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# LAURA KIPNIS'S ENDLESS TRIAL BY TITLE IX

By Jeannie Suk Gersen September 20, 2017



*Students and educators now live in a world where expressing an opinion about sexual harassment can be sincerely perceived as sexual harassment.*

Photograph by Chris Sweda / Chicago Tribune / Alamy

In 2015, Laura Kipnis, a film-studies professor at Northwestern University, published a polemic in *The Chronicle of Higher Education* titled “Sexual Paranoia Strikes Academe.” Kipnis argued that students’ sense of vulnerability on campus was expanding to an unwarranted degree, partly owing to new

enforcement policies around Title IX, which prohibits sex discrimination at educational institutions that receive federal funds. The new Title IX policies on sexual misconduct which were then sweeping campuses perpetuated “myths and fantasies about power,” Kipnis wrote, which enlarged the invasive power of institutions while undermining the goal of educating students in critical thinking and resilience. “If you wanted to produce a pacified, cowering citizenry, this would be the method,” she concluded. Kipnis wrote of a philosophy professor, Peter Ludlow, whom Northwestern disciplined for sexual harassment; Kipnis questioned the logic of the accusations against him.

One of Ludlow’s accusers, a graduate student (unnamed in Kipnis’s essay), then joined a fellow graduate student in the philosophy department in filing Title IX complaints against Kipnis, under Northwestern’s sexual-misconduct policy. Through her essay and a subsequent tweet about the essay, Kipnis was alleged to have violated the part of the sexual-misconduct policy prohibiting “retaliation”; additionally, she was alleged to have created a “hostile environment” and a “chilling effect” on complaints. Northwestern launched a formal Title IX investigation of Kipnis.

Most people under Title IX investigation don’t speak publicly about it, even to defend themselves. But Kipnis responded by publishing a follow-up essay in the *Chronicle*, called “My Title IX Inquisition,” decrying the investigation as a misuse of Title IX that allowed “intellectual disagreement to be redefined as retaliation.” On the same day, Northwestern cleared Kipnis of wrongdoing, finding that “viewpoint expression” is not retaliation, and that a “reasonable person” in the complainant’s position “would not suffer a hostile environment on account of” the essay and the tweet.

Earlier this month, Betsy DeVos, the Secretary of Education, delivered a policy speech on Title IX that focussed on the need for fair process for both accusers and the accused. She also stated that “schools have been compelled by Washington to enforce ambiguous and incredibly broad definitions of assault and harassment,” stemming from over-compliance with the Department’s

2011 “Dear Colleague” letter, which DeVos has made clear will be replaced by new regulations after a formal rulemaking process. Individuals “have faced investigation and punishment simply for speaking their minds or teaching their classes,” she said. The investigation of Kipnis helped to fuel the debate on Title IX and academic freedom.

In the meantime, Kipnis told me something that had only just been made public in a court filing. Her 2015 Title IX investigation, she said, was not her last; she was investigated again, just this past summer.

Back in 2015, the first investigation of Kipnis immediately triggered several other complaints. A professor whom Kipnis brought to her interview as her “support person” also had a Title IX retaliation complaint filed against him, after he spoke to the faculty senate about his concerns that the Kipnis investigation threatened academic freedom. An additional Title IX complaint at the same time also accused Kipnis of “involvement in and/or approval of” the faculty support person’s statement to the faculty senate. (Both of those complaints were eventually dropped.)

Drawing on her experience, Kipnis wrote the book “Unwanted Advances,” which was published in April. After Northwestern terminated Ludlow’s employment, he gave Kipnis access to confidential records in the graduate student’s successful Title IX complaint against him, along with thousands of texts and e-mails between them. Kipnis writes that “the more I learned about his situation, the more I saw his case as a lens through which the excesses and hypocrisies of the current campus hysteria came into focus.” Kipnis devotes a chapter of “Unwanted Advances” to her theory that Ludlow was falsely accused. In a letter to the editor in the *Daily Northwestern*, the Northwestern Philosophy Graduate Student Association objected that Kipnis “unfairly portrayed our colleague,” the graduate student.

In May, the graduate student sued Kipnis and her publisher, HarperCollins, for defamation. (A HarperCollins representative told me that the company

does not comment on pending litigation.) The suit alleges that the book falsely suggests that the graduate student and Ludlow had a consensual dating relationship, falsely insinuates that her allegation of rape was untrue, and falsely claims that she is a “serial Title IX filer.” It also makes an invasion-of-privacy claim, alleging that Kipnis’s book publicly disclosed private facts, including the plaintiff’s prior relationship with a married professor at another school, and details intimate conversations from her relationship with Ludlow.

It’s puzzling that the plaintiff is staking part of her lawsuit on the alleged falsehood of the statement that she is a “serial Title IX filer.” Kipnis mentions in the book that the graduate student was a complainant in six Title IX complaints; in the suit, the plaintiff acknowledges two, one against Ludlow and one against Kipnis. But days before filing the defamation suit, in May, the graduate student joined four Northwestern faculty members and five other graduate students as a complainant in yet another Title IX complaint against Kipnis, this time based on the publication of “Unwanted Advances.”

Kipnis told me that she was surprised when Northwestern once again launched a formal Title IX investigation of her writing. (A spokesperson from Northwestern did not respond to a request for comment by press time.) Kipnis said that investigators presented her with a spreadsheet laying out dozens of quotations from her book, along with at least eighty written questions, such as “What do you mean by this statement?,” “What is the source/are the sources for this information?,” and “How do you respond to the allegation that this detail is not necessary to your argument and that its inclusion is evidence of retaliatory intent on your part?” Kipnis chose not to answer any questions, following the standard advice of counsel defending the court case.

She did submit a statement saying that “these complaints seem like an attempt to bend the campus judicial system to punish someone whose work involves questioning the campus judicial system, just as bringing Title IX complaints over my first *Chronicle* essay attempted to do two years ago.” In other words, the process was the punishment. Possible evidence of retaliatory purpose, she

learned, included statements in the book that aggressively staked out her refusal to keep quiet, expressed in her trademark hyperbole. Her prior Title IX investigation, she writes, “has made me a little mad and possibly a little dangerous. . . . I mean, having been hauled up on complaints once, what do I have to lose? ‘Confidentiality’? ‘Conduct befitting a professor’? Kiss my ass. In other words, thank you to my accusers: unwitting collaborators, accidental muses.” Also presented as possible evidence was her Facebook post quoting a book review—“Kipnis doesn’t seem like the sort of enemy you’d want to attract, let alone help create”—on which Kipnis had commented, “I love that.”

If Kipnis did engage in retaliation or violate confidentiality, those infractions would be impossible to untangle from her book’s performance of her protest. “Unwanted Advances” sharply criticizes both the use of Title IX to silence political opponents and the secrecy that can enable abuse and overreach in campus Title IX processes. The latest iteration of Northwestern’s investigation of Kipnis took a month to complete, and again ruled in her favor. The university concluded that she did not retaliate or engage in sexual harassment by discussing mostly public information about pseudonymous students in a book meant to critique the Title IX landscape, including false accusations and the use of Title IX to punish those critical of Title IX. Though she didn’t honor the confidentiality of university investigations, Northwestern recognized that confidentiality is a request rather than a requirement in its sexual-misconduct policy.

Northwestern’s decision letter did suggest, however, that the dean of Kipnis’s school might still choose to sanction her for possible violations of the university’s policy on “civility and mutual respect.” The evidence: her statements after the book’s publication, in e-mails, on social media, and in talks, in which she questioned the veracity and reliability of the graduate student’s account and hoped that “the book will cause a bit of a shit storm.” The university said that these “behaviors could be interpreted as demeaning and/or intimidating.” Kipnis objected that her statements rebutting charges of inaccuracy in her book could not legitimately be construed as “incivility.” The

dean ultimately found that Kipnis did not violate the civility policy, and that was the end of the matter.

The U.S. Supreme Court has remarked, in *Oncale v. Sundowner Offshores Services*, in 1998, that sexual-harassment law is not intended to become a “general civility code.” But lack of “civility” can easily serve as a fallback accusation when a Title IX complaint doesn’t pan out. And Title IX can be deployed to make life difficult for a person one despises, for whatever reasons—good or bad. Two professors I spoke to said that they have experienced this phenomenon firsthand.

Nicholas Wolfinger, a professor of family and consumer studies, said that he was on the receiving end of this dynamic at the University of Utah, where he has been at odds with his colleagues for years. He told me it is because he has been openly contemptuous of colleagues who are “dead wood” and do not produce scholarship. Wolfinger was accused last year, under the school’s Title IX policy, of “being aggressive, rude, or dismissive of female faculty members” and “making unwelcome/unwanted sexual jokes or comments to other faculty members in the department” over the previous twelve-year period. Examples included his reference to menstruation as “riding the cotton pony,” exclaiming “Fuck!” at a faculty meeting, and recounting stories of proposing to his wife at a strip club.

The university’s investigation found him not responsible for Title IX sexual harassment and gender discrimination, but his dean still decided to impose an administrative reprimand and suspension for “unprofessional behavior,” specifically with reference to his use of profanity and the “constant stream of insults that you direct at others, particularly those berating and belittling your colleagues.” (Wolfinger has written about his Title IX process, but his piece did not mention the reprimand and suspension for unprofessional behavior.) It seems that the wish to knock off unlikable and ill-behaving colleagues can lead to illegitimate use of the Title IX process to punish them, even if there is no finding of responsibility. Ultimately, Wolfinger made a deal to work part-time

without giving up tenure, a result that he says both he and his colleagues were happy with.

A professor who previously taught at a small college in California told me a related story. He was an outspoken critic of the school's president, administration, and board, asking "too many questions" and calling for transparency regarding the school's management, curricular, and financial problems. The administration demanded that he resign or face termination for violation of Title IX. When he didn't resign, the school launched a Title IX investigation, with no complainant, that accused him of sexually harassing a former student five years earlier—but the former student sent the school a signed affidavit saying that the charges were baseless. The college decided to drop the Title IX charges, but it terminated the professor anyway for not living up to its standard of conduct, citing an alleged instance of public drunkenness (which he denies), his use of profanity (an e-mail in which he used the term "bullshit"), and what the college deemed to be immoral correspondence with a woman who had no connection to the school. (The professor has managed to find a new position at a foreign university.)

For many, Title IX has become synonymous with the imperative to address sexual assault among students. But Title IX can also be used to discourage disagreement, deter dissent, deflect scrutiny, or register disapproval of people whom colleagues find loathsome. The problem is not with Title IX itself, much less the generic capacity of *any* rule to be used as a pretext for unrelated ends. Rather, it is the growing tendency to try, in the words of Kipnis's book, "to bend Title IX into an all-purpose bludgeon." This warping is made possible by ambiguous and undisciplined understandings—misunderstandings—of sexual harassment and its harms. Kipnis's rebuke of common slippages and connotations, whereby "gropers become rapists and accusers become Survivors," anticipated a situation in which expression of her opinions about a sexual-harassment allegation could be sincerely perceived as an act of sexual harassment. Perhaps, in this

environment, the complaint that followed the publication of “Unwanted Advances” was inevitable.

Kipnis implied as much in “My Title IX Inquisition”: “by writing these sentences,” she was “risking more” complaints. That risk is now built into the professional life of those of us in universities who engage on subjects related to gender and sexuality. Like Kipnis, I routinely hear from teachers who say they are refraining from teaching and writing on such topics for fear of attracting Title IX complaints, which bring possibilities of termination, demotion, pay cuts, and tens of thousands of dollars in legal fees, especially for the swelling ranks of teachers who, unlike Kipnis and me, do not have tenure.

Yet debate on these topics is crucial to the pursuit of sex equality, as much as participants may disagree on what that means. As the Education Department under Secretary DeVos undertakes new rulemaking under Title IX, it will be important to be more explicit about how it may better protect the core educational activity of a campus: the production of knowledge and the expression of ideas. At this moment, Title IX is too often conscripted to serve purposes antithetical to the education of citizens in a democracy, in which disagreement, dissent, or disapproval should lead to argument, not to an infinite loop of institutional investigation.





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