

# Mississippi College Law Review

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Volume 41 | Issue 1

Article 2

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Summer 2023

## Introduction

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### Recommended Citation

(2023) "Introduction," *Mississippi College Law Review*: Vol. 41: Iss. 1, Article 2.

Available at: <https://dc.law.mc.edu/lawreview/vol41/iss1/2>

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## INTRODUCTION

*Stephanie J. Durr\**

In 1972, Congress passed Title IX of the Education Amendments of 1972.<sup>1</sup> In its entirety, Title IX reads:

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.<sup>2</sup>

Revolutionary for its time, Title IX enacted a federal ban to prevent “schools, local and state education agencies, and other institutions that receive federal assistance from the Department [of Education]” from discriminating based on sex.<sup>3</sup> Consisting of a mere thirty-seven words, Title IX has been lauded for its “breadth and comprehensiveness.”<sup>4</sup> Thirty-seven words changed the trajectory of gender equality in educational institutions—in the classroom; athletics; sexual assault awareness, response, and prevention; employment; financial assistance with tuition; and more.<sup>5</sup> Though revolutionary for its time, “fifty years later, we are reminded that law changes law, not conscience.”<sup>6</sup>

The 2022 *Mississippi College Law Review* Symposium celebrated the 50<sup>th</sup> Anniversary of the Passage of Title IX. With the benefit of hindsight, the Symposium critically examined Title IX and its progeny, analyzing the benefits and the downfalls over the past fifty years. The 2022 Symposium celebrated Title IX for its accomplishments in eliminating sex-based discrimination in educational institutions but refused to let previous accomplishments overshadow the still-existing gender inequality. While history allows celebration, advocacy demands a commitment to work toward solutions for the persisting inequality. Armed with this intention, the *Mississippi College Law Review* set out to provide

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1. *Title IX and Sex Discrimination*, U.S. DEP’T OF EDUC., [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html) (last revised Aug. 2021).

2. *Id.*

3. *Id.*

4. See, e.g., Remy Tumin, *Title IX Gave Women Greater Access to Education. Here’s What It Says and Does*, THE NEW YORK TIMES (June 22, 2022), <https://www.nytimes.com/2022/06/22/sports/what-is-title-ix.html>.

5. Collin Binkley & Erica Hunzinger, *EXPLAINER: What is Title IX and What Impact Has It Had?*, U.S. NEWS & WORLD REPORT (June 20, 2022), <https://www.usnews.com/news/politics/articles/2022-06-20/explainer-what-is-title-ix-and-what-impact-has-it-had>.

6. Hannah Eckel, *Mississippi College Law Review Symposium: “Celebrating the 50th Anniversary of the Passage of Title IX”*, MISS. C. L. REV. (Mar. 31, 2022), <https://mclawreview.org/2022/03/31/mississippi-college-law-review-symposium-celebrating-the-50th-anniversary-of-the-passage-of-title-ix/>.

a forum dedicated to educating and equipping attendees with the knowledge to effectively advocate for gender equality.

The *Law Review*'s Editorial Board opted to maintain the virtual format of the prior two symposia, as the effects of a global pandemic still permeated various aspects of planning this event. The virtual Symposium was held on Friday, April 1, 2022. The Symposium featured two panel discussions: (1) sexual assault survivor advocacy and (2) current issues in sports law and gender equality. To say it took a village to ensure the success of the event would be an understatement. But, the crown jewels of the Symposium were undoubtedly the esteemed panelists who enthusiastically participated in our discussions.<sup>7</sup>

Interestingly, the Supreme Court did not interpret Title IX to include sexual assault as a form of sex discrimination until 1992, in *Franklin v. Gwinnet County Public Schools*.<sup>8</sup> Since that time, there has been an increased focus on sexual assault prevention on college campuses across the United States.<sup>9</sup> With this in mind, the first panel featured a discussion on sexual assault survivor advocacy. Moderated by Dr. Kristena Gaylor (Title IX Coordinator at Mississippi College), the panelists included Brett Harvey (Director of Civil Rights Compliance at Mississippi State University), Dr. Jay Stone (Licensed Clinical Psychologist), Sharlotta Sharp (Registered Sexual Assault Nurse Examiner), and Pat Mathis (Founder and Member of Title IX Solutions, LLC).

The Sexual Assault Survivor Advocacy Panel endeavored to equip attendees with the best practices for advocating for sexual assault survivors and discussed the issues that may arise when representing those who have experienced a sexual assault. The panel touched on procedural topics such as: what considerations should be weighed when deciding whether to litigate or arbitrate sexual assault and harassment claims in light of recent legislation that ended forced arbitration of those claims and whether the differing pleading standards across federal circuit courts places some plaintiffs at an unfair advantage when pursuing Title IX claims. The bulk of the discussion, however, centered around more substantive topics.

Dr. Stone provided an enlightening foray into the field of trauma-informed lawyering. When encountering clients who have experienced trauma, such as sexual assault survivors, a trauma-informed lawyer can be an incredible advocate both inside and outside the courtroom. The panel discussed how understanding the nature and effects of trauma can inform the lawyer's approach to interacting with the client and minimize the risk of re-traumatizing the survivor. Ms. Sharp enhanced this discussion by providing us with an explanation of the integral role a Sexual Assault Nurse Examiner ("SANE") can have in helping survivors prove their sexual assault claims in court. These topics provided a framework within

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7. On a personal note, I would like to extend my sincerest gratitude to each of our panelists. It was a pleasure to work with them and get to know them as I planned the Symposium. The panelists volunteered their time, and our event was deeply enriched by each of them.

8. *Franklin v. Gwinnett Cnty. Pub. Sch.*, 502 U.S. 60 (1992); see also *Background Brief Title IX & Sexual Assault Prevention and Response*, NAT'L ASS'N OF STUDENT PERS. ADM'RS, [https://www.naspa.org/images/uploads/main/Title\\_IX\\_Sexual\\_Assault\\_Background\\_Brief\\_FINAL.pdf](https://www.naspa.org/images/uploads/main/Title_IX_Sexual_Assault_Background_Brief_FINAL.pdf) (last visited May 1, 2023).

9. *Background Brief Title IX & Sexual Assault Prevention and Response*, *supra* note 9.

which to understand the stigma sexual assault survivors face and the barriers survivors face when trying to seek legal help. The panel rounded out this discussion by offering their advice on best practices for mitigating the barriers and overcoming the stigmas.

The Sexual Assault Panel then shifted to the opposite side of the proverbial “v.” to discuss the rights of people accused of sexual misconduct, specifically in terms of sexual assault on college campuses. The panel discussed the implications of anonymous reporting and whether a person asserting a claim of sexual misconduct is able to maintain anonymity. Mr. Harvey and Dr. Gaylor were able to draw from their experiences in adjudicating Title IX claims at the university level to give Symposium attendees a personal view. Mr. Harvey also provided insight into protections available for due process concerns related to the adjudication of Title IX claims.

Finally, the panel ended its discussion by considering Title IX claims at the institutional level. Mr. Mathis provided personal insight—through his work with Title IX Solutions—into best practices for Title IX Coordinators, school counsel, and investigators in resolving sexual assault claims to avoid lawsuits against a university. In the context of Title IX lawsuits against a university, the panelists also discussed the best way to conduct Title IX lawsuits to best protect an institutional client while also balancing concerns with sensitivity for the survivor-claimant.

In sum, the Sexual Assault Survivor Advocacy panel provided a multi-faceted discussion. From procedural concerns about whether and how to prosecute a claim to substantive concerns for survivors, those facing accusations, and institutions as a whole, Symposium attendees were left realizing that the takeaways from this discussion can be applied to an array of legal fields and are not singularly limited to Title IX concerns.

Quintessentially, when most Americans think of Title IX, the topic of collegiate sports comes to mind. Indeed, as one New York Times journalist observed, “the most visible changes [post-Title IX passage] were seen in gymnasiums, fields, and courts across the United States . . . .”<sup>10</sup> It stood to reason that no Symposium focusing on Title IX would be complete without some discussion on sports law and gender equity. Thus, the second panel featured a discussion on current issues in sports law and gender equity (hereinafter referred to as the “Sports Law Panel”). Moderated by Brett Harvey (Director of Civil Rights Compliance at Mississippi State University), the panelists included Professor Michael McCann (Founding Director of the University of New Hampshire Franklin Pierce School of Law’s Sports and Entertainment Law Institute), Jacqueline McWilliams (Commissioner of the Central Intercollegiate Athletic Association), Nichelle Womble (International Basketball Federation (FIBA) Agent), and Mary Roy<sup>11</sup> (Director and Title IX Coordinator at Vanderbilt University).

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10. *Title IX Gave Women Greater Access to Education*, *supra* note 5.

11. The *Mississippi College Law Review* extends its sincerest gratitude to Ms. Roy. She stepped in—at the very last minute—at the request of her colleague who could no longer join us for the Symposium. We are grateful that Ms. Roy joined us and contributed to the discussion with her rich knowledge and expertise.

The Sports Law Panel commenced with a spirited discussion on the National Collegiate Athletic Association's ("NCAA") rules and regulations. In the summer before the 2022 Symposium, the NCAA substantially changed the name, image and likeness ("NIL") rules for collegiate athletes. As a hot-button topic, this seemed like the perfect jumping-off point for the Sports Law Panel. Specifically, the panel offered opinions on whether this rule gives more autonomy to the players and discussed whether the NIL changes will prompt lawsuits from female athletes for disparities in payment and amenities offered. The panelists also discussed institutional regulations of athletes' social media accounts and the legal ramifications of those regulations.

Refusing to cover merely one hot-button topic, the Sports Law Panel transitioned into a discussion of Title IX and transgender athletes. To guide the discussion, the panelists first articulated the current NCAA guidelines regarding athletes joining the team consistent with their gender identity and the repercussions universities could face for failing to adhere to those guidelines. With the current regulations as the framework, the panelists then discussed whether Title IX's protections against gender discrimination should apply to transgender athletes. The panelists also offered their professional insights on whether the current NCAA guidelines address concerns that still retain a physical advantage over cisgender women even after hormone therapy and whether these concerns are well-founded.

Finally, the panel offered some practical insights to agents and sports law practitioners. The panelists opined on the legal challenges an athlete may face when he or she agrees to endorse a particular brand, then offered personal anecdotes and advice to attorneys looking to practice in sports law.

The attempt to encapsulate or accurately convey the Sports Law Panel in written form is simply inadequate, given our panelists' lively exchange of ideas. Each panelist offered personal insights and offered their informed opinions on complex issues in a respectful and assertive way. However, this panel epitomized that while Title IX was revolutionary for its time, fifty years later, gender inequity still persists in education and sports.

The 2022 Symposium ended with a call to action: there is still work to be done. The same call to action persists now. As advocates, we must not solely rely on a thirty-seven-word statute to address the inequality in our institutions. We must be the galvanizing force for change. We must advocate.