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**INSTITUTIONAL LIABILITY OF STUDENT-
ATHLETE SEXUAL MISCONDUCT: A LEGAL
DISCUSSION OF EVENTS AND
RECOMMENDATIONS**

A Thesis Presented for the
Masters Degree in Sport Studies with a Concentration
in Sport Management
The University of Tennessee, Knoxville

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DEDICATION

This thesis is dedicated to my parents, Robert and Jeanie Goble, and my brother Grant Goble.

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ABSTRACT

The purpose of this study was to examine how universities are being exposed to *Title IX* liability due to increasing sexual assault and sexual harassment accusations of student-athletes. This thesis examined recorded case law with regard to student-athlete sexual misconduct as well as compared law reviews and academic journal findings to determine the extent of which a university is responsible for such misconduct in an effort to propose recommendations to assist administrators in understanding and managing these liability issues. Colleges and universities are becoming increasingly entangled in sexual harassment lawsuits and settlements involving student-athletes. These incidents are costly both monetarily, and in damage to the reputation and integrity of the school and its athletic program (Duffy & Osborne, 2005). Student-athletes' help universities generate millions of dollars annually toward athletic departments, provide national marketing opportunities, as well as provide entertainment for their communities, alumni and fans nationwide (Harrison & Moye, 2006). This trend of incidents of harassment has fostered a growing concern as to whether or not a university should be held responsible for the behavioral misconduct of their student - athletes. Athletic departments and their administrators are under increased scrutiny with regard to student-athlete behavior, specifically sexual harassment and sexual assault. Previous research has indicated that male athletes make up roughly two percent of a campus' population and are named in 23% of sexual assault cases (Duffy & Osborne, 2005).

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CHAPTER I

Introduction

The purpose of this study was to examine how universities are being exposed to *Title IX* liability due to increasing sexual assault and sexual harassment accusations of student-athletes. This article explored the availability of *Title IX* as a vehicle for imposing legal liability on colleges and universities for acts of sexual violence committed by their student-athletes (Davis & Parker, 1998). While many forms of sexual harassment exist, the article primarily discussed male-on-female sexual harassment and assault. Since the turn of the century, there have been several sexual assault cases brought to national attention involving athletes at major Division I universities. Spies (2006) outlines the growing epidemic:

On December 29, 2005, just four days before he was supposed to suit up for the Florida State Seminoles in the FedEx Orange Bowl, senior linebacker A.J. Nicholson sat in a Hollywood, Florida police station and was questioned about allegedly sexually assaulting a nineteen-year-old woman. On January 27, 2005, star University of Iowa basketball player Pierre Pierce threatened the life of a former girlfriend, forcibly disrobed her, held her at knifepoint, and vandalized her apartment. In February 2004, three Virginia Tech football players, including quarterback Marcus Vick, were charged with at least ten misdemeanors arising from an incident where they gave alcohol to three fifteen-year-old girls, took pictures of them, and had sex with at least one of the girls (p. 1)

While these examples are newsworthy, they are not isolated cases of reported sexual assaults among college athletes. There are a disturbing number of reports surfacing of sexual assaults committed by male athletes toward females. Spies (2006) research indicated the following:

Statistics show that male athletes are more likely than the average male college students to commit sexual assaults. According to one study, athletes commit one in three college sexual assaults. In another study of sexual assaults at ten Division I schools between 1991 and 1993, male athletes made up only 3.3% of the entire male college population but were involved in 19% of the reported sexual assaults on campus (p. 1).

A Federal Bureau of Investigation (FBI) report stated, “the rate of committing sexual assaults is thirty-eight percent higher among college basketball and football players than the average male college student” (Spies, 2006, p. 1). Some attribute this to the violent nature of contact sports, for example *New York Times* columnist Robert Lipsyte wrote, “felony arrests among pro and college male athletes may or may not be rising, but better reporting makes it clear that many of them cannot turn off their aggressive behavior at the buzzer” (Coakley, 2007, p. 211).

A 2003 study suggested that the competitive nature of athletes and their “win at all costs” mentality allows them to believe using force to settle a disagreement or get what they want is an acceptable method of resolution (Potrafke, 2006). Potrafke (2006) also discusses additional data that support the 2003 findings. More than 175 athletes were arrested for criminal activity at 112 National Collegiate Athletic Association (NCAA) Division I schools, and among the most common criminal activities were assault and sexual assault. Parent (2003) reports of more universities coping with the issue of sexual harassment by their student-athletes:

Which collegiate powerhouses might be added to this list in the months to come? The University of Colorado is already one, having been notified in the summer of 2002 by the attorneys of an alleged victim of a gang rape at the football team’s annual recruiting party. The University of Notre Dame

might be next, as it has had at least seven former football players accused of sexual assault and/or rape within the last five years. Or, perhaps will it be Indiana University, where in December of 2001, a member of the Hoosier football team was charged with pulling a student into a bathroom at a party and attempting to rape her. It could be any number of universities, including the University of Mississippi, Iowa State University, Arizona State University, or the University of Georgia, all of which have been forced to deal with allegations of sexual assault by at least one member of their respected football team (p.2).

The above mentioned teams and universities are not the only schools dealing with athletes who commit sexual assault. Deviant crimes such as the aforementioned are not isolated to student-athletes, but it is their high profile and alarmingly high rate of participation, that puts them in the forefront of this issue. Headlines such as “Prosecutor wants more information about Wildcat Lodge rape case” or “Third LaSalle player charged with rape” and “Sixth rape allegation surfaces at Colorado” provides the media with opportunities to expose athletes and universities to unsolicited nationwide attention (Hogan, 2006, p.1

With the most recent December 2007 settlement, The Court of Appeals for the Tenth Circuit ruled against the University of Colorado, forcing institutions to take a closer look into how they can protect themselves from future *Title IX* litigation. Colorado was ordered to employ a full time *Title IX* officer on their athletic department staff to help the university become complaint with and advise regarding future *Title IX* allegations (Lisa Simpson v. The University of Colorado, 2007). With student-athletes involved in headline news, it is important for an institution to know how it can be liable for the actions of the athletes it brings on campus to represent the university. This issue of sexual assault and sexual harassment among male athletes is nothing new, but with the rulings of Williams

v. University of Georgia (2006) and Simpson v. University of Colorado (2007) the courts have made it clear this issue will no longer be tolerated and institutions will be punished.

The following chapters will introduce and explain the elements of *Title IX* as well as outline how institutions can be held liable for the actions of its students. Chapter II will portray cases involving not only college age students but elementary school children, which set the standards for sexual harassment in an educational environment. It will relate *Title VII* and *Title IX*, as well as explain how these cases set forth guidelines in determining whether or not an educational institution can be held liable for student-on-student as well as teacher-on-student sexual harassment. Chapter III will examine cases involving student-athletes and sexual harassment while applying the *Title IX* guidelines established in Chapter II. Chapter IV will discuss common reasoning discussed in each case in the previous chapters. Chapter V will conclude the findings established in *Title IX* sexual harassment litigation as well as provide recommendations to educate institutions on how to protect themselves from *Title IX* liability.). While there seems to be conflicting research that shows an increase in student-athlete sexual assault, there are also reports that state sexual assault among athletes exists but is not increasing. This simply tells us there needs to be more research in this area to determine the trend in student-athlete sexual misconduct.

CHAPTER II

Legislative History and Early Case Precedent

Title IX

Title IX, 20 U.S.C. § 1681 et seq. (1974), the statute which governs sex discrimination claims in educational programs was implemented by Congress in 1972. *Title IX* of the Education Amendments 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 educational program or activity receiving federal financial assistance.” *Title IX* was passed to protect people from discrimination based on sex in education programs or activities. It applies to all local and state agencies that receive federal funding from the Department of Education, including approximately 16,000 local school districts, 3,200 colleges and universities, and, 5,000 for-profit schools (Spies, 2006, p. 2). The Education amendment applies not only to those wishing to participate in sport but every individual seeking to attain any level of higher education. Any student can file a *Title IX* claim for being denied an opportunity to learn at their highest potential based on gender discrimination.

Title IX creates obligations for universities when a student is sexually harassed or sexually assaulted; such obligations extend directly to athletic departments when the accused is a student-athlete or staff member (Hogan, 2006). “The Office of Civil Rights (OCR) has the authority under the Department of Education to enforce *Title IX*’s prohibition on sex discrimination” (Spies, 2006,

p. 2). The Office of Civil Rights created guidelines specifically dealing with *Title IX* and athletics. These guidelines have to do with intercollegiate athletic policies, equal opportunity in athletics, teen pregnancy as well as sexual harassment. The main job of the OCR is to make sure every university or school has a sexual harassment policy in place that handles any issue dealing with sexual discrimination. While the OCR has the ability to withdraw federal funds from any institution that fails to comply with *Title IX*, it cannot provide compensation or award damages to any victim claiming a violation. As a result in of early *Title IX* litigation, it was established that such compensations or awards can be collected under private action against the university (Spies, 2006).

Before the enactment of *Title IX*, courts relied on the interpretation of Title VII 42 U.S.C. § 2000 (1964) in sexual discrimination cases. *Title VII* of the Civil Rights Act of 1964, prohibits discrimination on the basis of sex in the workplace, but not in an educational setting (Lamanna, 1999). In the early 1970s, Congress made several attempts to alter *Title VII* to include educational institutions, but was unable to do so until 1972 with the passage of *Title IX*. With the decisions of Annabelle Lipsett v. University of Puerto Rico (1991), Franklin v. Gwinnett County Public Schools (1992), and Aurelia Davis v. Monroe County Board of Education (1999), a federal law was established that specifically prohibits sex discrimination in educational settings. As noted in the following discussion, many *Title IX* cases look to *Title VII* for guidance. The means of enforcement for *Title IX* are administrative. "The statute directs federal agencies that distribute

educational funding to establish requirements by which the anti-discrimination provisions of the act are to be achieved” (Lamanna, 1999, p.3).

Davis v. Monroe County Board of Education (1999) established three separate theories of liability for institutions to be held responsible under *Title IX*. The first standard is the “knew or should have known” standard. Williams v. University of Georgia (2006) outlined how institutions failure to respond to a sexual harassment allegation which leads to additional sexual harassment violates *Title IX*. In the Williams case, the victim was allegedly gang raped by members of the University of Georgia football and basketball teams. Georgia was found liable because the institution knowingly recruited a student-athlete with a criminal background of sexual harassment; their response to the accusation was not the reason the university was found liable. This standard does not expect an institution to foresee a sexual harassment, it simply states, that an institution must respond accordingly to a reported incident. The institution must conduct an investigation into the alleged situation and the alleged harasser, as well as provide punishment to the accused if found guilty. The term “deliberate indifference” refers to the indifference of an institution to a reported assault. If an institution becomes aware of an assault and does nothing in response, it is deliberately indifferent to the assault, which violates the first standard of *Title IX* liability outlined by Davis v. Monroe County Board of Education (1999).

The second Davis standard of liability, “response to claims differing on basis of sex,” simply means, the institution must respond equally to allegations concerning both males and females. In Rowinsky v. Bryant Independent School

District (1996), the court did not deny the presence of sexual harassment, the case was determined in favor of the defendant because the plaintiff could not prove the school district responded differently on the basis of sex. The aforementioned case involved a male student sexually harassing female students on the school bus. The presence of the sexual harassment was admitted by the school district, but because the plaintiff could not prove the school district acted differently to the allegations by a male versus a female, it was not found liable. If an institution responds adversely to reported allegations from a female versus and a male student, the institution has violated the second Davis standard of *Title IX* liability.

The third standard set out by the court in Davis, “actual knowledge,” echoes the first standard of liability. Similar to Colorado, if an institution fails to respond to a sexual harassment claim, it can be held liable. In many reported sexual harassment cases, institutions will claim the harassment is the plaintiff’s fault and concern and the plaintiff should take corrective actions. If an institution knows of a reported harassment and knows the behavior continues to occur and fails to respond in an adequate manner, it can be held liable under the third Davis liability standard. The most influential detail of the first and third Davis standards include an institution cannot be held liable for the actions of the harasser, but institutions are liable in failing to respond to sexual harassment accusations (Lamanna, 1999). In 1997, the Office of Civil Rights (OCR) issued guidelines to inform educators and institutions of the appropriate standards that should be

followed under federal law when investigating sexual harassment allegations under *Title IX*.

Under these guidelines, a school will be held liable under *Title IX* for student-student sexual harassment if all of the following circumstances are present: (1) a hostile environment exists in the school's programs or activities; (2) the school knows or should have known of the harassment; and (3) the school fails to take immediate and appropriate corrective action (Lamanna, 1999, p.8)

Courts take into consideration the OCR standards, *Title VII* and the standards established by Davis, Franklin, and Gebser v. Lago Vista Independent School District (1993) when deciding the extent of liability in a sexual harassment *Title IX* case.

Sexual Harassment

Sexual harassment is defined as "unwelcome conduct of a sexual nature" (Spies, 2006, p. 3). Hogan (2006) further states, it can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. The OCR defines two different types of sexual harassment, quid pro quo sexual harassment and hostile environment sexual harassment. Spies (2006) defines both in detail:

Quid pro quo harassment occurs when a "teacher or other employee conditions an educational decision or benefit of the student's submission to unwelcome sexual conduct." In contrast, hostile environment sexual harassment is defined as conduct that "does explicitly or implicitly condition a decision or benefit on submission to sexual conduct and which requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex". Both types of sexual harassment are a violation of *Title IX*. (p.3)

It is important to note that sexual harassment includes opposite gender as well as same gender sexual harassment. Hogan (2006) states:

Sexual assault is unwelcome physical conduct of a sexual nature, and like the other forms of sexual harassment, it “can deny or limit, on the basis of sex, the student’s ability to participate in or to receive benefits, services, or opportunities in the school’s program (p.2).

The most frequent type of sexual harassment happening on college campuses is creating a hostile environment. Many cases have arisen of female students being sexually harassed by college student-athletes or recruits while attending social functions. Common themes in cases include the victim being intoxicated and surrounded by several men which resulted in sexual assault. In all hostile environment sexual harassment cases, an institution is liable not for the actions of the harasser, but for its own actions or reactions in either failing to respond or responding in a way that is clearly unreasonable (Hogan, 2006). The guidelines for hostile environment sexual harassment were set forth in Ellison v. Brady (1991) and Harris v. Forklift Systems, Inc. (1993). In both cases, the courts ruled that a hostile environment exists if the conduct is “sufficiently severe or pervasive as to alter the conditions of a victim’s employment and to create an abusive working environment” (Osborne & Duffy, 2005, p. 4). It was also ruled that discriminatory and abusive working conditions can exist, without affecting an individual’s psychological well being. While the above guidelines deal directly with *Title VII*, the prohibition of sexual discrimination in the workplace, the above cases established the guidelines for hostile environment sexual harassment which are used when considering allegations in an educational setting.

Under the OCR standards for quid pro quo sexual harassment, the institution is liable for both the harassers' actions and its own response to the harassment. The major shift came in 1986, when the United States Supreme Court, addressed the injustice of sexual harassment by recognizing claims for both quid pro quo and hostile environment sexual harassment in the employment setting (Lamanna, 1999). Since the Supreme Court's ruling, the Court has expanded liability for sexual harassment by refusing to require psychological injury for recovery in hostile environment claims (Lamanna, 1999). It was not until Davis, that the Court ruled an educational institution could be held liable for peer sexual harassment (Lamanna, 1999).

A 1993 study by the American Association of University Women (AAUW), examined the problem of sexual assault in public schools in the United States. The study revealed four out of five students (81%) reported they had been the target of some form of sexual harassment in a school setting (Lamanna, 1999). While the majority of the reported sexual harassments were peer on peer, there was a portion of incidents in which the harasser was a school employee (Lamanna, 1999). The AAUW study found the effects of sexual harassment to be detrimental to the victim. The negative impacts to the victim include poor grades, depression, negative behavior and in severe cases, suicide attempts. Lamanna (1999) discusses in detail the severe effects of sexual harassment:

The emotional and behavioral repercussions are even more alarming. Student's not only suffered embarrassment, fear, and feelings of inadequacy, but were affected in such a way that caused many to change their seats or their route to and from school, to stop attending certain activities, and to refrain from going to certain areas within the school. In

some instances, the harassment was so severe that it caused students to become emotionally withdrawn or to transfer to different schools (p.2).

If student-on-student sexual harassment is severe, it can rise to the level of discrimination actionable under *Title IX* (Davis v. Monroe County Board of Education, 1999, p.3). Quid pro quo and hostile environment sexual harassment are both punishable under *Title IX*.

Case Law Review

Cannon v. University of Chicago

In 1979, a woman who claimed she had been denied admission to medical school based on gender discrimination filed a *Title IX* suit against the university and various officials of the medical school. Her claim alleged she was denied equal access to a federally funded institution and denied admission because she is female. Cannon v. University of Chicago et. al., 441 U.S. 677 (1979) was significant in influencing future sexual harassment litigation, and establishing the right to hold a private action against an institution in violation of *Title IX*. On the district court level, the case was dismissed for failure to state a claim. The appellate court upheld the district courts' dismissal stating an individual does not have basis for a private course of action against an institution. On May 14, 1979, the United States Supreme Court reversed and remanded the lower courts decision. The Supreme Court held:

Notwithstanding *Title IX*'s failure to expressly authorize a private right of action, a woman who, because of her sex, is denied admission to an education program of an institution which receives federal financial assistance for its education program may maintain a federal court action for violation of *Title IX*, since (1) a woman who is discriminated against on the basis of sex is a member of the class for whose special benefit *Title IX*

was enacted, (2) the legislative history of *Title IX* indicates Congress' intent to create a private cause of action for a person excluded, on the basis of sex, from participation in a federally funded program, (3) implication of a private remedy under *Title IX* is fully consistent with the orderly enforcement of *Title IX*, and (4) the subject matter of private action under *Title IX* (invidious sex discrimination) does not involve an area basically of concern to the states (*Cannon v. University of Chicago*, 1979, p.3).

The ruling of Cannon has provided future victims of sexual discrimination a right of private action against the institution. The Supreme Court also noted that *Title IX* is designed after *Title VII*, which the court will look to for guidance in interpretation.

Lipsett v. University of Puerto Rico

Annabelle Lipsett v. University of P.R., et al., 759 F. Supp. 40, (U.S. Dist. of P. R. 1991). Annabelle Lipsett (plaintiff) entered the residency medical program at the University of Puerto Rico in June 1980. She had completed medical school, and received very satisfactory marks on all of her evaluation forms on her work from June 1980 through September 1981. The plaintiff was noted as a "hard working resident who has done above average work, has excellent knowledge and is well motivated" (*Annabelle Lipsett v. University of Puerto Rico*, 1991, p. 2). In May of 1982, the Director of the residency program, Dr. Gonzalez had notified the plaintiff that she had been promoted to the second year of the program and should make future living arrangements in the area.

As the plaintiff entered her second year of surgical residency, she was troubled by the male to female ratio of the residents as well as the difference in the quality of facilities for both genders. In 1980, the program consisted of thirty-

one men and four women. In 1981, there were thirty-four men and four women and in 1982 the program consisted of thirty-one men and five women. The plaintiff described the inequity in the quality of facilities; the men's lounge consisted of living room furniture including a large couch, color television, pool parlor, seats, a kitchen and four private bedrooms. The female lounge consisted of a small sofa, a kitchen and two semi-private rooms (Annabelle Lipsett v. University of Puerto Rico, 1991). The plaintiff noted that it was difficult to gain respect as a female in a predominantly male dominated profession. Throughout the plaintiff's experience as a resident, she encountered sexist comments from many of the male doctors. She was told many times that surgery was a male domain and not to complain. The complaints of harassing behavior from women to the administration were dismissed. One doctor was noted in saying he wanted to have all women removed from the program, and the most notable comment was that women could not be surgeons because they could not be relied on while they were menstruating or "in heat" (Annabelle Lipsett v. University of Puerto Rico, 1991, p.2).

Throughout the plaintiffs second year she was taunted and threatened that she would be removed from the program. The only offers to alleviate the harassment came from male residents who told her that if she had sexual relations with them they would protect her. After she continually rejected sexual offers, her work load began to decline. She complained to the chief resident and he explained, "It was characteristic for a low level woman resident to keep a relationship with a high level resident or an attending in order to ease her way

through the program” (Annabelle Lipsett v. University of Puerto Rico, 1991, p.3). The plaintiffs’ contract was not renewed for her third year of residency for the 1982 - 83 year.

The dismissal was allegedly based upon disciplinary measures. Following numerous appeals through the residency program, the plaintiff filed suit in federal court seeking damages and declaratory and injunctive relief against the University of Puerto Rico’s School of Medicine and several of its officers (Annabelle Lipsett v. University of Puerto Rico, 1991). The plaintiff claimed she was subjected to unconstitutional sex discrimination, and denied promotion to her third year residency level of the five-year program because of her sex.

In 1986, the United States District Court for the District of Puerto Rico dismissed the plaintiff’s claim on the basis that there was a noticeable absence of factual basis to link the instances and attitudes to the possible scope of liability (Annabelle *Lipsett* v. University of Puerto Rico, 1991). In 1988, the United States Court of Appeals for the First Circuit reversed the district court judgment and stated the appellant held a prima facie case of hostile environment sexual harassment as well as quid pro quo sexual harassment (Annabelle Lipsett v. University of Puerto Rico, 1991). The appellate court also held that the individual appellees had actual and constructive knowledge of the appellant’s allegations of harassment (Annabelle Lipsett v. University of Puerto Rico, 1991). The court held that appellant presented facts from which it could be found that the failure by two appellees to investigate and take reasonable measures to stop the harassment directed against appellant constituted gross negligence

amounting to deliberate indifference (*Annabelle Lipsett v. University of Puerto Rico*, 1991). After seven years within the judicial system, on June 20, 1990, a jury returned a \$525,000 verdict in favor of the plaintiff. The jury found the defendants, University of Puerto Rico et al., had sexually discriminated against the plaintiff under the actual knowledge and deliberate indifference standards of *Title VII*.

Franklin v. Gwinnett County Public Schools

Setting the stage for Davis was Christine Franklin v. Gwinnett County Pubic Schools and William Prescott, 503 U.S. 60 (1992). Franklin v. Gwinnett County Public Schools (1992), provided that *Title IX* allows a damages remedy for a victim of harassment because the Court presumed the availability of all appropriate remedies unless the United States Congress had expressly indicated otherwise (*Christine Franklin v. Gwinnett County Public Schools*, 1992). Christine Franklin, plaintiff, was a high school student at Gwinnett High School in Georgia from September 1985-1989. During the Plaintiff's sophomore year, Andrew Hill, defendant, was an athletic coach and employed teacher by Gwinnett County High School when he began sexually harassing the plaintiff. The complaint alleged Mr. Hill engaged her in sexually-oriented conversations which included questions about her boyfriend and her sexual history. The defendant also asked the plaintiff if she had ever considered having sexual intercourse with an older man. The defendant continued with the sexual comments as well as forcibly kissing her in the school parking lot. The defendant continued his harassment when he called the plaintiff at home and asked her to meet him socially.

The harassment continued into her junior year, when on three occasions, the defendant interrupted the plaintiff's classes, requested the teacher dismiss her from class and took her to his office where he subjected her to coercive intercourse (Christine Franklin v. Gwinnett County Public Schools, 1992). The plaintiff continually reported the defendant's behavior towards her as well as other female students to school officials and it continually went unnoticed. Teachers and administrators not only did nothing to remedy the situation, they discouraged the plaintiff from pressing charges. On April 14, 1988, the defendant resigned from Gwinnett High School on the condition that all matters against him would be dropped (Christine Franklin v. Gwinnett County Public Schools, 1992). Following the defendant's resignation the school closed its investigation. The plaintiff's complaint alleged the following:

- 1.) She was subject to continual sexual harassment and abuse, including coercive intercourse by a male teacher at the school.
- 2.) Teachers and administrators were aware of the teacher's conduct but took no action to stop it.
- 3.) The school closed its investigation of the teacher's conduct after the teacher resigned on the condition that all matters pending against him be dropped (Christine Franklin v. Gwinnett County Public Schools, 1992, p.5).

On February 26, 1992, The United States Supreme Court reversed and remanded the Appellate Court for the Eleventh Circuits decision to dismiss the case on the grounds that *Title IX* did not authorize an award of damages.

The Supreme Court held that (1) *Title IX* provided a damages remedy for the student because the Court presumed the availability of all appropriate remedies unless the United States Congress had expressly indicated otherwise, and (2) where liability was created by statute without a remedy, it would have been enforced by a common law action (Christie *Franklin* v. Gwinnett County Public Schools, 1992, p.1).

The Supreme Court ruled Gwinnett High School was in violation of *Title IX* and made it possible for the plaintiff to collect damages as a remedy for the sexual harassment she endured.

Rowinsky v. Bryan Independent School District

An example of how a plaintiff could not provide adequate evidence to prove a lack of institutional response based on sex in a hostile environment sexual harassment situation is evident in, Debra Rowinsky v. Bryan Independent School District, ET AL., 519 U.S. 861 (1996). Mrs. Rowinsky, the plaintiff, is the mother of Jane Doe and Janet Doe, the alleged victims of hostile environment sexual harassment. During the 1992-93 school year, Jane and Janet Doe were eighth-grade students at Sam Rayburn Middle School in Bryan Independent School District (BISD). The two girls rode the school bus to and from school everyday. The bus driver, Bob Owens strictly enforced the rule that males and females had to sit on opposite sides of the bus. It was noted on occasion Mr. Owens had to reinforce to Jane and Janet not to sit on the boys side of the bus (Debra Rowinsky v. Bryan Independent School District, 1996).

Beginning in September, 1992, a male student identified as G.S. repeatedly verbally and physically harassed Janet on the school bus. On a regular basis, G.S. would slap Janet's bottom and make crude comments such as, "what bra size are you wearing?" and "what size panties are you wearing?" as she would walk down the aisle (Debra Rowinsky v. Bryan Independent School District, 1996, p.3). G.S. would also repeatedly use vulgar language when he would speak to Janet. Janet reported the harassment at least eight times to the

bus driver. It was reported that Mr. Owens wrote down the names of the parties involved on a notepad, and Janet eventually stopped reporting the incidents (Debra Rowinsky v. Bryan Independent School District, 1996).

On September 24, 1992, G. S. grabbed Jane's genital area and breasts (Debra Rowinsky v. Bryan Independent School District, 1996). The two girls and their parents went into the school to discuss the harassment with the assistant principal. The assistant principal informed the Rowinsky family that he had previously heard of the sexual assault from another student and the situation merited the expulsion of G. S. The assistant principal suspended G. S. from riding the bus for three days and required him to sit in the second row behind the driver (Debra Rowinsky v. Bryan Independent School District, 1996). On September 29, 1992, the plaintiff went back into school to discuss the incident and the fact that there had been previous reports of sexual assault. The assistant principal showed the plaintiff a bus report which contained numerous errors. The report did not contain G. S. as the alleged harasser and the date and length of the alleged assault was inaccurate (Debra Rowinsky v. Bryan Independent School District, 1996).

The three-day suspension did not deter G. S.'s behavior, he continued with crude comments and he did not sit in the second row of the bus. Mr. Owens asked Jane and Janet to sit in the second row if G. S. did not. The plaintiff called the school transportation office and requested that they look into the incidents. In November, 1992, G. S. again made crude comments to Jane and Janet in front of Mr. Owens, it was reported that Mr. Owens did nothing about it and the girls

did not file a complaint. In December, 1992, another male student with the initials L.H. reached up Janet's skirt, made a crude comment and touched her genital area (Debra Rowinsky v. Bryan Independent School District, 1996). Jane complained to Mr. Owens at the next stop light and Mr. Owens just stared into space. On December 16, L. H. again "reached up Janet's skirt and touched her near her panty line" (Debra Rowinsky v. Bryan Independent School District, 1996, p.4). On December 19, the plaintiff contacted transportation services about the assaults of her daughters and those of other girls on the bus. Transportation services told the plaintiff they would conduct an investigation into the incident. On January 12, 1993, the plaintiff contacted the assistant principal to inquire about the investigation results; the assistant principal informed her that the transportation services did not conduct the investigation, but L. H. had been suspended for three days (Debra Rowinsky v. Bryan Independent School District, 1996).

On January 13, the plaintiff contacted Tom Purifoy, Bryant Independent School District (BISD) Director of Secondary Education, and reported the assaults on the school bus. Mr. Purifoy referred her to C.W. Henry at transportation services. Mr. Henry assigned a different bus driver to replace Mr. Owens. On January 19, the plaintiff removed her daughters from the bus. On March 30, during class, a male student with the initials of F. F., reached up Janet's shirt and unfastened her bra. The teacher sent both students to the Vice-Principal Sandra Petty's office. Ms. Petty suspended F. F. for the rest of the day and the next day. The plaintiff approached Ms. Petty about the incident and Ms.

Petty informed her she did not consider F. F.'s behavior to be sexual. On March 30, the plaintiff and her attorney contacted Dr. Sarah Ashburn, BISD Superintendent, to discuss the G. S.'s behavior. Ms. Ashburn informed the plaintiff the three-day suspension was adequate punishment. At no time during the discussion did Ms. Ashburn inform the plaintiff of *Title IX* on BISD's *Title IX* grievance plan (Debra Rowinsky v. Bryan Independent School District, 1996).

Ms. Ashburn informed the plaintiff she was not going to pursue further action against any of the boys that assaulted Jane and Janet. The plaintiff filed a grievance with the United States Department of Education Office of Civil Rights. The plaintiff alleged, BISD and its officials condoned and caused hostile environment sexual harassment (Debra Rowinsky v. Bryan Independent School District, 1996). The plaintiff's claim sought declaratory and injunctive relief as well as compensatory damages and attorney's fees under *Title IX* (Debra Rowinsky v. Bryan Independent School District, 1996).

The district court held that Rowinsky had failed to state a claim under *Title IX* because there was no evidence that BISD had discriminated against students on the basis of sex; Rowinsky had failed to provide evidence that sexual harassment and misconduct was treated less severely toward girls than toward boys (Debra Rowinsky v. Bryan Independent School District, 1996, p.5).

The United States Court of Appeals for the Fifth Circuit's decision is as follows, "We conclude that Mrs. Rowinsky does not have standing to assert a personal claim under *Title IX*". (Debra Rowinsky v. Bryan Independent School District, 1996, p.5).

The judgment did not deny the actions against Jane and Janet were sexual harassment, but the plaintiff's claim did not support evidence to show BISD was negligent under or that the plaintiff herself was discriminated upon in an educational program or activity *Title IX*. The plaintiff could not prove BISD acted different toward the sexual harassment of girls versus boys, therefore she could not establish a *Title IX* case against the school district.

Thorpe v. Virginia State University

Sheronne Thorpe v. Virginia State University et. al., 6 F. Supp. 2d 507, (U.S. E. Dist. of Virginia 1998) portrays a clear example of which an institution was neglectful in its response to a sexual harassment allegation. On December 3, 1995, Virginia State University (VSU) student, Sheronne Thorpe, the plaintiff, and friend were headed to an all male dormitory to watch a movie. Jovelle Tillman, also a VSU student invited the two girls to watch the movie. It is important to note, the plaintiff did not know Mr. Tillman or the companion of her friend she accompanied to the male dormitory. Upon arrival to the all male dorm, the dorm resident advisor told Mr. Tillman to sneak the girls up the back stairway due to the fact girl were not allowed in the dormitory at that hour.

Marcus Steele and Rodney Granger were among the students in the dorm room watching the movie. While watching the movie, the plaintiff mentioned to Mr. Steele how much she liked the glow-in-the-dark stars on the ceiling. Mr. Steele then offered the plaintiff a beer, which she declined. At this point in the night, the plaintiff's friend had left the room unbeknownst to the plaintiff. During the movie, Mr. Granger asked the plaintiff if she wanted to wait for her friend in

another room where he also had another display of glow-in-the-dark stars. The plaintiff accompanied Mr. Granger to another room to look at the stars where Mr. Granger offered Ms. Thorpe a beer, which she declined again. Mr. Steel then entered the room and asked the plaintiff, “how about a threesome?” (Sheronne Thorpe v. Virginia State University, 1998, p.3). The plaintiff declined, asked the men to leave and began looking for her friend. After an unsuccessful search, the plaintiff returned to the room to get her jacket and purse with the idea of returning to her dorm room alone. Mr. Steele and Mr. Granger allegedly proceeded to rape the plaintiff in front of other male students (Sheronne Thorpe v. Virginia State University, 1998).

After the attack a group of men allegedly escorted the plaintiff to the third floor where her friend was waiting. After leaving the male dormitory, the plaintiff immediately reported the incident to her resident advisor who called the campus police. After her police interview, she was admitted to the Southside Regional Medical Center where she received treatment and testing for rape trauma (Sherone Thorpe v. Virginia State Univeristy, 1998). Later that day, the plaintiff proceeded to file charges against Mr. Steele and Mr. Granger. The two men did not deny intercourse took place, instead they said it was consensual (Sheronne Thorpe v. Virginia State University, 1998). The day after the alleged attacks, the plaintiff met with Vice President of Student Affairs Claud Flythe and two university psychologists. Mr. Flythe informed the plaintiff the alleged incident was a “tragedy” and the guilty parties would be punished (Sheronne Thorpe v.

Virginia State University, 1998). The university psychologist dismissed the plaintiff from her final exams and she returned to her home in New York.

The plaintiff's complaint alleged, at no time after the reported rape, did VSU provide her with the VSU Student Handbook, the VSU Student Code of Conduct, or a Sexual Harassment Complaint Procedure, all of which according to the plaintiff, are required to be provided by *Title IX* (Sheronne Thorpe v. Virginia State University, 1998). The plaintiff also alleged that the rapists remained at large on campus resulting in fear for her personal safety. As a result of that fear, the plaintiff did not return to VSU for the 1996 spring semester (Sheronne Thorpe v. Virginia State University, 1998). The plaintiff filed a hostile environment sexual harassment action against VSU seeking declaratory relief and damages for violations of *Title IX's* implementing regulations, claiming VSU intentionally discriminated against her in failing to provide her with proper procedures in handling the alleged rapes (Sheronne Thorpe v. Virginia State University, 1998).

Following a one-day bench trial conducted on June 20, 1996, Mr. Granger was acquitted. After Mr. Granger's acquittal, no charges were initiated against Mr. Steele. According to the First Amended Complaint, not one of the VSU students allegedly involved in the attack on Ms. Thorpe was subjected to any form of disciplinary action by the school (Sheronne Thorpe v. Virginia State University, 1998). The defendant (VSU) sought to have the *Title IX* claim dismissed on the basis that the *Eleventh Amendment*, which states federal courts have the authority to hear cases against states by private citizens, provided it the benefit of sovereign immunity and precluded the exercise of jurisdiction over the

action (*Sheronne Thorpe v. Virginia State University*, 1998). On May 8, 1998, The United States District Court for the Eastern District of Virginia, Richmond denied the universities motion to dismiss, holding the *Eleventh Amendment* did not immunize it from *Title IX*. Congress has provided a clear statement of its intent to remove the protection of the *Eleventh Amendment* for private civil actions instituted under the provisions of, among other civil rights legislation, *Title IX* (*Sheronne Thorpe v. Virginia State University*, 1998).

Thorpe established universities are not protected by the *Eleventh Amendment* from *Title IX* liability. The institution sought dismissal of the Ms. Thorpe's *Title IX* claim stating a private citizen could not bring a private right of action against a state institution. However the Franklin court clearly established the victim of a sexual assault had could bring a private action against an institution receiving federal financial assistance.

Gebser v. Lago Independent School District

In 1998, the *Title IX* criteria regarding institutional liability was upheld in *Alida Star Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998). In the spring of 1991, the plaintiff Ms. Gebser was an eight grade student in Lago Vista Independent School District. During that time she joined a school book club lead by teacher Frank Waldrop. During the book club meetings, Mr. Waldrop made a few sexually suggestive remarks towards some of the students. The plaintiff entered high school the next year in the same school district. She was placed in some classes taught by Mr. Waldrop. Mr. Waldrop continued to make sexual remarks, especially when he was in the room alone with the

plaintiff. In 1992, parents of two students complained to the principal about Mr. Waldrop's comments during class (*Alida Star Gebser v. Lago Vista Independent School District*, 1998). The principal told the parents he was unaware of the comments, but they would never happen again. The principal met with Mr. Waldrop and advised him to be careful of his comments during class, and also reported the meeting to the school's guidance counselor. It was noted that the principal never reported the complaints to the school superintendents (*Alida Star Gebser v. Lago Vista Independent School District*, 1998). Mr. Waldrop stopped by the plaintiff's house frequently to give her books. During these visits Mr. Waldrop kissed and fondled the plaintiff.

During the spring semester the two engaged in sexual intercourse. The relationship continued through the summer and into the next school year. The plaintiff and Mr. Waldrop would conduct their relationship during class time, although never on school property. The plaintiff never reported the relationship to her parents or school authorities. In 1993, the two were caught by a police officer as they engaged in their relationship; Mr. Waldrop was then arrested and fired from the school, and his teaching license was revoked (*Alida Star Gebser v. Lago Vista Independent School District*, 1998). After the incident, the school district never formulated or distributed a sexual harassment policy (*Alida Star Gebser v. Lago Vista Independent School District*, 1998).

In November of 1993, the plaintiff and her mother filed a *Title IX* and state negligence suit against Lago Vista Independent School District (defendant) as well as a private suit against Mr. Waldrop (*Alida Star Gebser v. Lago Vista*

Independent School District, 1998). The suit claimed punitive as well as compensatory damages against both defendants (*Alida Star Gebser v. Lago Vista Independent School District*, 1998). The United States District Court for the Western District of Texas granted summary judgment in favor of the defendant on all claims and remanded the claims against Mr. Waldrop to state court (*Alida Star Gebser v. Lago Vista Independent School District*, 1998). In rejecting the *Title IX* claim, the District Court stated there was not an act of discrimination by the school district based on sex. The plaintiffs proceeded to appeal to the United States Supreme Court. The Supreme Court dismissed the student's Title IX claims, ruling the plaintiff was not allowed to recover from the school district for sexual harassment by a teacher, "unless an official of the school district had actual notice of and was deliberately indifferent to the misconduct" (*Alida Star Gebser v. Lago Vista Independent School District*, 1998, p.1). The school notice of in-class harassment was not considered sufficient evidence to prove deliberate indifference because the school was not aware of the continued escalating harassing behavior of the teacher.

Simply, after the first complaint, the administration addressed the situation to Mr. Waldrop as well as recorded the incident. There was not an additional complaint of sexual harassment until Ms. Gebser and Mr. Waldrop were found engaging in a sexual relationship. The court established the administration responded appropriately following the first complaint and was not made aware the harassment continued, therefore they had no reason to believe the harassment still existed. Ms. Gebser did not report any additional sexual

harassment, therefore a school official did not have actual knowledge the harassment was occurring.

Davis v. Monroe County Board of Education

The year 1999 was a pivotal time in setting the stage for sexual harassment and *Title IX* claims with the Supreme Court's ruling in Aurelia Davis v. Monroe County Board of Education et. al., 526 U.S., 629 (1999). The petitioner's daughter, LaShonda Davis was a fifth-grade student at Hubbard Elementary School, a public school in Monroe County, where the alleged sexual harassment took place. In December 1992, G.F. allegedly attempted to touch her (the plaintiff) breast and genital area while making vulgar comments such as "I want to get in bed with you" and "I want to feel your boobs" (*Aurelia Davis v. Monroe County Board of Education*, 1999, p.9). According to the complaint, similar incidents occurred on or about January 4 and January 20, 1993. The plaintiff reported each of the alleged incidents to her mother as well as her teacher. The plaintiff's mother further contacted the teacher and was assured the principal had been informed and they would take care of the situation.

In the months to come, G.F.'s sexually elicit behavior continued towards the plaintiff. He continued to make crude comments as well as sexually harass her. The plaintiff allegedly continued to report her classmate's behavior while her mother was continually assured the matter had been reported to the administration. The harassment ended in mid-May 1993 when in a criminal case, G.F. was charged with and plead guilty to sexual battery (*Aurelia Davis v. Monroe County Board of Education*, 1999). The criminal case was followed by a

civil suit. The civil complaint alleged how the plaintiff's once high grades had diminished during the string of assaults. In April 1993, her father had found a suicide note she had written. During the string of events, the plaintiff and a group of friends, who had also fallen prey to the behavior of G.F. went to speak with the principal. It was reported that while the girls attempted to speak with the principal, a teacher denied their admittance and stated, "If he wants you, he'll call you" (Aurelia Davis v. Monroe County Board of Education, 1999, p.10). The official complaint states the following:

The Board is a recipient of federal funding for purposes of *Title IX*, that the persistent sexual advances and harassment and deliberate indifference by Defendants to the unwelcome sexual advances of a student upon LaShonda created an intimidating, hostile, offensive and abusive school environment in violation of *Title IX* (Aurelia Davis v. Monroe County Board of Education, 1999, p.10).

The complaint sought injunctive relief under *Title IX* of the Education Amendments as well as compensatory and punitive damages. The District Court for the Middle District of Georgia dismissed the petitioner's claim, reasoning that *Title IX* provided no basis for liability absent an allegation that the Board or an employee had a role in the harassment. The Court of Appeals for the Eleventh Circuit reversed the District Court's judgment stating student-on-student sexual harassment introduced a cause of action against the school board under *Title IX*. The court borrowed from *Title VII* stating:

We conclude as *Title VII* encompasses a claim for damages due to a sexually hostile working environment created by co-workers and tolerated by the employer, *Title IX* encompasses a claim for damages due to a sexually hostile educational environment created by a fellow student or students when the supervising authorities knowingly fail to act to eliminate

the harassment (Aurelia Davis v. Monroe County Board of Education, 1999, p.11).

The United States Supreme Court affirmed the Appellate Court's judgment, holding that student-on-student sexual harassment provided grounds for a private cause of action against the institution under *Title IX*. The Supreme Court held that a private damages action could lie against a recipient of *Title IX* funding in cases of peer harassment, but only where the recipient institution acted with deliberate indifference to known acts of harassment in its programs or activities. Additionally, it concluded that such an action would lie only for harassment that was so severe, pervasive, and objectively offensive that it effectively barred the victim's access to an educational opportunity or benefit (Aurelia Davis v. Monroe County Board of Education, 1999).

Doe v. The Ohio State Board of Regents

A *Title IX* sexual harassment case that failed to hold the institutional liable involves Jane Doe v. The Ohio State University Board of Regents, et al., Defendants, (E. D. OH 2006). This cases involves two separate victims of the same harasser. On February 3, 2002 Ms. Lee reported she was having a conversation with Mr. Goldstein in her dorm room. Following the conversation Mr. Goldstein attempted to forcibly remove her clothes and have sex with her. Ms. Lee reported the event to her Resident Advisor at Baker Hall and wrote a Communication Information Form (CIF) describing the details of the event. The Resident Advisor encouraged Ms. Lee to report the incident to the police, which she proceeded to do on February 11, 2002. A few days after Ms. Lee filed the

CIF, the Resident Advisor conducted an investigation and interviewed both Ms. Lee and Mr. Goldstein separately. During the interview Ms. Lee stated her objectives were to have Mr. Goldstein removed from the dormitory, the incident documented and to leave open the possibility to reconcile her friendship with Mr. Goldstein. The Resident Advisor at Baker Hall then temporarily removed Mr. Goldstein from Baker Hall and placed him in Smith Hall.

In Ms. Lee's police report she had falsified facts of the incident and notified the OSU police she did not want to further pursue the case. The police report was logged into the OSU Campus Security Report as a sexual assault and was reported to the campus paper on February 20. Due to Ms. Lee's wishes, OSU did not issue a campus crime alert and did not arrest Mr. Goldstein. Mr. Goldstein was then charged on February 26, with sexual misconduct and an alcohol violation under the Ohio State University Student Code. Mr. Goldstein was placed on disciplinary probation until June 14, 2002, and was made a permanent resident of Smith Hall.

On the evening of February 26, 2002, Jane Doe (plaintiff) was out at a bar with friends. After the evening out she did not return to her own dorm room, instead she went to a friend's room in Smith Hall. While at Smith Hall she went on the computer to find someone to hang out with, she exchanged instant messages with ex-boyfriend and high school friend, Mr. Goldstein. They agreed to meet outside of Smith Hall to share a cigarette (Jane Doe v. The Ohio State University, 2006). After they met outside, Mr. Goldstein stated he forgot his cigarettes and suggested they go up to his room to get them. The plaintiff

informed Mr. Goldstein she was not interested in sex that night, but agreed to go up to his room. The plaintiff reports Mr. Goldstein's roommate was present, but was either or asleep or "passed out" (Jane Doe v. The Ohio State University, 2006, p.2). After about fifteen minutes of smoking and talking, Mr. Goldstein sat down on the couch next to the plaintiff and began intimate contact that was consensual at first. The plaintiff's complaint then describes the following facts of the assault:

While he was kissing me, he ended up pushing me on my back, just with his chest with his own force of being aggressive. At this point his tongue was almost choking me. He took my hands and put them above my head. He then took one of his hands and continued holding my hands above my head, the other one he put down my pants and put what felt like a fist inside of me. He then took both of his hands and pulled down my pants quickly, very quickly, then put both of my hands together above my head. At this point we were both fully clothed with only my pants pulled down and his pants opened up. And he started having sex with me. I told him to get off of me and he just did it harder (Jane Doe v. The Ohio State University, 2006, p.3).

Following the incident, the plaintiff told a male friend and fellow OSU student of the assault. After some reluctance, the plaintiff reported the assault to her hall director. The hall director then reported the incident to the police. The hall director and police officer noted the plaintiff was reluctant to report the incident and specifically did not provide them with the last name of the assailant. The plaintiff's report did not include important information of the alleged rape, such as the full name of the assailant. The complaint was very factually inconsistent. When asked if the plaintiff had provided authorities with all of the important information, her frequent response was, "I think so" or "I thought I did, but I may not have" (Jane Doe v. The Ohio State University, 2006, p.4).

The plaintiff continued to falsify statements and leave out important details to the police and withdrew from classes as of May 17, 2002. The criminal case took an extensive amount of time to pursue due to the plaintiff's reluctance to complete proper forms and provide accurate details. In October 2004, the rapes

charges filed by Ms. Lee, against Mr. Goldstein were dismissed pursuant to a plea bargain. Following the charges against Mr. Goldstein, the plaintiff claims The Ohio State University (defendant) subjected her to severe harassment which deprived her of her access to educational opportunities or benefits in violation of *Title IX*, she also asserted a claim of negligence on behalf of the institution for failure to follow or enforce safety rules and guidelines, failing to warn students, and for permitting Mr. Goldstein to circulate throughout the campus.

According to the three standards of liability established by Aurelia Davis v. Monroe County Board of Education (1999), the plaintiff failed to prove two of the necessary three standards. It was not disputed that rape and sexual abuse took place, which met the first standard that the actual event had occurred. However, the plaintiff failed to prove the defendant had actual knowledge that Mr. Goldstein was a direct threat and posed potential sexual harassment harm towards the plaintiff.

The facts of this case differ from those in Davis, in which the actual notice standard was satisfied by repeated reports of the harassing conduct to the teacher and principal by both the student and her mother. (*Aurelia Davis v. Monroe County Board of Education*, 1999, p.645-647). Defendant OSU was not notified with respect to any harassment against Plaintiff until after the incident of sexual assault occurred on February 22, 2002. Nonetheless, OSU could have had actual notice based on the attempted sexual assault on Ms. Lee. However, as illustrated in detail in the facts and summarized above, at the time of the sexual assault on Plaintiff, there were no definite findings against Mr. Goldstein. Rather, there were just allegations against him. OSU therefore acted reasonably under the circumstances, that there were only pending allegations against Mr. Goldstein at the time (*Jane Doe v. The Ohio State University*, 2006, p.8).

Lastly, the plaintiff failed to establish the third element of liability in Aurelia Davis v. Monroe County Board of Education (1999) deliberate indifference.

The key to this analysis is what was known to OSU at the time and whether the actions taken before and after the assault on plaintiff were reasonable. OSU's actions were reasonable based on the circumstances of this case, and therefore did not act with deliberate indifference to the complaints made by Ms. Lee or Ms. Doe (*Jane Doe v. The Ohio State University*, 2006, p.9).

As set forth in *Aurelia Davis v. Monroe County Board of Education* (1999), the plaintiff must establish all three standards of liability. The District Court for The Southern District of Ohio, Eastern Division granted summary judgment in favor of the defendant, dismissing the action. Under the *Title IX* liability standards established in *Davis*, Ohio State University was not deliberately indifferent in its response to the alleged attacks. The institution was not certain Mr. Goldstein was the assailant, nor was there a conviction against him, therefore Ohio State could not proceed with definite punishment or expulsion against him. This case is unique because there are multiple accusations by two separate victims.

The cases mentioned in this chapter were imperative in establishing the guidelines judges use today to determine *Title IX* liability. The most influential of the discussed cases are *Cannon*, *Franklin* and *Davis*. The *Cannon* ruling provided future victims of sexual discrimination a right of private action against an institution. The *Franklin* court established that *Title IX* allows a damages remedy for a victim of sexual assault. *Davis* not only held the institution liable under *Title IX*, but it also established the three standards courts use today to determine whether or not an institution should be held liable for a *Title IX* violation.

CHAPTER III

Cases and Rulings Involving Student-Athletes

Brzonkala v. Virginia Polytechnic and State University

Christy Brzonkala v. Virginia Polytechnic and State University, 935 F. Supp. 772, (U.S. W. Dist. Ct. VA, 1996) outlined a sexual harassment case involving student-athletes and *Title IX*. On March 1, 1996, Christy Brzonkala (plaintiff) filed a complaint against Virginia Polytechnic and State University (Virginia Tech) alleging violations of *Title IX*, the Violence Against Women Act and various state laws. The plaintiff was a female student-athlete at Virginia Tech when on September 21, 1994 she was sexually assaulted in her dormitory by Antonio Morrison and James Crawford, both members of the Virginia Tech football team.

On the night of the attack, the plaintiff and a friend, Hope Handley, were on the third floor of their dormitory with two males they did not know (Crawford and Morrison). After fifteen minutes of conversation Ms. Handley and Mr. Crawford left the room, it was then Mr. Morrison requested intercourse with the plaintiff. After she resisted twice by forcefully saying “no”, Mr. Morrison then forced her into bed, disrobed her and forced her into vaginal sexual intercourse. Shortly thereafter, Mr. Crawford returned to the room, exchanged places with Mr. Morrison and raped the plaintiff. When Mr. Crawford was finished, Mr. Morrison changed places again and raped the plaintiff a third time (Christy Brzonkala v. Virginia Polytechnic and State University, 1996, p.2).

During the weeks following the incident, the plaintiff became notably depressed, stopped attending classes and attempted suicide. The plaintiff was referred by the university to a psychiatrist and treated with antidepressants with no further investigation into the cause of her depression. The plaintiff then withdrew from Virginia Tech for the ensuing 1994-95 school year. In February 1995, the plaintiff recognized the two men as Mr. Crawford and Mr. Morrison; she then proceeded to file a complaint against the men in April. The complaint was filed under Virginia Tech's Sexual Assault Policy.

The plaintiff relied on the Virginia Tech advisors to process her complaints. At no time did any Virginia Tech official encourage her to report the alleged events to the police nor did the officials report the alleged events to the head of the university, disciplinary committee or the Blacksburg Police Department. In the first hearing by the disciplinary board, Mr. Morrison admitted the plaintiff told him "no" twice while Mr. Crawford denied any sexual contact with the plaintiff (*Christy Brzonkala v. Virginia Polytechnic and State University*, 1996, p.2). Mr. Morrison was found guilty by the university disciplinary committee of sexual assault and suspended for two semesters. There was insufficient evidence to convict Mr. Crawford of any wrong-doing. Mr. Morrison then appealed the committee's sanction, in which the appeals officer upheld Mr. Morrison's suspension. In early July 1995 a second hearing was brought about on the basis of due process violations alleged by Mr. Morrison. The second hearing resulted in the confirmation that Mr. Morrison was guilty of abusive conduct and reimposed the sanction of an immediate two-year suspension. Mr.

Morrison appealed the result, and without notice to the plaintiff, Virginia Tech set aside the sanction against Mr. Morrison and lifted his suspension.

Mr. Morrison returned to Virginia Tech for the fall 1995 semester and proceeded to play football. The plaintiff discovered through a newspaper article that Mr. Morrison was reinstated to the Virginia Tech football team. The plaintiff alleged that Virginia Tech violated *Title IX* when reinstating Mr. Morrison to the university and football team during the fall of 1995. The plaintiff stated that Mr. Morrison's readmission to the university forced her to reconsider her decision about returning to Virginia Tech in the fall of 1995, resulting in a deprivation of an educational opportunity. The District Court for The Western District of Virginia later dismissed the *Title IX* claim based on lack of statistics and insufficient evidence that the plaintiff had plans of returning to Virginia Tech and was turned away by the reinstatement of Mr. Morrison. The Court also claimed the plaintiff failed to prove the rapes were gender based.

Klemencic v. Ohio State University

An example of sexual harassment by a coach to an athlete occurred in Denise C. Klemencic v. Ohio State University, Thomas Crawford, James L. Jones, 263 F.3d 504, (2001). During the 1990-91 and 1991-92 seasons, the plaintiff was a member of Ohio State University's women's track and cross country teams. The plaintiff's NCAA eligibility ended after the 1991-92 season. Her cross country team was coached by the defendant, Mr. Crawford. After the plaintiff's eligibility expired, she wished to train for the Olympic Games. She entered into an unwritten agreement with Mr. Crawford whereby she would

continue to train with Ohio State's cross country team. In exchange for the allowance to train, the plaintiff agreed to be the teams' volunteer assistant coach (Denise Klemencic v. Ohio State University, 2001). In the alternative, if Ohio State did not agree to the terms of the agreement, Mr. Crawford agreed to train the plaintiff on his own time. Following the plaintiff's senior season, Mr. Crawford attempted to establish a romantic relationship with her. The plaintiff alleges that his romantic overtures, her rejection of those overtures, and her desire to train with the team during 1992-93 led to quid pro quo sexual harassment (Denise Klemencic v. Ohio State University, 2001). The plaintiff refused to date Mr. Crawford on multiple occasions. In September 1992, the plaintiff called Mr. Crawford to ask him about her training schedule, and he allegedly told her that due to her "bad attitude," her overreaction towards his romantic overtures, and her lack of training over the summer, she could not train with the team (Denise Klemencic v. Ohio State University, 2001, p.3). The plaintiff believes Mr. Crawford would not train her because she refused to date him (Denise Klemencic v. Ohio State University, 2001).

The plaintiff then reported the details to Ohio State officials, and Athletic Director James Jones proceeded to conduct an investigation. During the investigation, the defendant met with and admonished Mr. Crawford and placed a letter of reprimand in Mr. Crawford's personal file (Denise Klemencic v. Ohio State University, 2001). Mr. Jones did not permit the plaintiff to train with the cross country team, due to the fact that her eligibility had expired and it was Mr.

Crawford's job to train eligible athletes. The defendant offered the plaintiff contact information to other university services that would aid in her training.

In January 1993, the plaintiff proceeded to file a formal sexual harassment complaint against Mr. Crawford with Ohio States' Office of Dispute Resolution (Denise Klemencic v. Ohio State University, 2001). Mr. Gail Carr- Williams conducted an investigation and concluded that Mr. Crawford's actions were in clear violation of Ohio State's sexual harassment policy (Denise Klemencic v. Ohio State University, 2001). In 1994, the plaintiff filed a suit in the District Court for the Southern District of Ohio at Columbus (Denise Klemencic v. Ohio State University, 2001). In an amended complaint, she alleged that the defendant, Ohio State, was liable for Mr. Crawford's quid pro quo sexual harassment and for his excluding her from the benefits of the athletic programs at Ohio State "to which she was entitled" (Denise Klemencic v. Ohio State University, 2001, p.4). She also alleged that the defendant's and Mr. Crawford denied her the benefits of and subjected her to discrimination under the educational programs of Ohio State on the basis of sex in violation of *Title IX* (Denise Klemencic v. Ohio State University, 2001). The plaintiff sought compensatory and punitive damages alleging that Mr. Crawford and the defendants were liable under *Title VII*, in violations of state law, including intentional infliction of emotional distress and sexual harassment (Denise Klemencic v. Ohio State University, 2001).

The plaintiff began to characterize her complaint as hostile environment as well as quid pro quo. In the plaintiff's claim, she alleged intentional infliction of emotional distress and sexual harassment, and sought compensatory and

punitive damages. In July, 1998, the District Court granted Mr. Crawford's motion of summary judgment as well as dismissed the plaintiff's hostile environment claim (*Denise Klemencic v. Ohio State University*, 2001). Due to the findings in *Alida Star Gebser v Lago Vista Independent School District* (1998), which clarified the standard of proof that a plaintiff alleging sexual harassment by a school employee would have to meet before the school could be liable under Title IX, the District Court granted summary judgment to Ohio State in terms of the plaintiff's *Title IX* claims for failure to meet the criteria outlined in *Alida Star Gebser v Lago Vista Independent School District* (1998) (*Denise Klemencic v. Ohio State University*, 2001). The Court also returned a verdict in favor of the defendant's on the plaintiff's quid pro quo sexual harassment claims (*Denise Klemencic v. Ohio State University*, 2001). The plaintiff appealed, and The United States Court of Appeals for the Sixth Circuit found there were no genuine issues of material fact. The Court stated the plaintiff failed to establish the first element of a prima facie case against the University under *Title IX*, where the final judgment had previously held that no underlying sex discrimination occurred (*Denise Klemencic v. Ohio State University*, 2001). As established in *Alida Star Gebser v Lago Vista Independent School District* (1998), the elements of a prima facie case are as follows:

- 1) She was subjected to quid pro quo sexual harassment or a sexually hostile environment.
- 2) She provided actual notice of the situation to an "appropriate person," who was, at a minimum, an official of the educational entity with authority to take corrective action and to end discrimination.
- 3) The institution's response to the harassment amounted to deliberate indifference. (*Denise Klemencic v. Ohio State University*, 2001, p.9).

The Courts concluded the plaintiff could not provide enough evidence to prove the alleged hostile environment sexual harassment occurred on the basis of gender, as well as the institution responded to the sexual harassment claims with deliberate indifference.

Benefield v. The Board of Trustees of the University of Alabama at Birmingham

Another influential case concerning student-athlete sexual harassment and alleged *Title IX* violations involves Brittany Benefield and the University of Alabama at Birmingham (UAB). Benefield v. The Board of Trustees of the University of Alabama at Birmingham, 214 F. Supp. 2d 1212, (N. Dist. of AL 2002). In 1999, the plaintiff Brittany Benefield had entered UAB at the age of 15 as a freshman on the basis of an academic scholarship. She was a very bright and gifted student, which led to her early arrival on the campus of UAB. Upon her arrival, the plaintiff's mother, Jacqueline Benefield, met with the Director of Residential Housing and Student Life, as well as Assistant Vice President for Enrollment. The two administrators promised the plaintiff's mother they would look after the plaintiff and provide special treatment due to her age. She was housed in an on campus dorm room with the residential advisor (RA) as her roommate. The administrator also assured the plaintiff's mother she would be contacted if any problems arose.

During the first semester at UAB, the plaintiff attained a 3.5 grade point average. In July of 2000, the plaintiff was moved to Blazer Hall, a different

residence hall housing many football and male basketball players. Many of the athletes initiated conversation with the plaintiff, introduced her to beer, and sexually exploited her while dubbing her as their plaything (Parent, 2003). After the allegations, the plaintiff's school performance as well as self-confidence began to diminish. UAB officials questioned the plaintiff about her sexual activities with student-athletes after her mother had complained about Brittany's actions, which she denied. Later, she recanted her denial to school officials but maintained that the sexual activities were consensual. The plaintiff began using drugs supplied by the student-athletes, and she contends the resident assistants were aware of her sexual activities and drug use. The plaintiff's grades fell to a 1.9 GPA, and she stopped attending classes.

The plaintiff and her mother brought a *Title IX* lawsuit against UAB claiming the university was aware of the illegal activities taking place in the residence hall and did nothing to prevent it, which constituted deliberate indifference to sexual harassment so severe, pervasive, and objectively offensive that it deprived her of access to educational opportunities (Brittany Benefield v. University of Alabama at Birmingham, 2002). The United States District Court for the Northern District of Alabama later dismissed the case based upon the defendant's (UAB) request. The District Court found the University's promise to protect the plaintiff did not invoke *Title IX* (Parent, 2003). The District Court reasoned that the defendant did not show deliberate indifference in its response to the allegations because the plaintiff never complained to the UAB administration nor her parents, and when confronted by officials concerning the

situation, she lied and stated the rumors were untrue, when in fact the sexual activity was consensual.

The court then held that the board was not liable under *Title IX* because the student's actions were voluntary, and she specifically denied the alleged sexually harassing behavior when questioned by the university. The court further found that, given the university's attempt to ascertain the truth of the sexual harassment rumors and the plaintiff's multiple denials of the same, that the school was not deliberately indifferent in violation of Title IX. (*Brittany Benefield v. University of Alabama at Birmingham*, 2002, p.1).

The university's response to the alleged sexual harassment relieved them from any liability involved in this case.

Jennings and Keller v. University of North Carolina

A civil court case involving coach to athlete sexual harassment is set forth in Melissa Jennings and Debbie Keller v. University of North Carolina, 444 F.3d 255, (2006). Melissa Jennings, plaintiff, was a walk on, fourth string goal keeper for the UNC soccer team from August 1996 through May 1998, while Debbie Jennings, plaintiff, was team captain at the time. The women described their pre-practice routine and how the defendants allegedly sexually harassed and violated their *Title IX* rights. Before practice everyday, the team would run and stretch for approximately fifteen minutes. The women would stretch in a circle and casually socialize about topics such as school, dating and sexual activity. The plaintiffs noted while there were a few of the players that were open about their sexual activity, many of the women did not disclose their own sexual actions.

Head Coach Anson Dorrance and assistant coach William Palladino are accused of taking part in the conversation before practice and offering sexual

innuendos towards certain players. The plaintiff stated the Mr. Dorrance would often encourage discussion of a sexual nature and make crude comments. The plaintiff noted a specific conversation of which one of the players informed the team “that she had sex with one man, climbed out of his window, and then climbed into the window of another man’s apartment to have sex with him” (Jennings and Keller v. University of North Carolina, 2006, p.6). Mr. Dorrance was present during the story and asked the player if she knew the names of her sexual partners or whether she took tickets, meaning she drew her partners at random (Jennings and Keller v. University of North Carolina, 2006).

On two separate occasions, the plaintiff stated that the Mr. Dorrance tried to induce her into a conversation concerning her private life and who she was dating. The plaintiff declined to offer any personal information to the coaches, or her teammates. Ms. Jennings and Ms. Keller also stated Mr. Dorrance often made comments about team members’ bodies, including comments about weight, legs and chest size (Jennings and Keller v. University of North Carolina, 2006). Mr. Dorrance allegedly would tell a member of the team she had nice legs or “cute dimples” (Jennings and Keller v. University of North Carolina, 2006, p.6). The plaintiff testified that Mr. Palladino did not partake in the sexual conversation to the extent of Mr. Dorrance, but he was aware of the behavior and did nothing to stop it. Jennings and Keller v. University of North Carolina (2006) outlines three important facts of the case:

- 1) There is no evidence that Mr. Dorrance once questioned a player about the size of her boyfriend’s genitalia, and there is no evidence that Ms. Jennings overheard the question.

2) Mr. Dorrance describes his conduct very differently than the description of Ms. Jennings and Ms. Keller. He states in his affidavit: "I never initiated comments on those topics [of players' boyfriends and private lives], only infrequently heard players' comments on those subjects and even less frequently said anything to any player at those times about those subjects." Mr. Palladino likewise testified that he "never initiated discussions on those topics, only infrequently heard players' comments on those subjects and even less frequently said anything to any player at those times about those subjects."

3) Several former soccer players who were on the team with Ms. Jennings submitted affidavits consistent with Mr. Dorrance and Mr. Palladino's descriptions (Jennings and Keller v. University of North Carolina, 2006, p.6).

Another notable conversation between the plaintiff and Mr. Dorrance took place in his hotel room in California during the Final Four. At the end of every season the head coach has a meeting with each individual player to discuss her athletic and academic performance. The plaintiff entered the Mr. Dorrance's hotel room and sat across from him at a table. Mr. Dorrance told the plaintiff that her grades were insufficient, at the time her grade point average was 1.538 on a 4.0 scale, and he told her she needed to bring them up (Jennings and Keller v. University of North Carolina, 2006). During the discussion about her grades, the plaintiff stated that Mr. Dorrance then asked her "who are you f***ing?" (Jennings and Keller v. University of North Carolina, 2006, p.8) The plaintiff then replied "it's none of your g**d*** business" (Jennings and Keller v. University of North Carolina, 2006, p.8). In the fall of 1997, the plaintiff returned to the soccer team for the next season. At the end of the 1997 season, the plaintiff had another end of the year meeting with Mr. Dorrance. Mr. Dorrance then proceeded to inform the plaintiff that her grades weren't sufficient, her conditioning was not adequate and she did not contribute to the team chemistry. Mr. Dorrance cut the plaintiff from the soccer team

following the meeting. It is important to note that the plaintiff was not the first walk-on player that Mr. Dorrance had cut from the team.

Following the meeting with Mr. Dorrance, the plaintiff's father, wrote a letter to the Assistant to the Chancellor. In the letter, the plaintiff informed the Assistant to the Chancellor of the behavior and language of Mr. Dorrance. The University of North Carolina at Chapel Hill has had written sexual harassment policies since the early 1990s, and had informed students, staff and faculty of these policies. Mr. Dorrance was also aware of the policies (Jennings and Keller v. University of North Carolina, 2006). After receiving the plaintiff's letter, the Assistant to the Chancellor forwarded the letter to the Athletic Director. Soon thereafter, the Senior Associate Athletic Director began an investigation as well as arranged a meeting with the plaintiff's parents, the Assistant to the Chancellor and Mr. Dorrance. During the meeting, the plaintiff recounted Mr. Dorrance's behavior while he was present. Mr. Dorrance strongly denied discussing sexual behavior in one-on-one meetings with players, but acknowledged that he participated in group discussions at practice of a jesting or teasing nature with the women on the soccer team (Jennings and Keller v. University of North Carolina, 2006).

Following the meeting, the Athletic Director composed a letter to the plaintiff summarizing the events of the meeting and acknowledging the inappropriate behavior of Mr. Dorrance. The Athletic Director informed the plaintiff that appropriate interventions have occurred with Mr. Dorrance and the

inappropriate activity was immediately discontinued. The Athletic Director also composed a letter to Mr. Dorrance stating the reprimand of his behavior.

On August 25, 1998, the plaintiff's brought forth a lawsuit against the University of North Carolina claiming:

- 1) A *Title IX* claim against the university for sexual harassment.
- 2) *Title IX* claims for damages against Mr. Dorrance for invasion of privacy, against Mr. Dorrance and Mr. Palladino for sexual harassment, and against University officials Susan Eringhaus, John Swofford, Richard Baddour, Beth Miller and the estate of Michael Hooker for failure to supervise Mr. Dorrance and Mr. Palladino and prevent the alleged violations of Ms. Jennings's rights
- 3) A common law invasion of privacy claim against Mr. Dorrance (Jennings and Keller v. University of North Carolina, 2006, p.10).

Ms. Keller settled her claims with the University of North Carolina on March 24, 2004, Ms. Keller and the university filed a stipulation of dismissal with prejudice as to Ms. Keller's claims (Jennings and Keller v. University of North Carolina, 2006). On October 27, 2004, the District Court for the Middle District of North Carolina at Durham, granted summary judgment to the defendants on all remaining claims and denied the plaintiff's motions (Jennings and Keller v. University of North Carolina, 2006). It was concluded that Mr. Dorrance's behavior was not severe or pervasive enough to create a hostile environment and was not based on the athlete's sex; there was no basis to impute liability to the University under *Title IX* (Jennings and Keller v. University of North Carolina, 2006).

The evidence showed that the head coach used vulgar language and took part in sexual banter at practice with some women he coached and that he once directed a vulgar question at the athlete. She responded with her own profane reply that ended the matter. The head coach did not touch, threaten, ogle, or proposition the athlete, and thus could not be found to

have sexually harassed her. There was no basis to hold him liable for invasion of privacy under the Fourteenth Amendment for forcing the athlete to disclose personal information since she was not forced to disclose anything. He was not liable for common law invasion of privacy since his conduct did not rise to the level of egregiousness required under North Carolina tort law. Because the head coach's conduct was not severe or pervasive enough to create a hostile environment and was not based on the athlete's sex, there was no basis to impute liability to the University under Title IX (Jennings and Keller v. University of North Carolina, 2006, p.1).

The university's existing sexual harassment policy as well as their immediate response to the allegations helped prevent them from being held liable for *Title IX* violations. The university had an established sexual harassment policy and educated its administrators on how to respond to such allegations. This education and implementation of sexual harassment policies and procedure helped protect the university from this *Title IX* lawsuit.

Williams v. Board of Regents of the University of Georgia

A case involving student-athlete sexual assault is described in Tiffany Williams v. Board of Regents of the University of Georgia, 441 F.3d 1287 (2006).

This case outlines a demoralizing event where student-athletes took advantage of a female student. The alleged incident took place on January 14, 2002, when University of Georgia student Tiffany Williams, received a phone call from her then boyfriend, UGA basketball player, Tony Cole. After receiving the call, she went to Mr. Cole's room in McWhorter Hall where the two engaged in consensual sex. Unbeknownst to Ms. Williams (plaintiff), UGA football player, Brandon Williams, whom the plaintiff did not know, was hiding in Mr. Cole's closet. Mr. Cole and Mr. Williams had previously agreed he would hide in the closet while

the two had consensual sex. Once Mr. Cole and Ms. Williams finished, Mr. Cole left the room and slammed the bathroom door behind him. Then Mr. Williams emerged from the closet naked and proceeded to sexually assault and attempt to rape Ms. Williams. While Brandon Williams assaulted the plaintiff, Mr. Cole was on the phone with two additional UGA athletes, Steven Thomas and Charles Grant. Mr. Cole informed the two they were “running a train” on the plaintiff (Tiffany Williams v. University of Georgia, 2006, p.5). Mr. Thomas and Mr. Grant came to Mr. Cole’s room, and, with Mr. Cole’s encouragement, Mr. Thomas sexually assaulted and raped the plaintiff.

The plaintiff returned to her dorm room approximately two hours later and called a friend and confided the details of the attack. The friend encouraged the plaintiff to report the rape to the proper authorities, but the plaintiff was hesitant to do so. The plaintiff informed her mother of what had happened, who then notified the UGA Police. Later that day, the plaintiff had a sexual assault exam and requested that the police press charges against Mr. Cole, Mr. Williams and Mr. Thomas. After the plaintiff filed charges, she permanently withdrew from UGA. After a UGA police investigation, the Chief of Police provided an explanation of events to the Director of Judicial Affairs (Tiffany Williams v. University of Georgia, 2006).

It was concluded that the actions of Mr. Cole, Mr. Williams and Mr. Thomas constituted sexual harassment under University of Georgia’s sexual harassment policy. The policy, applicable, in January 2002, provided that “sexual harassment between students, neither of whom is employed by the University,

should be treated as a disciplinary matter and should be reported to the Office of Student Affairs” and not dealt with under the Sexual Harassment Policy (Tiffany Williams v. University of Georgia, 2006, p.5). Mr. Cole, Mr. Williams and Mr. Thomas were charged with disorderly conduct and suspended by their coaches from their sports teams. One year after the alleged rape, Mr. Cole, Mr. Williams and Mr. Thomas were brought before a UGA judiciary panel comprised of one staff member and two UGA students. The panel decided not to sanction the three student-athletes due to the fact that Mr. Cole and Mr. Williams no longer attended UGA, and Mr. Thomas left the university in September, 2003. Mr. Cole, Mr. Williams and Mr. Thomas later faced criminal charges, which were dismissed against Mr. Cole and Mr. Thomas, while a jury acquitted Mr. Williams (Tiffany Williams v. University of Georgia, 2006). Therefore none of the defendants were found guilty of any charges by the university or the state.

The second part of the plaintiff’s complaint alleges that additional defendants, James Harrick, former UGA head basketball coach, Vincent Dooley, Athletic Director of the University of Georgia Athletic Association (UGAA), and Michael Adams, President of UGA and UGAA, who were involved in recruiting Mr. Cole, knew he had a criminal background and previous history of sexual harassment of women at other colleges he attended. The plaintiff alleges the defendants knew Mr. Cole had been dismissed from one previous college for disciplinary problems and was dismissed from another college and plead no contest to criminal misdemeanor charges involving two sexual assaults of two

female athletic department employees (Tiffany Williams v. University of Georgia, 2006). In all, the plaintiff's lawsuit included charges against:

- 1) UGA, the Board of Regents of the University System of Georgia and UGAA for violation of *Title IX*.
- 2) Adams, Harrick and Dooley for violation of torts.
- 3) UGA and the Board of Regents.
- 4) Mr. Cole, Mr. Williams, and Mr. Thomas for state law torts. Ms. Williams also sought injunctive relief ordering the defendants to implement policies and procedures to protect future students from student-on-student sexual harassment (Tiffany Williams v. University of Georgia, 2006, p.6).

The U. S. District Court for the Northern District of Georgia proceeded to dismiss all of the plaintiff's claims and her request for injunctive relief, as well as deny her request to amend her complaint. The Appellate Court for the Eleventh Circuit reversed the District Court's decision to dismiss the *Title IX* claims against UGA and UGAA and to deny the defendant's motion to amend her complaint (Tiffany Williams v. University of Georgia, 2006).

The appellate court found that the district court erred when it dismissed the student's Title IX claim against the university and the athletic association where: (1) the student's complaint sufficiently alleged that the university and the athletic association were funding recipients properly subject to Title IX liability; (2) an "appropriate person" at both the university and the athletic association had actual knowledge of the harassment where the president of the university and the athletic director had actual knowledge of the discrimination or harassment that the student allegedly faced; (3) the university president and the athletic director were deliberately indifferent since they knew about the assailant's previous misconduct when they recruited him to attend and admitted him to the university; and (4) the discrimination effectively barred the student's access to an educational opportunity or benefit (Tiffany Williams v. University of Georgia, 2006, p.1)

In the plaintiff's first amended complaint, she sought declaratory judgments "that the defendants' application of its sexual harassment policy to the plaintiff was unconstitutional as it denied her equal protection of the laws" and "that

defendants' application of its sexual harassment policy to other similarly situated female students who are sexually harassed by other students denies equal protection of the laws" (Tiffany Williams v. University of Georgia, 2006, p.6). The University of Georgia violated the first standard of Davis, that the institution "knew or should have known" Mr. Cole was a threat of sexual assault. When the University recruited Mr. Cole with the knowledge of his sexual misconduct background it violated *Title IX*, therefore the school was found liable.

Simpson and Gilmore v. The University of Colorado Boulder

The most recent and well known case surrounds a frenzy of student-athlete misconduct that took place at the University of Colorado at Boulder campus. Lisa Simpson v. The University of Colorado Boulder, 500 F.3d 1170 (2007) incorporates the preceding cases, illustrating how institutions can be liable for their student-athletes concerning sexual harassment. Two female Colorado students (Ms. Simpson and Ms. Gilmore) alleged that several different Colorado football players and recruits sexually assaulted them while attending a party at the plaintiff's Boulder apartment in December 2001. During the party, Ms. Simpson felt "tired and intoxicated" and went to her bedroom to lie down (Lisa Simpson v. The University of Colorado Boulder, 2007, p.3). Two Colorado football players and two recruits went into the bedroom and disrobed her while she was passed out. The recruits sexually assaulted the plaintiff as the two players watched. Later, more sexual favors were demanded of the plaintiff, and she was unable to resist due to the large size and number of men that surrounded her. At the same time, in another room in the apartment, Ms. Gilmore

was also being sexually assaulted by three football players or recruits. On December 9, 2002, Ms. Simpson filed a complaint in Colorado State Court, which was later removed by the university on December 23, to the U.S. District Court for the District of Colorado. Ms. Gilmore then filed her complaint December 8, 2003, in the Federal District Court.

The two cases were consolidated on January 30, 2004, and on May 5, 2004, the University of Colorado filed a summary judgment motion contending that the plaintiffs could not establish the elements of a *Title IX* claim (Lisa Simpson v. The University of Colorado Boulder, 2007). On March 31, 2005, the District Court granted Colorado's motion for summary judgment. The court ruled that no rational person could find that Colorado had actual notice of the sexual harassment of Colorado students by football players and recruits, or that Colorado was deliberately indifferent to the harassment (Lisa Simpson v. The University of Colorado, Boulder, 2007).

On September 6, 2007, the 10th Circuit of the U.S. Court of Appeals later reversed the judgment, stating the evidence that the association of sexual misconduct with college football programs had been a matter of widespread reporting and concern at Colorado for several years. (Lisa Simpson v. The University of Colorado Boulder, 2007). The history indicated that in 1997, a high school girl was allegedly sexually assaulted by a Colorado football recruit as a party hosted by a Colorado football player. Following the 1997 allegations, the Boulder district attorney advised Colorado officials to implement policies and procedures pertaining to sexual-assault prevention training for football players.

The university and athletic program did very little, if anything to implement policies and educate its athletes. During former Head Coach, Gary Barnett's tenure, it was argued that he undermined the efforts to remedy the problem by convincing the alleged victim not to file charges. The Appellate Court did not allow the university summary judgment.

The plaintiff's and the University reached a settlement agreement. December 5th, 2007, Ms. Simpson was awarded \$2.5 million while Ms. Gilmore was awarded \$350,000, as part of the settlement; Colorado was also forced to add a *Title IX* advisor and a part-time position in the Office of Victim Assistance (Brady, 2007). Ms. Simpson was awarded more than Ms. Gilmore on the basis that she was willing to disclose personal information and facts from the attack, where Ms. Gilmore was not.

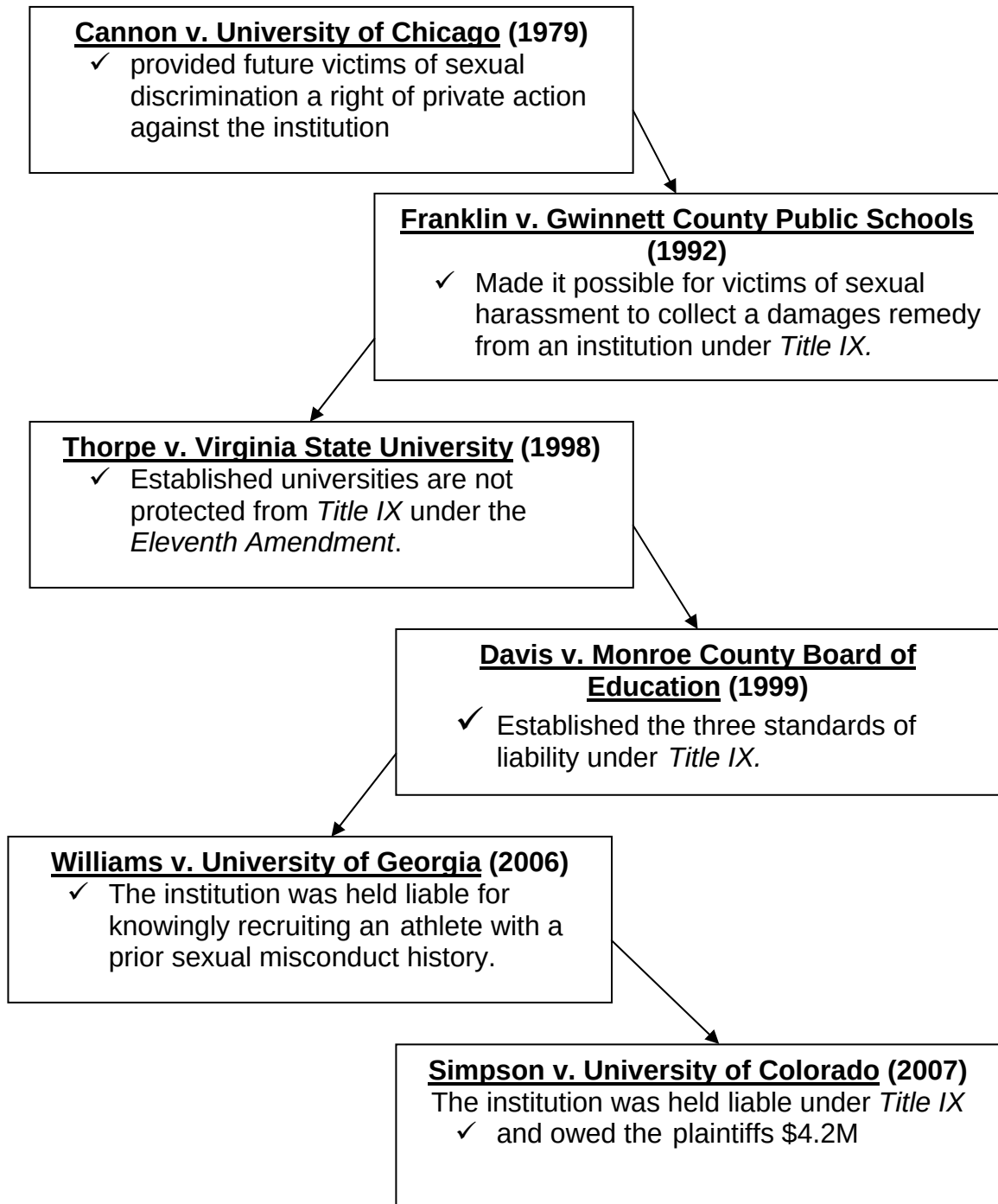
The Appellate Court found that the evidence that the association of sexual misconduct with college football programs had been a matter of widespread reporting and concern for many years, and that in addition to the evidence that CU's football coach knew that efforts by CU were not effective in establishing a football-team culture that would prevent sexual assaults, those efforts were being undermined by the coach himself, the evidence was sufficient to support findings: (1) that CU had an official policy of showing high-school football recruits a "good time" on their visits to the CU campus; (2) that the alleged sexual assaults were caused by CU's failure to provide adequate supervision and guidance to player-hosts chosen to show the football recruits a "good time;" and (3) that the likelihood of such misconduct was so obvious that CU's failure was the result of deliberate indifference (Lisa Simpson v. The University of Colorado, 2007, p.1).

Lisa Simpson v. The University of Colorado (2007) has put universities and athletic departments on notice that they may be held accountable for their

student-athlete sexual harassment, forcing them to take a deeper look into the practices and behaviors of the administration and their student-athletes.

This case has established the next step in holding institutions liable for student-athlete misconduct under *Title IX*. The ruling of Simpson implies judges as well as administrators are no longer tolerating sexual behavior in recruiting practices or sexual misconduct by its student-athletes or administration. The history of Colorado football's sexual harassment accusations proved the coaching staff as well as athletic administration was deliberately indifferent to Ms. Simpson and Ms. Gilmore's reports of sexual assault by university recruits and football players. All three standards of liability established in Davis were proved by Ms. Simpson, with the resurrection of complaints starting in 1997, the institutions failure to implement recommendations stemming from the 1997 accusation, proof the program had an official policy of showing recruits a good time and showing the lack of institutional supervision to host-athletes with a recruit. The decisions of Cannon, Franklin, Gebser, and Davis were stepping stones that provided Ms. Simpson and Ms. Gilmore the right to file a private action against a university, the right to recover damages, and guidelines to follow in establishing an institutions failure to provide both genders with equal opportunity to an education.

Figure 1. Title IX Institutional Liability Landmarks



CHAPTER IV

Discussion of Common Reasoning in Research

The preceding cases illustrate the evolving legal precedent regarding student-on-student and administrator-on-student sexual harassment cases.

Davis made it possible for students to expose universities to *Title IX* liability.

Parent (2003) explains:

The nexus for the lawsuits against UAB and the University of Colorado is a 1999 decision by the United States Supreme Court. For better or worse, this decision has made universities, particularly those Division I schools garnering the most media attention, more vulnerable to *Title IX* litigation. In a narrow 5-4 decision, the Supreme Court held that a federally funded educational institution may be liable for damages under *Title IX* in instances where the institution is deliberately indifferent to student-on-student sexual harassment such that the victim is deprived of opportunities or benefits provided by the institution. (p.2)

Universities are now required to implement a sexual harassment policy to better protect themselves and further educate their administration on how to respond to sexual harassment allegations.

The criminal history and previous sexual harassment allegations of players and employees before they arrived at an institution is sufficient information for notice of a risk presented by these individuals (Hogan, 2006). Institutions and athletic departments must be aware of the criminal backgrounds of the athletes they recruit as well as the coaches they hire. Criminal background checks can prevent poor recruiting and hiring decisions to help minimize institutional liability. Auman (2005) supports the theory stating:

Had the University of South Florida (USF) done background checks on its incoming freshman class, it would have known that junior college

linebacker Gene Coleman was charged with six felonies including two burglaries, two larcenies and dealing in stolen property after \$13,000 in jewelry was stolen from a neighbor's home in June 2004. While another USF signee, quarterback Carlton Hill, was arrested at a Jefferson County High School and charged with a misdemeanor count of contributing to the delinquency of a minor after being found having consensual sex with a 16 year old student in the school locker room. Coleman had a previous criminal record before attending USF (p.2).

Conducting background checks on prospective student-athletes, whether they are high school seniors or transfer students will not only help make college campuses a safer place, but they can also save universities thousands of dollars as well as spare them negative publicity in the media. Universities must be proactive in determining the character of the student-athlete recruited. Too often college coaches are focused on garnering the best athletes that will help them win, rather than determining if the athlete will be a successful representative of the university as well as contributing to the performance of the team.

Lisa Simpson v. The University of Colorado (2007) is an example of how universities will do anything to "win at all costs." It has become too easy to provide top recruits with illegal entertainment to help will show them a good time. The Colorado settlement has resulted in many universities looking into the conduct of their athletic departments recruiting procedures. The NCAA has implemented additional rules that involve official recruiting visits to college campuses. These rules implement a curfew for the recruit as well as the host athlete as well as place a strict policy on the use of alcohol and drugs.

Institutions can learn from the previous court rulings on how to protect themselves and how to know if it could possibly be held liable. If a school is

recruiting an athlete and finds out he or she has a history of sexual misconduct, the institution should think twice about recruiting that athlete. For example, an institution recruits a student-athlete who runs a 4.5 second forty yard dash and is labeled as the number one recruit in the nation in his particular position and has a background of sexual assault. During the student-athletes first year on campus, he sexually assaults a female student; the female student can hold the university liable under *Title IX*. The institution intentionally brought the student-athlete to campus to participate on the athletic team, aware of his sexual misconduct history. The institution put other students at risk because they knew of his background, yet recruited him anyway putting them in violation of *Title IX*.

If an institution isn't sure how to respond to an allegation of rape, it should read Simpson and Brzonkala. For example, a female approaches the Dean of Students and says, "last night a member of the football team raped me." The Dean informs the female student an investigation will occur. Come to find out an investigation never occurred and another female student was raped by the same football player. The second female student raped has a sufficient claim to hold the institution liable under *Title IX*. In this example, the institution was deliberately indifferent to the initial notice of assault and did nothing to remedy the situation or prevent future assaults and the institution had actual knowledge the behavior was occurring based on the first complaint.

CHAPTER V

Conclusion and Recommendations

The purpose of this thesis was to investigate the extent to which the misconduct of student-athletes exposes institutions to legal liability for *Title IX*, the statute which governs sex discrimination claims in educational programs. While there seems to be conflicting research, researchers at Northeastern University and the University of Massachusetts reviewed 107 reported sexual assaults at 30 NCAA Division I schools over a two-year period, they found that at 10 of the schools “student-athletes comprised only 3.3% of the male student body, but were involved in 19% of the reported sexual assaults” (Hogan, 2006, p.1).

As mentioned in Chapter I, student-athletes are high profile members of the student body, especially in the more popular sports of football and basketball. They are subject to an inherent responsibility of exhibiting proper conduct as a student, while being placed in the media spotlight. When an athlete is deviant or acts in a manner that would garner negative attention, it will likely make headline news and potentially expose the university to negative publicity and public scrutiny. In 2005, the University of Colorado and its former head football coach, Gary Barnett experienced first hand the damaging national attention and financial strain of student-athlete misconduct. Uncontrolled, repeated, misbehavior from student-athletes introduced an additional financial strain on the university, but the damage done to the institutions national reputation was, arguably, of much

greater impact. Gleason (2007) described the turmoil the coach and the institution went through:

The trial and tribulations that surrounded his exit from the University of Colorado may be history, but they aren't forgotten. Not on this night. Gary Barnett is one of the most debated figures in Colorado sports history. His tenure as head football coach at the University of Colorado ended in hail of media condemnation, spurred by endlessly replayed sound bites and video clips. Deplored daily on "SportsCenter," and by virtually every local and national media personality, Barnett was an easy target and a ratings messiah. Everybody cashed in on the coach's misfortune and the drama that surrounded his fabled 2005 team; everyone that is, except Barnett. (p.58)

Coach Barnett was quoted as saying, "We were tried and convicted in the media, not in the court of law" (Gleason, 2007, p.60).

Unfortunately for Barnett, he spoke too soon. On December 5th 2007, The University of Colorado agreed to settle the *Simpson Title IX* suit for \$2.85 million rather than proceed to trial (Brady, 2007). The settlement was precipitated by a September 2007, ruling by the 10th Circuit court of Appeals in favor of Ms. Simpson, the victim of sexual assault by CU players and recruits in 2001. As a condition of the settlement, CU will add a *Title IX* adviser and a half-time position in the Office of Victim Assistance. Coach Barnett's statement suggests the high profile of student-athletes puts their behavior, whether it is on or off the field in the media spotlight. It is implied that student-athletes must deal with media pressures that their non-athlete student counterparts do not have to deal with.

If an institution becomes aware of a student-athlete involved in a sexual harassment allegation it needs to embrace and address the situation rather than ignore it. If Colorado had addressed the allegations as they occurred rather than

taking a stance of indifference, it may have endured some negative publicity, but saved them millions of dollars. As a result of ignoring of the situation, the negative publicity the institution and program endured has made the University of Colorado a national embarrassment. As of 2006, Colorado had spent at least \$2 million in legal costs and severely damaged its reputation (Hogan, 2006). With the recent settlement, CU must now pay an additional 2.85 million dollars to the victims Simpson v. University of Colorado (2007).

Athletic departments can handle situations such as these in a manner that will provide the victim a sense of relief as well as curtail improper student-athlete behavior. Athletic departments must be aware of the recruiting practices as well as behavioral patterns of its student-athletes; if a department observes an emerging pattern of harassment or sexual assaults it must take immediate action to rectify the situation. Whether or not the departments' response is effective varies case by case. It is recommended that athletic departments take the following measures in handling a sexual harassment allegation.

First, an institution must not intimidate a student from coming forward with allegations of sexual assault. Often, an administrator may be tempted to intimidate a victim or discourage their coming forth if the allegation involves an athlete. An athletic department, coach or administrator should not interfere with a university or police investigation. It is important for the institution to work with the police and the university disciplinary body; compiling information from them could help the athletic department prevent future problems, but it should not impede

these investigations. This assures students as well as student-athletes receive the same treatment from authorities.

Second, athletic administrators, coaches and trainers should refer sexual assault complaints to the university disciplinary body. This allows for the same treatment of all students at the institution and eliminates any special treatment due to the status of the individual accused. Athletic departments and coaches must also discipline players accused of sexual harassment through verbal reprimand, game suspension, requiring community service, etc. If a player is found guilty of sexual assault by the university disciplinary body, or a law enforcement agency, the athlete should be removed from the team. If the program or team has a policy, it needs to be enforced and not altered depending on the status and athletic ability of the athlete involved.

Third, developing and instituting a zero tolerance policy would allow the institution to strictly enforce the behavior policy and send a message of intolerance of such misbehavior. At the beginning of every year, athletic departments should provide sexual assault/sexual harassment prevention training and reinforce that training when sexual assault allegations arise. Institutions could also follow the lead of CU in adding an official *Title IX* advisor to implement policies. Once again, it is imperative that this policy is enforced equally for all student-athletes.

Finally, during team meetings and meetings with recruits, coaches and administrators should outline and explain the code of conduct for the team and the consequences for violating the code. If an athletic department does not have

a code of conduct, it should create one (Hogan, 2006). This type of education ensures student-athletes have been made aware of the policies and all they entail. The athletic department should allow the university disciplinary body as well as the police department to handle formal complaints instead of getting involved itself. Frequently a member of an athletic department will be the first respondent to a behavioral issue involving a student-athlete; many times athletic departments can alter, discourage or even unethically conceal the situation depending on the facts involved. If a department develops and implements a policy to allow the university to dictate policy in such situations, it will not only eliminate the “win at all costs” mentality many coaches adopt which allows certain athletes leniency when it comes to rule infractions and punishment, but also allows for equal treatment of student-athletes and their student counterparts.

With recent rulings, courts have set forth guidelines for athletic departments who do not already maintain a policy, as to how to manage and respond to sexual harassment claims concerning their student-athletes. Preventative measures must be established to determine an institutions response resulting from an alleged sexual assault or sexual harassment. Spies (2006) recommends athletic departments focus particular attention on sexual harassment training and disciplinary systems that are in place for handling student-athletes involved in an alleged sexual assault or sexual harassment. Spies (2006) also outlines the following:

Sexual harassment training is necessary for all student-athletes, coaches, and administrators so that all individuals are clear as to what type of behavior will not be tolerated as well as how to notify the proper officials if

this inappropriate behavior does occur. Next, disciplinary systems need to be in place to ensure the victims of sexual assaults that immediate and appropriate corrective action will be taken by the school (p.17).

When such a situation arises, universities and schools must have a grievance plan in place. Universities should educate all student-athletes on the statistics of sexual assault by athletes, how to prevent such behavior, as well as inform them of their public status in society as soon as they arrive on campus. Williams and Simpson made it clear that courts will no longer tolerate institutions without proper policies and education of administrators as well as student-athletes. Recommendations have been made in the past on how to combat this situation, but previous courts had not held institutions liable. With the 2006 Williams and 2007 Simpson rulings, it is evident that universities better start listening and implementing these policies.

Athlete orientation should include mandatory seminars and informational lectures concerning sexual abuse, alcohol abuse, and drug abuse to educate the athletes of the dangers of such behaviors. The university must also educate all incoming freshmen students of trends and dangers of sexual harassment on college campuses. The institution should educate athletes how to conduct themselves, what steps to take if they do become a victim of sexual harassment, and how to report it. All colleges and universities must have a sexual harassment policy in place as well as adopt a zero tolerance policy in order to protect the institution from potential *Title IX* liability. In addition to the university policy, athletic departments and administrators must implement and enforce additional codes of behavior for athletes.

Title IX requires that school's adopt and publish grievance procedures to address sexual discrimination (Osborne & Duffy, 2005, p.8). The procedure should provide an efficient manner in preventing and responding to sexual harassment. The following criteria were issued by the OCR with hopes of reducing instances of sexual harassment and protecting students. An institution must implement the following standards to be compliant:

- 1) Notice of policies and procedures must be sent to students, parents (elementary and secondary), and employees, including where complaints may be filed.
- 2) The procedure must actually be applied to complaints alleging harassment.
- 3.) An adequate, reliable, and impartial investigation of the complaints must be conducted, including the opportunities to present and witness and other evidence.
- 4) A designated, prompt time frame should be established for the complaint and investigative process.
- 5) Notice of the outcome of the complaint must be given to the parties involved.
- 6) An assurance must be made that the school will take corrective measures to eliminate current harassment and similar instances of harassment in the future (OCR, 2001).

Athletic departments should complete a criminal background check on all potential recruits before they are brought on campus. This should be done not only to protect athletes and students but also to protect the university's image, athletic department and team. The Idaho legislature was the first to address the problem when it adopted its state policy prohibiting any Idaho state university from recruiting any athlete with a felony conviction or a juvenile charge corresponding to a felony conviction (Potrafke, 2006). Fresno State University adopted a university-wide criminal background check policy. Under the policy, the coaches are prohibited from recruiting an athlete with a felony conviction, and

any athlete with a misdemeanor conviction is yellow- flagged (Wieberg, 1998). An athlete that has been yellow flagged does not prevent a coach from recruiting that athlete, but the coach must notify and receive permission from the athletic director.

The University of Oklahoma stated it has began a policy of running criminal background checks on prospective recruits, putting greater priority on making sure they know exactly who is coming to campus (Auman, 2005).

Oklahoma's Athletic Director, Joe Castiglione commented:

We didn't do this to set the tone or call attention to this part of the process. It's due diligence and we think it helps us create a better profile on the prospective student-athletes we are bringing in. We're not going to catch every single thing, but if we don't do this, someday someone else is going to walk into my office and say; "Did you know about this?" "Did you check?" (Potrafke, 2006, p.4).

The University of Florida has adopted a similar policy, Coach Urban Meyer said, "We won't take a person that's going to embarrass the university, or we try not to. A lot of times things fall underneath the radar, but if it's on the radar, we won't do it" (Auman, 2005, p.1). The aforementioned statement is referring to the screening of prospective student-athletes. Currently Baylor University, the University of North Carolina, the University of Kansas, and the University of Miami (Florida) have all considered implementing background checks (Potrafke, 2006). While it may seem excessive or unethical to some, completing background checks of prospective student-athletes may save a university the financial burden as well as the public humiliation Colorado endured.

Universities can be liable for *Title IX* violations if they do not take precautionary measures when dealing with an allegation. Aurelia Davis v. Monroe County Board of Education (1998) identified three factors to use in determining whether or not a school is liable under *Title IX*. Lisa Simpson v. The University of Colorado Boulder (2007) is a cautionary reminder that these types of cases can have devastating affects on a university and their athletic programs. If the plaintiff bringing about the lawsuit can prove all three of the following three factors, the school is liable for compensatory and punitive damages under *Title IX*:

- 1) A school official who has the authority to institute corrective measures has notice of the harassment. In other words, the official knows that harassment is occurring.
- 2) The school official with knowledge was deliberately indifferent to the harassment.
- 3) The harassment is so severe, pervasive, and objectively offensive that it effectively limits the harassed student's access to an educational opportunity or benefit (*Aurelia Davis v. Monroe County Board of Education*, 1998, p.1).

Aurelia Davis v. Monroe County Board of Education (1998) is not the only case to outline legal implications with regard to sexual harassment and *Title IX*. Franklin v. Gwinnett County Public Schools (1992) not only recognized the existence of a sexual harassment claim under *Title IX*, it also established an allowance for monetary damages in a *Title IX* private action. Similar to Aurelia Davis v. Monroe County Board of Education (1998) and Franklin v. Gwinnett County Public Schools (1992), there have been several recent high profile suits that have established the legal guidelines in determining the extent of institutional liability. While *Title IX* is the most notable and frequently tested discrimination law in an

educational setting, *Title VII*, as first set forth in Annabelle Lipsett v. University of Puerto Rico (1991) is also taken into consideration when dealing with sexual harassment. Based on the interpretation of Franklin v. Gwinnett County Public Schools (1992) and Annabelle Lipsett v. University of Puerto Rico (1991), four standards have surfaced in the debate over the appropriate standard of institutional liability in regard to *Title VII*:

- 1) "Knew or should have known". Meaning, if an institution should have known the accused was a direct threat of assault, or the accused had a previous background of sexual assault or sexual harassment.
- 2) Actual notice. If the accuser has notified university officials of a sexual assault or harassment, the institution has actual notice.
- 3) Intentional discrimination proven by direct and circumstantial evidence. If the evidence directly shows the sexual assault or harassment was based on gender.
- 4) Disparate treatment. If the institutional response to the allegation is inadequate or does not meet policy standards.

The Intentional Discrimination Standard under *Title VII* also outlines a set of standards an institution must be aware of when dealing with gender discrimination and sexual harassment. A plaintiff must prove one of the following for an institution to be liable under the Intentional Discrimination Standard of *Title VII*:

- 1) An institution recruited a student-athlete with knowledge that the athlete had a history of sexual misconduct toward women, and the student-athlete subsequently sexually assaults a female student.
- 2) An institution failed to take action in response to a female student's complaints in the aftermath of a sexual assault by a student-athlete.
- 3) An institution imposed lenient sentences for a student-athlete's sexual assault of a female student. (Davis & Parker, 1998, p.17)

In Christy Brzonkala v. Virginia Polytechnic and State Institute (1996) court explained the similarities between *Title IX* and *Title VII* stating, in a *Title IX* action,

the plaintiff seeks not to hold the school responsible for the acts of the third parties but rather to hold the school responsible for its own actions in failing to take prompt and remedial actions.

While sexual assault by student-athletes is a problem among college campuses, universities must take responsibility by educating athletes about the impact and dangers of sexual assault as part of the *Title IX* required sexual harassment policy (Spies, 2006). An implementation of an impartial and effective disciplinary system can provide institutions confidence they will not be held liable for violating *Title IX*. Administrators, coaches, alumni and athletes must recognize, enforce and let their actions reflect the notion that student-athletes are students first. When institutions lose sight of this goal and award athletes special status, it allows a breeding ground for violence and an “above the law” mentality (Coakley, 2007). In closing, when a university or athletic department places competitive success above all else, condones, and in some cases promotes violent behavior by student-athletes, the university is not fulfilling its true mission as an educator (Sweeney, 1999).

Suggestions for Further Research

Based on the legal review of this thesis, further research can be performed to help develop a better understanding as to how many universities need sexual harassment training. It has been established that universities can be held liable under *Title IX* for sexual harassment allegations against student-athletes, further research can be done to determine how many universities are aware of such potential legal liability. Different institutions can be surveyed to

determine their policies and procedures in handling student-on-student sexual harassment as well as sexual violence committed by student-athletes. Once data has been collected, preventative measures or suggestions can be made to such institutions on how to respond to sexual harassment allegations as well as how to protect themselves from legal liability.

Further research could be broken down into sexual harassment trends in specific sports such as football and basketball. Quantitative research could be performed to examine different conferences or divisions to determine trends or patterns in student-athlete misconduct. Further research into different types of student-athlete misconduct could provide institutions with opportunities to protect themselves further from various types of misconduct extending beyond sexual harassment or sexual assault.

A researcher could examine how many student-athletes had committed a sexual assault at an institution and conduct a background check on those athletes to determine how many of those athletes had a prior background of sexual misconduct before they entered the institution. Researchers could also look into the admission standards at different universities and determine how many student-athletes were admitted without meeting the requirements of the university admission standards because they were any athlete.

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