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### My Title IX Inquisition

By *Laura Kipnis*

When I first heard that students at my university had staged a protest over an [essay](#) I'd written in *The Chronicle Review* about sexual politics on campus — and that they were carrying mattresses and pillows — I was a bit nonplussed. For one thing, mattresses had become a symbol of student-on-student sexual-assault allegations, and I'd been writing about the new consensual-relations codes governing professor-student dating. Also, I'd been writing as a feminist. And I hadn't sexually assaulted anyone. The whole thing seemed symbolically incoherent.

According to our [campus newspaper](#), the mattress-carriers were marching to the university president's office with a petition demanding "a swift, official condemnation" of my article. One student said she'd had a "very visceral reaction" to the essay; another called it "terrifying." I'd argued that the new codes infantilized students while vastly increasing the power of university administrators over all our lives, and here were students demanding to be protected by university higher-ups from the affront of someone's ideas, which seemed to prove my point.

The president announced that he'd consider the petition.

Still, I assumed that academic freedom would prevail. I also sensed the students weren't going to come off well in the court of public opinion, which proved to be the case; mocking tweets were soon pouring in. Marching against a published article wasn't a good optic — it smacked of book burning, something Americans generally oppose. Indeed, I was getting a lot of love on social media from all ends of the political spectrum, though one of the anti-PC brigade did suggest that, as a leftist, I should realize these students were my own evil spawn. (Yes, I was spending a lot more time online than I should have.)

Being protested had its gratifying side — I soon realized that my writer friends were jealous that I'd gotten marched on and they hadn't. I found myself shamelessly dropping it into conversation whenever possible. "Oh, students are marching against this thing I wrote," I'd grimace, in response to anyone's "How are you?" I briefly fantasized about running for the board of PEN, the international writers' organization devoted to protecting free expression.

Things seemed less amusing when I received an email from my university's Title IX coordinator informing me that two students had filed Title IX complaints against me on the basis of the essay and "subsequent public statements" (which turned out to be a tweet), and that the university would retain an outside investigator to handle the complaints.

I stared at the email, which was under-explanatory in the extreme. I was being charged with retaliation, it said, though it failed to explain how an essay that mentioned no one by name could be construed as retaliatory, or how a publication fell under the province of Title IX, which, as I understood it, dealt with sexual misconduct and gender discrimination.

Title IX was enacted by Congress in 1972 to deal with gender discrimination in public education — athletics programs were the initial culprits — and all institutions receiving federal funds were required to be in compliance. Over time, court rulings established sexual harassment and assault as forms of discrimination, and in 2011 the U.S. Department of Education advised colleges to "take immediate and effective steps to end sexual harassment and sexual violence." Since then, colleges have been scrambling to show that they're doing everything they can to comply, but still, [more than 100](#) of them are under federal investigation for violating Title IX policies.

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I should pause to explain that my essay included two paragraphs

about a then-ongoing situation on my campus involving a professor who was himself the subject of two sexual-harassment investigations involving two students. This professor subsequently sued university officials and one of the students for defamation, among other things. The charges had occasioned a flurry of back-and-forth lawsuits, all part of the public record, which had been my source for the two paragraphs. My point in citing this legal morass was that students' expanding sense of vulnerability, and new campus policies that fostered it, was actually impeding their educations as well as their chances of faring well in postcollegiate life, where a certain amount of resilience is required of us all.

The email from the Title IX coordinator provided a link to information about our university's Title IX policies, which brought me to a page containing more links. Clicking around, I found information about the rights of accusers and what to do if you've been harassed, though I couldn't find much that related to me. I did learn that Title IX protects individuals who've reported sexual misconduct from retaliation — characterized as "intimidation, threats, coercion, or discrimination" — but I failed to see how I could have retaliated against anyone when it wasn't me who'd been charged with sexual misconduct in the first place.

I wrote back to the Title IX coordinator asking for clarification: When would I learn the specifics of these complaints, which, I pointed out, appeared to violate my academic freedom? And what about my rights — was I entitled to a lawyer? I received a polite response with a link to another website. No, I could not have an attorney present during the investigation, unless I'd been charged with sexual violence. I was, however, allowed to have a "support person" from the university community there, though that person couldn't speak. I wouldn't be informed about the substance of the complaints until I met with the investigators.

Apparently the idea was that they'd tell me the charges, and then, while I was collecting my wits, interrogate me about them. The term "kangaroo court" came to mind. I wrote to ask for the charges in writing. The coordinator wrote back thanking me for my thoughtful questions.

What I very much wanted to know, though there was apparently no way of finding it out, was whether this was the first instance of Title IX charges filed over a publication. Was this a test case? From my vantage point, it seemed to pit a federally mandated program against my constitutional rights, though I admit my understanding of those rights was vague.

A week later I heard from the investigators. For reasons I wasn't privy to, the university had hired an outside law firm, based in another Midwestern city an hour-and-a-half flight away, to conduct the investigation; a team of two lawyers had been appointed, and they wanted to schedule "an initial interview" the following week. They were available to fly in to meet in person — the phrase "billable hours" came to mind — or we could videoconference. The email contained more links to more Title IX websites, each of which contained more links. I had the feeling that clicking on any of them would propel me down an informational rabbit hole where I'd learn nothing yet not re-emerge for days.

I replied that I wanted to know the charges before agreeing to a meeting. They told me, cordially, that they wanted to set up a meeting during which they would inform me of the charges and pose questions. I replied, in what I hoped was a cordial tone, that I wouldn't answer questions until I'd had time to consider the charges.

We finally agreed to schedule a Skype session in which they would inform me of the charges and I would not answer questions. I felt the flush of victory, though it was short-lived. I said I wanted to record the session; they refused but said I could take notes. The reasons for these various interdictions were never explained. I'd plummeted into an underground world of secret tribunals and capricious, medieval rules, and I wasn't supposed to tell anyone about it.

**B**ecause I strongly believe that the Title IX process should be far more transparent than it is, let me introduce some transparency by sharing the charges against me.

Both complainants were graduate students. One turned out to have nothing whatsoever to do with the essay. She was bringing charges on behalf of the university community as well as on behalf of two students I'd mentioned — not by name — because the essay had a "chilling effect" on students' ability to report sexual misconduct. I'd also made deliberate mistakes, she charged (a few small errors that hadn't been caught in fact-checking were later corrected by the editors), and had violated the nonretaliation provision of the faculty handbook.

The other complainant was someone I'd mentioned fleetingly (again, not by name) in connection with the professor's lawsuits. She charged that mentioning her was retaliatory and created a hostile environment (though I'd said nothing disparaging), and that I'd omitted information I should have included about her. This seemed paradoxical — should I have written more? And is what I didn't write really the business of Title IX? She also charged that [something I'd tweeted](#) to someone else regarding the essay had actually referred to her. (It hadn't.)

Please pause to note that a Title IX charge can now be brought against a professor over a tweet. Also that my tweets were apparently being monitored.

Much of this remains puzzling to me, including how someone can bring charges in someone else's name, who is allowing intellectual disagreement to be redefined as retaliation, and why a professor can't write about a legal case that's been nationally reported, precisely because she's employed by the university where the events took place. Wouldn't this mean that academic freedom doesn't extend to academics discussing matters involving their own workplaces?

Since the investigators had refused to provide the charges in writing, and I can often barely read my own handwriting, I'd typed notes during the Skype session, though I'd wondered if they'd object to that, too — could they? The extent of their powers was mysterious to me. (I'd briefly considered furtively recording the session despite the ban but decided against it — I'm a law-abiding type, I realized to my chagrin.)

I made what sense I could of my wildly mistyped notes and emailed the investigators a summary, adding that I'd answer only questions related to the charges I'd been informed about. I wrote up a peevish statement asserting that the essay had been political speech, stemming from my belief, as a feminist, that women have spent the past century and a half demanding to be treated as consenting adults; now a cohort on campuses was demanding to relinquish those rights, which I believe is a disastrous move for feminism. I used the words "political" and "feminist" numerous times.

Let me interject that I don't think my university necessarily wanted to be the venue for a First Amendment face-off — indeed, the president himself had recently [published an op-ed](#) in defense of academic freedom. As I understand it, any Title IX charge that's filed has to be investigated, which effectively empowers anyone on campus to individually decide, and expand, what Title IX covers. Anyone with a grudge, a political agenda, or a desire for attention can quite easily leverage the system.

And there are a *lot* of grudges these days. The reality is that the more colleges devote themselves to creating "safe spaces" — that new watchword — for students, the more dangerous those campuses become for professors. It's astounding how aggressive students' assertions of vulnerability have gotten in the past few years. Emotional discomfort is regarded as equivalent to material injury, and all injuries have to be remediated.

Most academics I know — this includes feminists, progressives, minorities, and those who identify as gay or queer — now live in fear of some classroom incident spiraling into professional disaster. After the essay appeared, I was deluged with emails from professors applauding what I'd written because they were too frightened to say such things publicly themselves. My inbox became a clearinghouse for reports about student accusations and sensitivities, and the collective terror of sparking them, especially when it comes to the dreaded subject of trigger warnings, since pretty much anything might be a "trigger" to someone, given the new climate of emotional peril on campuses.

I learned that professors around the country now routinely avoid discussing subjects in classes that might raise hackles. A well-known sociologist wrote that he no longer lectures on abortion. Someone who'd written a book about incest in her own family described being confronted in class by a student furious with her for discussing the book. A tenured professor on my campus wrote about lying awake at night worrying that some stray remark of hers might lead to student complaints, social-media campaigns, eventual job loss, and her being unable to support her child. I'd thought she was exaggerating, but that was before I learned about the Title IX complaints against me.

**M**y Midwestern Torquemadas were perfectly pleasant at our on-campus meeting — they'd indeed flown to town to meet in person — so pleasant that I relaxed and became overvoluble, stupidly gratified by their interest and attentions. There I was, expounding on my views about power and feminism; soon I was delivering a mini-seminar on the work of Michel Foucault. Later, replaying the two-and-a-half-hour session in my mind, I thought, "You chump," realizing that I'd probably dug a hundred new holes for myself. They'd asked endless questions about particular sentences in the essay, the sources for my ideas and claims, and what I'd meant in that fateful tweet. They didn't record any of it, nor was there a stenographer. One of the lawyers typed notes on her laptop; they'd send me a summary of my remarks, they said, which I could correct or add to, if I chose. I found these procedures utterly mystifying.

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Toward the end, I asked how the complainants could possibly know that my essay had created a "chilling effect" on campus. One of them, I was told, had provided the lawyers with the names of students and staff members who'd testify that the essay had chilled them. I, too, could supply names of witnesses to interview, if I liked.

That was our only face-to-face meeting, though there were numerous phone calls, emails, and requests for further substantiation, including copies of emails and tweets. I tried to guess what all this was costing — two lawyers flying back and forth to conduct interviews of the complainants, myself, and an expanding list of witnesses, review the sources for a 5,200-word article, adjudicate their findings, and compose a thorough report. I'm no expert on legal fees, but I was pretty sure the meter was ticking in \$10,000 increments.

I'd been asked to keep the charges confidential, but this became moot when, shortly before my campus meeting with the investigators, a graduate student [published an article](#) on a well-trafficked site excoriating me and the essay, and announcing that two students had filed Title IX retaliation complaints against me. She didn't identify her source for this information or specify her own relationship to the situation, though she seemed well versed on all the inside details; in fact, she knew more about the process than I did.

It wasn't me alone on the chopping block. She also excoriated our university's president for his op-ed essay on academic freedom, which, she charged, was really a veiled commentary on the pending Title IX charges against me and thus subverted the process by issuing a covert advance verdict in my favor. (He'd obliquely mentioned the controversy over the essay, among other campus free-speech issues.) She didn't seem particularly concerned that she herself was subverting the process by charging that the process had been subverted, and by revealing the complaints in the first place.

She was also surprisingly unconcerned about how effectively her article demolished its own premises about the asymmetry of institutional power. If a graduate student can publicly blast her own university's president, mock his ideas, and fear no repercussions, then clearly the retaliatory power that university employment confers on anyone — from professors to presidents — is nil. Nor had my own essay exactly had a chilling effect on anyone's freedom of expression.



An academic friend and I disagreed about whether the graduate student's article would be seen as a good career move on her part (a courageous example of "punching up") or a self-wounding one ("collegiality" is still a factor considered by hiring committees; no one wants a high-drama potential colleague). He thought the former; I wasn't so sure, though we agreed that given the shifting political winds on campuses these days, it was impossible to call.

At the end of the interrogation, the investigators asked if I wanted to file my own retaliation complaint against the student who'd revealed the charges. I said that I believed all parties involved were using the process for political purposes. I declined to press charges against anyone.

They'd issue a report on their findings within 60 days, they said, though on what basis I had no idea. The standard that applied was "preponderance of evidence," they'd explained — "more likely than not" as opposed to "beyond a reasonable doubt" — but that seemed pretty vague. Note that I was never actually presented with any of this evidence. Given that the investigators doubled as judge and jury, and the extralegal nature of the proceedings, I wished I'd been more ingratiating.

**T**he Title IX bureaucracy is expanding by the minute. A recent emailed update from my university announced new policies, programs, hires, surveys, procedures, websites, and educational initiatives devoted to sexual misconduct. What wasn't quantified is how much intellectual real estate is being grabbed in the process. It's a truism that the mission of bureaucracies is, above all, to perpetuate themselves, but with the extension of Title IX from gender discrimination into sexual misconduct has come a broadening of not just its mandate but even what constitutes sexual assault and rape.

Ambivalent sex becomes coerced sex, with charges brought months or even years after the events in question. Title IX officers now adjudicate an increasing range of murky situations involving mutual drunkenness, conflicting stories, and relationships gone wrong. They pronounce on the thorniest of philosophical and psychological issues: What is consent? What is power? Should

power differentials between romantic partners be proscribed? Should eliminating power differences in relationships even be a social goal — wouldn't that risk eliminating heterosexuality itself?

Nothing I say here is meant to suggest that sexual assault on campuses isn't a problem. It is. My concern is that debatable and ultimately conservative notions about sex, gender, and power are becoming embedded in these procedures, without any public scrutiny or debate. But the climate on campuses is so accusatory and sanctimonious — so "chilling," in fact — that open conversations are practically impossible. It's only when Title IX charges lead to lawsuits and the usual veil of secrecy is lifted that any of these assumptions become open for discussion — except that simply discussing one such lawsuit brought the sledgehammer of Title IX down on me, too.

Many of the emails I received from people teaching at universities pointed out that I was in a position to take on the subjects I did in the earlier essay only because I have tenure. The idea is that once you've fought and clawed your way up the tenure ladder, the prize is academic freedom, the general premise being — particularly at research universities, like the one I'm fortunate enough to be employed at — that there's social value in fostering free intellectual inquiry. It's a value fast disappearing in the increasingly corporatized university landscape, where casual labor is the new reality. Adjuncts, instructors, part-timers — now half the profession, according to the American Association of University Professors — simply don't have the same freedoms, practically speaking.

What's being lost, along with job security, is the liberty to publish ideas that might go against the grain or to take on risky subjects in the first place. With students increasingly regarded as customers and consumer satisfaction paramount, it's imperative to avoid creating potential classroom friction with unpopular ideas if you're on a renewable contract and wish to stay employed. Self-censorship naturally prevails. But even those with tenure fear getting caught up in some horrendous disciplinary process with ad hoc rules and outcomes; pretty much everyone now self-censors accordingly.

When it comes to campus sexual politics, however, the group most constrained from speaking — even those with tenure — is men. No male academic in his right mind would write what I did. Men have been effectively muzzled, as any number of my male correspondents attested.

I suspect that most Americans, if pushed, would go to the mat for the First Amendment, which is what academic freedom is modeled on. You can mock academic culture all you want, and I've done a fair amount of it myself, but I also believe that unconstrained intellectual debate — once the ideal of university life, now on life support — is essential to a functioning democratic society. And that should concern us all. I also find it beyond depressing to witness young women on campuses — including aspiring intellectuals! — trying to induce university powers to shield them from the umbrages of life and calling it feminism.

As of this writing, I have yet to hear the verdict on my case, though it's well past the 60-day time frame. In the meantime, new Title IX complaints have been filed against the faculty-support person who accompanied me to the session with the investigators. As a member of the Faculty Senate, whose bylaws include the protection of academic freedom — and believing the process he'd witnessed was a clear violation of academic freedom — he'd spoken in general terms about the situation at a senate meeting. Shortly thereafter, as the attorneys investigating my case informed me by phone, retaliation complaints were filed against him for speaking publicly about the matter (even though the complaints against me had already been revealed in the graduate student's article), and he could no longer act as my support person. Another team of lawyers from the same firm has been appointed to conduct a new investigation.

A week or so earlier, the investigators had phoned to let me know that a "mediated resolution" was possible in my case if I wished to pursue that option. I asked what that meant — an image of me and the complainants in a conference room hugging came to mind. I didn't like the visual. The students were willing to drop their complaints in exchange for a public apology from me, the investigators said. I tried to stifle a laugh. I asked if that was all. No,

they also wanted me to agree not to write about the case.

I understand that by writing these sentences, I'm risking more retaliation complaints, though I'm unclear what penalties may be in store (I suspect it's buried somewhere in those links). But I refuse to believe that students get to dictate what professors can or can't write about, or what we're allowed to discuss at our Faculty Senate meetings. I don't believe discussing Title IX cases should be verboten in the first place — the secrecy of the process invites McCarthyist abuses and overreach.

For the record, my saying this isn't retaliation. It's intellectual disagreement. If more complaints are brought, I suppose I'll write another essay about them. To my mind, that's what freedom of expression means, and what's the good of having a freedom you're afraid to use?

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