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Growing Up with Popular Culture in The Time of Title IX

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Growing Up with Popular Culture in The Time of Title IX

*Christine A. Corcos**

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“Growing up in the time of Title IX—it was passed when I was 10—I got a front-row seat to so many great moments in women’s sports. Of course I didn’t know it at the time.”

Jackie Joyner-Kersey¹

INTRODUCTION

Generally, while popular culture has reflected Title IX’s existence since its enactment, characters who discuss the impact of the law rarely mention the actual statute. Instead, they discuss its impact and its effects. The writers of these episodes and films might believe that the public cannot understand Title IX’s sophistication, but that might well not be the case. Nevertheless, what the writers do is clear away what they might think is unnecessary information—the name of the statute, the rulings, the procedures—and concentrate on the issues and the effects: the reasons that Title IX exists, the reasons that Congress enacted it, and the conflicts that endure. These issues include peer-on-peer sexual harassment and peer-to-peer bullying, supervisor harassment, inappropriate sexual relationships, and sexual assault. The other information that writers omit is in reference to other statutes and legal theories that might also support harassment or bullying claims.²

I. WHEN TITLE IX WAS NEW

When Congress passed Title VII, that Act did not protect against employment discrimination in educational institutions.³ Title IX addresses that gap to some extent.⁴ Passed in 1972, it provides 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 subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁵ Title IX applies both to traditional educational public and private

1. Jackie Joyner-Kersey, *Jackie Joyner-Kersey’s winning moment*, ESPN (June 5, 2012), https://www.espn.com/espnw/title-ix/story/_/id/8011246/jackie-joyner-kersee-winning-moment [<https://perma.cc/J9YD-WG22>].

2. See *infra* notes 188–89.

3. See Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000e–16.

4. For an extensive legislative history of Title IX, see Paul C. Sweeney, *Abuse Misuse & Abrogation of the Use of Legislative History: Title IX & Peer Sexual Harassment*, 66 UMKC L. REV. 41, 46–67 (1997).

5. 20 U.S.C. § 1681 (Title IX). In 2002, Congress renamed Title IX of the Education Amendments of 1972 the Patsy Takemoto Mink Equal Opportunity in Education Act. Pub. L. No. 107-255, 116 Stat. 1734 (2002).

institutions that receive federal financial support and also to training programs if their operators receive such support.⁶

Courts use much of Title VII jurisprudence⁷ to inform their Title IX rulings and provide additional protections.⁸ For example, in *Jackson v. Birmingham Board of Education*, the United States Supreme Court held that Title IX protects education plaintiffs who complain about discrimination.⁹ “Reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report went unpunished. Indeed, if retaliation were not prohibited, Title IX’s enforcement scheme would unravel.”¹⁰

Some scholars investigated the presentation of sexual harassment on television and in film in the 1990s and noted that both frequently depicted sexual harassment without depicting much in the way of consequences for the harasser or long-term effects on the subject of the harassment.¹¹ Do these images continue? That is, do television, film, and other types of popular culture continue to present harassers as immune to consequences? Do they continue to present the victims as resilient and able to survive this behavior? At least with regard to the presentation of behavior subject to Title IX, writers of this content seem to be aware that the statute requires compliance and a change in behavior. They also seem to understand that one way to send a strong signal is to model audience behavior through presentations of appropriate and inappropriate behavior and speech onscreen.

6. See U.S. DEP’T OF JUST., TITLE IX LEGAL MANUAL § I (2021), <https://www.justice.gov/crt/title-ix#I.%20Overview%20of%20Title%20IX:%20Interplay%20with%20Title%20VI,%20Section%20504,%20Title%20VII,%20and%20the%20Fourteenth%20Amendment> [<https://perma.cc/YJ9B-YBZM>].

7. *Id.*

8. See *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005).

9. *Id.* at 180.

10. *Id.*

11. See Jill Axelrod, *Sexual Harassment in the Movies and Its Effect on the Audience*, in *SEXUAL HARASSMENT: COMMUNICATION IMPLICATIONS* 107 (G. Kreps ed., 1993); Susan L. Brinson, *The Use and Opposition of Rape Myths in Prime-Time Television Dramas*, 27 *SEX ROLES* 359 (1992); Elizabeth Grauerholz & Amy King, *Prime Time Sexual Harassment*, 3 *VIOLENCE AGAINST WOMEN* 129 (1997).

II. TITLE IX IMAGERY IN POPULAR CULTURE: PEER-ON-PEER SEXUAL HARASSMENT AND PEER-ON-PEER BULLYING

What is the law with regard to peer-on-peer sexual harassment or bullying under Title IX? Mere teasing or even bullying might not suffice to support a plaintiff's claim of a Title IX violation.¹² In *Davis v. Monroe County Board of Education*, the Supreme Court held that

[i]t is not enough to show, as the dissent would read this opinion to provide, that a student has been "teased" . . . or "called . . . offensive names" . . . Comparisons to an "over-weight child who skips gym class because the other children tease her about her size," the student who "refuses to wear glasses to avoid the taunts of 'four-eyes,'" and "the child who refuses to go to school because the school bully calls him a 'scaredy-cat' at recess" . . . are inapposite and misleading. Nor do we contemplate, much less hold, that a mere "decline in grades is enough to survive" a motion to dismiss.

. . .

Moreover, the provision that the discrimination occur "under any education program or activity" suggests that the behavior be serious enough to have the systemic effect of denying the victim equal access to an educational program or activity. Although, in theory, a single instance of sufficiently severe one-on-one peer harassment could be said to have such an effect, we think it unlikely that Congress would have thought such behavior sufficient to rise to this level in light of the inevitability of student misconduct and the amount of litigation that would be invited by entertaining claims of official indifference to a single instance of one-on-one peer harassment.¹³

The plaintiff must show that the bullying or harassing behavior is linked to a deprivation of equal access to that educational program or activity and also that the bullying is directly linked to the plaintiff's sex, gender, sexual or gender identity, or other characteristic protected under Title IX.¹⁴ To state a claim against the school district with regard to such behavior, the

12. See *Davis v. Monroe Cnty. Bd of Educ.*, 526 U.S. 629 (1999).

13. *Id.* at 652–53.

14. *Davis* provides an example of sexual harassment on the basis of gender. *Id.* at 650–51. The school administration in the show *Two and a Half Men* has actual knowledge of the behavior and is taking action to address it.

plaintiff must also show that the district had knowledge of the behavior and failed to act.¹⁵

Where, as here, the misconduct occurs during school hours and on school grounds—the bulk of G.F.’s misconduct, in fact, took place in the classroom—the misconduct is taking place “under” an “operation” of the funding recipient. In these circumstances, the recipient retains substantial control over the context in which the harassment occurs. More importantly, however, in this setting the Board exercises significant control over the harasser. . . . On more than one occasion, this Court has recognized the importance of school officials’ “comprehensive authority . . . , consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.” The common law, too, recognizes the school’s disciplinary authority. We thus conclude that recipients of federal funding may be liable for “subject[ing]” their students to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment and the harasser is under the school’s disciplinary authority.¹⁶

*Two and a Half Men*¹⁷ centers on two brothers who live in a beach house in Malibu, California. Charlie, the owner of the house, is a successful composer who enjoys a hedonistic life. Alan has moved in with him after his 12-year marriage to Judith ends. Alan’s pre-teen son spends weekends, and quite often when Judith takes vacations, will spend that time with them as well.

The 2005 *Two and a Half Men* episode “Principal Gallagher’s Lesbian Lover” presents an example of peer-on-peer sexual harassment and the sanctions that a school imposes in such cases. Alan contends with a sexual harassment problem at Jake’s school when ten-year-old Jake draws a picture of a girl in his class that emphasizes the girl’s developing

15. *Id.* at 654.

16. *Id.* at 646–47 (alteration in original) (internal citations omitted) (citing *Doe v. Univ. of Ill.*, 138 F.3d 653, 661 (7th Cir. 1998)) (finding liability where schools fail to respond properly to “student-on-student sexual harassment that takes place while the students are involved in school activities or otherwise under the supervision of school employees”); Restatement (Second) of Torts § 152 (Am. L. Inst. 1965).

17. *Two and a Half Men* (NBC television broadcast).

anatomy.¹⁸ Alan describes the problem to Charlie, who makes fun of the issue in front of Jake.¹⁹

ALAN: Apparently, there is a little girl in Jake's class named Barbara Schmidt . . . who is a little more physically developed than the other girls. And Jake decided to make a picture of her and pass it around.

JAKE: I only passed it to one person. What happened after that was not my responsibility.

CHARLIE: Dude, why did you sign it?

JAKE: Okay, that part I regret.

ALAN: Go back to your room.

CHARLIE: (Reading the description on the drawing) "Boobra Schmidt." I'm putting this one on the refrigerator.

ALAN: Charlie, this is serious.

CHARLIE: (Ignoring him) It really speaks to me.

ALAN: The girl went home in tears. Her mother is on the warpath. Jake could get expelled.

CHARLIE: For a silly drawing?

ALAN: It's considered sexual harassment. The school has a zero tolerance policy.

CHARLIE: For the good old days when you could wander into the girls' locker room pretending you were blind.

ALAN: You actually did that? That's horrible.

CHARLIE: No, the horrible part was stealing the dog from the blind

18. *Two and a Half Men: Principal Gallagher's Lesbian Lover* (CBS television broadcast Sept. 26, 2005) (transcript on file with the *Louisiana Law Review*).

19. *Id.*

kid.

ALAN: Well, unfortunately, times have changed and we no longer live in a Porky's Movie.²⁰

Jake, who is supposed to be in his bedroom with the door shut, demands to know what a Porky's Movie is.²¹ The allusion is lost on him.²²

In addition to the popular culture reference here (the Porky's movie), this scene encapsulates the difference between Alan's and Charlie's understanding of the cultural and legal changes in attitudes toward women's appearances.

Jake also runs afoul of housekeeper Berta.²³ She sees the drawing and confronts him.²⁴

BERTA: So . . . you like making fun of girls with big boobs?

JAKE: (Looks carefully at Berta's chest) Not anymore.²⁵

Note here that Alan expressly labels Jake's conduct as "sexual harassment."²⁶ Jake attends a public school in Sherman Oaks, which is part of the Los Angeles Unified School District. The current Los Angeles Unified School District Sexual Harassment Policy reads, in part, as follows:

Under California law, sexual harassment is any unwelcome conduct based on sex, including sexual advances, requests for sexual favors, and any other verbal, visual, or physical conduct of a sexual nature or based on sex made by someone from or in the work or educational setting, under any of the following conditions:

20. *Id.*

21. *Id.*

22. PORKY'S (Twentieth Century Fox 1981). The film centered on a group of high school boys who wanted to hire a sex worker to help them enter adulthood. On the film, see, for example, Kerri VanderHoff, *Fast Times at Ridgemont High and Porky's: Gender Perspective in the Teen Comedy*, 9 MCNAIR SCHOLARS J. 145 (2005), <https://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1058&context=mcnair> [<https://perma.cc/2JPP-PJW2>].

23. *Two and A Half Men: Principal Gallagher's Lesbian Lover*, *supra* note 18.

24. *Id.*

25. *Id.*

26. *Id.*

...

The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment.²⁷

When Alan arrives at the principal's office, he finds that Barbara's mother is also waiting to see her.²⁸ Barbara's mother has obviously large breasts.²⁹ Alan is both fascinated and aware that he should neither say nor do anything to indicate that he has noticed.³⁰ However, he is unsuccessful.

WOMAN (BARBARA'S MOTHER): Are you waiting to see the principal?

ALAN: Yeah. Oh, have a seat. (To the woman) Alan.

WOMAN (BARBARA'S MOTHER): Mindy. Nice to meet you.

ALAN: You, too (Looking at her more carefully). You must be Boobra's mom. Barbara's mams.

As they wait to see the principal, the episode continues with an intervening scene showing Charlie filling in for Alan at Alan's chiropractic clinic.

MINDY: Let me tell you, puberty is hard enough for a young girl without having to be leered at and made fun of by obnoxious little boys.

ALAN: I couldn't agree with you more. I assure you . . . I've had a talk with Jake about how wrong it is to objectify women's—

MINDY: (Gesturing to her eyes) Up here. I'm up here.

27. See Office of the General Counsel, *Los Angeles Unified School District Sexual Harassment Prevention Policy*, L.A. UNIFIED SCH. DIST. (Aug. 14, 2020), <https://achieve.lausd.net/cms/lib/CA01000043/Centricity/Domain/383/Sexual%20Harassment%20Poster%20-%20English.pdf> [<https://perma.cc/VVZ4-Q4BX>].

28. *Two and A Half Men: Principal Gallagher's Lesbian Lover*, *supra* note 18.

29. *Id.*

30. *Id.*

ALAN: I know. I know. I see you. And let me tell you something. There is no one more sympathetic than I to the plight of the large-breasted woman.

MINDY: (Obviously annoyed) Plight? It's not an affliction.

ALAN: Well, no, not the breasts themselves. But the attendant back problems . . . associated with carrying the enormous load.

MINDY: So now my breasts are a load?

ALAN: From a strictly engineering standpoint, yes. See, see, I am a chiropractor. And I deal with the heartache of MMS all the time.

MINDY: MMS?

ALAN: Massive Mammary Syndrome. A term I coined in an article I submitted to the Journal of the American Chiropractic Association. It hasn't really caught on. Anyway, MMS is particularly acute among strippers but they bring it on themselves with those humongous implants. Yours, on the other hand, appear quite natural. God given, am I right?

MINDY: What the hell is wrong with you?

ALAN: (Embarrassed and flailing) I don't know. I was a bottle baby. . . . I am really sorry.

MINDY: Just drop it.

ALAN: You know, in my defense— Well, well, in the defense of all men, we do live in a mammo-centric society.

MINDY: Mammo-centric?

ALAN: Another coinage of mine. Hasn't really permeated the cultural Zeitgeist.

MINDY: Hey, bottle baby, I'm up here.

ALAN: That perfectly illustrates my points. Point. From the moment we are born, we are basically bombarded by breasts.

Breasts in advertising, breasts in television, in movies. Here a breast, there a breast, everywhere a breast-breast. Heck, you can understand the fixation.

MINDY: You're a horrible little man.

ALAN: Okay, I had hoped that we could have a spirited exchange of ideas here. But if we are gonna just degenerate into name-calling, we should wait for the principal to decide what a reasonable punishment for my son would be.

MINDY: Fine. We'll let the principal decide.

ALAN: Okay.

A woman enters the reception area.

WOMAN: I'm Principal Gallagher.

ALAN: (Looks at her chest) Oh, God, my boy's gonna get the chair.³¹

Note Alan's use of the phrase "name-calling" to refer to Mindy's response.³² Of course, Mindy's references to him as a "bottle baby" and as "horrible" and "little" come only after he attempts to explain his point of view in ways that she finds extremely offensive.³³ What he refers to her "name-calling" is not the sort of childish insult that Jake and other children indulged in during class against Mindy's daughter Barbara.³⁴

Alan's attempt to portray himself as an ally of girls and women goes wildly astray here, even though one might argue that he supports women's rights much more than Charlie. Alan tells Charlie that things at Jake's school went so horribly wrong that although Jake received a one-week suspension, Alan says he has "been asked never to set foot . . . on the grounds of Woodward Avenue Elementary School . . . [a]nd it was suggested . . . that I resign from the PTA. And there's talk of a civil suit. Principal Gallagher's lesbian lover . . . might just drop by tonight to kick my ass."³⁵ Charlie responds by suggesting he charge his camcorder,

31. *Id.*

32. *See id.*

33. *See id.*

34. *Id.*

35. *Id.*

apparently in order to film the event.³⁶ Alan's distress at the outcome is obvious.³⁷ Charlie, who takes the position that women are objects, believes that the results here have validated his views.³⁸

In the episode "Large Birds, Spiders, and Mom,"³⁹ Jake starts junior high, and both Charlie and Alan terrify him by carefully explaining all the things he needs to do to protect himself from other students and "gangs."⁴⁰ They explain how to avoid gangs and bullies; apart from Jake's father, Alan, they never tell him to report bullying behavior to teachers or other responsible adults.⁴¹ Alan even gives Jake a cellphone to use to call him "in emergencies."⁴²

ALAN: Things will go great for you. You just have to remember a few things.

JAKE: Like what?

ALAN: Well . . . always keep your lunch money in your shoe but have some spare change in your pocket.

JAKE: How come?

ALAN: Decoy money. They won't stop hitting you till they get something.

JAKE: Who are "they"?

36. *Id.*

37. *See id.*

38. Note that the parallel story in this episode involves Charlie overseeing Alan's office. *Id.* Alan has asked Charlie simply to answer the phone. *Id.* Charlie instead hires a woman, who under the guise of working as a masseuse, engages in prostitution and gives Charlie a "cut" of every appointment. *Id.* When Alan returns to the office, he is furious. *Id.* Charlie is proud, noting that patient traffic has increased, and the clinic has made a great deal of money in a few hours. *Id.* While this parallel story is not Title IX-related, it points out the differences between Alan's and Charlie's views of women. Alan values women as human beings. Charlie views relationships with women as transactional.

39. *Two and a Half Men: Large Birds, Spiders, and Mom* (Warner Bros. television broadcast Sept. 24, 2007) (transcript on file with the *Louisiana Law Review*).

40. *Id.*

41. *Id.*

42. *Id.*

ALAN: The big kids holding you by your ankles and plunging your head in the toilet.

JAKE: Plunging my head in the toilet?!

CHARLIE: Don't, don't, don't, don't freak the kid out, Alan. It's not so much plunging as dipping.⁴³

Berta chimes in with more practical advice that refers to one possibly responsible school employee.⁴⁴

BERTA: Here's what you do. Make friends with the janitor. They usually have their own bathroom.

JAKE: Okay.

BERTA: Just never drink out of his thermos.

JAKE: All right.

BERTA: And don't believe him if he tells you he loves you.⁴⁵

The writers send the message that school is dangerous to students because of those around them, and they can rely only on themselves.⁴⁶ If they need help, they will have to call on someone outside the school to assist them.

By 2014, one might expect that television characters would certainly be more aware of the application of Title IX. Yet despite media reports that sexual harassment in schools and universities was continuing,⁴⁷ and was still the content of television episodes, some characters still seemed to take the issue lightly while others were concerned. Still, none mentioned Title IX.⁴⁸ However, television episodes focus on characters that push

43. *Id.*

44. *Id.*

45. *Id.* Berta's comment includes the information that grownups in positions of power will use emotion to prey on young people.

46. *See id.*

47. Debjani Roy, *What About Sexual Harassment on Campus?*, HUFFPOST (Mar. 29, 2014), https://www.huffpost.com/entry/about-sexual-harassment-college_b_4662080 [<https://perma.cc/D8J5-TNTH>].

48. *See, e.g., Two and A Half Men: Principal Gallagher's Lesbian Lover*, *supra* note 18; *Two and a Half Men: Large Birds, Spiders, and Mom*, *supra* note 39.

back on harassing behavior as well as those that engage in it, indicating that content creators want to emphasize that harassing behavior is important to highlight.

The short-lived legal comedy *Cristela* features an episode in which pre-teen Isabella (Izzy) is accused of bullying a classmate.⁴⁹ *Cristela* stars Cristela Alonso as Cristela Hernandez, an ambitious and funny law student living with her family in Dallas, hoping to pass the bar and enter on a legal career.⁵⁰ The show aired on ABC, which described the series as featuring a character in her sixth year of law school because she attends school part-time.⁵¹

Like many Title IX plaintiffs, *Cristela* objects to the stereotypes that surround her.⁵² Her mother and sister think her ambition to become a lawyer will stand in the way of a presumed, biological imperative to become a wife and mother.⁵³ Her brother-in-law, Felix, often finds her a little overbearing.⁵⁴ His friend, Gustavo, is simply interested in pursuing *Cristela* as a possible girlfriend for himself.⁵⁵ He does not understand her ambition or her lack of response to his overtures.⁵⁶

The show does not make clear whether Izzy attends a private or a public school. The type of school Izzy attends might change the legal responsibility of the school. If the school is private but receives federal funding, the school may still be responsible for student-on-student harassment if school employees are aware of the harassment and “deliberately indifferent” to it.⁵⁷ However, “even if the school’s response

49. *Cristela: Dead Arm* (Twentieth Century Fox television broadcast Jan. 16, 2015) (transcript on file with the *Louisiana Law Review*).

50. See *Cristela*, ABC MEDIUM, https://web.archive.org/web/20141109161530/http://www.abcmmedianet.com/web/showpage/showpage.aspx?program_id=003859 [<https://perma.cc/G7JE-USV6>] (last visited Aug. 25, 2022).

51. See *id.* Note that the American Bar Association (ABA) allows students a maximum of 84 months to complete their Juris Doctor degrees. See ABA, 2022–2023 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf [<https://perma.cc/43JV-ZUMW>].

52. *Cristela: Pilot* (Twentieth Century Fox television broadcast Oct. 10, 2014) (transcript on file with the *Louisiana Law Review*).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 663–64 (1999); *Jauquet v. Green Bay Area Cath. Educ., Inc.*, 996 F.3d 802 (7th Cir. 2021).

to the harassment [is] not as fulsome as a parent would want for her child, ‘[a] negligent response is not unreasonable, and therefore will not subject a school to liability [under Title IX].’”⁵⁸

When Cristela inquires, Izzy defends herself by saying first, that the other girl started the dispute and second, that she was only copying her aunt, Cristela, in behaving as she did.⁵⁹ The bullying behavior she exhibited at school was her way of standing up for herself.⁶⁰ Because she did not like the other girl’s behavior, Izzy reacted in the only way she knew how, which prompted the school to label her as a bully.⁶¹ There might also be some aspect of labeling a non-white child a bully here, although the episode does not explore that aspect of the issue.⁶² What is more clear is that like Cristela, Izzy attempts to seize control of the narrative but is unsuccessful.⁶³ Her physical reaction to Britney’s behavior, regardless of the behavior, is impermissible.

Cristela tries to explain how Izzy misperceived the issue to Izzy’s mother Daniela, again without mentioning Title IX. Instead, she emphasizes the importance of norms and parental example.⁶⁴ In response, Daniela tells Cristela that the note the school sent home is addressed to Izzy’s parents and not to “the parents and the nosy aunt.”⁶⁵ Cristela, however, believes that she should involve herself in Daniela’s meeting with the school principal because Daniela will not know how to handle the interaction.⁶⁶ In Cristela’s opinion, Daniela is also a bully based on her treatment of school-aged classmates, and she learned that behavior from their mother.⁶⁷ She points out that Daniela mistreated another girl named Rosa Menendez, who had “a thin, little mustache.”⁶⁸ Daniela also interprets Cristela’s behavior as interference that is likely to make the situation worse. Daniela’s remark makes direct reference to a physical characteristic that many people would identify as male rather than female,

58. *Jauquet*, 996 F.3d at 809 (second and third alterations in original) (quoting *Johnson v. Ne. Sch. Corp.*, 972 F.3d 905, 912 (7th Cir. 2020)).

59. *Cristela: Dead Arm*, *supra* note 49.

60. *Id.*

61. *Id.*

62. Note that the principal does seem to like Cristela very much but seems to dislike Isabella’s mother. *See id.*

63. *See id.*

64. *Id.*

65. *Id.*

66. *See id.*

67. *Id.*

68. *Id.*

even though many women have facial hair, specifically because she uses the word “mustache”⁶⁹ and mispronounces Rosa’s last name.

DANIELA: I don’t understand how anyone can bully Izzy.

CRISTELA: I don’t know. I mean, why did you bully the kids you bullied in school?

DANIELA: What are you talking about?

CRISTELA: Felix, tell her.

FELIX: It was so long ago. I mean, who can remember?

CRISTELA: I bet Rosa Menendez remembers.

DANIELA: Oh, Rosa man-endez.

FELIX: Oh, yeah.

DANIELA: (Thoughtfully) Mm, mm. She had a thin, little mustache.

CRISTELA: You and your friends would not stop!

DANIELA: Oh, please. I was giving constructive criticism and beauty tips to the less-popular girls. I was being helpful.

CRISTELA: You were being mean.⁷⁰

Cristela insists on accompanying Daniela to meet the principal at Izzy’s school to discuss Izzy’s behavior.⁷¹ The principal makes clear that

69. Facial hair, including beards, is more common for women than many think. One cause is Polycystic Ovary Syndrome (PCOS), which affects as many as one in ten women of childbearing age. See Violanda Grigorescu et al., *Polycystic ovary syndrome*, OFF. ON WOMEN’S HEALTH (Feb. 22, 2021), <https://www.womenshealth.gov/a-z-topics/polycystic-ovary-syndrome> [<https://perma.cc/2Q87-JMQ3>]. One well-known woman who has PCOS is Harnaam Kaur. See *Official Website // Harnaam Kaur*, HARNAAM KAUR, <http://harnaamkaur.com/> [<https://perma.cc/HEV2-CSS9>] (last visited Aug. 26, 2022).

70. *Cristela: Dead Arm*, *supra* note 49.

71. *See id.*

he and the administration view Izzy as the instigator.⁷² Cristela and Daniela blame their mother and the game “Dead Arm.”⁷³

DANIELA: There’s been some poor behavior-modeling in our home. It’s our mother. She’s clearly not the best influence.

PRINCIPAL: Really? Is your mom a big fan of the game “Dead Arm”?

CRISTELA: “Dead Arm”?

PRINCIPAL: I saw Izzy punching Britney. She said they were playing “Dead Arm.”

CRISTELA AND DANIELA (together): Felix! Alberto!⁷⁴

While Daniela was herself a bully in school and Cristela spoke out against bullying,⁷⁵ Cristela also displays bullying behavior at her workplace. Her coworkers finally tell her so, although politely, when she discusses Izzy’s problems with them.⁷⁶ The other interns assure Cristela that they did not encounter bullying at their private schools.⁷⁷ Maddie, the daughter of the law firm founder, notes that she attended an exclusive private school and asserts, “You know, I think rich kids are generally pretty nice.”⁷⁸ The other explains that he attended a “Suzuki method

72. *Id.*

73. *Id.*

74. *Id.*

75. According to the principal, she composed an anti-bullying song for a show. *See id.*

76. *See id.*

77. *Id.*

78. *Id.* Her comment seems laughable because viewers might conclude that wealthy people are more likely to be insensitive and, thus, perhaps more likely to bully. However, popular culture seems to present examples of bullying in all situations and among all class and ethnic situations, supporting the notion that bullying is a universal human issue, not particularly a class or ethnic one. Consider the *Roseanne* episode “Dan’s Birthday Bash,” first broadcast January 3, 1989, in which a drunken patron at Dan’s favorite bar, the Lobo, makes fun of Dan’s new “drinking hat” as well as Dan and Roseanne’s weights. *Roseanne: Dan’s Birthday Bash* (ABC television broadcast Jan. 3, 1989). Roseanne stops Dan from attacking the man, but when they see him again a few nights later, she gives him permission to punch the man in the face. *Id.* Similarly, the series *Arrested Development* features a mother, Lucille Bluth, who is extremely critical and demanding of her children. *See generally Arrested Development* (Fox television broadcast).

school. It's a, uh, hyper-intellectual learning environment that combines music and science."⁷⁹ Both of these environments are completely foreign to Cristela's experience. When she further asks them whether they perceive her frequent sarcasm as offensive, they acknowledge that sometimes it is a problem.⁸⁰ Cristela translates this revelation into her discussion on bullying with Izzy.⁸¹

CRISTELA: I guess it's because I've always had to be tough, you know . . . To learn how to stick up for myself. 'Cause every place I go to, I'm always the underdog.

IZZY: Why?

CRISTELA: I'm the first one in the family to go to college, and in that world, we have to work twice as hard and be twice as good to get as far as everyone else. Do you understand?

IZZY: I think so. Be why is it wrong when *I* just did what *you* would do to Britney?

CRISTELA: There's a fine line between sticking up for yourself and bullying. And, apparently, I need to learn from it, too.

IZZY: Sounds hard.

CRISTELA: It is. But . . . I'm willing to work at it.

IZZY: Twice as hard?

CRISTELA: Yes.

IZZY: So, I can be twice as good. Or else somebody else gets it.

CRISTELA: We'll work on that.⁸²

Finally, returning to the series *Two and a Half Men*, Jake and Charlie explain in vivid detail how middle school could affect Jake because of the bullies who await him there and the likelihood that he might be on his own

79. *Cristela: Dead Arm*, *supra* note 49.

80. *Id.*

81. *Id.*

82. *Id.*

in defending himself.⁸³ In each of these episodes, at least one adult takes the position that bullying is a normal childhood rite of passage, something that most, if not all, children suffer through.⁸⁴ Even the adults like Alan Harper in *Two and a Half Men*, who are otherwise sympathetic to children who suffer through bullying, understand that what adults can do for children being bullied is limited. At some point, children must stand up for themselves. In the *Roseanne*⁸⁵ episode “Home-Ec,” the father, Dan Conner, discovers that his son D.J. has been facing a bully.⁸⁶ Instead of fighting the other boy—a solution Dan would prefer—D.J. crafts his own remedy.⁸⁷ He hires a “bodyguard”—another student who is likely to do to the bully what the bully is threatening to do to D.J.⁸⁸ What dismays the bully’s father and heartens Dan is that the bodyguard turns out to be a female student.⁸⁹

These portrayals prompt us to ask why. Why, fifty years after the passage of Title IX, fifty years after the writers of these episodes would have gone to school under Title IX, and fifty years after many of the characters in these shows would also have attended schools subject to Title IX, why do we still see adults counseling children to handle such issues themselves? Is it that some adults today still see these issues as “schoolyard” problems? Is it that they believe school officials do not or will not take protection of vulnerable children seriously? Part of the answer is certainly that Title IX requires the plaintiff demonstrate that certain factors enter into the bullying—that the actions are not “mere bullying.”⁹⁰

83. *Two and a Half Men: Large Birds, Spiders, and Mom*, *supra* note 39.

84. Eileen Kennedy-Moore, *Is It Bullying... Or Ordinary Meanness?*, PSYCH. TODAY (Oct. 1, 2014), <https://www.psychologytoday.com/us/blog/growing-friendships/201410/is-it-bullying-or-ordinary-meanness> [<https://perma.cc/SM7K-22XE>] (discussing the difference between unkindness and deliberate targeting).

85. Like many other situation comedies (sitcoms), *Roseanne* has enjoyed a resurgence of popularity during the pandemic. While audiences watched it during its initial run (1988–2007), in 2019 they watched 11,810,943,194 minutes of *Roseanne* episodes and 20,137,102,531 minutes in 2020, an increase of 70%. See *LOL: Amid Uncertain Times, Consumers Take Comfort in Nostalgic Comedy Shows*, NIELSEN (Mar. 2021), <https://www.nielsen.com/us/en/insights/article/2021/lo-l-amid-uncertain-times-consumers-take-comfort-in-nostalgic-comedy-show/> [<https://perma.cc/4EKR-584S>].

86. *Roseanne: Home-Ec* (ABC television broadcast Feb. 5, 1991).

87. *Id.*

88. *Id.*

89. *Id.*

90. Plaintiffs must allege that “the sexual harassment, as opposed to mere bullying, [is] sufficiently severe, pervasive, and objectively offensive to give rise

However, some of the answer is a narrative that writers also often develop, which is that the victims eventually turn on their harassers, track them down, and exact revenge. The extrajudicial revenge taking seems sweet to viewers who themselves might have been victims of schoolyard and classroom bullying. Consider the *Two and a Half Men* episode “A Lungful of Alan.”⁹¹ Viewers see the bully’s fear develop when the victim re-appears. Particularly in “A Lungful of Alan,” Jamie Eckelberry, the young woman whom Charlie and Alan had bullied and humiliated in school, returns to make them both feel small.⁹²

CHARLIE: What’s that?

ALAN: My high school yearbook. Hey, do you remember a girl named Jamie Eckelberry?

CHARLIE: No.

ALAN: Yeah, sure you do. She used to hang out at the house all the time. Oh, yeah. Eckelberry Hound. Not a name she was fond of.

CHARLIE: Hey, I didn’t make it up. I just spread it around. What about her?

ALAN: Oh, she called the alumni association and tracked me down.

CHARLIE: How does that work? They let her sniff one of your sweaters?

ALAN: She emailed me. She’s in town on business, and I invited her over.

CHARLIE: Great. I’ll get out of your way. Just keep her off the good rug.⁹³

to a Title IX claim.” *Lansberry v. Altoona Area Sch. Dist.*, 318 F. Supp. 3d 739, 753 (W.D. Pa. 2018).

91. See *Two and a Half Men: A Lungful of Alan* (Warner Bros. television broadcast Jan. 3, 2005) (transcript on file with the *Louisiana Law Review*).

92. *Id.*

93. *Id.*

When Jamie arrives at Charlie's home, she is beautiful and elegant, and both Charlie and Alan immediately want to pursue a relationship with her.⁹⁴ She of course remembers Charlie's treatment of her.

JAMIE: Say it, Charlie

CHARLIE: Say what?

JAMIE: Say that slick, cool, Charlie Harper finally wants Eckelberry Hound.

CHARLIE: You knew about that name?

JAMIE: That name scarred me for life. It's the reason I haven't eaten a carbohydrate since college.

CHARLIE: Well, you do look good.

JAMIE: You're damn right I look good . . . you smug, shallow son of a bitch. I have spent years working and sweating and dreaming . . . about the day that I would be able to rub your smarmy nose in it.

CHARLIE: Okay, I'm getting mixed signals here.

JAMIE: This is the signal, Charlie: You can't have this. Not now, not ever. Never, never, never!⁹⁵

It is possible that many students knew about and repeated Charlie's offensive slur about Jamie, and if so, she might have been able to make out a Title IX claim by showing that his language and other students' responses prevented her from gaining equal access to an educational program or activity. Charlie even tells Alan that he "just spread it [the name he called Jamie] around."⁹⁶ But the episode provides no additional information or any indication that Jamie tried to file a Title IX claim. She

94. *Id.*

95. *Id.*

96. *Id.*

suffered instead and then plotted vengeance.⁹⁷ Charlie also admits to the name-calling.⁹⁸

The popular show *Will & Grace* also includes an example of a bullying victim who takes revenge years later on his bully, again because he apparently found no *support* from school officials.⁹⁹ *Will & Grace* is an ensemble comedy about four main characters, Will, an attorney, Grace, an interior designer, Karen, a socialite with a rather mysterious past, and Jack, an aspiring actor. The characters in the show are in their early 30s when the show begins in 1999.¹⁰⁰ Because Title IX took effect in 1972, they would have been young, perhaps just beginning school, when it came into effect. All of these characters have lingering insecurities from childhood. In the episode “Past and Presents,” Will confronts one of his when Kevin Wolchek, an elementary school classmate who bullied him years before, re-enters his life.¹⁰¹ In that episode, Will discovers that Kevin, now also an attorney, has joined the law firm where Will works and is still as unpleasant as Will remembers.¹⁰² Kevin’s comments suggest that his treatment of Will arises from his suspicion that Will is gay, even though Will did not come out until he was a student at Columbia University.¹⁰³

Kevin resumes his unpleasant behavior, taunting Will and pushing him to draft a contract for Kevin’s client, which Will does.¹⁰⁴ Of course Kevin scares him, and he complies.¹⁰⁵

KEVIN: (Entering) Hey, Will, I’m gonna need you to—

WILL: (Quickly throws something in his desk drawer and closes it) Hey!

KEVIN: Catch you at a bad time, or—

WILL: No, no! I was just, uh . . .

97. *See id.*

98. For a road map to analyzing a Title IX peer on peer sexual harassment case, see Susan P. Stuart, *Jack and Jill Go to Court: Litigating a Peer Sexual Harassment Case Under Title IX*, 29 AM. J. TRIAL ADVOC. 243 (2005).

99. *See Will & Grace* (NBC television broadcast).

100. *See id.*

101. *Will & Grace: Past and Presents* (NBC television broadcast Oct. 4, 2001) (transcript on file with the *Louisiana Law Review*).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

KEVIN: You were lotioning. Heh, heh. That's nice. You know, I'm sure a lot of guys do that.

WILL: For your information, I was not lotioning. (Then quickly) Yes, I was lotioning, but I happen to have a prescription from my doctor.

KEVIN: Well, which doctor would that be? Your gyno?

WILL: You here for a reason?

KEVIN: Yeah, actually, I need you to draft a contract for my meeting with D.T. Peterson.

WILL: Peterson the meat guy? He's not my client.

KEVIN: Yeah, I know, but I'm taking this chick out to dinner tonight, so . . .

Will: So?

KEVIN: So . . . make it about ten pages and use plenty of big words.

WILL: Wait. Wait a minute! Whoa. Are you kidding me with this? I'm not gonna do your homework for you!

KEVIN: I think you will.

WILL: No, I won't.

KEVIN: Yeah, you will.

WILL: But—

KEVIN: Just do it.

WILL: (Nervously) Or what? You're gonna—you're gonna beat me up at 3:15 at the flagpole? Come on. What—That might have worked on me when I was in fourth grade, but I'm an adult now. You know, I—I wear suits and stuff. I'm not scared of you.

KEVIN: Boo!

*Will shrieks and jumps away from his desk*¹⁰⁶

Will calls in sick to work the next day in an attempt to avoid interacting with Kevin.¹⁰⁷ Ultimately, of course, he does return to work, and Kevin continues to torment him.¹⁰⁸ Will agrees to produce the contract that Kevin needs for the client.¹⁰⁹ However, Will gets his revenge on Kevin.¹¹⁰

Wolchek enters with the contract that Will drafted. D.T. Petersen is seated, waiting for him.

KEVIN: Ok, Mr. Petersen, here's the final draft of the merger agreement. I think you'll find that everything's in order.

PETERSON: (He begins reading the contract aloud.) "Pursuant to standard legal codes, the party of the first part, D.T. Petersen, President and Chief Executive Officer of Petersen Meats, Incorporated, will hereafter be referred to as 'The Big Wiener.'"

KEVIN: Excuse me?

PETERSON: What the hell is this about?

KEVIN: Uh—

PETERSON: (Continues reading) "Upon completion of the merger, the base of operation for the new corporation will now be located one foot inside my big, pimply ass."

KEVIN: Uh—

We see Will dancing along the hall, outside the office.

PETERSON: (Continues to read the document out loud) "Kevin Wolchek has not done his own homework since he was eight years

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

old. One can only assume he received his law degree after consensual soft kissing with his torts professor.”

KEVIN: Uh, ok, uh, can you just pardon me for, uh, one moment?

*Kevin runs out of the office after Will, and Will runs down the hall.*¹¹¹

Note also that Will makes a reference to an impermissible relationship between Kevin and a law school professor, which if true would be a Title IX violation.¹¹²

Will’s response is also notable. Like many victims, he wants revenge on his childhood bully.¹¹³ He uses the word *homework*: “I’m not gonna do your homework for you.”¹¹⁴ The type of revenge he takes is specific to his area of knowledge. Should he have done what he did, given that he has a loyalty to his employer, his firm, which should override his desire to humiliate Kevin? What obligation did he really have to do Kevin’s work for him? The episode provides no indication that a supervising attorney at the firm told Will to assist Kevin in any way. So, Will’s workplace behavior seems tied to that desire for revenge over Kevin’s school bullying, which Will apparently did not report at the time.

In “Past and Presents,” the writers invite the viewers to think about the enduring harm that bullies cause and the limited effect that the law might have on these situations, even if school employees step in at the appropriate time to stop the behavior. Is Kevin the sort of child who would have stopped the bullying behavior? He is still a bully two decades later.¹¹⁵ He has apparently learned nothing in college, law school, or in practice except to continue to exploit those around him. It is also possible that part of the message here is that lawyer Will is using the skills he has—the writing of the contract—to send the message in a way that he cannot otherwise and could not when he was a child. Perhaps the writers are sending a message—that Title IX has somewhat limited remedies—that they cannot send without writing a two-hour movie.¹¹⁶ Of course, *Will & Grace* is a comedy, and the remedy the writers offer is not a serious one. But it *is* one that victims might savor as they watch Will fashion it.

111. *Id.*

112. *See id.*

113. *See id.*

114. *Id.*

115. *See id.*

116. *See id.*

Would Kevin's elementary school behavior support a claim of a Title IX violation? The writers give no indication that other students joined in the bullying, but it seems as though Kevin's behavior was persistent, and it might have been severe.¹¹⁷ The behavior seems to be based on name-calling and suggestions about Will's sexual identity. Will would have had to demonstrate that Kevin's name-calling was related to his perception that Will's behavior did not conform to a traditional, masculine, gender role. Will would also have had to show that others also perceived him in this way and joined in the name-calling and/or harassment.¹¹⁸ He would have to demonstrate that the behavior was pervasive.¹¹⁹ One incident of name-calling would not suffice. Further, Will would have to show that he, or his parent or guardian, reported the behavior to the responsible school employee in a timely fashion.¹²⁰

Will remembers the bullying vividly for decades.¹²¹ Did he tell his parents about Kevin's bullying? If so, did they notify the school? If the school knew, did the school take steps to respond to the situation? The writers provide no answers for these questions. What they do offer is a popular culture example of what school bullying looks like to children who do not fit in and who are either afraid to speak up or do not know how to appeal to responsible adults or other children for assistance.¹²²

Similarly, *My Bodyguard* is a film that features a teenager who "hires" an older student to be his "bodyguard" to protect him from school bullies.¹²³ The film emphasizes several tropes, including that of the misunderstood bully (the bodyguard who has a secret), the bully who lacks courage and when confronted, backs down. It is essentially a coming of age and a buddy film.¹²⁴

117. *See id.*

118. *See, e.g.,* S.E.S., as Next Friend of J.M.S. v. Galena Unified Sch. Dist. No. 499, 446 F. Supp. 3d 743, 787–89 (D. Kan. 2020) (citing *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 377 F. Supp. 2d 952, 963 (D. Kan. 2005)). *See also* *McCann on Behalf of J.M. v. York Sch. Dept.*, 365 F. Supp. 3d 132, 132–33 (D. Me. 2019) (student stated plausible claim under Title IX by showing that bullying by other students was on the basis of sex and deliberate indifference to that harassment by school authorities, based on students' demeaning gendered activities and gendered language).

119. *McCann*, 365 F. Supp. 3d at 139.

120. *Id.* at 147.

121. *Will & Grace: Past and Presents*, *supra* note 101.

122. *See id.*

123. *MY BODYGUARD* (Twentieth Century Fox 1980).

124. *Id.* The coming-of-age film centers on the self-discovery and growth of the central character but usually features a young person as the protagonist.

Other pop culture bullying victims carry out revenge, and their revenge is more violent, particularly if their schools fail to act in the face of repeated warnings that the victims' bullies are persisting the behavior, or because the victims believe that the schools are not responding appropriately, even if they are. Consider movies such as *Carrie*,¹²⁵ in which the protagonist, Carrie, is a shy teenager with no friends and a highly religious mother.¹²⁶ When other students repeatedly bully and humiliate her, she eventually acts.¹²⁷ The body count is horrendous when Carrie takes vengeance, and her victims include several of her teachers, the principal of her school, all the students who attend her school prom except one, Carrie's mother, and eventually Carrie herself.¹²⁸ *Carrie* includes a number of tropes that define both victim and bully, including the idea that victims have no friends.¹²⁹

As Carrie does, and as Cristela does in her eponymous show *Cristela*, victims of bullying may take control of the narrative and define their actions as assertiveness.¹³⁰ By reframing the discourse, they are also demanding that the law take account of their vulnerability and need for protection at a much earlier stage in their education. While a school district might not face liability for failing to address bullying under Title IX, it could face liability under other statutes. For example, in cases in which a

The defining attributes of the coming-of-age film have been well described by the screenwriter Julie Selbo. Films in this genre revolve around a character who is on a journey of self-discovery: "Through one or more moments of revelation in the film story, the main character is able to move forward in his or her life and mature into a 'new age' – a more developed sense of self."

ALASTAIR FOX, COMING-OF-AGE CINEMA IN NEW ZEALAND: GENRE, GENDER, AND ADAPTATION 5 (2017) (footnotes omitted). In *A Dictionary of Film Studies*, Annette Kuhn and Guy Westwell define the buddy film as "[a] film that tells the story of a close relationship between two men, often with a light-hearted tone." ANNETTE KUHN & GUY WESTWELL, A DICTIONARY OF FILM STUDIES (2012), <https://www.oxfordreference.com/view/10.1093/acref/9780199587261.001.0001/acref-9780199587261-e-0080> [<https://perma.cc/RA4G-CPUF>].

125. *CARRIE* (Brian de Palma 1976). Director Brian De Palma based the film on Stephen King's novel of the same name, published in 1974.

126. *See id.*

127. *See id.*

128. *See id.*

129. *See, e.g.,* Marisa Lynn Whitley, Effects of Bullying and Victimization on Friendship Selection, Reciprocation, and Maintenance in Elementary School Children (May 2016) (M.A. thesis, University of Tennessee – Knoxville) (on file with author).

130. *See Cristela: Dead Arm, supra* note 49.

school district might have a statutory duty to protect children against bullying,¹³¹ the Americans with Disabilities Act (ADA) might provide a remedy.¹³²

A 2010 “Dear Colleague” letter from the U.S. Office of Civil Rights warns obliquely against both the liability of not addressing bullying in the school setting and the subsequent danger if school officials and employees do not do so.¹³³ This letter suggests that more recognition of school bullying is necessary.¹³⁴ Bullying is not just part of school life that both bullies and victims “grow out of” and get past. It is a behavior that may continue affecting both groups for life.

III. TITLE IX IMAGERY IN POPULAR CULTURE: SUPERVISOR SEXUAL HARASSMENT AND PEER SEXUAL HARASSMENT: TITLE IX IN THE WORKPLACE

The popular series *The Big Bang Theory* (TBBT),¹³⁵ set at (a decidedly fictionalized) California Institute of Technology (Cal Tech), features several episodes that focus on supervisor sexual harassment.¹³⁶ The series centers around three physicists and an engineer, all employed at Cal Tech, who work with faculty, staff, and students at the institution.¹³⁷ The physicists and engineer often behave improperly toward women and sometimes do so in their workplace.¹³⁸ Mrs. Davis, the head of the Human Resources Department, often calls one or more of them in to speak with them because another employee or a student has filed complaints against them under Title IX.¹³⁹

One offender is physicist Sheldon Cooper, who runs afoul of Title IX when he tells his newly hired research assistant Alex that she is like “an

131. See, e.g., CAL. EDUC. CODE § 234 (West 2012).

132. See Americans with Disabilities Act of 1990 § 202, 42 U.S.C. § 12132.

133. U.S. DEP’T OF EDU. OFF. OF CIV. RTS., DEAR COLLEAGUE LETTER: HARASSMENT AND BULLYING (2010). Note that while the DOE has issued subsequent regulatory changes that invalidate some of the 2010 Dear Colleague letter, the section on bullying in the 2010 letter seems still to be in place. See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. § 106 (2020).

134. *Id.*

135. *The Big Bang Theory* (CBS television broadcast).

136. See *id.*

137. See *id.*

138. See *id.*

139. See *id.*

egg salad sandwich” because she is “a slave to her biological urges.”¹⁴⁰ The offended Alex promptly files a complaint.¹⁴¹ Again, Mrs. Davis calls Sheldon into her office.¹⁴² Without mentioning Title IX, she refers to his statement that Alex is “like an egg salad sandwich” and tells Sheldon, “I don’t even know what that means, but I’m gonna go ahead and tell you; you can’t say it.”¹⁴³ Here Mrs. Davis, who is supposed to know what you can and cannot say and do under Title IX, cannot interpret his language and, thus, explain to him why what he said to Alex is impermissible under the law.¹⁴⁴ However, she calls out what he says. Sheldon does not understand how his statement, “You’re an egg salad sandwich,” could possibly have offended Alex. To him, it’s a simple analogy.¹⁴⁵ Throughout the run of the series, viewers watch Sheldon struggling to understand why what he does and says offends people and struggling to understand what other people do and say.

Sheldon never explains to Mrs. Davis exactly why he says what he does to Alex.¹⁴⁶ In fact, he is concerned because Alex has indirectly asked another physicist, Leonard Hofstadter, to have dinner with her.¹⁴⁷ To Sheldon, this invitation interferes with what he believes is her required allegiance to him as her supervisor.¹⁴⁸ In order to understand her action in approaching Leonard, he reverts to an explanation his father offered him years ago, which is that women suffer from hormonal imbalance.¹⁴⁹

ALEX: What did I do?

SHELDON: You don’t know? Oh, you poor dear. Your ovaries are squirting so much goofy juice into your brains you don’t even know which way is up. You made an inappropriate sexual advance towards Dr. Hofstadter.

ALEX: What? I didn’t make a sexual advance toward ANYBODY.

140. *Big Bang Theory: The Egg Salad Equivalency* (CBS television broadcast Jan. 3, 2013) (transcript on file with the *Louisiana Law Review*).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

SHELDON: Now, there's no need to get defensive. I'm not unsympathetic to your plight. My father used to say that a woman is like an egg salad sandwich on a warm Texas day.

ALEX: What?

SHELDON: Full of eggs and only appealing for a short time.

ALEX: This conversation is making me uncomfortable.¹⁵⁰

However, how could Sheldon justify his comments? They are not necessary for him to convey any instructions or information with regard to her work. In a prior scene in the episode, Leonard, the person with whom she had the conversation, did not object to it.¹⁵¹ Sheldon should not make the remarks he does to Alex because he is her supervisor. They are inappropriate, and Alex properly objects by telling Sheldon that she is uncomfortable.¹⁵² She also files a Title IX complaint, although Mrs. Davis does not use the name of the statute when she discusses the issue with Sheldon.

Sheldon is not the only character who does not understand Title IX. When he discusses the comments Alex made to Leonard with three other characters, Penny, Bernadette, and Amy, they give him some advice that is not helpful.¹⁵³ Penny is Leonard's girlfriend, Bernadette is another scientist, married to a friend of Leonard and Sheldon's, and Amy is Sheldon's girlfriend.¹⁵⁴

SHELDON: Well, a short, bespectacled colleague of mine who lives in the shadow of his brilliant roommate . . . Let's call this colleague Ricardo Shilly-Shally.

PENNY: You're talking about Leonard.

SHELDON: No, no . . . Shilly-Shally has red hair and, uh, he briefly served in the Mexican Navy. Anyway, despite the fact that he has a girlfriend, Shilly-Shally has been the recipient of inappropriate workplace flirtations from a young lady.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

AMY: It's your assistant Alex, isn't it?

SHELDON: No, no, no. This is Tondelaya della Ventimiglia.

PENNY: (Interrupts) Wait, what the hell's going on with Leonard and Alex?

SHELDON: No, uh, no, I'm sorry. Who's talking about Leonard and Alex?

PENNY: Fine. So, Ricardo and Tondelaya.

SHELDON: Okay, look. It's not really about Ricardo and Tondelaya. It's really about her boss, who doesn't quite know how to handle this situation and could use your advice, which is surprising because Dr. Einstein Von Brainstorm—he's usually pretty smart about these things.

PENNY: I'm gonna kill her.

BERNADETTE: I'm sure you've got nothing to worry about. Leonard would never cheat on you.

AMY: She's right. But say the word. I've got a lab full of cocaine-addicted monkeys with nothing to lose. One of them could end up in the back seat of her car. Or her shower.

SHELDON: Ladies, ladies, please. We're not here to talk about Penny, okay? We're here to talk about me. I mean, Einstein Von Brainstorm. Oh, darn it! All right, I guess the cat's out of the bag. Let me explain what's going on. Ricardo is really

PENNY: (Visibly annoyed and shouting) We know what's going on, Sheldon!

SHELDON: Well, what should I do?

BERNADETTE: Well, Alex is your employee. If she's doing something that's making Leonard uncomfortable, you should talk to her.

SHELDON: Oh, no, he's not uncomfortable at all. No, he's loving

it. Yeah, he's strutting around like he's five-foot-six.

PENNY: WHAT? He's loving it?

BERNADETTE: Sheldon, you need to talk to Alex right away.¹⁵⁵

Bernadette seems to assume that Alex has violated some Cal Tech policy or regulation, probably having to do with Title IX. Note her use of the “making [him] uncomfortable” language.¹⁵⁶ She also uses the word *employee*, which suggests she might also be thinking about Title VII.¹⁵⁷ But the “workplace” here is a university.¹⁵⁸ Sheldon responds by saying that Leonard is not, in fact, uncomfortable, and viewers know Leonard is not from an earlier scene.¹⁵⁹ Alex’s attention flatters him, even though he has no intention of dating her.¹⁶⁰ He does not respond to Alex’s suggestion of dinner, and Alex later denies that she meant to ask him out.¹⁶¹ Alex could be making a true statement, although it is unlikely that she did not know Leonard has a girlfriend. In fact, Alex has met Penny.¹⁶² But Alex does not insist, and it is the first time she has made such a comment to Leonard.¹⁶³ Bernadette seems to think that any overture from Alex is impermissible.¹⁶⁴ However, Leonard has not objected to Alex’s comment, and Sheldon says so.¹⁶⁵ Amy’s comment that she is willing to exact revenge on Alex for Alex’s overture to Leonard is also somewhat disturbing.

155. *Id.*

156. *Id.*

157. *See id.*

158. *See id.*

159. *Id.*

160. *See id.*

161. *Id.*

162. *Id.*

163. *See id.*

164. *See id.*

165. “In general, teasing, casual comments, or single instances of inappropriate conduct are not illegal. For inappropriate behavior to rise to the level of illegal harassment, it must be unwelcome or unwanted. It must also be severe (meaning very serious) or pervasive (meaning that it happened frequently). Inappropriate behavior is also illegal if it results in your employer making an employment decision about you, such as refusing to promote you or demoting you.” *See Harassment*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/youth/harassment> [<https://perma.cc/J6F5-Y456>] (last visited Aug. 28, 2022).

TBBT also gives an example of peer-to-peer sexual harassment in the episode “The Pirate Solution.”¹⁶⁶ Astrophysicist Raj Koothrapali applies for a position in a lab working with another distinguished scientist and his team.¹⁶⁷ Raj has great difficulty talking to women unless he has had at least one alcoholic drink.¹⁶⁸ When a female scientist comes into the interview, Raj quickly has some alcohol and then makes an inappropriate suggestion to the scientist.¹⁶⁹ When Howard and Leonard ask Raj whether he got the job because he is clearly the most qualified applicant, Raj deflects by saying that the interviewer is British and that the British and Indians have a bad history.¹⁷⁰ Leonard responds by saying that if the interviewer discriminated against him because of national origin, that is illegal, and he should file a complaint.¹⁷¹ “That’s okay,” Raj responds, “[a] complaint has been filed.”¹⁷²

Finally, while Leonard himself engages in some questionable behavior under Title IX on the show, he is also the target of what might be some sexual harassment from Mrs. Latham, a Cal Tech donor on one particular episode.¹⁷³ In “The Benefactor Factor,”¹⁷⁴ Mrs. Latham makes a pass at Leonard; he mistakenly assumes that she wants him to sleep with her in exchange for a substantial donation to the physics department.¹⁷⁵ If she were his supervisor or someone with authority over him, the situation could present *quid pro quo* sexual harassment under Title IX.¹⁷⁶ As an

166. *The Big Bang Theory: The Pirate Solution* (CBS television broadcast Oct. 12, 2009) (transcript on file with the *Louisiana Law Review*).

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *The Big Bang Theory: The Benefactor Factor* (CBS television broadcast Feb. 10, 2011) (transcript on file with the *Louisiana Law Review*).

175. *See id.*

176. For Title IX purposes, a plaintiff can state a cause of action for *quid pro quo* sexual harassment if she suffers a tangible adverse action by refusing to agree to a supervisor’s request for sexual favors. *See* 42 U.S.C. § 2000e-2. Leonard is an employee of the fictional Cal Tech portrayed in the show. California’s Fair Employment and Housing Code, Government Code 12940, also might cover the situation. However, what is not clear is what authority, if any, Mrs. Latham might have. Leonard would also have to show that the harassment is linked to sex (that is, that it is on the basis on sex). In addition, if Mrs. Latham is not acting for the institution, then Leonard would have no claim against her.

employee of Cal Tech, Leonard enjoys the protections of Title IX.¹⁷⁷ But Title VII might also protect him.¹⁷⁸

When Leonard communicates his impressions to Howard, Sheldon, and Raj, they are all in favor of this *quid pro quo*.¹⁷⁹ They encourage him to accept what seems to be Mrs. Latham's offer—sex for a significant donation to the physics department.¹⁸⁰ This gender role reversal, presenting Mrs. Latham as the older and more powerful person in the potential relationship, appeals greatly to them and eventually to Leonard.¹⁸¹ Films, television, and novels have presented this type of gender role reversal before and usually as one with comedic overtones.¹⁸²

Sheldon offers to obtain some experimental sexual enhancement drugs for Leonard.¹⁸³ No one seems to think this proposed behavior would be improper, except Leonard.¹⁸⁴ As it turns out, the donor tells him she intends to make the donation in any case.¹⁸⁵ She does understand the impropriety, although that did not stop her from approaching Leonard, and she must have known he might misunderstand.

LEONARD: That was a great meal.

MRS. LATHAM: I'm glad you enjoyed it.

LEONARD: The only time I eat this well is when my mom's in town and she takes me out to dinner.

177. See U.S. Dep't of Just. Title IX Legal Manual § IV(B)(2) (U.S. Dep't Just. 2021), <https://www.justice.gov/crt/title-ix#2.%C2%A0%C2%A0%20Relationship%20to%20Title%20VII> [<https://perma.cc/P8G4-JU28>].

178. Federal courts do not agree on the extent to which non-student plaintiffs could or should bring various claims under Title VII instead of Title IX. See e.g., *Harrington v. Lesley Univ.*, 554 F. Supp. 3d 211 (D. Mass. 2021); Lynn Ridgeway Zehrt, *Title IX and Title VII: Parallel Remedies in Combatting Sex Discrimination in Educational Employment*, 102 MARQ. L. REV. 701 (2019).

179. *The Big Bang Theory: The Benefactor Factor*, *supra* note 174.

180. *Id.*

181. *Id.*

182. One obvious example is the 1967 film *The Graduate* in which newly graduated Benjamin Braddock has an affair with the older, more experienced Mrs. Robinson. See generally *THE GRADUATE* (Embassy Pictures 1967). The film is based on Charles Webb's 1963 novella *The Graduate*. See generally CHARLES WEBB, *THE GRADUATE* (1963).

183. *The Big Bang Theory: The Benefactor Factor*, *supra* note 174.

184. *Id.*

185. *Id.*

MRS. LATHAM: Is that so?

LEONARD: You kind of remind me of her. She enjoys making people uncomfortable, too.

MRS. LATHAM: Well, you remind me of a boy I dated in college.

LEONARD: No kidding.

MRS. LATHAM: Sweet boy. Very smart. If only he'd had money.

LEONARD: Yeah, um, so, hey, speaking of money, how are you feeling about helping the Physics Department get a cryogenic centrifugal pump and a molecular sieve?

MRS. LATHAM: Well, I must say, you make a very persuasive case for it.

LEONARD: Oh, good, good.

MRS. LATHAM: And I'm seriously considering taking it to the next level.

LEONARD: Terrific. Great (pauses). What level is that? (Mrs. Latham kisses him.) Okay, now you don't remind me of my mom.¹⁸⁶

The next morning, the news of Leonard's tryst with Mrs. Latham has spread, if not through campus, at least through the department and to Dr. Seibert, who greets Leonard with satisfaction:¹⁸⁷

DR. SEIBERT: Ah, there he is! The man of the hour! He took one for the team!

LEONARD HOFSTADTER: (Protesting) I didn't do it for the money!

DR. SEIBERT: Keep telling yourself that, it makes it easier. Trust me, I know.¹⁸⁸

186. *Id.*

187. *See id.*

188. *Id.*

What is interesting and disturbing about Dr. Seibert's reaction is that he seems to take the position that keeping donors happy is the cost of doing business for the fictional version of this university. Would he have reacted in the same way had Mrs. Latham actually requested a *quid pro quo*? If she had communicated her request to Dr. Seibert before her dinner with Leonard, suppose Dr. Seibert urged Leonard to comply or threatened Leonard with retaliation if Leonard did not comply with Mrs. Latham's request. Would such actions on Dr. Seibert's part be directed at Leonard "on the basis of sex," as the statute requires?

Suppose Mrs. Latham had a somewhat more formal or institutionally acknowledged relationship with the institution. Could the institution have faced some liability for her harassment? The Ninth Circuit Court of Appeals does not seem to have considered the question. However, the Third Circuit Court of Appeals has recently decided a case that addresses some of these issues. Liability might depend on exactly what kind of relationship the institution has with the third party (the donor), the extent to which it invites the third party onto the premises, any objection that an individual that the institution is supposed to protect objects to the behavior, and the knowledge that the institution has concerning that objection. In *Hall v. Millersville University*,¹⁸⁹ the Third Circuit found that an educational institution could be liable "under Title IX for its deliberate indifference to known sexual harassment perpetrated by a non-student guest."¹⁹⁰ *Hall* concerned a non-student boyfriend's murder of his student girlfriend on the premises of the university. The girlfriend had previously reported the boyfriend's assaults and asked security to remove him.¹⁹¹ The university had policies in place to limit non-student access to the buildings and campus.¹⁹² It also instituted policies to maintain contact with students who reported dating violence, which the court noted that the university failed to follow.¹⁹³ The *Hall* court considered all of these factors in finding that the university had both notice of and deliberate indifference to the harassment. Both are necessary to find a funding recipient liable under Title IX for student-on-student harassment.¹⁹⁴

Citing the United States Supreme Court's holding in *Davis v. Monroe County Board of Education*,¹⁹⁵ the *Hall* court said,

189. *Hall v. Millersville Univ.*, 22 F.4th 397 (3d Cir. 2022).

190. *Id.* at 399.

191. *Id.* at 400–02.

192. *Id.* at 402.

193. *Id.*

194. *Id.* at 404–05.

195. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

Title IX's plain terms notify federal funding recipients that they may face monetary liability for intentional violations of the statute. Moreover, it is an intentional violation of Title IX's terms for a funding recipient to act with deliberate indifference to known sexual harassment where the recipient exercises substantial control over the context in which the harassment occurs and the harasser, even if they are a third party. Given this framework, we conclude the text of Title IX provides Millersville and other federal funding recipients with adequate notice.¹⁹⁶

Further, the *Hall* court noted that in *Davis*, the Supreme Court emphasized the institution's control over the harasser, and not whether the harasser was a student, employee, or non-student.¹⁹⁷

Returning to the case of Mrs. Latham and her advances toward Leonard, it appears that Leonard does not object to her attentions. His supervisor does not object, either. In order for Leonard to make out a claim, he would first have to establish that Mrs. Latham has some association with the institution that gives her some authority over him, that her approach to him could fit the definition of *quid pro quo* harassment, and that he considers her request unwelcome. These factors are absent but interesting to contemplate.

Are the writers suggesting that even in jest that many, or even some, university officials would condone such a practice? The episode does leave viewers envisioning a satisfactory outcome: the physics department receives a large donation, and Mrs. Latham seems generous, if not completely pure of heart. However, it also suggests that at least some academic disciplines are tainted.¹⁹⁸ Their search for knowledge might sometimes take some distasteful detours.¹⁹⁹

196. *Hall*, 22 F.4th at 399.

197. *Id.* at 405.

198. Sheldon's girlfriend Amy, a neuroscientist, mentions in this episode that she is engaged to a Saudi Arabian prince who funds her research. *The Big Bang Theory: The Benefactor Factor*, *supra* note 174.

All scientists have to fund-raise, Sheldon. How do you think I paid for my lab? I went to Saudi Arabia and met with a prince who had an interest in neurobiology Technically, Faisal is my fiancé. But I do have a state-of-the-art two-photon microscope and a place to stay in Riyadh for the winter.

Id.

199. Whether donors have an unacceptable influence on institutions because of their donations is a question that is back in focus after the death of Jeffrey Epstein and the news of his large gifts to Massachusetts Institute of Technology

IV. TITLE IX IMAGERY IN POPULAR CULTURE: INAPPROPRIATE SEXUAL RELATIONSHIPS AND TITLE IX

Inappropriate sexual relationships are as old as the educational system itself. The story of Abelard and Heloise is well known.²⁰⁰ Generally, popular culture depicts inappropriate sexual relationships as occurring between older male teachers and younger female students, although there is no reason that this should continue given that the media now routinely reports on cases of older female teachers in relationships with male students and relationships between same-sex professor/student couples.²⁰¹ Sometimes these relationships end with marriage or long-term affairs.²⁰² At other times, the student plays the role of the meddling “spoiler” in the professor’s marriage, if he or she is married, and tries to exact revenge if he or she attempts to end the relationship, particularly if the story is a drama.²⁰³ The more unusual cases, and the ones that really draw attention, are the ones that feature female teachers and male students, or same-sex

(MIT). See David Adam, *Universities Grapple with Donor Behavior*, THE SCIENTIST (Sept. 4, 2019), <https://www.the-scientist.com/news-opinion/universities-grapple-with-donor-behavior-66389> [<https://perma.cc/578U-28BE>].

200. Some fairly recent works suggest that traditional interpretations of the couple’s relationship might be myth, however. See Cristina Nehring, *Heloise & Abelard: Love Hurts*, N.Y. TIMES (Feb. 13, 2005), <https://www.nytimes.com/2005/02/13/books/review/heloise-abelard-love-hurts.html> [<https://perma.cc/43HW-FBXQ>].

201. See Karin Johnson, *No prison time for ex-teacher, coach convicted of sex crime*, WLWT5 (July 31, 2018, 5:59 PM EDT), <https://www.wlwt.com/article/no-prison-time-for-ex-teacher-coach-convicted-of-sex-crime/22607356> [<https://perma.cc/UD7J-ESC7>] (female former teacher and coach convicted of gross sexual imposition for relationship with 16-year-old female student).

202. See the case of Mary Kay Letourneau, *infra* note 212. See also the polyamorous relationship of Harvard professor William Moulton Marston, the creator of the superhero Wonder Woman, and his wife Elizabeth, and Marston’s student Olive Byrne, dramatized in the film *Professor Marston and the Wonder Women*. PROFESSOR MARSTON AND THE WONDER WOMEN (Boxspring Ent. 2017); JILL LEPORE, THE SECRET HISTORY OF WONDER WOMAN (2014).

203. The number of tales that depict student-teacher relationships is overwhelming, beginning with Abelard and Heloise. See generally, e.g., J. M. COETZEE, DISGRACE (1999); ROBERT STONE, DEATH OF THE BLACK-HAIRED GIRL (2013); LYNN COADY, MEAN BOY (2006); LAUREN GRODSTEIN, THE EXPLANATION FOR EVERYTHING (2013); CHAD HARBACH, THE ART OF FIELDING (2011); SYLVAIN REYNARD, GABRIEL’S INFERNO (2011). See also JO KEROES, TALES OUT OF SCHOOL: GENDER, LONGING, AND THE TEACHER IN FICTION AND FILM (1999); Alexander Fedorov et al., *Professional Risk: Sex, Lies, and Violence in the Films About Teachers*, 7 EUR. J. CONTEMP. EDUC. 291 (2018).

relationships, and the media and academia are covering more examples of those.²⁰⁴ In the early 1990s, high school teacher Pamela Smart had an affair with a student²⁰⁵ and convinced him and his friends to murder her husband.²⁰⁶ She was convicted of being an accomplice to first degree murder, conspiracy, and witness tampering in 1991.²⁰⁷ She currently serves a life sentence and has been denied parole.²⁰⁸ Several films and documentaries have explored those events, including *Murder in New Hampshire*, which starred Helen Hunt as Smart,²⁰⁹ and *Captivated: The Trials of Pamela Smart*, which starred Nicole Kidman in the Pamela Smart role.²¹⁰ There are also a couple of true crime books about the murder.²¹¹

Consider also the case of Mary Kay Letourneau, whose relationship with 12-year-old student Vili Fualaau led not just to the loss of her position as a teacher but also a conviction for rape, the birth of their child, the revocation of her plea agreement, and the reinstatement of the seven-and-a-half-year prison sentence.²¹² After her release in 2004, she and Fualaau married.²¹³ Although they eventually separated, they were still married at her death in 2020.²¹⁴ The film *All-American Girl: The Mary Kay*

204. See Heather Sykes, *The Angel's Playground: Same-Sex Desires of Physical Education Teachers*, 1 J. GAY & LESBIAN ISSUES IN EDUC. 3 (2003).

205. Kathy McCormack, *Pamela Smart denied chance at freedom decades after killing*, ABC News (March 22, 2022, 3:45 PM), <https://abcnews.go.com/Entertainment/wireStory/pamela-smart-denied-chance-freedom-decades-killing-83625234> [<https://perma.cc/G3TV-X98A>].

206. *Id.*

207. *Id.*

208. *Id.*

209. MURDER IN NEW HAMPSHIRE: THE PAMELA SMART STORY (Robert Greenwald Productions 1991).

210. CAPTIVATED: THE TRIALS OF PAMELA SMART (Hard Working Movies 2014).

211. See KEN ENGLADE, DEADLY LESSONS (2014); STEPHEN SAWICKI, TEACH ME TO KILL (2019). See also JOYCE MAYNARD, TO DIE FOR (2014) (the novel on which the film starring Nicole Kidman was based).

212. EJ Dickson, *How the Media Turned Child Rape Into a 'Tryst' for Mary Kay Letourneau*, ROLLINGSTONE (July 8, 2020), <https://www.rollingstone.com/culture/culture-features/mary-kay-letourneau-vili-fualaau-relationship-media-child-rape-tryst-1025466/> [<https://perma.cc/4YL7-3YN3>].

213. *Id.*

214. Rachel Chang, *Inside Mary Kay Letourneau's Final Days*, BIOGRAPHY (Oct. 15, 2020), <https://www.biography.com/news/mary-kay-letourneau-final-days> [<https://perma.cc/4SNR-FPBF>].

Letourneau Story features her story.²¹⁵ One commentator points out that at the time of her trial and incarceration, people were still rather reluctant to view her as the guilty party, although had the roles been reversed, they would have had no difficulty understanding her culpability:²¹⁶

Perhaps more than any other figure in recent history, the media coverage of Mary Kay Letourneau is responsible for perpetuating the gendered double standard associated with child rape, or the idea that, while a male teacher having sex with an underage female pupil is reprehensible, a female teacher sleeping with an underage male pupil is not only forgivable, but worthy of a high five.²¹⁷

By the time Letourneau died, public opinion had shifted somewhat:

Thanks in part to shifting cultural mores and the relatively even-handed, sober coverage of accused female sexual harassers like Asia Argento, there appears to be a growing understanding that sexual abuse is sexual abuse, regardless of the physical appearance of the accused or the gender of the victim. (An AP tweet after Letourneau's death referred to her being convicted of "child rape," rather than a "tryst," which underscores this cultural shift.)

Yet there is still an unspoken assumption that such assaults are somehow less severe or damaging to the victims than if the gender dynamic were reversed. Female sexual predators in teacher-student cases face far less punitive sentences than male sexual predators, according to a 2013 analysis, and judges continue to make elaborate justifications for such sentences, with one British judge telling a babysitter who sexually abused an 11-year-old: "It was quite clear he was a mature 11-year-old, and you were an immature 20-year-old, so that narrows the arithmetic age gap between you." While few publications would dare to put an idyllic photo of a convicted predator on the cover, we still have a long way to go in terms of our understanding of the complex dynamics of sexual abuse.²¹⁸

215. See *ALL-AMERICAN GIRL: THE MARY KAY LETOURNEAU STORY* (Grosso-Jacobson Productions 2000).

216. Dickson, *supra* note 212.

217. *Id.*

218. *Id.*

Generally in pop culture, however, relationships resemble the traditional older male professor, younger female student pattern, and end either with a breakup because a third party finds out about the relationship or because one of the parties becomes unhappy with the relationship or with the couple's marriage, almost always with the subordination of the woman's career to the man's. These issues—the questions of power—tend to be exactly what raises concerns about these relationships.

The recent film *The Wife*,²¹⁹ based on the Meg Wolitzer novel of the same name,²²⁰ retells these kinds of stories in its plot about Joan, a young student at Smith College in the late 1950s who falls for her charismatic professor.²²¹ He eventually loses his position, and his writing career falters.²²² Joan, now working in publishing, ghost writes his novel, and it becomes a success.²²³ Throughout their marriage, marked by his affairs and bad behavior, she remains faithful to him.²²⁴ He eventually wins the Nobel Prize in Literature, although his success is almost entirely based on Joan's writing.²²⁵ The novel and the film examine her decision to leave him.²²⁶ Then when he dies, she decides to say nothing about his success or her role in it.²²⁷

The inappropriate professor-student relationship is one that television also depicts, particularly in sitcoms.²²⁸ The trope has continued through the years, and while characters might say the law or policy prohibits or discourages such relationships, they do not mention Title IX explicitly, nor until relatively recently did they mention exactly *why* the law or an educational institution would do so. The writers do have the opportunity to explain the policy as well as show the bad outcome. Perhaps the writers think showing the bad outcome is really all the viewers need to see. Their own experiences can fill in the gaps.

However, in her essay *What's Wrong With Sex Between Professors and Students? It's Not What You Think*, Amia Srinivasan writes that faculty should be focusing at least as much on the faculty members'

219. *THE WIFE* (Silver Reel 2017).

220. MEG WOLITZER, *THE WIFE* (2003).

221. *THE WIFE*, *supra* note 219.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. See, e.g., *infra* Part II for a discussion of failed relationships in *Friends*, *Mom*, and *The Connors*.

responsibilities as teachers in the faculty-student relationship as they do on the power relationship:²²⁹

Teachers, as teachers, understand how to do certain things; students, as students, want to understand how to do those things. The tacit promise of the classroom is that the teacher will work to confer on the student some of his knowledge and understanding. In the best case, the teacher-student relationship arouses in the student a strong desire, a sense of thrilled if inchoate infatuation. That desire is the lifeblood of the classroom, and it is the teacher's duty to nurture and direct it toward its proper object: learning. The teacher who allows his student's desire to settle on him as an object, or the teacher who actively *makes* himself the object of her desire, has failed in his role as a teacher.²³⁰

Thus, Srinivasan points out that the intellectual relationship between the teacher and the student is at least as important as the power relationship. Many of the depictions of pop culture teacher-student relationships depict the eagerness and enthusiasm that the student brings to the relationship and the willingness the teacher shows to engage with the student. The power inequality emerges later.

For example, the popular show *Dear White People* depicts an inappropriate relationship between Neika Hobbs, a faculty member at Winchester University, and ambitious student Troy Fairbanks, son of one of the university's deans.²³¹ Additionally, the romance on *Pretty Little Liars* between Ezra Fitz and Aria Montgomery begins while he is a teacher at her high school and she is a student in his class.²³² Although the story ends with their marriage, they do engage in a prohibited relationship.²³³

229. See Amia Srinivasan, *What's Wrong With Sex Between Professors and Students? It's Not What You Think.*, N.Y. TIMES (Sept. 3, 2021), <https://www.nytimes.com/2021/09/03/opinion/metoo-teachers-students-consent.html> [https://perma.cc/RHU5-LEEF].

230. *Id.* (emphasis added).

231. *Dear White People: Chapter III* (Netflix first made available Apr. 28, 2017).

232. See *Pretty Little Liars* (Freeform). Based on the novels by Sara Shepard, the series began airing on the ABC-owned channel Freeform in 2010 and ended in 2017.

233. See Aya Tsintziras, *Pretty Little Liars: 10 Things That Went Wrong For Aria Since She Started Dating Ezra*, SCREEN RANT (Feb. 27, 2021), <https://screenrant.com/pretty-little-liars-aria-life-worse-began-relationship-ezra/> [https://perma.cc/6PRM-YDCS].

The season six *Friends* episode “The One Where Ross Dates a Student”²³⁴ also presents the central character, Ross Geller, who teaches paleontology at Columbia University, deliberately pursuing a relationship with attractive student Elizabeth Stevens.²³⁵ Ross understands, and even states, that colleagues know and have tried to dissuade him from this relationship.²³⁶ He knows that he could lose his position at Columbia.²³⁷ However, his friends make fun of the relationship, primarily because of the age difference between him and Elizabeth, and because of the professor-student trope.²³⁸ They do not focus primarily on the danger to Ross’s career or to any damage he could have on Elizabeth.²³⁹

What is particularly troublesome is, of course, that Ross has complete control over the situation from the beginning.²⁴⁰ He discovers through his anonymous evaluations that someone in his class is fond of him and sets out to find out who it is.²⁴¹ When he does, Ross and the student, Elizabeth, go on a date.²⁴²

ROSS: Hey! I just got uh, my teacher evaluations! Check out what this one student wrote, “I loved Dr. Geller’s class. Mind blowing lectures! Dr. Geller, you are definitely the hottie of the paleontology department!”

CHANDLER: Ahh. Hotties of the Paleontology Department. There’s a big selling calendar, eh?

RACHEL: Who wrote it?

ROSS: Oh, I wish I knew, but the evaluations are all anonymous.

JOEY: Oh, hey, do you still have their final exams?

ROSS: Yeah.

234. *Friends: The One Where Ross Dates a Student* (NBC television broadcast Mar. 9, 2000) (transcript on file with the *Louisiana Law Review*).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

JOEY: Oh, 'cause you can just match the evaluation to the exam with the same handwriting and boom! There's your admirer.

CHANDLER: A hot girl's at stake and all of a sudden he's Rain Man.

RACHEL: Okay, wait a minute, wait a minute, why are we so sure that this is a girl?

ROSS: (Annoyed) It's a girl! Anyway, it wou—it wouldn't matter. Okay? Because I'm a teacher and she's a student.

CHANDLER: Oh, is that against the rules?

ROSS: No, but it IS frowned upon.

CHANDLER: I see.

ROSS: Besides, there's a big age difference.²⁴³

Ross is posting grades up on the message board when Elizabeth enters.

ELIZABETH: Professor Geller?

ROSS: Yeah?

ELIZABETH: I wanted to say how much I enjoyed your class.

ROSS: Oh, thank you. Thanks very much. (Trying to be casual, and leans on the message board, accidentally impaling himself on a thumbtack.) Ow!

ELIZABETH: Uh . . . I'm a little embarrassed about calling you a hottie on my evaluation.

ROSS: That was you?

ELIZABETH: Yeah. I felt a little weird about it. You're a teacher. I'm a student. But would you maybe want to go out with me

243. *Id.*

sometime?

ROSS: Oh, I . . . I don't—I don't think that would be the best idea.

ELIZABETH: Oh, because I was thinking, the semester's over. You're not my teacher anymore.

ROSS: What time?

ELIZABETH (checking her grade): Oh, you know what? Forget it. You already gave me an A.

ROSS: (Disappointed) Gotcha.

ELIZABETH: I'm kidding!

ROSS: Oh! So . . . so seriously. What time?²⁴⁴

Later, Ross and Elizabeth are together when they encounter Burt, another faculty member.²⁴⁵ Ross immediately pushes Elizabeth away so Burt does not see that Ross and Elizabeth are together.²⁴⁶ Subsequently, Ross and Elizabeth are at the Central Perk coffee shop deciding what to do on their second date.²⁴⁷ Some of Ross's colleagues are also at the coffee shop, and Ross buries his head in Elizabeth's lap so they do not see him.²⁴⁸

ELIZABETH: What are you doing?

ROSS: Nothing, I'm . . . I'm just . . . I'm so comfortable with you.

ELIZABETH: Do you not want to be seen with me?

ROSS: What? No! Of course, of course I do! Are . . . are they gone?

ELIZABETH: Uh, no. They're still here, but I think I'm about to leave.

ROSS: What? No! No! Wait! You're right. This is stupid. Who

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.*

cares what people think? I mean, I mean, we like each other, right? There's nothing wrong with that. Come on.

They walk over to greet his colleagues.

ROSS: Burt. Lydia. Mel. This is Elizabeth.

ELIZABETH: Hi.

LYDIA: (To Elizabeth) Aren't you in my Popular Culture class?

ROSS: That's right, Lydia. Elizabeth here is a student, and uh, we're dating. And you may frown upon that, but we're not gonna hide it anymore.

MEL: You are so fired.

ROSS: (Startled) WHAT?

BURT: They're going to fire you! You can't date a student. It's against the rules.

ROSS: Really? It's not just frowned upon?²⁴⁹

Later, in Ross's apartment, Ross looks up the policy in his faculty handbook.

ROSS: Wow! It actually is in the handbook. I can't date you or have a hot plate in my office. I can't believe we have to stop seeing each other.

ELIZABETH: For what it's worth I did appreciate you standing up for me. It felt really nice. It kinda made me like you even more.

ROSS: I know, I know I really like you too. But we—we can't date. It's against the rules. It's forbidden.

ELIZABETH: Wow!

ROSS: What?

249. *Id.*

ELIZABETH: Just hearing you describe it as forbidden. It's really hot.

ROSS: Really?

ELIZABETH: Yeah.

ROSS: Well, I . . . I . . . I don't care how hot it is. It's . . . it's . . . uh, it's wrong.

ELIZABETH: Stop it!

ROSS: No! No! It's wrong! It's—it's—it's naughty. It's taboo.

ELIZABETH: Shut the book!

They start to make out.

ROSS: Let's also get a hot plate!

*They continue to make out.*²⁵⁰

Ross's behavior in attempting to hide his relationship with Elizabeth while they are together indicates that he certainly suspects that a professor-student relationship might not be simply "frowned upon."²⁵¹ If he thought that, he would not have pushed Elizabeth away from him when he saw Burt in the street or hidden from Burt, Lydia, and Mel in the coffee shop. For her part, Elizabeth enters into the relationship knowingly but also is not willing to continue with it if Ross is unwilling to admit to it publicly.²⁵² This episode, during a series that aired from 1994 through 2004, positions the attitudes toward Title IX about 20 to 40 years after the enactment of Title IX. According to the show, the institution involved, Columbia, has adopted a policy forbidding faculty-student relationships that would position faculty to exploit students and faculty should understand the policy.²⁵³

250. *Id.*

251. *See id.*

252. *See id.*

253. *Id.*

However, note that according to Columbia's website, in real life, Columbia adopted its policy in 2018.²⁵⁴

[N]o faculty member may initiate or accept sexual or romantic advances or engage in a romantic or sexual relationship with any undergraduate student enrolled in Columbia College, the Fu Foundation School of Engineering and Applied Science, the School of General Studies, or Barnard College or other affiliate of Columbia, regardless of whether the faculty member has a supervisory role over the student. These restrictions against romantic and/or sexual relationships with undergraduate students apply to all officers of instruction, research, administration, and the libraries.²⁵⁵

But one (fictional) faculty member obviously does not. However, Ross and Elizabeth's relationship ends when he breaks up with her after deciding that she is emotionally too young for him.²⁵⁶

In 2015, the season two episode of *Mom*, "A Commemorative Coin and a Misshapen Head,"²⁵⁷ Violet, Christy's 19-year-old daughter, reveals that she is dating her 42-year-old psychology professor.²⁵⁸ Neither Violet nor the professor discusses any institutional policy that might regulate such a relationship.²⁵⁹ The episode does not make clear whether Violet is in the professor's class; it appears that she is not. Eventually, they move in together and make plans to marry.²⁶⁰ Christy and her mother Bonnie are extremely concerned about this relationship, expressing their unease to the professor, Gregory Munchnik.²⁶¹ He says he understands and attempts to

254. *Romantic and Sexual Relationship Policies*, COLUM. UNIV. SCH. OF THE ARTS, <https://arts.columbia.edu/policies/romantic-relationships> [<https://perma.cc/E5JF-AA7F>] (last visited Feb. 8, 2022).

255. COLUM. UNIV. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION, REVISED POLICY ON ROMANTIC AND SEXUAL RELATIONSHIPS WITH UNDERGRADUATE STUDENTS (2018) [https://eoaa.columbia.edu/sites/default/files/content/docs/Policy_on_Romantic_and_Sexual_Relationships_with_Undergraduate_Students\(April_2018\)_FINAL_02-14-2019\).pdf](https://eoaa.columbia.edu/sites/default/files/content/docs/Policy_on_Romantic_and_Sexual_Relationships_with_Undergraduate_Students(April_2018)_FINAL_02-14-2019).pdf) [<https://perma.cc/L9ER-DT87>].

256. *Friends: The One with the Proposal: Part I* (CBS television broadcast May 18, 2000).

257. *Mom: A Commemorative Coin and a Misshapen Head* (CBS television broadcast Mar. 12, 2015).

258. *See id.*

259. *See id.*

260. *See id.*

261. *Id.*

reassure them.²⁶² They meet his mother Phyllis, and Christy, Bonnie, and Phyllis discuss the unusual situation.²⁶³ None of the three mention the possibility that Gregory might lose his job.²⁶⁴ Instead, Gregory's mother makes jokes about how soon Violet will leave Gregory.²⁶⁵ She is right about the end of the relationship, but it comes sooner than she thinks. Gregory ends it before the wedding after he decides that Violet is too immature for marriage.²⁶⁶

Another *Mom* episode raises a question about professor-student relationships. In "Pork Loin and a Beat-Up Monte Carlo,"²⁶⁷ Christy competes for a law firm internship with other members of her first-year criminal law school class. Although her professor, an adjunct at her school, tells her privately that she was the best advocate in the mock trial that he held to decide who should get the internship, he decided to award it to another student.²⁶⁸ Christy is furious and accuses him of discriminating against her because of her past, which she mentioned during her cross-examination of the student who played the accused during the mock trial.²⁶⁹ The professor calmly responds that his firm would like to offer her a paying position for the summer.²⁷⁰ She is so excited that she hugs him.²⁷¹ He responds: "I'm not allowed to hug you back, but congratulations."²⁷² He is aware that hugging his student would be inappropriate.²⁷³

262. *Id.*

263. *Mom: Kreplach and a Tiny Tush* (CBS television broadcast Jan. 7, 2016).

264. *Id.*

265. *Id.*

266. *Mom: Mahjong Sally and the Ecstasy* (CBS television broadcast May 12, 2016).

267. *Mom: Pork Loin and a Beat-Up Monte Carlo* (CBS television broadcast Nov. 29, 2018) (transcript on file with the *Louisiana Law Review*).

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. Another *Mom* episode, "Ambulance Chasers and a Babbling Brook," presents a different law teacher-law student relationship. *Mom: Ambulance Chasers and a Babbling Brook* (CBS television broadcast Oct. 18, 2018) (transcript on file with the *Louisiana Law Review*). Christy discovers her contracts professor, Natalie Stevens, in attendance at an Alcoholics Anonymous meeting near the law school campus. *Id.* The professor importunes Christy to begin going to coffee with her and to call her by her first name. *Id.* Natalie also tells Christy not to worry about preparing for class. *Id.* At first Christy is flattered by the attention, but she finally tells Natalie that the attention and the amount of pressure Natalie puts on her to listen and help her solve her personal problems is too much

Twenty-two years after the *Friends* episode, six years after the events in *Mom* that detail the relationship between Gregory and Violet, the story of the professor-student relationship is still a theme on television. In the season four, February 2, 2022, episode of *The Conners*, Becky speculates on the likelihood that her psychology professor has a romantic interest in her based on his comments on her papers and his willingness to let her bring her daughter to class when she does not have child care.²⁷⁴ Jackie cautions her that entertaining thoughts of a romantic relationship would cost him his position at the college.²⁷⁵

JACKIE: Don't you do it.

BECKY: Do what?

JACKIE: Don't be hot for teacher. We've all been there. My training officer, Hank the Tank, he was teaching me how to drive in a high-speed pursuit and we started going at it like two cats in heat. Next thing you know, we're in our underwear on the hood of the car. . . .

BECKY: You're way ahead of me. Yeah, okay, I like him, but I don't know if he likes me. I mean, we laugh in our advisor meetings. We have these amazing, deep talks that I can't have with

for Christy to handle. *Id.* Before class one day, Christy says she needs the structure of AA and that Natalie should consider attending meetings as well. *Id.* Natalie rejects the idea, tells Christy she did not think Christy was a “loser” like the other AA members, and abruptly tells Christy to take her seat. *Id.* She also tells Christy she “hopes [she] did the reading.” *Id.* Natalie’s manipulation of Christy does not fit Title IX’s definition of sexual harassment. Natalie has not pressured Christy for sexual favors. It is possible Natalie approached Christy specifically because she believes Christy is more vulnerable than the usual 1L student. One might think Natalie is bullying Christy and using her power as an instructor to force Christy to support her emotionally. However, the episode gives no indication that Christy eventually receives a grade in the class that is less than she deserves. Natalie makes several remarks to the students that indicate she detests teaching as a general matter. *Id.* Note also that Natalie and Christy enter into their short-lived relationship after meeting in the context of a contracts class. But on the issue of retaliation in an educational setting, see *Anderson v. Univ. of New Eng.*, No. 21-cv-00169, 2022 WL 2340873 (D. Me. June 29, 2022) (student stated claim for retaliation under Title IX and for breach of contract).

274. See *The Conners: Hot For Teacher and Writing a Wrong* (ABC television broadcast Feb. 2, 2022) (transcript on file with the *Louisiana Law Review*).

275. *Id.*

anybody else.

JACKIE: Has he given you any obvious clues?

BECKY: Just little comments he makes on my papers.

JACKIE: Like what?

BECKY: Uh, "Great job." "You're a star."

JACKIE: That's nice. That doesn't mean anything.

BECKY: True, I am a star. One day, I turned a paper in late because I missed class, and he wrote he missed me.

JACKIE: "Missed" could be platonic. I mean, I miss Kenny Rogers Roasters, but I wouldn't date him. What else you got?

BECKY: Uh . . . how about this? "I love the way your brain works."

JACKIE: He used the word "love"? Good God! Hot pants! Get out of that class!

BECKY: You actually think he's into me?

JACKIE: You have deep talks. You laugh together. He writes flirty little notes on your papers. Hot pants!

BECKY: Okay. Now it's real. That's exciting, but it also sucks, because you're right. It could ruin his career, and how could you resist this?

JACKIE: What are you gonna do?

BECKY: I have to drop his class and find another advisor before something gets out of hand.

JACKIE: Yeah, that's the smart move. That's what I was gonna do with Hank the Tank, but then he got caught stealing money from the mob and he hit the road . . . when they threw him off an

overpass.²⁷⁶

The title of the episode, “Hot For Teacher,” refers to a 1984 Van Halen song, *Hot For Teacher*.²⁷⁷ Note that the episode flips the script.²⁷⁸ The Van Halen song features a male student who lusts after his female teacher.²⁷⁹ In this story arc, a female student voluntarily becomes involved with her male teacher.²⁸⁰ Whether the relationship that the male student fantasizes about in the song or the one Becky and Glenn pursue in *The Conners*, the danger is still real. Even though Becky believes she has agency, the college likely would not, and Title IX does not indicate that adult students have the power to waive its provisions with regard to student-teacher relationships.

At this point, the episode suggests that Becky believes her maturity is informing her decision. She is, after all, in her 40s, and unlike Elizabeth in *Friends*, she has some life experiences.²⁸¹ She was married for years, is now a widow, and is in recovery. She is also taking her aunt’s advice.²⁸² However, she then does a foolish thing. Like Elizabeth, she confides her attraction to her professor.²⁸³ For Becky, this step signals agency. She decides to do what she might do with regard to any other relationship—that is, she tells a man she is interested and attracted to him. But as Jackie has already pointed out, Glenn Davis is not just any man.²⁸⁴ He is her professor.²⁸⁵ They have a particular relationship, that of professor and student. Becky might try to characterize her statement that she is interested in him as a simple statement of fact that he can ignore and that will not change the nature of that relationship. It is a fiction that many people believe once disclosed, sexual attraction is the genie in the bottle that has escaped.

When Becky does speak to her professor about dropping the class, he tells her there are problems.²⁸⁶ The course is required for her major, and he is the only faculty member teaching it.²⁸⁷

276. *Id.*

277. See VAN HALEN, *HOT FOR TEACHER* (5150 Studios 1984).

278. See *The Conners: Hot For Teacher and Writing a Wrong*, *supra* note 274.

279. See VAN HALEN, *supra* note 277.

280. See *The Conners: Hot For Teacher and Writing a Wrong*, *supra* note 274.

281. *Id.*

282. *Id.*

283. *Id.*

284. See *id.*

285. See *id.*

286. *Id.*

287. *Id.*

BECKY: I need to transfer out of your class and take it with another professor.

GLENN DAVIS: Well, there's two problems with that. One, this course is a requirement and I'm the only one who teaches it. And two, you're doing great in this class. Why would you want to transfer?

BECKY: Because I have feelings for you, and if I'm reading my graded papers correctly, I think you might have feelings for me, too, unless I've misread this whole thing, in which case, I hope you have a very tiny stroke that just kills this memory.

GLENN DAVIS: It took a lot of courage to tell me that. I'll try to be just as brave. Don't tell anyone, 'cause I'll deny it if you do . . . I have feelings for you, too. But you didn't hear it from me.

BECKY: I knew you liked me!

GLENN DAVIS: Shh, shh. Maybe we keep our voices down to a non-career-ending level.

BECKY: Sorry. I just really enjoy being right. I know you can get fired for dating me.

GLENN DAVIS: And I'm worried about what this could do to you, too. I mean, the students would hate you for getting their favorite professor fired (Chuckles).

BECKY: So what do we do?

GLENN DAVIS: Easy. The only thing we can do. I marry you immediately and we grow old doing psych research. We'll shock babies together off the coast. Why don't we talk about this over dinner? We just gotta find a place to meet that's so horrible, nobody but us would ever go there.²⁸⁸

Thus, Glenn pushes Becky further into what he knows to be not just a bad decision but an unethical one, and for him, one that can have devastating professional consequences.²⁸⁹ *The Conners* scriptwriter Bruce Helford

288. *Id.*

289. *See id.*

speaking to Entertainment Tonight commented, “

not analogous to one in which the teacher is older and the student is under interesting dilemma for the both of them.”²⁹⁰

Both Becky and Glenn realize they cannot pursue the relationship, yet they decide to do so.²⁹¹ Note, Glenn’s response to Becky that what they should decide to do is “easy.”²⁹² It might seem “easy,” but it is not the choice he suggests nor the one she agrees to.²⁹³ And contrary to Helford’s comments, Glenn has the power to end the discussion and the behavior at any time during the conversation.²⁹⁴ As a psychology professor, he knows or should know that Becky’s behavior is understandable and to be expected, and he knows what his response should be. He does not give it.²⁹⁵

Note also that the age of the student has no bearing on whether the relationship is proper or improper. What matters is the relationship itself. Because Becky’s college is fictional, the writers do not provide a policy for viewers to read. However, the University of Illinois Title IX policy on intimate relationship between supervisors and persons they supervise can provide some clarification:

Article I: A. Requirements on Faculty, Teaching

1. Relationships Involving Supervisory or Evaluative Authority

U of I System employees (faculty and staff), volunteers, and Graduate/Professional Students are prohibited from entering into any Intimate Personal Relationship with any person over whom they have any direct or indirect Supervisory or Evaluative Authority. For existing

290. Stacy Lambe, ‘*Veep*’ Star Matt Walsh Joins ‘*The Conners*’ as Becky’s Love Interest (Exclusive), WUSA9 ENT. TONIGHT (Feb. 2, 2022, 1:50 PM EST), [https://www.wusa9.com/article/entertainment/entertainment-tonight/veep-star-matt-walsh-joins-the-conners-as-beckys-love-interest-exclusive/603-e54169ff-065c-4ed7-a84a-8bd07ba0cafb#:~:text=Veep%20star%20Matt%20Walsh%20is,\(Lecy%20Goranson\)%20attends%20school](https://www.wusa9.com/article/entertainment/entertainment-tonight/veep-star-matt-walsh-joins-the-conners-as-beckys-love-interest-exclusive/603-e54169ff-065c-4ed7-a84a-8bd07ba0cafb#:~:text=Veep%20star%20Matt%20Walsh%20is,(Lecy%20Goranson)%20attends%20school) [https://perma.cc/CZY5-2NTK].

291. *The Conners: Hot For Teacher and Writing a Wrong*, *supra* note 274.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

relationships prior to this policy see B.1.²⁹⁶

If these two individuals are interested in pursuing a relationship, they must wait until, at a minimum, Becky and Professor Davis are no longer student and teacher, respectively. The optimal situation would be that they wait until Becky has graduated or left the college to avoid the appearance of impropriety, but they could date after Becky is no longer in Glenn's class. Nevertheless, they continue their inappropriate relationship.

In the third episode of the story arc, word of the relationship finally leaks when Becky accidentally sends a text meant for Glenn to his teaching assistant Wanda.²⁹⁷ Wanda immediately notifies the college administration.²⁹⁸ Glenn tells Becky not to worry because he has already resigned from his position.²⁹⁹ Becky is horrified, but Glenn is pleased.³⁰⁰ He can now pursue his dream of becoming a novelist.³⁰¹ Becky finally realizes that Glenn's view of the relationship and his willingness to sacrifice his career are not in line with her goals or with her feelings about him.³⁰² She finally understands that Glenn's immaturity and inability to plan for the future is part of his charm for her.³⁰³ She goes to the administration and tells them a lie: that she approached him, and that the fault is entirely hers.³⁰⁴ She does so to save his career, and her attempt is ultimately successful.³⁰⁵ The administration believes her, Glenn keeps his job, and she receives academic probation.³⁰⁶

GLENN: The dean said you felt guilty about letting me take the fall and that there was no relationship, and it was all your fantasy, and that you texted about things that never actually happened. Why'd

296. *Policy on Workplace-Related Intimate Personal Relationships*, UNIV. OF ILL. SYS., https://www.hr.uillinois.edu/policy/policy_library/policy_resources_applicable_to_all_employees/policy_on_workplace_related_intimate_relationships#:~:text=1.,indirect%20Supervisory%20or%20Evaluative%20Authority [<https://perma.cc/FN78-CJL4>] (last visited Feb. 4, 2022).

297. *The Conners: Messy Situation, Miscommunication, and Academic Probation* (ABC television broadcast Mar. 16, 2022) (transcript on file with the *Louisiana Law Review*).

298. *See id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

you throw yourself under the bus?

BECKY: To get you your job back. And all they did was put me on probation. You belong in the classroom. You were like a fish out of water and it was so hard watching you flop around all over the place.

GLENN: Thank you. I was just starting to get traction on my book, but this is good, too. So, I guess we go back to dating on the down-low again, huh?

BECKY: No, we can't. We had a close call and we have to learn from it.

GLENN: Do you think we should stop seeing each other?

BECKY: I think by your question, you know the answer.

GLENN: No, I don't.

BECKY: In your heart, you do.

GLENN: I really don't.

BECKY: If you think about it, you do.

GLENN: I thought about it, and I don't.

BECKY: Yes! We're breaking up!

GLENN: So, that's it? It's just over?

BECKY: Oh, Glenn, you're a great guy. We're just star-crossed lovers. I'm sorry. Oh, this is too hard. You should go.³⁰⁷

The dean seems to have no questions about why Glenn should have resigned rather than denying the accusation when it first came up.³⁰⁸ Why would the dean simply accept Becky's word rather than launch an investigation? He did, after all, have Wanda's report and the texts.³⁰⁹

307. *Id.*

308. *Id.*

309. *Id.*

Becky could be lying, as indeed she is.³¹⁰ And if Glenn's job means so little to him, why is he so willing to let Becky take the blame? That willingness, as well as his previous behavior, suggests that he is not, in fact, "a great guy."³¹¹ The problem for Becky is that she now has academic probation on her record, and it is related to lying about a non-existent relationship with a faculty member, lying that could have cost him his career. She will have to explain that probation when, and if, she applies for admission to a four-year college and later if she applies to graduate school, both of which she has mentioned wishing to do before.³¹² What will she say? That she lied then but is telling the truth now?³¹³ She is not a starry-eyed teenager like many of the students at the community college she attends.³¹⁴ She is in her 40s, twice-married, and a mother.³¹⁵

The earlier presentation of Becky and Glenn as equally willing participants in the relationship emphasizes Becky's agency and her eagerness to take the initiative in pursuing Glenn. Her willingness to take the blame and to exonerate Glenn might also seem as if she is taking responsibility for her actions. However, it can equally appear to feed into the traditional narrative that women, at best, fantasize about relationships with their professors and, at worst, lie about such relationships.³¹⁶ Becky does other women no favors by taking the blame for what Glenn has done here by violating the college's rules. Of course, the writers might have thought of no other way out of the Becky-Glenn relationship dilemma except this one. However, Glenn and his inability to function and to make decisions is the writers' character. They could have made him an aspiring novelist who decides to move away from Lanford for the sake of his

310. *Id.*

311. *Id.*

312. *See id.*

313. As Sir Wilfred Robards famously bellows to Christine Helms on cross in *Witness for the Prosecution*: "The question is, Frau Helm, were you lying then, are you lying now? Or are you not, in fact, a chronic and habitual LIAR?!" WITNESS FOR THE PROSECUTION (Edward Small Productions 1957).

314. *The Conners: Messy Situation, Miscommunication, and Academic Probation*, *supra* note 297.

315. What defenses she might raise is an interesting question and beyond the scope of this article. However, note that Becky is a recovering alcoholic. *See The Conners: Money, Booze and Lies* (ABC television broadcast Mar. 31, 2021).

316. *See, e.g.,* Helen Clarke, 'An a for a lay,': *A governmental approach to the sex for grades discourse in higher education*, 90 WOMEN'S STUD. INT'L F. 1 (2022) (discussing likely willingness of female students to accept sexual advances from male instructors in exchange for grades, or to make assumptions that other female students who receive high grades from male instructors are having intimate relationships with those instructors).

career, leaving Becky behind to grieve her lover. Instead, they leave him at the college, ready to take up a relationship with the next young woman who has less emotional maturity than Becky.

In all three of these cases, Ross and Elizabeth, Gregory and Violet, and Glenn and Becky, even if the teacher and student were no longer in a teacher-student relationship—for example, if the course had ended, as in the Ross-Elizabeth situation—such situations could arise again. In addition, other students could easily object. Other students might believe that a student involved with a professor might receive favorable treatment from that professor's colleagues, even if that were not the case. Of course, the opposite might also happen.³¹⁷

Law school settings also offer a disturbing number of examples of Title IX harassment.³¹⁸ Law schools should be among the settings in which faculty and staff would behave appropriately, precisely because many of them are lawyers and know how to read the statute. That writers choose to set these scenes in law schools suggests that they are pointing out the irony of a lack of compliance.³¹⁹

One relatively well-known example of law school sexual harassment is the one that occurs in the film *Legally Blonde*.³²⁰ Since its release, this film has proven popular among women lawyers, law students, and aspiring

317. See *BU Professor Fired After Allegations of Sexual Harassment Spark Investigation*, CBS Bos. (April 13, 2019, 7:10 PM), <https://www.cbsnews.com/boston/news/boston-univeristy-fire-david-marchant-sexual-harassment-allegations/> [<https://perma.cc/5WRT-3H7R>]; Katherine Long, *UW researcher Michael Katze fired after sexual-harassment investigation*, SEATTLE TIMES (Aug. 3, 2017, 3:33 PM), <https://www.seattletimes.com/seattle-news/education/uw-researcher-michael-katze-fired-after-sexual-harassment-investigation/> [<https://perma.cc/3CU5-Z6FH>]; Isaiah Seibert, *University Of Evansville Fires Theater Professor Accused Of Harassment*, WFYI (Dec. 17, 2018), <https://www.wfyi.org/news/articles/university-of-evansville-fires-theater-professor-accused-of-harassment> [<https://perma.cc/JN5P-H4FY>].

318. See *supra* text accompanying notes 258–74 on the discussion of *Mom*.

319. For more about law professor-law student relationships and images of law schools in popular culture, see Christine A. Corcos, *What We Talk About When We Talk About Law Schools: Deconstructing Meaning In Popular Culture Images of Legal Education*, HEDGEHOGS AND FOXES, <https://hedgehogsandfoxes.org/index.php/2019/04/12/christine-a-corcoc-what-we-talk-about-when-we-talk-about-law-schools-deconstructing-meaning-in-popular-culture-images-of-legal-education/> [<https://perma.cc/9B4R-LMS4>] (last visited Aug. 28, 2022).

320. *LEGALLY BLONDE* (MGM 2001) (transcript on file with the *Louisiana Law Review*).

lawyers who see courage and agency in its main character Elle Woods.³²¹ The problem for Elle, as some commentators have pointed out, is that she is a fish out of water at Harvard Law School (HLS).³²² A fashion major with a distinctively feminine persona, she does not fit in well with the highly competitive and aggressively masculine approach of the HLS presented in the film.³²³

Professor Callahan, Elle's criminal law professor, makes clear to her that if she responds affirmatively to his advances, he will help her succeed in her internship.³²⁴

CALLAHAN: Have you thought about where you might be a summer associate?

He sits down next to her.

ELLE: Oh, um, not really. I know it's very competitive.

CALLAHAN: Well, you know what competition's really about, don't you? It's about ferocity, carnage. Balancing human intelligence with animal diligence. Knowing exactly what you want . . . and how far you'll go to get it. How far will Elle go?

ELLE: Are you hitting on me?

CALLAHAN: You're a beautiful girl.

Elle gets up.

ELLE: So everything you just said . . .

321. Jessica MacLeish, *20 Years Later, 'Legally Blonde' Remains a Benchmark for Revenge Fantasy*, THE RINGER (Jul. 15, 2021, 6:00 AM EDT), <https://www.theringer.com/movies/2021/7/15/22577904/legally-blonde-movie-20th-anniversary> [<https://perma.cc/9ZTY-Z4UA>].

322. Note that while Harvard Law School exists, the Harvard Law School the film presents is fictionalized. Amanda Brown's novel set *Legally Blonde* at Stanford Law School, the school she attended for two years. See Amy Silverman, *Legally Brown*, PHX. NEW TIMES (Oct. 30, 2003, 4:00 AM), <http://www.phoenixnewtimes.com/news/legally-brown-6407263> [<https://perma.cc/WTN3-5C2V>].

323. See LEGALLY BLONDE, *supra* note 320.

324. See *id.*

CALLAHAN: I'm a man who knows what he wants.

ELLE: And I'm a law student who just realized her professor is a pathetic asshole.

CALLAHAN: Too bad. I thought you were a law student who wanted to be a lawyer!³²⁵

His approach startles Elle, and she decides to withdraw from law school.³²⁶ When she confides in Emmett, Callahan's assistant, he is shocked but tries to dissuade her, assuring her that she earned her place at HLS.³²⁷ She disagrees and for comfort, goes to the beauty salon to confide in her friend Pauline.³²⁸ The Kingsfield-like Professor Stromwell overhears the conversation and says, "If you're going to let one stupid prick ruin your life, you're not the girl I thought you were."³²⁹ Her comment has more influence than Emmett's, and Elle decides to stay at Harvard.³³⁰

What is disturbing about Stromwell's comment, though, is that it indicates that she knows about Callahan's behavior and has known for some time.³³¹ Moreover, she seems to take it as a given that women attorneys must deal with a certain amount of harassment. It simply "comes with the territory." Perhaps it does.³³² In this case, however, the person doing the harassing is an adjunct professor at Harvard Law School, and Stromwell, who seems to be a tenured member of the faculty, knows about it.³³³ Has she ever done anything to address it, whether or not any student has reported it directly to her? Has she reported any of her own suspicions about Callahan? Harvard is a private institution, but that does not mean that it could ultimately escape liability for Callahan's actions should Elle pursue a Title IX complaint.³³⁴ Note also that Stromwell does not

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *See id.*

331. *See id.*

332. Debra Cassens Weiss, *Harassment is "embedded within the culture" in many legal workplaces, new study finds*, ABA J. (July 8, 2020, 2:25 PM CDT), <https://www.abajournal.com/news/article/harassment-is-embedded-in-the-culture-in-many-legal-workplaces-study-finds> [<https://perma.cc/2DSJ-M8XA>].

333. *See* LEGALLY BLONDE, *supra* note 320.

334. Harvard has received millions of federal dollars in work-study funding since 2016. *See* Adam Andrzejewski, *With a \$40.9 Billion Endowment, Harvard*

encourage Elle to do so, instead encouraging her to ignore Callahan's extremely disturbing behavior and pursue her dream of becoming a successful attorney.

Other professor-student relationships on television include *Degrassi: The Next Generation* characters Paige Michalchuk, a high school student, and Matt Oleander, a student teacher.³³⁵ Matt eventually loses his position, and the two continue their relationship.³³⁶ Other examples include *Skins* characters Angie (psychology teacher) and Chris (student),³³⁷ *E.R.*

Gets \$22 Million in Federal Work Study Funding, REAL CLEAR POL'Y (June 28, 2021), https://www.realclearpolicy.com/articles/2021/06/28/with_a_409_billion_endowment_harvard_gets_22_million_in_federal_work_study_funding_782902.html#:~:text=Open%20the%20Books-,With%20a%20%2440.9%20Billion%20Endowment%2C%20Harvard%20Gets%20%2422,in%20Federal%20Work%20Study%20Funding&text=Harvard%20received%20%2422.2%20million%20from,Education's%20Federal%20Work%20Study%20Program [https://perma.cc/AW2V-ZVDC]. Elle would have to demonstrate that an HLS official able to take corrective action had actual notice of behavior which prevented her from obtaining access to “any education program or activity receiving Federal financial assistance,” and was deliberately indifferent to it. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998). Neither Stromwell, nor Emmett, nor Elle herself report the behavior to a responsible HLS official. Whether Stromwell or Emmett is a mandatory reporter is unclear. The real-life HLS provides its Title IX policies and procedures here: *Title IX at Harvard Law School*, HARV. L. SCH., <https://hls.harvard.edu/staff-dashboard/human-resources/title-ix/> [https://perma.cc/G43M-DGTB] (last visited Oct. 30, 2022). Note that in 2014, the U.S. Department of Education's Office for Civil Rights found the real-life Harvard Law School out of compliance with Title IX regulations. HLS agreed to revise its policies. See Theodore R. Delwiche et al., *Law School Found in Violation of Title IX After Years-Long Probe*, THE HARV. CRIMSON (Dec. 30, 2014, 5:43 PM), <https://www.thecrimson.com/article/2014/12/30/law-school-violation-title-ix/> [https://perma.cc/FE4C-UUJ3]. HLS provides its revised Title IX policies and procedures here: *Title IX at Harvard Law*, HARV. L. SCH., <https://hls.harvard.edu/staff-dashboard/human-resources/title-ix/> [https://perma.cc/D7LP-82L6] (last visited Oct. 30, 2022).

335. *Degrassi: The Next Generation: Bark at the Moon* (CTV television broadcast Nov. 23, 2004).

336. *Degrassi: The Next Generation: Neutron Dance* (CTV television broadcast Oct. 26, 2004); *Degrassi: The Next Generation: Bark at the Moon*, *supra* note 335; *Degrassi: The Next Generation: Queen of Hearts* (CTV television broadcast Dec. 9, 2005); *Degrassi: The Next Generation: Modern Love* (CTV television broadcast Jan. 24, 2005); *Degrassi: The Next Generation: Death of a Disco Dancer* (CTV television broadcast Oct. 3, 2005).

337. *Skins: Maxxie and Anwar* (Company Pictures television broadcast Mar. 1, 2007).

characters Doug Ross and Harper Tracy,³³⁸ and *One Tree Hill* characters Brooke Davis (high school student) and Nick Chavez (English teacher).³³⁹ The show *E.R.* provides an example of a supervising physician involved with a medical student: Doug Ross and Harper Tracy.³⁴⁰ While neither *DeGrassi: The Next Generation* nor *Skins* is a U.S. show, both illustrate that popular culture generally continues to offer examples of professor-student relationships that present the power imbalances that underlie objections to such relationships. That these relationships are so common on television suggests that they are the sort of pairings that viewers expect to see in real life.³⁴¹

V. TITLE IX IMAGERY IN POPULAR CULTURE: SEXUAL ASSAULT AND TITLE IX

Rape as an issue for popular culture is generally demonstrated in drama rather than comedy.³⁴² The *Law & Order: SVU* episode “Girl Dishonored” presents the case of Lindsay, a first-year student who as part of her pledging at a sorority at TSU, a fictional New York university,

338. See *E.R.: Days Like This* (NBC television broadcast Nov. 2, 1995). Physician Doug Ross, played by George Clooney, and medical student Harper Tracy, played by Christine Elise, have sex, and others on the hospital staff find out. They tell Ross that he will lose his fellowship. *Id.*

339. See *One Tree Hill* (The WB television broadcast). Brooke and Nick meet on a blind date in the episode “I Love You But I’ve Chosen Darkness” and then discover that she is a student in his class in the episode “Where Did You Sleep Last Night?”. *One Tree Hill: I Love You But I’ve Chosen Darkness* (The WB television broadcast Oct. 25, 2006); *One Tree Hill: “Where Did You Sleep Last Night?”* (The WB television broadcast Nov. 8, 2006). They agree to continue dating in secret. *Id.* In the *Two and a Half Men* episode “The Two Finger Rule,” during a discussion of sexual experiences, Charlie mentions one relationship with a Mrs. Terrapotta. “Sixth grade. Mrs. Terrapotta. It wasn’t actually a date. Nowadays she’d probably go to jail.” See *Two and a Half Men: The Two Finger Rule* (NBC broadcast Apr. 1, 2009) (transcript on file with the *Louisiana Law Review*).

340. See *E.R.: Days Like This*, *supra* note 338.

341. See, e.g., *Texas on record-setting pace for inappropriate teacher-student relationships*, CBS NEWS (June 5, 2016, 2:59 PM), <https://www.cbsnews.com/news/texas-record-setting-pacer-inappropriate-teacher-student-relationships/> [<https://perma.cc/ZQ4E-FXFA>].

342. On sexual assault in popular culture, see NICKIE D. PHILLIPS, *BEYOND BLURRED LINES: RAPE CULTURE IN POPULAR MEDIA* (2016).

approaches a member of a campus fraternity to obtain an intimate photo.³⁴³ He and two other fraternity members gang rape her.³⁴⁴ When she attempts to report the rape, she runs into a number of obstacles.³⁴⁵ The campus security officer tells the nurse at the hospital that Lindsay can shower, feigning no knowledge of the rape.³⁴⁶ Thus, the nurse does not collect crucial evidence.³⁴⁷ Responsible campus officials, including the dean, raise questions about Lindsay's state of mind at the time of the assault, including whether she was inebriated.³⁴⁸ Lindsay's mother, who seems suspicious of the university's protocols, calls in local law enforcement, including Detectives Benson and Rollins.³⁴⁹ Things go from bad to worse as the detectives attempt to build a case.³⁵⁰ Lindsay's sorority sisters harass her, the fraternity brothers demonize her, and the detectives discover that the head of campus security routinely counsels members of the fraternity on ways to discredit women who accuse them of rape, for example, by sending them texts that include invitations to go out.³⁵¹ Lindsay decides not to pursue the rape complaint, but the detectives uncover a pattern and practice of such assaults at the fraternity.³⁵² The ADA eventually calls various women students who are willing to testify before a grand jury to put pressure on the university.³⁵³ He and the detectives uncover evidence that the dean has been underreporting sexual assaults to the federal government.³⁵⁴ The episode ends with the dean's resignation and probable indictment and the likely indictment of the head of security.³⁵⁵ Police arrest the students who raped Lindsay and other women.³⁵⁶ However,

343. *Law & Order: Special Victims Unit: Girl Dishonored* (NBC television broadcast Apr. 24, 2013) (transcript on file with the *Louisiana Law Review*).

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.* The character has counseled the male students who commit the sexual assaults that sending such texts will discredit the women by creating the impression that the women are responding to requests to continue relationships after the assaults occur. *Id.* Thus, the assaults were not assaults at all. The women consented to the encounters.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

Lindsay kills herself, unable to deal with the aftermath of the assault or the upcoming trial.³⁵⁷

Throughout the episode, the writers are very critical of the fictional university that has charge of the sexual assault investigation in “Girl Dishonored.”³⁵⁸ They express their criticisms through the characters of Benson and Rollins, who must confront the campus officials to discover what, if anything, they did to unearth what happened to the young women who filed complaints.³⁵⁹ The criticisms that Benson and Rollins, eventually the other officers, and finally the district attorney express echo objections that many make concerning whether universities should take charge of Title IX investigations.³⁶⁰ Some of the difficulties include a perceived lack of understanding on the part of campus officials regarding ways in which to reconcile the process due to both the complainant and the accused.³⁶¹

The episode also criticizes the university’s handling of sexual assault reports under Title IX and by extension higher education’s handling of Title IX sexual assault reports.³⁶² Talia Blaine, the counselor who speaks with Lindsay and another student who reported a sexual assault the year before, defends the way in which she explains the Title IX process to complainants, saying that she wants complainants to understand what they will undergo when they have to meet their harassers face to face.³⁶³ As she tells the detectives:

BLAINE: The students call the frat “The Rape Factory.” It’s their idea of a joke.

ROLLINS: And the school doesn’t shut them down?

BLAINE: How? They’re also called “The Water Walkers.” A lot of legacies, scholar-athletes. Smart, from good homes. The dean doesn’t want to destroy these boys’ futures on a drunken accusation.³⁶⁴

357. *Id.*

358. *See id.*

359. *See id.*

360. *Id.*

361. *See id.*

362. *See id.*

363. *See id.*

364. *Id.* This fictional character’s comments are not completely analogous to those of the judge who sentenced Brock Turner to six months for rape because Turner had been convicted. However, Judge Persky said, “A prison sentence

The detectives become suspicious of the head of campus security when he seems less concerned about helping a female student who has suffered a sexual assault than in giving advice to male students concerned about their reputations.³⁶⁵ When they interview him, he is both aggressive and defensive of his approach to investigations of sexual assault allegations.³⁶⁶

Listen, you should see this place on Sunday mornings. These kids, away from home for the first time, they're all out of control. I should turn in a guy every time a girl puts out and doesn't get flowers the next day? . . . I'm just trying to keep these kids alive. . . . Make sure they don't drink and drive or OD or get knifed. I can't police their bedrooms.³⁶⁷

When the detectives interview the dean, she is reluctant to assist them with their investigation into the assault on Lindsay. When they press her further, she tells them that the files on a different investigation are sealed.³⁶⁸ She discusses an earlier complaint that another student made about several of the fraternity members. "Renee Clark made, then withdrew, unsupportable allegations against a fellow student. . . . I feel sorry for her. But short of destroying someone else's reputation, we've done everything we can to help her."³⁶⁹ Unsatisfied with the interview, the detectives leave but are more suspicious of the dean's possible involvement in a coverup than they were before.

Lindsay, the student who is one of the central characters of the *Law & Order: SVU* episode, leaps to her death from the top of a campus building because of the trauma of dealing with the sexual assault and the attacks of the other students and lack of support of campus administrators, an ending

would have a severe impact on him . . . I think he will not be a danger to others." See Ashley Fantz, *Outrage over 6-month sentence for Brock Turner in Stanford rape case*, CNN (June 7, 2016, 8:45 AM EDT), <https://www.cnn.com/2016/06/06/us/sexual-assault-brock-turner-stanford/index.html> [<https://perma.cc/BP6N-MUDA>]. Voters subsequently recalled Persky. See Meghan Keneally, *California voters oust judge who sentenced Stanford swimmer to six months for sexual assault*, ABC NEWS (June 6, 2018, 10:04 AM), <https://abcnews.go.com/US/california-voters-oust-judge-sentenced-stanford-swimmer-months/story?id=55684700> [<https://perma.cc/5DSF-VA9V>].

365. *Law & Order: Special Victims Unit: Girl Dishonored*, *supra* note 343

366. *Id.*

367. *Id.*

368. *Id.*

369. *Id.*

that is much too common for sexual assault survivors.³⁷⁰ Initially, the other central character, Renee Clark, who checked herself into a psychiatric facility because of the overwhelming pressure she feels from students and administrators, is reluctant to assist Rollins and Benson.³⁷¹ She tells them, “When I filed charges, Dean Meyerson tried to make it out to be my fault. And when I posted online about what a sham their investigation was, I got a letter saying they’d charge me with a violation of the TSU honor code—that I was intimidating my rapist!”³⁷² Renee finally agrees to assist the detectives with their investigation into the administrators’ behavior.³⁷³ Together, and with the help of other female students who agree to come forward, they put together a case that the ADA can prosecute.³⁷⁴

What is unusual about “Girl Dishonored” is that one of the characters actually mentions a relevant statute.³⁷⁵ In this case, the dean mentions the Clery Act, the act that requires that higher education that receives federal funding collect and report crime statistics, including sexual assaults.³⁷⁶ One of the points the episode makes is that sexual assault victims can face harassment not just from male friends of the men they accuse but also from other women.³⁷⁷ Complainants can face allegations that they are lodging false accusations because they do not want to admit that they consented to the act.³⁷⁸

Some of the dialogue and situations in the episode echo real life events. For example, the repeated comments about Lindsay’s drunkenness and the likelihood that she actually consented to sex with her attacker parallels the comments from one sexual assault victim in a 2012 Swarthmore College case. “‘I was asked if I had led them on, if I’d been drinking, if I’d given consent and forgotten,’ the survivor said. ‘I was told that I shouldn’t complain because after all, hadn’t I gone out to get some?’”³⁷⁹ She continued, “‘I was reminded that my rapist was a good

370. See Lavinia M. Weizel, *The Process That is Due: Preponderance of the Evidence as the Standard of Proof for University Adjudications of Student-on-Student Sexual Assault Complaints*, 53 B.C. L. REV. 1613, 1614 (2012).

371. *Law & Order: Special Victims Unit: Girl Dishonored*, *supra* note 343.

372. *Id.*

373. *See id.*

374. *See id.*

375. *See id.*

376. *See id.*; Clery Act, 20 U.S.C. § 1092 (1990).

377. *Law & Order: Special Victims Unit: Girl Dishonored*, *supra* note 343.

378. *Id.*

379. Anna Gonzales, *Sexual Assault on Campus: A Bigger Problem Than It Seems*, THE PHX. (Nov. 15, 2012), <https://swarthmorephoenix.com/2012/11/15/sexual-assault-on-campus/> [<https://perma.cc/3D28-CJXH>].

person and asked if I really wanted to accept responsibility for destroying their life.”³⁸⁰ Another Swarthmore student who sought assistance found that the campus official with whom she spoke attempted to diminish the complaint by suggesting that she was imagining the interaction as something other than a consensual one.³⁸¹ The official also asked about the student’s prior sexual knowledge, religious views, and use of alcohol that night.³⁸²

Some of the sexual assault survivors from the Swarthmore case and a prior case that occurred at Amherst College recognized themselves and their stories in “Girl Dishonored.”³⁸³ Angie Epifano, the Amherst College student who had discussed her sexual assault and criticized the institution’s response to her complaint, wrote a critique of the *Law & Order: SVU* episode in which she objected to what she considered to be so much of her story:³⁸⁴

So many parts of Renee’s story ranging from her broken home, to corrupt school judicial policy, to being forcibly committed to a Psych Ward, came from me. It’s sickening, appalling, and unnerving to realize that the worst experiences of your life have been condensed into 45 minutes of cable TV drama. Granted, the episode was powerful and the writers did a good job squishing all of my survivor friends’ and my stories together to make a whole, but at what cost? I feel like I’ve been stolen from, cheated out of the chance to tell them how the story should go. My main problem was the episode’s ending, with disgustingly optimistic tone, for, as I mentioned earlier, the corrupt school officials and rapists are brought to trial and Renee decides to return to school. That is not real life.³⁸⁵

Epifano objects to what she considers to be an overly tidy ending after the 45 minutes that the show allots to this complicated and messy issue.³⁸⁶ She is upset and offended,³⁸⁷ and understandably so.

380. *Id.*

381. *Id.*

382. *Id.*

383. Angie Epifano, *Survivors Dishonored: A Response to SVU*, FEMINISTING (Apr. 26, 2013), <http://feministing.com/2013/04/26/survivors-dishonored-a-response-to-svu/> [<https://perma.cc/TY5U-D5XE>].

384. *Id.*

385. *Id.*

386. *See id.*

387. *See id.*

CONCLUSION

What popular culture representations offer are ways to think about the issues that confront society while also creating some distance between the issues and the viewer's personal life.³⁸⁸ Such television series as *Friends*, *Mom*, and *The Conners*; such films as *Legally Blonde*; and such novels as *The Wife* are entertainment that carry messages to those who consume that entertainment. Network television shows might have up to 21 minutes in an episode if they are half-hour shows or up to 43 minutes if they are hour-long shows to present viewers a problem and deliver a solution.³⁸⁹ Their mission is to entertain, although they often insert a message during the entertainment.³⁹⁰ Even shows without such short time constraints have practical limits—money or viewer patience—and they must tell a story that captures viewers' attentions. Too much moralizing or horror, for example, limits the audience. Lack of audience might lead to cancelation.³⁹¹ However, some shows, such as the ones discussed in this

388. Such distancing is most obvious in popular culture about science fiction in themes such as human rights. See Christine A. Corcos, *Visits to a Small Planet: Rights Talk in Some Science Fiction Film and Television Series From the 1950s to the 1990s*, 39 STETSON L. REV. 183, 186–87 (2010).

389. See, for example, the running times for the episode “Kreplach and a Tiny Tush” of the show *Mom*, 19 minutes, and for the episode “Girl Dishonored” of the show *Law & Order: SVU*, 43 minutes. *Mom: Kreplach and a Tiny Tush* (CBS television broadcast Jan. 7, 2016); *Law & Order: Special Victims Unit: Girl Dishonored*, *supra* note 343. While the shows occupy thirty minutes and sixty minutes of network broadcast time respectively, commercials and other non-story time occupy the rest of the airtime for such episodes.

390. A number of scholars have examined television show messaging. For recent studies, see Jennifer Hoewe and Lindsey A. Sherrill, *The Influence of Female Lead Characters in Political TV Shows: Links to Political Engagement*, 63 J. BROAD. & ELEC. MEDIA 59 (2019) (study of the effect of powerful female characters on viewers and viewers' subsequent interest in politics and political engagement); John M. Tchernev et al., *Forceful or Funny? Audience Interpretations of Narrative Persuasion in Satirical Entertainment Media*, 72 COMM'C'N STUDS. 734 (2021) (viewers tend to understand characters' intentions but not writers' messages); BARBARA VILLEZ, TELEVISION AND THE LEGAL SYSTEM (2009) (viewers in France and the U.S. learn significant lessons about their own legal systems from watching legal shows, and in the French case, absorb mistaken impressions about the French legal system).

391. See for example, *Quantico*, which ABC canceled after three seasons. Nellie Andreeva & Denise Petski, ‘*Quantico*’ Canceled After Three Seasons On ABC, DEADLINE (May 11, 2018, 1:40 PM), <https://deadline.com/2018/05/quantico-canceled-after-three-seasons-abc-priyanka-chopra-1202386965/> [<https://perma.cc/3XST-3SXV>] (“But with its dense narrative and heavy serialization,

article, do engage with what is an ongoing concern for the public. With regard to Title IX, those concerns include protections for persons, particularly the young, attending educational institutions. These persons are at risk for exploitation by those persons who have responsibility for and power over them. At the same time, the public expects some protections for those who undertake the work necessary to provide for the education of those attending these institutions.

Popular culture representations of these issues over the past 20 to 30 years suggest that in a number of cases those representations are complex as they are in real life. The characters in popular culture television and film have varying reactions to situations that Title IX could address. Many persevere without making Title IX claims. Elle's fictional institution fails her, but she triumphs and graduates at the top of her class. Her success is a Hollywood fantasy. She seems to bear no scars from her encounter with Callaghan. The harassment that she undergoes, however, is also an unfortunate example of the kind of behavior that women too often still encounter today.³⁹² The depiction of Ross and Elizabeth's inappropriate relationship also seems to have no long-term consequences, but *Friends* does point out, through the comments of Ross's colleagues, that it is a violation of Title IX. Some fictional institutions, like *The Big Bang Theory*'s Cal Tech and Becky Conner's community college, in episodes set years later demonstrate that they take Title IX seriously to protect students from sexual harassment. *The Conners*, set in the U.S. of this decade, shows a student who makes a dramatic decision to protect a professor with whom she is having an inappropriate relationship. Her decision is precisely the sort of choice that Title IX should protect against. It forces viewers to think of the purpose of Title IX: should teachers and the students they supervise have any sort of intimate relationship at any time, given the unequal power in that relationship? And if such relationships take place, who should regulate them?

Title IX does not seem to have protected *Will & Grace*'s Will Truman because Will and his parents did not pursue a claim under the law's provisions. The late 1990s show does not discuss what effect the statute could have had on him had his parents pursued a claim under it. *Two and a Half Men*'s Jake Harper is both bullied and bully. He seems to emerge unscathed, even though he has faced some Title IX consequences. The

the series started to lose momentum in the second half of its first season and continued to see declines though Season 2 and into Season 3.”).

392. Anemona Hartocollis, *A Lawsuit Accuses Harvard of Ignoring Sexual Harassment by a Professor*, N.Y. TIMES (Feb. 9, 2022), <https://www.nytimes.com/2022/02/08/us/harvard-sexual-harassment-lawsuit.html> [<https://perma.cc/K57G-33BD>].

show, however, does spend some time focusing on bullying and its effects on other victims.

Finally, *Law & Order: SVU*'s treatment of sexual assault in the episode "Girl Dishonored" presents a stark view of campus violence against female students and questions about whether university administrations do enough to protect those women from rape.³⁹³ While the episode is just one popular culture example, it is an episode in one of the most popular series on U.S. television.³⁹⁴

The contrasts between the shows suggests that as the public becomes more aware of issues involving Title IX, even if it does not know precisely what entails, writers are more comfortable including plots discussing the statute. Such representations offer the public the opportunity to think more deeply but at a remove about fictional characters whose situations might resemble their own. Popular culture can emphasize or revive interest in campus sexual harassment if the public begins to lose interest.³⁹⁵ That could happen as universities settle civil cases and perpetrators begin to serve their sentences.³⁹⁶

Popular culture representations of Title IX and other legal issues will continue. Many members of the public enjoy legal dramas and comedies. That the images they see might not be entirely accurate is not the point. They enjoy watching, thinking about, and discussing the messages that popular culture presents. The public appreciates stories that tell them about issues that affect them and their lives. If popular culture helps the public evaluate the world while it entertains, then it performs a valuable function.

393. Charlotte Huff, *A crisis of campus sexual assault*, 53 AM. PSYCH. ASS'N 26 (2022), <https://www.apa.org/monitor/2022/04/news-campus-sexual-assault> [<https://perma.cc/FJP6-QEHR>].

394. The show has been on NBC since September 1999. Victoria Hannan, *Law & Order: Special Victims Unit: a strangely comforting show about the most heinous crimes*, THE GUARDIAN (Sept. 6, 2022, 13:30 EDT), <https://www.theguardian.com/culture/2022/sep/07/law-order-special-victims-unit-a-strangely-comforting-show-about-the-most-heinous-crimes> [<https://perma.cc/SD2F-N6L7>]. NBC has renewed it for a 24th season. *Law & Order: Special Victims Unit: Season 23 Ratings*, TV SERIES FINALE (May 20, 2022), <https://tvseriesfinale.com/tv-show/law-order-special-victims-unit-season-23-ratings/> [<https://perma.cc/7RV3-PZ7S>].

395. Nikki Graf, *Sexual Harassment at Work in the Era of #MeToo*, PEW RSCH. CTR. (Apr. 4, 2018), <https://www.pewresearch.org/social-trends/2018/04/04/sexual-harassment-at-work-in-the-era-of-metoo/> [<https://perma.cc/MTH9-HS7C>].

396. *Universities face few consequences once scandals subside and victims are paid*, M LIVE (Aug. 3, 2021, 9:16 AM), <https://www.mlive.com/public-interest/2021/07/universities-face-few-consequences-once-scandals-subside-and-victims-are-paid.html> [<https://perma.cc/H94W-UCE3>].

It does simplify complex issues, but it also provides a narrative for consumers of that culture to begin a discussion of the ideas it presents.