

Sexual Violence And Collegiate Athletes

Samantha Reilly
Legal Studies
Ithaca College 953 Danby Road
Ithaca, New York 14850 USA

Faculty Advisor: Gwen Seaquist

Abstract

This research examines the regulations under Title IX of the Education Amendments of 1972, 20 U.S.C. and the National Collegiate Athletic Association (NCAA), along with the prevailing attitudes and sometimes-selective enforcement of the regulations in cases of collegiate athletes accused of committing acts of sexual violence. The statistics of sexual violence at colleges and universities are quite alarming in general, and when looked at further, it is shown that in many cases, the alleged attacker is often a varsity athlete. Title IX prohibits discrimination based on sex, in education programs receiving federal funding, including sexual violence and sexual conduct, which creates a hostile learning environment. In April of 2011, the U.S. Department of Education issued a “Dear Colleague Letter” informing all education programs receiving federal funding of their requirements under Title IX, to respond promptly and adequately to any complaint of sexual violence. In spite of these regulations, the violations continue. This paper examines cases where the educational institution's selective enforcement of Title IX in cases of sexual violence has resulted in the rights of the attacker being held to a higher priority than those of the victim. The universities have instead focused on avoiding scandal and on protecting their own image to preserve funding for the college and in some cases scholarships and continued education for the attacker, with no recognition of the negative effects on the victim. 100,000 students will be sexually assaulted within the next year if something does not change within the judicial system and the institutions of higher education. Clearly, laws and regulations have not worked. The administrators of these institutions must look more deeply into their own value systems and fairly apply the laws as they are written.

Keywords: Sexual Violence, Title IX, College Athletics

1. Introduction

The vast majority of perpetrators of rape will not go to prison. Out of every 1,000 rapes, 944 perpetrators will walk free. Out of every 1,000 rapes, only 344 will be reported.¹ According to a recent study conducted by The Department of Justice, 80% of campus rapes went unreported, and in 2012, 45% of colleges reported zero sexual assaults.² Of the rape cases reported on college campuses, 25% involved varsity athletes. This paper will examine the issue of sexual violence on college and university campuses, the laws and regulations that are in place to protect victims of sexual assault, and the culture that has allowed perpetrators of these vile crimes to escape punishment. When schools focus on protecting star athletes and the school's reputation, it is at the expense of leaving victims feeling re-victimized by those who are supposed to protect them. Title IX regulations and The National Collegiate Athletic Association (NCAA) recommendations will be reviewed, along with examples of noncompliance and proactive compliance under Title IX.

2. Sexual Violence Culture in College

Sexual violence on campuses has been a problem for a long time and is pervasive. “Sexual Violence” is a term that includes sexual harassment, sexual assault and rape. Harassment can be along the lines of degrading remarks or gestures or being touched, grabbed or pinched in a sexual manner. Sexual assault covers a wide range of unwanted behaviors, but not penetration. Rape is defined by most statutes to be “nonconsensual oral, anal or vaginal penetration of the victim by body parts or objects using force, threats of harm, or taking advantage of a victim who is incapacitated or otherwise incapable of giving consent.”³

What is important to keep in mind is that many sexual violence cases go unreported. Due to the traumatic experience that leaves these victims distraught, many victims are fearful of reporting or have trouble reporting the content of their attack. In 2014, the Department of Justice campus crime statistics reported campus crimes as follows: 4,250 stalking; 2,326 fondling; 2,831 domestic violence; 3,191 dating violence; and 4,462 rapes.⁴ In 2007, the National Institute of Justice (NIJ) conducted a study that found 19% of women experienced sexual assault that year.⁵ In the Kaiser Foundation’s study, of over 500 colleges and universities in the United States, it was found that 5% of men and 20% of women have experienced sexual violence. Sexual assault claims that turn out to be false range between 2%-8%.⁶

Fewer than 8% of men in college commit more than 90% of sexual assaults, most likely due to the lack of sanction.⁷ From 2009-2013, Harvard University suspended ten students after 235 reports of sexual assault. From 2008-2013, the University of California Berkley expelled three students after 78 reports of sexual assault. From 2002-2013 at Dartmouth College, three students were expelled after 155 reports of sexual assault. From 1996-2013, at Stanford University, one student was expelled after 259 reports of sexual assault. From 1998-2013, The University of Virginia expelled zero students after receiving 205 reports of sexual assault, whereas, in an alarming contrast, the university expelled 183 students for cheating and other Honor Board violations.⁸

3. Title IX And Athletics

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*⁹, is a federal civil rights law that has the intention of providing equal opportunities to women. Title IX applies to any education program or activity that receives federal funds, and is enforced by the U.S. Department of Education Office for Civil Rights. Title IX states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”¹⁰ Under Title IX, discrimination on the basis of sex can include sexual violence such as rape, sexual assault, sexual battery and sexual coercion.¹¹

It wasn’t until the reversal of the case *Grove City College v. Bell*, in 1988, when athletic programs became considered federally funded programs. Up until the reversal of this case, which originally held that Title IX only applied to the financial aid department and not the school as a whole, college and university athletic programs did not have to abide by Title IX because the Reagan Administration endorsed a program-specific interpretation of Title IX, which held that athletic programs rarely received federal funds.¹² It was later determined that all programs affiliated with an institution receiving federal funds, are subject to Title IX. Female athletes generally win cases against colleges and universities that lack of opportunities for women participation, scholarships and equal treatment.¹³ When it comes to sexual violence cases, however, results may vary.

On April 4, 2011, the Office for Civil Rights issued a Dear Colleague Letter (DCL) to explain a school’s responsibility to respond in accordance with the requirements of Title IX, to student-on-student sexual harassment and sexual violence. The letter stressed that sexual violence not only interferes with students’ rights to receive an education free from discrimination, but it is also a crime.¹⁴ The DCL established the schools’ obligations upon notice of sexual violence claims requiring that, whether a student is sexually assaulted on or off campus, schools should still respond promptly with an investigation. “The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.”¹⁵ Further, schools should have procedures in place to prevent and resolve sexual violence complaints. Required procedures include: notice of nondiscrimination; at least one employee designated as the Title IX coordinator for “overseeing the school’s response to Title IX reports and complaints and identifying and addressing any patterns and systemic problems revealed by such reports and complaints;”¹⁶ training and education for employees so they know to whom to report when harassment of this kind occurs; and publishing of a grievance procedure that is prompt and proper in providing resolutions for student complaints.

Whether the sexual conduct is charged as a crime by the police investigation or not, the conduct, when considered by the schools, may still fall under unlawful sexual harassment under Title IX. “A criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.”¹⁷ In addition, schools should be conducting accurate investigations of their own while the police conduct their investigation. Schools should not wait until the police investigation is complete to provide adequate protection for the complainant.

4. Protection For The Athlete

For athletic departments, federal regulations are also in the NCAA, *Athletics’ Role in Support of Healthy and Safe Campuses*. Despite the DCL spelling out exactly what is expected of colleges and universities when situations of sexual conduct arise, the Jean Cleary Act requiring that campuses publish annual reports of crime, the Violence Against Women Act, and the SaVE Act, which requires staff and student training on sexual violence matters¹⁸, the issue still persists within athletics. Although Title IX was enacted with the intention of protecting women’s rights to equal opportunities and against discrimination, the reality seems to be more about protecting the rights of the athlete. A prime example of how far a school will go to protect a student-athlete from a rape allegation was exemplified in the documentary, “The Hunting Ground.”¹⁹

In December of 2012, Florida State University’s (FSU) star football quarterback and winner of the Heisman Trophy Award, Jameis Winston, raped Erica Kinsman. The night Kinsman was raped, she went to the hospital and was tested with a rape kit, which proved she was, in fact, raped. She contacted the Tallahassee Police to inform them of her attack. With the information that Erica provided to the police department, they could have followed up with interviews of the suspect and his two friends, obtained video surveillance from thirty cameras at the bar in which Winston and Kinsman met, and located the cab driver that drove Erica and the suspect to his apartment, but they did none of these. When Erica subsequently identified the suspect as Jameis Winston, the Tallahassee Police Department refused to run a DNA test. In fact, Detective Angulo of the Tallahassee Police Department, an FSU graduate, told Erica to think twice about whether or not she wanted to press charges, because “this is a huge football town.” Winston had the support of not only his classmates and football fans, but also nearly the entire town. The police department prolonged the investigation for almost ten months, while Winston, as if nothing had happened, continued to play football.

The school did not do much better than the police department. In, *Jane Doe v. Florida State University Board of Trustees*, it is stated that on January 22, 2013, the FSU athletic department learned that Jameis Winston was accused of rape. Rather than notify the FSU administration, the athletic department opted to violate Erica Kinsman’s Title IX rights with their “deliberate concealment” of the fact that their star football recruit was accused of a violent sexual assault. The school did not investigate for eleven months, while Jameis Winston was named starting quarterback for the fall of 2013 and led the team to the national championships.²⁰ FSU had deliberately ignored the DCL they received in 2011. Kinsman argued they had actual knowledge of the rape, and due to their deliberate indifference and reckless disregard of the consequences of Winston’s actions, they did not take the appropriate steps to protect her from further harassment, as required under Title IX. Kinsman further argued that after the attack, she was subjected to additional harassment on campus. She was fearful to be on the same campus with her perpetrator, she was bullied, threatened and vilified by Winston fans on social media and eventually dropped out of school.

“No one from FSU’s administration or Title IX office ever contacted Plaintiff during either the spring 2013 semester of Plaintiff’s freshman year or the fall 2013 semester of Plaintiff’s sophomore year regarding disciplinary proceedings, investigation of the rape, protection of Plaintiff from Winston, removing him from her courses, restraining his proximity to her, or possibly removing him from school altogether.”²¹ On February 12, 2016, the prolonged litigation was settled for \$950,000. Of that, \$700,000 went to Kinsman’s attorney fees, and \$250,000 went to Kinsman for damages. “While neither party concedes any disputed issue of law or fact in the Litigation and FSU specifically denies any wrongdoing or unlawful acts, the Parties have determined that it is in their best interests to fully and finally resolve, compromise and settle all existing and possible claims, defenses, disputes, disagreements and controversies between them in Litigation.”²²

This is not the only case where the athlete’s accolades were put before the rights of a woman. It was found, yet again, that football was prioritized at Baylor University. In August 2015, Baylor University engaged Pepper Hamilton Law Firm to conduct an independent, external review of the university’s institutional failure to respond to Title IX and other compliance issues. The review revealed many reports of sexual violence from 2012-2015 at the university and further proved that there were inadequate actions taken to address the complaints. There were examples found that proved administrators discouraged victims from reporting or participating in further student conduct processes.²³

The findings addressed concerns about the tone and culture of the football program, after it was noted that the Athletic Department failed to identify and respond to a *pattern* of sexual violence by a football player, and to take action in response to several reports of sexual violence by multiple football players.²⁴

A football player in the case, *SS v. Alexander*, raped a female equipment manager at the University of Washington. The woman did not report the case right away, but was asked about it by the football coach who had heard some talk. The woman mentioned filing a police report, and the coach recommended she end her position as the equipment manager for the team and hold off on reporting the rape until they could come up with a “better solution.” The Title IX coordinator at this school recommended the victim and the rapist attend mediation, which the rapist did not cooperate in attending. Months later, another victim was raped by the same player, yet no further investigation took place.²⁵

Another Title IX complaint was filed against the University of Alabama, when a hockey player was accused of raping a woman in a dorm room. The police contacted the rapist, who confessed to having sexual intercourse with his victim while she was unconscious and, therefore, unable to consent. The school then determined the hockey player’s scholarship should be revoked, and he should be expelled from the university. This investigation took just enough time to allow the hockey player to finish out the season. Subsequently, the expulsion was lowered to a two-semester suspension, after which he was allowed to return to the athletic facility.²⁶

These are only a few of the many examples illustrating the extent some police, courts and the schools have gone to so that their athletes can complete a season, continue their on-campus education, and preserve the reputation of the school, in spite of the malicious act each defendant committed. While authorities are more concerned with protecting the athletes, the lives and rights of the victims are held at a lesser value and concern is rarely given to the consequences bestowed upon the woman.

5. A Proactive Approach By Stanford University

Even if a school follows the requirements set forth by the DCL, this issue will never change unless the courts, the police, universities and colleges come to the same conclusions and follow through with appropriate actions. Stanford University recently dealt with a particularly egregious case of sexual violence involving one of its competitive swimmers. In this case, upon learning of the assault, the university acted responsibly and took immediate disciplinary action, banning the defendant from ever stepping foot on campus; ultimately however, the victim experienced another “assault” when The Court allowed the defendant to escape punishment commensurate to his crime.

In the case, *People v. Brock Turner*, a star swimmer “Olympic hopeful”, for Stanford University, violently raped an unconscious woman behind a dumpster. While the defendant faced up to 14 years in prison, his motion requested probation, while the prosecutors asked for 6 years in prison.²⁷ Apart from the fact that the school conducted an immediate investigation, several professors, coaches and other faculty wrote letters on behalf of Brock, expressing his great character and pleading for a lesser sentence. In addition, the attacker’s father wrote a letter in an attempt to decrease his sentence writing “that is a steep price to pay for only 20 minutes of action, out of his 20 plus years of life.” Judge Aaron Persky sentenced Turner to 6 months in jail and three years of probation. Judge Persky’s ruling that anything more would have a “severe impact” on the 20 year-old, demonstrated another “assault” on the value of the forever-altered life of the woman. After spending three months in jail, Turner was released for showing “good behavior” after committing three felonies. His victim, who wished to remain anonymous, wrote a powerful, public message to Brock, “You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence, my own voice, until today.”²⁸ What was notably different about this case, was that two strangers happened upon Brock Turner raping the unconscious woman behind the dumpster and called the police. If it were not for these two strangers passing by, Turner would likely have never been arrested.

The Penal Code Section 1171(a)(1) states the purpose for sentencing someone to prison: “The Legislature finds and declares the purpose of imprisonment for a crime is punishment. The purpose is best served by the terms proportionate to the seriousness of the offense with the provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.”²⁹

Although Brock Turner’s sentence was not proportional to the severity of the crime committed, Stanford University took immediate action in contacting the police, and in less than two weeks, conducted an investigation and banned Brock from ever stepping foot on campus again.³⁰ Even though the school conducted an immediate investigation, several professors, coaches and other faculty wrote letters on behalf of Brock, expressing his great character and pleading for a lesser sentence.

6. Conclusions And Recommendations

Preventative education programs should be implemented at universities and colleges. The NCAA should institute education and training sessions for every athletic team, and the school should continue to follow the guidelines set forth by the DCL in 2011. These actions should NOT go unreported, nor should these actions be taken lightly. Athletes look up to other athletes, and aspire to be great, just like their role models. The message that is being sent to all prospective students in high school is that athletes will get away with pretty much a slap on the wrist, if they're talented enough. "Be like Jameis Winston, be like Brock Turner, be great and do what you want, you have a huge potential for greatness and your fans have your back!" A society continuing to downplay acts of harassment and violence, in the very places where students are supposed to be learning to be better and more productive members of society, instead ignore the value and rights of the victims.

An athlete's prior history should be taken into consideration. Tony Cole was a basketball player for the Community College of Rhode Island (CCRI), until it was alleged by two females that he sexually assaulted them. Cole then transferred to Wabash Community College, where he played for a season before being dismissed because of another sexual assault claim. He was then recruited at the University of Georgia where he was accused of another rape. These universities ignored his background, which allowed his pattern of sexual violence to continue, because they wanted him to play basketball.³¹

If nothing changes, more than 100,000 students will likely be sexually assaulted in the upcoming school year.³² Considering athletes commit 25% of these crimes, the National Collegiate Athletic Association needs to implement strict sanctions that will deter athletes from committing these crimes. Right now, athletes seem to be invincible. If an athlete is held to a higher standard, which they should be, because they are role models for many people, then the NCAA should have no problem standing by Title IX, and protecting women from sexual violence. "The NCAA does not currently have a policy to revoke a student-athlete's eligibility for committing a sex crime. Disciplinary decisions are left up to member institutions, which can be problematic because schools are self-interested parties."³³ Athletics is a privilege, not a right. These sanctions need to go as far as losing eligibility for life, not just a season. If there is any prior history of sexual violence on the student's record, NCAA should not allow the student to participate.

Sexual violence reports can no longer be ignored or overlooked to preserve the athlete's image. Unfortunately, college is a business. The Athletic Department at a Division I school bring in a great deal of money for the school, the system is money. Revenue comes from alumni, trustees and fans. Football especially, brings in millions of dollars. Thus, the school, and athletic departments have decisions to make when it comes to students who are talented enough to be drafted for the NFL and bring publicity and money to the school. Colleges and universities and the athletic programs need to stop covering up the actions of their student-athletes. There is no such thing as a substantial loss for an athlete that will ever be comparable to the substantial loss of a normal life for the victim. It is not enough to have written rules, stating sexual violence is unacceptable, actions are what cause change. A victim's civil rights must supersede concern for a student-athlete's potential. The property interest as a scholarship holder or key player, and the school's pride in having a winning team should be secondary. Until those priorities are reordered, justice will not be served and discrimination against women in education will continue.

7. Endnotes

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