

TortsCenter | Episode 6

“Fielding the Future: Title IX and NIL”

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By accessing and listening to [00:01:00] the Tort Center podcast. You agree to these terms and conditions. Welcome back to Tort Center. This is Courtney Dunn and I'm here with Carla Barialli Barker. Today, we have a very special guest, Morgan Chall. Carla, can you introduce Morgan for us?

Carla Varriale-Barker: I'd be so happy to. I had the privilege of knowing Morgan while Morgan was a gold star sports law and ethics student.

As part of Columbia University sports management program. Let me tell you a little bit about Morgan and what makes Morgan so special. She graduated from Cornell University. She had a bachelor's degree in global and public health sciences. Morgan's passion has always been sports. While she was at Cornell, she was a division one gymnast and president of the Cornell student athlete advisory committee.

She was also selected to be the Ivy League student athlete [00:02:00] representative to the NCAA division SAAC, representing all Ivy League athletes in the NCAA governance process. And that interest played out later in 2019 when Morgan was elected chairwoman of the division SAAC, the second woman in the last 15 years to hold this position.

Go Morgan. Go Morgan. Go Morgan. As chair, she represented about 180, 000 Division I student athletes in NCAA governance and was the first female

student athlete to serve as a voting member on the NCAA's Division I Board of Directors. Fast forward to 2020. At the request of the United States Senate Committee on Commerce, Science and transportation.

Morgan authored a brief that assisted the Senate committee's review of potential name, image and likeness federal legislation. [00:03:00] A topic we'll be talking about this afternoon. She's also authored an opinion piece published in USA Today. Arguing that paying college athletes will exacerbate the existing gender equity in college sports.

At present, Morgan is at UC Irvine. She's in law school. And while she was in law school, she's already completed more than 50 hours of pro bono work in our first year, which is pretty amazing. I I'd love to get some time management tips from Morgan, because I don't know a lot of people that have time. For pro bono work in their first year of school, and some of that notable pro bono work that Morgan did included volunteering with a domestic violence clinic, and she is also the vice president of the Jewish Law Association.

copyright share of the IP law society and president of the entertainment and sports law society. It's pretty [00:04:00] incredible that you're able to do all of that while still being a full time law student. So hats off to you, but I knew you in the Columbia sports law program. And it's sort of not a surprise because Morgan has High energy, super engaged, very knowledgeable about the very current issues facing in particular college athletes.

She has a passion for gender equity and it is such a pleasure to reconnect with her on this platform.

Morgan Chall: Welcome. Thanks, Carla. That was an amazing introduction. And thank you, Courtney. It is so awesome to be here. I'm super excited to chat with you guys today about all things gender equity and Title IX and college athletes.

Some of my favorite topics. So thanks for having me,

Carla Varriale-Barker: Morgan. I have a question I have been dying to ask you. I knew you as a high achieving [00:05:00] sports law student at Columbia. Now here you are at UC Irvine. You have all of these other activities, interests. I have to just ask you a basic time management question.

What are your strategies for success or what advice could you give, whether it's in law school or in life, how do you do it?

Morgan Chall: That was very kind of you, Carla. Thank you. I think there's, I'm like a quote junkie and there's a couple of quotes that come to mind. So one of them is. You can do it all, but you just can't do it all at the same time.

And I've learned that the hard way throughout the last couple of years. I think my mom told me that quote, and like, she heard it from somebody else. But I really think about that quote, especially like when I get overwhelmed and like, I sign up for too many things. And remember that, I mean, I [00:06:00] feel like it's self explanatory.

You can do it all. You just can't do it all at the same time. And so even, you know, thinking about my week this week, for example, like I'm super type A and so I calendar everything, like not just meetings or this podcast. Like I have a very stable routine and like at the beginning of every week I put in my calendar.

What I'm going to do and when and so I figure out like what I have to do that week from schoolwork or like last year when I was really involved with pro bono stuff like with pro bono this year I'm like more involved with the clubs like when it's clubs or like meetings of sorts like and I literally calendar like to do during this item and like this is what I'm going to do.

And to that, you can do it all but not all at the same time, it helps me to stay from like not being overwhelmed because I'll look at my to do list for this three hour time block and it's okay, I'm doing research with a professor this semester so like I'm gonna work on my research during this time period or I'm only gonna do my [00:07:00] evidence reading and like I don't need to worry about the trademark reading because I'm just doing evidence reading and I made time to do trademark tomorrow and like it's all gonna work out So a stable routine is super important.

I get up at 6 a. m. every day to work out and make sure that I go to bed at a decent time. And I think for law school, I would say remember and just any challenge in life. I'm sure I'll have to. Listen to this podcast again when I'm a first year associate, but remember your why. I'm really happy. I took four years off before law school and like went to grad school and like, you know, your class, as you know, is the reason why I decided to go to law school.

I've been thinking about it, but it really confirmed my interest in wanting to be a lawyer in this space. And so I think remember your why when things get tough and when it feels like you're learning. Stuff that is not, might not be applicable, controllables and staying in your own lane is another quote that I really like,

especially with law school and just the general [00:08:00] competitiveness of being a lawyer, you can't worry about what's going on around you, who's doing what, you know, what assignments other people are getting, like how they're doing on their assignments, like all you can control is how much effort you put into something, how prepared you are, and how you show up.

And then lastly, like, scheduling time off. I do schedule time off for myself. It's usually Friday nights. I'm watching There's a football tonight, Sunday, this past weekend, I watched football day, so I do schedule a time off. It varies each week, depending on what's going on, but I do, I do that and I think it's vital.

Carla Varriale-Barker: I think that's great advice for lawyers, period. I'm going to be over my wall right after this podcast. Great suggestion. Of course. Let's jump in right away with Title IX. Title IX is now [00:09:00] 52 years old. It's on its face, such simple legislation, yet it has had such a complicated history. Let me ask you, is Title IX aging gracefully or not so much?

Morgan Chall: Ooh, that's a loaded question. I think as the, as any law student would say, it depends on how you look at things. But I think that, you know, for one, just talking about how Title IX has changed and then we can kind of decide together whether she thinks she's aged gracefully or she's showing her age. For starters, as society and science has evolved, it's, It's important to recognize that, like, we're developing new understandings of what gender and sex means, and I won't go into the weeds on Title IX and transgender athletes because that could be a whole nother podcast on its own.

But on the other side, you know, the evolution of technology, our economy, the impact of Title IX on our education system, and Title IX's subsequent impact on the workforce combined with employment discrimination laws have [00:10:00] all created a really different workforce today than 52 years ago. So, and You know, in law school, they teach us that when you analyze a statute, in addition to looking at case law, one of the other key points of analysis is looking at legislative and history and legislative intent.

So, you know, when I was thinking about this question, I did a little research because I wanted to get a better understanding of, you know, what was going on, what was the legislative history of Title IX. And I found it really interesting. So, you know, in the 1960s and 70s, as more women entered the workforce, there was a significant disparity in pay compared to their male counterparts.

So the combination of both the Equal Pay Act and the Civil Rights Act of 1964 ultimately paved the way to the passage of the Education Amendments of 1972,

or as better, we know them as Title IX. But just as any piece of legislation passed, Especially under the 14th Amendment, in order to tackle such a complex problem, all three different branches of [00:11:00] government were involved, and we can, like, talk for hours about the failings of some of those different branches, from the enforcement agency in charge of actually enforcing the law, which goes under the executive branch, to perhaps some of the, you know, Loopholes that in the actual design of Title IX by Congress, but I think where we really see some of Title IX shortcomings is and how the legislative branch or judiciary interprets the law and one key case in terms of what we're talking about today that I think is important to discuss and how Title IX has aged was a 1999 Supreme Court case It's called NCAA versus Smith and where a female volleyball player sued the NCAA after she was denied eligibility to play volleyball in college and without getting too much into the detail of what the court talked about, they ultimately ruled an interest.

Justice Ginsburg wrote the [00:12:00] majority opinion that they agreed with the NCAA that they did not have to comply with Title IX. Title IX, as we know, is the law that requires anybody who receives federal funds, any educational institution who receives federal funds, To comply with their law and because the answer really argued that they didn't receive federal funds, so they don't have to comply with the law.

So even though the NCAA is the governing body of all college sports, it's never actually been subjected to the requirements of Title IX, which has been made very clear in recent years since athletes like Sedona Prince's famous TikTok video a few years ago that highlighted. The stark disparity in resources between the men's final four and the women's final four.

And now here we are to answer your question, Carla. How has she aged 52 years later after Title IX became law and 25 years later after the 1999 Supreme Court case that said the NCAA doesn't have to comply with this law? And out in California, There's a judge, Judge Claudia Wilkins, [00:13:00] who's tasked with answering yet another complex issue that addresses some of the spirit and purpose of this legislation, and that's the NCAA settlement.

So I know that we're going to talk a little bit more about that, but I don't know if I can say she's aged gracefully. I think she's starting to show her age, and I think that the settlement is bringing that up.

Carla Varriale-Barker: What can you share with us about that settlement? Where's it at? What are the issues that are involved?

Morgan Chall: Yeah. So this NCAA settlement is a 2.8 billion settlement at the plaintiff's attorneys and the NCAA agreed to a couple months ago at this point. Interestingly, the plaintiff's attorneys are also the same attorneys that brought forth and won the NCAA versus Alston Supreme court case back in 2021 that opened Uh huh.

I've been following it very closely, and so they are all over trying to pick apart the NCAA's compensation limits and rules and [00:14:00] restrictions around college athlete compensation and just the general NCAA rules in general, to be honest, which the settlement is highlighting. So it's a 2.8 billion settlement that brought together three different antitrust lawsuits.

And so the parties agreed to the settlement and the judge hasn't actually approved the settlement terms. So I work with some high school athletes right now and help them through the college recruiting process. And this has actually been a topic of conversation because. There's a lot of universities who don't know, who are telling athletes they don't know what their roster limits are going to be, and so it's directly impacting college recruiting.

So some of the proposed terms is eliminating scholarship limits per sport, so currently There's five sports that are restricted in terms of how many people on their team can be on scholarship. Those are called headcount sports and football, men's basketball, women's basketball, women's volleyball, and women's gymnastics are the five, those five sports.

So part of the settlement terms is eliminating [00:15:00] scholarship limits. They also implement roster limits on teams. There's revenue sharing up to 10,000. About 21, 22 million a year that schools can partake in with their student athletes. And the terms also include an NCAA clearinghouse that would be managed by the NCAA, which would assess whether payments over 600.

Would be required to be reported through this clearinghouse database with any third party contracts and be assessed for whether they meet fair market value standards and whether they're paid for with a quote valid business purpose, which would mean if the NCAA is managing this system, they're deciding their terms.

mean they're deciding what fair market value is and what a valid business purpose is. So that's some of the highlights, but Judge Wilkins this past week denied those terms. And part of the reason she did not, one of the biggest sticking points that she pushed back on [00:16:00] was this clearinghouse database. And she also pushed back on the revenue share.

So for the revenue share, the NCAA is counting any dollars that student athletes get from RevShare, so TV, media, contracts, etc., as NIL payments. And Judge Wilkins goes, Yeah, no, I don't think so. Sounds like pay for play to me. That's like leaning towards employees. You need to rethink your classification of that, and the clearinghouse, she pushed back on the NCAA being in charge of determining what a valid business purpose is and fair market value again, all in line with the antitrust lawsuits.

So there's a lot going on there, and there's a lot of implications for where Title IX applies, where it doesn't apply. How do

Carla Varriale-Barker: you think it'll shake out?

Morgan Chall: Yeah, honestly, like to kind of cut to the chase, I don't see this settlement. So she didn't technically deny the term. She said, [00:17:00] Plaintiff's attorneys, NCAA, go back to the drawing, not even go back to the drawing board, just go back to the negotiation room and clarify some of these things that I've told you to clarify, most notably the classification of revenue share dollars as NIL payments and the NCAA management of the clearinghouse.

And there was a brief filed by former and current women's rowers On the gender equity and title nine issues because most of the 2.8 billion dollars from the settlement In the terms proposed was going towards football and men's basketball players And by most I mean like 70 towards football and like another 22 towards men's basketball give or take a couple percentages And there's 24 different ncaa sports So there was a lot and in addition to that most of the money in the proposed terms Was to be coming from schools that were not actually plaintiffs in this lawsuit So [00:18:00] the only plaintiffs in the lawsuit were the power five or now power four conferences So they were at the negotiating table But all the other schools like the conference that I come from the ivy league conference Was not privy to these negotiations and Those kinds of conferences are the ones who are actually Who under the terms of this proposal are going to be footing most of the 2.

8 billion bill, even though most of the athletes in the Power Four conferences are going to be the ones benefiting from the settlement terms. So I know like your head's turning, Courtney, I can see it. I

Courtney Dunn: think that the judge pushed back on when she was reviewing the settlement terms, or was that kind of just pushed to the side?

I don't understand how that could be.

Morgan Chall: Candidly, I didn't read the whole transcript and I didn't watch the Oral arguments or anything, but from what I was able to gather from like various news sources That actually wasn't like her sticking point like the thing that she was really hung up on This is also the same judge originally ruled in the Don't quote me [00:19:00] on this, but I want to say it was the alston She's a district court judge, and she originally ruled in the Alston case, which went up to the Supreme Court.

So this judge has not been very friendly to the NCAA, and when I saw she was handling this settlement, I immediately was like, oof, I think everybody in the office, national office, needs a drink. Because, to answer your question, where do I think this is going, candidly, I don't see a world in which having worked with the NCAA, I Staff and the presidents and chancellors that sit on the committees like the board of directors and the board of governors who are tasked with helping to decide issues like this.

There's no way they're ever going to agree to call student athletes employees of their universities. Like, they will continue to fight that in court, and I guess I can't make financial determinations for them, and I know it's going to be super costly if they lose. [00:20:00] I think the damages was like 4 billion.

Between the three lawsuits and so the 2. 8 billion is looking a lot nicer than 4 billion if they were to lose, but I don't think that they will ever concede on the point that the revenue share dollars are the equivalent of pay for play. So I think that they will go back to litigating this issue before they and pull out of the settlement agreement before they agree to that.

Carla Varriale-Barker: You raise an interesting question. If you remember in our sports law class, we always had like our sports law hero, Mount Rushmore pivotal figures in sports law, you raised judge Claudia Wilkin, and she was also the judge, interestingly, who was involved in the Ed O'Bannon, you know, going way back, which thrust the whole question about student athletes.

And the role of student athletes, I think, into the public [00:21:00] eye and and the sort of exploitation, I think, made the public more aware of the potential for exploitation or the exploitation, in fact, of exploitation. Student athletes. So she's a really pivotal figure. She comes across as a very no nonsense judge.

Her opinions are tight, well written. So I think this particular judge is a very interesting part of the sports law landscape for many of the reasons that you just highlighted.

Morgan Chall: Yeah, I completely agree with you. And you know, one of the things I was thinking about about our conversation today and reflecting on different topics that we could be covering and stuff, and also my understanding of the law so much better, just having one year of law school under my belt.

And I think to your point, judge Wilkins is a huge powerhouse and Mount [00:22:00] Rushmore figure when it comes to college athlete rights. And I would be really, really interested to see what happens if a lawsuit or a case came to her docket that was re challenging the NCAA's, uh, Exception for not having to comply with title nine because Remember, like, back in, and I still will go on record saying that I think the Supreme Court got the Alston decision wrong, but given that our Supreme, current Supreme Court does not like to follow precedent on a lot of issues, it's not surprising that even in 2021, they unanimously didn't follow precedent with, given the.

1984 1986 Board of Regents decision that had carved out an exception for the NCAA to be able to regulate compensation because it was tied [00:23:00] to their athlete eligibility standards. And because the Supreme Court got rid of that through the Olson decision, they essentially overturned precedent on that issue.

And And given that it's been 25 years now since that 1999 decision and the changing social landscape and everything, I kind of wonder what would happen if someone challenged that again, but specifically in Judge Wilkins court. from the

Carla Varriale-Barker: mouths of law students. I

Courtney Dunn: love it. A fresh take. Morgan. Morgan, you mentioned some current social standards, certain social considerations.

What else kind of is there going on that you think affects college athletes in this kind of NIL Title IX realm as a former college athlete yourself?

Morgan Chall: I think one of the things That is going on that people aren't paying a lot of attention to is the impact of [00:24:00] NIL on international student athletes. So interestingly, like in my introduction, Carla, you mentioned I'm president of the Entertainment and Sports Law Society here at UCI.

One of the initiatives that we're working on is developing a relationship with the UCI athletic department. And so I was on the pickleball court the other day, and I saw a group of young female students who were wearing UCI soccer shirts. And so naturally, I went over to them and introduced myself, said, Are you on the soccer team?

And it turns out I was talking to somebody who was an international student. And so I started asking her questions about, Hey, I'm just curious. Cause You know, I haven't been on a college campus now since 2020. I graduated in 2019, but I worked at Cornell for a year. So still able to keep on the pulse of like what was going on on the ground.

But since NIL became legal, my only interactions with student athletes have been my old teammates, not like kind of athletes. [00:25:00] So my conversation was really interesting. And she shed a light on like the impact and restrictions with international student athletes. And I don't really know how to tackle that issue, but I think that's like another issue to be considered, especially when determining how are we going to regulate this wild, wild west of a system.

I think other considerations for athletes in general in this space is. You know, when it comes to the NCAA settlement, settlements aren't like required to opt into. And so even athletes who could get money from the settlement might decide to opt out of it and reserve their right to sue the NCAA in future antitrust actions, which.

they would otherwise get rid of. They can't sue the NCAA. I think it's for 10 years or something if they're part of the settlement. So I don't know if that answers your question very well, but I think there's a lot of different moving parts to things that athletes can be [00:26:00] considering. And then the impact of the Olympics in four years.

I mean, we just came off an incredible Olympic year where I love seeing those people. polls of like if Stanford were a country, like we would have the third most medals in the world, something like that. Maybe it wasn't third, but it was, it was up there. And there were a couple of other schools that had the same, same medal count.

And I think it's like people are overlooking the impact that the NCAA has for Olympic sports and the United States Olympic team. And I do wonder, like, what is going to happen, especially with the U. S. hosting four years from now. Like, what is going to happen with, you know, The Olympics, if these

opportunities are eliminated to compete in college, where a lot of those Olympic athletes actually get better and get into Olympic shape through college.

Courtney Dunn: Given all of those different considerations, the current social climate and the impact on current college students, people [00:27:00] say NIL rights and Title IX are just not compatible. Do you think that that's true as things stand, or is it kind of like moving pieces that need to be figured out for there to be that compatibility with our.

52 year old Title IX. I mean, don't knock it in two year olds.

Morgan Chall: I know, incompatible. Again, going back to the first question of, like, legislative history and congressional intent in passing this statute. That intent is still there. Like whether it's actually been enforced adequately by the office of civil rights or at the university level is a whole other question.

Like I'm prefacing this statement by saying I don't have any sort of data to cite this next opinion that I have. I'll call it an opinion, but I would bet if you choose any college athletic program or any university in the [00:28:00]

And you have to actually, I've spoken with some title nine attorneys like Arthur Bryant is amazing based out of California and litigates a lot of title nine issues on college sports. Like he's, he's like the, the trailblazer when it comes to like enforcing title nine. Like, in sports more broadly, but college athletics in particular.

And, I think Title IX, like, is compatible with NIL and the NCAA settlement. But I do think that there's areas where maybe it's not compatible. So, when it comes to the enforcement of, like, roster limits, we know that Title IX covers that. And so if there's any reduction in roster limits, it, there has to be an equivalent reduction on, for men's teams.

In terms of eliminating scholarship limits for sport, we know Title IX covers that. In terms of the revenue share, I would argue Title IX covers that too, if it's coming from the universities. And this isn't covered by the settlement terms, but two of the ways that schools [00:29:00] right now, um, Without the settlement can support athletes with Nils.

They can actually help them get deals and complete their deal, their NIL deals. That was like a big thing that just like sticks out to me that they're allowed to do now. That's interesting. It's crazy because it brings me back to the op-Ed that I

wrote in 2021 before Alston, where I literally argued this exact issue that opening up this door.

Or is without any sort of restrictions or regulations was just gonna create yet another avenue for schools to disproportionately support their men's athletes compared to their female athletes. And, you know, I think Courtney, to your point, like, is it compatible? The one place where I'm not sure if it's compatible would be the NCAA Clearinghouse.

But I think if somebody challenged the 1999 Supreme Court decision, then perhaps that's where it could become compatible through that.

Carla Varriale-Barker: And speaking of [00:30:00] Title IX practitioners and experts in the legal field, I'd be remiss if I didn't ask you about my friend and colleague, Professor Jayma Meyer. Have you worked with Jayma at all?

Morgan Chall: So I haven't worked with her, but she's part of that Title IX Group of attorneys that I've been connected to. So I've seen her emails and stuff, and she is also a powerhouse of a trailblazer in the space. I think she's amazing. I haven't had an opportunity to work with her or speak with her, but I am familiar with her work.

Carla Varriale-Barker: Yeah, I wanted to make sure that I mentioned her because she is a practitioner. She's a professor, definitely somebody for you to get to know on your Title IX journey, the next 50 years.

Courtney Dunn: Yeah. Well, Morgan, we may have to have you on for a follow up episode to give us some updates on the status [00:31:00] of that NCAA settlement.

I know we will be watching on our end here. Thank you so much for all of this info today. Something to look into and keep educated on. I also want

Carla Varriale-Barker: to point out that Morgan is here in her individual capacity, her opinions are her own, they are not the opinions and beliefs of UC Irvine, or her prospective employer, which is Morgan Lewis.

When do you start with Morgan Lewis?

Morgan Chall: So, I will be a summer associate next summer with Morgan Lewis and their labor and employment practice group in Los Angeles and I'm super, super excited about that. It's a fantastic team.

Courtney Dunn: So exciting. I'm lucky to have you. Thank you everyone. Tune in next month. Don't forget to rate, review, and subscribe and follow us on Podbean and Apple [00:32:00] Podcasts.