

AN EMPIRICAL ANALYSIS OF NON-LEGAL FACTORS INFLUENCING JUDGING IN
STUDENT-INITIATED SEX DISCRIMINATION SUITS IN HIGHER EDUCATION

by

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Abstract

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The sexual interaction among students and educators has become a significant social issue in higher education, resulting in claims being brought to the U.S. courts by students and parents alleging sex discrimination and sexual harassment. These claims have been based on three principal legal theories: 1) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, (2) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §2000), and (3) Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §1681-1863).

During its first phase, this study examined U.S. Courts of Appeal and U.S. District Court decisions involving sex discrimination in higher education between students and faculty or administration, brought to the court under the Equal Protection Clause of the Fourteenth Amendment, Title VII, and Title IX. The study's purpose was to examine the relationship among judges' political ideology, judges' gender, judges' appointment era, plaintiffs' gender, and judges' voting in sex discrimination disputes. Judges' individual voting, the single binary dependent variable, was classified as pro-plaintiff (liberal) or pro-defendant (conservative). Political ideology, appointment era, judges' gender, and plaintiffs' gender were set up as independent predictors.

In addition to examining the relationship among the independent variables and individual voting, the study in its second phase examined case outcomes in United States Courts of Appeal to determine, among other things, if the composition of an appellate panel influenced decisional outcomes. The independent predictors in this phase of the study were the gender majority of the panel, the appointment era majority of the panel, the ideological majority of the panel, and the plaintiffs' gender. The binary dependent variable was the case decisional outcome, either pro-plaintiff (liberal) or pro-defendant (conservative).

Results with the individual database indicated that political ideology and plaintiffs' gender were factors which influenced judge voting. Results of the panel database indicated that appointment era majority and plaintiffs' gender were significant factors influencing case outcome.

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Chapter 1

Introduction

The sexual interaction among students and educators has become a significant social issue in higher education, resulting in claims being brought to the U.S. courts by students and parents alleging sex discrimination and sexual harassment. These claims have been based on three principal legal theories: 1) the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, (2) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §2000), and (3) Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §1681-1863).

Discrimination means to treat one person differently from another (Christensen, 1994). Sexual harassment is a form of sex discrimination and may include extortion of sexual favors, sexual expressions, jokes, comments, or displays (Christensen, 1994). The concept of sexual harassment can be applied to instructor-student relationships similar to employee-employer, because teachers have the authority and opportunity to demand sexual favors from the students in return for better grades (Benson & Thompson, 1982). Although sexual harassment can apply to both males and females, "in reality, it remains a problem faced almost exclusively by women" (p. 238). Simple friendliness and jokes can be misinterpreted as sexual advances from those in authority, such as teachers or employers. The effect therefore of sexual harassment policies is "not merely to restrict sexual speech around those who find it offensive; it is to restrict sexual speech, period" (Christensen, 1994).

This concept of sexual harassment was illustrated clearly during the Anita Hill-Clarence Thomas incident. This issue drew national attention during Clarence Thomas' confirmation hearings for the United States Supreme court when Anita Hill, his former assistant at the EEOC, made allegations about Thomas's harassment of her, which

Thomas denied (Black & Allen, 2001). "The issue of whether it was a terrible thing to speak frankly about sex to her was almost never raised" (Christensen, 1994, p. 3). However, sex discrimination and more specifically sexual harassment in the educational system must be strictly enforced.

According to Hippensteele and Pearson (1999), "sexual harassment is a serious concern in academia" (p. 48). Academic communities need to better understand how to respond to sexual harassment concerns in order to prevent the problem before it results in legal proceedings. Since sex discrimination and sexual harassment are a concern in the educational sector, the intent of this study was to examine sex discrimination in higher education throughout the U.S. court system; specifically how such conflicts involving students find expression in the federal courts and how the courts react to them.

During its first phase, this study examined U.S. Courts of Appeal and U.S. District Court decisions involving sex discrimination in higher education between students and faculty or administration, brought to the court under the Equal Protection Clause of the Fourteenth Amendment, Title VII, and Title IX. The study's purpose was to examine the relationship among judges' political ideology, judges' gender, judges' appointment era, plaintiffs' gender, and judges' voting in sex discrimination disputes. Judges' individual voting, the single binary dependent variable, was classified as pro-plaintiff (liberal) or pro-defendant (conservative). Political ideology, appointment era, judges' gender, and plaintiffs' gender were set up as independent predictors.

In addition to examining the relationship among the independent variables and individual voting, the study in its second phase examined case outcomes in United States Courts of Appeal to determine, among other things, if the composition of an appellate panel influenced decisional outcomes. The independent predictors in this phase of the study were the gender majority of the panel, the appointment era majority of the panel,

the ideological majority of the panel, and the plaintiffs' gender. The binary dependent variable was the case decisional outcome, either pro-plaintiff (liberal) or pro-defendant (conservative).

The data sets for the analyses of judges' individual votes in these gender discrimination cases were derived from cases brought pursuant to the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000), and Title IX of the Educational Amendments of 1972 (20 U.S.C.A. §1681). They included 157 decisions, consisting of 70 cases issued by the United States Courts of Appeal and 87 cases from U.S. District Courts issued between 1964 and 2013.

The relative efficacy of the attitudinal and legal models in accounting for the results was studied. The attitudinal model is an aspect of a social-psychological theory and is used in explaining judicial voting (Epstein & Knight, 2000). This model states that justices decide disputes based on their ideological and other values instead of purely legal ones (Weinshall-Margel, 2011). In other words, this model theorizes that justices make value-laden decisions (Segal & Spaeth, 1993).

The second model examined was the legal model, which states that court decisions are decided from the facts of the case, processed through the lens of judicial precedent (Weinshall-Margel, 2011). There is actually more than one class of legal models. One class states that there is a single correct answer to legal questions, a second class states that "legal criteria have a gravitational pull on the decisions of justices" (Segal, Spaeth, & Benesh, 2005, p. 20), and the third class states judges believe they are following legal principles. This model was reviewed in more detail later in the study.

Background

Although the U.S. Constitution was ratified in 1789 and the Bill of Rights in 1791, it was not until after the Civil War in 1865 that the Thirteenth Amendment was enacted to eliminate the rights of states to justify discrimination against slaves. The Thirteenth Amendment states, “Neither slavery nor involuntary servitude ...shall exist within the United States, or any place subject to their jurisdiction” (U.S.C.A. Const. amend. XIII, §1). Following this, in 1868 the Equal Protection Clause of the Fourteenth Amendment was enacted, which states, “no state shall ... deny to any person within its jurisdiction the equal protection of the laws” (U.S.C.A. Const. amend. XIV, §1). The Fourteenth Amendment added protection to newly freed slaves and others who were similarly situated.

Although the Fourteenth Amendment was ratified in 1868, it was not until the twentieth century that the Equal Protection Clause became central to civil rights protection (Tsesis, 2012). The seminal case addressing race based equal protection in K-12 education was *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 692 (1954). The justices unanimously stated that school segregation laws violated the Equal Protection Clause and that separate facilities could never be constitutionally equal. Two examples of U.S. Supreme Court cases are: *Green v County School Board*, 391 U.S. 430, 88 S.Ct. 1689, and *Swann v Charlotte-Mecklemburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267. These cases will be discussed in detail later.

In applying Equal Protection doctrine to gender discrimination in *Craig v. Boren*, 429 U.S. 190 (1976) the Supreme Court declared unconstitutional an Oklahoma law that allowed women to buy low alcohol 3.2% beer at age 18, but men could not buy it until age 21. There, the Supreme Court concluded that “[c]lassifications by gender must serve important governmental objectives and must be substantially related to achievement of

those objectives” (*Craig v. Boren*, 429 U.S. 190 (1976), p. 190). Although the Court refused to apply the rigorous strict scrutiny standard it has used to analyze racial classifications, it nonetheless determined that gender discrimination warrants a more serious analysis than a mere rational basis test. The Boren intermediate scrutiny test has been repeatedly applied to Equal Protection claims based on gender. See, e.g., *United States v. Virginia*, 518 U.S. 515 (1996)(discussed below) and *Michael M. V. Superior Court*, 450 U.S. 455 (1981)(upholding state’s statutory rape law that punished men for having intercourse with a woman under age 18, but did not punish woman for having sex with a man under age 18).

Title VII of the Civil Rights Act was enacted by Congress in 1964 in order to prohibit discrimination in employment in both the private and public sectors. The act states “it is an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin” (42 U.S.C.A. § 2000). Laws relating to work, the family, and education were impacted by this public policy (Shea, Green & Smith, 2007).

Title IX of the Educational Amendments of 1972 states that “no person in the U.S. shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal aid” (20 U.S.C.A & 1681-1683). This law did not specifically delineate sexual harassment as a form of discrimination (Grube & Lens, 2003). The U.S. Department of Education, Office of Civil Rights (OCR), however, interpreted the law to include “sexual harassment, including student-to-student harassment” (Grube & Lens, 2003, p. 179). In the case of *Franklin v. Gwinnett County Schools*, 503 U.S. 60, 112 S.Ct., the court

established criteria under which a school district can be held liable in damages under Title IX in cases involving a teacher's sexual harassment of a student.

The technical wording of Title IX did not clearly delineate whether the provisions included discrimination in athletics in universities (Valentin, 1997). However, three years after Title IX was added, President Ford signed specific regulations to guide the use of the statute for school systems or other systems which used federal funds (Valentin, 1997).

These three sources of protection have been used together or separately in educational cases pertaining to sexual discrimination or sexual harassment, a few of which reached the U.S. Supreme Court. Since 1972 there have been many issues related to sexual discrimination or sexual harassment, which have been tried in the federal court systems, thus enabling equality not only in employment but also in the educational settings. President Clinton reinforced commitment against discrimination in order to strengthen support to "eradicate gender discrimination and other types of inequalities in education and society" (Valentin, 1997, p. 9).

Theoretical Basis for Research

Attitudinal Theory

The attitudinal model is a policy-based model that emphasizes attitudes of judges. According to the model, judges weigh their decisions based on their personal policy preference as well as the facts of the case (Segal, Spaeth, & Benesh, 2005). In essence, the model states that in judicial decisions, the situations of the case are the facts and the objects are the people involved in the lawsuit. Situations can be subjectively perceived and therefore judges can dispute the facts in a subjective manner. This model has been applied to the Supreme Court justices for three reasons: 1) The Supreme Court justices are appointed for life and have the freedom to decide cases based on subjective

preferences. 2) Supreme Court Justices do not have any political ambitions to promote, as they are already in the highest court in the land. Therefore, ambition is not involved in their decisions. 3) The Supreme Court is the court of last resort and therefore justices are allowed to choose their own cases, thereby giving them the freedom to pursue their own interests (Segal, Spaeth, & Benesh, 2005). In summary, the only extralegal characteristic that is involved in cases is the justices' own personal attitudes and beliefs.

The attitudinal model further predicts that moderate justices will not vote consistently liberal or conservative, while those with extreme ideologies will consistently vote liberal or conservative dependent on their political ideologies (Collins, 2008). This model is used to help the researchers predict how the case will be decided. However, this model does not account for the opinions of the judges (Abramowicz & Tiller, 2009; Hammond, Bonneau, & Sheehan, 2005). Although the attitudinal model has been researched extensively at the Supreme Court level, researchers have been studying this model relative to the lower appellate courts as well. According to Songer and Haire (1992) models which explain justices' behavior on the Supreme Court "may not be appropriate for understanding judicial behavior in other appellate courts" (p. 964). The research conducted by Songer and Haire (1992) was limited to rulings on obscenity cases, utilizing a combination of models in their study. Although the attitudinal model supports the belief that the attitudes of judges factor into the decisions, the voting choices of lower courts reflect complex factors. The influences of the judges are ideological as well as a result of the interaction of the other judges, and their perception of the interplay between the litigants and attorneys. It is doubtful that one single model can fully explain decision-making behavior of the judges.

Legal Model

This theory is the most traditional theory taught in law schools and asserts that court decisions are the result of the intent of lawmakers, court precedents and the clear meaning of the law. This model does not allow for individual judicial ideology or individuality (Cross, 1997). Supporters of the legal theory infer that justices' decisions are rooted in the law (Weinshall-Margel, 2011).

Although the legal model is not easily clearly defined, the classic legal model has some basic characteristics that have remained constant throughout the years. One of the characteristics of this model is the supposition that precedents and texts are more important than individual reasoning. Another aspect of that principle is the understanding that the legal model does not allow for judicial decisions, which are motivated by personal political principles (Cross, 1997). In essence, the legal theory holds that the "the law is separate from politics" (Cross, 2003, p. 1462). However, some researchers state that the law is not the only factor that inspires court decisions, but believe there are other influences besides the facts of a case or text of a statute or constitutional provision that justices use to make decisions (Cross, 2003). There are nonlegal factors which influence voting; such as changes in social trends over time, threats of reversal by the Supreme Court, and a lower court shift. This lends to vagueness in the legal model according to Cross (2003), thus making a detailed examination of the model difficult. This is the reason studies over time provide an incomplete support for the legal model.

Baum (1994) discussed the relationship between judges' goals and their behaviors. According to his research on state supreme courts and lower federal courts, judges give high priority to making good law and policy. Implicit with this is the impact that the Supreme Court makes on precedent legal decisions. Fisher, Horowitz, & Reed (1993) assert that a goal of judges at all levels is to accurately interpret the law. This model does

not allow for personal views regarding policies, but only allows for strict adherence to the law.

Importance of the Topic

In contrast to substantial literature on United States Supreme Court Justices' voting, there is a dearth of empirical research on non-legal factors which influence how judges in the United States Courts of Appeal and District Courts vote in higher educational sexual discrimination cases. Since more cases reach the United States Courts of Appeal and District Courts than the Supreme Court, the importance of understanding non-legal influences on voting and decisional outcomes cannot be gainsaid.

The concern among educators regarding the legal ramifications of sexual harassment has become more serious with each passing year. Therefore it is necessary for educators to thoroughly understand the nature of federal legislation in order to recognize the importance of policies that are enforced to protect educational administrators as well as students (Butterfield, 1995).

Structure of the Federal Court System

Brief Summary of the United States Court Systems

The judicial branch of the government consists of a dual court system: state and federal. These two systems operate in a largely independent fashion from one another, except that state courts are obligated to apply federal law in the manner in which the United States Supreme Court has interpreted it. The federal court system is composed of the U.S. Supreme Court, U.S. Courts of Appeal, and U.S. District Courts. Federal courts are responsible for deciding "issues concerning the U.S. Constitution, statutes enacted by Congress, or regulations produced by federal governmental agencies" (Shea, Green, & Smith, 2007).

The state court systems are comprised of courts in each of the 50 states. The Tenth Amendment to the Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (U.S.C.A. Const. amend. 10). Since the federal government's power is a limited one, the powers not granted to the national government are reserved to the states and the people. This division is reflected in the powers enjoyed by the United States and the 50 state court systems. For the purposes of this study, the focus will be on the lower courts in the Federal Court System only. This system consists of 94 U.S. District Courts and 13 Courts of Appeal. The District Courts are the trial courts and the Courts of Appeal serve as intermediate appellate courts subordinate only to the United States Supreme Court. There are one or more District Courts in each state, with larger states divided into as many as four districts.

The U.S. District Courts, also known as federal trial courts, are presided over by a single judge for each case. There are multiple judges and courtrooms in each district and many issues concern the U.S. Constitution, regulations by federal governmental agencies, or statutes enacted by Congress (Shea, Green, & Smith, 2007). Once these cases are decided, the plaintiffs have the right to appeal the decision to a higher court.

The U.S. District Courts are considered the courts of *original jurisdiction*. The United States Courts of Appeal hear appeals from district courts which are assigned by Congress to the same circuit as the appellate court. These courts also review cases involving decisions of federal administrative agencies (Carp & Stidham, 1985). In the U.S. Courts of Appeal a majority vote is required to render a decision. This means that two of the three judges agree on the decision. The remaining judge may enter a dissent, but the majority still decides the outcome of the case, either pro-plaintiff or pro-defendant.

The District Court judges and Courts of Appeal judges are appointed by the President of the United States and were primarily composed of male justices in the early part of the twentieth century. However after the passage in 1972 of Title IX, women and minorities began to play a greater role in the judicial system (Lens, 2003). As recently as the Reagan administration, approximately 96% of judges were Caucasian males. Between 1977 and 1980 there were a total of 11 women nominated to the circuit courts. In the same period of time there were 45 men nominated to the circuit courts. Between 1987 and 1988 there were 5.4% women nominated for the federal courts (U.S. G.P.O.1990)

The 13 Courts of Appeal or appellate courts consist of 11 numbered circuits, with one in the District of Columbia and one which handles trade and patent cases (Shea, Green, and Smith, 2007). Each court is assigned its jurisdiction by Congressional enactment. The First Circuit consists of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island. The Second Circuit consists of Connecticut, New York, and Vermont. The Third Circuit consists of Delaware, New Jersey, and Pennsylvania. The Fourth Circuit consists of Maryland, North and South Carolina, and Virginia. The Fifth Circuit consists of Louisiana, Mississippi, and Texas. The Sixth Circuit consists of Kentucky, Michigan, Ohio, and Tennessee. The Seventh Circuit consists of Illinois, Indiana, and Wisconsin. The Eighth Circuit consists of Arkansas, Iowa, Minnesota, Missouri, Nebraska, and North and South Dakota. The Ninth Circuit consists of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The Tenth Circuit consists of Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. The Eleventh Circuit consists of Alabama, Florida, and Georgia. Table 1.1 describes which states and territories are located in each Court of Appeals circuit.

Table 1-1 United States Courts of Appeal Circuits

Circuit	Region/Legal Issue assigned
1	Maine, Massachusetts, New Hampshire, Puerto Rico and Rhode Island
2	Connecticut, New York, and Vermont
3	Delaware, New Jersey, and Pennsylvania
4	Maryland, North Carolina, South Carolina, and Virginia
5	Louisiana, Mississippi, and Texas
6	Kentucky, Michigan, Ohio, and Tennessee
7	Illinois, Indiana, and Wisconsin
8	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota
9	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington
10	Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming
11	Alabama, Florida, and Georgia
District of Columbia	District of Columbia
Federal Circuit	Tax, Patent, and International-trade cases

Usually, the U.S. Federal Courts of Appeal decide cases that are appealed from judgments entered by the district judges after verdicts by jurors or judges in the *trial courts* (Shea, Green, & Smith, 2007). The Courts of Appeal are composed of a panel of three judges on each case. Unlike the lower trial courts, these judges do not hear the case with a jury present, but consider only the written arguments submitted by the parties based on the record of that case in the lower court.

The court of last resort in the federal system is the U.S. Supreme Court. This court has authority over any decisions made in lower courts related to the U.S. Constitution or federal statute. The legal principles established by the Supreme Court are final and must be applied by the lower courts until a future case arises in which the Supreme Court justices overrule the precedent they have established (Shea, Green & Smith, 2007). Decisions made by the U.S. Supreme Court cannot be appealed to any other court. Although the United States Supreme Court's decisions on Constitutional law may not be overruled except by the Supreme Court itself, Congress may overrule the Supreme Court's decisions interpreting laws passed by Congress by simply changing the law to reflect the way Congress believes the law was intended to operate.

United States Supreme Court and Justices

The U.S. Supreme Court, also known as the High Court, consists of a total of nine justices. One of the justices is known as the chief justice and the other eight are identified as associate justices (West's Encyclopedia of American Law, 2005). The Supreme Court justices are appointed by the President of the United States for life absent their impeachment by Congress, resignation, or death. However, the Senate has the power to reject the nominees to the court.

In defined circumstances a federal court may adjudicate a matter of state law when the facts of the case involved a very similar issue involving federal law. For

example, in the context of employment discrimination a plaintiff who brings a Title VII claim may be permitted to assert claims under state anti-discrimination statutes if the issue in the two cases substantially overlaps. This exercise of jurisdiction by the federal courts is known as supplemental or pendant jurisdiction and the authority for exercising this jurisdiction is granted by Congress. However, State Supreme Courts are the highest authority over state cases involving state law. Therefore, when federal courts decide issues of state law they are bound to follow the decisions of the applicable state's highest legal tribunal in their interpretation of state law.

The U.S. Supreme Court decides cases either through original jurisdiction or through appeal. The principle function of this Court is to review decisions of the lower courts for legal error and decide whether those courts correctly applied either the federal constitution or federal statutes. The Court receives approximately 10,000 petitions each year but only agrees to review, known as a grant of the writ of certiorari, about 75-80 cases per year (<http://www.supremecourt.gov/faq.aspx#faqgi9>). Four of the nine justices must vote to hear a case in order for it to be placed on the docket.

The annual term for the Supreme Court is nine months, October to June of each year. After reviewing written briefs the justices listen to each side present their case usually in a time allotment of 30 minutes orally argued. After the case is heard, the justices retire alone together to discuss the case. When the Chief Justice is in the majority he assigns writing of the majority opinion to himself or one of the associate justices who is in the majority. When the chief is not in the majority the senior associate justice may assign the opinion to himself or another justice in the majority (Segal, Spaeth, & Benesh, 2005). Of all the justices that have served on the Supreme Court, there have only been four women justices, one Hispanic judge and two African American judges have been appointed to the Supreme Court (www.law.cornell.edu).

Chapter 2

Review of the Literature

Precedent Supreme Court Cases Involving Sex Discrimination

Overview

Cases involving claims of sexual discrimination are brought to the Supreme Court based principally on three grounds. These are the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972. The Equal Protection Clause of the Fourteenth amendment states:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor shall any state deny to any person equal protection of the laws. (U.S. Const. amend. XIV, §1).

This amendment broadened the scope of constitutional protection to include not only slaves but also all individuals. The protections were not specific and therefore would require interpretations by judges to clarify the constitutional protections (Shea, Green, & Smith, 2007).

In addition to the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964 “provides remedies to employees for injuries related to discriminatory conduct and associated wrongs by employers” (42 U.S.C.A. §2000). This includes all employees in all areas of economic endeavors. Title VII was enacted to protect employees in the workplace but did not specifically mention educational institutions; however several cases in the educational arena such as *Peters v. Jenney*,

327 F. 3d 307, *Palmer v. Louisiana St. Bd. Of Elem. and Secondary Educ.*, 842 S. 2d 363, and *Cherry v. Ritenour Sch. Distr.*, 253 F. Supp. 2d 1085, have been addressed through the courts under Title VII.

Title IX states that “No person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance” (20 U.S.C.A. §1681a). In order to establish a Title IX case, the plaintiff must prove: 1) educational program is involved, 2) defendant is recipient of federal funds, and 3) discrimination occurred on the basis of sex.

The following sections highlight pivotal Supreme Court cases under each of these provisions. These cases have set precedents for these laws and lower courts adhere to these when making court decisions. Cases involving higher education are the focus of this study. However, Supreme Court cases involving K-12 as well as those outside the educational system are reported as well.

Equal Protection

A landmark Supreme Court case involving sex discrimination in the higher educational sector under the Equal Protection Clause of the Fourteenth Amendment was *U.S. v. Virginia*, 518 U.S. 515, 116 S Ct. 2264. The case, decided June 26, 1996, consisted of a lawsuit by women who were denied admittance to the Virginia Military Institute (VMI), a male-only institution. The U.S. District Court ruled in favor of the defendant, but the U.S. Court of Appeals Fourth Circuit, 976 F. 2d 890, vacated and reversed the decision of the lower court. As a result of the Court of Appeals decision, the Virginia Military Institute proposed adding the Virginia Women’s Institute for Leadership (VMIL), thereby purporting to offer women the same benefits as the male students. However, the Supreme Court ruled that VMI violated the equal protection law by

admitting only male students and found the programs were not comparable. This decision was based on a precedent case of *Sweatt v. Painter*, 339 U.S. 629. This case involved a male Negro who was denied admission to a law school in Texas because of his race. Another law school was opened later which would allow Negro applicants; however the Supreme Court decided that the schools were not equal and violated the Fourteenth Amendment.

A decision which was brought under the Equal Protection Clause of the Fourteenth Amendment involving higher education was *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S. Ct. 3331. This case, decided in July 1982, concerned a male plaintiff who sued a university stating that he was not admitted to the School of Nursing because of his gender. The U.S. District Court for the Northern District of Mississippi ruled in favor of the defendants and the plaintiff appealed. The Federal Court of Appeals vacated and remanded and denied en banc review. On writ of *certiorari* the U.S. Supreme Court decided in favor of the plaintiff stating that the admissions policy could not be justified under the Educational Amendment of 1972 and violated the Equal Protection Clause as well.

The next case which was decided in the U.S. Court of Appeals but which did not receive grant of the writ of *certiorari* from the U.S. Supreme Court was the case of *Trauvetter v. Quick*, 916 F.2d 1140. In this case a female teacher who had engaged in a sexual relationship with her principal sued members of the school board as well as the superintendent and assistant superintendent claiming sexual discrimination as well as sexual harassment. She brought suit under Title VII and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court ruled in favor of the defendants and the teacher appealed. The U.S. Court of Appeals affirmed the ruling of the lower court stating there was no violation of Equal Protection as the teacher failed to

prove the principals' sexual advances were motivated by her gender, thereby no violation of Equal Protection or Title VII. The plaintiff did not prove that the alleged sexual harassment occurred intentionally or because she was female.

Title VII

The first Supreme Court case addressing Title VII discrimination occurred soon after Title VII's enactment in 1970 with *Phillips v. Martin Marietta Corp*, 400 U.S. 542, 91 S. Ct. 496 (1970). In this case a female plaintiff brought suit against a company claiming she was discriminated against because of her sex and denied employment. The U.S. District Court for the Middle District of Florida decided in favor of the defendant and the plaintiff appealed. The Fifth Circuit of the Court of Appeals affirmed. *Certiorari* was granted and the U.S. Supreme Court ruled in favor of the plaintiff, stating that separate hiring policies for men and women were a form of discrimination under Title VII.

Another Supreme Court case involving sexual discrimination and employment did not reach the Supreme Court until 1977 with *Hazelwood School District v. United States*, 433 U.S. 299, 97 S. Ct. 2736. This was a case brought against Hazelwood School District alleging violation of Title VII for racial discrimination in hiring among teachers in the district. The U.S. District Court for the Eastern District of Missouri ruled against the plaintiffs who appealed to the U.S. Court of Appeals, 534 F.2d 805. The appellate court overturned the lower court's ruling and the defendants appealed to the U.S. Supreme Court. The U.S. Supreme Court held that

Statistics can be an important source of proof in employment discrimination cases, since absent explanation, it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees

are hired. Evidence of long lasting and gross disparity between the composition of a workforce and that of the general population thus may be significant even though ... Title VII imposes no requirement that a work force mirror the general population.(p. 7-8)

The Court vacated and remanded the case stating that in order to determine whether a *prima facie* case of discrimination was made, in making its analysis, the court directed it must consider the “relevant labor market area” before making any valid statistical findings comparing the racial composition of the applicant pool with the racial composition of the teaching staff. In 1986 the U.S. Supreme Court ruled that sexual harassment was a form of sexual discrimination in *Meritor Savings Bank v. Vinson*, 477 U.S. 57. This case involved a female bank employee who brought a sexual harassment suit under Title VII. The U.S. District Court for the District of Columbia ruled in favor of the defendant and the plaintiff appealed. The U.S. Court of Appeals, 753 F.2d 141, reversed the decision and remanded the case back to the U.S. District Court. On appeal, the U.S. Supreme Court held that sexual harassment is a form of sexual discrimination under Title VII and ruled in favor of the plaintiff.

Clark County School District v. Breeden, 532 U.S. 268, 121 S. Ct. 1508 was another case involving alleged sexual harassment and retaliation as a form of discrimination. The plaintiff was a school district employee claiming she was a victim of sexual harassment due to a comment she heard while a male employee was reviewing a job applicant’s personnel file. She complained about the comment, asserting it constituted sexual harassment. When she was transferred to another position with less supervisory authority about a month later, she commenced a Title VII action, claiming her transfer was in retaliation for her complaint of sexual harassment. The U.S. District Court

for the District of Nevada ruled in favor of the defendant and the plaintiff appealed. The U.S. Court of Appeals Ninth Circuit reversed the lower court's decision. On writ of *certiorari*, the U.S. Supreme Court reversed the U.S. Court of Appeals decision and sided with the District Court, stating that no isolated incident as insignificant as the kind she described could constitute a cause for retaliation under Title VII. In essence, Title VII requires extremely serious workplace misconduct, which must be severe or pervasive before the threshold for sexual harassment is reached.

A substantive ruling by the U.S. Supreme Court was the case of *McDonnell Douglas Corp v. Green*, 411 U.S. 792. In this case, a black male stated he was discriminated against and was unfairly discharged from the company in violation of Title VII. The U.S. District Court ruled for the defendant and plaintiff appealed. The U.S. Court of Appeals remanded the case back to the District Court and certiorari was granted. The U.S. Supreme Court held the plaintiff must carry the burden of proving discrimination.

A very recent Supreme Court case regarding Title VII was decided as recently as June 2013. This case was the *University of Texas Southwestern Medical Center v. Naigel Nassar*, 133 S.Ct. 2517. The plaintiff filed a suit under Title VII alleging he was discriminated against based on his race and religion, which resulted in his dismissal from the university. He also claimed retaliation as a result of his complaint against his alleged harasser. The U.S. District Court for the Northern District of Texas ruled in favor of the plaintiff and the defendants appealed to the U.S. Court of Appeals, Fifth Circuit. The appellate court ruled in favor of the plaintiff on the retaliation claim, but ruled against the plaintiff on the discrimination claim of unlawful employment discharge. The case was appealed to the U.S. Supreme Court, which vacated the decision of the appellate court stating that retaliation claims must be proved according to traditional principles of but-for causation and remanded for further proceedings.

Title IX

The earliest Supreme Court case involving Higher Education sex discrimination under Title IX of the Education Amendment Act of 1972 was decided May 14, 1979 with *Cannon v. University of Chicago*, 441 U.S. 677, 99 S. Ct.. In *Cannon*, a female student sued under Title IX, claiming that she was denied admission to medical school due to discrimination because of her gender. The U.S. District Court for the Northern District of Illinois dismissed the case and the plaintiff appealed to the U.S. Court of Appeals Seventh Circuit. The appellate court affirmed the ruling of the lower court stating the plaintiff did not have a valid Title IX claim and on certiorari the U.S. Supreme Court ruled in favor of the plaintiff, stating that the plaintiff had a right to sue under Title IX and there was an implied cause of action in which the plaintiff was allowed to bring a civil lawsuit against the school.

In the K-12 sector as well, Title IX cases were brought before the U.S. Supreme Court. A classic case was *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 112 S. Ct. 1028, decided February 26, 1992. This case involved a female student claimed sexual harassment by a coach-teacher. The U.S. District Court for the Northern District of Georgia dismissed the case and the student appealed. The Federal Court of Appeals for the Eleventh Circuit affirmed the ruling of the lower court and the case went to the U.S. Supreme Court. The Supreme Court ruled for the plaintiff, thus setting an important precedent regarding student claims of Title IX harassment in the educational sector. In *Franklin*, the Supreme Court ruled that students subjected to sexual harassment in public schools could sue the school boards for monetary damages under Title IX of the Education Amendments of 1972. This is the first case in which the U.S. Supreme Court upheld monetary awards for damages under Title IX, thus stating that a law creates rights which allow private parties the right to bring a lawsuit.

In *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 129 S. Ct. 788 plaintiffs brought a claim alleging their daughter, a kindergarten student was subjected her to sexual harassment by bullying her into lifting her skirt on the school bus. Two issues confronted the Court: (1) did the plaintiffs state a claim under Title IX standards sufficient to go forward with a trial? And (2) may plaintiffs sue concurrently under Title IX and the Equal Protection Clause pursuant to § 1983 under the circumstances of this case. The Court held that since the school district investigated this complaint and all others made by the parents, no deliberate indifference by the school district was alleged sufficient to state a Title IX claim. However, the Court ruled unanimously that a claim filed under Title IX for unequal treatment based on gender does not preclude the use of 42 U.S.C. § 1983 to further constitutional claims. The Court reasoned that Title IX was not meant to be the exclusive tool for addressing gender discrimination in schools, or a substitute for actions filed under § 1983 to enforce constitutional rights.

Another Title IX educational case which involved student-to-student sexual harassment, was *Davis v. Monroe*, 526 U.S. 629, 119 S. Ct. 1661, decided in 1999. This case involved a student suing the school board and officials for their failure to remedy a classmate's harassment of the student. The U.S. District Court dismissed the case and the parents appealed to the U.S. Court of Appeals Eleventh Circuit. The appellate court en banc affirmed the ruling of the lower court and the U.S. Supreme Court heard the case. The case was reversed and remanded back to the lower courts. Justice O'Connor in her decision stated that school districts would be liable under federal law Title IX only if they were deliberately indifferent to information about severe, pervasive, or objectively offensive harassment among students (*Davis v. Monroe*, 526 U.S. 629).

It is not unusual for cases to be brought to the U.S. Supreme Court under the Equal Protection Clause of the Fourteenth Amendment as well as Title IX. This was the

case with *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S.Ct. This case, decided in 1989, involved a high school student and parent suing the school district claiming sexual harassment of the student by a teacher. The U.S. District Court for the Western District of Texas decided in favor of the defendant and the student appealed on the Title IX claim. The U.S. Court of Appeals for the Fifth Circuit affirmed the ruling of the lower court and the case was appealed to the U.S. Supreme Court. Justice O'Connor, writing for the Court, affirmed the ruling of the appellate court stating that the defendants could not be liable, as they did not have previous notice of the harassment, a pre-condition for Title IX liability.

Title IX of the Educational Amendment of 1972 originally did not include specifically equal athletic accommodations until later, but a well-known case *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 125 S. Ct. 1497, brought athletics to the forefront. Decided in 2005 this case consisted of a male high school coach who brought suit stating the girls' basketball team was not receiving equal accommodations similar to the boys' team. The U.S. District Court of Alabama dismissed the complaint, after which he was ultimately dismissed from his position. He again brought suit alleging the school board retaliated against him in violation of Title IX due to his complaints. The U.S. Supreme Court reversed the decision and remanded the case to the lower court. *Jackson* established that both the victims of sex discrimination and the persons who report violations are covered under Title IX and therefore may not endure adverse employment actions as a consequence of those reports (*Jackson v. Birmingham Board of Education*, 544 U.S. 180).

United States Courts of Appeal

The Judiciary Act of 1789 was established to create a federal court system comprised of three tiers (Carp & Stidham, 1985). However, Congress did not pass

legislation limiting district judges' assignments until the mid-1800s. Until that time district judges were autonomous but could not judge in another district. These district judges were not required to adhere to the rulings of higher-court judges as the Judiciary Act of 1789 did not give a higher court specific powers over the lower courts (Carp & Stidham, 1985). In 1891 the Evarts Act established the Circuit Court of Appeals, decreasing the workload of the Supreme Court by relieving the Supreme Court justices from needing to ride the circuits. The official title of Court of Appeals was not established until 1911 (Carp & Stidham, 1985).

Unlike the U.S. Supreme Court, the U.S. Courts of Appeal does not have the luxury of choosing which cases to decide. Generally, these courts are not courts of original jurisdiction; and therefore cases that come before them have been decided in another forum (Carp & Stidham, 1985, p. 41). The U.S. Courts of Appeal review cases from two general categories: 1) ordinary civil and criminal appeals, and 2) appeals from federal departments and administrative agencies (Carp & Stidham, 1985, p. 41). They do not retry the cases but only apply the law to the facts appearing in the written records of the case. The cases are reviewed by a panel of three judges (Carp & Stidham, 1985). Before President Carter's presidency, the overwhelming majority of justices on the U.S. Courts of Appeal were white and male. However, "over 21 percent of his appeals court judges were nonwhite, and over 19 percent were women" (Carp & Stidham, 1985, p. 94). According to Hurwitz and Lanier (2008) the number of women judges on the bench increased to approximately 16% between 1985 and 2005. This shift on the bench has been studied in order to understand whether decisions of the court have been affected by this change.

The present research focused on sex discrimination cases in Higher Education in both the U.S. Courts of Appeal and U.S. District Courts. Although individual voting was

studied at both judicial levels, a major focus of the cases in the appellate courts was the panel effects, specifically if the panel composition related to the decisional outcome in sex discrimination cases. "Since the vote of one judge is not outcome determinative in a three panel court, the "decisions of three-judge panels...are of real interest" (Sunstein, Schkade, Ellman, & Sawicki, 2006, p. 40). Many studies have been devoted to Supreme Court decisions, however a study of the federal U.S. Courts of Appeal are important because they resolve thousands of cases each year in contrast to the small number decided each year by the United States Supreme Court (Edwards & Livermore, 2009).

Judges' Political Ideology

Since judges have the ability to wield a great deal of power, their selection may result in major political battles between the Democrats and the Republicans (Shea, Green, & Smith, 2007). The impact of ideology on judges' voting patterns has been researched, however the ideology of a judge is not easily directly observed. Judges decide cases with "a combination of attitudes, beliefs, and experiences that cannot be measured in the same objective fashion as a physical phenomenon" (Fischman & Law, 2009, p. 34). Therefore, researchers have used proxy variables, such as membership in a political party in an attempt to understand judges' voting patterns.

As the President nominates federal judges with the approval of the senate, a practice started by George Washington, it is an assumption that the political party of the judge will be the same as that of the President. Justices are appointed for life; therefore a president has the ability to influence policy for many years beyond the presidential term (O'Brien, 2005). Political parties and interest groups hope that the judge who shares the same political ideology will decide cases that will benefit the party and will hold the same ideologies the party espouses. According to Sunstein et al., (2006) many Presidents have appointed judges who would rule favorably towards the political party of the President.

Research has been conducted examining the relationship between judicial decisions and their presidential choices. Sunstein et al. (2006) continue to speculate whether judges who sit on panels are more influenced by the panel make-up than their own political party. The political affiliation of the appointing President is actually only a proxy for the ideology of the judge according to Sunstein et al. (2006). Sunstein et al. (2006) explored possible reasons why judges vote as they do. He examined not only the political ideology of the judge but other variables, such as the make-up of the panel as well as whether there was a difference between presidential appointees even between the same party.

The Sunstein Study examined political ideology on Circuit Court Judges' votes in various categories including Title VII sex discrimination (Sunstein et al, 2006). Sunstein's study had as its purpose to determine whether the political party of the appointing president influenced the political ideological direction of the judge's vote, and whether a judge's vote is also influenced by fellow panel members' party affiliation. The study was comprised of 6,408 three-judge panel decisions including 19,224 votes of the individual judges. The findings for sexual discrimination cases in the study demonstrate that "Republican appointees vote in favor of plaintiffs 35 percent of the time, whereas Democratic appointees vote for plaintiffs 52 percent of the time" (Sunstein et al., 2006, p. 3). For sexual harassment cases "Republican appointees vote in favor of plaintiffs at a rate of 40 percent, whereas Democratic appointees vote for plaintiffs at a rate of 55 percent" (p. 32).

The primary goal of Sunstein's study was to understand the behavior of judges. However, Sunstein studied only the political ideology of the judges and did not focus on other judicial attributes that may contribute to the voting outcome of the judges. Sunstein's study examined cases from 1995-2004 and included a table listing the percentage of liberal votes by president group and case category (p. 118). Sunstein

defined liberal votes as those votes that favored a plaintiff's complaint of discrimination on the basis of sex, race, or disability (p. 19). The study also grouped presidents together by ideology and years in order to determine if there was a difference in voting with various cases. The table which listed the cases by categories and percent of liberal votes showed that Democratic appointees voted more pro-plaintiff than Republican from 1981-2004.

Epstein and Segal (2006) believe that "ideology is a driving force in politics-including on the bench" (p. 86). Ideology labeling is a complex process as Liberalism and Conservatism cannot be observed. Therefore, they must be defined in order to understand what is witnessed. There is a range of conservative and liberal and not a specific line that divides the two concepts. The Democratic Party is considered the liberal party, while the Republican Party is considered conservative. The Democratic party/liberal views favor civil rights, while Republicans/conservatives are less likely to vote in favor of expansion and enforcement of civil rights (Chemerinsky, 2005). "Liberalism is distinguished by a marked concern for social progress and human betterment" (McClosky & Zaller, 1984, p. 190). Conservatism on the other hand is concerned with human betterment, "but it differs from liberalism in its vision of what constitutes the good society and how it can best be achieved" (McClosky & Zaller, 1984, p. 190). Conservatives believe "that most people need strong leaders, firm laws and institutions, and strict moral codes to keep their appetites under control" (McClosky & Zaller, 1984, p. 190). Scholars believe that understanding the role ideology plays in a justice's decision is crucial; however researchers understanding of the proposed theories vary and do not concur with fellow researchers (Yung, 2010).

A study by Cross and Tiller (1998) "found that panels controlled by Republicans were more likely to defer to conservative agency decisions ...than were the panels

controlled by Democrats” (p. 2175). As much research has been conducted at the Supreme Court level pertaining to the ideology of judges, Yung (2010) attempted to analyze the ideology of judges based on the behavior of U.S. Courts of Appeal judges. The study was not directed at case outcomes, but attempted to determine whether judges voted liberal or conservative based on their colleagues’ voting preferences.

Yung (2010) listed three problems in measuring judges’ ideologies at levels below the Supreme Court. One difficulty was the large number of court opinions in the appellate and lower courts. Another problem was the inability in coding accurately the case outcome related to ideology and the last difficulty in measuring outcomes was the large number of unanimous decisions, thus making it difficult to determine whether a judge was influenced by colleagues’ decisions. Yung (2010) gathered data from opinions issued by 177 Circuit Courts of Appeal judges in 2008 “who had a significant number of interactions” in the cases studied. An ideology score was computed for each judge based on a number of variables including type of case, circuit prevailing party, and type of case. The data collected showed there was a statistically significance between the appointing president and the ideology correlation of the judge.

Judges’ Gender

Women comprise approximately 33% of all lawyers in the United States according to the American Bar Association (American Bar Association, 2013). http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb2013.authcheckdam.pdf. In addition, the number of women holding political office, including that of the judiciary, has increased over the past few years (Frederick & Streb, 2008). However, the growth of women in the judiciary has occurred at a slow pace. President Kennedy was the first president to publicly announce a commitment to appoint women to the national bench, but a large increase in the number of female justices did

not occur until President Carter's presidency (Palmer, 2001). The numbers of federal female justices continued to rise under the Reagan and Bush administration, but did not substantially increase again until the Clinton administration (Palmer, 2001). As of 2013, "fifty-two of the 163 active judges currently sitting on the thirteen federal courts of appeal are female (about 32%)". "Approximately 30% of active United States district (or trial) court judges are women (<http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1>).

According to O'Connor and Azzarelli (2011):

Women judges can play a critical function in strengthening the rule of law both through their contributions to an impartial judiciary as well as through their role in the implementation and enforcement of laws, particularly those that provide access to justice for women and girls.

O'Connor and Azzarelli (2011) argue that electing women judges will increase the likelihood of positive results with cases involving females. O'Connor and Azzarelli (2011) state that women judges play an important role because a judiciary comprised of males and females is a reflection of the society. If judiciaries are diverse mirroring society, people are more likely to put their trust in the court.

Before 1980 there were not enough female judges to be able to analyze the impact they had on the judicial system. It was not until after 1980 that women began to have an increased representation on the court system and by 1995 there were 51 female judges serving in the state supreme courts (Songer & Crews-Meyer, 2000). With this increase in female judges, researchers have conducted studies to determine whether there is a difference in judicial voting related to gender. According to Palmer (2001) "once women are on the bench...there is strong evidence that they are much more sympathetic to sex-discrimination claims" (p. 238).

According to Kulik, Perry and Pepper (2003), "...if a judge's gender is in fact associated with court decisions, the plaintiff may benefit or unfairly suffer from the particular judicial assignment" (p. 70). Kulik et al. (2003) conducted a study with a hypothesis that female judges in sex discrimination cases would favor the plaintiff to a greater degree than male judges. The results demonstrated no statistical differences between male and female judges. However, they noted a limitation of the study was a low sample. The findings surprised the researchers because previous research had demonstrated there was a difference.

Peresie (2005) provided data of an empirical analysis of 556 federal appellate cases over a three-year period in cases involving sexual harassment or sex discrimination in order to determine if the presence of women on the court may lead to a different outcome than decisions from male judges. Results demonstrated that plaintiffs were "twice as likely to prevail when a female judge was on the bench" in a majority of these types of cases (p. 1761).

Choi, Gulati, Holman, and Posner (2011) researched existing data sets to determine whether gender of the judges had any significant effects on judicial quality. The researchers used the term "judicial quality" as a proxy for femaleness. The data sets consisted of justices from the highest courts of 50 states, federal district judges and federal appellate judges. The research consisted of five hypotheses, three of which addressed whether female judges underperformed their male counterparts. Of these three hypotheses, the researchers found little to no support that there were any "significant gender effects on judicial performance (p. 504). The researchers suggested that as a result of women living in a gender-biased world, this gives them a distinct perspective that might enhance their judicial talents (Choi et al., 2011).

The U.S. District Court cases are decided by a single judge; therefore research in determining voting patterns does not include the direct influence of fellow judges. However, the U.S. Court of Appeals' cases are decided by a panel of three judges and research has been conducted to determine whether voting is different when women are on a panel then when it is a male only panel.

Judges' Appointment Era

Ronald Reagan won the presidency for two consecutive terms in 1980 and 1984 and stocked the bench with conservative judges (Sunstein et al., 2006). In fact, one of Reagan's campaign promises was that he would appoint only those judges who were opposed to abortion as well as "judicial activism" (O'Brien, 2005, p. 69). As a result of his appointments, he had the strongest impact on the court since Roosevelt (O'Brien, 2005, p. 69). Reagan made other changes as well. He increased the rigor of judicial selection as well as placing three new justices on the Supreme Court and positioning Rehnquist in the role of Chief Justice.

Reagan's approach to judicial appointments continued even through the presidency of George H. W. Bush, who served as Vice-President during Reagan's presidency. During his term he chose nominees to the court from Reagan's administration (O'Brien, 2005, p. 77). A primary reason President Bush was elected was a result of the popularity of Reagan. In fact, President H.W. Bush was able to successfully appoint a conservative, Clarence Thomas, to the bench by learning from Reagan's mistake in his failure to nominate another conservative, Bork, to the bench years earlier. "Thus, a key element of the Reagan legacy is the large number of judicial nominees who have shaped constitutional interpretation long past the 1980s" (Kengor & Schweizer, 2005, p. 93). Even through most of the presidency of President Clinton, the primarily

Republican senate was able to limit Clinton in appointing moderate conservative judges to the bench (Smith, 2010).

Plaintiffs' Gender

In the early 1960s, the women's movement had as one of its focuses to ensure equal opportunity socially and economically. Three of the provisions enacted as a result of this movement was "the Equal Pay Act, Title VII of the Civil Rights Act of 1964, and affirmative action" (Shea, Green & Smith, 2007). The Equal Pay Act addressed discrimination in pay, while Title VII prohibited sex and racial discrimination in employment (Shea et al. 2007). These policies were enacted originally to improve the status of women; however, Title VII has been used to protect men as well.

According to a study by Elkins, Phillips, and Konopaske (2002), "male plaintiffs alleging reverse gender discrimination do not seem to receive the same advantage from male observers as female plaintiffs do from female observers" (p. 12). Their study consisted of 120 university students who acted as jurors in order to determine if there was a gender bias between male and female plaintiffs. Conclusion of the study strengthened previous research by confirming that the gender of the plaintiff makes a difference in the voting behavior of the judge.

Bornstein (2012) discusses the entrenched gender stereotypes about the role of men and women in the workplace and at home. The article centers on the belief opined by former Supreme Court Justice Ginsburg, who believed this gender stereotyping was limited to both men and women and "led the Supreme Court to define sex discrimination in a way that encompassed this understanding" (p. 27). The article argues that federal courts need to take the final step to apply Title VII equally to men in order to allow full equality between the sexes. Under the umbrella of Title VII, stereotyping or penalizing someone based on gender constitutes sex discrimination. Since Title VII was enacted

over 50 years ago, research has been done to demonstrate discrimination towards male plaintiffs, thus indicating discrimination has come full circle.

Chapter 3

Methods

This study examined U.S. Courts of Appeal and U.S. District Court decisions involving allegations of sex discrimination by students in higher education brought under the Equal Protection Clause of the Fourteenth Amendment, Title VII and Title IX. The following research questions were used to guide this study:

- Question 1: What is the relationship among U.S. District Court and U.S. Courts of Appeal judges' political ideology, gender, appointment era, plaintiffs' gender and their voting higher education cases involving students' claims of sex discrimination brought against universities and their faculty?
- Question 2: What is the relationship among political-ideological panel majority, appointment era majority, gender-panel majority, plaintiffs' gender, and decisional outcomes in the United States Courts of Appeal, for higher education students' claims of sex discrimination in cases brought against universities and their faculty?

Hypotheses

Based on the foregoing investigations and my own assessment of the descriptive data, I anticipated the following outcomes for the database containing judges appointed by Republican and Democratic presidents.

Individual Voting

- Hypothesis 1: The odds of judges appointed by Republican presidents voting in a conservative pro-defendant direction in student initiated higher education gender discrimination decisions for the period 1964-2013 would be greater than that of judges appointed by Democratic presidents.
- Hypothesis 2: The odds of judges appointed during 1981 and later period voting in a conservative pro-defendant direction in higher education student initiated gender discrimination disputes would be greater than judges voting in that direction appointed 1980 and earlier.
- Hypothesis 3: The odds of judges nominated by Republican presidents voting in a conservative pro-defendant direction who were appointed during 1981 and later periods would be greater than judges appointed by Republican presidents during 1980 and earlier periods.
- Hypothesis 4: The odds of judges nominated by Democratic presidents voting in a conservative pro-defendant direction who were appointed during 1981 and later periods would be greater than judges appointed by Democratic presidents during 1980 and earlier periods.
- Hypothesis 5: The odds of a judges voting in a conservative pro-defendant direction in student initiated higher education gender discrimination cases with a male plaintiff will be greater than

judges voting in a conservative pro-defendant direction with a female plaintiff.

Panel Decisions

Hypothesis 6: The odds of a conservative pro-defendant outcome in student initiated higher education gender discrimination disputes with a Republican majority panel will be greater than a Democrat majority panel.

Hypothesis 7: The odds of a conservative pro-defendant decision in student initiated higher education disputes in gender discrimination cases will be greater when the majority of the panel is composed of judges appointed 1981 and later than judges appointed 1980 and earlier.

Hypothesis 8: The odds of a panel rendering a conservative pro-defendant decision in student initiated higher education gender discrimination decisions when the plaintiffs are male will be greater than when the plaintiffs are female.

Research Design

Data Base

Utilizing the Westlaw search engine, the data collected includes U.S. District Court and U.S. Courts of Appeal cases from 1964-2013. The search criteria for cases contained the terms “sex discrimination”, “education”, and colleges or universities. This data included all cases that involved Equal Protection, Title VII and Title IX during this time period. However, Title IX was not law until 1972, therefore the Title IX cases were drawn from cases decided between the years 1972-2013. The data base was narrowed to include only cases in which undergraduate or graduate students sued faculty or

administrators under the Equal Protection Clause, Title VII or Title IX. This approach resulted in 70 U.S. Courts of Appeal cases and 87 U.S. District Court cases involving sexual discrimination or sexual harassment in higher education being included in the analysis which follows.

In phase one of the study the dependent variable recorded was the vote of the individual judge, whether pro-plaintiff (liberal) or pro-defendant (conservative). During the second phase of the study the dependent measure was the decisional outcome, that is, pro-plaintiff (liberal) or pro-defendant (conservative). Biographical data about the judges was retrieved from the Songer database (Songer & Tabrizi, 1999) and (http://judgepedia.org/index.php/Main_Page).

Judge-Level Variables

The first independent variable was political ideology, with the party of the nominating president serving as proxy for the conservative or liberal ideology of each judge. The political ideology predictor was coded “1” for judges nominated by Republican presidents and “0” for judges nominated by Democratic presidents.

The second independent variable was judges’ gender which was coded “1” for female, “0” for male.

The third independent variable was the judicial appointment era defined by the date the judge was appointed to the federal bench. This category was divided into two eras. One was pre-Reagan and consisted of those cases up to and including the year 1980 which were coded as “0”. The other era was Reagan and later and consisted of appointments made in the year 1981 and later and were coded as “1”.

Reagan’s goal during his presidency was to appoint staunch conservatives to the bench (Stidham & Carp, 1987). In addition, according to O’Brien (2005), the composition of the Supreme Court changed drastically during the Reagan, Bush and Clinton eras.

Reagan campaigned with the “promise to appoint only those opposed to abortion and “judicial activism”” (O’Brien, 2005, p. 69). As President Bush served as Vice-President under Reagan, he continued the conservative legacy that Reagan had begun during his term of office. O’Brien (2005) stated of Reagan “No other president has had as great an impact on the federal judiciary since Roosevelt” (p. 69). Setting up appointment era in this fashion enabled an examination of the relationship between appointment era and conservative and liberal voting in higher education sex discrimination cases. Reagan was successful in appointing lower-court judges. In fact, before he left office, “he appointed almost half of all lower-court judges...” (p. 69).

Case-Level Variables

There was one case-level independent variable studied. This variable was the plaintiff’s gender. Female plaintiffs were coded with a “1”, while male plaintiffs were coded with a “0”.

Gender Majority of the Panel

The gender composition of the panel in the U.S. Courts of Appeal cases were collected and analyzed to determine if decisional outcomes were affected by the majority gender of the three-judge-panel, as recent studies indicate the importance of panel composition. Examination of this variable proceeded in two parts. First, this category was coded as a “1” if there were a female majority on the panel of three judges, and “0” if there was a male majority on the panel. *En banc* panels were not included in the analysis of panel composition, since there are a large number of votes on these panels, and the voting patterns which occur with such large panels is not comparable to the smaller three-judge panels.

Ideological Majority of the Panel

The political ideology majority of the panel was analyzed to determine whether it influenced decisional outcomes in the case studies. First, this variable was coded “0” if the majority of the panel were Democratic appointees and “1” if the majority of the panel were Republican appointees.

Dependent Measures

Individual Voting: Conservative-Liberal

As there are only two outcomes of voting, either pro-plaintiff (liberal) or pro-defendant (conservative), the coding was binary for this dependent measure. Logistic regression was applied to analyze the relationship between the predictor-independent variables since the dependent measure is binary. Binary logistic regression is used because the dependent variable is occurrence or no occurrence; that is, the decisional outcome is either “1” for pro-defendant (conservative) or “0” for pro-plaintiff (liberal) (Zhang, Han, & Dai, 2013).

Case Decisional Outcome: Conservative-Liberal

The case decisional outcome was a dependent measure and coded as a “1” for pro-defendant (conservative) and “0” for pro-plaintiff (liberal). There were 70 decisions included in the database. The dependent measure was used to examine the relationship between panel gender majority and political party majority panel, majority appointment era, plaintiffs’ gender, and decisional outcome (pro-defendant or pro-plaintiff).

Data Collection

Following IRB approval, the data was collected utilizing the Westlaw Database search engine to search all published and indexed cases in gender discrimination in higher education issued since 1964 in which a claim was made based on the Equal Protection Clause, Title VII or Title IX and decision rendered. Search terms included

“Equal Protection Clause”, “Title VII” or “Title IX” and the terms “university”, “college”, “student”, and “sex discrimination” in order to eliminate cases that were not in higher education.

The Westlaw search engine was utilized with the online UTA library website. The search was as follows: Academic, Library, Databases A-Z, Campus Research, Law link (upper left of screen), key search link (Go), click Education, click Colleges and Universities, Sex Discrimination, and search All Federal Cases.

All cases were collected and placed in the researcher’s data base spreadsheet. The data base included all decisions rendered by the United States Courts of Appeal and United States District Courts for the years selected.

Data Base Coding

SPSS “Data Editor Window” [hereafter “Data View Tab”] for INDIVIDUAL JUDGES’ VOTING

In SPSS Data View each row of the data table represents data from one case and each column contains data from one variable. The data view for individual judges’ voting was set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Judge’s Appointment Era [1= 1981 and later, 0=1980 and earlier]

Column 4 Judge’s Name

Column 5 Number Assigned to Judge

Column 6 Party of the President Appointing that Judge [1=Republican, and 0=Democrat]

Column 7 Judge’s Gender [1=female, 0=male]

Column 8 Plaintiffs’ Gender [1=female, 0=male]

Column 9 Equal Protection Claim [1=yes, 0=no]

Column 10 Title VII Claim [1=yes, 0=no]

Column 11 Title IX Claim [1=yes, 0=no]

Column 12 Individual Vote [dependent measure] [1=conservative-pro-university or college, 0=liberal-pro-student] for each of the 296 votes

SPSS Data Editor Window [hereafter “Data View Tab”] for PANEL

COMPOSITION AND DECISIONAL OUTCOME

In SPSS each row of the data table represents data from one case and each column contains data from one variable. The data view for panel voting was set up as follows:

Column 1 Case Name

Column 2 Case Citation

Column 3 Panel-Gender Majority [1=female majority, 0=male majority]

Column 4 Panel-Ideology Majority [1=Republican majority, 0=Democrat majority]

Column 5 Appointment Era-Panel Majority [1=1981 and later majority, 0=1980 and earlier majority]

Column 6 Plaintiffs’ Gender [1=female, 0=male]

Column 7 Equal Protection Claim [1=yes, 0=no]

Column 8 Title VII Claim [1=yes, 0=no]

Column 9 Title IX Claim [1=yes, 0=no]

Column 10 Decisional Outcome [1=conservative-pro-university or college, 0=liberal-pro-student] of each of the approximately 70 decisions.

The coding was crosschecked with two other doctoral students and one undergraduate honors student in The University of Texas at Arlington’s Ph.D. Educational Leadership and Policy Study program in order to ensure reliability.

Data Analysis

The data was analyzed using binary logistic regression. Logistic regression analysis was used to predict an outcome from variables that are continuous, discrete, dichotomous, or a mix. As the dependent measure for both phases of the study was dichotomous, logistic regression was the logical choice for data analysis (Tabachnick & Fidell, 2001). Binary Logistic Regression was used, as the data consisted of two categorical outcomes.

The first phase of the study examined individual judges' voting. Using SPSS the independent variables were entered utilizing a binary dichotomous for each variable in accord with which applies. The binary independent variables consisted of the judges' political ideology ("1" for judges appointed by Republican presidents and "0" for judges appointed by Democratic presidents), judges' gender ("1" for female judges and "0" for males), judicial appointment era (1980 or earlier = "0" and 1981 and later = "1"), and the plaintiffs' gender ("1" for female and "0" for male).

The independent variables were used to determine what the relationship between the independent variables and the dependent variables were in accounting for variations in the odds of individual votes being pro-defendant (conservative) or pro-plaintiff (liberal).

The second data analysis considered the relationship among panel majority (political ideology and gender), plaintiffs' gender, and decisional outcome. The dependent variable, decisional outcome, was the voting of the panel, either conservative (pro-defendant) or liberal (pro-plaintiff).

This phase of the study examined the relationship of the panel gender majority ("1" for female majority, "0" for male majority), ideological majority ("1" for Republican majority, "0" for Democrat majority), and appointment era majority ("1" for 1981 and later

majority era, “0” for 1980 and later majority era) to case decisional outcome (conservative or liberal) serving as the dependent measure. This design enabled an assessment of the independent contribution of the gender, ideological, and appointment era panel majority to the odds of pro-defendant conservative case outcomes.

Four logistic regression equations were run; three were run for individual variables and one for panel. In the first regression, the judges’ gender, plaintiffs’ gender, appointment era, and judges’ ideology were set up as independent predictors of the dependent binary measure of the 296 judges’ individual decisions in student-initiated sex discrimination claims in higher education.

For the second regression, only the Republican appointed judges’ appointment era, judges’ gender, and plaintiffs’ gender were set up as independent predictors for the dependent binary measure of the 164 judges’ individual decisions in student-initiated sex discrimination claims in higher education.

The third regression was run using only the Democratic appointed judges’ appointment era, judges’ gender, and plaintiffs’ gender as independent predictors and the binary dependent predictor was the 132 judges’ individual decisions in student-initiated sex discrimination claims in higher education.

The fourth regression examined the relationship of the independent variables of the panel using panel gender majority, panel ideological majority, plaintiffs’ gender, and appointment era majority. The dependent variable for the 70 cases was the binary dependent predictor of the decisional outcome in student-initiated sex discrimination claims in higher education in the U.S. Courts of Appeal.

For this study significant differences in the output produced by each independent variable were considered at the .10, .05, and .01 levels. Differences were determined to obtain significance when the acquired probabilities were below each of these thresholds.

In addition to the logistic regression tables, descriptive tables were executed in order to preliminarily analyze the results. For individual voting, there were eight descriptive tables listed below.

1. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims brought in United States Courts of Appeal and United States District Courts as a Function of Judges' Political Ideology
2. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts as a Function of Judges' Gender
3. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts as a Function of Judges' Appointment Era
4. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts by Democrat-Appointed Judges as a Function of Appointment Era

5. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts by Republican Appointed Judges as a Function of Appointment Era
6. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection, Title VII, and Title IX Claims in the United States Courts of Appeal and United States District Courts as a Function of Plaintiffs' Gender
7. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Individual Voting in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States Courts of Appeal as a Function of Plaintiffs' Gender
8. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Individual Voting in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States District Courts as a Function of Plaintiffs' Gender

The descriptive tables for the panel consisted of the following:

1. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection

Clause, Title VII, and Title IX Claims in United States Courts of Appeal as a Function of Panel Gender Composition

2. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal as a Function of Panel Political Ideology
3. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States Courts of Appeal as a Function of Plaintiffs' Gender
4. Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VI, and Title IX Claims in the United States Courts of Appeal as a Function of Appointment Era Majority

Chapter 4

Results

This chapter describes the empirical relationship of the judge-level and extrinsic variables to voting in the United States Courts of Appeal and United States District Courts in student initiated higher education sex discrimination cases. Tables 4.1-4.11 are concerned with individual votes, while tables 4.12-4.16 present the panel and decisional outcomes.

Part A: Court of Appeals and District Court Judges' Individual Voting

Table 4.1 shows the frequency distribution of the 296 individual votes cast as conservative (pro-defendant) or liberal (pro-plaintiff) for the combined Democrat and Republican data base in student initiated higher education sex discrimination decisions between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal and United States District Court, as a function of judges' ideology. The percentage following the numbered entry is the percentage of votes cast within each ideological group. Table 4.1 reveals that among Republican-appointed judges, 114 or 70% of their votes were cast in a conservative (pro-defendant) direction, whereas 50 or 30% of their votes were cast in a liberal (pro-plaintiff) direction. Among Democrat-appointed judges, 74 or 56% of their votes was cast in a conservative (pro-defendant) direction, whereas 58 or 44% of their votes were cast in a liberal (pro-plaintiff) direction. The direction of the voting was as anticipated in that more Republicans than Democrats cast conservative votes as a percent of their total votes. These results were compared to those obtained for logistical regression models, which will be discussed later in this chapter.

Table 4.1 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims brought in United States Courts of Appeal and United States District Courts as a Function of Judges' Political Ideology

Party Ideology	Conservative	Liberal	Total
Republican	114 (70%)	50 (30%)	164 (55%)
Democratic	74 (56%)	58 (44%)	132 (45%)
Total	188 (64%)	108 (36%)	296 (100%)

Table 4.2 shows the frequency distribution of conservative (pro-defendant) or liberal (pro-plaintiff) votes cast in student initiated higher education sex discrimination cases between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal and United States District Court as a function of judges' gender. The percentage following the numbered entry is the percentage of votes cast within each gender group. Table 4.2 reveals that 153 or 62% of male judges' votes were cast in a conservative (pro-defendant) direction, whereas 93 or 38% of their votes were cast in a liberal (pro-plaintiff) direction. Among female judges, 35 or 70% of their votes were cast in a conservative (pro-defendant) direction, whereas 15 or 30% of their votes were cast in a liberal (pro-plaintiff) direction. The direction of the voting did not suggest any statistically meaningful differences. These differences were tested for significance in the logits which are reported below.

Table 4.2 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts as a Function of Judges' Gender

Gender			
Judges' Gender	Conservative	Liberal	Total
Male	153 (62%)	93 (38%)	246 (83%)
Female	35 (70%)	15 (30%)	50 (17%)
Total	188 (64%)	108 (36%)	296 (100%)

The data in Table 4.3 represents a combined Republican/Democrat database for the voting of judges appointed in 1980 and earlier and those appointed in 1981 and later in the U.S. District Courts and U.S. Courts of Appeal. Among the 99 votes rendered by judges appointed in 1980 and earlier in these student initiated sex discrimination cases, 58 (59%) were cast in a conservative (pro-defendant) direction. Among the 197 votes made by 1981 and later appointees, 130 (66%) of votes were cast in a conservative direction. The direction of the voting does not suggest any meaningful differences. This result was further scrutinized through logistical regression analysis to see if there were any statistically significant differences between these groups. The result is discussed later in this chapter.

Table 4.3 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts as a Function of Judges'

Appointment Era			
Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	58 (59%)	41 (41%)	99 (33%)
1981 and later	130 (66%)	67 (34%)	197 (67%)
Total	188 (64%)	108 (36%)	296 (100%)

Table 4.4 displays the results of voting during the period 1964-2013 of judges who were appointed in 1980 and earlier, or 1981 and later, and selected by Democratic presidents for U.S. District Courts and U.S. Courts of Appeal appointments. Among 132 Democratic appointees' votes, 35 or 56% of the 1980 and earlier appointees cast their votes in a conservative (pro-defendant) direction and 39 or 56% of the 1981 and later appointees cast their votes in a conservative (pro-defendant) direction. This result indicates there was no difference between voting of Democratic appointed judges related to the appointment era.

Table 4.4 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts by Democrat-Appointed Judges as a Function of Appointment Era

Democrat Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	35 (56%)	27 (44%)	62 (47%)
1981 and later	39 (56%)	31 (44%)	70 (53%)
Total	74 (56%)	58 (44%)	132 (100%)

Table 4.5 displays the voting of judges selected by Republican presidents to U.S. District Courts and U.S. Courts of Appeal who were appointed in 1980 and earlier, or 1981 and later, during the period 1964-2013. Among 164 Republican appointees, 23 or 62% of the 1980 and earlier appointees cast their votes in a conservative (pro-defendant) direction, whereas 91 or 72% of the 1981 and later appointees cast their votes in a conservative (pro-defendant) direction. The more conservative voting for the Republicans in 1981 and later, as compared to those appointed in the earlier period, seemed significant, but was tested for significance when logistical regression equations were run.

Table 4.5 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal and United States District Courts by Republican Appointed Judges as a Function of Appointment Era

Republican Judges' Appointment Era	Conservative	Liberal	Total
1980 and earlier	23 (62%)	14 (38%)	37 (23%)
1981 and later	91 (72%)	36 (28%)	127 (77%)
Total	114 (70%)	50 (30%)	164 (100%)

Table 4.6 shows the frequency distribution of conservative (pro-defendant) or liberal (pro-plaintiff) votes of the 296 cast in the student initiated higher education sex discrimination decisions rendered between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal and United States District Courts as a function of plaintiffs' gender. Table 4.6 reveals that when the plaintiffs were male, votes were cast in a conservative (pro-defendant) direction 57 or 81% of the time, whereas when plaintiffs were female, judges' votes were cast in a conservative (pro-defendant) direction 131 or 58% of the time. The 23% difference for the voting for male and female plaintiffs suggests that plaintiffs' gender produced meaningful differences in individual voting, warranting closer examination.

Table 4.6 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Votes Cast in Student Initiated Higher Education Gender Discrimination Cases between 1964-2013 for Equal Protection, Title VII, and Title IX Claims in the United States Courts of Appeal and United States District Courts as a Function of Plaintiffs' Gender

Plaintiff Gender	Conservative	Liberal	Total
Male	57 (81%)	13 (19%)	70 (24%)
Female	131 (58%)	95 (42%)	226 (76%)
Total	188 (64%)	107 (36%)	296 (100%)

Table 4.7 shows the frequency distribution of the individual 209 votes cast, categorized as conservative (pro-defendant) or liberal (pro-plaintiff) in the student initiated higher education sex discrimination cases decided between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal database as a function of plaintiffs' gender. Table 4.7 reveals that when the plaintiffs were male, 44 or 83% of the votes were cast in a conservative (pro-defendant) direction and when the plaintiffs were female, 95 or 61% of the votes were cast in a conservative (pro-defendant) direction. Results suggest that in the U.S. Courts of Appeal plaintiffs' gender produced meaningful differences in individual voting, warranting closer examination.

Table 4.7 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Individual Voting in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States Courts of Appeal as a Function of Plaintiffs'

Gender			
Plaintiff Gender	Conservative	Liberal	Total
Male	44 (83%)	9 (17%)	53 (25%)
Female	95 (61%)	61 (39%)	156 (75%)
Total	139 (67%)	70 (33%)	209 (100%)

Table 4.8 shows the frequency distribution of the 87 votes cast, categorized as conservative (pro-defendant) or liberal (pro-plaintiff) in the student initiated sex discrimination higher education sex discrimination cases decided between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX in the United States District Court database as a function of plaintiffs' gender. Table 4.8 reveals that when the plaintiffs were male, 15 or 88% of the vote were cast in a conservative (pro-defendant) direction and when the plaintiffs were female, 38 or 54% of the votes were cast in a conservative (pro-defendant) direction. Results suggest that in the U.S. District Court plaintiff's gender produced meaningful differences in individual voting, warranting closer examination.

Table 4.8 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Individual Voting in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States District Courts as a Function of Plaintiffs' Gender

Plaintiff Gender	Conservative	Liberal	Total
Male	15 (88%)	2 (12%)	17 (20%)
Female	38 (54%)	32 (46%)	70 (80%)
Total	53 (61%)	34 (39%)	87 (100%)

Table 4.9 shows results of the logit analysis performed on the combined Republican and Democrat databases for United States Courts of Appeal and United States District Court judges voting in sex discrimination decisions in student initiated higher education rendered between 1964 and 2013.

A total of 296 votes were analyzed. A test of the full model against constant-only model was statistically significant, indicating that the predictors, as a set, reliably distinguished between conservative (pro-defendant) and liberal (pro-plaintiff) votes of the individual judges ($X^2=20.559$, $p<.01$, with $df=4$).

Overall, 63.5% of the predictions were accurate. Variability in the dependent variable accounted for by the independent variables was approximately .092, as measured by Nagelkerke's R Square.

The output indicates that the plaintiffs' gender was strongly related to the voting choices of the individual judges ($p<.01$). The odds of a pro-defendant vote decreased when the plaintiff was female as compared to when the plaintiff was male when all other variables were held constant. For the two categories associated with the plaintiff-gender variable, calculation of the effect size revealed that the odds of judges voting in a

conservative direction for a female plaintiff was reduced using a factor of .322 over the odds of voting in a conservative direction when the plaintiff was male. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a factor of 3.11 over the odds of a conservative vote for a male plaintiff.

Political ideology attained significance at the .05 level ($p=.028$), thereby indicating political ideology of the judge was a factor influencing voting of the judge. Calculation of the effect size indicates that the odds of a conservative vote by Republican appointed judges was 1.772 times greater than obtaining a conservative vote by Democrat appointed judges.

The judges' gender variable did not contribute significantly to the odds of a conservative pro-defendant vote among the 296 cast. In addition, the Wald criterion indicates that for this combined Republican-Democrat data base, the appointment era variable did not attain significance ($p=.629$). This result is consistent with the judges' 66% conservative voting for later appointees as compared to 59% conservative pro-defendant outcome for the earlier appointees, as observed in Table 4.3.

Table 4.9 Logit Analysis on the Odds of a Conservative Pro-Defendant Individual Voting for Student Initiated Claims brought under the Equal Protection Clause, Title VI, and Title IX in the United States Courts of Appeal and U.S. District Courts in Higher Education Gender Discrimination Cases: Combined Data Bases for Judges Nominated by Republican and Democratic Presidents

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Judges' Gender	.402 (.355)	1.282	1	.257	1.494
Plaintiffs' Gender	-1.133 (.508)	11.175	1	.001	.322
Appointment Era	.131 (.330)	.233	1	.629	1.140
Ideology	.572 (.261)	4.802	1	.028	1.772
Constant	1.687 (.588)	8.325	1	.004	5.406

Table 4.10 shows the results of the logit analysis performed on the Republican-only individual voting database for United States Courts of Appeal and United States District Court judges' in student initiated sex discrimination cases in higher education rendered between 1964 and 2013.

A total of 164 votes were analyzed. A test of the full model against constant-only model attained significance at the .10 probability level. The predictors, as a set, reliably distinguished between conservative (pro-defendant) and liberal (pro-plaintiff) votes of the

individual judges ($X^2=8.449$, $p<.1$, with $df=3$). Overall, 69.5% of the predictions were accurate. Variability in the dependent variable accounted for by the independent variables was approximately .071, as measured by Nagelkerke's R Square.

Table 4.10 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that for the Republican appointees plaintiff-gender variable ($p=.016$) made a significant contribution to prediction. The odds of a pro-defendant vote decreased when the plaintiff was female as compared to when the plaintiff was male when all other variables were held constant. For the two categories associated with the plaintiff gender variable, calculation of the effect size revealed that the odds of Republican judges voting in a conservative direction for a female plaintiff was reduced using a factor of .311 over the odds of voting in a conservative direction when the plaintiff was male. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a margin of 3.22 over the odds of a conservative vote for a male plaintiff.

Appointment era and the judges' gender variables showed no significant difference in conservative pro-defendant voting for the Republican appointees.

Table 4.10 Logit Analysis on the Odds of a Conservative Pro-Defendant Individual Vote for Student Initiated Higher Education Gender Discrimination Cases brought under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal and United States District Courts for Judges Nominated by Republican Presidents

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Appointment Era	.296 (.409)	.526	1	.468	1.345
Judges' Gender	.168 (.569)	.088	1	.762	1.188
Plaintiffs' Gender	-1.167 (.483)	5.832	1	.016	.311
Constant	1.728 (.741)	5.436	1	.020	5.632

Table 4.11 below shows the results of the logit analysis performed on individual in the Democrat-only database in student initiated sex discrimination higher education claims decided between 1964 and 2013 for United States Courts of Appeal and United States District Court judges.

A total of 132 individual Democrat votes were analyzed. A test of the full model against constant-only model was statistically significant, indicating that the predictors, as a set, reliably distinguished between conservative (pro-defendant) and liberal (pro-plaintiff) votes of the individual judges ($X^2=6.883$, $p<.10$, with $df=3$). Overall, 59.8% of the predictions for the Democratic appointed judges were accurate. Variability in the

dependent variable accounted for by the independent variable was approximately .068, as measured by Nagelkerke's R Square.

Table 4.11 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that plaintiff-gender variable attained significance at the .05 level ($p=.026$). For the two categories associated with the plaintiff gender variable, calculation of the effect size revealed that the odds of Democratic judges' voting in a conservative direction for a female plaintiff was reduced when all of the other independent variables were held constant using a factor of .341 over the odds of voting in a conservative direction when the plaintiff was male. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a factor of 2.93 over the odds of a conservative vote for a male plaintiff.

The appointment era variable did not contribute significantly to voting outcome ($p=.992$) for these Democratic appointees. In addition, the judges' gender variable did not contribute significantly to voting outcome.

Table 4.11 Logit Analysis on the Odds of a Conservative Pro-Defendant Individual Voting for Student Initiated Higher Education Gender Discrimination Claims brought under the Equal Protection Clause, Title VII, and Title IX in the United States Courts of Appeal and United States District Courts for Judges Nominated by Democratic Presidents

Independent Variables	B (SE)	Wald	df	p	Exp (B)
Judges' Gender	.531 (.409)	1.401	1	.237	1.701
Appointment Era	.004 (.365)	.000	1	.992	1.004
Plaintiffs' Gender	-1.075 (.483)	4.942	1	.026	.341
Constant	.995 (.467)	4.458	1	.033	2.706

Part B: Panel Decisional Outcomes

Table 4.12 contains the frequency distribution of decisional outcomes in student initiated sex discrimination cases on the United States Courts of Appeal by gender panel majority. Out of 70 total cases, the majority male panel consisted of 66 cases, of which 42(64%) resulted in a conservative outcome, while the majority female panel consisted of only 4 cases in which 50% of the cases were decided with a conservative outcome.

Results were analyzed utilizing logistic regression in Table 4.16.

Table 4.12 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal as a Function of Panel Gender Composition

Panel Gender Majority	Conservative	Liberal	Total
Male Judge Majority	42(64%)	24(36%)	66 (94%)
Female Judge Majority	2 (50%)	2 (50%)	4 (6%)
Total	44 (63%)	26 (37%)	70 (100%)

Table 4.13 displays the 70 case outcomes for the United States Courts of Appeal decisions in student initiated sex discrimination by panel ideological majority. Of the 42 decisions with a Republican majority, 31 or 74% of the outcomes were conservative (pro-defendant), whereas for the 28 cases with a Democrat majority, 13 or 46% of case outcomes were conservative (pro-defendant). The significance of the differences observed in this table was analyzed in Table 4.16.

Table 4.13 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in United States Courts of Appeal as a Function of Panel Political Ideology

Panel Ideology Majority	Conservative	Liberal	Total
Republican Majority	31 (74%)	11 (26%)	42 (60%)
Democrat Majority	13 (46%)	15 (54%)	28 (40%)
Total	44 (63%)	26 (37%)	70 (100%)

Table 4.14 shows the frequency of conservative pro-defendant case outcomes in the student initiated sex discrimination cases in the United States Courts of Appeal by plaintiffs' gender. Out of 70 total cases, 18 or 26% of the cases were initiated by male plaintiffs, whereas 52 or 74% of the cases were initiated by female plaintiffs. The outcomes with male plaintiffs consisted of 14/18 or 78% conservative panel decisions. With female plaintiffs, the outcomes were 30/52 or 58% conservative pro-defendant. This difference appears to be significant and suggests that for all cases male plaintiffs received significantly poorer outcomes than their female counterparts. This warrants further study.

Table 4.14 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VII, and Title IX Claims in the United States Courts of Appeal as a Function of Plaintiffs' Gender

Gender			
Plaintiff Gender	Conservative	Liberal	Total
Male	14 (78%)	4 (22%)	18 (26%)
Female	30 (58%)	22 (42%)	52 (74%)
Total	44(63%)	24 (34%)	70 (100%)

Table 4.15 shows case outcomes on the United States Courts of Appeal by appointment era majority. Out of 70 total cases, 8 or 47% of the cases resulted in conservative pro-defendant decisions when the panel appointment era majority was composed of judges appointed 1980 or earlier; whereas 38 or 72% of the cases resulted in conservative pro-defendant decisions when the panel appointment era majority was composed of judges appointed 1981 and later. The greater portion of conservative pro-defendant outcomes made by a panel appointment era majority 1981 and later appears to be significant and warrants further study.

Table 4.15 Frequency and Percentage of Conservative Pro-Defendant and Liberal Not Pro-Defendant Case Outcomes in Student Initiated Higher Education Gender Discrimination Decisions made between 1964-2013 for Equal Protection Clause, Title VI, and Title IX Claims in the United States Courts of Appeal as a Function of Appointment Era Majority

Appointment Era Majority	Conservative	Liberal	Total
1980 and earlier	8 (47%)	9 (53%)	17 (24%)
1981 and later	38(72%)	15(28%)	53 (76%)
Total	46(66%)	24(34%)	70 (100%)

Table 4.16 shows the results of the logistic regression analysis performed on the panel gender majority, panel ideology majority, plaintiff gender, and appointment era majority variables and outcomes for the 70 student initiated sex discrimination decisions in higher education made between 1964-2013 under the Equal Protection Clause, Title VII, and Title IX.

A test of the full model against constant-only model was statistically significant, indicating that the predictors, as a set, reliably distinguished between conservative (pro-defendant) and liberal (pro-plaintiff) decisional outcomes ($X^2=10.599$, $p<.05$, with $df=4$). Overall prediction success was 70%. Variability in the model dependent measure accounted for by the independent variables was approximately .194 as measured by Nagelkerke's R Square.

Table 4.16 gives the Wald statistic and associated degrees of freedom and probability values for each of the predictor variables. The Wald criterion demonstrated that the appointment era panel majority variable made a contribution to prediction at the .10 level of significance ($p=.092$). Calculation of the effect size for the appointment

variable indicated that the odds of a conservative pro-defendant case outcome increased by a factor of 2.781 when the panel majority was comprised of 1981 and later appointees compared to panels made up of 1980 and earlier appointment majorities.

The plaintiffs-gender variable attained significance at the .10 level ($p=.076$), in predicting a conservative pro-defendant case outcome. Calculation of its effect size showed that the odds of a conservative result for female plaintiffs decreased by a factor of .221 compared to male plaintiffs. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a factor of 4.53 over the odds of a conservative vote for a male plaintiff. Although the estimated effect size appears substantial, the relatively large standard error associated with the logit coefficient reflects substantial uncertainty as to whether this effect size is real. For the 70 cases under study, the ideological panel majority and panel gender majority variables showed no significance in contributing to the odds of a pro-defendant decision.

Table 4.16 Logit Analysis on the Odds of a Conservative Pro-Defendant Decision in the United States Courts of Appeal for Student Initiated Higher Education Gender Based Discrimination Claims brought under the Equal Protection Clause, Title VII, and Title IX:

1964-2013

Independent Variables	B (SE)	Wald	df	<i>p</i>	Exp (B)
Panel Gender Majority	-1.202 (1.268)	.899	1	.343	.301
Panel Ideology Majority	.746 (.565)	1.745	1	.187	2.109
Plaintiffs' Gender	-1.509 (.850)	3.153	1	.076	.221
Appointment Era Majority	1.023	2.844	1	.092	2.781
Constant	.807 (.928)	.757	1	.384	2.242

Results of Hypotheses

Individual Voting

Based on the descriptive data and logit analyses, this section examines the hypotheses listed in Chapter One. The first five hypotheses refer to the individual voting data base which contain judges appointed by Republican and Democratic Presidents in both U.S. Courts of Appeal and U. S. District Courts. Hypotheses 6-8 refer to the panel database for United States Courts of Appeal outcomes only.

Research Question 1: What is the relationship among U.S. District Court and U.S. Courts of Appeal judges' political ideology, gender, appointment era, plaintiffs' gender and their voting higher education cases involving students' claims of sex discrimination brought against universities and their faculty?

It was anticipated in Hypothesis one that the odds of judges appointed by Republican presidents voting in a conservative pro-defendant direction in student initiated higher education gender discrimination cases brought by students for the period 1964-2013 would be greater than that of judges appointed by Democratic presidents. Based on the results of Table 4.1 Republican judges voted more conservatively by 14%, and this difference was statistically significant at the .05 level ($p=.028$) when subjected to logit analysis as indicated in Table 4.9. Thus, political ideology of the judge was a contributing factor to the individual voting and the results supported the hypothesis.

Hypothesis two predicted that the judges who were appointed in 1981 and later would vote more conservatively than judges who were appointed during 1980 and earlier. Descriptive Table 4.3 showed that judges appointed during the later period voted more conservatively (7% difference) than those appointed 1980 and earlier. The logistical

regression analysis displayed in Table 4.9 did not indicate significant difference in the odds of conservative pro-defendant voting between the 1980 and earlier and 1981 and later periods for the appointment era variable. This table reveals that the odds of a judge appointed 1981 and later voting in a conservative pro-defendant direction compared to the earlier period increased by a margin of only 1.140. Therefore the hypothesis was not supported.

Hypothesis three predicted that the odds of judges appointed by Republican presidents during 1981 and later periods voting in a conservative pro-defendant direction would be greater than judges appointed by Republican presidents during the 1980 and earlier period. Descriptive Table 4.5 indicated a 10% difference in conservative voting by judges appointed during the later compared to the earlier period, in the predicted direction. According to the logistical regression output in Table 4.9, the odds of pro-defendant voting between the two time periods was not statistically significant ($p=.468$); therefore this hypothesis was not supported.

It was predicted in hypothesis four that judges appointed by Democratic presidents in 1981 and later would vote more conservative-pro-defendant than judges appointed by Democrats in 1980 and earlier. Descriptive Table 4.4 showed no difference in favor of conservative voting by 1981 and later Democrat appointees, as compared to judges appointed by Democrats during the earlier period. When this variable was subjected to logistical analysis which output is shown in Table 4.11, no significant difference appeared in conservative pro-defendant voting by later appointed compared to the earlier appointed Democrats ($p=.992$). This finding, which was accompanied by an effect size value of 1.004, did not support the hypothesis.

It was anticipated in hypothesis five that judges would vote more conservatively when the plaintiff was male as opposed to female. Table 4.6 showed that for the

combined 296-vote data base, males received 81% conservative votes, while females received 58% conservative votes. Logistical analysis showed statistical significance ($p=.016$) in Table 4.10, indicating that when the plaintiffs were male, the odds of judges voting in a conservative pro-defendant direction was significantly greater for male than female plaintiffs. This finding was accompanied by a substantial effect size of .311 and a negative B coefficient, as expected. Thus, the hypothesis was supported.

Descriptive Table 4.7 showed the distribution of 209 individual votes cast using the U.S. Courts of Appeal database only. Results indicated that male plaintiffs received 83% conservative votes, while female plaintiffs received 61% conservative votes. The U.S. District Court database for 87 votes cast in Table 4.8 showed that male plaintiffs received 88% conservative votes, while female plaintiffs received 54% conservative votes. These results indicate that judges voted in a similar conservative direction for male plaintiffs in both the U.S. Courts of Appeal and U.S. District Courts. Thus, descriptive data at each federal court level was consistent with the predictions for plaintiff gender effects.

Case Outcomes

Research Question 2: What is the relationship among political-ideological panel majority, gender-panel majority, plaintiffs' gender, and decisional outcomes in the United States Courts of Appeal, for higher education students' claims of sex discrimination in cases brought against universities and their faculty?

It was anticipated in hypothesis six that the odds of a pro-defendant outcome would increase when the panel was composed of a Republican majority. There was a 73% chance of a conservative pro-defendant vote with a Republican majority and a 52%

chance with a Democratic majority, according to descriptive Table 4.13. The logistical analysis output contained in Table 4.16 did not show a statistical difference for the panel ideology majority variable ($p=.187$). Therefore, the hypothesis was not confirmed. That said, the odds of panels composed of Republican appointed majorities as compared to Democrat appointed majorities were 2.109 greater to make a conservative pro-defendant decision. The large effect size differences for Republican majorities compared to Democratic ones suggest meaningful differences in case outcomes occurred based on ideological majorities despite the lack of significant statistical differences between the two levels of this variable.

It was anticipated in hypothesis seven that the panel majority of judges appointed 1981 and later would vote more conservatively than those appointed 1980 and earlier. The descriptive investigation for this variable in Table 4.15 demonstrated there was a 72% chance of a conservative pro-defendant outcome when the appointment era majority was composed of judges appointed 1981 and later compared to a 47% chance of a conservative outcome with appointment era majority 1980 and earlier. Logit Table 4.16 showed significance at the .10 level ($p=.092$) for conservative pro-defendant voting by panel majorities comprised of judges appointed during the later as compared to the earlier period, thereby supporting the hypothesis. Perhaps more importantly, the effect size reflecting real differences in panel outcome was 2.78. This means that the odds of later appointed majority panels voting conservatively was 2.7 times greater than the panels with earlier appointed majorities.

Hypothesis eight predicted that for the 70 cases which were considered, the odds of a conservative panel decision would be greater with male than female plaintiffs. According to Table 4.14 male plaintiffs received a conservative decision 78% of the time, while female plaintiffs received a conservative result 58% of the time. Logistical analysis

in Table 4.16 attained significance at the .10 level in the predicted direction ($p=.076$). This difference between panel outcomes for male and female plaintiffs' was accompanied by a substantial effect size in the predicted direction. This output means that the odds of a conservative vote for female plaintiffs was reduced by a factor of .221 compared to males. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a margin of 4.52 over the odds of a conservative vote for a male plaintiff. The practical import of this result is to demonstrate that females' chances of winning a case of the type under study are much greater than for male plaintiffs. These results tended supported the hypothesis.

Chapter 5

Discussion

While discussions regarding judge-level and extrinsic variables and judges' voting patterns have been researched extensively, there has been limited research related to student-initiated gender discrimination cases in higher education in the U.S. Courts of Appeal and U.S. District Courts. This study was conducted in order to determine: (1) the relationship among judge-level [ideology and judges' gender], and extrinsic variables [plaintiffs' gender and judges' appointment era] and individual voting and (2) the relationship between U.S. Courts of Appeal panel majority composition by ideology, gender, appointment era, and case outcomes.

Individual Judge Voting

Political Ideology

The first independent variable studied used party-of- the- appointing- president as a proxy for judges' ideology. Epstein, Landes, & Posner (2013) explained: "The party of the appointing President...and other ex-ante measures of judicial ideology are used not only to identify ideology...but also to explain judicial votes" (p. 175). The database for individual voting consisted of a total of 296 votes from judges on the U.S. Courts of Appeal and U.S. District Courts who voted on student initiated sex discrimination claims between 1964 and 2013.

It was anticipated in Hypothesis one that the odds of judges appointed by Republican presidents voting in a conservative pro-defendant direction would be greater than that of judges appointed by Democratic presidents. Based on the results of Table 4.1, Republican judges voted more conservatively than Democratic appointees by a margin of 14%, and this difference was statistically significant at the .05 level ($p=.028$) when subjected to logit analysis, as indicated in Table 4.9. Thus, political ideology of the

judge was a significant contributing factor to the individual voting outcome and the results supported the hypothesis.

Like this study, Sunstein, Schkade, and Ellman (2004), found that ideology was a significant contributor in sex discrimination cases. They examined 14,874 individual judge votes in U.S. Federal Courts of Appeal cases which included 18 different topics, including 1477 sex discrimination and sex harassment cases beginning in 1995. Similar to the current study Sunstein et al. (2004) used party of the appointing president as a proxy for judges' ideology. They found that judges voted according to their stereotypical pattern, meaning that Democrats tend to vote liberally while Republicans tend to vote conservatively in sex discrimination cases. Republican appointed judges voted conservatively 65% of the time, while Democrat appointees voted conservatively 49% of the time. Regarding sexual harassment cases, Republican appointed judges voted conservatively 63% of the time, while Democrat appointees voted conservatively 48% of the time. In both the sex discrimination and sexual harassment cases, the findings were highly significant at the $p < .001$ level.

Another study which investigated the relationship of political ideology to voting outcomes was one by Kulik, Perry, and Pepper (2003). This study examined the relationship between ideology and voting in sex discrimination cases in United States District Courts. They began with an initial set of 786 federal cases involving sex discrimination from 1981-1996. The final sample consisted of 143 cases presided over by a single judge in each instance. The researchers defined ideology of the judge by the political affiliation of the appointing president, as in the current study. Sixty-one of the cases were decided by a Democrat judge and 82 cases were decided by a Republican judge. Logistical regression analysis was applied with the result that political affiliation was significant at the $p < .05$ level. Democrat appointed judges were more likely to vote

liberally (pro-plaintiff) than Republican appointed judges. Both studies found similar results to the current study, demonstrating that ideology was a contributing factor to voting outcome. These studies and the current one suggest that the difference in the ideological voting in sex discrimination cases is a factor that extends to student-initiated cases. Results are consistent with the attitudinal theory, which states that attitudes influence the behavior of judges (Segal & Spaeth, 2002).

Appointment Era

Hypothesis two predicted that the judges who were appointed in 1981 and later would vote more conservatively than judges who were appointed during 1980 and earlier. Descriptive Table 4.3 showed that when all 296 votes [including Republican and Democratic appointees] were considered, judges appointed during the later period voted more conservatively by a margin of 7% than those appointed during 1980 and earlier. The logistical regression analysis displayed in Table 4.9 did not indicate a significant difference in the odds of conservative pro-defendant voting between the 1980 and earlier and 1981 and later periods ($p=.629$). This table reveals that the odds of a judge appointed 1981 and later voting in a conservative pro-defendant direction compared to the earlier period increased by a margin of only 1.140. Thus, the hypothesis was not supported. Since no difference was observed in a combined Republican and Democratic data base, a more nuanced examination of the data was required to determine whether any interaction effects were obtained between appointment era and the ideological variable.

Hypothesis three predicted that the odds of judges appointed by Republican presidents during 1981 and later periods voting in a conservative pro-defendant direction would be greater than judges appointed by Republican presidents during the 1980 and earlier period. Descriptive Table 4.5 indicated a (10%) difference in conservative voting

by Republican judges appointed during the later (72%) compared to the earlier period (62%). According to the logistical regression output in Table 4.10, the odds of pro-defendant voting between the two time periods was not statistically significant ($p=.468$); therefore this hypothesis was not supported.

As Reagan's term of office began in 1981, this study separated appointment era into the time period before he assumed office and the period after he began his presidential terms. The appointment era variable categorizes judges based on when they were appointed to the bench. Reagan's era was dubbed "the Reagan Revolution" (Kelley, 2006, p. 157). One of Reagan's priorities in office was to transform the judiciary. "Reagan's policy considerations drove his judicial appointments" (Kelley, 2006, p. 163). O'Brien (2005) stated that Reagan's appointees brought conservatism to the bench with long-ranging consequences.

Although the estimated effect size for Republicans between the two appointment eras appears substantial, the relatively large standard error associated with the logit coefficient reflects substantial uncertainty as to whether this effect size is real. Moreover, the failure to find empirical support for the prediction may reflect a Type I or Type II error, but this is largely speculative at this juncture. In short, although theory suggests that Republicans would vote more conservatively after 1980, no such effect was detected in a model, which included judges' gender and plaintiffs' gender.

It was predicted in hypothesis four that judges appointed in 1981 and later by Democrats would vote more conservative-pro-defendant than judges appointed by Democrats 1980 and earlier. This prediction was based in part on research by Smith (2010) regarding the influence of the Republican held senate on Clinton's appointees.

However, when this variable was subjected to logit analysis in Table 4.11, conservative pro-defendant voting of Democrat appointees by appointment era did not

attain significance either ($p=.992$). Thus, although Clinton's appointees were more conservative than his Democratic predecessors, they apparently were not sufficiently conservative to produce significant differences in individual voting when the 1981 and later Democratic appointees were compared to the earlier ones. This result is consistent with Sunstein, Schkade, Ellman & Sawicki's (2006) research, which revealed that there was only a small non-significant difference between Clinton's appointees and the appointees of Kennedy, Johnson, and Carter.

Judge Gender

Because of the importance of the issue, gender was included as an independent variable to add to our knowledge of gender effects. Based on the investigations it seems like there is a definitive trend finding no such effects. Although no specific hypothesis accompanied this investigation of gender influences, our results are consistent with researchers who found no significant gender effects on individual voting or panel decisions.

The current study consisted of 296 individual votes cast. Male judges comprised the majority with 246 (83%) versus 50 (17%) female judges. Female judges voted conservatively (pro-defendant) 70% of the time, while male judges voted conservatively (pro-defendant) 62% of the time. These differences were not statistically significant ($p=.257$).

Similar to the results of the current study, Kulik et al. (2003) explored the effects of personal characteristics of judges including gender and found that there were no effects of judge gender on voting outcomes. The study consisted of a database of 143 U.S. District Courts sexual harassment cases between 1981 and 1996. The dependent variable was the judicial vote and independent variables included not only judge gender, but age of judge, race, and political affiliation. The only significant findings that affected

the outcome were age and political affiliation of the judge. Their results were consistent with previous studies, which showed a weak relationship between judge gender and voting outcomes.

Sisk, Heise, and Morriss (2004) conducted an empirical analysis of 1784 judicial participations drawn from 729 published decisions from the appellate and trial court level. The study was primarily focused on religious characteristics of judges but also discussed sex/gender of the judges. Results of the effects of judge gender on voting outcome demonstrated that gender of the judge did not play a significant role in voting. Results of these studies concur with the current study in showing that there is no significant differences between voting outcomes and judge gender. According to the legal model, Fisher, Horowitz, & Reed (1993) assert that a goal of judges at all levels is to accurately interpret the law. This model thus does not allow for personal views regarding policies, but only allows for strict adherence to the law, as defined in the legal model.

Plaintiffs' Gender

Initially, sex discrimination cases were primarily focused on female plaintiffs, but as far back as the 1970's a renewed focus was cast on sex discrimination cases with male plaintiffs (Bornstein, 2012). It was anticipated in hypothesis five that judges would vote more conservatively in student initiated sex discrimination cases when the plaintiff was male as opposed to female. Results of descriptive Table 4.6 showed that for the 296-vote database, males received 81% conservative votes, while females received 58% conservative votes. Logit analysis showed statistical significance ($p < .01$) in Table 4.9, indicating that when the plaintiffs were male, the odds of Republican and Democrat appointed judges voting in the combined data base overall in a conservative pro-defendant direction was greater for male than female plaintiffs. Thus, the hypothesis was supported.

In logit Table 4.10, which represented a Republican only database, the plaintiff-gender variable ($p=.016$) made a significant contribution to prediction. The odds of a pro-defendant vote decreased when the plaintiff was female as compared to when the plaintiff was male when all other variables were held constant. For the two categories associated with the plaintiff gender variable, calculation of the effect size revealed that the odds of Republican judges voting in a conservative direction for a female plaintiff was reduced using a factor of .311 over the odds of voting in a conservative direction when the plaintiff was male. Stated differently, for Republican appointees, the odds of females receiving a liberal pro-plaintiff vote increased by a margin of 3.22 over the odds of a conservative vote for a male plaintiff.

For the Democrat only database in Table 4.11, the plaintiff-gender variable attained significance at the .05 level ($p=.026$). For the two categories associated with the plaintiff gender variable, calculation of the effect size revealed that the odds of Democratic judges' voting in a conservative direction for a female plaintiff was reduced when all of the other independent variables were held constant using a factor of .341 over the odds of voting in a conservative direction when the plaintiff was male. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a margin of 2.93 over the odds of a conservative vote for a male plaintiff.

There is limited research available regarding decisions favoring male versus female plaintiffs. Studies regarding plaintiffs tend to discuss whether plaintiffs succeed or not based on perception by the judges or in some instances, the jurors. One study which did analyze whether plaintiff gender matters was conducted/ by Elkins, Phillips, Konopaske, and Townsend (2001) which researched plaintiff gender stereotyping using 120 university students as mock jurors. The study was done in order to evaluate employment gender discrimination allegations. In their study observers were more

suspicious about the motives of the male plaintiff than of the female plaintiff. Thus, the results showed that “the gender of the plaintiff does make a difference in how the evidence presented in a gender discrimination claim is viewed” (p. 12).

Bornstein (2012) discussed sex discrimination as it relates to lawsuits filed by men under Title VII. In the years since Title VII was enacted, men have been stereotyped against as well as women. According to Bornstein (2012) federal courts have been challenged to fairly judge sex discrimination claims brought by men without unlawfully stereotyping men.

As Supreme Court Justice Ginsburg has noted, the antidiscrimination law has yet to completely fulfill the promise of “allowing individuals access to gender equality, free from the sex-based stereotypes that constrain them, whether they are men or women” (p. 27). It appears that the Supreme Court’s Equal Protection decision in *Mississippi University for Women v. Hogan*, 458 U.S. 718 requiring equal treatment for men and women applying to nursing schools as not yet translated into judicial practice, at least in student-initiated sex discrimination cases of the kind investigated here.

Decisional Case Outcomes

Edwards and Livermore (2009) give a first-person account of a 29-year judge, who states, “No empirical study has proven the truth of what has been suggested about panel effects, nor has any study disproved my claim that judicial deliberations produce consensus” (p. 1952). In addition, Sisk and Heise (2012) “have not found that any extralegal factor...explains more than a very small part of the variations in outcomes” (p. 1362).

This study included 70 decisional outcomes from the U.S. Courts of Appeal concerning student-initiated sex discrimination claims in higher education.

Panel Ideology Majority

It was anticipated in hypothesis six that the odds of a pro-defendant outcome would increase when the panel was composed of a Republican majority. There was a 73% chance of a conservative pro-defendant vote with a Republican majority and a 52% chance with a Democratic majority, according to descriptive Table 4.13. The logit analysis output contained in Table 4.16 did not show a statistical difference for the panel ideology majority variable ($p=.187$). Therefore, the hypothesis was not confirmed. That said, panels composed of Republican appointed majorities were 2.109 more likely to make a conservative decision than those composed of Democratic appointed majorities. Although the estimated effect size appears substantial, the relatively large standard error associated with the logit coefficient reflects substantial uncertainty as to whether this effect size is real.

Although statistically significant differences were found in individual judge database, these did not translate into panel majority effects for Republican and Democrat database. Although this is somewhat surprising, this assumption or expectation would entail an aggregation fallacy relative to the relationship between individual and group voting.

Revesz (1997) conducted a study exclusively on the Ninth Circuit decisions in order to determine, among other things, if “judges are likely to vote less ideologically when the panel is heterogenous...than when it is homogenous” (p. 1732). Results showed that the panel majority ideology is a better predictor of outcome than an individual judge’s ideology. However, Revesz’s (1997) study consisted of 676 cases while the current study consisted of only 70 Courts of Appeals cases. Additionally, Sunstein, Schkade, and Ellman (2004) discussed panel outcomes in terms of ideology majority by stating that “the likely majority outcome of a panel will be affected by its composition” (p.

329). The database in the study consisted of 4958 majority three-judge panel decisions in different areas including sex discrimination and sexual harassment. Findings revealed that when a panel was composed of all Democrat appointed judges, the result was a liberal ruling 61% of the time. When the panel consisted of all Republican judges, liberal results occurred 34% of time.

In addition, Moyer and Tankersley (2012) conducted research in the U.S. Courts of Appeals concerning sex discrimination claims and found a majority panel of Democrat appointed judges voted pro-plaintiff more often than a panel consisting of a majority of Republican-appointed judges.

In sum, the current study results demonstrate a likelihood majority panels vote differently, but do not demonstrate statistical significance. Results of Logit Table 4.9 indicate ideology is significant in that Republicans voted more conservatively than Democrat (entire database) but when we look at panels majority ideology showed no significance in contributing to the odds of a pro-defendant decision.

Panel Appointment Era Majority

It was anticipated in hypothesis seven that when the majority of judges on a panel were appointed in 1981 and later they would vote more conservatively than panel majorities appointed in 1980 and earlier. The descriptive investigation for this variable in Table 4.15 demonstrated there was a 72% chance of a conservative pro-defendant outcome when the appointment era majority was composed of judges appointed 1981 and later compared to a 47% chance of a conservative outcome with appointment era majority 1980 and earlier. Logit Table 4.16 showed at the .10 level of significance ($p=.092$) for conservative pro-defendant voting by panel majorities comprised of judges appointed during the later as compared to the earlier period. Calculation of the effect size for the appointment era majority variable indicated that the odds of a conservative pro-

defendant case outcome increased by a factor of 2.781 when the panel majority was comprised of 1981 and later appointees compared to panels made up of 1980 and earlier appointment majorities.

The precise meaning of this result is uncertain since this study failed to build in controls for the possible influence of Supreme Court precedents, decision date, and the circuits from which the cases came. Nevertheless, the data does suggest, at least tentatively, that more conservative judges were appointed during the 1981 and later period compared to the earlier one and panel voting aggregated in a conservative direction, at least for student-initiated sex discrimination claims in higher education.

Plaintiffs' Gender

Hypothesis eight predicted that for the 70 cases that were considered overall, the odds of a conservative panel decision would be greater with male than female plaintiffs. According to descriptive Table 4.14 male plaintiffs received a conservative decision 78% of the time, while female plaintiffs received a conservative result 58% of the time. Logistical analysis in Table 4.16 showed the results were in the predicted direction ($p=.076$) and attained significance at the .10 level. Calculation of its effect size showed that the odds of a conservative result for female plaintiffs decreased by a factor of .221 compared to male plaintiffs. Stated differently, the odds of females receiving a liberal pro-plaintiff vote increased by a margin of 4.52 over the odds of a conservative vote for a male plaintiff.

An example of a ruling in favor of a male plaintiff was brought to the U.S. Supreme Court in 1982. The case, *Mississippi University for Women v. Hogan*, 458 U.S. 718, was brought under the Equal Protection Clause claiming sex discrimination. In this case, a male student claimed he was denied admission to a nursing program on the basis of his sex. The U.S. District court ruled in favor of the defendants, but the appellate

court reversed the ruling. The U.S. Supreme Court upheld the ruling of the appellate court stating the defendants violated the Equal Protection Clause by refusing to admit a male student. Bornstein (2012) discussed reverse discrimination as it relates to Title VII by stating that due to stereotyping and gender discrimination, men have been discriminated against when males work in areas normally assigned to women. As the nursing profession has primarily been considered a woman's profession, it is possible that due to gender stereotyping, males in this occupation are subject to gender discrimination. If the male plaintiff had not appealed the case, the ruling would have resulted at the district court level in favor of the defendants, similar to the current study's results regarding plaintiff gender bias.

Panel Gender Majority

Although there was no specific hypothesis for this variable, there has been much research about the make-up of gender panel composition. In logit Table 4.16, panel gender majority did not demonstrate statistical significance ($p=.343$), demonstrating panels composed of majority male or female judges did not vote differently from each other in sex discrimination cases. Palmer (2001) discusses the role of women in the judiciary panels by stating that the impact of women on the bench is greatest in sex discrimination cases. However, Palmer (2001) does not discuss majority but limits the discussion to individual differences in panel composition.

Similar to results of the current study, Sunstein, Schakade, and Ellman (2004) conducted a study on judge gender panels and found that judge gender did not affect voting patterns. Farhang and Wawro (2004) examined how institutional features affected appellate panels and found that when the panel is composed of a female majority, there is no difference in influencing male judges than if only one female judge were sitting on the female. Therefore their conclusions are consistent with ours in stating there is no

difference with a female majority than a male majority in voting outcomes. Results are consistent with the legal theory discussed earlier, which states that judges base their decisions on the law, not on personal political principles (Cross, 1997).

Implications

This model examined student-initiated sex discrimination cases in higher education in the U.S. federal courts. Previous research has not focused on this particular topic with focus on sex discrimination and sexual harassment cases under the Equal Protection Clause, Title VII, and Title IX determining relationship between individual judge-related variables and voting outcomes as well as panel majority variables and decisional outcomes.

This study found that plaintiff gender was strongly related to the voting choices of the individual judges. In addition, political ideology of the judge was a factor influencing voting. For panel outcomes, the appointment era panel majority variable made a contribution to decisional outcome as well as appointment era majority and plaintiff gender.

Limitations

This study focused only on judicial voting in the U.S. District Courts and U.S. Courts of Appeal cases involving Higher Education with no focus on levels K-12. The most significant limitation of this study was the small sample of cases. The study also did not delineate between the results of specific federal circuit courts in various parts of the country.

The study did not focus on other judges' variables, such age of the judge, time on bench, previous judicial experience, school in which the judges received their law degree, personal economic background, location of the country, or years the judge worked as a lawyer before attaining the bench. Moreover, the design of this study did not include

controls for Supreme Court precedent. The appointing President of the judge was used as a proxy for the political ideology of the judge. This was a limitation as it presupposed the judge to be of the same party as the President.

Recommendations for Future Research

This study attempted to determine whether intrinsic or extrinsic variables influence judicial voting in sex discrimination cases. The focus of the study was student-initiated sex discrimination claims in higher education, with a focus of cases at the federal level.

Future studies need to be conducted with different judge-level and panel-level variables to determine if there are correlations with these variables and decisional outcomes. Additional variables could include time on bench, religion of the judge, how long the judge served as a lawyer, age of judge, age at time of appointment, circuit breakdown of decisions, as well as which law schools judges attended. In addition, future studies could focus on state courts as well as federal.

Appendix A
List of Supreme Court Cases

Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 692 (1954).

Cannon v. University of Chicago, 441 U.S. 677, 99 S. Ct. (1979).

Clark County School District v. Breeden, 532 U.S. 268, 121 S. Ct. 1508 (2001).

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