ABSTRACT

Valerie B. Glassman, THE JUDICIALIZATION OF STUDENT CONDUCT ADMINISTRATION AND ITS IMPACTS ON PRACTITIONERS. (Under the direction of Dr. Travis Lewis, Department of Educational Leadership; May, 2021.)

This study examined the lived experiences of student conduct administrators in light of the impacts of the "judicialization" of their profession, illustrated in this sphere as the use of civil litigation to resolve matters typically addressed through campus disciplinary systems, the encroachment of students' attorneys into the disciplinary process, and the maze of legislation and case law regulating this work. Using forty years of research that studied the impacts of medical malpractice litigation stress on physicians, the scholarly practitioner found parallels among reported impacts between both sued and non-sued student conduct administrators and doctors.

A national survey of 350 student conduct administrators followed by interviews with 12 survey respondents set out to determine the ways in which the changing nature of their profession effected their personal lives, professional work, and beliefs about the profession of college discipline. The Concerns About Litigation Survey for Student Conduct Professionals revealed significant differences in reported impacts between several demographic groups. These data mirrored results from the studies on physicians pertaining to the same demographics.

The interviews invited participants to share personal narratives about their lived experiences and led to the discovery of seven themes pertaining to the judicialization of their work: (1) communication, (2) conservative decision making, (3) mental health concerns, (4) responding to perceptions of what student conduct is, (5) the role of campus legal counsel, (6) the shift from being student-centered to process-centered, and (7) impacts of students' attorneys.

THE JUDICIALIZATION OF STUDENT CONDUCT ADMINISTRATION AND ITS IMPACTS ON PRACTITIONERS

A Dissertation

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by

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DEDICATION

In loving memory of

Ria Van Ryn

and in honor of my incredible family

Nan and Ira Kolko, Lauren, Allen, and Samantha Kolko, Rosalie and Siggy Kolko,

Harriet and Joel Glassman, and Matthew and Rafi Glassman.

Thank you for your love and support.

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CHAPTER 1: INTRODUCTION

Traditionally, the role of the college student conduct administrator is to receive reports of allegations of misconduct, meet with a student to understand their perspective on the matter, and evaluate all information to determine if a policy has been violated based on a particular institution's standard of proof (Dannells, 1997; Stoner & Lowery, 2004; Waller, 2013). In some cases, the student conduct administrator may refer cases to a trained hearing panel to adjudicate allegations. When a student is found responsible for violation of policy, the conduct officer or hearing panel issues sanctions, or consequences, commensurate to the nature and circumstances surrounding the violation, its effect on the community, university interests, posture of the responding student, and the student's previous disciplinary history. If the student disagrees with the outcome or believes that a procedural error may have influenced the findings, there is often an appeal process through which the student can contest the decision.

For nearly the entire formal existence of the field, student conduct has strived to be developmental in nature, taking into context the holistic nature of the student and incident and implementing procedures that will enhance the student's moral reasoning, self-awareness, values clarification, and decision-making (Greenleaf, 1978). Student affairs personnel programs, which are a common pathway to entry-level positions in student conduct administration, are laden with coursework on student development theory, history of American higher education, environmental theory and assessment, and diversity/inclusion. These classes are designed to prepare professionals to challenge and support students in all stages of their college experiences.

There is agreement among educators and researchers about the skills and knowledge that a student conduct administrator must possess in order to be effective. These include knowledge of the law and key judicial decisions that shape current practice (Gehring, 2006; Glick, 2016;

Waller, 2013). Very little, if any, of master's coursework deals with higher education and the law; Horrigan (2016) cites from the Council for the Advancement of Standards in Higher Education (CAS) an emphasis of student affairs preparation programs on graduate-level study in foundational studies, professional studies, and supervised practice. Expertise in higher education law does not appear to be a requisite for entry-level professionals. Freeman et al. (2016) underscore the value of legal knowledge and inclusion of such coursework in doctoral programs designed to prepare scholarly practitioners.

However, legal issues, case law, and attorneys have impacted the practice of student conduct administration significantly over the last decade (Horrigan, 2016; Miller, 2018; Shook & Neumeister, 2015; Waller, 2013). Students and their families have increasingly sought relief through the intervention of attorneys to support them in navigating what they believe to be a quasi-judicial process. This is especially prevalent when students are suspended or expelled from their institutions, a loss of what has been perceived as a property right to education. The infiltration of attorneys and legalistic language into what is fundamentally supposed to be an educational process, along with the possibility of lawsuits, has created a climate of fear, wariness, and weariness among student conduct practitioners. This study examined the extent of this impact and evaluated a potential intervention.

Background of the Problem

The emotional experience of the student conduct administrator today—and consequently, the changes to professional practice—is profoundly different from that of only ten years prior. In the 2000s, the practice of administering campus disciplinary processes deliberately emphasized student development and holistic education; this philosophy substantiated the change in name of the Association for Student Judicial Affairs to the Association for Student Conduct

Administration (ASCA) in 2008 (Bhatt, 2017; Horrigan, 2016). Today, nearly every aspect of the conduct administrator's work is regulated by a strategy to avoid confrontation and possible litigation. Codes of conduct are based on federal and state legislation which outlines criminal behavior, but also include expectations for students unique to each institution that detail policies for everything from academic integrity to use of campus facilities to how and where to protest.

For new student conduct professionals starting in the field, it is naïve to believe that every aspect of their work is neatly contained in the rules and regulations handbook. Every written word is subject to scrutiny. Every verbal utterance may be audio recorded and later reinterpreted. Because most staff are graduating programs from schools of education, counseling, or social work and not of law (Glick, 2016; Janosik et al., 2006; Nagel-Bennett, 2010; Sims, 1971) they arrive unprepared and unaware of the legalistic landscape awaiting them. There may exist some training or onboarding specific to each campus, and professional associations may offer specialized continuing education (Janosik et al., 2006) but conduct administrators across the country must now think more like a lawyer and less like a counselor or educator. This is often to the detriment of those students who would benefit from developmental, thought-provoking conversations that challenge them to reflect on their personal values and how their behavior does or does not align.

The dissonance between the idealized work of helping young college students to make better choices and the actual work of avoiding risk and litigation creates a precarious emotional state for student conduct administrators, which in turn may influence their daily work, mental and physical health, and interpersonal relationships. For example, although student disciplinary records are confidential, student conduct personnel recognize the very public nature of their work. Students themselves share details about their experiences with student conduct with their

peers, and at times communicate mistruths or lies regarding their interactions, meetings, or sanctions. This in turn antagonizes those who work in student conduct offices and generates a negative image of the staff.

Student conduct personnel also suffer scrutiny from senior level administrators. When a student believes they have been snubbed by the disciplinary process, it is not unusual for a parent or family attorney to place a call to a dean or vice provost. This is almost always an administrator who is completely removed from the disciplinary process and either unaware or ignorant of the appropriate procedures for disciplinary case resolution. Such interference in the daily work of student conduct administrators not only heightens the process to one that feels legalistic and overexposed, but also reveals deep inequities regarding access to such senior staff and ability to afford counsel.

Today's student conduct administrators work under extreme conditions in which a single misstep could result in potential litigation (Baldizan, 1998; Waller, 2013). It is not uncommon for offices of student conduct to have close relationships with university counsel, and while a law degree may be handy for a student conduct professional, it certainly does not exempt one from the stress and anxiety of the work. Even the threat of merely having to deal with a student's lawyer can create significant interference in a student conduct administrator's life.

There has been no literature specifically discussing how concerns about litigation and the judicialization of the disciplinary process have impacted the professional work and personal lives of student conduct administrators. However, there exists several decades' worth of research on the ways in which physicians' stress that stems from lawsuits and malpractice litigation has very real physical and emotional effects on the individual. These "critogenic" (or "law-caused") harms can include everything from restlessness and gastrointestinal problems to substance use

and suicidal ideation (Charles et al., 1984; Charles et al., 1985; Fulero, 2008; Gutheil et al., 2000; Wilbert & Fulero, 1988). Because the origins of litigation stress in both physicians and student conduct administrators may generate similar behaviors, emotions, and reactions, it seems apt to apply the medical malpractice stress literature in studying how concerns about litigation impact student conduct staff. While Miller's (2018) research examined the impacts of Department of Education investigations pertaining to Title IX on higher education administrators, this study was the first of its kind to investigate the ways in which the judicialization of the practice and concerns about litigation pertaining to all types of policy violations affect campus disciplinary administrators.

Naming and Framing the Problem of Practice

The profession of student conduct administration has been studied in various frameworks for over 50 years (Bhatt, 2017; Fley, 1963; Gillilan, 1997; Glick, 2016; Horrigan, 2016; Jackson, 2014; McNair, 2013; Nagel-Bennett, 2010; Waller, 2013). In the last three decades, researchers have more closely examined how stress and burnout in particular play a role in attrition from student affairs work in general (Burke et al., 2016; Howard-Hamilton et al., 1998; LaVant, 1988; Marshall et al., 2016; Mullen et al., 2018; Murphy, 2001; Quiles, 1998; Rosser & Janivar, 2003), but there is very little information pertaining to how the judicialization of college discipline has impacted the personal lives and professional practices of conduct administrators today. The encroachment of lawyers into the disciplinary process and a return to legalistic language is a relatively new phenomenon that has emerged approximately over the last decade, since the U.S. Department of Education's Office for Civil Rights issued the Dear Colleague letter (Ali, 2011) that required complainants and respondents in Title IX-related cases be permitted to have an

advisor of their choice—including attorneys—at their hearings. The subsequent reactions of student conduct administrators have not yet been documented by researchers.

However, the impact of concerns about litigation, particularly as it relates to medical malpractice stress, has been extensively studied in various settings around the world (Arimany-Manso et al., 2018; Benbassat et al., 2001; Bushy & Rauh, 1993; Charles & Kennedy, 1985; Charles et al., 1985; Fileni et al., 2007; Martin et al., 1991; Wilbert & Fulero, 1988; Youngberg & Soto, 1990). These reports, both qualitative and quantitative in nature, capture important data about the reactions physicians experience when faced with a potential lawsuit and provide insight into changes they have made in their daily practice with patients in attempt to avoid such litigation in the future. In the realm of student conduct practice, no such studies have yet taken place.

The specific problem addressed in this study was that there is little to no understanding of the physical, emotional, and psychological reactions that student conduct administrators experience in response to the increasing judicialization of their field. This study considered how physicians have responded to malpractice litigation and framed the concern of critogenic harms in the realm of practitioners of the college student disciplinary process. Such new research may reveal successful approaches to combatting burnout in student affairs and assist conduct officers in managing and coping with the unexpected problems of judicialization.

Purpose of the Study

The purpose of this mixed methods study was to understand the extent of the impact of judicialization on student conduct administrators. It explored the scope and breadth of how critogenic harms are experienced by college disciplinary officers and the ways in which they respond. The study sought to uncover how concerns about litigation directly affect student

conduct administrators in both their personal and professional lives. Using an action research plan, the scholarly practitioner examined the self-reported experiences of student conduct practitioners and developed evidence-based approaches to relieving litigation-related stress and reducing the impacts of judicialization.

Action research is a type of inquiry that allows the researcher-participant to meaningfully reflect on their situation and take steps to create change (Lewin, 1947). In considering potential methodologies of understanding the phenomenon of the judicialization of student conduct administration, the action research model was of particular use because it entails "the systematic collection of information that is designed to bring about social change" (Bogdan & Biklen, 1992, p. 223). Stringer (2007) constructed a three-step approach using the terms "Look" (observing the current landscape and collecting data), "Think" (organizing, interpreting, and analyzing the data), and "Act" (implementing solutions based on priorities and reviewing results). These steps form the basis of Sagor and Williams' (2017) four stage action research process, which acknowledges the value of regarding the problem within theoretical frameworks. As such, the study explored through both qualitative and quantitative investigative methods and the execution of interventions grounded in the findings how to practically address concerns about judicialization by student conduct administrators.

Data were collected via a survey administered to self-identified student conduct practitioners in the United States. This survey was derived from Brodsky's (1988) Concerns About Litigation Scale II, which the author was given permission to adapt and utilize for the current study. The survey, titled the Concerns About Litigation Survey for Student Conduct Professionals (CALSSCP), contained questions that were drawn from various studies

investigating the impact of litigation/malpractice stress on physicians. Participants self-identified interest in participating in interviews for more in-depth exploration of the survey responses.

Study Questions

The questions guiding this study were:

1. What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?
2. How do college student conduct administrators experience the impact of judicialization on their professional work?
3. How do college student conduct administrators experience the impact of judicialization on their personal lives?
4. In what ways do litigation and judicialization education workshops reduce critogenic harms on college student conduct administrators?

Theoretical Frameworks

Because this study sought to uncover the specific emotional, practical, and physiological responses to the judicialization of student conduct, it was based in psychological theory that had been used previously to understand how physicians manage their reactions to litigation and malpractice stress. Four theoretical frameworks, each used in the medical literature to examine the ways in which doctors have reacted to malpractice suits, are described below, along with a brief explanation of how each might help to illuminate the various responses that student conduct administrators have to the increasingly legalistic landscape encroaching on the university disciplinary process.

One of the most famous theories pertaining to how people deal with the stress of litigation was originally written as a framework to understand the ways in which people deal

with grief and loss. Elizabeth Kübler-Ross's (1969) Five Stages of Grief is unique in that it not only addresses the emotional responses that people have to death and dying, but also how people judge those feelings. These stages, which include denial and isolation, anger, bargaining, depression, and acceptance, were translated by such researchers as Lavery (1988), Smaldone and Uzzo (2013), Tunajek, (2007), and Youngberg and Soto (1990) to interpret the mental journeys of doctors after they are named in a lawsuit or receive performance evaluations. Because these analyses look at litigation as the trigger event that causes stress, it is appropriate to consider the reactions of student conduct administrators to litigation in the same framework.

The set of concepts known as appraisal theory seeks to explain how one's interpretation or evaluation of an incident (the "appraisal") determines their emotional response. Lazarus and Folkman (1987) pioneered some of the earliest research into appraisal theory, which later became one of the important theoretical frameworks relating to the study of emotion (Ellsworth & Scherer, 2003). There are two components of the appraisal: (1) the evaluation of the harm or threat already experienced, along with the potential to master the challenge; and (2) the consideration of the resources available to manage one's coping. Appraisal theory may be useful to understanding how student conduct administrators cope with litigation and judicialization because it considers numerous factors including the event itself, the ways in which the individual perceives the event, the resources available and the individual's ability to utilize them, along with how the individual has dealt with similarly stressful situations in the past. Together, the various appraisal theories could provide insight into how conduct administrators evaluate the problems of judicialization and litigation threat, as well as help predict how they might manage their emotions based on their previous experiences with comparable circumstances. For example, if a conduct administrator has dealt with other traumatic life events before being named in a

lawsuit, their prior coping practices and their subsequent reflection on those events could serve to inform their coping skills in the present litigation.

Maddi's hardiness model (Kobasa et al., 1982; Maddi, 2006, 2013) expanded on the appraisal theory paradigm by removing the event itself from the picture. Maddi and his colleagues determined that one's personality characteristics, and not necessarily the nature of the event, could help safeguard an individual against stressful experiences. Hardiness, writes Maddi (2006), is a learned trait that demonstrates high levels of strength in the three Cs: commitment, control, and challenge. Also related to resilience, hardiness provides the "courage and motivation" (Maddi, 2006, p. 161) for people to engage in healthy, problem-focused coping processes and allows them to appraise an event as less stressful. Several studies have investigated the ways in which hardiness has impacted student affairs professionals' descriptions of burnout (Murphy, 2001; Quiles, 1998; Rosser & Janivar, 2003) along with how hardiness has helped mental health professionals overcome stress from litigation in their work (Brodsky, 1988). This study furthers the current body of knowledge about hardiness by examining how it impacts the reactions of student conduct practitioners to judicialization and litigation threat.

Finally, Caplan's (1964) phases of crisis may provide a structure for the various responses a student conduct officer has to the increasingly legalistic climate of the profession. Grounded in the belief that problem-solving skills can increase resistance to stress, the four phases outline the rise in tension, an overburdening of coping mechanisms, lingering dysphoria, and coming to terms with the problem. In a report on physicians practicing in rural regions in the United States, Bushy and Rauh (1993) compiled the human response characteristics to crisis from earlier literature, categorized them into Caplan's phases, and applied them to professional

litigation, i.e., malpractice suits. The phases of crisis may serve to validate student conduct professionals' responses to litigation and ultimately suggest strategies for intervention or relief.

Definition of Key Terms

Judicialization

This study marked the first time the term "judicialization" is used to describe the formal and informal treatment of the undergraduate disciplinary process as a quasi-judicial/legalistic system. Vallinder first used this term in 1994 to describe a change in the political realm:

1. the expansion of the province of the courts or the judges at the expense of the politicians and/or the administrators, that is, the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts, or, at least,
2. the spread of judicial decision-making methods outside the judicial province proper. In summing up we might say that judicialization essentially involves turning something into a form of judicial process (p. 91).

Sweet (2002) added to this definition by applying judicialization to forms of political dispute resolution. The author explained that judicialization is an "observable" and "measurable" phenomenon in which a judicial mechanism overtakes the "normative structure governing exchange in a given community" (Sweet, 2002, p. 17). Sweet's interpretation more aptly lends itself to the college student disciplinary process in that it refers to legalistic systems superseding those processes specifically developed to facilitate the adjudication of policy violations.

Hirschl (2008) completes the understanding of this term as it is used in the current study by underscoring that judicialization relies on courts and judicial means to address "core moral predicaments" (p. 119). The author writes that judicialization is actually three interconnected processes:

1. "the spread of legal discourse, jargon, rules, and procedures" (p. 121),
2. "the expansion of the province of courts and judges in determining…outcomes, mainly through administrative review…and "ordinary" rights jurisprudence" (p. 121),
3. the dependence on courts to make decisions pertaining to major controversies "that define (and often divide) whole polities" (p. 123).

Critogenic Harms

Following dialogue that explored the emotional impact of civil litigation on physicians, Gutheil et al. (2000) coined the term "critogenesis" to relate to "the intrinsic and often inescapable harms" (paragraph 5) triggered by the act of being named in a lawsuit. From the Greek roots *crites* and *genic* ("judge" and "sprung from"), critogenic harms may be the traumatic result of one's involvement in legal action or perhaps even from the fear of being involved in legal action. Researchers who have studied physicians' traumatic stress stemming from medical malpractice litigation cite such critogenic harms as sleeplessness, loneliness, isolation, increased substance use, relationship troubles, overeating, reduced productivity, and job dissatisfaction (Arimany-Manso et al., 2018; Bushy & Rauh, 1993; Fileni et al., 2007; Gutheil & Joo, 2017; Martin et al., 1991; Nash et al., 2004; Ryll, 2015; Youngberg & Soto, 1990).

Assumptions

The current study made assumptions about student conduct administrators and the nature of the disciplinary process. The first was that conduct administrators adhere to the philosophy that student discipline is, at its core, an educational process that addresses the holistic well-being of the student. Although student conduct processes do not deny that some consequences, or sanctions, are punitive in nature, the goals of student discipline are to enhance moral development and decision-making, protect the safety and welfare of the community, and provide

opportunities for student respondents to address and repair harms made to others (ACPA-College Student Educators International, 2010). This assumption is critical to the underlying principle of the study that disciplinary processes on college campuses are not the same as criminal or civil court trials. Although the behavior at issue may be the same (e,g., a student may be in violation of a campus policy and state law for consuming alcohol under the age of 21), the potential outcomes and stakes for the individual may be different. At its extreme, the strongest consequence a college can impose on a student is expulsion, or permanent separation from the institution. Institutions of higher education cannot impose jail sentences or the death penalty. It is for these reasons that colleges and universities frequently use lower standards of proof (commonly preponderance of the evidence or clear and convincing evidence) to determine whether policy violations have occurred.

The study also assumed that whether enrolled in a public or private institution of higher education, the student has a right to a fundamentally fair disciplinary process. Although not as rigorous a standard as due process, fundamental fairness requires that rules and policies must be reasonable and easily accessible or known to students (Smith, 2011). Both due process, a constitutional right guaranteed to students at public institutions by *Goss v. Lopez* (1975), and fundamental fairness require that students must be notified in advance of the charges against them, have the opportunity to be heard, and "confront evidence against [them]" (ACPA-College Student Educators International, 2010, p. 6). The study also assumed that any given campus's disciplinary process allows student respondents adequate opportunity to present their perspective and permits, when appropriate, avenues of appeal based on reasonable grounds of appeal. These grounds could include procedural errors during the investigation and/or hearing or new information only available after the hearing that would have substantially impacted the findings.

Finally, this study presumed that students have the capacity to advocate for themselves and respond directly to allegations of misconduct. Several landmark court cases have concluded that students can represent themselves in campus disciplinary hearings and that such proceedings do not necessitate students' use of attorneys (*Gorman v. University of Rhode Island*, 1986; *Wasson v. Trowbridge*, 1967). The idea that policies guiding student behavior and the processes by which such behavior is adjudicated are all written in clear, unambiguous language is essential to the core belief that students themselves should respond directly to allegations against them. A developmental student conduct process presumes that students accept responsibility for their decisions and recognize how to make better choices. The Final Rule on Title IX (Office for Civil Rights, 2020) not only permitted attorneys to be present in certain proceedings for sex- and gender-based harassment but required them to be able to cross-examine in real time other involved parties. It is worth noting that in 2013, North Carolina became the first state to permit full legal representation—at the student's expense—at certain types of campus disciplinary hearings (Disciplinary Proceedings; Right to Counsel for Students and Organizations, 2013).

Scope and Delimitations

The survey instrument utilized in this study was made publicly available as a link to a Qualtrics survey hosted by East Carolina University and shared through the following forums: ASCA (Association for Student Conduct Administration) Women and Student Conduct Facebook group, Student Conduct Professionals Facebook group, the and the email listservs of ACPA – College Student Educators International, Association for Student Conduct Administration, Southern Association for College Student Affairs, and the student conduct administrators group in the Consortium on Financing Higher Education. Because the survey instrument asked questions that are uniquely related to the American experience of student

conduct administrators and indirectly referenced federal legislation, participants who identified as living outside the United States were eliminated from the study. Further, participants who self-reported that they did not work at least 75% full-time equivalent as a student conduct administrator were also eliminated.

The focus of the study centered on three aspects of the perceived impact of judicialization on student conduct officers: the changes to professional practice, beliefs about attorneys' involvement in student disciplinary processes, and the self-described impacts on one's personal life. The instrument questions were largely derived from Brodsky and Cramer's (2008) Concerns About Litigation Scale and previously published studies on physicians' concerns about litigation and their responses to malpractice stress. As researchers have begun to explore the impact of litigation and its threat on law enforcement officers and mental health clinicians, the results of this study on student conduct administrators expand what is known about how professionals in high-risk careers react to potential lawsuits. However, what is gathered from this study may not necessarily translate to the experiences of other student affairs practitioners, such as staff in cultural or religious identity centers, whose interactions with students do not directly affect a student's continuation of studies or transcript notations.

Significance of the Study

This study extends extant literature on the lived experiences of student affairs professionals and student conduct administrators and fills a gap in the literature pertaining to the emerging phenomenon of the judicialization of college disciplinary processes and its impact on practitioners. It connected theoretical frameworks of human responses to stress, coping, crisis, and burnout with what is known about how student conduct officers manage and master concerns about litigation.

Advances in Practice

The goal of this study was to first understand the scope of the problem of judicialization in current student conduct processes. To this point, no research has evaluated the extent to which the encroachment of lawyers or litigation threat has caused critogenic harms to those professionals who work in campus discipline. While the literature suggests that professionals in roles that face a high degree of public scrutiny are susceptible to stress and trauma, the current research uncovered triggers unique to student conduct and found strong connections between physicians' reactions and student conduct officers' reactions. The more detailed information that can be collected about diverse student conduct administrators' self-reported responses to judicialization, the more the profession can harness and modify existing practices used by physicians to deal with the stress of malpractice suits based on specific physical, emotional, or physiological symptoms.

Further, the study utilized the aforementioned theoretical models and data collected in considering new interventions such as conference workshops, online webinars, and peer support groups that address concerns of litigation and judicialization by conduct officers. Such interventions teach practical, theory-based coping methods that reduce stress, enhance confidence, and increase resilience to such threats. Based on self-reported demographic information, data also emerged that relates to specific strategies designed for different populations. For example, the study revealed significant differences between practitioners who identify as male and those who identify as female in both their professional work and personal lives; the different genders may require different skill sets for managing critogenic harms.

Implications for Social Justice

In their chapter "Organizational Justice," Cropanzano et al. (2005) identify three categories of workplace justice (fairness), how employees perceive these justice frameworks, and the implications for employee well-being. The authors cite research that links the perception of injustice in the workplace, whether it is procedural, distributive, or interactional, to experiences of stress. Although observations of workplace justice are subjective, they play an important role in the well-being of employees. Consequences of perceived injustice have been shown to include burnout, absenteeism, dissatisfaction with job responsibilities, and a lack of engagement with the greater work organization (Graham, 2009). It is therefore imperative for the current study to illuminate the ways in which the judicialization of student conduct creates what is construed an unjust environment for its practitioners. Understanding how conduct administrators identify workplace injustice can also contribute to specialized approaches for alleviating their concerns.

For example, an administrator may believe there is procedural injustice when they are requested to make exceptions to typical outcomes, or when a student exhausts the appeal process and then uses an attorney to find other venues to continue arguing the case. But the procedure itself must be perceived as fair in order for employees to respond favorably (Cropanzano et al., 2005). In these scenarios, student conduct officers might perceive the overall institution in a negative light, which Cohen-Charash and Spector (2001) explain could lead to counterproductive behaviors that could, in the long term, harm the organization. These reactions to judicialization could therefore have greater implications than on just the individual. A failure to trust the organization because of perceived procedural injustice may lead to a lack of commitment as well, leading to increased anger and perhaps even working against the organization (Cohen-Charash & Spector, 2001). Framing the concerns of workplace justice within the theoretical

models of appraisal and hardiness may lead to new tools that teaching problem-based coping skills that help the conduct officer respond constructively to the concerns of litigation and the encroachment of attorneys.

Summary

The judicialization of student conduct and its impact on practitioners is a previously unexplored phenomenon. As students increasingly utilize attorneys to help them navigate their campus disciplinary matters, the once developmental process has become more legalistic in nature. Student conduct officers, who typically hold advanced degrees in social work, education, or counseling, find themselves unprepared to deal with high levels of scrutiny or in situations that challenge their ethical obligation to treat all students equitably. The professional organization for practitioners, the Association for Student Conduct Administration (ASCA), currently offers no guidance for managing these concerns beyond a single white paper on "An Attorney's Role in the Conduct Process" (King & White, n.d.). As such, there seems to be no standard of practice for handling concerns of judicialization.

Literature, especially from the medical disciplines, offers detailed examples of how other professionals have responded to litigation threat in their work. Physicians, who regularly perform procedures that may unintentionally negatively impact a patient, are particularly vulnerable to being sued for malpractice. Without any experience or training on how to manage their feelings, physicians frequently respond to this malpractice threat in ways they may not even recognize are occurring. Studies have concluded that the physical symptoms and emotional reactions stemming from malpractice have resulted in legitimate psychological disorders akin to Post-Traumatic Stress Syndrome and other noticeable concerns such as substance abuse, weight gain, and gastrointestinal problems (Paterick et al., 2017; Ryll, 2015; Tunajek, 2007). These reactions

manifest in ways that affect a physician's personal life and professional work. This study evaluated whether student conduct professionals, who are engaged in high-risk work that might substantially impact a student's academic or professional future, respond similarly to the increasing judicialization of their field and the escalating use of attorneys by accused students to help them avoid being found responsible for policy violations.

The roots of the judicialization of student conduct date back to early 20th century case law that affirmed as precedent the authority of an educational institution to set behavioral expectations for its students. The "creeping legalism" (Dannells, 1997) of the field made a significant surge at the appearance of the 2011 Dear Colleague letter (Ali, 2011) and continues to play a major role in campuses' policy development. Simultaneously, the role of the student conduct practitioner developed over time from that of a stern taskmaster to one of a supportive advisor, fully devoted to promoting holistic development in students. As the climate of student conduct continues to shift back toward a legalistic framework, its practitioners find themselves unable to grapple with the dissonance of fostering student growth amidst a rigid, regulated system. The next chapter will examine significant contributions in research as well as historical influences on the practice of student conduct administration today.

CHAPTER 2: REVIEW OF THE LITERATURE

To understand the evolution of the administration of student conduct processes from the mentality of doling out punishment against what Thomas Jefferson called students' "spirit of insubordination" (Stoner & Lowery, 2004) to one of devoted desire to instill values and provoke moral development, it is important to consider such changes alongside the expansion of the role of the conduct administrators themselves. Also vital to this shift in philosophy are the court cases and legislative statutes that govern the policies and processes of campus disciplinary administration. The first section of this literature review includes a chronological timeline of how the how the profession of student conduct administration came into being using historical documentation, journal articles, and dissertations. It also describes the shift from being purely punitive in nature to developmental and growth-promoting. The second section addresses the "creeping legalism" that has impacted practitioners' attempts to help students reflect meaningfully on their decisions and behavior. It includes both court cases and federal legislation that have reframed the practice of student conduct back into a judicialized structure.

The third section considers what it is like to be a student conduct officer today. Do these practitioners have similar experiences to those student affairs personnel in other functional areas, or does their direct role in facilitating a student's continued enrollment in or separation from the institution position them differently? Several doctoral dissertations from 2000 and after have addressed this phenomenon.

The fourth section of this review examines literature from the medical field, which provides useful information about how physicians have reacted to litigation and malpractice stress. The vast collection of research on physicians' and mental health practitioners' responses to the threat and event of litigation can potentially inform how student conduct professionals,

whose interactions with students may well be some of the most regulated on campus, respond to the judicialization of their field and the increasing presence of students' attorneys in what is expected to be an educational process.

In the final section, the scholarly practitioner presents four theoretical frameworks through which the current study data may be evaluated. Collectively, these theories consider two independent variables: the individual who is experiencing the event and the event itself. They posit that a person's coping skills and previous life experiences can have a profound impact on how the individual assesses the current situation in the broader context of their life's journey. These theories also identify personal attributes that help someone to be more resilient to stress.

History of College Student Conduct Administrators

For as long as colleges and universities have existed in America, so too have formal student disciplinary systems to manage behavior and misconduct. In that the earliest colonial colleges were informed by the infrastructure of the universities at Oxford and Cambridge, frameworks such as student discipline, administration, and coursework were also modeled after the English prototypes (Brubacher & Rudy, 2008). Because the earliest colleges were mainly training institutes for the clergy and public leaders, students were expected to behave in ways that aligned with the curriculum. Predicated on the concept that the colleges were founded in part to keep young Puritans under control, the faculty, by authority of the college president, regularly administered corporal punishment to those who "needed to be brought to moral submission" (Smith, 1994, p. 78).

The colleges also erected small and meager residential facilities to board the students who attended. These buildings housed both students and faculty in an attempt to create a social life that integrated intellectual pursuits and moral stricture, thus developing a power dynamic in

which the faculty ruthlessly monitored the students' every move (Brubacher & Rudy, 2008). Set against the context of the emerging American revolution, college campuses became a hotbed of rebellion and mutiny (Smith, 1994). With instructors burdened with both teaching and disciplinary responsibilities, students soon came to mistrust those who lived among them.

The disciplinary system functioned as one of parent and child, with many of the students who came to study being under 18 years old (Dannells, 1997; Robson, 1985). As such, behavioral issues were dealt with under the doctrine of *in loco parentis*, in which the university had the authority to discipline as a parental figure. Dannells (1997) posits that harsh punishments were in accordance with contemporaneous social mores, given the sovereignty of the church-colony-college relationship and the expectancy that the colleges would regulate every aspect of a student's life. It is of note that by the eighteenth century, while instructors in America were responsible for managing student discipline, in the English universities the same task had now been allocated to special administrators, separating the function of teaching and disciplining, or "proctoring" (Brubacher & Rudy, 2008). This permitted a new type of academic freedom within the classroom and invited students and instructors to develop close bonds, a profound contrast to the colonial campus culture.

In loco parentis existed for over 275 years before it was supported by case law in the early 20th century. The landmark cases *Gott v. Berea College* (1913) and *Stetson University v. Hunt* (1924) affirmed the doctrine as legitimate and lawful. Gott, a local restaurant owner, filed suit against Berea College after administrators forbade students from dining and drinking at off-campus establishments. Gott's business had been significantly affected by this new disciplinary policy. The Kentucky Supreme Court ruled that colleges can set behavioral expectations for their students both on and off campus, and in doing so, set a precedent that existed for almost fifty

years under which a student was subject to a college's broad and vague interpretation of how one should behave (Loss, 2014). Faculty were therefore at liberty to discipline at will, a role they resented as much as the students.

In 1922, a Stetson University student named Helen Hunt was expelled from the institution for allegedly disrupting the sleep of her fellow residence hallmates by ringing cow bells (Lee, 2011). The Florida Supreme Court upheld the college's right to summarily dismiss the student without a hearing, reasoning that "college authorities stand *in loco parentis* and in their discretion may make any regulation for their government which a parent could make for the same purpose, . . .so long as such regulations do not violate divine or human law" (*Stetson University v. Hunt*, 1924).

Following the Civil War, the influence of the German research university had significant impact on the ways in which the American university perceived its students (Dannells, 1997; Gillilan, 1997). An increased emphasis on research and specialization also encouraged attention to the student's intellectual development. Students were now expected to take ownership of their decisions rather than simply collect reprimands and accept punishments for their behavior. Nevertheless, in the years immediately preceding and following *Gott* and *Stetson*, the work of student discipline had been reallocated from college presidents or their designees to trained administrators, which Dannells (1997) suggests was an attempt by college presidents to avoid retribution for harsh punishments. These specialists used counseling and persuasion in place of severe penalties when working with troublesome students. This paradigm more closely aligned with the Germanic model in which faculty found their role of monitoring student behavior to be demeaning and paternalistic (Brubacher & Rudy, 2008).

The "hapless member[s] of the faculty" (Smith & Kirk, 1971) appointed by the president to oversee student welfare soon evolved into what became the deans of men and women. Charged with more than just managing student conduct, the deans' responsibilities expanded as colleges encountered new challenges with coeducation (Lowery, 2011). These pioneers discerned that student discipline was more than meting out punishment, and that students would benefit from consideration of the whole person and thoughtful, personalized attention to each matter. This philosophy was affirmed by the American Council on Education Studies in the landmark document *The Student Personnel Point of View* (American Council on Educational Studies, 1937), which acknowledged the role of the early student affairs workers as legitimate and integral to the holistic development of the student.

The deans of students may have unintentionally splintered their roles from other student personnel workers, who came to specialize in such emerging fields as mental health and career counseling. While the latter group of specialists viewed their work as developmental and promoting positive growth within students, they also mistakenly perceived the role of the dean as that of disciplinarian and punisher, one that was antithetical to their mission (Lowery, 2011). Early records of meetings from deans of students, in fact, demonstrate that these administrators were as concerned about students' character formation and ethical development as anyone else who worked at the college (Dannells, 1997).

In 1963, Fley conducted a thorough historical study of the role of deans of students and other student personnel workers. The author explains that the marriage of counseling and discipline was not readily accepted by those who performed campus services we now identify as financial aid, academic advising, and career services. The emergence of new social sciences such as anthropology and sociology, which offered theoretical frameworks to understanding student

behavior (Gillilan, 1997), helped to legitimize student discipline as it incorporated themes from social and counseling psychology. It is perhaps for this reason that today, nearly all student affairs preparation programs include some aspect of student development theory.

Administration of student conduct changed dramatically following the return of thousands of World War II veterans, utilizing the GI Bill, to universities across the country (Dannells, 1997; Gillilan, 1997; Smith, 1994; Smith & Kirk, 1971). This academically ambitious population, skilled in military service and organizational survival, would not stand for the type of unilateral punishment doled out by deans. However, veterans' focus on school made them disinterested in any kind of confrontation against the system. After all, their military training had enforced conformity to organizational norms and respect for authority. By this time, student conduct administrators had redirected energy toward "rehabilitation of student offenders" (Dannells, 1997, p. 10) and even received professional training specific to campus discipline.

As disciplinary matters focused more on student development, colleges and universities delegated some adjudicatory responsibility to hearing boards of both students and staff members (Sims, 1971). This incited mixed reactions. Many questioned the efficacy of students as peer disciplinarians, particularly set against the context of the campus violence of the 1960s and 70s (Smith, 1994). Students engaged in the Civil Rights and Free Speech Movements also demanded equitable participation in campus disciplinary panels and in forming rules and policies.

With increased student activism came the expanded notion of a student's right to due process in disciplinary hearing procedures and more formalized codes of conduct (Lowery, 2011). Due process shortly became the nucleus of campus discipline, particularly following the historic decision of *Dixon v. Alabama State Board of Education* (1961). Scholars frequently cite

this case as the "death knell" for *in loco parentis* (Lee, 2011, p. 70). It also left a legacy of litigation encroachment in campus discipline.

In 1960, following their dismissal from Alabama State College for their participation in a lunch counter sit-in, six African American students filed suit in U.S. District Court, maintaining that they had been expelled without notice or hearing (Due Process Clause Forbids Expulsion of Students for Misconduct from Tax-Supported College [Due Process Clause], 1962). The district court ruled that because the college had no policy affording the students due process, the college was not obligated to pursue charges in such a manner. However, the Fifth Circuit Court of Appeals overturned this decision, maintaining that the college, as an actor of the state, was required to grant students their Constitutional right to due process.

Dixon not only confirmed due process in public college and university disciplinary proceedings as a student's right, but also motivated institutions to create more formal, legalistic judicial systems to adjudicate misconduct and assign sanctions when appropriate (Baldizan, 1998). Of note, in *Harvard Law Review*'s discussion of the case, both the appeals court and the journal itself promote a more educational, less judicial approach to a student's due process. Quoting the case judgment, the *Review* wrote: "a simple informal conference with a school official would suffice. . .a 'full-dress judicial hearing, with the right to cross-examine witnesses' was thought impractical and unnecessarily disruptive of the academic community" (Due Process Clause, 1962, pp. 1,430-1,431).

Nevertheless, *Dixon*'s impact is felt across both public and private institutions as courts have continued to require institutions to apply standards of due process. Baldizan (1998) laments that the end of *in loco parentis* signified the end of legal support for student conduct administrators acting as parents. Rather, their work is defined by legal precedent and is

"effectively withdrawn from the field of morality and character formation" (Hoekema, 1994, p. 18). Because the institution is deemed to be in a contractual relationship with its students, student conduct administrators are as well. The opportunities to engage in conversation to promote moral and ethical development are overwhelmed by the responsibility to strictly adhere to written policies and procedures. "The institutional focus changed from facilitating growth to defending punitive outcomes" (Thomas, 1987, p. 56).

Laws, Lawyers, Policies, and Mandates: The Judicialization of Student Conduct

Dixon v. Alabama State Board of Education (1961) marked the beginning of what Dannells (1997) termed "creeping legalism" into the administration of college student conduct. While the case confirmed the right of students to due process in campus disciplinary procedures, it also shifted the perception of the institutional relationship from that of parent-child to one that is contractual (Melear, 2003). The GI Bill of 1944, Civil Rights Movement, 26th Amendment, women's rights movement, and anti-war movement all led to a growing sense of student self-determination and independence (Gregory, 2013), thus transforming the underlying philosophy of college student conduct to one that is increasingly legalistic (Bickel & Lake, 1997). While law and policy have always been areas of knowledge important to student conduct administrators, their evolving nature, particularly at the federal level, requires staff to be current with education legislation.

So too have court cases contributed to the "revised institution/student relationship" (Bowden, 2007). Grossi and Edwards (1997) took a relatively early look at case law that would later inform disciplinary administrators on the processing of non-academic policy violations and established procedures that would ensure due process. It is of note that while private institutions are not bound to guarantee constitutional due process rights, scholars (Baldizan, 1998; Bowden,

2007; Grossi & Edwards, 1997; Lowery, 2008; Melear, 2003) affirm that such schools should have clearly delineated rules and regulations in addition to specific disciplinary procedures to which they must adhere. These rules are the "contract" that binds student to institution, and vice versa. Contract theory provides that the student is a consumer of education (Melear, 2003), and therefore, students have turned evermore to the courts to seek judgment on whether their contractual agreements with the institution have been violated.

Federal Legislation and Guidance

All institutions that receive financial support from the United States government, as well as those whose students are eligible to receive federal financial aid, are required to comply with legislation, such as Title IX of the Educational Amendments of 1972 and the Title IV programs of the 1965 Higher Education Act (Lowery, 2008). Although Hunter and Gehring's 2005 study revealed 186 laws and amendments that affect higher education, only a handful have had lasting and significant impact on the practice on student conduct administration (Glick, 2016; Waller, 2013).

Clery Act

The 1990 Crime Awareness and Campus Security Act, later renamed the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (Clery, Clery Act), was passed by Congress to increase transparency about crime on campus and issue timely warnings about serious or ongoing threats to campus. Clery was amended in 2013 to give additional rights to campus victims of sexual harassment, including sexual assault and domestic violence. It is perhaps this law that has been the most intrusive in student conduct work, as it evaluates student behavior which may be considered a violation of law in addition to a violation of campus policy. The nature of Clery compliance requires a true collaboration effort between campus

constituencies including law enforcement, campus security, residence life, student conduct, among others.

In 2014, DeBowes completed a thorough investigation about the knowledge of student conduct administrators regarding the statistical reporting obligations of the Clery Act. The author explored differences in personal factors, institutional factors, and institutional roles that contribute to one's understanding of this complex requirement. Notably, DeBowes comments on one of many arguments against the meaningfulness of Clery Act statistics as an accurate representation of crime on campus: "official" statistics are likely to be underrepresentations of actual crimes on campus (Fisher et al., 2002). Rather, a campus could utilize self-reported data from victimization surveys to get a truer picture of campus behavior.

A 2003 study by Gregory and Janosik assessed the perceptions of campus conduct administrators on the effectiveness of Clery on conduct practices. Although the original study used the term "judicial" to refer to the processes and officers, current practices have shifted to "conduct" in an effort to emphasize the profession's educational, developmental perspective over one that is court-like and legalistic. In 2008, the Association for Student Judicial Administration renamed itself as the Association for Student Conduct Administration, "reflecting the philosophical shift from antiquated legalistic and courtroom-like proceedings" (Association for Student Conduct Administration, 2014). The study's authors reported that over two-thirds of survey respondents indicated no change in their case load since the passage of the Clery Act. However, 50% of those surveyed reported a closer relationship with campus police or security due to the requirements of reporting student behavior that may rise to the level of a crime.

There are two major concerns with how the Clery Act impacts student conduct administrators. The first is that it is perceived by colleges are universities to be an unfunded

mandate; that is, an obligation of high priority but with little or no financial backing to train and support campus Clery Act compliance officers (Glick, 2016). Institutions that fail to comply with the stringent requirements may be assessed fines or lose all federal funding. This places an undue burden on conduct administrators to not only have an intimate knowledge of campus policy, but also of federal and state law and the peculiarities of what is called "Clery geography," or the on- and off-campus locations at which crimes are reportable under Clery. The National Association of Clery Compliance Officers and Professionals (NACCOP) was founded in 2013 specifically to address the complexities of Clery reporting and support campus agencies like police departments, public safety, and student conduct in their effort to comply.

"Clery geography" presents another argument against the accurate portrayal of campus crime statistics. The *Handbook for Campus Safety and Security Reporting* (Office of Postsecondary Education, 2016) makes clear the specific locations on campus, immediately adjacent to campus, and off campus in which an institution is responsible for reporting crimes. One map in the *Handbook* visualizes the public sidewalks directly next to a campus building, streets, and sidewalks on the other side of the street as "countable" geography in which crimes must be reported and added to the campus statistics. The *Handbook* notes, however, that incidents that take place on private property immediately behind those sidewalks across the street are not part of the campus Clery geography and consequently not reportable. Therefore, an indeterminant number of crimes as defined by the Clery Act may take place just beyond these borders in bars, private homes, clubs, and entertainment venues but are not considered part of a campus's statistical count. While an institution may in fact report what it believes to be accurate to the degree that the incidents took place within its Clery geography, the number of students who are engaging in underage consumption of alcohol, drug use, sexual assault, and other crimes

off campus is not included in the annual report, and the public only learns of a fraction of the crimes that take place both on and near institutional terrain.

The second issue regarding the impact on student conduct administrators is that absent or partially completed incident reports make Clery Act compliance difficult. This scholarly practitioner has observed that student resident assistants (RAs) typically write the bulk of incident reports at residential campuses because they report allegations of misconduct in residence halls. As peer advisors, they experience mixed roles of serving as both "dorm police" and residential support providers. RAs may feel pressured to not document misconduct by their residents, such as underage possession or consumption of alcohol, thereby not counting an alcohol law violation in the campus security report. Another problem with RA reporting is incomplete narratives or documentation. An RA may write, for example, that a dozen students were in a room smoking marijuana but only record and report the names of the two room owners with whom the RA interacted directly. In this scenario, only the two drug law violations are reported for Clery purposes when as many as twelve could have been referred. The amount of time this scholarly practitioner has spent on accurate Clery crime reporting, gathering additional information from residential staff, and communicating with the Clery compliance and records manager at campus police has nearly tripled over the last several years.

Title IX

Title IX of the Educational Amendments of 1972 states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Several Supreme Court cases determined that sexual harassment, including sexual violence, is a form of discrimination under Title IX and is therefore prohibited (Lowery,

2008). Sexual misconduct, or behavior of a sexual nature that is conducted without consent and that may include verbal and/or physical harassment, has long been a policy violation standard to many colleges and universities.

The 2011 Dear Colleague Letter from the Office for Civil Rights (OCR) in the Department of Education reiterated and reaffirmed a college's role in adjudicating reports of sexual misconduct in which a student is the alleged perpetrator (Ali, 2011). The letter, applicable to all institutions that receive federal financial aid, compelled colleges to write new procedures to address sexual violence on campus (Miller & Sorochty, 2014) including lowering the standard of proof in sex- and gender-based harassment hearings for students to "preponderance of the evidence." OCR also wrote in the letter that an institution must apply equal appeal opportunities to both parties involved and proposed an accelerated adjudication process with a 60-day limit.

The impact on student conduct administrators was immediate. Media outlets and due process advocates criticized the letter itself and the role of campus conduct administrators in adjudicating sexual misconduct allegations. It set federal expectations for campus disciplinary proceedings without going through the requisite "notice and comment" process for proposed agency rules (Cohn, 2014). Additionally, the enhanced requirements for disciplinary proceedings pertaining to sexual misconduct further thrusted campus conduct offices toward establishing a quasi-judicial process which many argued campuses were ill-equipped to facilitate themselves (Winn, 2017). Most notably, the letter took a firm, unprecedented stance making Title IX the "federal government authority" on campus sexual misconduct adjudication without explaining the legal basis for such authority (Johnson & Taylor, 2017). With such public attention on conduct offices, colleges expeditiously aligned their practices with the new expectations while

straddling the fine line between providing an educational, developmental process and meeting the courtroom-like standards of practice.

In 2017, under the direction of Secretary of Education Betsy DeVos, the Office for Civil Rights released a new Dear Colleague letter that withdrew the guidance set forth in 2011 (Jackson, 2017). Recognizing that the earlier regulations were circulated without the proper rulemaking procedures, the 2017 letter rescinded all of the policies and procedures and allowed schools to choose the standard of proof to find respondents responsible for sexual misconduct, suggesting they use the same standard as is used in other student conduct cases (Office for Civil Rights, 2017).

Critics of DeVos and the Trump administration argue that the new Dear Colleague Letter was composed in light of angry student respondents claiming that their rights under the 2011 guidance were abridged in favor of supporting the rights of complainants. The Clery Center, a nonprofit organization founded with the support of the parents of the student for whom the Act was renamed, explains what appears to be the stance of conduct offices nationwide: "Advocacy for victims does not occur at the expense of rights for the accused" (Clery Center, 2017). Most conduct administrators did not abridge their policies or procedures following the 2017 letter.

On May 6, 2020, after hundreds of thousands of public comments regarding a first draft, the Department of Education released the Final Rule on Title IX (Office for Civil Rights, 2020). Almost immediately condemned by victims' advocates, civil rights organizations, and conduct practitioners across the country, the Final Rule narrowed the scope of nonconsensual sexual behavior that colleges and universities would be required to address, including definitions of and the geographic locations of such misconduct. A banner victory for supporters of accused students' rights, who believe that college is no place to adjudicate what is considered criminal

behavior, the Final Rule requires live cross-examination of other parties by the respondent or complainant's advisor of choice, typically an attorney, and that formal notice must be made to the institution's Title IX coordinator before offering an option of informal resolution. Further, the Final Rule required institutions to post publicly the training materials used with individuals who would be tasked to adjudicate such matters. In perhaps the biggest blow to campus conduct professionals, the Department of Education gave schools only 100 days – until August 14, 2020 – to comply with the new regulations. All this amidst the growing global pandemic of the Covid-19 novel coronavirus and the resurgence of violent racial and social injustice confronting Americans everywhere. Facebook groups for student conduct and Title IX professionals became informal think tanks and complaint boxes where individuals could share their thoughts about the pending changes. A request for a preliminary injunction to delay implementation of the Final Rule was denied in the United States District Court when Judge John G. Koeltl found that the plaintiffs, the State of New York and the Board of Education for the City School District of the City of New York, "failed to show…that the DOE acted 'arbitrarily and capriciously'" in its development of the rule, and required full compliance by the August 14 deadline (*State of New York v. United States Department of Education*, 2020, p. 2).

Due Process in Disciplinary Proceedings

The evolution of student conduct processes since *Dixon v. Alabama* (1961) has largely been shaped by subsequent case law that has informed what it means to provide "due process" to students responding to disciplinary charges (Grossi & Edwards, 1997). For the most part, the courts have distinguished academic misconduct from that which is behavioral, citing "faculty members are in the best position to academically evaluate students" (Swem, 1987). The precedents set forward by *Board of Curators of the University of Missouri v. Horowitz* (1978)

and *Regents of the University of Michigan v. Ewing* (1985) established that the courts would generally defer to the expertise of the faculty in making academic decisions as long as the institutions did not exercise behavior determined to be arbitrary and capricious. It is of particular note that the defendants in both *Horowitz* and *Ewing* were students dismissed from their medical programs due to unsatisfactory performance and not because of a behavioral violation of academic integrity expectations. Richmond (1989) asserts that students charged with academic misconduct should be "afforded greater procedural protection" (p. 304).

Cases involving poor grades or failure to obtain minimum grades do not typically fall under the purview of student conduct officers today. However, *Jaksa v. Regents of University of Michigan* (1984) pertained to an academic dishonesty case in which the student submitted an exam with his own cover sheet attached to another student's test. The district court responded to this case, finding cheating to be a disciplinary matter, and determined that Jaksa's due process rights were not violated in processing his dismissal from the university for one semester (reduced by the institution's appellate board from two semesters following his expression of "regret and shame" [*Jaksa v. Regents of University of Michigan*, 1984]).

The courts have recognized a college or university's authority to set both behavioral and academic expectations for its students (Bringing the Vagueness Doctrine, 1971; Swem, 1987). The *General Order on Judicial Standards of Procedure and Substance Review of Student Discipline in Tax Supported Institutions of Higher Education* (1968) established "student discipline is considered a part of the teaching process" (p. 1). The order also described the components of fundamental fairness and underscored that the "circumstances and ends" of the disciplinary process vary greatly from those of the "processes of criminal law" (Loschiavo & Waller, n.d.).

Dixon v. Alabama (1961) established that state-supported institutions were required to provide due process to students before depriving them of their liberty and property interests (Lowery, 2008). But no court has firmly established the standards of due process beyond *Goss v. Lopez* (1975), which required that students "be given *some* kind of notice and afforded *some* kind of hearing" (Lowery, 2008, p. 579). Although the case involved high school students, *Goss* affirmed that the state of Ohio had suspended them without a hearing, and was therefore in violation of due process. It further affirmed a free public education as a property interest.

In that the Constitution does not require private colleges and universities to provide due process in disciplinary proceedings, authors (Kaplin & Lee, 2006; Pavela, 2000; Stoner & Lowery, 2004) advise such institutions to provide these basic rights (Lowery, 2008). Court cases (see, for example, *Holert v. University of Chicago*, 1990; *Melvin v. Union College* 1993; *Slaughter v. Brigham Young University*, 1975) have also reinforced a college's responsibility to have a clearly delineated process in its documentation (Wood & Wood, 1996).

A Student's Right to Counsel

The rulemaking sessions of the 2014 reauthorization of the Violence Against Women Act detailed the parameters for advisors for respondents and complainants in sexual misconduct cases, permitting students to have "an advisor of their choice" at "any related meeting or proceeding" (Violence Against Women Act Negotiated Rulemaking Committee, 2014). This includes attorneys, who even student conduct professionals have asserted can be valuable supports for students as they navigate the complexities of the disciplinary process (King & White, n.d.). However, courts have held that non-sexual misconduct cases do not require legal representation for students (*Gorman v. University of Rhode Island*, 1986; *Wasson v. Trowbridge*,

1967) and that when attorneys are permitted, institutions can limit their participation in hearings (*Osteen v. Henley*, 1993).

In 1975, *Gabrilowitz v. Newman* determined that counsel could be permitted at a campus disciplinary hearing when the student respondent is facing both criminal and disciplinary charges for the same behavior (Weisinger, 1981). The court was careful, however, to specify that the presence of counsel was only permitted to protect the student's due process interests at the criminal hearing and that the student did not have a Constitutional right to counsel for the campus hearing. The courts have also held, following *French v. Bashful* (1969), that if the institution utilizes counsel in adjudicating the matter, a student may have the right to counsel as well. In this ruling, the due process rights of students at Southern University in New Orleans were not met because the person adjudicating their case was a third-year law student.

Perhaps not surprisingly, the herald call for increasing the role of attorneys in campus disciplinary proceedings has come overwhelmingly from attorneys themselves. The majority of literature arguing for legal presence in campus conduct hearings is published in university law journals. Richmond (1989) offers two reasons for why conduct administrators attempt to keep attorneys from campus disciplinary hearings: (1) conduct hearings are intended to be developmental and educational (adding that conduct officers believe lawyers are incapable of being supportive), and (2) attorneys in the conduct process would escalate the proceedings to an adversarial sensibility using legal jargon. The author also posits that simply because of their professional role as conduct administrators, they cannot be unbiased in adjudicating allegations of policy violations. In a 2018 panel discussion, both a representative from the non-profit organization Foundation for Individual Rights in Education and a Duke University law school professor argued both that attorneys can be trained to observe rules of order as prescribed by a

school's disciplinary code and that appointed college and university advisors can be trained in legal matters pertaining to preserving a student's due process rights (Kruth & Coleman, 2018).

Several authors (Blaskey, 1987; Kipnis, 2004) are concerned with a young student's inability to interpret disciplinary code or maintain self-confidence in front of a campus conduct officer or panel. In a self-published article, Kipnis (2004) reasons that a student who is not familiar with the disciplinary code or legal jargon will benefit from the services of an attorney who can interpret "obscure" language or provide them with guidance on how disciplinary hearings will proceed. The author also argues that by denying a student's right to counsel, both the student and institution bear inordinate "social costs" (Kipnis, 2004, p. 9). This include things like lost scholarship eligibility and job opportunities for wrongfully "convicted" students, which the author implies are greater than the cost of having counsel present. Blaskey (1987) also asserts that although a school cannot incarcerate a student, it can deprive the student of a liberty right (that is, the ability to pursue and complete a higher education) for years to come.

Literature from the perspective student affairs administrators have little in common with the stance of attorneys. Weisinger and Crafts (1979) agree that the presence of attorneys can be disruptive to disciplinary proceedings if they interfere with the educational mission. But they suggest that a student with legal representation at a campus hearing loses the opportunity for developing self-awareness and engaging in reflection. The authors also examine the cost prohibition of permitting attorneys in the conduct process and the inequity of students' ability to afford counsel.

The impact of case law and federal legislation has required student conduct administrators to be vigilant, precise, and meticulous in their daily tasks. Work that used to focus on the holistic development of students, inviting them to take ownership of their decision-making

and clarify their values system, has been overtaken by fears and worries of violating a student's due process or civil rights. The presence of lawyers in the disciplinary process deepens its semblance to a judicial proceeding. In a 40-year old article, Remley (1979) appears to accurately predict the state of affairs in 2020 as the author suggests that "a preventive legal education program might be developed by the student personnel administrator and attorney." This may be one remedy that relieves the stress of litigation on student conduct administrators.

The Lived Experiences of Student Conduct Administrators Today

The profession of student conduct administration has been studied in various frameworks for over 50 years (Bhatt, 2017; Fley, 1963; Gillilan, 1997; Glick, 2016; Horrigan, 2016; Jackson, 2014; McNair, 2013; Nagel-Bennett, 2010; Waller, 2013) and in the last three decades, researchers have more closely examined how stress and burnout in particular play a role in attrition from student affairs work in general (Burke et al., 2016; Howard-Hamilton et al., 1998; LaVant, 1988; Marshall et al., 2016; Mullen et al., 2018; Murphy, 2001; Quiles, 1998; Rosser & Janivar, 2003). However, there is very little information pertaining to how the judicialization of college discipline has impacted the personal lives and professional practices of conduct administrators today.

An early study on student conduct administration was conducted in 1961. Sillers examined the purpose of college discipline through an educative lens. However, the researcher's subjects shared that even developmental sanctions could include punitive measures, such as probation or withdrawal of privileges. Even at this early juncture, Sillers found that student conduct administrators were concerned with the public perception of their work. Although they acknowledged the requirement to keep student records confidential, they also understood how outside observations regarding their decision-making and conclusions about student behavior

would impact both their own professional practice and the reputations of the institutions at which they worked.

Gillilan (1997) completed a dissertation on case studies of college and university conduct officers (then called judicial officers). This qualitative analysis evaluated the content of interviews with nine conduct officers to find common threads pertaining to their work. Several participants cited legal encroachment as a factor in the administration of college discipline, especially as it pertained to the timeliness of resolving cases. Gillilan (1997) found that of those he interviewed, staff in public institutions appeared to have closer relationships with legal counsel than those in private institutions. One participant, "Rose," revealed that while she herself had a law degree, it was not necessarily important to her work in student conduct. Two other study participants spoke about their increasingly frequent conversations with students' attorneys who didn't seem to comprehend the educational nature of the process.

In 2010, Nagel-Bennett recognized a push-pull strain on behalf of chief student conduct administrators that appears to contribute to stress. The author noted a perpetual lack of understanding of the value for students and the merit of disciplinary processes overall within institutions of higher education. Nagel-Bennett (2010) also pointed out the increased criticism of university community members including parents, faculty, and senior-level administrators, although "they would rather not be involved, except to provide input about the outcome" (p. 19). Layering in the components of legislative guidance, case law, crisis management, attention to First Amendment rights, and accommodating students with disabilities amongst an increasingly litigious climate makes the profession of student conduct administration ever more precarious. Waller (2013) reinforced the problem of the delicate balance between the developmental needs of the student, institutional priorities, and legal requirements.

Dowd (2012), who studied the ethical dilemmas faced by conduct administrators, pointed out the tensions one might experience when meeting with students who have high-profile connections. While several in the community may assume that such students (e.g., children of donors, student-athletes) will receive lenient treatment compared to others, there exists an ethical obligation to maintain equity in administering conduct policies. Framing the problem as one of competing interests, Dowd (2012) writes, "Politics, institutional reputation, fear of litigation, and financial ramifications of pending disciplinary actions can further undermine ethicality" (p. 5). The author also recalled the difficulty of being able to have a developmental moment with a student in the presence of a lawyer, focusing more on ensuring due process than the meaningful reflective conversations traditional to the conduct meeting.

Waller's 2013 study reinforced the importance of following one's institution's specific policies and processes for adjudicating allegations of misconduct. This study focused specifically on utilizing the concepts of justice and care when meeting with students. In 2016, Glick included legal knowledge and self-mastery as two skills crucial to the professional identity of student conduct administrators.

But Bhatt, in a 2017 study on the impact of voice on a student conduct administrator's role, alluded to the emerging field of restorative justice as an alternative conflict resolution pathway for potential violations of policy. In this practice, facilitators focus on assisting the offender to repair harm made to individuals and the greater community. The model is far less adversarial than a traditional conduct process. Mahnke's (2016) study subjects noted that there exists the desire to utilize restorative practices in conventional conduct meetings, but that there is overwhelming pressure to observe institutional policies. New research (Karp & Sacks, 2014) lauds restorative justice for inviting respondents to take a more active approach in understanding

their own accountability, but also warns that poor implementation of restorative practices can interfere with an institution's legal obligation to provide due process (Kimball, 2017).

Litigation Stress, Critogenic Harms, and Litigaphobia: The Impact of Legal Action on Professionals and Their Practice

There exists little student affairs literature (King & White, n.d.; Weisinger, 1981; Weisinger & Crafts, 1979) that addresses the concern of legal counsel's encroachment into the college disciplinary process. One recent dissertation (Miller, 2018) examined the impacts of scrutiny from inside and outside the institution and increased federal regulation on student affairs practitioners who administer sex- and gender-based harassment investigation and adjudication under Title IX. Scarcer still is research examining the impact of the presence of attorneys on the personal and professional lives of student conduct administrators. However, scholars have been studying the reactions of physicians to litigation or the threat of litigation for over 40 years (Charles et al., 1984; Mawardi, 1979). Such research has affirmed litigation stress as a legitimate concern involving physical and emotional responses that impact relationships, substance use, mental health, and attrition from the job entirely (Fulero, 2008).

In 1983, Brodsky coined the term "litigaphobia," which the author described as "the irrational and excessive fear of litigation" (p. 204) and later applied the term in his study of law enforcement officers (Brodsky & Scogin, 1991). Bursztajn and colleagues identified "critogenesis"—from the Greek roots *crites*, judge, and *genic*, sprung from (Gutheil et al., 2000)—as a fitting way to describe the "law-caused" consequences (p. 6) that stem from the litigation process. Because of the high stakes involved in the college disciplinary process (i.e., a student's temporary or permanent separation from an institution) and the great potential for legal counsel's intervention, it may be appropriate to consider the effects of litigation stress and

medical malpractice stress on physicians as similar to the same stresses on student conduct professionals.

Some of the earliest studies about how physicians react to the threat of being sued or actual litigation were conducted by Dr. Sara Charles in the mid-1980s. As the subject of a medical malpractice suit herself, Charles was motivated to understand the reactions of physicians following a lawsuit (Charles & Kennedy, 1985). Charles et al. (1984) noted that no previous study had examined the "subjective stress of malpractice litigation" (p. 563) and thus conducted a survey of physicians in the greater Chicago area to identify "physicians' perceptions of the impact of malpractice litigation on their personal and professional lives" (p. 563).

Charles' 1984 study of 154 physicians who had been sued, along with a second study published in 1985 (Charles et al., 1985), revealed that both sued and non-sued physicians experienced physical symptoms such as anger, tension, depression, insomnia, substance use, suicidal ideation, and gastrointestinal distress. Both sets of physicians also reported feelings of decreased self-confidence, being misunderstood, and being defeated. Respondents to the 1985 questionnaire who had been sued were asked to respond regarding their reactions to being sued; those who had not were asked to respond "on the basis of their reactions to the general threat of medical malpractice litigation" (Charles et al., 1985, p. 437). Because those who had been sued reported symptoms at a greater rate than those who hadn't, the researchers of the 1985 study posited that the symptom clusters could actually be a subset of an already discovered psychiatric disorder "with malpractice litigation as the specific psychosocial disorder" (Charles et al., 1985, p. 439).

In their discussion of the 1985 study, Charles, Wilbert and Franke suggest that malpractice litigation may impact a physician's self-awareness, impacting their sense of freedom

in making clinical judgments or perhaps not offering the full scope of medical options. The authors also point out that both sued and non-sued physicians report similar rates of symptoms associated with major depressive disorder.

Wilbert and Fulero (1988) added that another impact of litigation is the practice of "'defensive medicine' so as to avoid or minimize the risk of legal action" (p. 379), which could include ordering unnecessary tests, not performing high-risk procedures, or even rejecting potential patients that are perceived to be litigious. This study examined the unique impacts of legal action on psychologists, despite that they are sued at a lower rate as compared to other physicians. It revealed that the threat of litigation led these doctors to practice "antilitigation strategies" (Wilbert & Fulero, 1988, p. 381), such as maintaining accurate and updated records, closely supervising trainees, and making sure clients understand their limits of confidentiality. The authors note that litigation threat may actually serve as incentive for practitioners to observe higher standards of professional conduct.

Youngberg and Soto (1990) further identified effects of litigation stress on the organization, including reduced productivity, increased sick leave, job dissatisfaction, and impaired decision making. Another study conducted in 1991 (Martin et al., 1991) sought to understand how the "psychologic sequelae of malpractice litigation" (p. 1,300) of litigant physicians compared to other people who had been had not been sued. Martin et al. (1991) further determined that stress symptoms of psychological trauma, job strain, and shame/doubt related to litigation are most persistent and prevalent for two years following the lawsuit. They also found that the intensity and frequency of these specific symptoms diminish after two years following the lawsuit, but that they did not return to the rate of symptoms expressed by those physicians who had not been sued. The authors noted that feelings of shame and doubt do return

to a baseline following a lawsuit, which they relate to a "mastery of the trauma" (Martin et al., 1991, p. 1,303). Finally, the study reveals that older physicians and female physicians are more likely to use active coping strategies and put into perspective the litigation event against other stressful life events. "If [physicians] can see litigation as a job hazard and not an indictment of their ability as physicians, they will be better able to mobilize adaptive coping mechanisms such as improved office practices and active participation in their defense and to minimize negative coping such as self-blame" (Martin et al., 1991, p. 1,303). A 2004 survey of the literature on malpractice litigation concluded that physicians who had lawsuits brought against them practiced medicine more defensively, had symptoms suggesting major depression, and were plagued by self-doubt (Nash et al., 2004).

Later studies looked at other subpopulations' unique responses to professional litigation. Bushy and Rauh (1993) noted that in rural communities, the physician-client dynamic may be drastically different from that in a city because of a small town's geographic isolation. With health care professionals filling many different roles, they have expanded responsibilities and may therefore be more susceptible to making mistakes and thus have a greater potential for litigation. These authors also spoke to subjects who reported intense symptoms of depression that seemed to impact their ability to make clinical decisions and their interpersonal relationships, especially those with intimate partners. A physician in this study who had not been sued described exercising caution around a peer who had been sued, and those who had been sued stated that others avoided them or avoided talking about the emotional impact of the litigation. Finally, the authors found that litigation affected the relationships the physicians had with other health care professionals, particularly the nurses who helped in providing a continuum of care for the patients.

An Italian study (Fileni et al., 2007) specifically examined the perception of radiologists of malpractice litigation stress. Survey responses aligned with previous studies on the impact of litigation, including reports of anxiety, anger, feelings of helplessness, and humiliation. While they reported that radiologists are less likely than other types of physicians to be sued, it is notable that they disagreed with the concept that only less qualified practitioners run the risk of litigation. This study also looked at the causes of malpractice litigation, which was believed to include the attitude of the mass media and the possibility of receiving considerable amounts of money. Less than half believed that a decline in the health care system itself was to blame for the increase in malpractice litigation.

Medical Malpractice Stress Syndrome (MMSS; also Clinicial Judicial Syndrome, Litigation Stress, or Litigation Response Syndrome) has been categorized as a "forme fruste," or incomplete expression of a disease or disorder, of Post-Traumatic Stress Disorder (Arimany-Manso et al., 2018; Lees-Haley, 1989; Paterick et al., 2017; Strasburger, 1999). Clinicians have confirmed it as a legitimate disorder of physicians resulting from the trauma of being involved in litigation that manifests in both physical and emotional symptoms. Arimany-Manso et al. (2018) determined that in its most severe forms, MMSS can cause death, either by suicide or heart attack. Their meta-study of research that examined keywords pertaining to MMSS concluded that certain conditions may predispose an individual to suffer, including lifestyle, work environment, insufficient pay, and poor relationships with patients.

Critogenic Harms

It is clear that involvement in a lawsuit can have lasting, perhaps even irreparable, consequences on the litigant. Participating in litigation at any level—perhaps even as a witness—can feel intimidating and stressful (Ryll, 2015). Attorneys themselves can be susceptible to the

psychological harm that stems from involvement in litigation (Cardi, 2014; Lande, 2014). Business executives also report feeling aggravated by lawsuits against their companies (Lande, 2015). So too do police and other law enforcement officers fear the threat of lawsuits (Brodsky & Scogin, 1991). But Ryll (2015) points out that misconduct or medical errors don't necessarily have to occur in order for one to be named in a lawsuit. Emotional harms can surface at the mere mention of legal action, or even if one is not directly involved in the litigation.

The Harvard Medical School's Program in Psychiatry and Law developed the term "critogenic" to describe the "law-caused" emotional effects of litigation (Gutheil et al., 2000). Gutheil and Joo (2017) found that several disciplines observe clientele suffering from critogenic harms, including victims of crimes who suffer secondary trauma or retraumatization when going through trial and the family and friends of victims who are collaterally impacted by newly fragile relationships. Strasburger (1999) adds that nearly anyone who is put on the stand or is deposed is subject to feelings of humiliation and being discredited.

Litigaphobia

In a 1988 examination of the extant literature on litigation anxiety, Brodsky further examined how the mere possibility of litigation is a concern for mental health professionals. The author noted how clinicians spend so much time protecting their patients' rights that they spend less time actually providing services. Further, Brodsky argued that those who fear legal action the most become more and more legalistic in their approaches, "giving up genuine treatment in their efforts to ensure that they will not be sued for not providing treatment" (Brodsky, 1988, p. 497). Following a lawsuit, one doctor reported that she viewed all patients "as potential enemies," and that her "love for [her] work and for life was greatly diminished" (Samples, 1988, p. 27). Brodsky (1988) also wrote that these fears manifest as a clinical phobia according to the

3rd edition of the *Diagnostic and Statistical Manual of Mental Disorders*; he termed this "litigaphobia, or the excessive and irrational fear of litigation" (p. 497).

Another important question Brodsky and colleagues (Breslin et al., 1986) raise is whether professional practices are actually influenced by litigaphobia. They note that anecdotal data about the contentious and exhausting nature of lawsuits may overweigh the actuality that litigation by patients is relatively rare. The prevalent thinking, they report, is that any patient is a potential litigant, and therefore must be treated as though they will proffer legal action in the future. The authors contend that the more a clinician believes their patient will initiate litigation, the more likely that clinician is to be conservative in their behavior and decision-making pertaining to diagnoses and recommendations. They conclude lamenting that society has turned to litigation and civil lawsuits as a means of reconciling differences, noting that litigaphobia is certainly not limited to practitioners in medicine and mental health.

Perhaps because of its prevalence and pejorative connotation, Brodsky evolved the term "litigaphobia" into "fear of litigation" (Brodsky, 1988) and finally "concerns about litigation" (Brodsky & Cramer, 2008). This, Brodsky explains, normalizes the construct and removes the implication that it is a dysfunction rather than an everyday aspect of professional work. In 2001, an Israeli study examined how various components of physicians' attitudes toward medical error interrelate to one another and sought to develop a scale to measure such feelings (Benbassat et al., 2001). These authors noted that "fear of litigation (an emotion) mediates the relation between cognitive awareness of committing errors and adoption of defensive behavioral practices" (Brodsky & Cramer, 2008, p. 532).

Noting that the 2001 study focused exclusively on physicians, Brodsky sought to develop a Concerns About Litigation Scale (CALS) that could be more generalized across professions

and that demonstrated more internal consistency than the sub-scales created by Benbassat et al. (2001). The resultant survey examined such factors as preventive practice, personal frustration and annoyance, and the interpersonal relationship between the practitioner and the client (Brodsky & Cramer, 2008). An early study using the CALS observed that health professionals are extremely concerned about litigation, and suggested workshops on improving practice rather than focusing on reducing the threat of litigation.

Coping with the Fear of Making Mistakes

One common theme among the research on measuring fear of/concerns about litigation is the "fear of personal inadequacy and failure" (Gerrity et al., 1992, p. 1,043). Fear of failure appears to be related to stress from uncertainty, particularly in the realm of medicine and the responsibility to make accurate diagnoses and prescriptive treatments. Gerrity et al. (1992) also note that the role of uncertainty in making professional decisions has not yet been researched beyond the practice of mental and physical health care. However, several authors note the link between the fear of medical errors and its impact on professional practice.

At least two qualitative studies examining the impact of perceived errors by physicians on their welfare revealed intense feelings of "agony" and "anguish" with emotions ranging from self-doubt to extreme guilt (Christensen et al., 1992; Gallagher et al., 2003). Fears were also related to potential litigation and a colleague's discovery of one's incompetence. The study also examined how one's beliefs impact the way in which the physicians handled the mistakes. Dominant beliefs impacting the manner in which they experienced the mistakes include the conviction that one's profession has impossibly high standards of excellence that are not humanly possible to achieve as well as the acceptance that mistakes are inevitable (Christensen et al., 1992). Schwappach and Boluarte (2008) found that being involved in errors can increase a

physician's likelihood to feel burn-out and symptoms of depression. They also report that the clash of personal values against organizational culture and working conditions contribute to the dissonance of feelings following errors.

McLeod (2003) explores the concepts of self-awareness and empathy as character traits inherent in physicians. The author explains how caring for patients may become so extreme that physicians neglect to care for themselves. The culture of perfectionism and high levels of self-expectation lead to work addiction, stress, defensiveness, and dissatisfaction with the role. McLeod reports that while those in the medical profession are supposed to have higher rates of substance abuse and depression than the general population, it is more common to see physicians who are simply unhappy. The author invites physicians to accept the fallibilities of both their work and themselves.

Theoretical Frameworks

Several theories guide the study of student conduct administrators' reactions to the judicialization and encroachment of attorneys into the practice of college discipline. These appear widely in the literature related to physicians and their reactions to medical error, malpractice stress, and litigation. The Kübler-Ross Stages of Grief model, though originally proposed to describe the emotional states of a patient diagnosed with terminal illness, is cited in the medical literature (Kübler-Ross, 1969; Lavery, 1988; Smaldone & Uzzo, 2013; Tunajek, 2007; Youngberg & Soto, 1990) as the phases of a physician's response to litigation. A 2014 dissertation also applied this model to women overcoming workplace bullying (Zackius-Shittu, 2014). Theories about appraisal, stress, and coping developed over several decades by Folkman, Lazarus, and colleagues (Folkman et al., 1986) suggest that one's response to stress depends on how a person appraises the situation and their ability to cope with the stressor. Maddi's (2006)

Hardiness Model identifies three attitudes (commitment, control, and challenge) that allow an individual to have the courage and motivation to move from challenge to personal growth. Finally, Caplan's (1964) Phases of Crisis describes the human experiences of a precipitating event, disruption, tension, and collapse or coping.

Five Stages of Grief

Several authors have compared the stages of dealing with litigation and malpractice stress to the progression of emotional states described by Elizabeth Kübler-Ross in her seminal 1969 work *On Death and Dying*. When Kübler-Ross illustrates the experiences of various feelings that emerge during the period of grief, she also examines the burden of having to judge these feelings and suppress any resentment toward the illness itself. "The grief, shame, and guilt are not very far removed from feelings of anger and rage" (Kübler-Ross, 1969, p. 18). These emotions appear to be closely tied to the mental states physicians experience following distressing incidents, particularly after being named in a lawsuit (Tunajek, 2007; Youngberg & Soto, 1990) or receiving performance evaluations (Smaldone & Uzzo, 2013).

Kübler-Ross (1969) describes the feelings of denial and isolation as the first stage of terminal illness or following confrontation, writing that the patient who received the diagnosis abruptly or without a long period of symptoms is typically in a deeper state of denial. The author is clear that denial is a healthy way of coping with such news, serving as a buffer and giving the patient time to explore more constructive ways of managing their feelings. Denial is also accompanied with an increased sense of awareness of situations. Lavery (1988) analogizes this to a physician's heightened "defense mechanisms to protect both psychological integrity and socioeconomic assets" (p. 139). In this stage, the physician might overanalyze every moment of

their professional decisions to that point, which can lead to a loss of concentration or focus on current practice.

The second stage, anger, impacts both the subject of the lawsuit as well as those who work with and live with him. “The reason for this is the fact that this anger is displaced in all directions and projected onto the environment at times almost at random” (Kübler-Ross, 1969, p. 44). The expression of anger may be amplified particularly if the patient’s medical conditions were beyond the physician’s control (Lavery, 1988). When facing a lawsuit, the physician may become hostile and direct it inappropriately toward the litigious patient and their lawyer. The physician may also be angry at the additional unsolicited attention brought about by the lawsuit (Smaldone & Uzzo, 2013).

The bargaining stage follows anger, writes Kübler-Ross (1969), perhaps serving a coping mechanism through which the patient subconsciously wishes to postpone the inevitable. The equivalent behavior in a lawsuit may be a settlement offer. This, however, may be uncomfortable to the physician whose training is not based on compromise but on practical, clinical research that results in healing or a cure (Lavery, 1988). Bargaining may also involve the physician requesting an even greater scrutiny of their work to demonstrate that it is appropriate and that they will continue to achieve great results in the future (Smaldone & Uzzo, 2013; Youngberg & Soto, 1990).

Depression then accompanies loss. Symptoms of grief mirror those of depression, and include sleep disturbance, crying, and loss of interest in usual activities (Lavery, 1988). In this stage, the person experiencing loss may disconnect from loved ones, expressing the realities of sadness, regret, fear, and uncertainty (Oklahoma State Department of Education, 2013). It is at this stage where substance abuse, negative self-image, and other unhealthy behaviors are most

likely to occur (Lavery, 1988). Tunajek (2007) adds that the "prolonged nature of the litigation fosters depression, a sense of not being in control, and the associated feeling of helplessness" (p. 22). The depression phase, particularly as it stems from malpractice and litigation stress, has been the most researched of the five stages of grief.

When anger and depression have completed their terms, the final stage of acceptance settles in (Kübler-Ross, 1969; Lavery, 1988). The subject acknowledges that they have done their best to prevent, manage, and mitigate the situation (Youngberg & Soto, 1990). However, Kübler-Ross (1969) warns that acceptance is not necessarily a "happy stage" (p. 100); it is, rather, the recognition that there is much that is out of one's control. For sued physicians who are used to being in control, making medical judgments, and using their scientific and practical knowledge to manage a clinical decision, acceptance can include the devastating destruction of sense of self (Lavery, 1988).

Appraisal Theories of Stress and Coping

Lazarus's stress and coping theory (Folkman et al., 1986) addresses the two processes of cognitive appraisal and coping that mediate the relationship between a person and their environment. Cognitive appraisal is the evaluation of one's situation, and coping is the way in which one handles the demands of the appraisal (Lazarus & Folkman, 1987). The primary appraisal of stress assesses the harm already experienced, the anticipated harm, or threat, and the challenge, the potential for benefit or mastery. The more relevant the situation is to a person's well-being, the more emotional will be the response (Smith & Kirby, 2009). The secondary appraisal involves an analysis of the resources available to help with coping. Insufficient resources are likely to lead to stress. Both appraisals are important because together they allow

an individual to evaluate the "person-environment transaction" (Folkman et al., 1986) and explain why different people react to the same situation in different ways (Smith & Kirby, 2009).

Coping is the overcoming of stress. It can be problem-focused, which addresses the troubled person-environment relation that is causing the distress, or emotion-focused, which regulates the stressful emotions (Folkman et al., 1986). Lazarus and Folkman (1987) developed a scale to assess the functions of coping, which resulted in several subscales including confrontive coping, distancing, self-control, accepting responsibility, and escape-avoidance. Smith and Kirby (2009) further developed the components of coping into

> *Motivational relevance*, which is an evaluation of how important the situation is to the person. . .*Problem-Focused Coping Potential*, an assessment of the individual's ability to act on the situation to increase or maintain its desirability. . .[and] *Emotion-Focused Coping Potential*, an evaluation of one's ability to psychologically adjust to the situation should it turn out not as desired (p. 1,357).

Charles, who conducted some of the earliest studies on the impact of medical malpractice litigation stress on physicians, also examined physicians' appraisal of stress (Charles, Warnecke, et al., 1988). This particular study used the Folkman and Lazarus model and emphasized that when a situation is perceived as holding few possibilities for benefit, coping mechanisms tend to be more emotion-focused. When a situation is appraised as being changeable by taking specific action, coping is problem-focused.

Charles, Warnecke, Nelson, and Pyskoty (1988) also noted that how a physician appraised the stress of litigation had much to do with how significant a life event the litigation was to that physician. The researchers categorized the study participants into two groups: those who identified litigation as their most stressful life event (Group 1) and those who acknowledged

that while the litigation was stressful, it was not as stressful as some other event in their lives (Group 2). The latter group tended to use more problem-focused coping strategies in both their everyday clinical practices as well as in response to litigation, but used emotion-focused coping in response to everyday stressors.

All but two doctors in the study, Charles notes, developed symptom clusters suggesting dysphoria and depression. The authors imply that the physicians in Group 1 may identify litigation as a personal attack on their competence and integrity as opposed to a more regular occurrence in medical practices. This changes the context of the litigation, resulting in a feeling of powerlessness over the event and a coping response that is more emotion-focused.

Maddi's Hardiness Model

In 1982, Kobasa, Maddi, and Kahn posited that the process of coping in Lazarus's appraisal models were contingent solely upon the events themselves. These researchers argued that certain personality characteristics—specifically commitment, control, and challenge (the "3Cs")—serve as buffers against the impact of events and can influence one's coping processes. Together, these dispositions work to allow the individual to appraise the event as less stressful.

Commitment refers to an active involvement and participation in one's life events as well as the general sense of purpose that allows one to find meaning and connection with one's environment. Control does not necessitate complete power or authority over one's domain, but instead is a disposition expressed as the mere understanding that one can have influence over various aspects of life by means of exercising creativity, imagination, choice, and knowledge. The characteristic of control also assists in one's integration of jarring, dissonant problems as matters that are more easily dealt with because it is related to stress resistance. Challenge is the notion that change, rather than stability, is the norm, and that change provides opportunity for

growth. It also lends the idea that events can be "stimulating rather than threatening" (Kobasa et al., 1982, p. 170) because they are chances to learn and grow rather than protect and react.

Maddi (2013) insists that in order to have hardiness and be able to translate stress into advantage, one must achieve a high level of strength in each of the 3Cs. Hardy coping, Maddi (2013) writes, is being able to identify a challenging situation, make reasonable determinations of how to tackle the problem, and "carrying out the steps that result from this identification and analysis" (p. 9). Hardy attitudes are also correlated to resilience. The resulting "courage and motivation" (Maddi, 2006, p. 161) from strength of the 3Cs assists a person in building a healthy social support network, using problem-focused coping methods (as opposed to emotion-focused), and engaging in self-care. A final important aspect of hardiness is that it can be learned, and that it is not necessarily a genetic or inborn trait (Maddi, 2006). This is significant in that if hardiness can be learned, it can also be taught. Maddi has developed curricula for students, businesses, public safety organizations, and individuals to improve and develop hardiness characteristics (Maddi, 2018). Lambert and Lambert (1987) write that nurses, who have a job requirement to tolerate stress, could benefit from hardiness training.

There is little literature in the realm of hardiness as it relates to managing the stress of litigation. Brodsky (1988) acknowledged that mental health professionals experience stress pertaining to legal intrusion in their work, and that some level of hardiness can help them rise above difficult circumstances. There are reports that indicate hardiness is related to burnout and a desire to leave one's position or profession within student affairs (Murphy, 2001; Quiles, 1998; Rosser & Janivar, 2003), but these do not include litigation as a factor.

For years, reports have shown that men and women react to job-related stress in different ways (American Psychological Association, 2010; Burke, 2002; Grönlund, 2007; Wong, 2018).

Researchers seem to agree that women's unpaid additional labor of running a household, along the emotional labor of "surface acting," expressing emotions that one is not actually experiencing (Wong, 2018), creates a gendered tension that manifests in higher reported levels of physical symptoms like headaches, gastrointestinal distress, fatigue, and changes in appetite (American Psychological Association, 2010).

Grönlund (2007) cites control over work and home demands as a key factor in women's stress levels: While a woman may have high control over the housework of which she is in charge, she may feel less stress at home and therefore "high job demands may be more burdensome" (p. 482). That author's findings are particularly interesting in the context of the current study, notably that "[f]or employees with high job demands, work spills over negatively on private life, regardless of working hours, gender, class position and the age of the children" (Grönlund, 2007, p. 485). However, only women who have a very high level of control over their jobs can reduce what Grönlund labels work-to-family conflict.

Caplan's Phases of Crisis

In 1964, Caplan identified crisis as a period during which a person is presented with an "opportunity for personality growth and with the danger of increased vulnerability to mental disorder" (p. 36). When there is an imbalance between the extent of the problem and the individual's available resources and skills to manage it, tension rises and the individual experiences both emotional (anxiety, fear, guilt, shame) and biological (sweating, appetite changes) responses.

Caplan's reasoning followed that mastery of a crisis results in strength. An individual will therefore be able to handle similar stressful situations in the future in addition to having new skills to assist in overcoming vastly different conditions. As with other theorists, Caplan (1964)

indicates that resistance to mental disorder and other stressors can be taught by helping the individual "extend his repertoire of effective problem-solving skills" (p. 37).

Caplan (1964, 1981) describes four phases of how the intensity and duration of tension impact the functioning of the individual. Bushy and Rauh (1993) add that although the model seems linear, it is not unusual for the process to occur out of order. In the first phase, an individual becomes aware of the crisis. There exists an initial rise in tension because the person attempts to use normal coping mechanisms in response to the stimulus which do not resolve the crisis. Recognizing a lack of applicable resources, the individual may experience cognitive dissonance, for example, "shock, numbness, disbelief, and denial" (Bushy & Rauh, 1993, p. 58).

At the second phase, the stimulus overburdens the individual's coping mechanisms and ability to respond as they normally would (Caplan, 1981). Additional feelings of stress and disorder arise, accompanied by complaints of physical symptoms such as gastrointestinal distress, colds, headaches, and backaches (Bushy & Rauh, 1993). Caplan (1981) identifies this as a critical stage because one's support system can play a significant role in helping the individual manage their stress, identify untapped strengths and resources, and mitigate expectations of how the situation will progress. Bushy and Rauh (1993) appear to agree that one's success in navigating this phase of crisis will depend on whether they use constructive or detrimental coping approaches, but these do not directly correlate to problem-focused and emotion-focused coping. Rather, these authors explain that a healthy, constructive coping behavior will be weighed by its frequency of use by the individual and its effect on the individual, their family, friends, and community.

The third phase presents lingering dysphoria, potentially in light of the search for meaning of the stimulus or crisis (Bushy & Rauh, 1993; Caplan, 1981). At this point, the

individual digs deep into their reserves for what might have been considered irrelevant resources. There may be recognition that some aspects of the crisis are unconquerable (Caplan, 1964), and may merely seek to achieve some level of comfort rather than continue to change the environmental situation (Caplan, 1981). Again, of particular importance is the social support system to help the individual defend against the emotional turmoil of crisis. While Caplan (1981) emphasizes that a social network's main responsibility is to assist the crisis sufferer with concrete tasks and identifying resources, it also serves to reinforce or negate the magnitude of the matter and to absorb some of the emotional burden.

By the fourth phase, the individual may have come to terms with the extent of the crisis and begins to recover a sense of control (Bushy & Rauh, 1993). If the problem cannot be solved with available resources, or if the individual has resigned to failure, the tension escalates to a breaking point and causes drastic results (Caplan, 1964). The role of the social network at this phase is to allow the individual to experience grief and anger while at the same time providing touch points for that which was lost (Caplan, 1981). The social environment also serves to counteract the sufferer's feelings of guilt, self-blame, or anger. Caplan (1981) adds that a nonprofessional group of people who have experienced similar crises are best positioned to offer support because they identify personally with the individual and can simultaneously work to master their own coping skills.

Bushy and Rauh (1993) consider patterns of physicians' response to litigation in rural communities within the framework of Caplan's phases of crisis. They place the receipt of the subpoena or initiation of litigation in phase 1, stimulating anxiety and concern. As the legal process progresses, the litigant physician endures physical and emotional stress. Personal relationships may be strained, and depression begins to impact the physician's clinical judgment.

Further, in rural communities in which the population is small and intimate, litigation impacts a physician's relationships with other health care professionals, particularly because there are likely to be so few doctors who fill multiple clinical roles. This narrows the physician's social support network and impacts their ability to rely on others to help manage through the crisis. In the same vein, because the threat of litigation provokes others to remain distant in hopes of insulating themselves from the problem, the individual's professional peers withdraw, leaving the litigant with fewer chances to be able to overcome the crisis.

Summary and Conclusions

In a 2018 study, Miller deduced that the judicialization of student conduct is a relatively recent development over the last decade following the Dear Colleague letter (Ali, 2011). The researcher's interviews of 19 campus Title IX process coordinators and student conduct administrators revealed that the impact of federal regulation, public scrutiny, and investigation by the Office for Civil Rights (OCR) into appropriate administration of policy and procedure had a measurable impact on these personnel. In addition to immediate changes to staffing structure, policy language, and number of reports of sexual harassment filed, the study participants cited a more formal, "legalistic" model coming back into operation, a shift from the administrators' favored educational model. The participants also collectively indicated a greater reliance on general counsel, a sense that they themselves were on trial, and notably, increased feelings of "stress, anxiety, and mental and physical fatigue" (Miller, 2018, p. 94).

Miller's (2018) study, though notable in its pioneering effort to understand the responses of Title IX and student conduct administrators who have also been the subject of an OCR investigation to judicialization (Miller termed it "legalization"), does not fully explore the breadth and depth of judicialization's impacts on the personal lives and professional work of the

student conduct administrator population at large. Because Title IX administrators are likely to be seasoned, senior-level professionals with years of experience in student conduct, who hold a law degree, or both, Miller's study excludes a significant number of professionals who are potentially impacted by regulations, students' attorneys, scrutiny, and criticism.

Like the physicians in the aforementioned studies, Miller's participants described symptoms such as sleeplessness, high blood pressure, and a self-questioning about their ability to remain in the field following the time of inquiry. The research conducted in the current study bridged the gap between the literature on physician's responses to litigation and malpractice threat and the groundbreaking evidence uncovered by Miller about a specific set of student conduct professionals.

CHAPTER 3: STUDY DESIGN

This study explored through mixed methods action research the ways in which the judicialization of student conduct and the encroachment of students' attorneys impacts its practitioners. Using a 40-question survey instrument followed by semi-structured interviews of interested participants, the study revealed specific cognitive, emotional, and physical effects that student conduct administrators experience as a result of the changing, legalistic nature of their work. This type of action research, according to Sagor and Williams (2017), was appropriate for the current inquiry because it focuses on the scholarly practitioner's own field of practice and sphere of influence and implements an intervention specifically designed to address a problem using evidence-based methods.

To reiterate the study questions:

1. What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?
2. How do college student conduct administrators experience the impact of judicialization on their professional work?
3. How do college student conduct administrators experience the impact of judicialization on their personal lives?
4. In what ways do litigation and judicialization education workshops reduce critogenic harms on college student conduct administrators?

The first study question sought to understand the mindset of today's student conduct administrator within a litigious, highly regulated work climate. Given the literature pertaining to the lived experiences of student conduct administrators and the impacts of malpractice stress and

critogenic harms on physicians, the study explored how practitioners describe their feelings toward the changing character of student conduct administration.

The second and third study questions called for both closed- and open-ended inquiry into how college disciplinary officers experience the increasingly judicialized nature of their profession. Because studies have demonstrated that physicians begin to practice "defensive medicine" when considering the possible threat of or responding to litigation (Arimany-Manso et al., 2018; Charles, Warnecke, et al., 1988; Nash et al., 2004; Wright, 1981), it seemed possible that student conduct administrators modify the way in which they go about their daily work when thinking about the chance of being named in a lawsuit.

These questions also sought to understand the specific critogenic harms experienced by conduct officers as a reaction to judicialization. Research conducted by Charles and colleagues (Charles & Kennedy, 1985; Charles et al., 1984; Charles et al., 1985; Fulero, 2008; Wilbert & Fulero, 1988) pioneered the exploration of medical malpractice stress and its impacts on sued, non-sued, and litigation-aware physicians. Their studies revealed that physicians experienced significant mental and physical disorders similar to Post-Traumatic Stress Syndrome. Reported symptoms included sleeplessness, substance use, weight gain or loss, and gastrointestinal distress, as well as issues with intimate and other social relationships, communication, and job satisfaction. This study examined whether conduct officers experience the same impacts on their personal lives from litigation stress as do physicians.

Finally, the scholarly practitioner expected that interviews with study participants would reveal potential preventive measures that could reduce the impact of judicialization on student conduct officers and build within them skills and competencies that would allow them to respond more constructively to litigation or its threat. The scholarly practitioner also examined if training

student conduct professionals on best practices for dealing with litigation and teaching them about problem-based coping would increase appraisal skills and thus lessen the cognitive, physical, and emotional impacts.

This chapter will introduce the rationale for the study design and describe the targeted stakeholders, sampling strategies, instrumentation, and procedure. It will also discuss the study's method for analyzing the quantitative and qualitative data, delineate the study's assumptions and limitations, and clarify the role and positionality of the scholarly practitioner.

Study Design and Rationale

The impacts on practitioners of the judicialization of college student conduct was an unexplored phenomenon that appeared likely to be similar to the ways in which physicians, mental health practitioners, and other professionals in high-risk roles have responded to litigation, malpractice suits, or the threat thereof. As such, part of the research design for the current study mimicked previous investigations of the research conducted to understand how "clinical judicial syndrome" (Arimany-Manso et al., 2018) influences the daily work and personal lives of physicians and other medical practitioners. Such studies have utilized survey instruments as well as interviews to gather rich data on both the scope of the problem and its depth.

The study in its totality followed a three-cycle action research design, derived from Sagor and Williams' (2017) four-stage model. The scholarly practitioner identified this framework as appropriate because it is an "investigation conducted by the person…empowered to take action concerning their own action, for the purpose of improving their future actions" (Sagor & Williams, 2017, p. 6). In other words, the results of the research are meant to directly inform and instruct student conduct practitioners about how to manage stress due to litigation and the

judicialization of their practice. Figure 1 demonstrates how the current study utilizes Sagor and Williams' approach to action research.

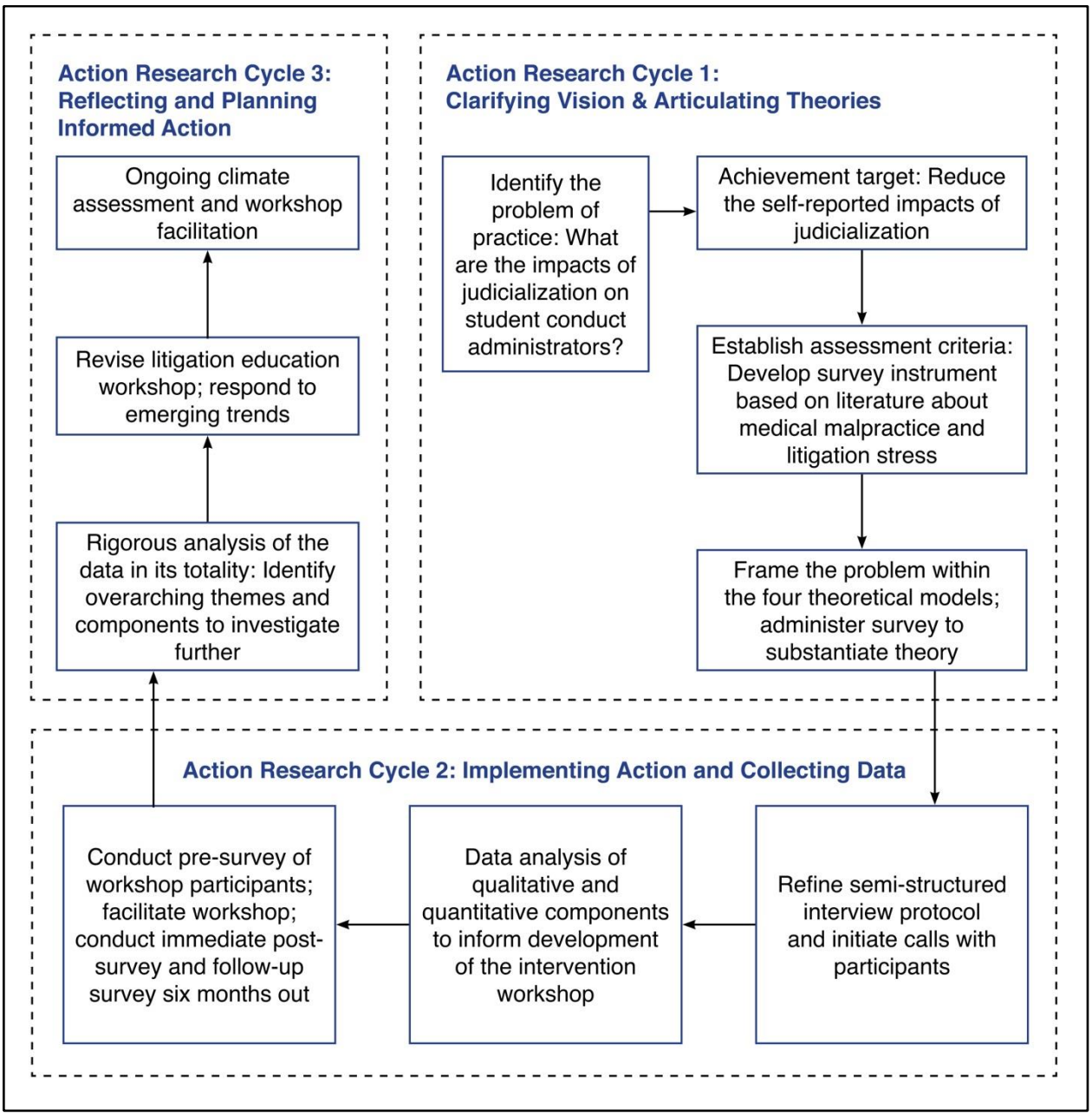
Rationale for a Mixed Methods Approach

The earliest studies on litigation stress in physicians were conducted in the mid-1980s, when Charles, herself a psychiatrist who had been sued for malpractice (Herbert, 1985), developed a survey to "identify physicians' perceptions of the impact of malpractice litigation on their personal and professional lives" (Charles et al., 1984, p. 563). This instrument was ultimately completed by 154 physicians who had been sued between 1977-1981 and requested responses based on agreement or disagreement with anecdotal statements on common reactions to being sued. Respondents were also asked to rate the severity of symptoms, both physical and psychological, that stemmed from the stress of being sued. These symptoms were taken from the criteria list for affective disorder from what was then the current *Diagnostic and Statistical Manual of Mental Disorders*. Later studies on the same topic (Charles et al., 1985; Charles, Pyskoty, & Nelson, 1988; Cook & Neff, 1994; Waterman et al., 2007; Wilbert & Fulero, 1988) also utilized surveys to collect quantitative data.

In 1986, Breslin et al. observed that "[t]he plethora of litigation is not limited to physicians" (p. 547). Because of this, Brodsky began to develop what ultimately became the Concerns About Litigation Scale (CALS). Key to the questions the CALS sought to understand was the notion developed by Benbassat et al. (2001) that the "fear of litigation (an emotion) mediates the relation between cognitive awareness of committing errors and adoption of defensive behavioral practices" (Brodsky & Cramer, 2008, p. 532). While the initial release of the CALS was designed to be applicable to "health-related professionals" (Brodsky & Cramer, 2008, p. 532), the CALS II was constructed with a variety of professionals in mind and therefore

Figure 1

Action Research Plan of the Current Study Based on Sagor and Williams' (2017) Four-Stage Action Approach



more generalizable across vocations. Because Brodsky suggested that the CALS II could be used outside of the health professions, the scholarly practitioner acquired a copy of the instrument directly from Brodsky for use in the current study.

However, interviews of physicians on the impacts of malpractice litigation have added insight into the personal experiences following involvement in or adjacent to a lawsuit. Bushy and Rauh (1993) reviewed the particular impacts on rural medical practitioners, using quotes from interviewees to illustrate their intimate experiences after being named in a suit. In 1988, Charles, Warnecke, et al. (1988) published a study in which 51 doctors who had been sued were interviewed to assess the stressfulness of litigation and what kinds of coping mechanisms they employed in dealing with it. Using Lazarus and Folkman's (1984) appraisal model, the researchers discovered that appraisal of the litigation as a significant life event may be useful in predicting symptomology. The interviews helped the researchers to understand how important or traumatic the litigation was in relation to other stressful life events. Finally, interviews of physicians related to the impacts of their perceived mistakes (and not necessarily being sued as a result), revealed that common responses include self-doubt, fear, disappointment, and shame (Newman, 1996) and that fear of failure and a heightened sense of competitiveness may lead to the non-disclosure of mistakes (Christensen et al., 1992).

It was clear that in order to ascertain the scope of the problem pertaining to the judicialization of student conduct that both a written instrument as well as personal interviews with self-selecting survey respondents would provide a breadth of information that had heretofore been unexplored. Taking a cue from the extensive literature investigating the various impacts of litigation stress on physicians, Action Research Cycles 1 and 2 utilized both qualitative and quantitative data collection techniques.

The mixed methods design for data collection can provide a better understanding of the research issue; quantitative methods can test hypotheses grounded in an existing theoretical framework and qualitative methods can examine the depth of understanding (Palinkas et al., 2016). Further, mixed methods investigations can improve confidence in one's findings and allow the researcher to "verify the findings derived from one type of data with those derived from another" (Small, 2011, p. 63). The nested, sequential nature of the study, that is the administration of the surveys followed by semi-structured interviews, also supports the researcher's ability to understand emergent data, make associations, and offer a "complementary interpretation" (Small, 2011, p. 69).

Further, phenomenological research connects the experiences of several individuals to find a common meaning or thread among them (Creswell, 2012). The goal of the scholarly practitioner is to capture the "essence" (Creswell, 2012, p. 96), or the "very nature of the thing" (Van Manen, 1990, p. 177) that is shared by the study participants. Bevan (2014) reports that while the interview is the most frequently used method of data collection in phenomenological research, there is little discussion about what types of questions should be asked, and in what format. The author further explains that writing questions in the language and vocabulary of the respondent allows the researcher to connect more closely, "unencumbered by theoretical terms" (Bevan, 2014, p. 137).

Action Research Cycle 1

Sagor and Williams (2017) plot out a four-stage action research process for educational settings. The authors detail that stages 1 and 2 involve "clarifying [the] vision and targets" of the investigation and "articulating theory" (Sagor & Williams, 2017, p. 11). As such, the scholarly practitioner has named the specific problem of practice (the judicialization of student conduct

administration), previously identified four theoretical models by which to frame the problem and is developed models of inquiry to assess the various dimensions of the study questions. The current study has combined Sagor and Williams' first two stages into Action Research Cycle 1, in which both qualitative and quantitative methods are employed to refine the study questions and instrumentation used to explore them.

Qualitative Micro-Study

The first research cycle was initiated in Spring 2019 with a small-scale case study of four student conduct officers at a single site pertaining to the impact of judicialization on their professional work. These interviews revealed starter and emergent codes that, along with the adaptation of existing survey questions from the literature on litigation and malpractice stress, informed the creation of the instrument to be used in the current research, the Concerns About Litigation Survey for Student Conduct Professionals (CALSSCP). This study, developed as a research project for academic credit, investigated how four professionals with full-time responsibilities in college student discipline experienced judicialization and its effects on their work.

In that study, the scholarly practitioner used semi-structured interviews to gain an understanding of the ways in which these practitioners adapted their daily work and interactions with students and with other university administrators. The participants were selected based on their proximity of geography and level of familiarity with the scholarly practitioner. Five staff members were invited to participate, and one declined. Each interview lasted between six and thirty minutes.

The literature on litigation stress in physicians and the lived experiences of student conduct professionals provided an ample vocabulary from which the scholarly practitioner

expected to find congruent themes in the pilot study. The first set of codes from which the interview questions were derived included "litigation stress," "defensive practice," and "institutional influence/politics." The studies by Charles and colleagues (Charles & Kennedy, 1985; Charles, Warnecke, et al., 1988; Charles et al., 1985) reveal that physicians appear to consciously alter the ways in which they practice medicine to a methodology they deem "defensive" against the threat of litigation. Considering that this study sought to channel the malpractice stress literature to inform new research, extracting codes from those studies to apply to the current inquiry seemed appropriate. Based on the scholarly practitioner's position at the research site, "institutional influence/politics" was determined as a potential code that could arise from the participants' responses, particularly in light of the changing senior leadership at the presidential and provost levels.

Following the four interviews, the starter codes appeared to remain relevant to the study, but three additional codes emerged. The first, "secondary trauma," was cited by two of the study participants as a phenomenon experienced by both the conduct professionals and the hearing panelists following the procedures of conduct board hearings and communication with students who seemed to have questionable motives.

Another theme, "following the process," surfaced in direct relation to "institutional influence/politics." This refers to the belief of several participants that the written process as outlined in the undergraduate handbook contains all of the proper steps for a student or administrator to take in disciplinary proceedings. These staff expressed deep concern that when the institution deviates from the written process, or when students utilize attorneys to help contest their disciplinary findings beyond the appeal process, a dangerous precedent is set that opens doors for additional future litigation. They noted that when a student's attorney attempts to

reveal what they believe to be problems with the process to senior administration or other executive staff outside of the disciplinary process, those staff are inclined to involve themselves in the cases, making the student conduct administrators feel irrelevant or useless.

Finally, it became apparent that "changing frameworks of student conduct" was a common theme among participants. Several indicated a feeling of dismay at how distant from its original goals of development and education student conduct processes have come. They cited a need to closely follow process and policy to the letter so as to avoid scrutiny at the expense of meaningful, personal conversations with students that spark growth and enhance decision-making.

Even with four participants, the study yielded rich information and emergent codes for future exploration. In particular, the experiences described during the interviews appeared to align with the theoretical frameworks and selected literature, which helped to make meaning of these narratives. Several of the study participants expressed concern over the tension between their instinctive desire to help students become better decision makers and the external push compelling them to observe the process with exacting precision. They noted that their stress is also exacerbated by occasional pressure from senior administrators to issue a specific sanction, such as disciplinary probation, that would fall outside of the typical range of consequences for any given behavior. These encounters are similar to those detailed in the literature on the lived experiences of student conduct administrators. Nagel-Bennett's 2010 research, along with Waller's 2013 study, revealed the ways in which student conduct officers were pulled in many different directions pertaining to the student's own developmental needs, institutional influences, and legal requirements. Being forced to choose between these competing interests could certainly induce stress.

Additionally, research on the ethical dilemmas of student conduct administrators (Dowd, 2012) indicates that it is difficult to have educational moments with a student when an attorney is present. While one participant acknowledged that the sexual misconduct adjudication process has already steered far away from being developmental in nature, that person also stated that the presence of attorneys in such hearings made it next to impossible for panels to ask students to reflect meaningfully on their behavior. That staff member also noted that attorneys would jump at the chance to find a moment in the hearing that they could label as a procedural error and therefore work with their student for an appeal should the outcome not be in their favor.

There seemed to be parallels between the reactions of both physicians and student conduct practitioners to the stress of litigation. Like the physicians in the studies by Charles and colleagues (Charles et al., 1985; Charles & Kennedy, 1985; Charles, Pyskoty, & Nelson, 1988), another participant expressed both physical and emotional symptoms that the conduct practitioner believed were related to the stress of the current litigious climate within the realm of student conduct work. That individual acknowledged the experiences of physicians who had been sued for malpractice as legitimate and reported that felt quite relatable, although the participant recognized that conduct practitioners who work at different kinds of institutions could have different reactions. This conduct practitioner noted, for example, that because North Carolina state law permits students to have attorneys fully represent them in specific types of disciplinary cases at public institutions, student conduct administrators might react to that in a different way.

The responses generated from the qualitative micro-study uncovered unique aspects of the judicialization of student conduct administration that directly informed the wording of

specific questions in the quantitative instrument. The micro-study's semi-structured interview questions also form the basis of the planned interview protocol for Action Research Cycle 2.

Quantitative Instrument Testing

The survey instrument (for the quantitative component of the study, the Concerns About Litigation Survey for Student Conduct Professionals (see Appendix C), was comprised of 40 items derived from several sources. Brodsky and Cramer's (2008) Concerns About Litigation Survey, provided directly to the current study's scholarly practitioner, served as the backbone of the instrument and informed the intent behind many of the questions, along with emergent codes and themes from the micro-study. Additional statements requesting the participants' agreement or disagreement stem from three studies previously mentioned: Wilbert and Fulero's 1988 early research on the impact of litigation stress on practicing psychologists in Ohio; Benbassat et al.'s (2001) endeavor to develop a way to measure physicians' attitudes toward medical error and malpractice stress in Israel; and an examination of Italian radiologists' and radiotherapists' responses to malpractice stress (Fileni et al., 2007). The diversity of these studies is particularly significant as they suggest that malpractice stress is a universally experienced phenomenon by licensed practitioners who administer medication, perform surgeries, diagnose without invasive treatment, and engage in verbal therapy.

The instrument categorizes the 40 questions into three categories: impacts on professional practice, beliefs about attorneys' involvement in student disciplinary processes, and impacts on one's personal life. Although these categories are not labeled on the survey itself as the participant completes it, these overarching groupings, used with similar titles across the aforementioned studies, helped to sort and reveal themes that emerge from responses. These categories relate directly back to this study's questions that seek to understand the impacts of

judicialization on student conduct practitioners in various aspects of their lives. Table 1 demonstrates the correlation of survey questions directly to study questions 1-3 of this research. Further, the survey invited participants to voluntarily include contact information to identify interest in sharing qualitative data for the study. All who completed this part were asked to participate in a semi-structured interview for follow-up questions that directly address their own responses to the questions and invite free response as well. These questions were derived from both the micro-study as well as from Miller's 2018 interviews on the impact of federal investigations and other outside factors on student affairs administrators of Title IX-related allegations on campus.

The instrument collected vital demographic information on each participant, including write-in, optional response fields for gender identity, work title, years completed in the profession, position level, name of institution, primary functional area, and location of institution. Participants had the option to select from predetermined lists that answer highest educational degree completed, whether the survey respondent has been involved in litigation, whether the respondent knows someone who has been involved in litigation, the nature of misconduct that the participant's office adjudicates, institution size, institutional type, and whether the institution is a designated minority-serving institution (MSI). A diverse response pool allowed the scholarly practitioner to make assumptions about particular aspects of student conduct adjudication, for example, whether administrators who hold a law degree are less susceptible to the effects of judicialization.

In May 2019, a pilot version of the survey instrument was distributed via email link to the approximately 170 members of the listserv of the conduct officers at institutions belonging to the Consortium on Financing Higher Education, a group of 35 highly-selective private liberal arts

Table 1

Research Study Questions and Their Correlating Questions on the Survey Instrument

Study Question	Related Survey Questions
1. What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?	16-28
2. How do college student conduct administrators experience the impact of judicialization on their professional work?	1-15
3. How do college student conduct administrators experience the impact of judicialization on their personal lives?	29-40

colleges and universities. Eleven individuals completed the survey and five responded to the email request for feedback on the language and structure itself. Following these conversations, several of the survey questions were revised for clarity, and several were replaced in order to respond to emerging themes on which the participants indicated they wanted to voice an opinion.

A second test of the survey was conducted in July 2019. Members of the Student Conduct Professionals Facebook group were invited to take the survey to assist in testing its validity and reliability, along with refining the questions even further. Eighteen respondents participated in this test, and the results were analyzed for internal consistency. A version of the survey was approved in September 2019 by the Institutional Research Board (IRB) for dissemination and data collection. However, in August and September 2019 the Concerns About Litigation Survey for Student Conduct Professionals was sent to the Research and Assessment Committee of the Southern Association for College Student Affairs (SACSA) and the Research Committee of the Association for Student Conduct Administration (ASCA) for the purpose of having each organization invite its membership to participate. Feedback from both committees led the scholarly practitioner to revise several of the instrument questions, requiring an IRB amendment to be submitted and approved.

Between October 24 and November 11, 2019, a link to the Qualtrics survey with a page regarding informed consent to participate was made available and advertised to the previously mentioned student conduct organizations, commissions, Facebook groups, and listservs. The scholarly practitioner awarded three participants with Amazon gift cards as an incentive to complete the survey.

Responses to the survey were collected within Qualtrics and also emailed to the scholarly practitioner, who followed up with self-identified respondents who wished to participate in

further interviews. After 350 surveys were collected, approximately 150 participants left their contact information indicating interest in being interviewed. Noting that the response rate for interview interest was evenly distributed between male- and female-identifying participants, the scholarly practitioner selected twelve respondents at random under the following demographics: six males and six females; three men and three women whose offices adjudicate matters of sex- and gender-harassment and three men and three women whose offices do not.

Action Research Cycle 2

The third stage (this study's second cycle) of research, report Sagor and Williams (2017), is used to implement action while simultaneously collecting data. In conjunction with the data analysis of the quantitative portion of Cycle 1, this component involved the execution of the follow-up interviews of survey respondents who indicated interest in speaking further about their experiences along with the development and execution of an intervention workshop in the form of a "litigation education workshop" at a pre-conference session at the annual meeting of the Association for Student Conduct Administration.

Quantitative Data Processing and Analysis

The quantitative data was collected and scored within the Qualtrics platform. The instrument contains several questions which are "reverse-scored" to prevent repetitive survey clicking and require the reader to consider each question as it is phrased. Further, the 40 survey questions are categorized into three components: professional practice, beliefs about students' attorneys in the disciplinary process, and personal life. Upon the close of the survey, the data was downloaded to a spreadsheet format and imported into Statistical Package for the Social Sciences (SPSS). This software allowed the scholarly practitioner to complete basic statistical functions and assess trends, particularly as they pertained to the first three study questions.

Qualitative Data Collection

The interviews were conducted between January and February 2020. The questions from Miller's 2018 interviews of student conduct and Title IX administrators involved in U.S. Department of Education Office for Civil Rights inquiries, along those developed for the micro-study of the current research, formed the basis of the semi-structured interviews (see Appendix D) the scholarly practitioner used in the qualitative portion of this study. To gain a deeper understanding of the phenomenon of judicialization, the interview questions offered the participants space to freely discuss their perspectives and experiences on specific topics in a confidential setting.

The scholarly practitioner made appointments with each participant through email to speak via phone or video conference. Interviews were scheduled for one hour, and the scholarly practitioner obtained informed consent and permission to record each interview. The semi-structured interview protocol was followed, and conversation evolved organically depending on the participants' responses. All conversations were recorded through the video- or voice-communication software or hardware and were transcribed into text for coding. The transcribed text was reviewed twice for accuracy and edited, only for purposes of legibility.

Although the scholarly practitioner knows the identities of those participants who are interviewed, names, specific titles, institutions, and other distinguishing information are not published in conjunction with one another. The participants were given pseudonyms based on their gender and the order in which they were interviewed, for example, the first female interviewed was named Alice and the first male interviewed was given the name Bradford. Each of the twelve transcriptions was imported into NVivo. Beginning with Alice's interview, the scholarly practitioner highlighted quotes from the participant and created topic themes or

"nodes" that were originally based on the starter codes from the pilot study. Around the time of the fifth interview coding, the scholarly practitioner began to revise the nodes and collapse some of the specific themes into more broad categories in order to support a better generalization of the experiences of any given subset of the participants.

NVivo helped to organize and analyze the information gathered from the interviews. The rich combination of quantitative and qualitative data was expected to reveal the common threads of judicialization's impact on the beliefs, personal lives, and professional work of student conduct administrators. Data analysis was conducted on the interview data in concert with the survey responses in order to determine potential topics to be discussed in a future intervention.

The data analysis and interpretation of results from the surveys and interviews were expected to support the advancement of theoretical hypotheses pertaining to the similarities of responses to litigation threat and stress between physicians and student conduct administrators. The scholarly practitioner was hopeful that the two forms of inquiry will reveal results that demonstrate a high level of commensurability. Consequently, Cycle 2 implemented the first intervention approach, carefully informed by the data discussion, in an attempt to alleviate the stress and tension experienced by student conduct administrators as a result of judicialization.

Intervention

Literature from the medical field offers several possibilities for remedying or alleviating concerns about litigation. Two approaches emerge as appropriate interventions to help mitigate the impact of judicialization on student conduct professionals and prepare them to effectively cope with the threat of litigation. Both offer resources on managing stress, but they are designed to intervene at two very different stages.

The first possible means of relief is in the form of a self-help group of professionals who have similar experiences. Tunajek (2007) notes that groups that "foster mutual aid, discussion in a safe environment, and collegiality" (p. 23) can provide a sense of belonging, knowing that one is not alone in facing the complex, unexpected feelings that develop after being involved in litigation. While Tunajek does not discount the value of discussing the concerns with confidential sources like clergy, therapists, or one's own attorney, the author indicates there is great value in establishing a network of similarly situated individuals. Similarly, Newman (1996) contends that the potential shame and despair of being involved in medical errors connects those individuals to an emotional state in which they should be willing to both give and receive support to one another. Boehler (2007) cites several different peer support groups for physicians based on geography, specialty, and even gender. Finally, Shapiro and Galowitz (2016) outline a step-by-step approach to developing a peer support program within one hospital to address concerns of burnout, involvement in adverse events, and litigation.

The extant literature also points to the ethical responsibility of professional organizations to train and prepare its membership for identifying best practices to avoid a lawsuit and coping strategies to manage emotions during the litigation event. In 1988, Wilbert and Fulero cite "antilitigation strategies" (p. 381) regulated by the American Psychological Association as an assistive practice to guide clinical dialogue. Fileni et al. (2007) suggest continuing education and professional development to enable networking and evolve organizational standards. Sorrel (2009) described a professional organization's sponsored workshops for physicians who had been sued. The Cooperative of American Physicians' (CAP) annual retreat provides both professional preparation about the legal process and a safe haven for those who want to talk about their experiences with others.

To carry out the "action" component of Sagor and Williams' (2017) third stage of action research, the scholarly practitioner created a full-day pre-conference workshop for the Association of Student Conduct Administration's February 2020 annual meeting. Borrowing from the frameworks of the CAP retreat and the detailed information of the Physician Litigation Stress Resource Center, the workshop addressed the common experiences of student conduct administrators to validate their emotional and professional responses as well as conveyed several mechanisms for managing litigation stress such as problem-based coping and viewing lawsuits as an unavoidable aspect of the profession. The workshop taught best practices for managing documentation, following an institution's written policy and process, and staying healthy and engaged at work in the face of difficult workplace conditions. The end of the day was reserved for a group discussion in which the participants could share and discuss their own personal experiences with judicializations and create a small peer network of thought partners who could offer sympathy, wisdom, and advice. To determine the effectiveness of the workshop, participants were invited to fill out a brief paper evaluation immediately upon its conclusion.

Action Research Cycle 3

Although Stage 4 is the final stage in Sagor and Williams' (2017) process, the authors are careful to note that it only marks the completion of the "first lap around the action research cycle. It is here that action researchers are invited to return and revisit their original visions or targets" (Sagor & Williams, 2017, p. 8). Therefore, the third action cycle, "Reflecting on Data and Planning Informed Action," involved a rigorous data evaluation of the information collected in Cycles 1 and 2, which served to inform future iterations of the litigation education workshop and allowed the scholarly practitioner to further refine and update its content. At this point in the process, some of the available information was communicated to key stakeholders – in this

instance, student conduct administrators and professional organizations – informally via responses to student conduct Facebook group posts that shared some of the research findings and formally through a September 3, 2020, webinar that presented only the evidence-based approaches to combatting the "creeping legalism" (Dannells, 1997) of litigation stress, attended by approximately 50 individuals. Disseminating the results of the action research as an advocacy action plan also allowed the scholarly practitioner to identify additional relevant literature, plan and organize new workshops, respond to emerging issues within the realm of judicialization, and engage practitioners in their own development of resilience and problem-based coping skills.

Stakeholders

The stakeholders for this study included all professionals currently working full-time in an office of student conduct, which may have an alternative name, such as "Office of Student Conflict Resolution," "Office of Rights and Responsibilities," or what is thought to be antiquated: "Office of Judicial Affairs." This number, based on a 2017 salary report from the Association for Student Conduct Administration, was estimated to be over 3000 professionals. While it is not uncommon on college and university campuses for professional staff who work in residence life, housing, fraternity and sorority affairs, or student activities to have responsibilities in student/group misconduct adjudication, for purposes of this study a homogeneous population helped to ensure internal validity of the instrument.

The study included college and university employees who self-identify as full-time conduct professionals who work in offices of institutional equity or Title IX compliance. Following the Dear Colleague letter (Ali, 2011), several colleges and universities rehoused their investigation and adjudication of sex- and gender-based harassment allegations to a department outside of that which typically manages academic, non-academic, and student organization

policy violations. Because the management of these cases is highly regulated by legislation (e.g., Clery Act, VAWA), the professionals involved in their administration may have experienced the impacts of judicialization in much the same way as those who work in student conduct.

Sample and Sampling Procedures

To collect study participants, email invitations to complete the survey were sent to the full memberships of the following organizations: Association for Student Conduct Administration (ASCA); ACPA – College Student Educators International; and Southern Association for College Student Affairs (SACSA). These associations regularly communicate studies of interest to their members to encourage scholarly research within student affairs. Emails were also sent to the Campus Restorative Justice and ASCA Yahoo listservs. Further, announcements were posted in each of these Facebook groups with a link to the instrument: Equal Opportunity/Title IX; Hoosiers in Higher Education; Doctoral Mom Group; Doctor of Education (Ed.D.) Network; Jewish Student Affairs Professionals; ASCA Women and Student Conduct; Student Conduct Professionals; ASCA Assessment in Conduct Community of Practice; and the ASCA Conflict Resolution Community of Practice. Purposive sampling was chosen as the specific research strategy for the current study as it identifies and selects participants who already have some knowledge or awareness of the phenomenon to be explored (Palinkas et al., 2016). By directly inviting self-identified members of the target population to participate in the study, it was highly likely that the number of valid, complete responses would meet the participation criteria.

The survey instrument itself (see Appendix C) contains a question that allowed the scholarly practitioner to filter out participants whose primary functional area is not student conduct administration. The survey also asked whether the respondent had personally been

involved in litigation pertaining to their work in student conduct or knew someone who has. These specific questions could allow for response generalizability to a specific demographic, for example, directors of student conduct offices, new professionals, or student conduct administrators who do not have a law degree.

Ethical Considerations and Informed Consent

Before the collection of data began, the scholarly practitioner completed the Collaborative Institutional Training Initiative (CITI) modules through its website. CITI certification ensures the scholarly practitioner has attained an understanding of the history of the study of human subjects and overall requirements for the conduct of research. Upon completion of the CITI training, the scholarly practitioner was then eligible to apply for approval to conduct research through East Carolina University's Institutional Review Board.

Pertaining to recruitment of participants for the study, taking the survey (and answering any specific question therein) was an "opt-in" choice stemming from the initial message regarding the study. That is, a person could choose or choose not to click on the link to take the survey after reading the email or Facebook announcement. The first page of the survey included informed consent outlining the following elements (see Appendix B):

1. Voluntary participation. A participant could choose to take the survey or not take it. They could also decline to answer any question or exit the survey without penalty. Additionally, a survey respondent could indicate that they would like to participate in an interview and subsequently decline that aspect as well.
2. Benefits. Respondents did not receive any direct benefits from participation in the survey, but their responses could have helped the scholarly practitioner learn more about student conduct practitioners' responses to the judicialization of their field.

3. Risks. Responding to the survey involved minimal risk to those who participated. It may have brought discomfort or sensitive emotions or could have been distressing as the respondent reflected on their experiences.
4. Confidentiality. The survey was administered through the Qualtrics platform, which collects information anonymously. Appropriate settings were made in the survey so that IP addresses were not saved and that responses could not be traced back to any individual or electronic device. Agnes Scott College (2019) provided language on its sample consent form regarding the field requesting additional information:

   At the end of the survey you will be asked if you are interested in participating in an additional interview [by phone, in person, or email]. If you choose to provide contact information such as your phone number or email address, your survey responses may no longer be anonymous to the scholarly practitioner. However, no names or identifying information would be included in any publications or presentations based on these data, and your responses to this survey will remain confidential.
5. Contact. The consent form contained contact information for the scholarly practitioner, research supervisor, and the East Carolina University Institutional Review Board.
6. Consent. The participant indicated that they were 18 years of age or older and agreed or disagreed to partake in the study.

Data from the study was collected and stored anonymously, with the exception of survey respondents who were interested in participating in an interview. The information was stored in Qualtrics (accessible only to the scholarly practitioner with a password) as well as downloaded locally to the scholarly practitioner's personal computer. The PC was also secured by password.

Further, those who indicated consent to participate in an interview were reminded in future communication that they were able to decline to interview or stop the interview at any point without penalty.

Methodological Assumptions and Limitations

Because both the survey instrument and the interview questions were developed specifically for the current study, there existed several assumptions and limitations pertaining to their trustworthiness. Perhaps the most relevant assumption sustaining this research was that the methods used to assess the experiences of physicians who have experienced malpractice stress or involvement in litigation would be transferrable to the experiences of student conduct administrators. Studies from the medical and legal literature exist in both qualitative and quantitative formats; the scholarly practitioner assumed she could glean both a breadth and depth of information about the impacts of judicialization by using a mixed methods format. Small (2011) defines mixed methods studies as those which concern at least two different types of data (in the present study, these are survey responses and interviews) and more than one type of data analysis (here, statistical analysis and coding).

The questions on the survey instrument used in the current study were derived from several studies conducted to assess physicians' attitudes, reactions, and concerns regarding litigation. In the same way that Benbassat et al. (2001) utilized existing scales and measures, the scholarly practitioner compiled a group of statements, some adapted from the studies on physicians, related to the impacts of judicialization on student conduct administrators' beliefs, personal lives, and professional work. Because the questions on surveys for physicians invited respondents to answer along a Likert scale, the same response framework was utilized in the current study. Fileni et al. (2007) employed a five-degree scale from 1 (*strongly disagree*) to 5

(*strongly agree*), with the exception of adapting one existing questionnaire to a four-degree scale. The instrument to be used here also requested responses on two different five-degree scales: (1) From 1 (*strongly agree*) to 5 (*strongly disagree*), with the intermediary responses being *somewhat agree*, *neither agree nor disagree*, and *somewhat disagree*; (2) From 1 (*does not describe me at all*) to 5 (*describes me greatly*), with the intermediary responses being *describes me well*, *describes me somewhat*, and *describes me very little*. While their data analysis and discussion appear to provide meaningful results, to their detriment, Fileni et al. (2007) do not discuss the reliability or validity of their instrument. To reduce the possibility of participants clicking through the survey without reading the questions, several of the prompts on the Concerns About Litigation Survey for Student Conduct Professionals were reverse-coded.

Lincoln and Guba (1985) address four criteria for establishing the trustworthiness of qualitative research: credibility, transferability, dependability, and confirmability. These have been firmly supported by researchers since the authors' original publication as reasonable and recognizable components that demonstrate a study's usefulness and acceptability (Nowell et al., 2017). The first criterion is credibility, in which the participants can see themselves represented in the phenomenon that is to be explored. Cutcliffe and McKenna (1999) share that using direct quotes from transcripts in explaining phenomena as well as inviting interviewees to report on the "representativeness of the interpretation" (p. 378) can enhance a study's credibility. The use of various data sources for the qualitative portion of this study—the self-identified interview participants—helps to contribute to its complementarity and a deeper understanding of judicialization's impacts. The scholarly practitioner sought a high *n* figure of interviews to support credibility.

Transferability may be established by demonstrating that this study is applicable to other contexts (Lincoln & Guba, 1985). While this is not provable, it is incumbent upon the scholarly practitioner to demonstrate that the results are generalizable. This, in turn, means that the scholarly practitioner must provide a thick description of the phenomenon. This paper provides broad context and specific examples of judicialization in the administration of college student conduct throughout.

Third, dependability requires that the documentation of the research conducted within the study is clearly recorded and detailed. A study is dependable when the methods are clearly delineated, the survey instrument is shared, and the full research process is made transparent to the reader (Lincoln & Guba, 1985). This chapter, accompanied by the appendices containing the survey and interview questions, provide the reader with the full process for administering the study along with the tools to do so.

Finally, a study can be labeled confirmable when the first three aspects of trustworthiness are confirmed. Confirmability also requires that the scholarly practitioner make connections for the reader between the data and its interpretations (Nowell et al., 2017), demonstrating that the scholarly practitioner has not been biased in establishing findings. Again, rich, descriptive quotes from participants can help to illustrate themes and represent trends directly from the data itself.

Role of the Scholarly Practitioner

The quantitative data collected and analyzed within the Qualtrics application was anonymized to the extent that the scholarly practitioner was not able to identify individuals, exclusive of those responses in which the survey taker wished to participate in interviews. Although the instrument did provide optional spaces for the respondent to list their title,

department, and institution, the scholarly practitioner did not single out any particular completed survey or investigate further any given individual's unique circumstances.

Before beginning to analyze the data, the scholarly practitioner was required to take notice of and set aside her personal knowledge, experiences, and beliefs about the phenomenon being studied in a practice Husserl (1970) called "bracketing." While it is impossible for a scholarly practitioner to completely remove him or herself (and the preconceptions they hold) from the study subjects, it is incumbent upon the scholarly practitioner to be aware of their attitude toward the matter at hand and self-conscious of the stereotypes, beliefs, and worldviews that could potentially influence the interpretation of data. This reductionist approach, writes Bevan (2014), shifts the scholarly practitioner out of their "natural attitude and [into] adopting a critical stance" (p. 139). For example, the completed demographic information of any given survey might have led the scholarly practitioner to conclude that those responses were given by a friend or acquaintance from within the student conduct profession. The scholarly practitioner attempted to utilize only that information found in the survey and not cast upon those answers any preconceived notions or previous knowledge of that person's lived experiences. This was especially important in the event that such individuals also elected to be interviewed.

In the present study, the scholarly practitioner identified several factors that could have influenced the interpretation of the participants' reported experiences during the interviews. First, the scholarly practitioner's knowledge of the intensity of the professional work of the participants could have influenced the scholarly practitioner's interpretation of the interview data. Next, the scholarly practitioner herself had experienced immense institutional pressure to be more cognizant of litigation threat and respond with caution to any pending disciplinary matter. This certainly informed the nature of this research study and more specifically, shaped

the questions that were asked in the semi-structured interviews. Being aware of these biases should have allowed the scholarly practitioner to better listen to the participants and study the data to find common themes and experiences beyond those already acknowledged.

Summary

The goal of this study was to explore the three questions pertaining to the beliefs about and impacts of judicialization on college student conduct professionals. The literature review in Chapter 2 developed key themes of relevant history in American higher education and the previously studied phenomena of malpractice and litigation stress on physicians in an attempt to position this current research as a bridge between what is known about the demands of working in student conduct today and the external forces of legislation, litigation, and public scrutiny that impact the practice. The survey, distributed to student affairs professionals with a request for those working in student conduct to complete it, set out a pragmatic goal of reporting on the attitudes and lived experiences of those who administer student conduct processes. Trends and themes that emerged from the interviews that followed supplement the quantitative data with real-life examples of how judicialization and the increasing use of attorneys by students affects conduct administrators. The following chapter will provide a thorough accounting of the survey results alongside narrative themes developed from the interviews. It will also examine the pre- and post-intervention survey results from those participants.

CHAPTER 4: RESULTS

The purpose of this investigation was to assess the extent to which the judicialization of student conduct administration has impacted its practitioners in the realms of their professional work, beliefs and attitudes, and personal lives. This study appears to be the first in which self-identified conduct administrators from across the United States have been invited to report on the ways in which public scrutiny, students' litigation, federal regulation, and the encroachment of students' attorneys have created critogenic harms. A survey, developed by the scholarly practitioner and completed by 350 conduct administrator respondents, was divided into three subscales to address the first three study questions:

1. What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work? (Subscale B)
2. How do college student conduct administrators experience the impact of judicialization on their professional work? (Subscale A)
3. How do college student conduct administrators experience the impact of judicialization on their personal lives? (Subscale C)

Following the survey administration, six male-identifying and six female-identifying respondents were selected at random from those indicating interest to participate in interviews in order to gather qualitative data to support the survey findings.

The fourth study question sought to investigate potential interventions or remedies against the impacts of judicialization:

4. In what ways do litigation and judicialization education workshops reduce critogenic harms on college student conduct administrators?

In February 2020, the scholarly practitioner presented a live seven-hour workshop entitled "Demystifying Student Lawsuits, Litigation Stress, and Public Scrutiny" to a diverse group of seven practitioners at the annual meeting of the Association for Student Conduct Administration (ASCA) in Arlington, Virginia. In September of 2020, this workshop was condensed into an hour-and-a-half-long webinar format based on feedback from the earlier session, entitled "The Truth About Litigation Stress: Managing the 'Creeping Legalism' Through Evidence-Based Approaches." The first presentation was at cost to the participants; no money was received by the scholarly practitioner for the full-day seminar and no fees were charged for the webinar.

Concerns About Litigation Survey for Student Conduct Practitioners

Data Collection

An invitation to complete the survey instrument was disseminated via email to the full membership of the Southern Association for College Student Affairs (SACSA; initial invitation sent on October 24, 2019 and follow-up email sent November 18, 2019); Association for Student Conduct Administration (ASCA; initial invitation sent on October 28, 2019 and follow-up email sent November 11, 2019); and student conduct-identified professionals who are members of ACPA – College Student Educators International (ACPA; initial invitation sent on October 28, 2019 and follow-up email sent November 14, 2019). The scholarly practitioner shared the survey invitation with several email listservs whose membership is comprised mainly of student conduct administrators. Finally, the survey link was posted in the following Facebook groups, of which the scholarly practitioner was a member: Equal Opportunity/Title IX; Hoosiers in Higher Education; Doctoral Mom Group; Doctor of Education (EdD) Network; Jewish Student Affairs Professionals; ASCA Women and Student Conduct; Student Conduct Professionals; ASCA

Assessment in Conduct Community of Practice; and the ASCA Conflict Resolution Community of Practice.

Between October 28 and November 19, 2019, 404 individuals started the survey and 350 completed it. Upon the close of the survey in Qualtrics, the data was exported into an Excel spreadsheet. The information was sorted to eliminate the responses from participants who did not complete the questionnaire. The scholarly practitioner then evaluated the responses for each respondent and cleaned and coded the data accordingly. For example, the field of "Gender" requested that the participant write in their response. Answers such as "Woman," "F," "Cis Female," etc. were re-coded into the category "Female." Those who left the field blank or responded with such answers as "Non-binary," "Trans man," or "Genderqueer" were coded into the category "Other/Did not disclose." Similar demographic information was coded accordingly. When no correlate to the pre-determined categories was evident, the response was coded into "Other(/Did not disclose)." The final data was uploaded into the Statistical Package for Social Sciences (SPSS) for data analysis.

Respondent Characteristics

Tables 2-9 and Figure 2 identify the self-reported demographic information of the respondents. Of interest, approximately twice as many survey participants identified as female than male. More than 2/3 of the respondents' highest degree earned is a master's. About the same proportion of survey respondents also identified their position level as either mid- or director/manager-level. Overall, 238 of the 350 participants reported that their position is housed within an office of student conduct, rights and responsibilities, or other similarly titled office. Nearly 200 of the participants reported that they work at an institution with 10,000 or more students, and only 31 of the participants said that their institution is other than a 4-year college or

Table 2

Gender

Gender	Number of Respondents
Female	212
Male	126
Other/Did not disclose	12

Table 3

Highest Educational Degree Obtained

Highest Educational Degree Obtained	Number of Respondents
Bachelor's	8
Master's	258
JD	18
Doctoral	64
Other	1
Did not disclose	1

Table 4

Position Level within Student Conduct

Position Level	Number of Respondents
Entry-level	28
Mid-level	116
Director/Manager	182
Senior Leadership	10
Other/Did not disclose	14

Table 5

Respondent's Office Title/Function

Title/Function	Number of Respondents
Student Conduct/Rights and Responsibilities	235
Housing/Residence Life	35
Institutional Equity and Diversity/Title IX	27
Student Activities/Fraternity and Sorority Life	2
Dean of Students	20
Student Affairs	14
Other/Did not disclose	17

Table 6

Institution Size

Size	Number of Respondents
999 or fewer students	5
1,000-2,999 students	59
3,000-9,999 students	82
10,000 or more students	198
Choose not to answer	6

Table 7

Institution Type

Institution Type	Number of Respondents
Public, 2-year	26
Public, 4-year	211
Private, not-for-profit 2-year	2
Private, not-for-profit 4-year	100
Private, for-profit 4-year	8
Graduate/professional programs only	1
Other/Did not disclose	2

Table 8

Minority-Serving Institutions

Institutions	Number of Respondents
Hispanic-Serving Institution (HSI)	33
Historically Black College or University (HBCU)	2
Predominantly Black Institution (PBI)	2
Asian-American and Native American Pacific Islander-Serving Institution (AANAPISI)	2
Alaskan Native- or Native Hawaiian-Serving Institution (ANNHI)	1
Listed more than one MSI designation	3
Other	9
None	223
Choose not to answer/Did not disclose	75

Table 9

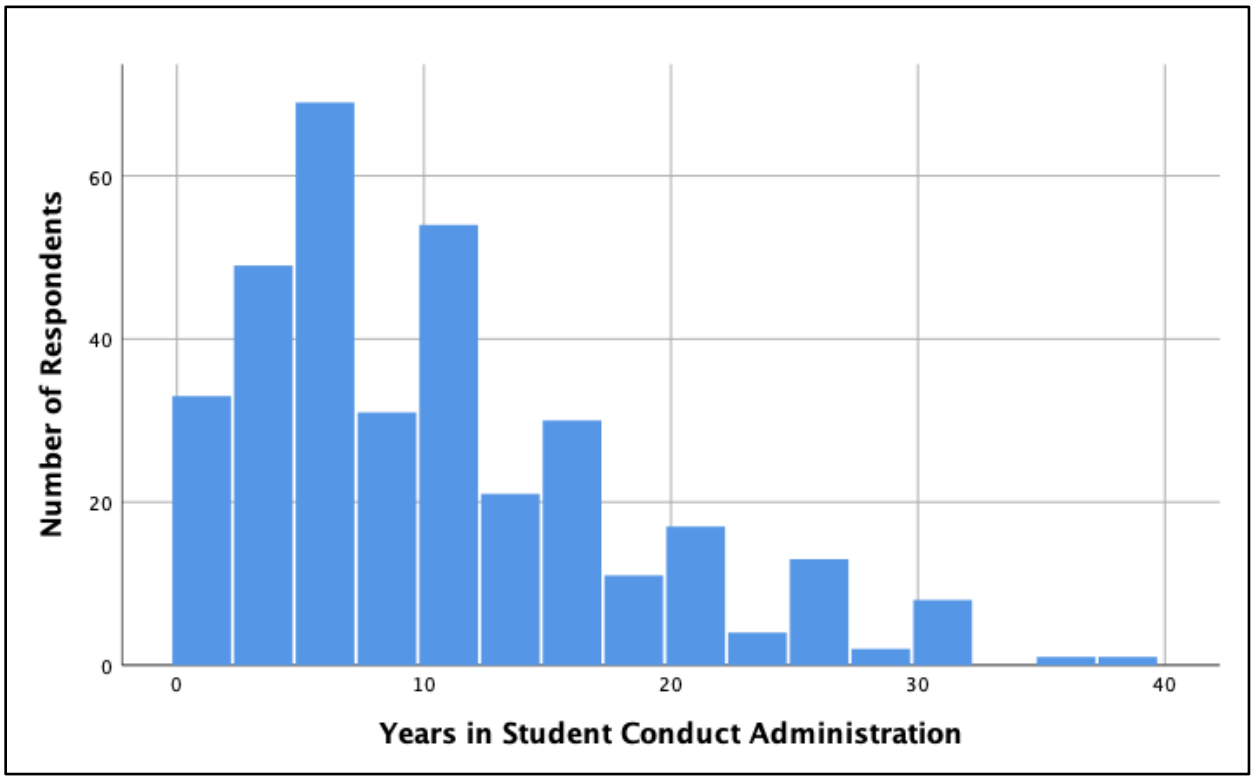
Types of Misconduct Adjudicated by Respondent's Office

Types of Misconduct	Number of Respondents
Academic misconduct	155
Non-academic misconduct	305
Residential misconduct	255
Sex- and gender-based harassment/Title IX	237
Group/organizational misconduct	253
Other	27
Choose not to answer/Did not disclose	3

Note. Most offices that adjudicate student misconduct have oversight over multiple types of misconduct allegations.

Figure 2

Self-Reported Years of Experience in Student Conduct Administration



university. Of the respondents, 13% work at an institution designated as minority-serving under the Higher Education Act of 1965. Some of these reported having two or more minority-serving institution designations while a few indicated "Other" and explained, for example, that their school serves first-generation students or has a religious affiliation. Finally, just under half of the survey participants reported that their offices adjudicate allegations of academic misconduct, but the majority of the respondents' offices do manage reports of non-academic misconduct, residential misconduct, group and organizational misconduct, and allegations stemming from reports of sex- and gender-based harassment, or Title IX.

Several respondents wrote in answers when asked to respond to their position level within student conduct. These included such titles as "Dean of Students" or "Vice President for Student Affairs." These were categorized as "Senior Leadership," assuming that these individuals supervise directors or managers of student conduct offices (see Table 4).

Reliability and Composite Scoring

SPSS was used to calculate Cronbach's alpha (α; reliability analysis) of the Concerns About Litigation Survey for Student Conduct Professionals as a whole and for each of the subscales. Subscale A, evaluating the impact of judicialization on student conduct administrators' professional work, yielded α=.786. The result for Subscale B, however, which sought to assess the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work, resulted in a Cronbach's alpha of only α = .616. The Cronbach's alpha for Subscale C, addressing how college student conduct administrators experience the impact of judicialization on their personal lives, was α= .824. The reliability score for the full 40-question survey was α=.889.

Vaske et al. (2017) report that $.65 < \alpha < .8$ is typically deemed to be acceptable when investigating aspects of the human experience, although some literature reports that a reasonable α should range from .7 to .95 (Tavakol & Dennick, 2011). It can therefore be assumed that Subscales A and C contain questions that are unidimensional; that is, they measure a single construct which are, in these cases, the impact of judicialization on professional work and personal lives, respectively. This concept is reinforced by Tavakol and Dennick (2011), who report that "alpha should be calculated for each of the concepts rather than for the entire test or scale" (p. 54). These authors write that a low α may be due to a small number of questions or questions that do not all address the same construct. Subscale B has 13 questions.

In light of the low α calculated for the questions on Subscale B, it may be more reasonable to assess the value of the responses on their own, especially in consideration of Study Question 1 that Subscale B seeks to address: "What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?" Unlike Study Questions 2 and 3 that consider the impacts of judicialization specifically on a conduct administrator's professional work and personal life, the questions on the survey pertaining to the first research question (Subscale B) speak to *many* dimensions: the various worldviews and attitudes a conduct practitioner holds. By evaluating the mean and standard deviation of each question on its own, the questionnaire may more readily reveal some of the beliefs and positions held by conduct practitioners across demographics (see Table 10).

Table 10

Subscale B Question Means and Standard Deviations

	Mean - All	Mean - Females	Mean - Males	Std. Deviation
Q16	3.11	3.10	3.16	1.170
Q17	3.54	3.59	3.46	.995
Q18	3.87	3.96	3.73	.990
Q19	3.78	3.81	3.71	.975
Q20	4.22	4.28	4.17	.853
Q21	4.26	4.33	4.13	.814
Q22	4.50	4.51	4.49	.911
Q23	4.17	4.21	4.14	1.092
Q24	4.14	4.16	4.17	.974
Q25	4.04	4.03	4.03	.873
Q26	3.39	3.37	3.42	1.319
Q27	3.46	3.51	3.36	1.096
Q28	4.13	4.20	3.98	.882

Note. Questions 23, 24, and 27 were reverse-worded. Table 10 represents the recoded scores.

Analysis of Study Question #1

The first study question asks "What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?" To understand these viewpoints, questions 16-28 (Subscale B) on the Concerns About Litigation Survey for Student Conduct Professionals asked respondents to indicate their level of agreement with 13 statements related to the role of students' counsel in the disciplinary process and how litigation impacts the work of practitioners. The questions in Subscale B were scored on a 1-5 Likert scale according to whether and how strongly the respondent agreed with the statement, when adjusted for reverse-coding:

1 = Strongly disagree

2 = Somewhat disagree

3 = Neither agree nor disagree

4 = Somewhat agree

5 = Strongly agree

Given that the mean for each question on Subscale B falls above the median, as evidenced in Table 10, it may be inferred that judicialization of student conduct has indeed impacted the beliefs and attitudes of its practitioners. A deeper analysis of these results will be presented in Chapter 5.

Seven of the 13 items on Subscale B yielded a mean response rate of 4 or greater, indicating the respondents' strong agreement with each of those statements. In particular, question 22 ("There is inequity among students who have the ability to hire lawyers and those who don't") generated the highest mean response for any one item on the instrument (M=4.50; SD = .911). Several one-way ANOVA tests on this item revealed that variance in gender, highest

degree earned, office location, and institutional type did not yield significant differences in response. However, using an independent sample *t*-test on question 22 indicated there was a statistically significant mean difference in response (M_{I-J}=.65) for those in entry-level positions (M=4.75; SD=.518) and those in senior leadership roles (M=4.10; SD=1.449; t (df)=2.07, $p < .001$).

Question 22 (M_{I-J}=.447; t (df)=-3.478, along with question 18 ("Litigation and students' attorneys is a normal part of student conduct practice in today's world"), also showed statistically significant differences among respondents according to their institutional size. The mean difference in question 22 between respondents at institutions of 1,000-2,999 students and those of 10,000 or more students was .447 with Cohen's *d*=.034. Question 18 showed a statistically significant difference between respondents at institutions of 3,000-9,999 students and 10,000+ students (M_{I-J}=.597; t (df)=--4.674; Cohen's d=.067).

Independent sample *t*-tests were conducted to compare the responses of male- and female-identifying respondents in subscale B. There was a significant difference in the level of agreement for women and men in questions 18 (M_{I-J}=.232; t (df)=--1.979; Cohen's d = 0.23), 21 ("I believe students use litigation [or the threat of litigation] to achieve the disciplinary outcomes they want;" (M_{I-J}=.198; t (df)=--2.155; Cohen's d = 0.24), and 28 ("I believe there has been an increase in litigation in student conduct cases due to the current political climate; M_{I-J}=.214; t (df)=--2.156; Cohen's d = 0.24). The *t*-test results can be seen in Table 11. In none of these three questions did a Pearson correlation find a strong relationship between gender and level of agreement.

Table 11

Independent Samples Test Between Male- and Female-Identifying Respondents

	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
						Lower	Upper
Q18	1.979	226.37	.049	.232	.117	.001	.462
Q21	2.155	333	.032	.198	.092	.017	.379
Q28	2.156	333	.032	.214	.099	.019	.409

Note. The significance level of Levene's test for question 18 was $p < .002$, indicating the variances for the two groups were not the same.

Position level correlated to statistically significant differences between directors and entry-level staff in Question 20 ("Litigation in student conduct matters is not necessarily due to practitioners' error;" mean difference of .5) and Question 24 ("The main reason students use lawyers in the conduct process is to help them understand the complex language of campus policies;" mean difference of .71). The effect size for these demographics was .036 for Q20 and .0496 for Q24.

Question 26 ("The need for a student conduct administrator to adhere to rigid guidelines pertaining to policy and process can impede upon their ability to have meaningful conversations with students") resulted in one of the lowest mean scores on Subscale B (3.39) but with the highest standard deviation (1.319). Several ANOVA tests on this question found that there was no statistical significance in the distribution of these responses against a respondent's demographic groups.

Analysis of Study Questions #2 and #3

Because Subscales A and C, which correspond to study questions 2 and 3, have been determined to have unidimensionality, one may analyze the means of each scale against demographic groups in order to make correlations. Comparing the means of Subscales A and C (2.8528 and 2.9845, respectively) using a paired samples *t*-test can determine whether judicialization creates a statistically significant difference of impact on the professional work and personal lives of student conduct administrators. Table 12 shows these results. There are three data points in Table 12 that confirm with statistical significance that judicialization's impact on student conduct practitioners' personal lives is greater than that on their professional work. First, the absolute value of *t* (4.606) is greater than the *t*-critical value (1.966785) at a significance level of α=.05. Next, the *p* value is .000, a value less than the significance level. Finally, the 95%

Table 12

Paired Samples Test between Subscales A and C

			Paired Differences				
						95% Confidence Interval of the Difference	
t	df	Sig. (2-tailed)	Mean	Std. Deviation	Std. Error Mean	Lower	Upper
-4.606	349	.000	-.13179	.53531	.02861	-.18806	-.07551

confidence interval does not include a value of zero. It may therefore be concluded that judicialization has greater influence on the personal lives of student conduct administrators than on their professional work. Table 13 further assesses the paired samples by analyzing the subscales by position level.

Effects of Title IX Adjudication on Reported Impacts of Judicialization

Additional data analysis was performed on the types of misconduct adjudicated by the respondents' offices and the means of Subscale A, Subscale C, and of the overall survey to establish whether one or more specific type of misconduct affected the impact of judicialization on the practitioner. Analysis reveals that respondents whose offices include the adjudication of sex- and gender-based harassment/Title IX allegations were far more impacted by judicialization than any other type of misconduct, whose results were statistically insignificant. Table 14 reports the mean scores for survey respondents as they identified whether their office's purview includes adjudication of sex- and gender-based harassment. Cohen's *d* on Subscale C between respondents whose offices do and do not adjudicate Title IX-related matters is .478, indicating a medium effect size, or strength of association. The effect size, as indicated by Cohen's *d*, between the two groups on the full survey instrument was slightly higher, at .494.

Table 15 demonstrates the results of the independent samples *t* test for survey results reported among respondents whose offices do manage Title IX allegations and those whose offices do not. There appears to be a statistically significant correlation between whether a respondent's office adjudicates TIX-related allegations and the respondent's experience of judicialization. Several two-way between-groups analyses of variance were conducted to explore the impact of TIX adjudication and other demographic factors on the overall impact of judicialization, as measured by the Concerns About Litigation Survey for Student Conduct

Table 13

Paired Samples Test between Subscales A and C by Position Level

			Paired Differences			
					95% Confidence Interval of the Difference	
Position Level	t	df	Mean Difference	Std. Deviation	Lower	Upper
Entry-level	-.642	27	-.06250	.51545	-.26237	.13737
Mid-level	-2.047	115	-.09526*	.50122	-.18744	-.00308
Director/Manager	-4.547	181	-.18471**	.54797	-.26485	-.10456
Senior Leadership	3.000	9	.43076***	.45402	.10597	.75555
Other/Did not disclose	-2.086	13	-.28690	.51450	-.58397	.01016

* significant at $p < .05$; ** significant at $p < .001$; *** significant at $p < .02$

Table 14

Subscale Means by TIX Purview

	Office adjudicates TIX?	N	Mean	Std. Deviation	Std. Error Mean
Subscale A	No	113	2.7062	.54443	.05122
	Yes	237	2.9226	.55878	.03630
Subscale C	No	113	2.7625	.67206	.06322
	Yes	237	3.0904	.69859	.04538
Full Survey	No	113	3.0790	.45477	.04278
	Yes	237	3.3088	.47549	.03089

Table 15

Independent Samples Test Between Offices Who Adjudicate Sex-/Gender-Based Misconduct and Those That Do Not

	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
						Lower	Upper
Subscale A	-3.416	348	.001	-.21645	.06336	-.34106	-.09184
Subscale B	-3.312	216.4	.001	-.15922	.04803	-.25388	-.06455
Subscale C	-4.156	348	.000	-.32787	.07890	-.48305	-.17269
Full Survey	-4.288	348	.000	-.22985	.05361	-.33528	-.12442

Note. The significance level of Levene's test for Subscale B was $p < .001$, indicating the variances for the two groups were not the same.

Professionals. The interaction effect between TIX adjudication purview and every other demographic group was not found to be statistically significant. However, through Pearson correlations, this demographic factor was determined to be the strongest predictor of a respondent's reported impacts of judicialization, based on the overall means of Subscales A and C and the overall survey.

The Effect of Other Demographic Factors on Reported Impacts of Judicialization

Data analysis also finds that those who have "been sued directly, named in a lawsuit, subpoenaed, or otherwise been involved in a lawsuit related to your work in student conduct" (asked of the respondents in the demographics section of the survey) report being impacted at a slightly higher rate than those who have not been involved in litigation (see Table 16). To further assess how being involved in a lawsuit impacted a participant, an independent *t*-test was conducted to determine whether a favorable or unfavorable outcome further enhanced the impacts of judicialization. There was a very significant statistical difference in scores on the survey as a whole for those who reported a favorable outcome and those whose outcomes were unfavorable (mean difference = .504, 95% confidence interval [-78, -.23], $p < .000$) with the Cohen's *d* effect size calculated at 1.037. The differences for subscales A and C were also significant (see Table 17).

An independent samples *t* test was also run for Subscales A and C as well as the whole survey against the independent variable of gender. Table 18 reports the subscale and full survey means by the respondents' self-identified gender. A simple observation of the subscale means reveals a .25 difference in means for males and females on Subscale C, as well as .13 difference for the genders in the overall survey. The *t* test of the means against the male and female genders demonstrated a statistically significant difference on Subscale C (impact on personal lives) and

Table 16

Independent Samples Test Between Respondents Who Reported Being Involved in a Lawsuit and Those Who Did Not

	t	df	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference Lower	Upper
Subscale A	3.775	334	.23125*	.06126	.11074	.35175
Subscale C	3.647	334	.28048*	.07692	.12918	.43178
Full Survey	4.037	334	.21009*	.05204	.10773	.31245

* significance at $p < .001$

Table 17

Independent Samples Test Between Respondents Who Reported Favorable and Unfavorable Outcomes from a Lawsuit

	t	df	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Subscale A	-3,973	108	-.62232*	.15665	-.93283	-.31182
Subscale C	-2.593	108	-.52097**	.20093	-.91925	-.12269
Full Survey	-3.632	108	-.50424*	.13882	-.77940	-.22908

* significance at $p < .001$; ** significance at $p < .015$

Table 18

Subscale Means by Gender

Gender	Subscale A Mean	Subscale B Mean	Subscale C Mean	Overall Mean
Female	2.8770	3.9275	3.0856	3.2862
Male	2.7995	3.8442	2.8316	3.1512
Other/Did not disclose	2.9833	3.8141	2.8056	3.2000
Total	2.8528	3.8936	2.9845	3.2346

on the survey as a whole (see Table 19). Of note, while the mean difference for females and respondents who identified as "Other" or who did not disclose their gender on Subscale C is 0.28, the independent samples *t*-test for these two populations did not reveal a statistically significant difference. This may be due to the relatively low number of respondents who identified as neither male nor female.

Only two items on Subscale A (impacts on professional work) resulted in statistically significant differences between male- and female-identifying respondents: question 3 ("I believe that errors made by the staff I work with, both in my office and across the institution, may leave me vulnerable to litigation") and question 14 ("I have been asked to treat a student differently by administrators because of their/their parents' high profile or likelihood to litigate"). Five items on Subscale C (impacts on personal lives) demonstrated statistically significant differences between these two genders. Of particular note is question 37 on Subscale C ("I have experienced an increase in physical ailments since beginning work in student conduct"), which resulted in a .52 difference of means between male and female respondents, the highest mean difference on any item on these two scales.

A two-way ANOVA was conducted that examined the interaction effect of gender and Title IX purview on responses to Subscale C. There was no statistically significant interaction between the effects of gender and Title IX purview on responses to Subscale C, F (3.173, 5.658)=1.552, p = .213.

Finally, Table 20 shows the mean responses of each subscale based on the survey respondents' self-reported position level within student conduct. Recall that participants who selected "Other" and indicated a position superior to the director or manager of the student conduct office were coded into "Senior Leadership." In Subscales B and C, as well as in the

Table 19

Independent Samples Test between Females and Males

	t	df	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference Lower	Upper
Subscale A	1.227	336	.07757	.06323	-.04680	.20194
Subscale C	3.246	336	.25400*	.07826	.10007	.40794
Full Survey	2.521	336	.13498**	.05354	.02966	.24029

* significance at $p < .001$; ** significance at $p < .013$

Table 20

Subscale Means by Position Level

Position Level within Student Conduct	Subscale A Mean	Subscale B Mean	Subscale C Mean	Overall Mean
Entry-level	2.7381	3.8049	2.8006	3.1091
Mid-level	2.8925	3.8846	2.9878	3.2493
Director/Manager	2.8652	3.9397	3.0499	3.2721
Senior Leadership	2.8467	3.6295	2.4159	2.9810
Other/Did not disclose	2.5952	3.7358	2.8821	3.0579
Total	2.8528	3.8936	2.9845	3.2346

overall survey itself, the level of reported impacts of judicialization increase by each position level, but senior leaders have markedly lower reported impacts than entry-level practitioners.

Interviews

Survey respondents were given an option to leave contact information if they were interested in participating in follow-up interviews. Of the 350 respondents, 134 chose to do so. Individuals who reported working in a role outside of a student conduct office (e.g., Title IX coordinator, residential coordinator) were eliminated to achieve some homogeneity of participants. Of these, six male- and six female-identifying individuals were selected using a Google random number generator. Three males and three females reported that their offices have purview over the adjudication of sex- and gender-based harassment allegations. See Table 21 for the participant demographics.

Interviews were conducted by phone and Skype in January and February of 2020. Of note, the earliest of these took place nearly four months before the Department of Education published its Final Rule on Title IX on May 6, 2020, which solidified new expectations for educational institutions in addressing matters of sexual harassment and misconduct on campus. The pending regulations in the interim months before the Final Rule, which appeared to roll back protections for complainants and increase procedural rights in favor of respondents, alarmed student affairs professionals. Five of the largest associations for campus life administrators submitted a joint response during the open comment period in January 2019, requesting such considerations as a lower standard of evidence to find responsibility, a broader definition of harassment, and return to a less legalistic grievance procedure (ASCA, n.d.; Student Affairs in Higher Education Consortium, 2019). Many interviewees cited this sea change of Title IX regulations as a pressing concern impacting their professional work.

Table 21

Demographic Information of Interview Participants

Participant Name	Institution Type	Gender	Does Office Adjudicate TIX Allegations?	Geographic Region
Alice	Two-year, public	Female	Yes	Midwest
Bradley	Four-year, public	Male	Yes	Southeast
Carl	Four-year, private	Male	No	Midwest
Deborah	Four-year, private	Female	Yes	Northeast
Elizabeth	Four-year, public	Female	No	Southeast
Francine	Four-year, private	Female	No	Northeast
Grace	Four-year, public	Female	No	Northeast
Henry	Two-year, public	Male	Yes	Mid-Atlantic
Isaac	Four-year, private	Male	No	Southeast
Jacob	Four-year, public	Male	Yes	Southeast
Kenny	Four-year, public	Male	No	Southeast
Linda	Four-year, public	Female	Yes	Mid-Atlantic

The interviews were also completed well before the global pandemic of the novel coronavirus (Covid-19) that forced a majority of institutions of higher education to close their residential or on-campus programs in favor of social distancing and physical safety. A March 13, 2020, survey conducted by the Association of College and University Housing Officers – International found that 61% of responding campuses in the United States were "considering implementing" or "already implementing" a closure of campus residential spaces and sending students either off campus or to their permanent homes. As of that same date, the website EdScoop listed 300 two- and four-year institutions of higher education who had already moved to online learning (Foresman, 2020). Two months later, in May 2020, the educational consulting firm Entangled Solutions shared that over 4,000 colleges and universities had been impacted by the coronavirus. The transition to empty residential campuses and conduct officers working from home is likely to have made a significant impact on how these staff perceive the influence of judicialization in their personal lives and professional work.

Following the interviews, each was transcribed into a text file and uploaded to NVivo, where they were coded using an inductive approach to highlight similarities across participants (Thomas, 2006). After thorough analysis of the codes and subsequent categories were developed, seven themes emerged across seven or more of the participants pertaining to the impacts of judicialization in regard to their professional work and personal lives: (1) communication, (2) conservative decision making, (3) mental health concerns, (4) responding to perceptions of what student conduct is, (5) the role of campus legal counsel, (6) the shift from being student-centered to process-centered, and (7) impacts of students' attorneys. Over 20 different ideas were presented by the participants under the topic of reducing the impacts of judicialization, including

separating work from home life, ensuring there is a supportive supervisor or colleagues, and engaging in some form of therapy.

Communication

Nearly all twelve interviewees indicated that the amount of communication with others, as well as the methods of communication, had changed significantly as a result of the increasing judicialization of student conduct work. Pointing to concerns of being recorded without knowing it or fearing that their words would be taken out of context, participants shared that they were worried about how their language might be misconstrued, leading to a more formal and structured way of sharing information with students. Linda reported: "We have to be cautious of everything that we're saying and who we're saying it to, which we should anyway. But the fact that people are trying to use it as kind of a threatening tool and a way to get what they are after makes it difficult." Alice considered that every conversation had the possibility to be broadcast: "I'm not gonna say anything to you or do anything that I wouldn't do without, you know, a full press conference watching me."

The implication that a student or their family would expose alleged cracks in the disciplinary process was profound for these practitioners. All seemed aware of the ways in which being unable to respond to public comment or scrutiny affected how they shared information with students. Francine explained, "[I]t's not fun to have conversations with students where they're just, you know, that like every word out of your mouth is going to be held against you." At Elizabeth's campus, a public institution, students may even invite the media to their hearings (with the exception of closed session), creating an atmosphere that anything in the process could be subject to thorough examination:

> We have to acknowledge that media are welcome at hearings until they go into closed session, we have to acknowledge that students can waive that right, and students can ask for media to be present at their hearing and there have been high profile cases and high profile students who have done that. And that sheds light on our system and on our process and on our practices. That can be really challenging sometimes, but … [we] really feel strongly that, you know, the potential of media or the prospect or the knowledge that media will be present does not change our process or practice or our values…

Almost every participant reported that judicialization seemed to change the fundamental nature of how they communicated with students, highly mindful of their language and vocabulary. Many acknowledged that they were cognizant of how carefully they selected words and sought to ensure that any communication was accurate, detailed, and even reviewed by a peer or supervisor. Both Deborah and Henry referred to "crossing Ts and dotting Is" in an effort to pay close attention to what's in their written communication. Jacob said, "I'm pretty deliberative anyway when I write, but when I write, you know, an outcome letter or an email, I'm much more mindful of how I write emails." Francine also responded that she was more "tentative [and] cautious, and in particular, like kind of, just…you end up like repeating the same thing because you don't want to be misunderstood."

Participants also reported a common behavior of documenting any interactions with a student, even when they didn't pertain to the disciplinary matter at hand, in order to confirm communications and record information. Carl explained that even in the gym, he would note the simplest conversation with a student and think about having to "run back to my office" and write down what happened. He further explained, "But when I need to document all those things,

because it, it comes back to get me every so many times I can't even explain so now I write down every little thing that I talked to anybody about." Francine stated that she would note even when she called a student and was unable to leave a message because the voicemail was full in order to memorialize the attempt to be in touch. She added that ten years ago, she would probably not have done so. Isaac said he even wrote down information presented by a student and would have that student sign a statement verifying that those notes regarding the situation were accurate:

> I see it as kind of like protecting myself because I think that it's very easy for verbal communication to be misunderstood. I do the same thing with students and parents. If there's something that we talked about, I will send a follow up email to just, hey, you know, I'm just following up and mention that this is, you know, my understanding of our meeting today. These are some of the things that we talked about; here the resources I said that I would provide to you. Just to have that written communication for that just in case.

The importance of writing notes was underscored by Deborah, who said that her notes helped her share information with general counsel and her supervisor. Elizabeth explained that the nature of her communication with constituents has become somewhat more legalistic, perhaps, she said, due to the fact her director has a law degree. "I think it's pushed me to do a type of writing that I'm not as familiar with. I've learned a lot about writing and crafting. I've learned a lot about being really intentional with the specific language that's used in that kind of stuff so I would say that's probably by far the greatest sort of shift in my practice," Elizabeth said. Jacob added that the judicialization of his work has required greater communication and collaboration with his legal affairs office, "because we need to make sure that we're making the best decision and one that will be supported by our legal department office." Linda also said that judicialization

“requires us to loop in other people that we probably wouldn't have otherwise. Yeah, so I feel like I spent a lot of my days consulting with our general counsel's office to make sure that I am thinking of every angle I should be thinking of so that I'm not misstepping on behalf of the institution or myself, frankly.” Further, Grace stated that preserving communication and other documentation was important in case of a litigation hold.

Conservative Decision-Making

Participants also highlighted the ways in which judicialization had led to a more conservative application of policies and processes, often retreating to making a decision that benefits the student and reduces the liability for future litigation. Alice said, “I think it is mostly just a very conservative workplace, if that makes sense…I'm making an educational decision or am I making a decision that I know won't be argued against either by the students or by my higher-up.” Grace implied that when a student brings a lawyer into the room, her staff tends to be “a little more careful” about the outcome. Henry explained that while it is not a good idea to deviate from an institution’s written procedures, “if you're ever going to go against your process, do it in favor of the students.” He inferred that a student is not likely to pursue litigation when a procedural error ends up benefitting the student. When Kenny was asked to put a policy into his campus code that states that any violation of law is a violation of campus expectations, he said he refused to do so “because I'm not qualified to determine if somebody violated a law or not; I'm not a lawyer. I don't have a law degree.” Kenny did not want to be challenged by an attorney for confounding legal standards with university educational standards.

The theme of conservative decision-making permeated into the matter of sanctioning as well, when a student has been found responsible for violating one or more policies and is issued consequences. These typically include a status sanction, such as a warning, disciplinary

probation for a period of time, or temporary (suspension) or permanent (expulsion) separation from a university. Carl explained that while disciplinary action is private, the implicit message surrounding the sanction seems to be a known entity. He reported that expulsion closes the door on a student, never allowing them to come back to school. Instead, Carl said, his institution will issue a lengthier period of suspension than what a less egregious policy violation might warrant, sending the message that his university would never truly permanently separate a student from the school and that at some point, a student might be welcomed back:

> I think even though we can't share with our students whether a student's been expelled, we can't necessarily share that; I think internally for those who know if we didn't expel someone we're sending a message that we didn't use the heaviest, I guess, punishment if you will, or sanction or something that definitely should not be happening on our campus. It goes against our values as a community.

Embedded in the theme of conservative decision-making is the fear of making mistakes. Several participants shared feelings of worry or anxiety over being called out by someone for messing up. Francine noted a concern that a mistake in a letter could get blown out of proportion, which would interfere with the educational component of the disciplinary process.

The student conduct practitioners who were interviewed also shared the concern of navigating a balance between having to protect the institution by providing a fair process and educating the student. They inferred that student development is eclipsed at the expense of following the process meticulously. Deborah reported she felt

> pressure…not only [to] do right by the students but also protect the institution, and it felt like I was alone because there was no one else that was going to be in that room but me

> making those decisions that could have such major ramifications again for both the students and the college.

Grace noted that there have been instances where, when a lawyer is present with a student, a certain charge might be withdrawn, but a student who had exhibited similar behavior and does not bring an attorney might have the charge sustained. She also noted that when there is potential for the media to be involved, "the institution is kind of changing how we react and I think that lends to pressure on my office on how we respond where we felt like the outcomes already been decided." Most telling about this theme was Alice, who reported the following regarding matters of sexual misconduct:

> Personally and professionally, to realize that you can't do enough, not because we are worried about what the victim has been through and the impact on the victim, but that we're worried that the alleged who was found responsible, so the responsible party, we're worried about a lawsuit from them. So we're going to go easier on them, rather than doing you know justice for the, for the victim. So that's had a big impact as well and it all kind of literally, the only reason for that is, you know, the concerns about litigation.

Finally, two interviewees pointed to the increasingly legalistic processes required under Title IX, and both shared that their institutions would be likely to have their non-sexual harassment processes mirror those for Title IX to provide consistency and simplicity. Grace was worried that the then-pending Final Rule regarding Title IX under the current political administration would impact how her institution would adapt processes for all disciplinary matters. Francine pointed out that court rulings on Title IX cases regarding students' right to due process would "trickle back into student conduct."

Mental Health Concerns

By far, the widest-reaching theme to emerge from the twelve interviews was that of mental health concerns, surfacing in eleven participants and ranging from a preoccupation with previous decisions to experiencing trauma to problems with personal intimacy. While some named the problem as simply stress, others identified medical diagnoses or symptoms that they believed were a direct result of or exacerbated by their work in student conduct, including post-traumatic stress disorder, anxiety, depression, weight loss, and sleep deprivation. Only Bradford, who had been working in student conduct for about 3.5 years at the time of his interview, reported that he did not believe he had been emotionally impacted by judicialization: "I mean from my mental health perspective or my physical health perspective I can't say that there's really anything that like, you know, significant, you know I haven't lost a lot of weight or changed my habits or patterns or anything like along those lines."

Several pinpointed the nature of student conduct work and its differentiation from other student affairs fields as the source of mental distress in that student conduct is the one department that can impact a student's standing at their institution of higher education. Grace, who had formerly worked in residence life, noted that while in the past she had dealt with some very difficult late night concerns such as suicidal ideation of a student, it was "kind of a 'one and done experience' usually," whereas with conduct matters, investigations can be prolonged. Henry, who also had experience working in residence life, said "I remember when I first started, I joked that I lost my faith in humanity when I started working here," referring to his transition to a community college. Linda remarked

> I definitely think though, that the base level of work that we do is super stressful. Yeah, I'm going to add on some of this stuff that you're talking about and some of the political

factors that come in from higher level administration it's just, it's what I would call unnecessary stress.

She also explained that a conduct officer typically has to deliver difficult news to a student and help them "imagine their life in a different way than they thought," which is "hard enough." Linda added that the influence that senior administrators may have over a conduct decision and how it impacts the sense of autonomy a conduct practitioner might have in the process makes it even more stressful.

A conduct administrator's deep concern for students can create conflict when a student appears litigious or it seems like the public eye is scrutinizing one's every move. Carl said that his wife noted the re-emergence of his depression that coincided with an escalating number of cases in which he was deeply embedded. Isaac also noted that even when a student does not have an attorney, the difficulty of having to separate a student from their beloved institution can be tough: "I think for me it's really difficult to see students break down, see students cry, but also, you know, in those moments having to really reinforce and reaffirm myself that you know suspension is really good for them because the institution isn't a healthy place [for them] right now." Kenny reported that he is encouraged to take a personal approach with students, which he appreciates, but that when a student emails him after a meeting and creates additional labor, he becomes unproductive because he needs to focus on clearing up any concerns that that individual may have so that there is no perception that he is disregarding the student.

Kenny's concern also revealed a sense of emotional conflict between one's personal values and directives by the institution. Deborah said her "default has shifted" from "student development compassion" to "swing[ing] more towards the sort of like process-oriented stuff because of my job…particularly with Title IX and sexual misconduct cases." In her phone call,

Linda asked the interviewer whether the subject of "being asked to do something that ethically is outside of [one's] boundaries" had come up with other participants. Carl specifically stated that while his ethics and morals haven't changed due to his work in student conduct, his practices have shifted to needing to "show his work" so that he can prove he is doing right by the school as well.

Three practitioners, Deborah, Jacob, and Isaac, whose offices all handle Title IX adjudication for their respective institutions, reported newly detected problems involving personal intimacy. Jacob shared that he stopped watching *Law and Order: Special Victims Unit* an NBC crime drama spin-off that concentrates on the investigation of sexual assault crimes, indicating that he is "in this work all the time," and that the show sometimes portrays work similar to his own. "Also, they always screw up the college stories, anyway," he added. For Deborah, the weight of the work infiltrated her life much more directly. She shared that being a conduct worker has indeed impacted her sex life. "Sometimes there are days that you spend a whole day thinking about people being hurt in intimate ways and you come home, and you don't want to be touched." Relatedly, Isaac said that his husband noted that he had become more "solutions driven" since working in student conduct; where Isaac had previously been a "nurturer" and "active listener… in intimate relationships," he said that he now "ask[s] for context" and tries to "craft a solution for others as well. So that's been a kind of unique development in my life."

Yet another concern under the theme of mental health concerns that surfaced was a preoccupation with decision making, either as it was occurring or after the fact. Elizabeth noted "I do a lot of processing with myself and with my with other important people in my life," while Henry seemed to second-guess himself after catching up to new developments from court cases

and “best practices just in student conduct in general….It sometimes sticks in the back of my mind. Am I doing this right?” Carl, too, recognized “I can just start playing all these games in your head, you should double, triple think things about what you do.” In citing the concerns of working as a one-person conduct office, Deborah noted that “This work is nearly impossible…I think the experience of being able to not take it personally and to trust my own decisions is just something that comes with time.” Grace noticed her reduction in self-confidence that came from interacting with attorneys:

> Anytime a lawyer gets involved, I think it raises like a certain level of anxiety of just like a microscope on what I'm doing. And usually, I'm pretty confident in my job but I've just had some experience with some of these lawyers where I start to second-guess my own abilities just based off of the interactions that we're having.

Finally, the interviewees revealed that the nature of their profession resulted in both toxic and traumatic workplaces. Linda cited the media as feeding into her senior leadership’s perception that there is something wrong with her work, negatively impacting her and her staff:

> So many people have an opinion about what we do based on what they hear in the media and it's so one-sided. So it definitely creates a perception of what our role is, with the work that we do, the quality of the work that we do, that we can't answer to. So it absolutely affects it. At my institution in particular, it's created a bit of a toxic environment because if my leadership doesn't understand that and they are hearing what's out there, either in the bigger media or in the student media, they're not necessarily able to support because they're not hearing or understanding the way that it works on the other side of it. It's been impacting us.

Likewise, Elizabeth remarked that in an appeal process, a student or organization would use that opportunity to fabricate "just completely blatant lies about my practice or how I've engaged with students," creating a sense of frustration as students and their attorneys attempt to resolve problems by going above her not just to her supervisor, whom she noted is female, but to her supervisor's boss, whom she noted is male.

Alice, Carl, and Kenny shared experiences of deep social-emotional impact, some to the point of deep depression and sadness. Alice noted a sense of vicarious traumatization as a result of the work with students involved in sexual misconduct matters. Carl was hurt by the fact that as a conduct officer, nobody stops by to see him in the way that they did when he was an academic advisor. He said he realized that now, "every time I'm with a student that is around, [it is because of] something that is not so positive for them." With this, Carl implied that the work itself was inherently adverse for his students, and he talked about how much that had affected his life. In referring to working his full-time position in student conduct, being a husband and father, and working on his dissertation, Carl disclosed: "I just want five minutes to do something pleasurable." Kenny added that while he loves what he does (almost all of the interviewees stated outright that they enjoyed their work), there are times when his diagnosed anxiety and depression becomes too much to handle and "once a year, [I] just really can't get out of bed."

Responding to Perceptions of What Student Conduct Is

Elizabeth had alluded to the fact that senior administrators at her own institution were not fully engaged in understanding what her role is and the processes by which a student may be issued disciplinary action. This, too, was a highly discussed topic by 10 of the 12 participants. Many of the interviewees targeted the media for skewing the truth, presenting only a narrow segment of a story, or misrepresenting the college disciplinary process entirely. Deborah noted

that many people's opinions on how student conduct is supposed to operate are based in movies "where the dean is always the bad guy," or they "come in expecting a courtroom." Francine seemed to agree with this sentiment when she stated that students want to "nitpick over semantics and I swear I think this all comes from watching a TV legal show."

There was a shared perspective by five of the interviewees reflecting on their own expertise and opinions by conduct outsiders about their ability to facilitate disciplinary processes. When Elizabeth noted that so many students went above her position to complain to or meet with supervisors, she indicated a frustration with "not seeming to be an expert or professional in this work." Kenny noted that several professionals around him suggested he get a law degree to become proficient in student conduct work, despite over 13 years of experience in the field following a master's degree and later pursuing a PhD. He explained: "I want to show how people with a student development background as opposed to a legal background can be really impactful in this work." Deborah and Henry both pointed to campus individuals, general counsel and the vice president of human resources, respectively, who are often called upon for their student conduct "expertise" but who do not work daily in the trenches and are not immersed daily in the work, and expressed frustration that they are not seen as subject matter authorities. Jacob added that while he felt quite comfortable conducting Title IX investigations, the authority to do so "left our office's purview," and he has expressed some doubts about the aptitude of those now appointed to investigate.

Linda noted that "many people have an opinion about what we do based on what they hear in the media, and it's so one-sided. So it definitely impacts, it creates a perception of what our role is, what is the work that we do, the quality of the work that we do, that we can't answer to." By this, Linda meant that because of educational record privacy laws like FERPA, conduct

administrators are unable to publicly comment on specific students' disciplinary matters. Elizabeth commented, "There definitely is a frustration at battling the perception of control that we as professional staff have versus what gets publicized and what gets shared about our system." Carl also said that not being able to share the outcomes of disciplinary processes weighed on him because he could not even communicate the positives of the process. The interviewees alluded to the fact students only take to the media when they feel wronged by the process, not just by a negatively impacting sanction, but even by the mere finding of responsibility for violating policy.

Some of the participants pointed to the spotlight shone on sexual harassment and campus sexual misconduct through the #MeToo movement as challenges to a fair and impartial process, untainted by media influence. Alice reflected on the double-edged sword nature of the increase in campus reporting of such behavior: students come to campus more knowledgeable of what sexual consent is, but because of celebrities getting away with sexual harassment (she named Donald Trump and Harvey Weinstein), students were more likely to feel that their perpetrator would as well. That, coupled with the public's constant scrutiny of whether campuses should even adjudicate sexual misconduct at all, led to a sense of hopelessness for ever having a semblance of a fair process. Linda indicated the media presented a vicious cycle: students' lawsuits would get attention, inciting others to litigate as well.

Deborah noted that Title IX-related cases created a heightened sense of anxiety because of their highly judicialized nature. Grace reported that even when cases do not fall under the realm of Title IX, "it's a witch hunt because 'I'm a male, so you're out to get me,' which isn't necessarily the case, but I think the media plays into that a little bit now." Kenny seemed pessimistic about the then-pending changes to Title IX adjudication under Secretary of Education

Betsy DeVos, noting, “It definitely is becoming more legalistic and everybody's kind of holding their breath, what the new regulations look like. I think the common thought among people is that how bad are they going to be and nobody's expecting they're going to be great.”

The Role of Campus Legal Counsel

It did not come as a surprise to hear the range of emotions expressed by the participants when speaking about their campus legal counsel. Almost all of them reported that their offices maintained relationships with their institution’s attorneys and connected with them regularly regarding the adjudication of various types of disciplinary matters. From being required to connect with them at the moment a student mentions an attorney or litigation to having them change an outcome or decision after a case has been decided, it is clear that legal counsel can serve as both a help and a hindrance to student conduct administrators.

Alice and Kenny both noted the harmful impacts of counsel changing a sanction or interfering in the disciplinary process, and not just by violating the written process for the adjudicating of cases (and therefore increasing a school’s liability to be sued in a different, subsequent conduct matter). In interfering with the conduct body’s decision-making or the appellate process, attorneys also negatively impact the staff member’s self-esteem and sense of competence. Kenny also noted that the student’s ability to learn anything from the matter would be stunted by the institution’s attempt to mitigate a lawsuit by reducing the disciplinary impacts.

The interviewees reported varying levels of communication with their campus attorneys. Linda said that “I feel like I spent a lot of my days consulting with our general counsel's office to make sure that I am thinking of every angle I should be thinking of,” and Jacob stated “…the judicialization piece has had us collaborate more directly with our legal affairs office. Not because we don't want to but because we need to make sure that we're making the best decision

and one that will be supported by our legal department office." It appeared commonplace that a conduct officer would touch base with counsel regarding an outcome before disclosing it to the responding student or organization on high-profile or serious cases. Deborah, who had worked in student conduct for over a decade, noted: "The follow up that I do in terms of communicating with my supervisor and our general counsel about what was said, what the concerns are, what the decisions are – and all of that has increased significantly over the last, maybe five or six years in particular." Francine seemed to worry about the impacts of what it means to have to bring in campus counsel, perhaps unnecessarily intensifying the case at hand. She said, "The amount of times that they just like, 'Loop in our internal counsel' and I'm like, …'We're not there yet.' Just because they said the word 'lawyer' doesn't mean that we need to rope in ours. So, the going over my head bit." Jacob appeared exasperated at the need for his campus' general counsel to be involved any time a student had a lawyer present: "I have to then have one of the two lawyers that we have on campus be present at a student conduct hearing for an alcohol violation."

Other conduct officers were more comfortable bringing campus counsel into conversations pertaining to disciplinary matters. Bradford noted that his campus's general counsel had a "dedicated student affairs staff member" there, inferring that there was a specific attorney designated to handle matters pertaining to student affairs: "I think we have a really good relationship with our legal office, so if I ever find myself in a situation where like, it feels like a more judicial case, like I don't ever hesitate to touch base with my supervisor and bring in legal if we need to." Isaac explained that while there is a good relationship and while counsel is easily connected with for "big threat" situations, he was "not empowered in my role to voluntarily contact our lawyers, so that already has to go up a chain to be activated." There seemed to be a

common thread about the seniority of a conduct staff member and their ability to have direct access to counsel.

Student-Centered v. Process-Centered

Nearly all of the interviewees, 11 of the 12, recognized that judicialization seemed to be responsible for causing a shift in the sensibilities of the conduct process moving from being developmental, educative, and formative to focusing intensely on following procedure, being cautious of what is communicated to the student, and avoiding litigation. The participants appeared to agree with Carl's assertion that "whenever an attorney comes involved, even though theoretically it doesn't change the process or change anything, I think, in all reality and all practicality, it changes everything." Grace affirmed this as well:

> Where our intent is to have an educational conversation typically with a student becomes more like us against them kind of conversation…When attorneys or things like that get involved and so usually I am very prideful of my ability with the student to have that kind of educational conversation where they leave feeling supported but held accountable, and I think it changes the feel of that so I think when a student has attorney involved, my ability to build a relationship with them through the process is diminished. Just that it changes the dynamics of everything…[A student might argue] "I had to get my lawyer involved because the college is out to get me," but I think just the ability to have that educational relationship with a student is markedly different when attorneys are involved.

Francine talked about how her formal communication and meetings with students were worded more "legally" than she would like and that there is pressure to inform students of their rights in the process when "it used to suffice to just say, you know, this is an educational process. We're not a court of law."

Alice remarked how she “can't have a real conversation with a student [when] there's an attorney sitting there.” She shared how difficult it was to even ask a student about how their academics were going because an attorney might tell the student “don't answer because you know she'll suspend you because you're not a good student too.” She inferred that she couldn’t holistically address the student’s well-being because the attorney would misinterpret any good intentions. Deborah noted how she now needs to watch what she says in the presence of a student: “I'm just very constantly aware of how the law interacts with my work, where I think years ago I was much more focused on what's best for students, what's right for students, and now I am focused on more like civil rights than what's best.” She said that her work feels “more micro-managed than focused on the student experience,” and that “it feels like you never have good answers. Everyone walks away unhappy every time. There's no learning. You never get the opportunity to have an educational conversation because it's so fraught from the very beginning.”

Grace, Kenny, and Isaac each used the word “adversarial” to describe the feeling when an attorney enters into the conversation. While they recognized that the law, even under the 2011 Dear Colleague letter and persisting through the 2020 Final Rule, permits a student to have an advisor of their choice in cases related to sexual harassment, their full involvement in campus disciplinary processes doesn’t serve well to separate out the semblance of a courtroom-like proceeding from one that was originally designed to be educational. Kenny reiterated that he is most concerned with the development of students and tries to “make it seem as non-adversarial as possible.” Linda noted that when students threaten to file complaints about her work or the process, “it is somewhat of an impediment to doing our job,” and she must spend more time consulting with counsel.

The Impacts of Students' Attorneys

When students bring counsel into the disciplinary process, the impacts on the conduct administrators can be both positive and negative. Bradford reported that sometimes a student's attorney can assist with the disciplinary process, particularly in the case of a mutual agreement or resolution in which the attorney helps the student acknowledge that the evidence pointing to a policy violation is rather clear. This can serve to support the authority of the conduct officer. "Sometimes when people hear that from their attorney, they feel less like they're getting cornered by like a staff member of the university, because that's the person that's the person that they're paying," Bradford shared. Henry concurred:

> More often than not I've actually found lawyers helpful. … They're often more rational than the student and they're able to see a solution they're able to know that their client or in our case with parents, their student messed up. So they're able to talk a little bit of sense into the student to take some responsibility… The lawyer can proverbially knock some sense into their client.

But more often than not, the conduct practitioners who were interviewed found lawyers to be an interference with the educational and developmental aspects of the disciplinary process. Carl explained that the presence of a lawyer fundamentally changes the spirit of the process. Elizabeth, who works at an institution with a student-run honor system, noted that she typically interacts with attorneys at the appeal level, and at her school, it is mainly student organizations who retain counsel for their disciplinary matters. When an attorney is invited to support an individual student at the appeal level, "that complicates things because attorneys are kind of jumping in at a place" where they haven't really been involved since the beginning, and are likely getting a skewed perspective of what has occurred. She added that while there are many

student organizations that have their own counsel through their national headquarters (e.g., fraternities and sororities), these groups are often calling on a local alum who may be a tax or real estate attorney (and not trained in education law) to help them with their grievances. Elizabeth said that this usually does not help the learning process. She concluded, "I don't want to work with attorneys who are justifying the behavior that had landed a student in my space, or who were supporting an org helping students be defensive about it." Linda agreed that "it's grown over time" in that students will threaten to bring in an attorney "as leverage," but that usually "that person is [not] an attorney in any sort of area that would be helpful for them in this situation."

Francine pointed out that there seems to be a cultural phenomenon of people seeking legal assistance "when they don't like your answer." She also noted that students' attorneys will nitpick more over semantics within a policy or procedure, further judicializing what is merely supposed to be a behavioral matter. It's no longer about "Did you cheat or did you not cheat," Francine said, but about whether a comma inserted in a policy changes whether or not a student is responsible for the violation. She noted that people today are generally more litigious than they might have been 20 years ago. Carl observed that parents were equally to blame for the rise in students' attorneys, finding that they too would threaten to call a lawyer when they felt their student was being unjustifiably punished.

Several of the participants found that students' attorneys can be quite disrespectful to campus professionals. Deborah navigated some difficult moments where she felt bullied before she learned to feel empowered to "keep the lawyers in their places" and stand up to them. Grace shared how she had received some intimidating email correspondence from lawyers who would threaten her credentials and her ability to do her job because she is an educator and not an

attorney, inferring that they believe the disciplinary process should be even more legalistic. Jacob noted that the job can be even more difficult for conduct administrators in those states that permit students to have full legal representation in campus disciplinary proceedings, including speaking directly on behalf of a student.

The topic of students' attorneys is inextricably linked to their accessibility and affordability. Half of the interviewees mentioned the disparities between those who can and cannot afford representation or the resulting discrepancies of treatment by the institution as a whole. Francine recognized the population differences between her former employment at a small public technical college and "a private institution where most of these folks come from pretty well-off backgrounds." Alice shared this sentiment, "because I know that not every student can afford an attorney…And so it's really hard for me, too. It's like if a student has an attorney come in, their sanctions shouldn't be any different from a student who didn't have one come in." Kenny recalled how he had to intervene with his dean of students' quick reaction to a student's lawyer, noting that while the student may be able to evade legal prosecution because of his wealth, it should not be acceptable for his lawyer to intimidate campus authorities administering the disciplinary process, which has lower stakes and lower standards of proof. "You can clearly see he and his attorney were just trying to mitigate damages; they couldn't have cared less that he hurt [someone], that he took somebody's life."

Reducing the Impacts of Judicialization

Perhaps most telling from the twelve interviews are the numerous strategies the participants identified in helping themselves feel less impacted by judicialization. These can be sorted into two categories of supporting the practitioners through their professional work and their personal lives. The strategies appeared to be evenly distributed between the two

classifications.

Two-thirds of the interviewees reported that having a supportive supervisor and/or colleagues who understand how judicialization might affect a conduct practitioner can make a profound difference in how deeply those forces are felt, and that a reliable, sympathetic team can even help to absorb some of the impacts. These participants mentioned strong relationships with supervisors, colleagues, university counsel, and even a Title IX coordinator that allowed them to offload some of the heavy burdens associated with their work. Isaac reported that he and his supervisor schedule time together in advance of hearings that might be "particularly draining or…difficult" to reflect on any road bumps or just decompress. Deborah, who is the sole conduct practitioner at her institution, got the support of her supervisor after she "finally had kind of a breakdown" from a particularly difficult hearing. The supervisor helped build in additional personnel supports for the day of a hearing to assist with logistics. Bradford also said he was comforted with the presence of campus counsel in high stakes conduct hearings. Deborah pointed to her fellow staff members and her campus's Title IX coordinator as individuals who have helped her feel less impacted by judicialization:

> I've been talking with colleagues who helped me feel more empowered to keep the lawyers in their places…Our actual Title IX coordinator and I have gotten pretty close, and we had a conversation about this, and she had said she experienced the same thing, and it sort of feels like something that is so personal and makes a big impact that no one's talking about… I now feel like I have a team. And that was huge, because I think being a one-person office with this work is nearly impossible, no support under you.

Alice and Elizabeth both stated that they had great bosses, and Elizabeth added that hers is accommodating with a flexible work schedule and will "support [her] emotionally when the

appeals that she reads she knows are not always accurate." Jacob said that because his campus attorney is also a former social worker, "she gets it," and as the director of his own office, he acknowledged "the impacts of helping other folks to manage what I know are impactful situations and taxing situations, both professionally for them, but also then knowing what's happening with them as people." He noted that he wanted to be a strong support particularly because the work is hard and "I know that we're not getting any more money."

Kenny and Francine pointed to the power of mentors who do not work within their institutional spaces. Francine said that "having a pal at another institution you can call up" and get a different perspective on a conduct case can be a useful tool to "to let the stress sort of roll off your back a little bit more." Kenny shared that he actually "cold" emailed a vice president of student affairs at another institution who is an alumnus of Kenny's doctoral program because they share similar identities. That individual, Kenny said, "as far as self-care, he really keeps me focused on what the important thing is. He really is getting me."

Participants also noted that a connection to the broader student conduct community and keeping up with law and policy updates helped them to feel more comfortable with the legalistic nature of their work. Three pointed to the benefits provided by Facebook discussion forums specifically for student conduct practitioners and the Association for Student Conduct Administration (ASCA) listserv. Alice and Deborah specifically referred to the ASCA Women and Student Conduct Facebook group as a safe space and "a great resource" in which they can ask for advice. Even Alice's male supervisor invited her to get an opinion on a particular matter through the women's group. Five of the interviewees said that reading current case law allows them to feel better prepared to manage some of the legalistic aspects of their work. Jacob reported that a relevant case in his regional circuit's Court of Appeals informed his decision-

making in a recent campus disciplinary hearing in which he otherwise might not have taken the right steps, thereby possibly amplifying the situation to be ripe for a lawsuit at its conclusion.

There were several strategies the interviewees noted that helped them to reduce the impacts of judicialization by setting limits on the scope of their work and taking a positive mindset approach to compartmentalizing it. Jacob and Francine talked about how excluding certain responsibilities like serving on a behavioral intervention team or in an on-call duty rotation for the institution allowed them to lift the weight of performing additional labor. Francine said, "Taking that off the plate, I'm not dealing with as much sort of heavy emotional burden and [that] actually has contributed greatly to my satisfaction." Carl shared that he was able to alleviate some of the effects of judicialization by spelling out the process for a student early in a conversation so that they know what to anticipate, including all possible outcomes. Isaac found it helpful to leave his office and work from a different space on campus.

Carl also noted that he is better able to manage these impacts since he realized that the threat of litigation and the encroachment of students' attorneys is now an expected part of the job. His narrative about navigating his workplace after being served his first subpoena reveals deep insight into a conduct practitioner's thought process:

> So, you start to think about it: Well, okay, so I should have expected this at some point; this is sort of the line of work that I'm doing. … I guess it just felt weird. Coming from a person who's never been in legal trouble, you get something that would normally be a sign of legal trouble…But I guess, you know, stepping back and thinking about it, and broadly, you know, it's okay. It's part of my job. It just makes you think "What is my job?" Huh, what isn't my job? Is it my job to make people feel like they should subpoena me for something? I can just start playing all these games in [my] head: you should

> double, triple think things about what you do. And so, it's really sort of a challenge in terms of, "Okay, why did I get into this line of work?" You know, why do I work in student affairs? Here's something that is a different side of that that can happen. But am I confident in what I did? Am I competent in how I handled the situation? Which I was, so whatever, but I think it was just a weird feeling, a bad feeling at first, and then I think it just took time to reflect on it, but you know? Yeah, I'm sure it will happen again at some point. So I just, I felt weird about that but now I feel like though, you know, as long as I'm…I guess for me personally, as long as I'm morally and ethically okay with what I've done, and I'm doing the right thing, then I can get past that.

Kenny also reported that "preparing yourself or being aware of the litigious nature" of the work beyond the typical "one law class every [student affairs] master's student takes" can help a conduct practitioner "be a defensive professional."

Similarly, Grace and Isaac used psychological reframing to change the meaning of what was happening to them in their work. Grace remembered from her days in residence life how she didn't get too intimidated by a parent's threat to get a lawyer if she didn't change a student's room "because there wasn't really a mechanism" and there was little she could do if there was truly no space to which she could relocate the student. Conduct, she reported, feels different, perhaps because of the broad spectrum of outcomes for disciplinary matters. She said that while it doesn't always change her feelings, she works to reframe her thinking so that she can understand it better. Isaac explained the mental process he went through when he got his first litigation hold. While he had "a lot of anxiety that came with that, specifically what it meant," he was able to identify a "higher anxiety moment" from his past, which reduced his stress levels about that case.

Analysis of Study Question #4

Intervention Workshop: Full-Day Training

On Wednesday, February 5, 2020, the scholarly practitioner presented a full-day (8:30-4:30 with an hour-long lunch) pre-conference workshop to an audience of seven full-time student conduct administrators at the annual meeting of the Association for Student Conduct Administration. This workshop was offered at a cost of $250 to the attendees; the registration fees are typically covered by a participant's institution as professional development. Over the course of the day, the following five topics (drawn from chapters 1-4 of this publication) were presented: Background of the Problem – Introduction to Judicialization; Review of the Literature – Case Law, Legislation, Resources; Theoretical Frameworks; Survey Results – Self-Reported Impacts on Student Conduct Administrators; Promising Practices from Physicians' Litigation Retreats. These specific modules were developed based on the evolution of the research for this study and designed to introduce the concept of judicialization to an audience with no previous knowledge of the topic but with experience in student conduct administration. The workshop's content closely followed the first three chapters of this text and presented some of the early quantitative data results to provide both a breadth and depth of information to the participants.

At the conclusion of the workshop, the participants were asked to complete an evaluation form about the day's content and their learning. Among the seven participants, all either agreed or strongly agreed that the course was valuable and that they would "recommend this training to a student conduct colleague." One participant ranked "The content was organized and easy to follow" as neutral, and added a note saying "I got lost a bit in the statistics." The evaluation then asked the participants to rank the five topics listed above from 1-5 "with 1 being the most useful and 5 being the least useful to your knowledge and skill development of this topic." Five of the

participants ranked each of the topics between 1 and 5, with Background of the Problem – Introduction to Judicialization scoring the highest (most useful) average ranking and Theoretical Frameworks scoring the lowest average ranking. One participant scored the topics with 1s/2s only and the other with 4s/5s. However, the last participant's high valuation of the course content and free response answers to later questions indicate that that individual might have misinterpreted the instructions for scoring completely.

Summarized, the free response comments show that the participants appreciated and learned from the full-day workshop, although one individual pointed out the difficulty of staying attentive through a seven-hour training "because it is a lot of information." Asked which modules could be eliminated, one person answered with the literature review and the remaining participants either left that answer blank or stated that all of the modules were beneficial. Two of them mentioned here that while the statistics resulting from the nationwide survey were difficult to follow, but important in helping to impart to the workshop participants that their feelings about the impacts of judicialization were valid, and that the student conduct community nationwide is experiencing this phenomenon. One person said, "I think that the use of your stats really grounded how relevant the problem of litigation stress is. That section was more technical, but I'd not cut it." This was echoed in the responses to the questions about what respondents liked most about the workshop. Another participant said that "formalizing the concerns into a framework will help me to help colleagues."

There were only two responses to "What would you change about this workshop?" One participant wished to have more time to discuss their concerns with the group, and another indicated that the workshop could be shortened or focused more on the promising practices. "Being outcome driven folks, the solutions are the most important part and spending time

discussing, that was incredibly valuable." Finally, participants were enthusiastic about the material and thankful to the presenter for sharing this information. Several reported that they looked forward to seeing how this material would be shared with the greater student conduct practitioner community.

Intervention Workshop: Webinar

Based on the positive responses from the pre-conference workshop, the scholarly practitioner set to determine whether a condensed version of the presentation, offered as an online webinar, would be as well-received as the full-day offering. Through the Association for Student Conduct Administration (ASCA), the scholarly practitioner arranged to present a 1.5 hour training in July 2020 for a fee of $49 for ASCA members and $99 for non-members. Only three individuals registered for that workshop, and together the presenter and ASCA decided to postpone or cancel until a later date. Both parties agreed that several factors likely contributed to the low registration turnout, including likely budget cuts for professional development in the summer amidst Covid-19 and the labor investment of student conduct offices in adapting policies and procedures to the Final Rule on Title IX.

The scholarly practitioner then decided to offer the workshop at no cost to participants in an effort to garner more interest. The webinar was advertised through various social media, including student conduct Facebook groups and listservs. To attempt to garner a baseline of participants' sense and understanding of judicialization, the original 40-item Concerns About Litigation Survey for Student Conduct Practitioners was used as a registration instrument; participants were required to complete the survey before entering their email address, which would then give them the link to the Webex online event. 76 individuals registered for the webinar, although several participants either clicked through on the neutral response (e.g.,

"Neither agree nor disagree") or skipped questions altogether in order to reach the end.

The webinar, entitled "The Truth About Litigation Stress: Managing 'Creeping Legalism' Through Evidence-Based Approaches," was delivered on September 3, 2020. Feedback on the full-day workshop indicated that participants were most positive about the "promising practices" aspect, describing the final module in which six approaches from physicians' litigation retreats were adapted and translated for utilization in the student conduct realm. This presentation closely mirrored the last two hours of the live February workshop and used the same Powerpoint slide deck. However, due to time and technology constraints, the webinar was largely passive in nature; participants were only able to ask questions through the Webex chat feature and were only answered when the presenter noticed them.

Approximately 50 individuals participated in the live webinar, and several more accessed the recording, which was available for one week following the presentation. At the end of the webinar, all registrants received a link to complete a follow-up survey containing 20 Likert scale questions asking their level of agreement from "strongly disagree" (scored as 1) to "strongly agree" (scored as 5) with various aspects of the training, as well as provide responses to open-ended questions about their favorite parts and possible ways to improve the training further.

27 participants answered the follow-up survey, which received fairly favorable responses (M=4.13; SD=.85). The survey was divided into four general sections pertaining to the effectiveness of the presenter, whether the workshop helped the participant to gain confidence or knowledge in specific areas, and whether the workshop provoked the participant to consider future skill development in specific areas. Generally, the presenter was rated highly (M=4.32; SD=.33). Respondents also reported that the workshop helped them to gain knowledge in being prepared for litigation, why students use litigation, positive coping strategies, and risk

management strategies (M=4.12; SD=.82), and that the workshop sparked interest in pursuing future professional development in responding to an unruly party, deposition and/or litigation preparation, finding an appropriate confidential personal advisor, and additional litigation stress training (M=4.07; SD=.81). Questions regarding whether the workshop helped to build confidence received the lowest scores overall (M=3.82; SD=.99).

Open-ended answers to four questions supported the numeric scoring of the survey. Responding to "What did you like most about the workshop?" participants' replies indicated a favorable reaction to the comparison of student conduct administrators' experiences to those of physicians, a good mix of theoretical and practical information, and a well-organized presentation. One participant indicated, "I liked some of the 'soft skills' that I can help our newer team members with, such as decision-making, watching your emotions, problem-based coping strategies." Another wrote, "Organized well. Good mix of theory (what's done in the medical profession) followed by practical examples (use checklists like doctors)."

Several of the write-in answers to "What did you like least about the workshop?" referred to a technology problem during which one participant did not mute their microphone, which significantly distracted the audience from the presentation. They also pointed to the expectation that there would be more discussion than what had actually occurred: "The pauses for questions or input felt forced and like they were not designed for generating any substantive conversation that lasted more than a few seconds" and "I was expecting more discussion of common experiences of practitioners who work in high-litigation areas, information about common reactions and feelings, etc. The closest moment came in discussing that many folks reported an impact on their intimate relationships and sex lives; I expected more discussion of those types of insights." Respondents also indicated that they would have liked a resource list at the end of the

presentation. Several days after the follow-up survey was emailed and the presenter was able to scan the responses, a reminder email to complete the follow-up was sent to all participants which included links to Koru mindfulness, a meditation method developed by Duke University clinicians and designed specifically for college-age adults; the Physicians Litigation Stress Resources Center; and a description of statements of orientation, a technique used to help a person to understand what will happen over the course of a conversation.

Participants offered constructive feedback in response to "What would you change about this workshop?" Two indicated that they felt that while they gained useful knowledge, it might be better geared toward entry-level and new professionals in the field. Another stated, "This may be better as a non-interactive webinar that folks can engage with at their own pace. Or maybe it needs to be broken into multiple parts to allow for more time to cover the topics and answer questions or generate conversation." Two other respondents agreed with this statement, specifying, "It was a lot to take in within a short timeframe" and "[I] do see additional opportunities for this to be expanded to a longer session, with more interactive components and deeper dives into topic areas."

Finally, in addressing "Please share any further comments or questions," nearly every respondent who completed this question pointed to an interest in "more information on preparing for deposition. I'd also like more in-depth training on the litigation process." A second participant stated "I would like to learn more about preparing a team to prevent litigation, and what to do when it seems like someone is preparing to sue, and what to do or how to engage with parties/legal counsel when litigation has already started." A final comment that validated the value and relevance of this workshop:

I honestly just want to thank Ms. Glassman for presenting on this topic. I have honestly

been struggling recently because of a very contentious back and forth with faculty regarding updates to the Code of Conduct. Even though the focus was on litigation a lot of the discussion was very relatable and helped me balance what was feeling somewhat personal.

CHAPTER 5: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

College student conduct administration has certainly evolved in the several hundred years since the advent of American universities themselves. However, it is only in the last sixty or so years since the decision of *Dixon v. Alabama State Board of Education* (1961) that students have been subject to formal rules and processes that regulate the adjudication of allegations of misconduct on campus. The formal profession of student conduct administration established itself alongside these federally mandated laws and policies designed to ensure due process and fundamental fairness. When the Association for Student Conduct Administration (ASCA) was formed as the professional development organization for such practitioners in 1987 (as the Association for Student Judicial Affairs), the majority of members were trained formally not in law, but in education, counseling, or social work. The educational objectives promoted by the association were – and still are – heavily grounded in moral and ethical development, student learning, and restoration to harmed parties and communities.

But as students have come to view their higher education as a commodity and their relationship with their universities as contractual, student conduct administrators in the carrying out of their duties have come under intensifying scrutiny as executors of that contract. To some extent limited in their capacity because of institutional policies for student behavior and those federal laws and statutes, conduct practitioners increasingly have been accused of the unfair treatment of students, inappropriate application of policy, and abuse of their power. On their end, conduct officers have felt the immense pressure of having their work regulated by federal law, exasperated by the ever-shifting climate and pendulum swing that seems to come with each new presidential administration. The media, in sensationalizing sexual misconduct lawsuits in which accused students sue their institutions for failure to follow due process, construct a singular

narrative of vengeful conduct administrators to which the practitioners are unable to respond because of educational record privacy laws. This in turn amplifies the psychological impacts on those practitioners, affecting everything from the language they use in an email to a student to their intimate partner relationships.

Summary of the Findings

In this study, the scholarly practitioner sought to identify the phenomenon of judicialization as it manifests within the practice of college and university student conduct administration, the ways in which it impacts conduct officers in their professional work and personal lives, and possible strategies to reduce any negative impacts. A nationwide study of 350 conduct practitioners revealed that judicialization indeed has changed their beliefs about the nature of their work, the way in which they carry out their work, and how they live their lives beyond the workplace. Survey respondents were approximately 2/3 female and 1/3 male, and a small number (12) of participants labeled their gender or sex identity as other.

Only 8 survey respondents reported that the highest degree they had earned was a bachelor's. This is not surprising, given that the Council for Advancement of Standards in Higher Education (2015) suggests that student conduct administrators have an earned graduate or professional degree. While only 18 respondents reported their highest degree was a juris doctor, about 18% (64) of the participants reported an earned doctorate. Slightly less than half of survey respondents (43%) reported that they themselves had "been sued directly, named in a lawsuit, subpoenaed, or otherwise been involved in a lawsuit;" 87% knew someone who had been so involved.

Participants who had been in their roles for longer periods of time, those who were mid-level or directors/managers in student conduct, women, individuals who had already been sued

or involved in a lawsuit, and those whose offices adjudicate allegations of sex- and gender-based harassment appeared to be the most significantly impacted by judicialization. In nearly all categories, female-identified respondents self-reported stronger impacts and beliefs than male-identified. The difference was most significant on reported impacts on one's personal life. The sample of those who self-identified as a different gender was too small to determine effect size in any given categorical response. Reported impacts on both personal life and professional work appeared to increase with position rank from entry level conduct officer to director or manager of the office. Further, respondents who worked in offices of institutional equity or their campus's Title IX office reported higher impacts than participants whose offices were situated in other departments, including offices of student conduct.

Interviews with twelve individuals who had completed the Concerns About Litigation Survey for Student Conduct Professionals (CALSSCP) complemented their responses with narratives that enhanced the credibility of the resulting survey data. Using inductive coding, seven prevalent themes emerged that were presented by seven or more of the participants. These included impacts on how and with whom conduct professionals communicate within their professional practices; being conservative in their decision-making (from finding a student not responsible due to information that may not reach the level of evidence required to issuing less egregious sanctions for behaviors that might otherwise warrant separation from the institution); changes to one's mental health; feeling like they have no recourse to defend the work and practice of student conduct; varying relationships with one's campus legal counsel; experiencing a shift from the disciplinary process as being educational and developmental to legalistic and focused on process; and how students' attorneys have affected their self-esteem and make visible the inequity of wealth amongst students.

Further, interview participants offered a breadth of suggestions on how they have managed to reduce the impacts of judicialization. Several indicated that going to a therapist or other clinical counselor provided tremendous benefit in being able to "offload" traumatic experiences to a confidential resource and gain advice and guidance on how to cope. Having a supportive supervisor or other colleagues who understand the contemporary legalistic landscape of student conduct appears to be a bolster as well. Other respondents noted that they have been able to reframe litigation, potential lawsuits, and job stress as less significant sources of stress than other concerns in their life, such as medical problems or family tensions, or have created clear boundaries between their work life and their home life. Off-campus, non-local mentors also appeared to have a positive impact in helping participants navigate through their concerns.

Presenting the study findings to a small group of conduct practitioners at a full-day workshop produced both positive reviews for the workshop itself as well as for the research encompassed within it. The seven practitioners who attended and with whom were shared the literature review, theoretical frameworks, and survey data results during the day-long seminar overwhelmingly reported that they benefited greatly from learning about the study and suggested remedies for reducing the impacts of judicialization. When the full-day workshop was condensed to a 1.5 hour webinar that focused solely on the promising practices from physicians' litigation retreats, the audience responded with mainly positive reviews, indicating that the information was "timely" and "easy to follow with concrete tips." Many wrote in a feedback survey that they would be interested in ongoing and/or additional training.

Interpretation of the Findings

The purpose of this study was to examine the ways in which college student conduct administrators experience judicialization in their work. Judicialization was described in this

study using definitions from Vallinder (1994), Sweet (2002), and Hirschl (2008) and was interpreted as the phenomenon of developmental, campus disciplinary processes turning into courtroom-like, judicial trials; the encroachment of students' attorneys into what were designed to be educational practices; the use of litigation as an attempt to supersede campus disciplinary outcomes; and the intense public scrutiny from college and university outsiders of the inner workings of disciplinary processes. The scholarly practitioner used a three-part action research cycle to examine judicialization through an inductive lens using theory and literature derived from the medical professions.

The study was framed by four questions:

1. What are the beliefs and assumptions held by student conduct administrators pertaining to the phenomenon of judicialization in their work?
2. How do college student conduct administrators experience the impact of judicialization on their professional work?
3. How do college student conduct administrators experience the impact of judicialization on their personal lives?
4. In what ways do litigation and judicialization education workshops reduce critogenic harms on college student conduct administrators?

The remainder of this chapter will examine the study findings alongside the frameworks of the vast literature to explore commonalities between the experiences of physicians and conduct practitioners. It will also expand upon the foundational research established by Miller (2018) that gave voice to conduct administrators of Title IX processes who were investigated by the Office for Civil Rights in the Department of Education.

Impacts on Personal Lives and Professional Work

Across nearly every single demographic group, the mean of Subscale C, impacts on personal lives, was higher than the mean of Subscale A, impacts of judicialization on professional work. Institutional size (see Table 6) and type (see Table 7) did not impact these differences. Only three outlying demographic groups emerged in which these individuals reported higher impacts in their professional work than their personal lives: conduct practitioners whose highest earned degree is a juris doctor, senior leadership (those administrators who have supervision responsibilities for directors of student conduct) and colleagues who work in offices of fraternity and sorority life. With the exception of the 33 respondents who reported that they work at Hispanic serving institutions, other survey respondents who indicated a specific designation of Title III minority-serving institution (MSI), also reported lower impacts on personal lives than on professional work. However, each of those designations had only one or two respondents per classification. Table 8 in Chapter 4 reports the number of respondents per type of MSI.

Reported Impacts by Position Level

The scholarly practitioner also noted an interesting phenomenon embedded in the subscale and full survey means when considering a student conduct administrator's position level within student conduct. Table 20 in Chapter 4 contains this data. Relating to study questions 2 and 3 (Subscales B and C) as well as the overall survey, respondents' answers demonstrated an increase in reported impacts of judicialization by position level. This is to say that as a practitioner is promoted from entry-level to mid-level to director/manager, they feel significantly more affected by judicialization in their beliefs and in their personal lives. For all three position

levels, reported impacts are also stronger in the personal life realm than in the professional work realm.

However, across the two subscales B and C and on the overall survey, respondents who identified as senior leaders who supervise directors/managers of offices of student conduct had lower self-reported impacts of judicialization than even entry-level practitioners. This group was also the only position level to report stronger impacts within the professional realm than in their personal lives. A paired samples *t*-test found that these differences were statistically significant for senior leadership at $p < .015$.

The same test for differences in judicialization's impacts on directors/managers found statistical significance ($p < .000$) as well. In this case, however, this set of student conduct administrators reported that their personal lives were far more affected than their professional work.

Gender Differences in Responses

The results from the Concerns About Litigation Survey for Student Conduct Professionals revealed some interesting gender differences between male- and female-identifying respondents in all three subscales: beliefs about judicialization, impacts on professional work, and impacts on personal lives. Females were more likely to normalize the idea that litigation is an expected aspect of the student conduct profession, agreed more that students use litigation or the threat thereof to achieve the disciplinary outcomes they want, and that the current political climate has contributed to the increase in litigation in student conduct cases. Overall, females reported stronger impacts across the survey. The survey questions listed in Table 22 resulted in statistically significant differences ($p < .006$ or less) between females and males.

Table 22

CALSSCP Questions with Statistically Significant Differences Between Females and Males

Question Number	Subscale	Question Text
3	A; Professional Work	I believe that errors made by the staff I work with, both in my office and across the institution, may leave me vulnerable to litigation.
30	C; Personal Lives	My eating habits have changed as a result of the stress from my job.
37	C; Personal Lives	I have experienced an increase in physical ailments since beginning work in student conduct.
38	C; Personal Lives	I often find myself venting about work to loved ones.
39	C; Personal Lives	The possibility of litigation makes me question my competence.

The revelation from the survey data appears to be confirmed by some of the narratives shared by the interview participants. Female interviewees, in general, were more open than the males about their personal struggles with how their work interfered with their lives at home. They detailed specific ailments and pinpointed specific scenarios in far greater depth, talking about lack of sleep, weight loss, depression, anxiety, loss of interest in intimacy, and exhaustion. For example, while Deborah reported how her first several cases at work led to not sleeping and not eating, Isaac said that when he got his first litigation hold, he "wouldn't say [he] lost sleep." This is particularly interesting in light of Table 11, which demonstrates that female-identifying respondents on the CALSSCP were far more likely to believe that they had less control over their work, believing that colleagues and others with whom they work are more responsible for workplace litigation.

Connecting these findings with the Kobasa et al. (1982) model of hardiness in which commitment, control, and challenge – the 3Cs – serve to buffer an individual from stress, one may infer that teaching these personality traits, perhaps in single-gender environments, may promote healthy event appraisal. Such professional development could help women develop hardiness characteristics that allow them to build resilience and reframe the possibility of litigation from threatening to stimulating. Grönlund's (2007) findings infer that a woman with greater control can mitigate the effects of a high demand and high strain job, typically in "education, health care, and service positions" and "highly dependent on other people and…often confined to a certain place and schedule" (p. 490), and possibly even generate gains. That study's results are also relevant to the current research in that they revealed a gender difference between men and women in high strain jobs in work-to-family conflict, or stress and impacts on the personal realm.

Previous Involvement in Litigation or Federal Investigation

Perhaps unsurprisingly, the results of the Concerns About Litigation Survey for Student Conduct Professionals and the subsequent interviews support and considerably enrich the findings of Miller's 2018 dissertation study. Miller's qualitative study was conducted by interviewing 19 student conduct administrators and Title IX coordinators at 11 member institutions of the American Association of University Professors that had been under investigation by the U.S. Department of Education and the Office for Civil Rights for a potential violation of Title IX under the 2011 Dear Colleague letter framework. Quoting participants, Miller (2018) extracted themes of "vulnerability" (p. 82), feeling "attacked by students, parents, attorneys, and the media" (p. 85), "litigation fatigue" (p. 74), "increased anxiety" (p. 74), "fear of the potential to lose [one's] job" (p. 74), "physical health issues" (p. 74), and the "stress and pressure of being the face of Title IX issues on their campus" (p. 75).

The data from the current study clearly indicate that a student conduct administrator need not necessarily be a Title IX coordinator or have been investigated by the Office for Civil Rights in order to feel the impacts of judicialization. The mere proximity of having one's office have purview over adjudicating sex- and gender-based misconduct seems to have a profound influence on practitioners. Table 14 demonstrates that just working in the same space as colleagues who deal with such misconduct feel affected in both the conduct professional's personal lives and professional work, but Tables 15 and 16 show that whether a respondent had been involved in previous litigation or other legal inquiry, and whether the outcome was favorable to the individual, is equally as impactful.

Most notable about the present study is that the data mirrors the early findings of litigation stress pioneer researcher Dr. Sara Charles. Specifically, her study of sued and non-sued

physicians (Charles et al., 1985) revealed that sued physicians' emotional and/or psychological reactions to being sued were more severe and lasted longer than the reported reaction to "the general threat of medical malpractice litigation" (p. 437) of those who were not sued. Where Charles' survey asked respondents to agree with whether the plaintiff's case was unjustified, the CALSSCP's questions 18 and 23 asked for a level of agreement or disagreement with "Litigation and students' attorneys is a normal part of student conduct practice in today's world" and "Student conduct administrators are at no greater risk for litigation than other student affairs professionals" (reverse-coded). Of all questions asked on Subscale B (beliefs and assumptions about judicialization), these two had the only statistically significant differences between respondents who had previously been involved in litigation and those who hadn't ($p < .000$). Charles, Pyskoty, et al. (1988) explain, "Those who have been sued…generally report more adverse symptoms and changes in behavior than non-sued physicians" (p. 359).

Further, half of the 12 questions on Subscale C, which dealt with conduct practitioners' reported impacts of judicialization on one's personal life, resulted in statistically significant differences between sued and non-sued conduct practitioners at $p < .01$, with five of the six items at $p < .006$. The strongest mean difference emerged from question 37, "I have experienced an increase in physical ailments since beginning work in student conduct." This marks a striking similarity to the participants in Charles's studies (Charles et al., 1985; Charles, Pyskoty, & Nelson, 1988), especially considering that the overwhelming majority of physicians – 84.1% in the 1985 study of both sued and non-sued physicians and 97% in the 1988 study of only physicians who had been sued – were men, and 60% of the CALSSCP respondents identified as female. The 1985 study compiled the respondents' subjective reported symptoms to litigation or the thought thereof, the top twenty of which included anger, depressed mood, frustration,

insomnia, fatigue, difficulty concentrating, gastrointestinal symptoms, indecision, and decreased sex drive. All of these symptoms were glaringly evident in the present study's interviews.

Charles and her colleagues also examined impacts to professional practice; however, the Subscale A item that had the greatest mean difference between sued and non-sued student conduct practitioners, question 3, "I believe that errors made by the staff I work with, both in my office and across the institution, may leave me vulnerable to litigation," did not have a corresponding question in any of the Charles studies. Question 3 also had the greatest mean difference of any item between sued and non-sued conduct administrators. Question 10, which asked "I am concerned about being sued for an alleged error," had a statistically significant but smaller mean difference than question 3 between sued and non-sued conduct administrators. This leads to a particularly interesting inference: Conduct administrators do not necessarily believe that their own errors could lead to litigation, but that mistakes made by colleagues could be attributed to them and wrongly lead to a lawsuit. This is also related to Charles' finding (Charles et al., 1985) that most physicians found their plaintiff's lawsuit unjustified.

Charles' research (Charles, Pyskoty, & Nelson, 1988) also found that 90% of sued physicians believed that the "current climate of litigation has eroded the quality of the physician-patient relationship" (p. 359) however, there was not a significant difference in responses to CALSSCP question 11, "Due to the threat of litigation, I find it more difficult to form a trusting relationship with students." Finally, Charles, Pyskoty, et al.'s 1988 study reported that there was a significant difference at $p < .05$ between sued and non-sued physicians who "did unnecessary tests" and "changed record keeping" (p. 359); the current study also found statistically significant differences between sued and non-sued conduct practitioners who responded to question 2, "I feel like I have to take steps to protect myself or my institution against litigation" ($p < .006$),

question 5, “I sometimes ask colleagues to review my written communication and documentation before their final versions are emailed/released” ($p < .05$), and question 15, “The risk of litigation prompts me to be extra careful in what I say, do, and/or write” ($p < .003$). While the statements between the two instruments are not identical, they reveal a greater tendency of professionals who have previously been involved in some form of legal action to take additional precautions, perhaps to avoid future litigation.

Interference with the Disciplinary Process

Chapter 4 reported that question 26 yielded one of the lowest mean scores (3.39) on Subscale B but the greatest standard deviation (1.319). This question asked respondents to rate their level of agreement with “The need for a student conduct administrator to adhere to rigid guidelines pertaining to policy and process can impede upon their ability to have meaningful conversations with students.” While the survey instrument revealed a slightly neutral level of agreement with this statement, the subsequent interviews of study participants painted a somewhat different picture of how dialogue with students can be inhibited by judicialization. The interviewees pointed more specifically toward the presence of attorneys rather than the adherence to procedure as the factor that significantly impacted their ability to have meaningful conversations.

When attorneys become a part of the campus process, the interviewees reported, their simply being present tangibly changes the character of the interactions thereafter. Isaac had noted that “[attorneys’] full involvement in processes doesn’t serve to continue that separation” of the campus educational process from a punitive, criminal one, while Grace reported “I think just the ability to have that educational relationship with a student is markedly different when attorneys are involved.” Eleven of the twelve participants made remarks along these lines. It may be

inferred, then, that it is not the strictness of process itself that impacts a conduct practitioner's ability to make connections with students, but the heightened sense of being under observation and being held exactingly to those procedural expectations by attorneys that changes the atmosphere for student conduct administrators.

Common Concerns Between Physicians and Student Conduct Administrators

The wide body of literature pertaining to the impacts of clinical judicial syndrome by medical practitioners is clearly applicable to the described experiences of college student conduct administrators. Using the earliest studies in the mid-1980s (Charles et al., 1984; Charles et al., 1985; Wilbert & Fulero, 1988) through the present day, researchers have discovered a potential new mental health disorder or incomplete expression of post-traumatic stress disorder that is solely the consequence of being involved in or facing the threat of litigation. The present action research was specifically designed to mirror some of previous studies conducted on physicians to determine if student conduct administrators experience the impacts of judicialization – a somewhat broader phenomenon than the mere event of litigation or threat therein – in ways that resemble clinical judicial syndrome. Both the quantitative and qualitative strands in the current study, created with similar questions and vocabulary to the studies by Charles et al. (1984; 1985), Fileni et al. (2007), and Brodsky and Cramer (2008), produced remarkably similar responses to surveyed and interviewed physicians regarding the way in which their professional work, beliefs, and personal lives are impacted.

Professional Practices

Wilbert and Fulero (1988) were among the first scholars to find that physicians who experience litigaphobia may end up practicing what they termed "defensive medicine" (p. 379), a habit in which they are overly cautious about their interactions and communications with

patients, documentation of signs and symptoms, and testing. Defensive medicine also includes the avoidance of patients who may merely even appear litigious, or feeling "on guard" (Martin et al., 1991). One potential defensive practice that may link physicians and student conduct administrators is the holding of a professional liability insurance policy. While federal laws do not mandate it for medical practitioners, several states do require it. The Association for Student Conduct Administration does not conspicuously feature liability insurance as a necessity, although it does offer a $1 million Educators Professional Liability Plan for under $100 annually. The uncertainty of litigation and the possibility that one's institution may not support an employee's decision is such that many student conduct administrators – including half of the twelve interviewees in this study – either already carry it or are considering it.

This theme of defensiveness was also present among student conduct administrators who completed the CALSSCP. Items 5, 9, 12, and 15 on Subscale A all related to themes of defensive practice that a conduct administrator might exhibit. Question 5 asked the respondent to rate how well the statement "I sometimes ask colleagues to review my written communication and documentation before their final versions are emailed/released" described them, and was the second highest rated item in Subscale A. Both questions 12 and 15 referred to caution with verbal and written communications. Each had means slightly above the median score of 3, and these "antilitigation strategies" (Wilbert & Fulero, 1988, p. 381) were all approached by the interviewees. However, question 9, which asked whether a practitioner had avoided students who threatened litigation, received the second-lowest mean score on Subscale A, meaning that they did not reject working with individuals who appeared litigious. One reason for this may simply be that there are many student conduct professionals operate in one- or two-person offices, and that there is no other staff member to whom a practitioner could "pass off" a litigious student.

Cautious, conservative workplace behavior was detailed extensively in the interviews for this study. Participants cited issuing less harsh sanctions, worrying about making mistakes, extensive note-taking, and documenting interactions for every student encounter as only a handful of the behaviors that conduct practitioners use to safeguard themselves. These actions connect to the literature by Breslin et al. (1986) that posits that any patient is a potential litigant, and that filing suit is now considered the societal norm for resolving conflict. This group of authors were the first to develop a litigaphobia scale, which eventually evolved into Brodsky and Cramer's (2008) Concerns About Litigation Scale (CALS), on which the CALSSCP is based. The translation of the CALS language to lingo specific to student conduct professionals with similar levels of agreement to statements and parallel expressions of defensive practice is a profound exposure of the heightened sensitivity of a broad spectrum of professional spheres to the possibility of litigation.

Another comparison may be evaluated regarding the medical literature on physicians in small, rural communities and student conduct practitioners at various size campuses. Bushy and Rauh (1993) interviewed doctors who had both been sued and not been sued, and the researchers drew an assumption that serving in multiple health care roles with added responsibilities might make such physicians more susceptible to litigation. The scholarly practitioner hypothesized that student conduct administrators who work at small campuses might experience impacts of judicialization more heavily than peers at larger institutions because they too might fill various roles, for example, students of concern case manager or residence life administrator. No statistically significant differences were found in any of the subscales among the various reported institution sizes. Nevertheless, it is notable that strands of the conduct administrators who were interviewed echoed the physicians' narratives throughout the literature. These include

the feeling and reality of isolation from colleagues when litigation threat is presented, the way in which practitioners reacted to local media publicity and neighbors' inquiries, and cautious recordkeeping. Perhaps most importantly is Bushy and Rauh's (1993) observation that physicians who had previously been sued were very willing to talk to others who had recently been subpoenaed. This resonates powerfully with the feedback from the full-day workshop that pointed to the group discussion on dealing with litigation threat as the most valuable training module.

Beliefs About Judicialization

High scores on subscale B seemed to suggest a trend among student conduct practitioners that litigation is not necessary the fault of the administrator and is sometimes due to the errors made by colleagues. Further, there was a high level of agreement with the statement that litigation is an expected part of the work of student conduct, and that these practitioners are indeed more at risk than their peers in other student affairs offices. The study by Fileni et al. (2007) found powerful agreement by Italian radiologists of similar beliefs, as well as that the mass media is responsible for contributing to the litigious environment. Ryll (2015) had also noted that a practitioner did not necessarily need to make a mistake in order for the patient to instigate a lawsuit.

While the current study did not ask specifically about the possibility of winning large sums of money through litigation as Fileni and colleagues' survey did, data analysis from the CALSSCP suggests that student conduct administrators do not believe that students use attorneys merely to help them understand confusing policy language (as is frequently the reason given). The survey data, combined with the interviews, indicate that student conduct administrators believe that students think they need a lawyer to help them reach a positive disciplinary outcome

and not necessarily come out with a monetary award. A conclusion may also be drawn between the survey results and interviews that conduct practitioners do not find the current system to be equitable because students' wealth or ability to afford an attorney is a key factor in determining outcomes rather than one's willingness to accept responsibility and consequences.

Personal Lives

The current study did not use clinical diagnostics to assess student conduct administrators' reported psychological or emotional symptoms pertaining to the impacts of judicialization. However, their repeated use of the word "trauma" and other mental health language when discussing their feelings about the judicialization of their work signals widespread suffering and anguish, aligning with several researchers' previous findings (Arimany-Manso et al., 2018; Lees-Haley, 1989; Paterick et al., 2017; Strasburger, 1999) on Clinical Judicial Syndrome, an incomplete expression of post-traumatic stress disorder that could possibly lead to death. This is a critical concern that demonstrates that student conduct practitioners are experiencing critogenic harms in analogous forms to both sued physicians and those physicians who were simply asked to discuss the possibility of litigation.

Both the survey and interviews exposed judicialization's substantial impacts on the mental health of student conduct practitioners. Naming signs and symptoms including depression, anxiety, sleeplessness, increased caffeine and alcohol use, decreased libido, and general tension, the participants self-reported experiences that were noticeably similar to those expressed by physicians from Charles et al.'s 1985 study. Arimany-Manso et al.'s (2018) meta-analysis of the literature pertaining to Clinical Judicial Syndrome included Charles et al.'s 1985 study among 17 other documents and found equivalent expressions of mental and physical symptoms with varying levels of severity in sued physicians, depending on the length of time

lapsed from the initiation of the litigation, level of peer and social support, and degree of integration. These authors also support the concept that "those who have experienced other more stressful life episodes cope better than those who have not" (Arimany-Manso et al., 2018, p. 159).

There is a striking parallel between the critogenic harms of litigation threat and legal action that manifest in both physicians and student conduct administrators. Bushy and Rauh (1993) expose the cycles of Caplan's (1981) phases of crisis as experienced by litigated rural physicians. It is not a far stretch to translate the expressed concerns of doctors in their report to those described by conduct practitioners. The first phase, impact, may bring to light the practitioner's typical coping mechanisms and if these are not adequate, the event becomes more central in the life of the practitioner and looms large amidst both their professional work and personal life. For example, Isaac had reported that when he received his first litigation hold it created a lot of anxiety for him regarding "specifically what it meant." The search for meaning in the litigation is potentially fruitless or else could lead to more emotion-focused coping, forcing the conduct practitioner to review countless communications and interactions in their head that may never yield a reason for the lawsuit or threat. Disorganization is the second phase and is the one in which the aforementioned mental health concerns are most likely to emerge, according to Bushy and Rauh (1993). This is also the phase in which practitioners explore using coping behaviors beyond their typical toolbox. Many of the interviewees spoke to using therapy or prescribed medications, but others like Jacob, who reported a worsening "general addiction to caffeine" since working in student conduct, have engaged in unhealthy coping techniques. Several of the interviewees have successfully worked through Caplan's recovery phase, using "wholesome coping tools" (Arimany-Manso et al., 2018) to work through their stress. Elizabeth

noted that having a supportive boss with whom she could speak authentically was of tremendous value in working through the problems of unwarranted conduct hearing appeals or insults to her character that both she and her boss knew not to be true. Others cited that the ability to talk openly with other conduct practitioners going through the same experiences in Facebook groups like Student Conduct Professionals and the Association for Student Conduct Administration listserv helped them to not feel as lonely or isolated. Finally, the reorganization phase involves an integration of the disruptive event into one's "post-crisis normal" (Bushy & Rauh, 1993, p. 60). The litigation becomes an event that, to some degree, has been mastered and that will inform future approaches and coping mechanisms to other stressful events. Deborah had reported that she used her early interactions with students' attorneys, which she first found intimidating, as a development opportunity and learn from colleagues how to "feel more empowered to keep the lawyers in their places."

McLeod (2003) speaks to the character traits of physicians that potentially make themselves more susceptible to the critogenic harms of litigation, explaining that having a strong ethic of care and personal expectations for high performance can lead to cognitive dissonance when it becomes impossible to live up to such high standards. The experience of the student conduct administrator may be comparable to that of the physician, aspiring to demonstrate the utmost respect and support for students using their very best judgment in accordance with campus policy and state and federal law when appropriate. However, a litigious student shifts the framework of those encounters, creating stress and tension for the conduct administrator and requiring them to focus intently on not messing up. Both student conduct administration and the practice of medicine have very high standards of excellence. The shared cultures of perfectionism and caring for students/patients at the expense of self-care could expose relevant

coping mechanisms. For example, McLeod explains that if a practitioner recognizes that their profession has impossibly demanding requirements and one accepts that mistakes are going to be inevitable, perhaps one is less likely to be impacted when they do occur.

This concept is directly related to the Lazarus and Folkman (1987) theoretical model of event appraisal. Considering the event's importance to the individual amongst the spectrum of situations that the individual has encountered can predict how well that person will cope with the event. That is, a conduct administrator who understands judicialization and understands its impacts to be a common phenomenon within the practice may be less likely to develop symptoms resulting from critogenic harms. Indeed, in his interview for this study Henry had remarked that there were other, far more significant problems in his life than his job; he seemed both confident and better equipped to utilize problem-focused coping in approaching his work. Charles, Warnecke, et al.'s (1988) research reinforced the idea that positive event appraisal could reduce feelings of powerlessness and pessimism.

Reduction of Critogenic Harms

The engagement of participants in the February 2020 full-day workshop and their evaluation comments regarding the need for such a training in the college student conduct administration profession demonstrated a deep desire of those seven individuals to connect with others who have had similar experiences dealing with the judicialization of their work. Several noted that the mere opportunity to connect with others in a safe space made them feel both less isolated and better equipped to tackle problems of litigation threat and the encroachment of students' attorneys. While a small handful did not find the theoretical frameworks component to be of significant value, others were excited to learn more about Maddi's (2006) hardiness model and explore ways to develop hardiness characteristics.

It appeared that the mere existence of the workshop – entitled "Demystifying Student Lawsuits, Litigation Stress, and Public Scrutiny" – helped the participants to understand that their experiences were part of a shared cultural thread within the realm of student conduct practice, and that they were not alone. The workshop brought to light for them the reality that critogenic harms resulting from their professional work are existent, measurable, and legitimate, and named the phenomenon many had encountered throughout their professional student conduct careers. The final part of the day-long workshop allowed the participants to interact with one another to confidentially describe intimate concerns and learn promising practices based in the medical literature from the scholarly practitioner for the reduction of the impacts of judicialization.

The follow-up webinar to the workshop, a 1.5 hour presentation entitled "The Truth About Litigation Stress: Managing 'Creeping Legalism' Through Evidence-Based Approaches," condensed the full-day's workshop and featured only the six promising practices from physicians' litigation retreats. A post-participation survey reported good results and a positive response to this professional development opportunity, and individuals shared an interest in further exploration of various facets of judicialization and ways to combat critogenic harms.

However, the scholarly practitioner did not conduct a longitudinal study examining conduct officers' baseline reactions to judicialization and the ways in which these litigation education workshops changed their responses. There is no meaningful way to assess what role, if any, the full-day pre-conference workshop or webinar, played in reducing critogenic harms on conduct practitioners. While they show promise, training workshops and discussion forums were not adequately evaluated in the current study to determine whether they bring about positive long-term impacts.

Limitations of the Study

As the first scholarship of its kind to reframe the existing literature and research on critogenic harms experienced by medical practitioners into the realm of student conduct administrators, the current study presents several limitations regarding generalizability, reliability, and validity. First, as Charles et al. (1984; 1985) suggest, physicians who have already experienced litigation may be more likely to want to complete a survey on concerns about litigation because of their strong feelings about the subject matter. The inverse must be acknowledged as well: doctors who have been involved in a lawsuit or have suffered critogenic harms may be too emotionally impaired to be interested in taking a survey about this very personal experience. While 42% of survey respondents reported being personally involved in a lawsuit, subpoenaed, or otherwise involved in litigation, it is unknown how many conduct practitioners chose not to consent to participating and their reasons for not completing the survey. Additionally, because the survey invitation was disseminated solely through email and social media, there may be a portion of conduct administrators who did not receive any information about the study.

While the Concerns About Litigation Survey for Student Conduct Professionals (CALSSCP) achieved high internal reliability scores based on Cronbach's α, the scholarly practitioner noted some concerns with the way in which survey participants were asked to respond to the questions on Subscales A and C. The options for responses to questions on these two subscales were coded as numerically equidistant from one another (e.g., "Does not describe me at all" = 1; "Describes me very little" = 2; "Describes me somewhat" = 3; etc.). However, it may have been difficult for a participant to make the distinction between "very little" and "somewhat." There is no true way to quantify the degrees in between each level of description,

and they are highly unlikely to be the same for each person. The subjectivity of the respondent's interpretation may account for the overall means of Subscales A and C being generally lower than the overall mean of Subscale B. The Likert scale used in Subscale B centered neutrality with two levels or agreement or disagreement. This means that the participant only had to distinguish two components: first, agreement, disagreement, or neither; and second, whether they agreed a lot or a little. Once the survey respondent determined where they fall on the agreement or disagreement spectrum, it was easy to decide whether their feelings are strong or minimal. Should the CALSSCP be administered again, it may be worth replacing a Likert scale of agreement/disagreement for the current request that asks how well the statement describes the individual.

Another limitation was discovered in the pre-conference workshop action research component. In this space, participants felt free to speak openly and authentically about their experiences without worrying about being judged or criticized by their own colleagues or supervisors. Technically, however, this was not a protected space under clinical standards in that a licensed counselor did not preside over the forum. Although notes were not taken regarding any one person's specific experiences, a subpoena could require anyone present at that meeting to divulge anything they remember being discussed. Future in-person discussions at which personal matters are brought up and deliberated should have a practicing clinician present or even as a facilitator. The information divulged in these sessions may then become protected health information under the Health Insurance Portability and Accountability Act (HIPAA) and held to a higher standard. While fellow group members are not held to legal standards of confidentiality, they may be strongly advised to maintain privacy in order to preserve the integrity of the group process.

A further limitation was noted in using the September 2020 pre-workshop survey as a registration mechanism for the webinar. Several people appeared to have merely clicked through the instrument (no response was forced) or gave responses of "neither agree nor disagree" for each item in order to receive the link to view the webinar. Additionally, the pre-workshop survey was not demonstrated to have a high level of internal reliability and may therefore not be an accurate representation of participants' levels of experience, knowledge, confidence, or skills as the instrument set out to assess. Additionally, neither the full-day nor webinar training required a thorough baseline evaluation of the participants' responses to judicialization and the ways in which critogenic harms impacted their professional work, beliefs, and personal lives. This limited the scholarly practitioner's ability to fully assess any short or long-term impacts that the workshops may have had on the reduction of harms.

Implications of the Findings for Practice

The similarities between the experiences of sued and non-sued practitioners in both the medical and student conduct fields are significant. Both sets of professionals describe major impacts on their personal lives and professional work as a result of having been sued or the potential threat of being involved in a lawsuit. Further, the work of physicians and student conduct administrators requires strict attention to regulations, a high degree of confidentiality, and meticulous documentation that can lead to strain and tension when such accuracy is unable to be achieved. Connecting the current study to the body of literature on student affairs burnout, the lived experiences of student conduct administrators, and the reactions of the spectrum of medical practitioners to litigation and the threat thereof, there are several implications for the profession of student conduct administration that may continue to support these campus

personnel as they tackle the increasing onslaught of litigious students, interfering parents and attorneys, public scrutiny, and federal and state regulation.

First, the pre-webinar survey indicated a slight disagreement with the statement that "My graduate program adequately prepared me for the work of student conduct today." It remains true that many college student personnel or student affairs master's degree programs, let alone social work or counseling programs, have little more than a single semester's worth of higher education law in their curricula, and coursework is unlikely to expose a budding professional to the everyday realities of the student conduct profession. An entry-level practitioner is lucky if they are able to secure a student conduct practicum while in graduate school in order to get hands-on experience. It is therefore incumbent upon individual institutions or the Association for Student Conduct Administration (ASCA) to offer regular, current training for new professionals that realistically addresses the judicialized climate of the profession and provides support in their first few years in the field. Such a training would be appropriate for the Mary Beth Mackin Foundations of Professional Practice Track at ASCA's annual Donald D. Gehring Academy, a summer immersion workshop featuring several content tracks, but this study makes it clear that professionals on all levels of experience would benefit from this information.

Although learning about the phenomenon of judicialization and confirming as a real occurrence within the student conduct profession may be helpful, workshop participants in both the ASCA pre-conference training and the webinar indicate that learning the promising practices borrowed from physicians' litigation retreats can further alleviate some of these impacts. The scholarly practitioner narrowed the pre-conference training to a singular module presenting risk mitigation and self-care strategies in the webinar titled "The Truth About Litigation Stress: Managing "Creeping Legalism" through Evidence-Based Approaches." The webinar offered six

specific behaviors for conduct practitioners that would help them to buffer against the impacts of judicialization and build resilience to the ever-changing legalistic landscape of their work. These include careful and objective documentation, improving communication skills, understanding the litigation process, learning problem-based coping strategies, engaging in wellness and self-care, and seeking litigation support and mentorship.

Each of the aforementioned strategies is potentially a workshop in and of itself and should be thoughtfully considered for possible professional development options through ASCA. One idea evolves from the Sara Charles MD Physician Litigation Stress Resource Center, an online repository of blog posts, podcasts, articles, and external references focused on supporting medical practitioners as they navigate the difficulties of litigation. Student conduct administrators would certainly benefit from such a resource specific to their field that normalizes their feelings and experiences, explains why they might be experiencing such distress, offers evidence-based approaches to managing their concerns, and even directs them to confidential sources of support. Until a conduct-specific resource website such as suggested here is developed, however, the current material on the Physician Litigation Stress Resource Center is general enough that student conduct administrators would find much of its content interesting and relevant.

The action research conducted in this study also demonstrated a need and desire for conduct administrators to be able to talk either with one another or a mentor about their experiences to gain validation, advice, support, and community. Indeed, since the February 2020 workshop, the scholarly practitioner noted an increasing use of the student conduct Facebook groups, specifically ASCA Women and Student Conduct and Student Conduct Professionals, to vent about work problems that were clearly the result of the judicialization of the practice. Such

posts frequently receive more comments, including those that which to express while they are unable to offer solutions, they stand in solidarity with the original poster. While each of these groups offer a way for an individual to post anonymously either by messaging a group administrator or completing a Google form that a group administrator moderates, there appears to be greater value in real-time conversation with a skilled, knowledgeable facilitator as there was during the ASCA pre-conference workshop. The professional association should provide space at regional and national conferences for individuals to work through the mitigation strategies and talk openly about their concerns.

Recommendations for Future Research

The current study lends itself to future exploration of some of the trends and data that surfaced through the action research. Perhaps most notable are the survey and interview results that suggest that female-identified student conduct practitioners self-report their experience of the impacts of judicialization in both the personal and professional realms at a more severe level than male-identified conduct practitioners. Few, if any, of the studies on physicians from Sara Charles and colleagues (Charles et al., 1984; Charles et al., 1985; Charles, Pyskoty, & Nelson, 1988) were able to differentiate impacts of litigation stress between men and women because the majority of Charles' participants were men. Later research on Clinical Judicial Syndrome also did not make distinctions between genders. Even less is known about the experience of student conduct administrators who identify as neither male nor female. Future research should explore literature that specifically addresses the spectrum of gender identification and workplace roles to investigate why men seem to be slightly more resilient of the impacts of judicialization. A greater sample of non-binary participants would yield additional information.

The data also seemed to suggest that the less controversial a disciplinary process or outcome is, the less likely a student is to litigate. Further, restorative justice is increasingly being utilized as one of several alternative dispute resolution pathways in student conduct processes and do not result in formal, reportable student conduct sanctions in the traditional sense. Without true punitive consequences that could potentially impact a student's status at their institution or possible future employment, the student may not be interested in drawing out the campus process through a legalistic avenue as recourse. This study did not compare the experiences of campus practitioners whose campuses exclusively utilize restorative or alternative practices to those who serve in more traditional conduct systems. The literature and current research suggest that restorative practitioners will experience the impacts of judicialization at lower rates. Future research could compare CALSSCP responses between participants at institutions whose disciplinary processes are grounded in restorative or alternative conflict resolution practices and those who use a traditional disciplinary process of sanctions and consequences for findings of responsibility. The research in this study suggests that the less punitive a disciplinary system is, the less likely a student might be to litigate.

Although grounded in established instruments and published studies by physicians and clinicians, the Concerns About Litigation Survey for Student Conduct Professionals (CALSSCP) was developed using an educational lens. Neither the survey nor the interviews were diagnostic in nature, and they did not seek to establish a clinical opinion on mental health disorders. Adapting the CALSSCP using the latest Diagnostic and Statistical Manual of Mental Disorders (DSM) under the informed supervision of a practiced psychologist or using instruments such as those devised by Charles et al. (1984; 1985) or Fileni et al. (2007) could help the student conduct administrator population identify specific disorders using legitimate diagnostic criteria and

therefore utilize existing clinical treatments to mitigate the impacts of judicialization. For example, a refined CALSSCP could help determine whether student conduct practitioners are also experiencing a forme fruste of a condition such as post-traumatic stress disorder.

Interviews in the current study did not specifically address whether the participant had been sued or otherwise involved in a lawsuit, an important distinction made in much of the medical literature. Speaking to student conduct administrators about their lawsuits or subpoenas and asking specific questions about how they managed the event, how much time had lapsed since the event, and how they have approached their work since the event would offer a more detailed understanding of how these professionals make use of event appraisal and to what extent they demonstrate the 3 Cs of hardiness. Future study might examine whether training offered by Maddi's Hardiness Institute (www.hardinessinstitute.com) can effectively teach student conduct practitioners commitment, control, and challenge as a tool to master stresses encountered in their work.

Conclusions

"I just need a space to vent where people 'get it.'" An August 2020 Facebook post by a member of ASCA Women and Student Conduct lamented the unfairness of a one-sided portrayal of the campus disciplinary process by the campus media and the poster's struggle of wanting to "set the record straight" against the value of confidentiality and student privacy. The author continued:

> What bothers me even more is the colleagues and others at our institution who buy into it and shame us when they don't know what's really going on. Especially people who know us and know our values. Frustrating to not feel like your colleagues have your back.

The impacts of the judicialization of student conduct administration are wide and far-reaching, and seem to have intensified in our increasingly digital world in which rumors can be spread at the tap of a button and the work, while often rewarding, is frequently frustrating, legalistic, and isolating. Before Facebook, there was no real venue through which student conduct practitioners could be frank about their experiences with non-campus colleagues who would understand what one another was going through. This study revealed that conduct administrators are not at all equipped after their graduate school programs to manage the public scrutiny of their private work or to cope with the dissonance of a professional workplace that often values precision, power, and privilege over moral development, growth, and learning. That conflict is intensified by the encroachment of students' parents and attorneys into the disciplinary process, who complicate the goal of education with rigorous examination of every email sent, every word spoken.

The pioneering work of Dr. Sara Charles, herself a litigant, initiated a field of study regarding the psychological effects and professional work impacts of physicians who had been involved in lawsuits or reflected on the possibility thereof. The next four decades of research into how doctors and clinical providers react to and mitigate the lasting impacts of litigation shaped the body of literature that served to inform the current study. Drawing on the similarities of character and personality between the two professions, this research examined how student conduct practitioners experience judicialization – a phenomenon much broader than the event of consequences of litigation – and how potential remedies used in the medical field might be borrowed and adapted for training and professional development opportunities.

As this study concluded, campus conduct professionals were in the throes of complying with the Final Rule on Title IX issued May 6, 2020, which sent them into a frenzy to frantically

rewrite student behavioral codes within 100 days amidst the backdrop of a global virus pandemic that required nearly all campus administrators to work at home for a period of time. As a presidential election year, 2020 presented the possibility of a new administration and another revision of Title IX interpretation. This would have sent student conduct administrators back to the drawing board again, perhaps harkening back to the 2011 Dear Colleague letter expectations. What is almost certain is that federal regulation of campus conduct policies will fluctuate periodically, and practitioners must be equipped to handle these changes immediately and effectively. For the preservation of their personal relationships and home life, it is also incumbent upon student conduct practitioners to know how to deal with the stresses that come with working in this field. Much like the work of Dr. Charles, the research and recommendations presented herein are simply the beginning.

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APPENDIX A: INSTITUTIONAL REVIEW BOARD APPROVAL

EAST CAROLINA UNIVERSITY
University & Medical Center Institutional Review Board
4N-64 Brody Medical Sciences Building· Mail Stop 682
600 Moye Boulevard · Greenville, NC 27834
Office **252-744-2914** · Fax **252-744-2284** ·
rede.ecu.edu/umcirb/

Notification of Exempt Certification

From: Social/Behavioral IRB
To: Valerie Glassman
CC: Travis Lewis
Date: 9/27/2019
Re: UMCIRB 19-001686
Judicialization of Student Conduct

I am pleased to inform you that your research submission has been certified as exempt on 9/27/2019. This study is eligible for Exempt Certification under category #2B.

It is your responsibility to ensure that this research is conducted in the manner reported in your application and/or protocol, as well as being consistent with the ethical principles of the Belmont Report and your profession.

This research study does not require any additional interaction with the UMCIRB unless there are proposed changes to this study. Any change, prior to implementing that change, must be submitted to the UMCIRB for review and approval. The UMCIRB will determine if the change impacts the eligibility of the research for exempt status. If more substantive review is required, you will be notified within five business days.

The Chairperson (or designee) does not have a potential for conflict of interest on this study.

IRB00000705 East Carolina U IRB #1 (Biomedical) IORG0000418
IRB00003781 East Carolina U IRB #2 (Behavioral/SS) IORG0000418

APPENDIX B: INFORMED CONSENT WAIVER

Informed Consent to Participate in Research
Information to consider before taking part in research that has no more than minimal risk.

Title of Research Study: The Judicialization of Student Conduct Administration and Its Impact on Practitioners

Principal Investigator: Valerie Glassman
Institution, Department or Division: Department of Educational Leadership, College of Education
Address:
Telephone #: 919-265-3025

Participant Full Name: _____Date of Birth: _____
Please PRINT clearly

Researchers at East Carolina University (ECU) study issues related to society, health problems, environmental problems, behavior problems and the human condition. To do this, we need the help of volunteers who are willing to take part in research.

Why am I being invited to take part in this research?
The purpose of this research is to understand the impact of "judicialization," or the phenomenon of legalistic mechanisms superseding those processes specifically developed to facilitate the adjudication of university policy violations, on the personal lives and professional work of student conduct administrators. You are being invited to take part in this research because you have previously self-identified as a college student conduct professional. The decision to take part in this research is yours to make. By doing this research, I hope to learn how student conduct administrators are impacted by judicialization through their beliefs, actions, and physical/emotional responses.

If you volunteer to take part in this research, you will be one of about 350 people to do so.

Are there reasons I should not take part in this research?
You should not participate in this study if you are not a full-time student conduct administrator. You may take part if your full-time work involves the administration of disciplinary processes even if your position is not situated in a student conduct office (e.g., Title IX or Office of Equity and Diversity).

What other choices do I have if I do not take part in this research?
You can choose not to participate.

Where is the research going to take place and how long will it last?
The research will be conducted via Qualtrics survey online, which may be completed anywhere with an Internet connection. If you identify as willing to participate in a follow-up interview, scheduling will take place via email, and the interview will be conducted via phone or Skype at the participant's convenience.

Completion of the survey will take less than 30 minutes. Interviews will be scheduled for one hour, but may not last the whole hour.

What will I be asked to do?
You will be asked to do the following:

- Click on the link to initiate the survey.
- Respond to the 40 survey questions. You may choose to answer or not answer any or all of the questions.
- Complete the optional demographic information questions. These questions will help the researcher to sort the data and analyze it for trends. Each of the demographic questions is also optional; you may choose to answer or not answer any or all of the questions.
- Identify whether you are willing to participate in a follow-up interview and if so, leave your contact information. The researcher will schedule an interview with you to be conducted via phone or Skype.
- The interview will be audio recorded and transcribed.

What might I experience if I take part in the research?
Some of the survey questions ask about your experiences with litigation, students' attorneys, and stress associated with work, and may be distressing to you as you think about your experiences.

We don't know if you will benefit from taking part in this study. There may not be any personal benefit to you but the information gained by doing this research may help others in the future.

Will I be paid for taking part in this research?
Three participants will be drawn from the pool of survey respondents who enter their email addresses in a form unconnected to their responses to win a $50 Amazon.com gift card.

Will it cost me to take part in this research?
It will not cost you any money to be part of the research.

Who will know that I took part in this research and learn personal information about me?
If you elect not to share your contact information for participation in an interview, your responses will remain anonymous and confidential. The researcher will not examine individual responses or a single respondent's demographic information to determine the identity of the participant. The data of participants who elect to be interviewed will be anonymous.

Survey responses will be presented in aggregate. Interview responses may be directly quoted but attributed to a pseudonym with only general information about the participant (e.g., "assistant director at a mid-size public institution in the Midwest").

How will you keep the information you collect about me secure? How long will you keep it?
The information you provide through the survey will be stored in the Qualtrics application which requires a password to access it. If you do not leave contact information to participate in an interview, the information cannot be traced back to you. The audio recordings of the interviews will be stored on digital devices in possession by the researcher only. Transcriptions of the interviews will be maintained in the researcher's personal computer and external hard drives for back-up. Those files will then be deleted from any cloud-based services.

What if I decide I don't want to continue in this research?
You can stop at any time after it has already started. There will be no consequences if you stop and you will not be criticized. You will not lose any benefits that you normally receive.

Who should I contact if I have questions?
The person conducting this study will be able to answer any questions concerning this research, now or in the future. You may contact the Principal Investigator at 919-265-3025 (weekdays, between 8:30 AM and 5 PM Eastern).

If you have questions about your rights as someone taking part in research, you may call the Office of Research Integrity & Compliance (ORIC) at phone number 252-744-2914 (days, 8:00 am-5:00 pm). If you would like to report a complaint or concern about this research study, you may call the Director for Human Research Protections, at 252-744-2914.

I have decided I want to take part in this research. What should I do now?
The person obtaining informed consent will ask you to read the following and if you agree, you should sign this form:

- I have read (or had read to me) all of the above information.
- I have had an opportunity to ask questions about things in this research I did not understand and have received satisfactory answers.
- I know that I can stop taking part in this study at any time.
- By signing this informed consent form, I am not giving up any of my rights.
- I have been given a copy of this consent document, and it is mine to keep.

_____ _____

Participant's Name (PRINT) **Signature** **Date**

Person Obtaining Informed Consent: I have conducted the initial informed consent process. I have orally reviewed the contents of the consent document with the person who has signed above, and answered all of the person's questions about the research.

_____

Person Obtaining Consent (PRINT) **Signature** **Date**

APPENDIX C: SURVEY

Concerns About Litigation Survey for Student Conduct Professionals

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I treat all students the same regardless of the likelihood that they will consult an attorney at some point in their disciplinary process.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

It is a personal irritation to have to take steps to protect myself or my institution against litigation.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I worry that errors made by the staff I work with may leave me vulnerable to litigation.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I do not worry about being recorded when I have conversations with students in private.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I ask colleagues to review my written communication and documentation before their final versions are emailed/released.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

University/institutional counsel is regularly involved in the work of my office.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

My institution has adapted or changed policies/processes in response to student lawsuits.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

When I find a student or group responsible, I do not worry about litigation or lawsuits.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

To avoid engaging in conflict with a student, I might request another adjudicator/adjudicating body hear the case.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I am reluctant to disclose errors in my work because I am afraid of being named in a lawsuit.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Due to the threat of litigation, I find it more difficult to form a trusting relationship with students.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I favor phone or in-person conversations with students over email or text as a means of communicating with them about resolutions and outcomes.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

It is rare that the thought of litigation comes to mind when working with a student.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I have been asked to treat a student differently by administrators because of their/their parents' high profile or likelihood to litigate.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The risk of litigation prompts me to adopt defensive practices.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Student conduct processes and policies should not be regulated by federal legislation.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Litigation against student conduct practitioners harms students.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Litigation and students' attorneys is a normal part of student conduct practice in today's world.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The mass media tend to direct public opinion against student conduct administrators.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Litigation in student conduct matters is not necessarily due to practitioners' error.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I believe students use litigation (or the threat of litigation) to achieve the disciplinary outcomes they want when they have exhausted the written institutional process.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

There is inequity among students who have the ability to hire lawyers and those who don't.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Student conduct administrators are at no greater risk for litigation than other student affairs professionals.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The main reason students use lawyers in the conduct process is to help them understand the complex language of campus policies.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Litigation does not depend on commitment or personal ability – it is unpredictable.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The need for a student conduct administrator to adhere to rigid guidelines pertaining to policy and process can impede upon their ability to have meaningful conversations with students.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Attorneys' involvement in a student disciplinary case, whether justified or not, does not affect the self-esteem of student conduct administrators.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The increase in litigation in student conduct cases is due to the current political climate.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Thinking about the possibility of litigation has made it difficult for me to sleep at night.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

My eating habits have changed as a result of the stress from my job.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

I do not believe my personal relationships have been affected by job stress.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

The practice of student conduct administration is different from what I expected it to be from when I entered the field.

- Strongly agree
- Somewhat agree
- Neither agree nor disagree
- Somewhat disagree
- Strongly disagree

I relive/reenact conversations with students in my head to recall whether I made any errors with them.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Litigation threat does not make me consider leaving student conduct for another profession.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The way in which I talk to students has impacted how I communicate with friends, family, and other loved ones.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I have good support from my colleagues if I need to discuss my concerns about attorney involvement.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I have experienced an increase in physical ailments since beginning work in student conduct.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

I often find myself venting about work to loved ones.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

The possibility of litigation makes me question my competence.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

Concerns about litigation have not impacted my ability to concentrate on everyday tasks.

- ○ Strongly agree
- ○ Somewhat agree
- ○ Neither agree nor disagree
- ○ Somewhat disagree
- ○ Strongly disagree

All demographics questions are optional. Please complete them to the extent you are comfortable.

Professional Work Title

- ○ Professional Work Title _____
- ○ Choose not to answer

Gender Identity

- ○ Female
- ○ Gender Fluid/Queer
- ○ Male
- ○ Non-binary
- ○ Other _____
- ○ Transgender Female/Male to Female
- ○ Transgender Male/Female to Male
- ○ Choose not to answer

Years in the Field

- ○ Years in the Field _____
- ○ Choose not to answer

Highest Educational Degree Completed

- ○ Bachelor's (e.g., BA, BS, BFA, BBA)
- ○ Master's (e.g., MA, MS, MSW)
- ○ Juris Doctor (JD)
- ○ Other Doctoral or Terminal Degree (e.g., PhD, MD, EdD, etc.)
- ○ Other _____
- ○ Choose not to answer _____

Position Level

- ○ Position Level _____
- ○ Choose not to answer

Primary Functional Area

- ○ Primary Functional Area _____
- ○ Choose not to answer

Have you been sued directly, named in a lawsuit, subpoenaed, or otherwise been involved in a lawsuit related to your work in student conduct?

- ○ Yes
- ○ No
- ○ Choose not to answer

Display This Question:

If Have you been sued directly, named in a lawsuit, subpoenaed, or otherwise been involved in a laws... = Yes

If so, was the outcome to you:

- ○ Favorable
- ○ Unfavorable
- ○ Choose not to answer

Do you know someone who has been sued, named in a lawsuit, subpoenaed, or otherwise been involved in a lawsuit related to their work in student conduct?

- ○ Yes
- ○ No
- ○ Choose not to answer

All demographics questions are optional. Please complete them to the extent you are comfortable.

College/University/Organization

- ○ College/University/Organization _____
- ○ Choose not to answer

My office adjudicates (select all that apply):

- ☐ Academic misconduct
- ☐ Non-academic misconduct
- ☐ Residential misconduct
- ☐ Sex- and gender-based harassment (Title IX)
- ☐ Group/organizational misconduct
- ☐ Other (please describe) _____
- ☐ Choose not to answer

College/University/Organization State

▼ Alabama ... Choose not to answer

College/University/Organization Country

▼ Afghanistan ... Choose not to answer

Institution/Organization Size (full-time enrollment)

- ○ 999 or fewer students
- ○ 1000-2999 students
- ○ 3000-9999 students
- ○ 10,000 or more students
- ○ Choose not to answer

Institutional Type

- ○ Public, 4-year
- ○ Private, not-for-profit 4-year
- ○ Private, for profit 4-year
- ○ Public, 2-year
- ○ Private, not-for-profit 2-year
- ○ Private, for profit 2-year
- ○ Graduate/professional programs only
- ○ Other (please describe) _____
- ○ Choose not to answer

Minority-Serving Institution (MSI) Information

- [ ] None
- [ ] Historically Black Colleges and Universities (HBCU)
- [ ] Predominantly Black Institution (PBI)
- [ ] Hispanic-Serving Institutions (HSI)
- [ ] Tribal Colleges or Universities (TCU)
- [ ] Native American Non-Tribal Institutions (NANTI)
- [ ] Alaskan Native- or Native Hawaiian-Serving Institutions (ANNHI)
- [ ] Asian American- and Native American Pacific Islander-Serving Institutions (AANAPISI)
- [ ] Other (please describe) _____
- [ ] Choose not to answer

Are you interested in participating in a phone or Skype interview on this topic?

- ○ Yes
- ○ No

Display This Question:

If Are you interested in participating in a phone or Skype interview on this topic? = Yes

Please enter your contact information (phone, email, Skype, etc.)

_____

APPENDIX D: SEMI-STRUCTURED INTERVIEW QUESTIONS

Structured Interview Protocol Template

Title of Study: The Judicialization of Student Conduct Administration and Its Impacts on Practitioners

Date & Time of Interview:

Location:

Interviewer: Valerie Glassman

Interviewee:

Position /Title of Interviewee:

Briefly describe the project to the interviewee.

Demographic information of interviewee:

Obtain oral consent to be recorded and remind participant about the working definition of "judicialization" in student conduct administration. Explain that all information will be kept confidential and that identifying information will not be connected to quotes attributed to the respondent. Invite the participant to select their own pseudonym.

Questions to be asked listed fully and in order:

1. How have you seen judicialization impact the overall work of your office?

2. What impacts have you experienced personally pertaining to the judicialization of student conduct administration?

3. Do you think that the media, political climate, or other external factors are impacting your work? In what ways?

4. How have your regular professional practices changed in response to judicialization?

5. Have you noticed any physical or emotional changes as a result of your work in student conduct? Please describe them.

6. What are some remedies or interventions you have used to alleviate your concerns?

Record responses, making notes of key points from each response below:

1.

2.

3.

4.

5.

6.

Thank the interviewee for their participation.
Assure them that their responses will be kept confidential.