

Episode 12: An interview with Sarah Brown, Senior Reporter at the Chronicle for Higher Education, on the legal landscape in higher ed

Courtney Bullard:

Welcome to the Law and Higher Ed podcast. My name is Courtney Bullard, CEO of Institutional Compliance Solutions, and your host. I am a Tennessee attorney, and I began ICS after serving as campus counsel for eight years at a university system. In that role, I handled all legal matters affecting the campus. Or as I like to say, I did everything but divorces. I bring that on the ground experience with me in working with clients today, and that experience shaped the mission behind ICS, which is to provide legally sound but also practical advice to the institutions that we partner with.

Today, I specialize in compliance with Title IX and related laws and regulations, as a result of my experience in the area on campus since the Title IX boom in 2011. This podcast provides relevant, tangible information that you can utilize in your professional life right now, and even maybe your personal life. Through interviews with campus leaders and subject matter experts, and informational episodes, you have access to information at any time, any day, that has both legal and practical implications for your career and your campus. So let's get to it.

Sarah Brown:

The legal landscape is very hot right now. It seems like liability and risk, risk management, risk assessment, is absolutely top of mind for colleges. Especially when it comes to particularly litigious areas, like Title IX and sexual misconduct.

Courtney Bullard:

The Chronicle of Higher Education has the nation's largest newsroom covering colleges and universities. It is a publication many of us in higher education look to to stay current, which is why my guest this week, Sarah Brown, is so exciting. Sarah is a senior reporter at the Chronicle and covers a myriad of issues in higher education. As you'll hear us discuss, the landscape is deep and wide when it comes to legal issues in higher ed. We talk about passing the harasser, the concept of apologizing for sexual misconduct, informal resolutions, perception of Title IX offices on campus, her experience on campus as a student when the 2011 Dear Colleague letter came out, and so much more. I hope you enjoy our conversation as much as I enjoyed interviewing her. She is super sharp and has a lot of information to share.

Hey, Sarah. Thanks so much for joining me on my podcast today.

Sarah Brown:

Thanks for having me. Happy to be here.

Courtney Bullard:

I wanted to start with your story, and how you got into journalism.

Sarah Brown:

I started journalism at the University of North Carolina Chapel Hill, so it was kind of a traditional journalist route, going to a big time J school and working for the campus newspaper. But I developed this interest specifically in higher ed because of my parents. My parents are professors at UNC campus, not Chapel Hill but a smaller campus. When I was growing up, our dinner table conversations were like, curriculum and tenure and disputes between different factions in the department. English departments are so dramatic, you have no idea.

Courtney Bullard:

Yes, I know this first hand. Yes, that's hilarious.

Sarah Brown:

So I remember growing up with this stuff. My parents would try to say, "No work talk at the dinner table." But that didn't really work that way. You know, when I had days off from school, my parents were bringing me to campus. I just felt very in touch with the campus environment and university environment really early on. When I started doing journalism, I started working on some stories about UNC, which had a lot going on at the time. Sexual assault investigations at the federal level, academic athletic scandal, all this stuff.

I would talk to my parents about it, and I just realized how fascinating higher ed was. That there was so many different aspects of higher ed to dig into from faculty life to student life to sort of how higher ed is impacting society, and there's just so many pieces of it that are just so interesting. I kind of developed this weird, nerdy passion for higher ed journalism. And that kind of has worked out. So I guess that's good.

Courtney Bullard:

Yeah, that's a really cool background. It's like, in your genes?

Sarah Brown:

Yeah, literally. I really got lucky in some ways, because I sort of figured out pretty early on, maybe halfway through college, that I was really passionate about writing about higher ed. I tried to read as much as I could and just really gain an understanding of it. Because, you know this as well as anybody, that higher ed is a really complicated space. And trying to understand university bureaucracy and just how the institutions work is just really hard. The fact that I was reading about it often and really interested in it and just continuing to try to build on my knowledge I think that helped a lot because I think a lot of people don't have a clue how universities really work.

Courtney Bullard:

Yes. A subject you and I were just talking about when we were prepping for this.

Sarah Brown:

Exactly.

Courtney Bullard:

So you are at the Chronicle. What is your position now? What do you cover?

Sarah Brown:

I'm a senior reporter, so basically, I just do a mix of daily news reporting on the news of the day, there's a big announcement out of the Education Department about Title IX or there's a controversy stirring at Michigan State, where the president could get fired or whatever. So a mix of that, as well as sort of more medium term analysis pieces. Kind of saying, there seems to be this trend in higher ed, colleges are thinking more about the issue of gender harassment, and the subtle sexist comments and remarks, and how they're trying to deal with that. And trying to look at a variety of issues within that topic.

Those pieces kind of take maybe a week or two weeks at most. Then less often, I do sort of longer term pieces, like big picture stories. One of the first ones I did was about Brigham Young University and its difficulties dealing with sexual assault on a campus that, obviously it's Mormon. And it's very taboo to talk about sex in Mormon culture.

Courtney Bullard:

Sure.

Sarah Brown:

Those are kind of the three different things that I do at the Chronicle.

Courtney Bullard:

Well, we're in a 24 hour news cycle world, obviously. There's a lot out there where you can get your news and information. I go straight to the Chronicle for everything that I want, by the way, for my listeners, they're not paying me to say this, it's just the truth. But for most of us in higher ed, we really rely on the Chronicle for up to date news and kind of what's going on. What do you think makes the Chronicle a reputable source for all of us out there that are reading the news and learning about what's going on in higher ed through news sources?

Sarah Brown:

I think the key thing that the Chronicle is really trying to do, and we've really tried to focus on this lately, is we're trying to add value, right? Because there's so many news sources out there, and there's actually quite a fair amount of local news coverage of higher ed. Say there's a particular flare up at Michigan State or at the University of Pennsylvania or the University of Virginia. There'll be local news stories about, they'll cover the event or the controversy or whatever happened.

We like to come in there and we will take that controversy, that event, or that moment, we'll put it in a broader context, we'll connect it to other things that are happening around the country, we'll tap into both our own expertise, as well as our very deep source list, and we will kind of pull all that together to do something that's much more big picture. But the key thing is, we're not just writing. You know, we cover breaking news, obviously, if there's a big story, like the University of Virginia has a new president, we're going to cover that right away.

But I think really what we try to focus on is adding value, and helping people not only understand the what, but the why, the how, the bigger picture, the where is this topic of this issue going in the future? What do you need to be worried about? A lot of the people who read us are presidents

and provosts who, they need to be able to understand, or they want to know this thing that's happening at this one campus in Florida or in California, what does that mean for me?

Courtney Bullard:

Exactly.

Sarah Brown:

I think that's what we really try to focus our time and attention on.

Courtney Bullard:

I know that the Chronicle covers more than just the legal landscape of higher ed, of course it gets much bigger than that, but honing in on the legal landscape, describe for me in a few words the legal landscape of higher ed from your lens and your coverage.

Sarah Brown:

Interesting question. Well, from my perspective, especially covering for the most part Title IX, sexual misconduct, harassment, assault, that kind of landscape, the legal landscape is very hot right now. It seems like liability and risk, risk management, risk assessment, is absolutely top of mind for colleges. Especially when it comes to particularly litigious areas like Title IX and sexual misconduct. It seems like it's just constantly on the lines of general counsel, of various administrators sort of in the student affairs space. There are a lot of lawyers out there that are suing colleges.

Courtney Bullard:

Yes.

Sarah Brown:

And I think that's something that colleges are really hyper aware of right now.

Courtney Bullard:

I call it the wild, wild west.

Sarah Brown:

Exactly. I've heard that one before. It just seems like there's this understanding that the smallest misstep, or the smallest thing that could be construed to be bias or something like that in an investigation or in a hearing process, that can be ground for a lawsuit, and it can be very expensive, very drawn out for the university. It's certainly a fascinating space to watch, but it just seems like the issues of liability and risk are just ...

Especially in the Title IX space, are just absolutely top of mind for colleges right now. Understandably, because there are just so many lawsuits floating around, and so many court rulings coming down that might impact how different campus policies need to look and that kind of thing. I think everyone's just kind of following that space very closely.

Courtney Bullard:

Often, they're contradicting.

Sarah Brown:

Yeah, that's what it seems.

Courtney Bullard:

Which makes it even more difficult.

Sarah Brown:

Don't we have a contradiction now between the sixth and the first circuit?

Courtney Bullard:

Yep, yep, yep.

Sarah Brown:

So that's fun.

Courtney Bullard:

Yeah. Fun is one word for it. I mean for me, Title IX nerd, yes, it's fun. I'm like, okay, what do we do now? But I know for those on the ground, it's like, okay, I feel like I'm on quicksand all the time.

Sarah Brown:

[inaudible 00:11:16]

Courtney Bullard:

Yeah. I make a decision that complies with one thing, but may not "comply" with another. Or I do everything right and I'm still sued.

Sarah Brown:

It's interesting. I mean, I think the legal space is fascinating for me, too, because I am kind of a nerd. So the fact that there's so many complicated issues to parse out in the sort of Title IX and civil rights law space. I really like digging in and really trying to untangle all of that. The other interesting thing that I've noticed, especially with Title IX, is that it's such a live issue and one where the court rulings are evolving day to day. I feel like I am learning right alongside a lot of my sources.

So it's kind of this thing where we're ... Yes, I talk to my sources and they know what's up, they know what's happening on the ground on campuses. Or they know what's on the minds of administrators. But we're all kind of figuring this out together, which is an interesting position to be in as a journalist.

Courtney Bullard:

Well and in general, I keep saying the reason I have so much passion for what I do, one of the reasons, is I'm living real time something that one day people are going to study.

Sarah Brown:

Right.

Courtney Bullard:

All that's happening it's like, eventually one day, we're going to look back and say, "This is how this area of the law kind of evolved." But it's still so new, it's kind of an exciting time.

Sarah Brown:

It is. Yeah. It is an exciting time. It's also, if you think about sort of who is being impacted by a lot of the changes that are happening in the Title IX landscape, campuses are really trying to create cultures where students who have been victims feel comfortable coming forward, right? I don't think anyone would say that higher ed has figured this out. But it seems like there is a much more prominent conversation about these issues, and reporting is higher, and all of that is a good thing, right?

In terms of the people on campuses who are being impacted in a positive way by the awareness that this whole conversation has prompted, I think, not like higher ed has figured it out. But I think there's no question that the awareness is way more.

Courtney Bullard:

They're trying to. Yeah, the awareness is up and they're absolutely trying to figure it out, which is more than some corporations are doing that you see.

Sarah Brown:

Yeah. It's really interesting, I started college in 2011, which is the year that the Dear Colleague letter came out.

Courtney Bullard:

Yeah, that's funny.

Sarah Brown:

And it's fascinating because when I started college, I remember going to freshman orientation, there was not a single mention of Title IX. I think there probably was some mention of, you know, don't go out drinking and don't walk home alone after that, don't be stupid. That was pretty much the extent of the sex ed at orientation, right? Then within two years, UNC was under multiple federal Title IX investigations, under a Clery investigation, and this whole world was exploding around us. All of a sudden, we had a Title IX office. It's like, what's a Title IX office? I don't even know what that is.

By the time I graduated, we had this whole infrastructure on campus for handling complaints that we did not have before. UNC used to have one of those processes where student honor court boards would hear the cases, right? Sexual assault cases were these honor court, student run things, would hear the cases. Which is kind of mind blowing if you think about where we're at now.

Courtney Bullard:

Right, exactly. It's completely gone 180, or 360, or whatever the term would be. It's such an interesting perspective from you as a student. You and I have talked, I lived it as a lawyer, but it's a really interesting perspective to hear from a student. People that criticize the Dear Colleague letter, which were many, and at the time as a lawyer I was like ... We were all scrambling, what does this mean? How can they just throw this out there? Are we really bound by this?

But if not for the posture that the Office of Civil Rights took, I really don't believe that the awareness would be where it is today, and I think that's a good thing.

Sarah Brown:

Yeah. I think there's no question that ... Because OCR has maintained that they were not imposing new requirements, right? Universities were already obligated under Title IX to do all of this.

Courtney Bullard:

Which, they were obligated to some degree. If you look at the 2001 guidance, a lot of it is the same. The fundamental principles really aren't that different, it was just adding these additional options for complainants. And yeah, being a little bit more, just handling these matters differently.

Sarah Brown:

The enforcement was just way up.

Courtney Bullard:

Yeah, yeah.

Sarah Brown:

I mean there's no question that regardless of what OCR says about whether it was breaking new ground, their guidance added tons of responsibilities, tons of unfunded band-aids, quite honestly.

Courtney Bullard:

Yes, yes, administrative burdens, for sure.

Sarah Brown:

Yeah, yeah, it changed so much. It's not like campuses didn't have any systems for dealing with sexual assault before then. But there was no such thing as a Title IX office. Now you have places like, Michigan State, I think, has a Title IX office with at least 40 people in it. It's crazy how much this has changed in a couple years.

Courtney Bullard:

An entirely new profession has been born out of it. You were supposed to have Title IX coordinators, but it was kind of just a name that was thrown on an administrator who usually did equity and diversity, or something else. But it wasn't something that was this bigger, holistic position like it is now. Yeah. This is an entire industry and an entire new profession.

Sarah Brown:

Yeah, it's been really interesting to see it sort of appear. And to see where it's going to go from here, right? I think there were all these jokes made, I remember after the 2016 election, where people were asking Title IX officers, "Are you even going to have a job anymore, now that we have the Trump administration?"

Courtney Bullard:

Yep. A lot of people asked me that. They were like, are you going to have any business? I was like, yeah. Yeah, for sure, probably more. Which is unfortunate. One of my colleagues, he and I talk about if the NPRM gets released and it's in the form that it was proposed, he's like, I mean, we're going to make good money. But that's unfortunate, that's not really ... It's crazy, it's crazy. I won't get off on my own tangent.

Sarah Brown:

Yeah. But no, it's true, though. I honestly, what are all of those small colleges going to do about live hearings and cross examination? How is that even going to happen?

Courtney Bullard:

I know. Yep. I've got a lot of smaller schools as my clients, and we put them on the ready. But it's like, just wait and see what happens, which can be a lot of things. I think it's safe to say we've covered ... My other question was just going to be, what's grabbing your attention within Title IX? Is there anything more specific, but you've covered a lot, is there anything we've missed?

Sarah Brown:

Yeah. I mean, the regulations are obviously front and center. And it appears they're going to drop in September, which is just going to be chaotic, I imagine.

Courtney Bullard:

Yes.

Sarah Brown:

Not a whole lot of time for actually implementing them before the semester starts, which I'm sure some college officials are not going to be happy about.

Courtney Bullard:

Well on that note, when I listened to Katherine Layman do a Q&A through NACUA, which is an organization for college university attorneys. And she made a big point about, it's not going to be immediate implementation. We're going to have a grace period for colleges to come into compliance. But I didn't really hear anything else after that. Then the NPRM dropped, and then here we are.

Sarah Brown:

Right.

Courtney Bullard:

Yeah, it'll be interesting.

Sarah Brown:

I mean, there might be a grace period. But I think there's just going to be a lot of anxiety about, well, if this is the standard now, if these are the requirements, and we're not there, what does that mean? Could we come under federal scrutiny for that? Could we be sued for that?

Courtney Bullard:

Well lawyers everywhere are going to pick and choose what parts of the NPRM is released benefit them. And even if universities aren't required to be under compliance quite yet, they're still going to wield it as evidence of universities acting inappropriately.

Sarah Brown:

Yeah.

Courtney Bullard:

So it's going to muddy the waters significantly. I think there'll be a lot of litigation over it, after a drop.

Sarah Brown:

Yeah. The other thing I'll mention, just in terms of what's grabbing my attention. I mean the regs are kind of what everybody is thinking about. But I think one other sort of space that I find really fascinating that there is some movement on higher ed right now, is sort of harassment. More not so much like student on student, sexual assault kind of space. But the broader spectrum of harassment. I'm sure you're aware of the National Academy's huge report on how prevalent harassment is in the sciences.

One of the things that the report talked about is how there have been more efforts to try to crack down on this on campuses, on harassing behavior. They have policies now, and processes for handling complaints. But the harassment is still happening.

Courtney Bullard:

And it is ingrained. From my experience, when you get with faculty in educational areas like the sciences, it's kind of this ingrained practice. I think it's going to reveal itself in an ugly way, but it's harder to change. Which I know sounds kind of crazy, but that's been my experience.

Sarah Brown:

It's true, though.

Courtney Bullard:

Universities have a hard time.

Sarah Brown:

Yeah. One of the points in the report is colleges have been focusing too much, in some cases, on compliance and checking boxes, versus really addressing culture. That was such an interesting point to me because it made me think about, well, even if colleges do need to be compliant with the law and the

increasing number of laws that are popping up around this subject, that doesn't, in and of itself, fix your culture. The cultural stuff is so much deeper. It's ingrained, as you just said.

I think figuring out what it means to create a culture where faculty are not unknowingly harassing their students. So much of the stuff that really weighs on women, the women that I've talked to, who are coming up through academia, for example. It's like the little moments where a man in a meeting just kind of makes a remark that just makes you feel kind of gross, or like a second class citizen.

Courtney Bullard:

Microaggressions.

Sarah Brown:

Yeah. Exactly. Or the older male professor who just stares at your chest as you pass him in the hall. It's not overt, quid pro quo sexual harassment. But it doesn't feel good, right? I think a lot of people are coming around to the fact that colleges need to figure out what to do about all of those sorts of spectrums of behaviors, which don't always fall into that, we file a Title IX complaint and go through this investigation. It doesn't always fall into that space.

Courtney Bullard:

Well on the student on student space, I feel like institutions, it's been such a focus. They have a lot of prevention, educational efforts that are available now. They're doing Green Dot programs, Bystander Intervention. There's a lot. But when it comes to faculty and staff, there's not the same kind of training. Faculty, at most campuses, it's like, you can't force me to be trained. So they're reluctant. Just getting the basics to them is hard enough.

Then adding another layer where colleges can do work on microaggressions, and all those things that come with education and prevention, that aid in changing culture over the long term, to me there's a big void there. Everyone thinks of education and prevention efforts with respect to, I don't know, compliance and they think really student on student, or getting in front of your athletics program. But faculty need that type of training as well, and it's missing.

Sarah Brown:

So much of it for faculty ... I mean, departments would be in a better place if more of their faculty got trained. But the key thing there, what would really impact the culture, is professors need to learn how to speak up in meetings.

Courtney Bullard:

Right, yeah.

Sarah Brown:

Or how in a small group discussion, and someone makes a comment that seems a little bit offensive, you have to call them out in the moment, and you have to know how to call them out in a way that makes sense. On top of all that, you have to figure out how to approach the training in a way that's not just going to be like, okay, rolling my eyes, why am I hear?

Courtney Bullard:

Yeah, absolutely.

Sarah Brown:

Which is often a thing that ... When I talk to department chairs or administrators who are trying to do this work on campuses it's like, "Getting my faculty on board is so hard." It's not that I think they're unwilling, I think a lot of this stuff is ingrained, and it's [crosstalk 00:24:03].

Courtney Bullard:

Well and they think it doesn't apply to me, and that's student affairs.

Sarah Brown:

Yeah, I'm a good person.

Courtney Bullard:

We don't have these issues. Yes, we don't have these issues, I don't have these issues. Whatever, which is understandable. And I'll tell you, as someone who's training all the time, I train faculty much different than I train any other area of campus. But you have to be ready. You're not going into a training and you just talk and then you walk out of the room. You're going to be hit with a lot of questions, hard questions. They're very obviously intellectual, very smart people. So it really does have to be tailored. But yeah, I mean, it has to be meaningful or it's kind of pointless.

But to your point about training folks also to kind of speak up and all that, I mean, I don't know what professional development is out there. But when I sit down with students, high school and college students, and I talk to them about consent and things like that, and I talk about, you do have to speak up for yourself. But we, as adults, need the same reminders. Especially when your career's on the line and you're coming through the ranks, it's much tougher to do.

I think even my husband will be like, what's the big deal? You just tell them that was offensive or whatever. You speak up at a meeting, you ask a question and I'm like, you have no idea, as a man sometimes what it feels like as a female to be in this situations.

Sarah Brown:

Right. One of the more interesting strategies that I've seen a campus use ... Because again, this is a very live issue, the National Academies have convened this group of campuses to try to figure out how to deal with this kind of harassment across the spectrum. There was one administrator who was working with department chairs. They were all men, or I think mostly men. She printed out stories that she'd gathered from a number of her colleagues who'd experienced harassment. Because frankly those women in male dominated fields in academia have experienced some level of harassment.

She had them each write down their stories, and she printed them all out, and she handed them out to the department chairs and had them read them out loud. And they were really visibly uncomfortable, and that was by design, right? It was designed to really make them feel it. That was just really interesting.

Courtney Bullard:

That's really interesting. That's pretty cool.

Speaker 3:

Did you know that ICS has a membership? Are you a Title IX coordinator that feels you can never keep up with the ever-changing Title IX landscape? Or do you need access to tools that can help you stay current and perform your job at the highest level for your institution. Perhaps your campus needs help with training. Put our knowledge to work for you with an ICS membership. Over 15 courses that can be used to train your campus, unlimited access to all ICS webinars, compliance aids and tools that are legally current, discounts on services, and information to assist you with Title IX and other regulations such as Clery, FERPA, and the ADA, are just a few of the benefits of an ICS membership.

Whether you are interested in one as an institution or as an individual, contact ICS today, or visit www.ICSlawyer.com to become a part of the ICS family.

Courtney Bullard:

Well, I guess to that end, it's a good segue. I know there was this recent article that you did on passing the harasser. That's something that I talk about to my colleges when I'm doing trainings. I consider, and the legal advice I'm giving when we have a faculty or staff member who's been accused of misconduct, and this whole you can resign in lieu of being terminated and things like that. But can you explain a little bit more about what that means and what you learned about it?

Sarah Brown:

Right. Pass the harasser is this phenomenon in higher ed where essentially, a professor or administrator commits some form of harassment that clearly violates university policy and the university sort of reaches an agreement with this professor or administrator that they will be allowed to resign quietly without a lot of fanfare, then they can just get a new job at a different institution. Essentially, it will be Professor X will just go from one university to another. And in many cases, because so many people who commit harassment or assault are repeat offenders, they will just go to another campus and do the exact same thing.

This has been going on in higher ed forever, right? I think there has been a lot more attention on it recently, because there has been so much more attention and outspokenness surrounding harassment, and people coming forward about, hey, this professor has harassed multiple victims over a period of 10, 15, 20 years. There's a lot more attention to the fact that universities were seeming to enable this by signing confidential agreements with these professors, and administrators who just allowed them to just move on. Okay, not my problem anymore, just go to the other institution and we'll wipe our hands clean.

Courtney Bullard:

Absolutely. I've seen it happen, I can't tell you how many times. I'm not saying I've been a willing participant, but as a lawyer, you know, I've drafted plenty of agreements where it's like, we'll let you resign in lieu of termination, and write you this very vanilla letter of recommendation, and then they move on and they go somewhere else.

Sarah Brown:

Right. Because the problems that might surface would be ... They might be documented in a personnel file. But personnel files are very tightly confidential.

Courtney Bullard:

Confidential.

Sarah Brown:

Right? So you're not sharing personnel files between institutions. I mean, that's a violation of their privacy. I think there definitely is more awareness of this now, especially given the Me Too movement, obviously sparked a lot of people coming forward about professors and administrators who committed harassment. The question is, clearly you can't just have a situation where the University of Wisconsin tells the University of California, by the way, this guy has been found responsible for sexual harassment. You can't just openly tell them that when they're calling you about a reference.

Courtney Bullard:

Right.

Sarah Brown:

You have to figure out, okay, what is the best kind of approach that will enable there to be more transparency around past behavior, past disciplinary history. Just so that universities, when they're making these hiring decisions, are making informed decisions. Because the other question that people talk about is like, well should any history of a disciplinary violation be a disqualifier for an academic job period? I think that's an open question. Does having a Title IX violation from 15 years ago, does that disqualify you for all academic jobs forever and always?

I think the key thing, when I wrote this article about passing the harasser, and what colleges are trying to do about it is they're trying to figure out ways to help improve transparency and information sharing about these issues, allow hiring committees to make more informed decisions, but not, again, violating privacy or sort of disqualifying people from jobs just because they have this disciplinary violation. But it's tricky. I don't think, most colleges have not figured it out.

I think the campuses that I was talking to for this story were sort of trying to figure out ways to ask about these issues in reference checks, to ask candidates to self disclose, and basically say, by applying for this job, you are going to be asked multiple times, have you ever been found responsible for any disciplinary violation? And you have to be honest about that. And if you're not honest, and the university finds out, you could be fired. Again, they're trying to figure out ways to do it without violating privacy. But it's a really tricky space.

Courtney Bullard:

I'll be honest with you, that space, you see the exact same issue in a way. I mean, it's not the same but it is, with student on student issues. Because a student will get dismissed from one institution. And then go and meet ... They've got to go somewhere to school, they're trying to finish their degree, and they go

to another institution. Then they will say, "I was found responsible ..." or somehow the other institution will find out they were found responsible for a Title IX violation.

Then that institution's calling me saying, "Well do we take him or her or not? The other, institution A, will not give us any more information, because it's a student record. And we try to get that applicant to wave any FERPA rights so that they can analyze it." But then again, you're still analyzing this behavior and this finding and it's like, well is that a big enough deal that this person should never be able to go to school again? And how do you make that call? Then what if something happens again?

Very much a similar issue that I think is going to also start happening with those who have been accused and found responsible on the student side as well. I don't know, have you seen any of that?

Sarah Brown:

Yeah. I mean, that goes back to the debate that I think is continuing, but really started getting going a few years ago, about transcript notations, right? Where you note on someone's transcript if they've been found responsible for a Title IX violation, and that basically that information would be passed to the other school. I recently saw this very case, and it didn't end particularly well, at the University of Cincinnati. They had a controversy break earlier this year because the college of arts and sciences there actually basically just published this innocuous feature story about a number of students who had just graduated in the fall who had overcome hardship, was sort of the framing to graduate.

It turns out, one of the students who was featured in that story was a registered sex offender. On top of that, this student had gone to, I believe, it was five different higher ed institutions in the previous six or seven years, he'd been kicked out of two of them for sexual misconduct. Cincinnati says they didn't know about any of this, and this caused a whole furor, because students were upset that Cincinnati was honoring him, even though he had committed this horrible act.

Then a lot of people were saying, you know, has Cincinnati admitted lots of other students who have this history? And that makes me feel unsafe as a survivor. And all this stuff. Right? It's messy. But I mean, the student in question, he graduated and he had kind of a bit of a topsy turvy beginning to his academic career. But it seems like he's kind of moving in the right direction now. Again, a lot of students on that campus were like, his very presence and the fact that you would honor him and allow him to come here and all that kind of stuff, just makes me feel like you don't take sexual assault seriously.

Again, if you're Cincinnati, I don't know what you do in that situation. Because it doesn't seem like excommunicating all people who have committed any sort of disciplinary violation, that doesn't seem like a sustainable future. But it's interesting, I have actually recently dealt with the sort of broader issue of how do you apologize and make amends for ...

Courtney Bullard:

Right. Like the restorative justice kind of piece.

Sarah Brown:

Yeah.

Courtney Bullard:

Sometimes.

Sarah Brown:

Right. What does a good apology look like? What does true remorse look like? I think it's interesting. My sense is that the sort of Title IX space, whether it's students or faculty or staff, I don't know if there has been a real reckoning with the question of how to apologize properly. Or if there is a good way to apologize ... It sort of seems like when people try, it comes out wrong or it's chalked up as just being defensive. But I think a lot of people in the Title IX space seem to be wondering what does it look like to re-introduce these people into society, if that makes sense.

Courtney Bullard:

Yeah, right? And to that, so they can stay in a college campus and have a good outcome. Because the flip side of that to me, at least, is I always say there are creepers and then there are people who are salvageable. Who really either weren't educated appropriately on consent, or were in a case that was a completely gray case.

Sarah Brown:

[crosstalk 00:36:05]?

Courtney Bullard:

And just the evidence didn't tip ... Yeah, with alcohol and everything, and the evidence just didn't tip in their favor. But it's not the guy running out of the bushes, like the Stanford case, and raping somebody. Should that really haunt you for the rest of your life? Can you go to another campus, have learned from that experience, and still be a good person and a contributing member of society? It doesn't really seem like, exactly like you said, just because you've been found responsible and had a disciplinary violation, in every case that means you're now a danger to every college campus in the country. In my experience, that's not what I've seen. I've seen confused young adults, alcohol.

Of course, there are survivors and their stories where that would be appropriate. But I do think there's also room for plenty, in plenty of cases, for kind of that restorative justice piece. I think on the apology side, if informal resolutions are more of an option, which they are, I have seen on college campuses where, even in the cases of sexual assault, or alleged sexual assault, where the victim wants an apology letter and some education for the respondent. And the respondent has written that up and done that, and everybody has "moved on" you know? But it's been successful, it's worked.

Sarah Brown:

Yeah. I think obviously, what a lot of student advocates, activists have said is that that approach is not for everyone. What we really [crosstalk 00:37:33].

Courtney Bullard:

Exactly, no, it's not a one size fits all.

Sarah Brown:

Yeah, and what we don't want to see is universities, in an attempt to shirk responsibility, or sort of lessen their liability, forcing students into these informal options.

Courtney Bullard:

Absolutely. It's a case by case scenario.

Sarah Brown:

Yeah.

Courtney Bullard:

Totally a case by case scenario. But when you have a university saying, "You are going to agree to this." That's totally different. But you have plenty, have had a lot of cases where complainants do not want to go through a full process, do not want to get the other person "in trouble" it is a much more gray situation. Informal resolution is what's most healing for everybody involved.

Sarah Brown:

Yeah.

Courtney Bullard:

Not every case.

Sarah Brown:

I think, right, that's a totally reasonable point. The formal investigation process, from talking to a lot of Title IX officials and really trying to understand how it works, and talking to students who have gone through these processes, it's absolutely not for everyone. It's hard, it takes months, you have to rehash your story over and over again. Whether or not there's cross examination, you are going to find yourself being asked a lot of tough questions. And even though you're in kind of a vulnerable position, and vulnerable state of mind, I mean, it's hard.

Again, basically, that process is going to be taking place for the better part of a semester, realistically.

Courtney Bullard:

I will say though, in the Title IX world, I think the awareness is out there. I hear so many complainants say, "I waited to bring this forward because my friends went through something similar and just said the process was awful." In institutions who are, of course, doing a great job. Because it's the worst experience of their life, and now they've got to relive it however many times. It's tough. It's definitely tough. So much to grapple with this in this area.

Sarah Brown:

Yeah. And so much of what I read about in the news coverage, especially in campus newspapers about Title IX. Often, they will cover students who have gone through the Title IX process, and generally had negative experiences. They said it dragged on forever, and there were all these delays and whatnot, and "I don't feel like I was treated well, I don't think they advocated for me." Of course the flip side of it is,

well Title IX officers are not advocates. They're trying to treat everyone fairly. The delays are often because you have to coordinate all these different peoples' schedules and that can be really hard.

Courtney Bullard:

Sometimes though the resultant is complaining.

Sarah Brown:

Yeah.

Courtney Bullard:

They wouldn't come in, they didn't want to participate. There's all kinds of reasons.

Sarah Brown:

Yeah, I think that's hard, too. As you say, students' perceptions of things, so students' perceptions of whether the Title IX office is doing a good job is often very much informed by their friends going through the process. If they've had negative experiences, that's not going to help promote this idea that the Title IX office is a good option for them. But at the same time, I think it's hard to see in a lot of cases what could be, it's hard to make everyone happy in these kinds of cases.

Courtney Bullard:

No. It's just a lose/lose situation.

Sarah Brown:

Right? So that [crosstalk 00:40:36]. Yeah.

Courtney Bullard:

Yeah. Absolutely. That gets me to, I know you cover a lot of this, we've spoken many times. I'm always big on with the news, you always hear exactly what you just said. Folks that are unhappy with the process, that's what the news likes to cover, because it is much more sensational. You don't have coverage of what a Title IX coordinator really does every day, and how difficult it is to do these Title IX investigations and things like that. I know you try to get a much more round picture of everything. What challenges have you faced in trying to give universities a voice in this Title IX process?

Sarah Brown:

I've spent a lot of time talking to Title IX officials, not on the record. Because again, they usually can't be quoted. But I think talking to them in a more informal, conversational kind of way has really helped promote my own understanding of what they're trying to do, and the kinds of things they're dealing with. Which helps me in turn sort of do analysis and present, I don't know if present their side is the right way of putting it. But I guess that's right. It's basically that, talking to a lot of Title IX folks off the record has helped me understand where they're coming from.

Then I also can turn to folks like you who talk to these people on a day to day basis and can help provide a little bit of a broader perspective, even if you're not commenting on the very specific facts of a particular university's case.

Courtney Bullard:

Yeah, there's so much fear. I mean, I have it myself sometimes. Because I do internal investigations. And I'm like, well if I say this, if I say something and I'm just talking as me, I mean, I do it on the podcast obviously all the time. But no doubt, a process is challenged, an attorney out there is going to take one sentence out of a paragraph and try to dissect it to show bias, or show incompetence, or whatever. There's just a lot of fear right now. I told you before, I don't like ... Attorneys get a bad rap. Journalists do, too. You're a cool journalist, I trust you, which is big for me to say.

It's probably 15 years ago, before I ever worked in higher ed and with my PR guys, I'm like, no, I'm staying as far away from the news as possible. These days, with Trump and the fake news, it seems like even more so, right? I've always thought, they'll tell you it's off the record, but really it's on the record. But that really has been the case with you. You say it's off the record, you're just trying to educate yourself. I think that's huge because it shows in the stories. It is more balanced.

Sarah Brown:

Yeah, I think it's important to be ... Part of the great thing about working at the Chronicle is that we do generally have the time to really dig into something, and take a few days. Versus crank out something in an hour. We really have a little more time to really try to understand something, which is really helpful. I try to be so careful. These issues are really sensitive, for everybody from the student survivors, who are coming forward and saying, "I reported and my complaint was mishandled." And whatnot. That's an incredibly big thing for them to do, and it's a sensitive topic.

Then on the flip side, from the university's perspective, when they're trying to navigate this stuff and talk about it, it's really sensitive. I think just trying to be really, really careful and calling people back for clarification, which I generally have the time to do, all of that, it's nice to have the flexibility to do that. That's how you earn trust.

Courtney Bullard:

Well we all appreciate it. Yeah. We all appreciate it. I'm trying to think if there's anything else from a substantive standpoint. Anything else you can think of that we haven't touched on? I know we could talk all day, because there's so much going on in higher ed and especially in the Title IX landscape. Anything else we haven't touched on?

Sarah Brown:

I don't think anything comes to mind off the top of my head. I think there's so many live issues here, which makes it, I'm sure, a fascinating place to be a lawyer. And it's a fascinating subject to dig into as a journalist. I think for example, there are ... Something we really haven't touched on that much is the whole athletics landscape, and how Title IX intersects with that, and doing training that's sort of specifically geared towards athletes and coaches.

Courtney Bullard:

Exactly what I'm prepping for right now. I leave Monday to go train coaches and administrators in athletics, then to train the athletes. I think it's so huge, and I've been reading a lot of these stories that you've thrown out there a little bit. I've been reading, to re-up myself on all that's going on in athletics.

I'm like, man, everything out there, there's so much that for so long was about football. Now, it's about Title IX, I know. But now you've got the ice skating world, the gymnastics world.

Sarah Brown:

Yeah, gymnastics.

Courtney Bullard:

I mean, really, we've already had swimmers. You're starting to see that it can effect any area of campus. Obviously football usually gets the biggest splash, and it is so crucial. Student athletes have so much power to be change makers for their campus, and so do coaches and staff in athletics, just by virtue of being part of the athletics program.

Sarah Brown:

Yeah, I've been really interested to track the efforts being made on the transfer policy front. Different universities, conferences, trying to not allow the sort of pass the harasser phenomenon. But the athletic world, where you have a student who commits sexual misconduct at UGA then just jumps to Alabama. That has happened for a long time. I think there are a lot of conferences that are really trying to crack down on that and say you can't transfer into our conference if you've previously been found responsible for X. There are a number of coaches, like Nick Saban, Alabama, who's been actually talking about this. Which has really been interesting to follow.

But at the same time, the NCAA has really not that I've seen moved the needle a ton on this. I've covered a little bit of it from time to time. But it sort of seems like they've had various task force type things. But the most recent ones, that was sort of dealing with the issue of sexual misconduct, it disbanded without issuing a report. It just kind of quietly vanished. You have to wonder, okay, well the NCAA is kind of the overarching body here. But what is their role in all of this space? I don't know.

Courtney Bullard:

Yeah, they should have a much more prominent role. I actually was on some of the conference websites, trying to get some information and some statistics for training the student athletes. I was like, whoa, some of the home pages are completely antiquated. The information they have on there is antiquated, and some of these are your Power Five conferences. I'm thinking, it's not really setting a good tone, in my opinion, for everyone else to come into compliance.

Despite all the news coverage, despite everything we're seeing, it's still happening. It's kind of like hazing. Despite the deaths happening, and it being all over the news, we're still having hazing deaths. It's the same thing. It's really the same thing with harassment in the workplace, and everything else. I'm constantly amazed at the fact that things are still happening to me at the exact same rate, to a degree sometimes in athletics. Then also in the workplace, despite all the news coverage.

Sarah Brown:

Yeah, no, it's true. Well, it's like the joke in journalism where the bad news is good news. As long as this stuff continues to happen, we're going to continue to cover it and hold colleges accountable. At this point, it doesn't show any sign of letting up.

Courtney Bullard:

It really doesn't.

Sarah Brown:

Whether it's fraternities, Greek life, athletics, on campus, writ large. It's an evolving space, for sure.

Courtney Bullard:

There's going to be no shortage of news stories, I don't think, in the near future, that's for sure.

Sarah Brown:

Yeah.

Courtney Bullard:

So I'd like to finish with fun facts, if you don't care. My first question I think I want to ask you is, if you were not a journalist, what do you think you'd be doing?

Sarah Brown:

Amazingly, this is an easy question for me to answer. I would be a jockey in thoroughbred horse racing.

Courtney Bullard:

Oh my gosh, I thought you were going to say, "I'd be an English professor."

Sarah Brown:

No.

Courtney Bullard:

Like your parents. A jockey in thoroughbred horse racing? I do find the jockeys to be fascinating. So you're into horses?

Sarah Brown:

Yeah. I grew up as a big horse person. I rode horses competitively and stuff. When I was really young, I got super into horse racing. Like the Kentucky Derby and stuff like that. At the time, I was like, maybe seven or eight. I was still small enough to think in my head, I can totally be a jockey. It looked so exciting to me. You're galloping on a horse going 40 miles an hour in a competitive race situation, it sounded great. Then I hit age 10, and I was already too tall. I was like, damn it.

Courtney Bullard:

Well it's such a hard life, too. My aunt trains horses.

Sarah Brown:

Oh my gosh.

Courtney Bullard:

And has a big horse farm in Texas. She doesn't do the race horses, but our family friend owns a couple race horses. I'm like, the life of a jockey is fascinating but also seems hard in ways that I probably don't even fully appreciate. But you would be a horse jockey?

Sarah Brown:

Yeah.

Courtney Bullard:

That's cool.

Sarah Brown:

I mean honestly, I think it's for the best that this has not been my career trajectory.

Courtney Bullard:

You picked a much safer career, physically.

Sarah Brown:

Yeah. I'm really glad that I have, knock on wood, not had any concussions yet. I haven't lost multiple limbs or broken a lot of bones.

Courtney Bullard:

So scary. I was going to ask what you like to do in your free time. Do you still work with horses and ride?

Sarah Brown:

I haven't been able to ride as much recently, just living in a city, it's hard. But certainly, I'm going to get back to it eventually for sure. It's a nice escape from the craziness and stress of the news environment, and just being able to sort of go out, unplug, go ride a horse, it's pretty great.

Courtney Bullard:

Yes. When we were in Oregon and we went horse back riding, you have to leave your phone. Which, my 13 year old daughter was like, "What?" It was so good though. They did it more than once, because they loved it. It's just like, you're just out there in nature, unplugged. Again, I'm always fascinated by other peoples' jobs, like the trail guides I'm thinking, I was talking to them. So this is what you do? And they're like, "In the summer, yeah. And in the winter, I work at the ski slopes." I'm like, wow, what a simple life. No cell phones ringing, no crazy deadlines, nobody mad at you all the time. Definitely fascinating.

My aunt, my final story about my horses would be my aunt, my daughter loves animals, my 13 year old. For the longest time wanted to get into horseback riding. My aunt was like, don't do it, it's expensive. I was like, well so is soccer and everything else. But I think it's a different kind of expensive, it sounds like. A whole nother world.

Sarah Brown:

Yeah. It is a little expensive. I think my parents would sort of joke around that, couldn't you have picked up any other thing that did not require all this money for lessons and for equipment? Really?

Courtney Bullard:

Yeah. Did you ever own a horse?

Sarah Brown:

I didn't own one, I would lease. Essentially we just had an apartment.

Courtney Bullard:

Right, okay.

Sarah Brown:

Yeah. So I'd basically pay a couple hundred bucks a month to ride this horse and compete this horse.

Courtney Bullard:

Yeah. It's expensive. Well that's so cool, I love that. That was not what I was expecting. It never is what I'm expecting. But after hearing your background I thought, she's going to say English professor. No, horse jockey. I love it, I love it. Well thank you so much for sharing everything. We talked about so much, and I think it's going to be really helpful for those listening. I just really appreciate your candor and your time.

Sarah Brown:

Yeah. This has been really fun, and just being able to sit here and unpack all this stuff for an hour is just sort of a reminder of how fascinating this space is, and sort of why I do what I do. Which is really to try to not only hold colleges accountable for things, but also to try to understand what does something mean? Why does it matter? And promote understanding of sort of how things work in the Title IX space and in the whole messy, chaotic environment. It's fun to be able to unpack all this with you.

Courtney Bullard:

Well I appreciate it.

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