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TITLE IX 50 YEARS LATER. . . REFLECTIONS FROM A TITLE IX COORDINATOR

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TITLE IX 50 YEARS LATER. . . REFLECTIONS FROM A TITLE IX
COORDINATOR

*Dr. Kristena Gaylor**

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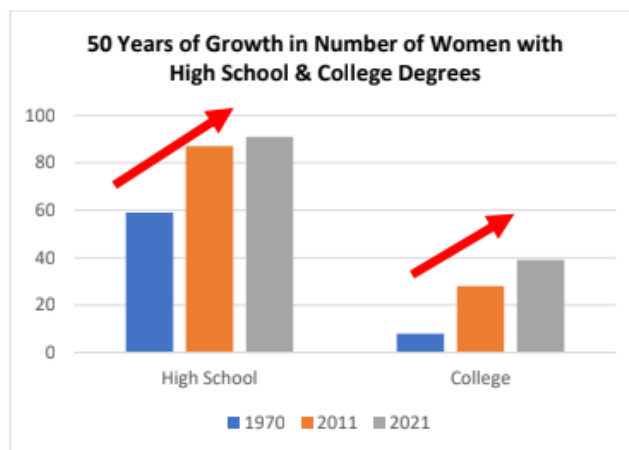
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I. BACKGROUND OF THE LAW AND PURPOSE OF THE VOLUME XLI'S TITLE IX SYMPOSIUM

On June 23, 1972, Congress enacted the Title IX Education Amendment of 1972. Title IX prohibits discrimination based on sex in education programs and activities operated by recipients of federal financial assistance. Title IX's core is the concept that students may not be denied educational opportunities based on their sex. Title IX's protections extend to school activities, including admissions, financial aid, student services, counseling services, athletics, and physical education. The Title IX legislation eliminates sex-based discrimination to ensure all students—both male and female—have access to and equality in education.

The enactment of Title IX led to an upward trajectory for women pursuing higher education and sports. A 2011 report by the White House Council of Women and Girls found that forty years after the enactment of the Title IX Amendment, approximately 87% of women had at least a high school education.¹ Approximately 28% had at least a college degree.² This is a substantial increase from the 59% of women with high school education and 8% of women with a college degree in 1970.³ A more recent study conducted in 2021 states that around 91.6% of women have graduated high school, and 39.1% of women have completed a college degree.⁴ Over the past fifty years, there has been a substantial increase in women admitted to institutions of higher learning. In fact, more women in today's world are earning college degrees than men.



1. Econ. & Stat. Admin., U.S. Dept. of Com. & Off. Of Mgmt. & Budget, Exec. Off. Of President, *Women in America: Indicators of Social and Economic Well-Being 19* (2011), <https://www2.census.gov/library/publications/2011/demo/womeninamerica.pdf> [hereinafter *Women in America*].

2. *Id.*

3. *Id.*

4. See Table 104.10: Rates of High School Completion and Bachelor's Degree Attainment Among Persons Age 25 and Over, By Race/Ethnicity and Sex: Selected Years, 1910 Through 2021, NAT. CTR. FOR EDUC. STAT. (Nov. 2021), https://nces.ed.gov/programs/digest/d21/tables/dt21_104.10.asp [hereinafter Table 104.10].

Many would agree that the most notable consequence of Title IX's passage is the increase in women attending colleges and universities and earning a college education. In addition, Title IX has provided women with more protection on college campuses, which includes increased protection from sex-based harassment. Furthermore, the law has provided a foundation for implementing processes and procedures to prevent sexual harassment complaints and incidents on college campuses. Title IX Coordinators are responsible for working with departments on campus to ensure compliance with Title IX laws and campus policies.

Fifty years later, on April 1, 2022, The Mississippi College Law Review presented a symposium dedicated to the 50th Anniversary of Title IX. The symposium's purpose was to celebrate the 50th anniversary of the passage of Title IX and highlight how it has impacted society. The title of the first symposium was "Sexual Assault Survivor Advocacy." The goals of the panel discussion were to educate and bring awareness to sexual assault prevention advocates, legal practitioners, and Title IX coordinators. The guest panelists included Title IX advocates and practitioners working with Title IX and other civil rights laws. The guest panelists were:

- Brett Harvey – Director, Office of Civil Rights Compliance, Mississippi State University
- Pat Mathis – Co-Founder & Managing Member, Title IX Solutions, LLC
- Shalotta Sharp, RN – Special Projects Coordinator, MSCASA
- Dr. Jay Stone – Psychologist, Bridgewater Psychiatry

I had the amazing opportunity to serve as a panel moderator for the Mississippi College Law Review Symposium last spring. The information gathered from the panel of experts includes several best practices for addressing Title IX matters at the institutional level. The following section summarizes the questions presented by the moderator and the panelists' responses to the questions posed during the "Sexual Assault Survivor Advocacy Panel."

II. TAKEAWAYS FROM THE SEXUAL ASSAULT SURVIVOR ADVOCACY PANEL

A. Adjudicating Title IX Claims

Q-1. Question: Congress passed the #MeToo bill that ended forced arbitration of harassment and sexual assault claims. Can you discuss the broader implications of this legislation and its benefits and drawbacks for survivors?

Panelist(s) Responses:

One panelist noted that there had not been a significant change in the arbitration of these matters.

B. Trauma-Informed Lawyering

Q-1. Can you talk a bit about Trauma-Informed Lawyering?⁵

Panelist(s) Responses:

Trauma-Informed Lawyering involves making the client feel more comfortable during a consultation or appointment. Tactics to make customers feel more comfortable are changing the design of your office, leaving the door open, and taking some extra time to build a relationship with the client rather than simply serving them. The panelists agree that trauma-informed training should be given to all attorneys.

The RN panelist notes that specific trauma-informed care is not taught in nursing school and is often a shock when nurses first encounter such mental and physical trauma in the workplace.

C. Victim Support and Advocacy

Q-1. This question was directed to the psychologist(s) on the panel. In your experience, what has proven to be the most helpful techniques to employ with adolescents who are victims of sexual assault? Why do you believe these techniques are so helpful?

Panelist(s) Responses:

The psychologist panelist states that having patience and an acute understanding of why the adolescent may not want to open up about the traumatic incident. The person consoling the adolescent victim must be extremely accepting and calm while listening. He says that the adolescent client should be shielded from the accused within the courtroom or during a hearing. Seeing the accused or even being in the same room with the accused could be extremely traumatizing for adolescents in particular.

Q-2. How are Sexual Assault Nurse Examiners, also known as SANE nurses, able to help survivors of sexual assaults in a lawsuit? What are the benefits of having a SANE nurse involved in adjudicating sexual assault claims?

Panelist(s) Responses:

The more our nurses know, the better. Forensic nurses can speak to all matters as it relates to potential pieces of evidence. SANE nurses have extensive knowledge of both the scientific and clinical aspects of sexual assault.

5. Overall, Trauma-Informed Lawyering (TIL) represents a different framework for aiding traumatized clients. It recognizes that making the client whole does not merely mean succeeding on a particular claim but helping the client psychologically heal through the legal system and extra-legal means. Understanding the nature and effects of trauma shapes the approach the TIL interacts with, interviews, and prepares the client for court. TIL also impacts the goals one pursues for the client and litigation strategy. Overall, TIL incorporates a heavy dose of psychology and therapeutic methods into serving clients and prioritizes the client's mental well-being and recovery.

D. Stigma for Reporting and Survivors

Q-1. Unsurprisingly, reporting sexual harassment or misconduct comes with a certain stigma. What can be done to remove some of the stigma and hesitation of reporting sexual assault on college campuses?

Panelist(s) Responses:

This is a million-dollar question. For example, on the Mississippi State University campus, several offices are devoted to helping students speak out if an incident occurs. Continued communication between students, Title IX Coordinators, and advisors must exist.

E. Those Accused of Sexual Misconduct

Q-1. Focusing on Title IX Hearings on college campuses, what rights do the accused students have? How do their rights in these proceedings differ from those of a criminal defendant?

Panelist(s) Responses:

Respondents and victims have a right to an advisor to which the institution should then educate said advisor on what he/her responsibilities are. The respondents can only be punished or sanctioned once there is a determination of responsibility. However, the complainant is entitled to broad supportive measures that differ from case to case as it affects the victim. Everyone in the process must also understand that the respondent may suffer some trauma based on the potential of jeopardizing their academic and professional career. It is important to recognize that there are two parties, and each is entitled to certain rights that are often changing and ongoing. Furthermore, we should do a better job of vetting out certain law enforcement that has had previous experience with sexual misconduct and may come into Title IX cases with some form of preconceived ideas.

Q-2. Is a sexual assault survivor able to maintain anonymity? What implications does anonymity have on the accused?

Panelist(s) Responses:

Under new regulations, anonymity is very difficult to keep during “due process,” as the accused has the right to know who the accuser is.

Q-3. What protections are available for those falsely accused of sexual assault or harassment? Are there any due process concerns that must be considered?

Panelist(s) Responses:

There must be clear evidence of reckless disregard for the truth to proceed with defamation lawsuits.

F. The Institutional Level

Q-1. In working with colleges, Title IX Coordinators, school counselors, and investigators, what are some approaches discussed and implemented that you have seen to be most beneficial in resolving sexual assault cases? Further, how have you noticed your discussions evolving in recent years, and have these discussions helped minimize the number of cases you have been referred to help with?

Panelist(s) Responses:

Yes, separating duties between parties and diligence within the process has helped reduce the number of incidents.

The process must include many roundtable discussions with experienced Title IX coordinators and past victims.

Working together in compliance (comprised of public safety, Title IX office, general counsel, counseling, housing, and student services, etc..) groups has been a helpful tool to keep parties in the loop and informed.

You absolutely must hire great people. Must get experienced folks to handle such procedures.

Q-2. What is the best way to conduct Title IX lawsuits to protect and advocate for an institutional client while emphasizing sensitivity and compassion toward the victim-survivor?

Panelist(s) Responses:

Institutions must maintain continuous education of Title IX coordinators in sexual trauma. According to a panelist, there must be programs for sexual misconduct training for all people (faculty and students). A best practice is to provide training year-round as an ongoing teaching and learning process.

III. CONCLUSION

In conclusion, Title IX has improved opportunities for women in academia and sports. Women are attending college and earning degrees at elevated rates. More women are represented as college administrators and faculty. Additionally, women excel and participate at higher rates in sports. Over the past fifty years, Title IX has made an impact. But there is still a distance to go to ensure gender equality is attained. Accordingly, we must continue supporting and advocating for victims of sexual violence against women, dating violence, domestic violence, and sexual assault and harassment. The overarching goal of the symposium was to celebrate where we are fifty years after the passage of Title IX and to highlight how this law has positively impacted society. Our communities must be safe and secure so community stakeholders can engage and participate at their full potential.