

Collegiate Athletes and Sexual Assault: Justice for Victims Amid Perpetrator Protections

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ABSTRACT

This research paper reviews existing research and attitudes on the paradigm of a quiet, yet pervasive reality that exists within collegiate level athletics. A reality that defies federal law, and protects male athletes from facing repercussions for perpetrating acts of sexual misconduct--disproportionately affecting young women, typically of college age, and already the most vulnerable to sexual abuses such as assault and harassment. In the US, women face disproportionate rates of sexual assault-- their male counterparts making up the overwhelming perpetrator demographic. But, few know collegiate male athletes, and inter-collegiate athletic authorities and leadership perpetrate and enable these crimes, on college campuses at even more alarming rates. This raises the question of *how do the ethical protections provided to collegiate level male athletes in the U.S. accused of sexual assault disproportionately impact the justice of victims?* And, *how must stakeholders act to resolve the injustices and disproportionalities that exist?* The research findings conclude that The NCAA and OCR must be held accountable, via an *Athlete and Accomplice Accountability Act (Quad-A)*, a framework devised for a legislative mandate that provides for the eliminations of current "recommendations" for handling sexual assault allegations, in addition to furthered enforcement of victim protections among other facets.

Introduction

Current National Collegiate Athletic Association (NCAA) and United States Department of Education Office of Civil Rights (OCR) provisions for sexual assault mitigation allow for a disproportionate impact on female victims, by being non-disciplinary of athletic authority's protections provided to collegiate male athletes (who perpetrate sexual assaults), aiding in the dismissal of allegations. Thus, posing the issue of the college athletics industry taking precedence over the safety of young women. Already in the United States of America (U.S.A.) exists a paradigm of sexual assaults and acts of sexual misconduct disproportionately impacting women--victims to male perpetrators. According to the National Sexual Violence Resource Center, one in 71 men will be raped in his lifetime, while one in five women will be raped in her lifetime. And, conjunctively, "less than 4 percent of college students are athletes, yet student-athletes are involved in nearly 20 percent of sexual assaults reported on college campuses," (Milligen, 2015). Further, the journal places emphasis on the fact that despite these striking statistics, the numbers provided merely account for the *reported* sexual assaults, as today a staggering 80% of sexual assaults on college-aged women *aren't* reported by victims (RAINN, n.d.). Congruently, it is not surprising that pervasive dismissal and excusal of athlete sexual misconduct is common. This is a reality that defies federal law and exempts male athletes from facing repercussions for perpetrating acts of sexual misconduct--disproportionately affecting young women, typically of college age, and already the most vulnerable to sexual abuses such as assault and harassment (RAINN, n.d.). The irony falls, however, in the current social push for girls' participation in sports as means to empower them and become an integral element in the education of sexual misconduct. In fact, included in the Olympic Review journal, a collaboration between the United Nations (U.N.) Women organization and International Olympic Committee targeted young girls in Brazil, in

a program titled “One Win Leads to Another,” which aimed to educate them on sexual violence and empower them to partake in athletics. According to Phumzile Mlambo-Ngcuka, Executive Director of UN Women, 93% of the participants knew where to report sexual violence by the end of the program (Mlambo-Ngcuka, 2019). So, the fact that women and girls are becoming encouraged to become empowered through sport, yet, are disproportionately violated by their collegiate athletic counterparts in the U.S.A., is counterproductive at least. And, if these efforts abroad hold this level of effectiveness, it is clear that our American athletic and educational institutions are not doing enough to empower young women to come forward, and provide them with safe and effective means to do so. Prompting the question: *How do the protections provided to collegiate athletes in the U.S. accused of sexual assault disproportionately impact the justice for victims?* And, consequentially, *how must stakeholders act to resolve the injustices and disproportionalities that exist?*

Contextualizing The Issue: The NCAA, Title IX, and the OCR

According to the University of Richmond Law Review (2012) the National Collegiate Athletic Association, or the NCAA is known as the most financially and socially powerful of the national associations that oversees the largest, and wealthiest, sports programs in higher education. Furthermore, Title IX, is a key legal tenant with a direct impact on the NCAA that was enacted in 1917. It provides regulations prohibiting gender discrimination in educational athletics programs and including stipulations with regard to the prevention and handling of sexual misconduct allegations. This includes a mandate that all educational institutions have a Title IX Coordinator accessible to students, despite a common dismissal, or unawareness of the position on college campuses. Title IX is provisioned under the United States Department of Education and their Office of Civil Rights or (OCR). The Office of Civil Rights’ purpose is to enforce the statutes of Title IX and has the power to open investigations into violations of the policy.

Ethics and Leadership: NCAA Athletics Officials and Staff

With accounting for this implication, it is crucial to know that despite it, collegiate athletic leadership under the NCAA plays a key role in receiving claims made against athletes--directly contributing to the unethicity that exists. In 2012 a female student at Florida State University (FSU) came forward alleging that Jameis Winston, “star quarterback” of the FSU football team, had sexually assaulted her (United States District Court, 2016). Athletics officials intervened, but only by claiming to have interviewed two other athletes who had been present during the incident. Both parties claimed that the encounter was consensual however despite the clear and present bias of both bystanders involvement in athletics, athletics officials told the university that the investigation was no longer worthy of legal involvement. As chronicled by the Loyola of Los Angeles Law Review (2019), it was only a year later when the media had become conscious of the incident that the university’s office had been notified. A *year* after that, the US Department of Education’s office of civil rights launched an official investigation into FSU’s handling of the case under Title IX. At the conclusion of the investigation, it was found that Winston’s coaches kept the claims mum, so that he could continue to play football for the university in the two years following the allegation (Kelly, 2019). This incident is directly indicative of economic, and social, motivation, as Winston led FSU to win the national championship, and would then be selected in the 2015 NFL draft to the Tampa Bay Buccaneers. Both achievements are pecuniary accolades to the university, and this type of cover provided by athletic leadership is, again, a corroborated theme. DeAndre Johnson, another FSU football player, had only face consequences for sexual violence after a video of him striking a woman in the face at a nightclub in Tallahassee went viral on social media, despite the head coach’s awareness of the incident (Kelly, 2019). It is clear that the NCAA cannot allow claims of sexual violence against athletes be directly handled by the coaches that rely on athlete success due to a clear and present bias. However, 2014 survey reported that *more* than 20% of college athletic departments oversee investigations of sexual assault against athletes, despite the NCAA’s release of a resolution prohibiting this priorly. In a study conducted by law enforcement from the year 2009 to 2014, ten major

institutions were studied to examine how often male athletes, specifically football and basketball players, were investigated for sexual misconduct. The conclusion held that the University of Florida had the most accused athletes, and a staggering approximate 80% of all campus sexual assault allegations were made against student athletes. But, 56%, more than half of these charges were either dropped, or the alleged perpetrator did not face prosecution or charges at all (Kelly, 2019). So, almost all sexual assault allegations were made against student athletes, yet over half of these athletes faced no consequences. Quantifiably, the National Sexual Violence Resource Center (2012) demonstrates that mere 2-10% of all sexual assault allegations are identified as false. Even if a 10% false accusation margin were to be applied to these claims, they would still be outwardly disproportionate, meaning that justice was not served to all of those deserving.

Institutional Implications: Economic Motivation

The NCAA is highly reliant on the revenue of its college institutions to generate capital, and to then distribute the income among programs depending on their promise. The NCAA has surpassed the threshold of \$1 billion in yearly revenue, and, in the 2018-2019 school year, the University of Texas, Texas A&M University, and The Ohio State University, all surpassed \$200 million dollars in individual revenue from NCAA athletics programs alone (Syracuse University's S.I. Newhouse School of Public Communications, 2019). Cumulatively, the NCAA is a multi-billion dollar industry, and its rosters, especially in men's sports, are the association's sources of steady income. That championship that Jameis Winston led his team to win? Those games earn the NCAA an approximate 11% of their yearly revenue (Kelly, 2019). So, it is no surprise that the NCAA and affiliate schools are economically motivated to keep accusations of sexual assault off of the radars of college administrations to avoid legal discourse, as they wish to keep a consistent stream of revenue. Without their athletes, the NCAA would not be successful in generating the money that they do, so they do everything in their power to shield their athletes from legal consequences for their actions as they do not want to be disenfranchised by sources of revenue— even if this means neglecting Title IX provisions and protections for victims of sexual assault.

Narrative Immunity: Examination of the Issue Through a Social Lens

Deb Waterhouse-Watson, a professor and researcher of intersection of media, law, gender and language, has performed extensive research into the theory of "narrative immunity." Watson (2019) argues that individual sexual assault cases involving athletes are inserted into a larger storyline that subscribes to victim shaming and denial. All falling back to the disbelief a community may be faced with when informed that a well respected, popular, and socially revered athlete is facing allegations of sexual assault. One who finds it hard to accept this may revert to believing a narrative, and one in which the accused perpetrator is favored due to social status. Corroborating this idea, a 2017 study conducted by the Journal of Intrapersonal Violence suggests inversely, "...that victims may be blamed based on their perceived social status," (Pica, E., Sheahan, C., & Pozzulo, J. 2020). As the center of school pride, and embodying traditionally admired masculinity, male athletes are viewed as leaders. This experience can manifest itself into a complex of entitlement and security. Not only does athlete invincibility perpetuate an unsafe environment and double standard favoring athletes on college campuses, if not mitigated, professional athletes with histories of sexual misconduct will continue to populate our magazines, and television screens.

Alternative Solutions

A tried strategy for mitigating the prevalence of sexual assault in the athletic communities of college campuses is education. Sponsored by coaches, university administration, and recommended by the NCAA in a handbook for addressing the issue, sexual assault education has been administered to collegiate athletics programs across the nation

on topics including de-escalation, prevention, consensual sexual behaviors, and reporting sexual misconduct. In fact, 82% of division one schools have implemented some form of training on the issue (Kelly, 2019). But, inconsistency is largely a limitation with the implementation of curriculum, as geographic distance, cultural and political socialization play a large role in the belief systems in different locales, directly impacting the development of sexual assault curriculum. Additionally, there is no indication on whether or not coaches and athletics staff, enablers of athlete sexual misconduct as demonstrated, partake in this education. Clearly, if they allow their athletes to aggrieve the safety of another and continue to stay on a team roster, they are in need of education as well. Albeit, if this kind of education were to be effective in itself, the inequities demonstrated thus far would not be as gravely significant. Another alternative solution would constitute an overhaul of the current OCR powers delegated under the United States Department of Education. The OCR has the power to financially punish institutions if they do not comply with Title IX, but has not done so historically (Kelly, 2019). The OCR has also allowed investigations to ensue for years without urgency; some involved parties graduating before investigations close. Tasked with ensuring the implementation of Title IX, the OCR would require intensive corrections to effectively perform these duties. But these solutions do not inherently compel athletes to stop sexually assaulting young women on college campuses.

Suggested Mitigation & Discussion

The NCAA and OCR must be held accountable, with a proposed *Athlete and Accomplice Accountability Act (Quad-A)*, reviving and reinstating regulations with regard to Title IX. Beginning with the eliminations of their “recommendations” for handling sexual assault allegations, affiliate colleges will be provided with mandated provisions which specify the following regarding claims with grounds for investigation, including points such as, but not limited to: (1) the prohibition of NCAA “... member institutions’ athletic departments from getting involved in any stage of an investigation against one of its athletes, unless it is in compliance with an order by OCR” (Kelly, 2019); (2) The suspension of all funding to NCAA affiliate schools amid investigations of sexual assault, and utilization of financial leverage under the OCR in addition to indefinite athlete suspension; (3) Cohesive and mandatory, but *supplementary*, education on sexual misconduct prevention; (4) and the restriction of perpetrator transfer to another NCAA institution. It must be clear to collegiate athletes that the NCAA will not protect them amid unethicalities, but the NCAA will protect against unethicity itself--not excusing unlawful athlete behavior, but by protecting those who fall victim to it.

Acknowledgments

I would like to thank my teacher, Ms. Houseknecht, and my AP Capstone Peers for the classroom environment that propelled this paper. The laughter, meaningful conversation, and friendship means so much to me.

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