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## This New Ruling Could Change Sexual-Misconduct Proceedings at Universities



Mark D. Sherman, an experienced Title IX defense attorney, said this opinion allows for more transparency and due process, and offers guidelines for universities.



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News



Emily Cousins  
Litigation Reporter



The Connecticut Supreme Court unanimously ruled a Yale University sexual-misconduct hearing was not quasi-judicial, and the accused student could proceed with his allegations of defamation.

The decision might be a cautionary tale for universities.

Thirteen organizations dedicated to preventing gender-based violence and ending sex discrimination in education filed a [joint amicus brief](#) supporting Jane Doe's argument against Saifullah Khan that the university's committee on sexual misconduct proceeding was quasi-judicial, and her statements were entitled to absolute immunity.

The brief contended that victims of sexual assault need protections so they are not deterred from coming forward. It said that public state policy requires institutions of higher education to safeguard students from sexual misconduct, and to provide a safe process to seek justice.

### Court 'Got It Exactly Right'

However, the Connecticut Supreme Court [concluded](#), "We must acknowledge that the accused's right to fundamental fairness is no less important than the right of the accuser or the larger community to achieve justice."

The high court cited a case decided last September, *Priore v. Haig*, which determined that statements made by the defendant about the plaintiff at a public hearing before a town planning and zoning commission were not entitled to

absolute immunity because the hearing was not quasi-judicial.

"[P]roceedings that lack such procedural safeguards do not adequately protect a critical public policy undergirding the doctrine of absolute immunity—to encourage robust participation and candor in judicial and quasi-judicial proceedings while providing some deterrent against malicious falsehoods," the court said in the *Priore* decision.

The attorney who represented the plaintiff, Eric D. Grayson of Grayson & Associates, said the Supreme Court "got it exactly right" in the *Priore* decision, and he agreed with the *Khan* decision "from a purely technical standpoint."

"In the *Khan* case, the technical application has consequences that nobody realized because the law was changing at the time," he said. "But at some point, you can't let every tribunal be an open forum for defamation."

Grayson said he wants all survivors of sexual assault to come forward and seek justice.

He said to protect them from claims of defamation, Yale and other universities should consider implementing the procedural safeguards needed to become a quasi-judicial procedure.

"They need to figure out how to implement policies and procedures that protect both the complainants and the defendant, who are both entitled to equal protection, and I don't think anybody can argue with that," Grayson said.

## **'I'm Not Sure That It's a Panacea'**

Julia Simon-Kerr, Evangeline Starr professor of law at the University of Connecticut School of Law, said former President Donald Trump put out Title IX regulations in May 2020 that created more protections for accused students, so universities might already be more in line with a quasi-judicial proceeding.

President Joe Biden has released new proposed regulations, which will not require live hearings and cross-examination, according to the Department of Education.

Simon-Kerr said universities will need to decide how they will respond to the reversal of some Trump-era regulations, and "they should really be very mindful of this opinion if they want to not chill reports from victims."

Simon-Kerr said this is a complicated issue, and there has to be "a dialogue for how to provide meaningful adjudication of campus sexual assault claims."

"I'm not sure that it's a panacea for it to necessarily go in this quasi-judicial direction to the detriment of thinking about other solutions that may be less legalistic," she said.

One important thing to note about the *Khan* decision, Simon-Kerr said, is the court had to assume the facts Khan alleged were true, and now the proceedings will continue to develop a factual record, and he may not succeed in his claims of defamation.

## **Guidelines**

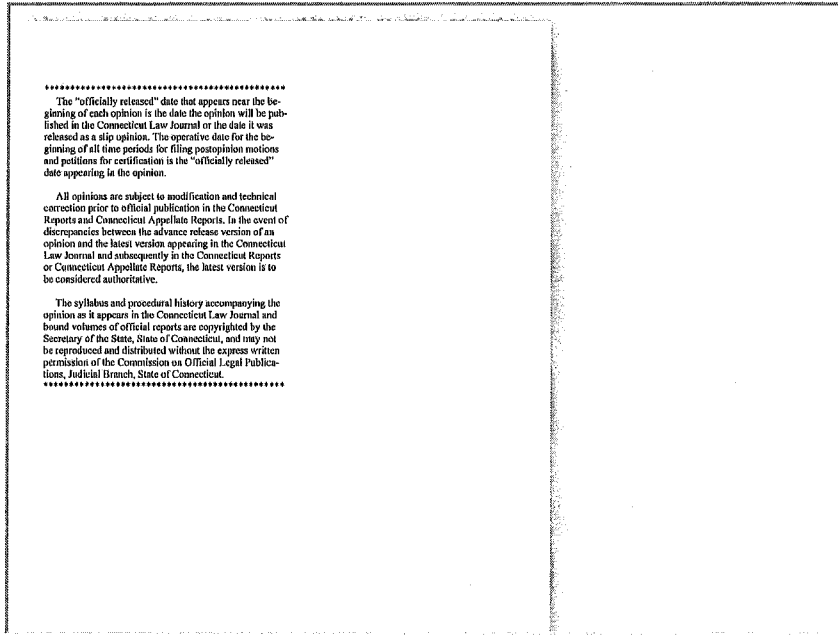
Mark D. Sherman of the Law Offices of Mark D. Sherman, an experienced Title IX defense attorney, said this opinion allows for more transparency and due process, and offers guidelines for universities.

"I think there's a way to be compassionate and sensitive to these types of cases, while still preserving an accused's right to a fair process, whether it's Title IX, school discipline, or criminal court," Sherman said. "We should always have the right to discovery and the right to confront an accuser. Those are basic principles of fairness and due process."

Sherman said he doesn't think this decision will chill victims, but will improve proceedings to get to the truth.

“Every school has different procedures and policies for misconduct hearings, and Title IX adds some degree of uniformity to sexual harassment and sexual abuse cases,” he said. “But this is a decision universities and colleges will take careful notice of and try to adjust their policies to protect their litigants.”

## Read the opinion:



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