

DEBORAH L. BRAKE

Professor of Law and John E. Murray Faculty Scholar
Associate Dean for Research & Faculty Development
University of Pittsburgh School of Law
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ACADEMIC EXPERIENCE

UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

Associate Dean for Research & Faculty Development, 2017-present

Professor of Law, 2006-present

Associate Professor of Law, 2002-2006

Assistant Professor of Law, 1998-2002

Courses taught: Constitutional Law, Employment Discrimination, Gender & the Law, Title IX Seminar. Prior teaching experience includes: Civil Procedure, Legal Process, Legal Process, Feminist Legal Theory, Constitutional Theory, and Reproductive Rights.

ACADEMIC AWARDS/HONORS

John E. Murray Faculty Scholar, 2009-present

Elected Member, American Law Institute, July 2017

Iris Marion Young Award for Social Justice, 2011

BOOKS and BOOK CHAPTERS

GETTING IN THE GAME: TITLE IX AND THE WOMEN'S SPORTS REVOLUTION (N.Y.U. Press 2010) (released in paperback, Aug. 20, 2012)

Women on the Court and the Court on Women, in The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017 (Penn. State Univ. Press 2018) (with Susan Frietsche)

Sport and Masculinity, in MASCULINITIES AND THE LAW (N.Y.U. Press 2012)

The Invisible Pregnant Athlete and the Promise of Title IX, in REVERSING FIELD: EXAMINING COMMERCIALIZATION, LABOR, GENDER AND RACE IN 21ST CENTURY SPORT (W. Va. Univ. Press 2010)

The Theory Behind the Retaliation Claim and Some Doctrinal Implications, in RETALIATION AND WHISTLEBLOWERS: PROCEEDINGS OF THE NEW YORK UNIVERSITY 60TH ANNUAL CONFERENCE ON LABOR (Wolters Kluwer Law & Business 2009)

ARTICLES

Back to Basics: Excavating the Sex Discrimination Roots of Campus Sexual Assault, 6 TENN. J. RACE, GENDER, & SOC. J. 7 (2017)

Fighting the Rape Culture Wars Through the Preponderance of the Evidence Standard, 78 MONT. L. REV. 109 (2017)

The Shifting Sands of Employment Discrimination: From Unjustified Impact to Disparate Treatment in Pregnancy and Pay, 105 GEO. L. J. 559 (2017)

The Trouble with “Bureaucracy,” 7 CAL. L. REV. ONLINE 66 (2016)

Lessons from the Gender Equality Movement: Using Title IX to Foster Inclusive Masculinities in Men’s Sports, 34 LAW & INEQUALITY 285 (2016)

Reviving Paycheck Fairness: Why and How the Factor-Other-Than-Sex Defense Matters, 52 IDAHO L. REV. 889 (2016)

On Not “Having it Both Ways” and Still Losing: Reflections on Fifty Years of Pregnancy Litigation Under Title VII, 95 B.U. L. REV. 995 (2015)

Tortifying Retaliation: Protected Activity at the Intersection of Fault, Duty, and Causation, 75 OHIO ST. L. J. 1375 (2014)

Retaliation in the EEO Office, 50 TULSA L. REV. 1 (2014)

Retaliation in an EEO World, 89 IND. L. J. 115 (2014)

Introduction to Amici Curiae Brief in Young v. United Parcel Service, Inc., and Brief of Law Professors and Women’s Civil Rights Organizations, 36 WOMEN’S RIGHTS L. REPORTER 66 (2014) (with Joanna Grossman)

Wrestling with Gender: Constructing Masculinity by Refusing to Wrestle Women, 13 NEV. L. REV. 486 (2013)

Discrimination Inward and Upward: Lessons on Law and Social Inequality from the Troubling Case of Women Coaches, 2 IND. J. L. & SOC. EQUALITY 1 (2013)

Unprotected Sex: The Pregnancy Discrimination Act at 35, 21 DUKE J. GENDER L. & POL’Y 67 (2013) (with Joanna Grossman)

Going Outside Title IX to Keep Coach-Athlete Relationships in Bounds, 22 MARQ. SPORTS L. REV. 395 (2012)

The Invisible Pregnant Athlete and the Promise of Title IX, 31 HARV. J. L. & GENDER 323 (2008)

The Failure of Title VII as a Rights-Claiming System, 86 N. C. L. REV. 859 (2008) (with Joanna Grossman)

What Counts as “Discrimination” in Ledbetter and the Implications for Sex Equality Law, 59 S. C. L. REV. 657 (2008)

The Heart of the Game: Putting Race and Educational Equity at the Center of Title IX, 7 VA. SPORTS & ENT. L. J. 199 (2008) (with Verna Williams)

Title IX as Pragmatic Feminism, 55 CLEVELAND ST. L. REV. 513 (2007)

Perceiving Subtle Sexism: Mapping the Social-Psychological Forces and Legal Narratives that Obscure Gender Bias, 16 COL. J. OF GENDER & LAW 679 (2007)

Retaliation, 90 MINN. L. REV. 18 (2005)

When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law, 46 WM. & MARY L. REV. 513 (2004) (selected for the 2004 Yale/Stanford Junior Faculty Forum)

Revisiting Title IX’s Feminist Legacy: Moving Beyond the Three-Part Test, 12 AM. UNIV. J. GENDER, SOC. POL’Y & L. 453 (2004)

The Struggle for Sex Equality in Sport and the Theory Behind Title IX, 34 U. MICH. J. LAW REFORM 13 (2001)

School Liability for Peer Sexual Harassment After Davis: Shifting From Intent to Causation in Discrimination Law, 12 HASTINGS WOMEN’S L. J. 5 (2001)

The Cruellest of the Gender Police: Student-to-Student Sexual Harassment, Anti-Gay Harassment, and Title IX, 1 GEO. J. GENDER L. 37 (1999)

SELECTED PRESENTATIONS

- “What Comes Next? Title IX Under a Trump Administration,” Symposium, Harvard Law School (April 13, 2017)
- “Title IX: History, Legacy and Controversy,” keynote speaker, University of Tennessee College of Law (March 2, 2017)
- “New Horizons: Navigating the Complex Landscape of Title IX Compliance,” panelist, American Association of Law Schools (Jan. 6, 2017)

- “Sexual Assault: Conflicts Between Campus and Courts,” Symposium, University of Montana School of Law (Sept. 30, 2016)
- “Shifting Sands: Bridging the Treatment/Impact Divide in Pregnancy and Pay,” Faculty Workshop, University of Minnesota School of Law (Nov. 5, 2015)
- “The Search for Inclusive Masculinities in Sport: Lessons for LGBT Inclusion from the Movement for Gender Equality,” Journal of Law & Inequality Annual Symposium: Playing with Pride: LGBT Inclusion in Sports, University of Minnesota School of Law (Nov. 6, 2015)
- “How and Why the Factor-Other-Than-Sex Defense Matters,” Symposium, University of Idaho School of Law (March 31, 2016)
- “Health, Safety and Gender: Title IX as a Source of Protection for Student-Athletes,” Labor, Entertainment & Sports: An Intersectional and Interdisciplinary Inquiry, UCLA Institute for Research on Labor & Employment, UCLA School of Law (April 18, 2015)
- “*Young v. UPS* and the Future of Pregnancy Discrimination,” Annual Conference on Applied Feminism: Feminism and Work, University of Baltimore School of Law (Mar. 5, 2015)
- “Sport, Gender, and Social Transformation,” Roundtable on Sports & Society, Penn State University (Feb. 26, 2015)
- “50 Years of Pregnancy Discrimination,” The Civil Rights Act of 1964 at 50: Past, Present and Future, Boston University School of Law (Nov. 14, 2014)
- “Tortifying Retaliation?” Ohio State Law Journal Symposium: Torts and Civil Rights Law: Migration and Conflict, Moritz College of Law (Nov. 15, 2013)
- “Discrimination Inward and Upward: The Troubling Case of Women Coaches,” Indiana Journal of Law and Social Equality Symposium, Indiana University Maurer School of Law (April 5, 2013)
- “Retaliation in an EEO World,” Law and Society Conference, Boston, Mass. (May 30, 2013)
- “Advanced Maternal Age: the Pregnancy Discrimination Act Turns 35,” University of Cincinnati College of Law, Third Annual Conference on Race, Gender and Social Justice (Oct. 26, 2012)
- “Masculinities in Sport and in Relation to Gender Equality,” inaugural conference of the Sport, Health, and Activity Research and Policy Center, University of Michigan (May 11, 2012)

- Distinguished Lecture, “Title IX at 40: Changes, Challenges, and Champions,” Tucker Center for Research on Women and Girls in Sport, University of Minnesota (April 23, 2012)
- Keynote Address, “Getting (and Staying) in the Game: Title IX and the Women’s Sports Revolution,” 24th Annual Women’s and Gender Studies Conference, University of Indiana (April 13, 2012)
- Littler-Mendelsohn Labor-Employment Law Lecturer at Cleveland-Marshall Law School, “Working Hard, Hardly Working: How Misinterpretations of the Pregnancy Discrimination Act Have Undermined Its Effectiveness” (Mar. 26, 2012)
- “Wrestling with Gender: Constructing Masculinity by Refusing to Wrestle Women,” Feminist Legal Theory Seminar, Harvard Law School (Feb. 14, 2012)
- AALS Annual Meeting, Joint Program on the 40th Anniversary of Title IX (Jan. 5, 2012)
- University of Cincinnati College of Law, Faculty Workshop, “Wrestling with Gender: Constructing Masculinity by Refusing to Wrestle Women” (Nov. 18, 2011)
- Senior Commentator at the Seton Hall Law School, Sixth Annual Seton Hall Employment and Labor Law Scholars’ Forum (Oct. 28-29, 2011)
- Marquette Univ. School of Law, Nat’l Sport Law Institute, Annual Conference, “Going Outside Title IX to Keep Coach-Athlete Relationships in Bounds” (Oct. 21, 2011)
- Sport and Masculinity, Faculty Workshop, WVU School of Law (Mar. 9, 2011)
- Sport and Masculinity, Law & Masculinities Conference, UNLV Boyd School of Law (co-hosted by Suffolk Law School) (Feb. 18-19, 2011)
- Law & Society Annual Conference, Chicago, Illinois, “Author Meets Reader: *Getting in the Game: Title IX and the Women’s Sports Revolution*” (May 27, 2010)
- “Getting in the Game: Title IX and the Women’s Sports Revolution,” California University of Pennsylvania, annual women’s studies conference (Mar. 17, 2011)
- “Getting in the Game: Title IX and the Women’s Sports Revolution,” University of Connecticut (Mar. 21, 2011)
- Hofstra University, National Pay Equity Day (April 20, 2010)
- Hofstra Law School, Gender Equality: Dimensions of Women’s Equal Citizenship, panel presentation (April 19, 2010)

- Testimony before the U.S. Senate Committee on Health, Education, Labor and Pensions, in support of the Paycheck Fairness Act and the Fair Pay Act (Mar. 11, 2010)
- University of Pennsylvania School of Law, The Delaware Valley, Pennsylvania, Ohio, and West Virginia Feminist Law Teachers Annual Conference: “Congress and the Constitution: Statutory Preclusion of Constitutional Rights” (Feb. 7, 2009)
- West Virginia University College of Law, Conference: Reversing Field: Examining Commercialization, Labor and Race in 21st Century Sports, Panel on Finding Equal Footing: Gender Issues in Sports: “The Invisible Pregnant Athlete” (Oct. 4-5, 2007)
- AALS Annual Meeting, Section on Minority Groups, E-racing the Color Line in Sports program: “The Heart of the Game: Putting Race and Educational Equity at the Center of Title IX” (with Verna Williams) (Jan. 6, 2008).
- University of South Carolina School of Law, Symposium: The Roberts Court and Equal Protection: Gender, Race and Class, Gender and Equal Protection panel: “The Implications of *Ledbetter* for Sex Equality Law” (Feb. 29, 2008)
- Ohio State University Moritz College of Law, faculty workshop: “The Invisible Pregnant Athlete and the Promise of Title IX” (Mar. 31, 2008)
- Testimony before the House Education and Labor Committee, Hearing on the Supreme Court’s decision in *Ledbetter v. Goodyear* (June 12, 2007)
- AALS Annual Meeting, Section on Women in Legal Education: “Perceiving Subtle Sexism” (January 5, 2007)
- Harvard Law School, Harvard Journal of Law & Gender annual conference: “Changing Social Norms? Title IX and Legal Activism,” Opening Remarks and Moderator (April 13, 2007)
- Cleveland Greater Sports Commission and Cleveland Marshall School of Law, “Girls and Women Rock” conference on Title IX: “Title IX and Feminist Legal Theory: The Case for Pragmatism” (Mar. 30, 2007)
- Hofstra Law School: “Title IX and the Pragmatic Turn in Feminist Theory” (April 30, 2007)
- Hofstra Law School: “Theorizing Retaliation: The Under-Protection of Discrimination Claimants and the Preservation of the Social Order” (Sept. 24, 2004)
- Yale/Stanford Junior Faculty Forum, Yale Law School: “When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law” (June 4-5, 2004)
- Law and Society Conference, Chicago, Ill.: “Retaliation” (May 28, 2004)

- Law, Culture & Humanities Conference, Hartford, Conn.: “When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law” (Mar. 12, 2004)
- 2003 Annual Fall Conference of the Association for Public Policy Analysis and Management, Wash. D.C.: paper on Title IX and theories of gender equality (Nov. 7, 2003)
- Law and Society Conference, Pittsburgh, PA: “Equality with a Vengeance: The Leveling Down Problem in Equality Law” (June 7, 2003)
- American University Washington College of Law, Conference: “Title IX: 30 Years Later” (panel presentation) (Apr. 2, 2003)
- University of Cincinnati College of Law, Conference: “‘If you Let Me Play’: Gender and the Politics of Athletics” (Mar. 13, 2003)
- University of Texas School of Law: Conference: “Subversive Legacies” (panel on Title IX and women’s sports) (Nov. 22, 2002)
- Women Law Teachers’ Conference, University of Pennsylvania School of Law, “Leveling Down Responses to Inequality” (Feb. 23, 2002)
- Annual Third Circuit Review, Pittsburgh, PA, “Sexual Harassment Law and the First Amendment: A False Conflict?” (Oct. 16, 2001)
- Hastings Women’s Law Journal, Annual Symposium: “The Academic Epidemic: Peer Sexual Harassment After *Davis v. Monroe County Board of Education*” (Mar. 3, 2000)
- University of Michigan Journal of Law Reform, Annual Symposium: “Competing in the 21st Century: Title IX, Gender Equity and Athletics” (Feb. 4-5, 2000)
- Georgetown University Law Center, Georgetown Journal of Gender Law, 2nd Annual Gender, Sexuality and the Law Symposium: “Hostile Hallways: Anti-Gay Peer Harassment in Schools” (Mar. 4, 1999)

SELECTED RECENT PROFESSIONAL SERVICE ACTIVITIES

Expert Advisor, American Law Institute, Project on Campus Sexual Assault, 2015-present

Coauthor, White Paper on Title IX & The Preponderance of the Evidence, and related advocacy on Title IX and campus sexual assault

Coauthor, *amici curiae* briefs in *Young v. UPS*, filed in U.S. Supreme Court (Sept. 10, 2014, merits brief; May 10, 2013, cert. petition)

Coauthor, STAYING IN BOUNDS: AN NCAA MODEL POLICY TO PREVENT INAPPROPRIATE RELATIONSHIPS BETWEEN STUDENT-ATHLETES AND ATHLETIC DEPARTMENT PERSONNEL (NCAA Publication 2012)

EDUCATION

HARVARD LAW SCHOOL, J.D., 1990, *magna cum laude*

- Harvard Law Review*, Office Chair, Developments in the Law Office
- Women's Law Association, board member
- Students for Public Interest Law

STANFORD UNIVERSITY, B.A., June 1987, *with Distinction*, in political science

- Phi Beta Kappa*

UNIVERSITY OF NEW MEXICO (1983-1985)

- National Debate Tournament qualifier

OTHER PROFESSIONAL EXPERIENCE

NATIONAL WOMEN'S LAW CENTER, Washington, D.C.

Senior Counsel, 1994-1998

Staff Attorney (Skadden Fellowship), 1992-1994

Conducted litigation and advocacy on issues affecting women's rights and economic security. Major cases included challenges to sex discrimination in intercollegiate and interscholastic athletics, sexual harassment in education, employment, prisons and housing, and discriminatory treatment of women prisoners. Litigation experience included extensive appellate advocacy in federal circuit courts and U.S. Supreme Court as both counsel and *amicus curiae*. Represented women's interests before Congress and administrative agencies. Public education activities included researching and authoring publications and frequent public speaking.

HON. CONSTANCE BAKER MOTLEY, U.S. District Court, S.D.N.Y.

Law Clerk, 1991-1992

PEOPLE FOR THE AMERICAN WAY, Washington, D.C.

Women's Law and Public Policy Fellowship, 1990-1991

Participated in legislative advocacy for the Civil Rights Act of 1991. Researched and drafted *amicus curiae* briefs and other documents on legal issues affecting women's rights and civil rights.