From: Phil Byler
Sent: Tue, 1 Jun 2021 21:52:30 +0000
To: T9PublicHearing
Subject: Written Comment: Title IX Public Hearing (Doe v. Purdue Lodestar Decision on Due Process and Sex Discrimination and Current Title IX Regulations)
Attachments: SAVE ESSAY Doe v Purdue Lodestar Case.pdf
Importance: High

Attached is a pdf containing my written testimony for the Public Hearing on the Title IX regulations. It is in the form of a case comment on the influential decision in *Doe v. Purdue*, 928 F.3d 652 (7th Cir. 2019) (Barrett, J.) and the current Title IX regulations. I was the winning appellate lawyer in *Doe v. Purdue*.
I am the Senior Litigation Counsel at the law firm of Nesenoff & Miltenberg LLP in New York, New York. My e-mail address is pbyler@nmllplaw.com. I will also be making an oral presentation on June 1, 2021.
Respectfully submitted,
Philip A. Byler
Philip A. Byler, Esq.
Nesenoff & Miltenberg LLP
363 Seventh Avenue - 5th Floor
New York, New York 10001
pbyler@nmllplaw.com
Office Telephone: 212.736.4500
(b)(6)
Office Telecopier: 212.736.2260

Phil Byler, Esq.
363 Seventh Avenue, 5th Floor
New York, NY 10001-3904
212.736.4500 • 212.736.2260
fax
Vcard • nmllplaw.com

***Doe v. Purdue*: Lodestar Decision On Due Process and Sex Discrimination**

By: Philip A. Byler, Esq., Nesenoff & Miltenberg LLP, New York, New York (winning appellate lawyer in *Doe v. Purdue*)

When then Education Secretary DeVos announced on May 6, 2020, what would be the current Title IX regulations, she pointed to three cases that were particularly instructive, one of which was the Seventh Circuit's decision in *Doe v. Purdue*.[1] Secretary DeVos noted that it was a three-woman panel with then Circuit Judge Amy Coney Barrett as the author of the opinion.[2] A short review of *Doe v. Purdue* provides an understanding that the current Title IX regulations, in mandating due process and fairness in Title IX sexual misconduct proceedings,[3] were based on well considered decisional law dealing with actual human experience.

Doe v. Purdue was a constitutional due process and Title IX discrimination suit brought on behalf of Plaintiff John Doe. He was falsely accused of sexual assault by John Doe's former girlfriend five months after the supposed occurrences of non-consensual sexual touching (never mind that John Doe and Jane Doe had a two-month long period of consensual sexual intercourse about which no complaint was made); and John Doe was suspended by the University and dismissed from Navy ROTC because of the university suspension. John Doe's dream and hope to serve his country as a Naval officer was destroyed after a University disciplinary process, rightly called "Kafkaesque" by John Doe, in which, among other things, there was no hearing, no cross-examination, no sworn testimony, no access given for John Doe even to see the investigator's

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[1] 928 F.3d 652 (7th Cir. 2019); "*Secretary DeVos Announces New Title IX Regulation,*" https://www.youtube.com/watch?v=hTb3yfMNGuA; U.S. Department of Education Press Release, "Secretary DeVos Takes Historic Action to Strengthen Title IX Protections for All Students," May 6, 2020; 34 C.F.R. 106. 45.

[2] "*Secretary DeVos Announces New Title IX Regulation,*" https://www.youtube.com/watch?v=hTb3yfMNGuA.

[3] U.S. Department of Education Press Release, "U.S. Department of Education Launches New Title IX Resources for Students, Institutions as Historic New Rule Takes Effect" (August 14, 2010); 34 C.F.R. 106.45.

report much less comment on it, no provision of the evidence that supposedly supported the allegations of complainant and thus no fair and adequate ability to prepare a defense to those allegations, no presumption of innocence (there was a presumption the accusing female's story was true, as she did not appear ever before the Dean and the Equity Committee), and no reasoned consideration of evidence as required by a burden of proof.[4]

The Seventh Circuit upheld the Complaint's pleading of (i) the constitutional due process claim and (ii) the Title IX discrimination claim.[5]

1. <u>The Constitutional Due Process Claim.</u>

Judge Barrett, after ruling that Purdue had deprived John Doe of a stigma-plus liberty interest, turned to "whether he [John Doe] has adequately claimed that Purdue used fundamentally unfair procedures in determining his guilt."[6] She wrote in pertinent part what is well worth quoting:

> John's circumstances entitled him to relatively formal procedures: he was suspended by a university rather than a high school, for sexual violence rather than academic failure, and for an academic year rather than a few days. Yet Purdue's process fell short of what even a high school must provide to a student facing a days-long suspension. ''[D]ue process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.'' *Goss* [*v. Lopez*], 419 U.S. [565,] at 581, 95 S.Ct. 729. John received notice of Jane's allegations and denied them, but Purdue did not disclose its evidence to John. And withholding the evidence on which it relied in adjudicating his guilt was itself sufficient to render the process fundamentally unfair. *See id.* at 580, 95 S.Ct. 729 (''[F]airness can rarely be obtained by secret, one sided determination of facts decisive of rights' (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring))).
>
> John has adequately alleged that the process was deficient in other respects as well. To satisfy the Due Process Clause, ''a hearing must be a real one, not a sham or pretense.'' *Dietchweiler by Dietchweiler v. Lucas*, 827 F.3d 622, 629 (7th Cir. 2016) (citation omitted). At John's meeting with the Advisory Committee, two of

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[4] Complaint, *Doe v. Purdue*, No. 2:17-cv-33-JPK (N.D. Ind.), ECF 1, pp. 2, 13-14; 928 F.3d at 656-658.

[5] 928 F.3d at 659-670.

[6] 928 F.3d at 663.

> the three panel members candidly admitted that they had not read the investigative report, which suggests that they decided that John was guilty based on the accusation rather than the evidence. *See id.* at 630 (stating that a hearing would be a sham if ''members of the school board came to the hearing having predetermined [the plaintiff's] guilt''). And in a case that boiled down to a ''he said/she said,'' it is particularly concerning that Sermersheim and the committee concluded that Jane was the more credible witness—in fact, that she was credible at all—without ever speaking to her in person. Indeed, they did not even receive a statement written by Jane herself, much less a sworn statement. It is unclear, to say the least, how Sermersheim and the committee could have evaluated Jane's credibility.
>
> Sermersheim and the Advisory Committee's failure to make any attempt to examine Jane's credibility is all the more troubling because John identified specific impeachment evidence. He said that Jane was depressed, had attempted suicide, and was angry at him for reporting the attempt. His roommate—with whom Sermersheim and the Advisory Committee refused to speak—maintained that he was present at the time of the alleged assault and that Jane's rendition of events was false. And John insisted that Jane's behavior after the alleged assault—including her texts, gifts, and continued romantic relationship with him—was inconsistent with her claim that he had committed sexual violence against her. Sermersheim and the Advisory Committee may have concluded in the end that John's impeachment evidence did not undercut Jane's credibility. But their failure to even question Jane or John's roommate to probe whether this evidence was reason to disbelieve Jane was fundamentally unfair to John.[7]

At this point in Judge Barrett's opinion, a footnote stated that it was not necessary to address the lack of cross-examination because of all the other procedural deficiencies.[8] Cross-examination, however, has been recognized as the greatest legal engine ever invented for discovery of the truth[9] and has been ruled to be required for basic due process in campus disciplinary cases.[10]

Judge Barrett's opinion was on a motion to dismiss; however, her crystallization of the due process issues has been followed by pre-trial discovery that has fortified John Doe's due process

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[7] 928 F.3d at 663-664.
[8] 928 F.3d at 664 n. 4.
[9] *Lilly v. Virginia*, 527 U.S. 116, 124 (1999); *see also Maryland v. Craig*, 497 U.S. 836, 846 (1990).
[10] *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018); *Doe v. Univ. of Cincinnati*, 872 F.3d 393, 401–402 (6th Cir. 2017); *Flaim v. Med. Coll. of Ohio*, 418 F.3d 629, 641 (6th Cir. 2005); *Doe v. Brandeis Univ.*, 177 F.Supp.3d 561, 605 (D. Mass. 2016); *Donohue v. Baker*, 976 F.Supp. 136 (N.D.N.Y. 1997).

case as focused by Judge Barrett. The depositions of Navy personnel and Navy document production showed that the Navy had relied exclusively upon the university suspension for disenrollment of John Doe,[11] and the depositions of Purdue people with the university documents that formed the basis of the allegations of the Complaint fully supported that Complaint and showed other failures of fair process. Among other things: John Doe was never provided the investigation report throughout the disciplinary case; there was no hearing, just an untranscribed half-hour meeting of John Doe alone with Dean Sermersheim and the Equity Committee; Jane Doe never appeared in person before Dean Sermersheim and the Equity Committee; there was involvement throughout the process of the Purdue sexual assault center known by the acronym "CARE"; the investigators never met with John Doe concerning what John Doe says was a highly selective, misinterpretation of the texts between him and Jane Doe by the investigators.[12]

The failures of due process are important to recognize because the practical reason why due process matters is so that cases are not decided "on the basis of an erroneous or distorted conception of the law or the facts."[13] The damage done to John Doe's career aspirations and emotional well-being was devastating and ought never to be inflicted without due process. Male respondents in Title IX university sexual misconduct proceedings have their side of the story and in life, have their hopes and dreams and their feelings. Due process, as provided by the current Title IX regulations applicable to all universities and colleges (private or public), allows male respondents to have their side of the story heard and not to have their lives upended based on Kafkaesque proceedings that really have no place in America.

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[11] Memorandum of Law, *Doe v. Purdue*, No. 2:17-cv-33-JPK (N.D. Ind.), ECF 106.
[12] Memorandum of Law, *Doe v. Purdue*, No. 2:17-cv-33-JPK (N.D. Ind.), ECF 116, pp. 7-8.
[13] *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

2. <u>The Title IX Discrimination Claim.</u>

Judge Barrett addressed John Doe's Title IX claim by first examining what should be the test for Title IX discrimination, noting the "erroneous outcome" and "selective enforcement" doctrinal tests stated in *Yusuf v. Vassar College*[14] and also the "deliberate indifference" and "archaic assumptions" doctrinal tests added by the Sixth Circuit in *Doe v. Miami.*[15] Judge Barrett, however, put all these doctrinal tests to the side, stating:

> We see no need to superimpose doctrinal tests on the statute. All of these categories simply describe ways in which a plaintiff might show that sex was a motivating factor in a university's decision to discipline a student. We prefer to ask the question more directly: do the alleged facts, if true, raise a plausible inference that the university discriminated against John ''on the basis of sex''?[16]

With that question in mind, Judge Barrett proceeded to analyze the facts as alleged in the Complaint.

Judge Barrett noted that John Doe cast his claim in "the backdrop" of the 2011 Dear Colleague Letter, recognizing Second Circuit and Sixth Circuit decisions that treated the 2011 Dear Colleague Letter as relevant in evaluating the plausibility of a Title IX claim.[17] Judge Barrett quoted the Second Circuit stating ''A covered university that adopts, even temporarily, a policy of bias favoring one sex over the other in a disciplinary dispute, doing so in order to avoid liability or bad publicity, has practiced sex discrimination, notwithstanding that the motive for the discrimination did not come from ingrained or permanent bias against that particular sex."[18] Judge Barrett recognized that the Sixth Circuit had ruled that the plaintiff's allegation that "pressure from

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[14] 35 F.3d 709, 715 (2d Cir. 1994).
[15] 882 F.3d 579, 589 (6th Cir. 2018).
[16] 928 F.3d at 667-668.
[17] 928 F.3d at 668-669, discussing *Doe v. Columbia*, 831 F.3d 46 (2d Cir. 2016), *Doe v. Miami*, 882 F.3d 579, 594 (6th Cir. 2018), and *Doe v. Baum*, 903 F.3d 575, 586 (6th Cir. 2018).
[18] 928 F.3d at 668, quoting *Doe v. Columbia*, 831 F.3d 46, 58 n.11 (2d Cir. 2016). Philip A. Byler was the winning appellate lawyer also in *Doe v. Columbia*, 831 F.3d 46 (2d Cir. 2016).

the government to combat vigorously sexual assault on college campuses and the severe potential punishment—loss of all federal funds—if it failed to comply, led Miami University to discriminate against men in its sexual-assault adjudication process," combined with other facts, ''support[ed] a reasonable inference of gender discrimination."[19] Judge Barrett also recognized that the Sixth Circuit had similarly ruled that the pressure of a Department of Education investigation and the resulting negative publicity ''provides a backdrop, that, when combined with other circumstantial evidence of bias in Doe's specific proceeding, gives rise to a plausible claim."[20] Judge Barrett further again quoted the Second Circuit: "There is nothing implausible or unreasonable about the Complaint's suggested inference that the panel adopted a biased stance in favor of the accusing female and against the defending male varsity athlete in order to avoid further fanning the criticisms that Columbia turned a blind eye to such assaults."[21]

After reviewing these pronouncements, Judge Barrett adopted the Sixth Circuit approach that the 2011 Dear Colleague Letter by itself did not plausibly establish Purdue had acted in part based on sex, but that the 2011 Dear Colleague Letter ''provides a backdrop that, when combined with other circumstantial evidence of bias in [a] specific proceeding, gives rise to a plausible claim."[22]

In John Doe's case, such facts were found to have been alleged that gave rise to a plausible inference that Purdue discriminated against John Doe on the basis of sex.[23] The "strongest" fact, according to Judge Barrett, was that "Sermersheim chose to credit Jane [Doe]'s account without hearing directly from her."[24] Judge Barrett explained:

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[19] 928 F.3d at 668, quoting *Doe v. Miami*, 882 F.3d 579, 594 (6th Cir. 2018).
[20] 928 F.3d at 668-669, quoting *Doe v. Baum*, 903 F.3d 575, 586 (6th Cir. 2018).
[21] 928 F.3d at 668, quoting *Doe v. Columbia*, 831 F.3d 46, 58 (2d Cir. 2016).
[22] 928 F.3d at 668-669, quoting *Doe v. Baum*, 903 F.3d 575, 586 (6th Cir. 2018).
[23] 928 F.3d at 669-670.
[24] 928 F.3d at 669.

> The case against him [John Doe] boiled down to a ''he said/she said" -- Purdue had to decide whether to believe John or Jane. Sermersheim's explanation for her decision (offered only after her supervisor required her to give a reason) was a cursory statement that she found Jane credible and John not credible. Her basis for believing Jane is perplexing, given that she never talked to Jane.[25]

Judge Barrett cited other facts as well: the Equity Committee panelists made up their minds before meeting with John Doe and appeared unfamiliar with the facts of the case while showing hostility toward John Doe; it was plausible that Dean Sermersheim and her Equity Committee advisors chose to believe Jane Doe because she is a woman and disbelieve because John Doe is a man; Purdue's sexual assault center CARE put up on its Facebook page during the same month that John was disciplined an article from *The Washington Post* titled "Alcohol isn't the cause of campus sexual assault. Men are" -- which could be understood to blame men as a class for the problem of campus sexual assault rather than the individuals who commit sexual assault; and CARE Director Monica Bloom's role in assisting Jane Doe's case.[26]

The clarity of Judge Barrett's analysis has resulted in *Doe v. Purdue* becoming the lodestar for interpreting Title IX in discrimination suits against universities by male respondents in university and college sexual misconduct disciplinary proceedings. Four Circuits have cited *Doe v. Purdue* and adopted its approach when reinstating the Title IX federal court suits brought by the male plaintiffs: the Third Circuit in *Doe v. University of Sciences*,[27] the Sixth Circuit in *Doe v. Oberlin*,[28] the Eighth Circuit in *Doe v. Univ. of Arkansas - Fayetteville*,[29] and the Ninth Circuit in *Schwake v. Arizona Bd. of Regents*.[30]

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[25] 928 F.3d at 669.
[26] 928 F.3d at 669-670.
[27] 961 F.3d 203 (3d Cir. 2020).
[28] 963 F.3d 580 (6th Cir. 2020).
[29] 974 F.3d 858 (8th Cir. 2020).
[30] 967 F.3d 949 (9th Cir. 2020).

3. <u>Recommendations As To Regulations.</u>

The present question is what, if anything, is to be done about the current Title IX regulations? The foregoing discussion of *Doe v. Purdue* has been provided to propose that the current regulations aren't broken, and therefore don't need to be fixed. Indeed, the current Title IX regulations were so well formulated precisely because of the many lamentable experiences with university sexual misconduct proceedings, as exemplified in *Doe v. Purdue.*

The current Title IX regulations state that the university or college disciplinary process shall treat complainants and respondents equitably, objectively evaluate the evidence, not have conflicts of interest or bias, presume respondents are not responsible, have prompt time frames, identify the burden of proof that is to be applied uniformly and have support services for both complainants and respondents.[31] These requirements reflect a very different disciplinary process than the one experienced by John Doe in *Doe v. Purdue.* Purdue did not treat John Doe equitably, did not objectively evaluate the evidence, did have bias and an arguable conflict of interest in Dean Sermersheim serving as both decision-maker and Title IX Coordinator, did presume John Doe was responsible, did not reasonably apply the burden of proof and did not have support services for John Doe.

The current Title IX regulations require formal written notice of allegations that contains "sufficient details known at the time and with sufficient time to prepare a response before any initial interview" – "[s]ufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known."[32] That written notice "must include a statement that the respondent is presumed not responsible for the alleged conduct" and must be amended if additional allegations

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[31] 34 C.F.R. 106.45(b)(1).
[32] 34 C.F.R. 106.45(b)(2).

are made later in the proceeding.[33] Purdue did provide notice but did not state that John Doe was presumed not responsible for the alleged conduct.

The current Title IX regulations require that the university or college conduct investigations that:

(i) "Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties"[34];

(ii) "Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence"[35];

(iii) "Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence"[36];

(iv) "Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney"[37];

(v) "Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate"[38];

(vi) "Provide both parties an equal opportunity to inspect and review any evidence

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[33] 34 C.F.R. 106.45(b)(2).
[34] 34 C.F.R. 106.45(b)(5)(i).
[35] 34 C.F.R. 106.45(b)(5)(ii).
[36] 34 C.F.R. 106.45(b)(5)(iii).
[37] 34 C.F.R. 106.45(b)(5)(iv).
[38] 34 C.F.R. 106.45(b)(5)(v).

obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient [university or college] does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source" and "[p]rior to completion of the investigative report, the recipient [university or college] must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report"[39]; and

(vii) "[c]reate an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing . . . send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response."[40]

These regulations would not have allowed Purdue to conduct the investigation the way the school did and would not have allowed Purdue not to disclose ever the investigation report to John Doe. Rather would have required Purdue investigators to share what the school considered its evidence with John Doe before the completion of investigation report, to meet with John Doe about the interpretation of the texts between John Doe and Jane Doe and to disclose the investigation report to John Doe 10 days prior to the hearing.

The current Title IX regulations require a "live hearing" at which cross-examination is to be conducted by the party's advisor of all witnesses in real time, including questions challenging

[39] 34 C.F.R. 106.45(b)(5)(vi).
[40] 34 C.F.R. 106.45(5)(vii).

credibility, and the university or college is to create an audio or transcript recoding of the hearing.[41] There was no such hearing in *Doe v. Purdue*, just an untranscribed half-hour meeting of John Doe alone with the Dean and the Equity Committee.

The current Title IX regulations require "[t]he decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility" and "[t]o reach this determination, the recipient [university or college] must apply the standard of evidence" and make a "written determination [that] must include": identification of the allegations potentially constituting sexual harassment; a description of the procedural steps taken from the receipt of the formal complaint through the determination; "[f]indings of fact supporting the determination"; "[c]onclusions regarding the application of the recipient's code of conduct to the facts"; "[a] statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant"; and a statement of the school's appeal procedures and grounds for appeal.[42] In *Doe v. Purdue*, Dean Sermersheim could not be the decision-maker because she was the Title IX Coordinator, and Dean Sermersheim's decision would have been totally inadequate, as it consisted of a conclusory very short paragraph without findings of fact, without conclusions and without rationale.

In short, the current Title IX regulations would not allow what happened in *Doe v. Purdue* that was so lacking in due process and that was devastating to John Doe's career aspirations and emotional well-being.

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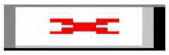
[41] 34 C.F.R. 106.45(6).
[42] 34 C.F.R. 106.45(7).

From: Phil Byler
Sent: Mon, 7 Jun 2021 14:18:16 +0000
To: T9PublicHearing
Subject: Intended Presentation
Attachments: Byler Presentation to OCR 06 07 2021.pdf

I was a scheduled presenter, but when I hit the unmute button (as I was told to do by the host), I was not unmuted. Very frustrating.
Attached is the three-minute presentation that I intended to give and tried to give this morning.
Phil

Philip A. Byler, Esq.
Nesenoff & Miltenberg LLP
363 Seventh Avenue - 5th Floor
New York, New York 10001
pbyler@nmllplaw.com
Telephone: 212.736.4500
Telecopier: 212.736.2260



Phil Byler, Esq.
363 Seventh Avenue, 5th Floor
New York, NY 10001-3904
212.736.4500 • 212.736.2260
fax
Vcard • nmllplaw.com

My name is Philip Byler, Senior Litigation Counsel at Nesenoff & Miltenberg where I have been litigating Title IX cases representing male respondents for the past seven years. After graduating from Harvard Law School and clerking for a U.S. Court of Appeals judge, I have been a litigation lawyer for over 40 years. I was the winning appellate lawyer in the noted cases *Doe v. Purdue*[1] *and Doe v. Columbia.*[2]

My point today is that the current Title IX regulations aren't broken, and therefore don't need to be fixed. I have submitted a written case comment discussing *Doe v. Purdue*, a Seventh Circuit decision that former Secretary DeVos cited when issuing the current Title IX regulations. I discuss *Doe v. Purdue* to show the current Title IX regulations, in mandating due process and fairness in Title IX sexual misconduct proceedings,[3] were well formulated because they were based on well considered decisional law dealing with some unjust experiences, as exemplified in *Doe v. Purdue.*

Doe v. Purdue was a suit brought on behalf of John Doe, who had been accused of sexual assault by his former girlfriend five months after the supposed occurrences of non-consensual sexual touching (never mind that John Doe and Jane Doe had a two-month long period of consensual sexual intercourse about which no

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[1] 928 F.3d 652 (7th Cir. 2019).
[2] 831 F.3d 46 (2d Cir. 2016).
[3] U.S. Department of Education Press Release, "U.S. Department of Education Launches New Title IX Resources for Students, Institutions as Historic New Rule Takes Effect" (August 14, 2010); 34 C.F.R. 106.45.

complaint was made); and John Doe was suspended by the University and dismissed from Navy ROTC because of the university suspension. John Doe's hope and dream to serve his country as a Naval officer was destroyed after a University disciplinary process in which there was: no access given for John Doe even to see the investigation report much less comment on it; no hearing; no cross-examination, no presumption of innocence; no reasoned consideration of evidence; Jane Doe was deemed credible by the decision-maker Dean of Students without ever appearing before that Dean.[4] The Seventh Circuit upheld the Complaint's pleading of the constitutional due process and Title IX discrimination claims.[5]

The current Title IX regulations would not have allowed the university not to disclose ever the investigation report to John Doe, but rather very differently would have required university investigators to share the school's evidence with John Doe before the completion of the investigation report.

The current Title IX regulations require a "live hearing" at which cross-examination is to be conducted by the party's advisor of all witnesses in real time, and the university is to create an audio or transcript recording of the hearing.[6] There

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[4] Complaint, *Doe v. Purdue*, No. 2:17-cv-33-JPK (N.D. Ind.), ECF 1, pp. 2, 13-14; 928 F.3d at 656-658.
[5] 928 F.3d at 659-670.
[6] 34 C.F.R. 106.45(6).

was no hearing at all in *Doe v. Purdue*, just an untranscribed half-hour meeting of John Doe alone with the Dean and the Equity Committee.

The current Title IX regulations impose decision-making obligations on schools[7] that would not have been satisfied in *Doe v. Purdue* because the decision-maker Dean of Students was the Title IX Coordinator and because the Dean's decision consisted of a conclusory short paragraph without findings of fact, without conclusions, without rationale.

In sum, the current Title IX regulations would not allow the career-altering denial of due process in *Doe v. Purdue*. **Keep the current regulations**.

[7] 34 C.F.R. 106.45(7).