

Legal Concerns in the Recruitment of University Athletes

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This presentation will address legal concerns in the recruitment of university athletes. The tort of negligent admission will be discussed at length. Also, the issue of institutional liability based on Title IX will also be presented.

Unfortunately, the commission of crimes by college recruits is a recurring fact of life. For example, Corey Brown, a former Plant High School outfielder, pled guilty to felony battery which occurred during group sex with a 14-year-old. The University of Virginia rescinded its scholarship offer to Brown, but the Oklahoma State baseball coach decided he would take the risk with Brown (Johnston, 2005). The well-publicized case of Willie Williams, a University of Miami prospect, who was arrested during a recruiting visit to Gainesville and who was found to have ten previous arrests (Auman, 2005) has also served as a clarion call to more closely evaluate character in the athletes recruited by universities.

Recently, the California legislature reacted to the issue of criminal behavior by college athletes by passing Assembly Bill 2165, which bars college athletes, who have been convicted of a violent felony, from playing sports until after a person completes his incarceration and parole (Cal AB 2165). This legislation was precipitated by public outcry after felonious assaults were committed by members of the Grossmont College football team. The players were permitted to remain on the team even though they had pled guilty to felony assault (Dumanis, 2006).

Some universities, e.g., the University of Oklahoma and Baylor University, have begun to conduct criminal background checks recruited student athletes (Auman, 2005). The National Association of Collegiate Directors of Athletics (NACDA) has contracted with a security management company to establish a background check protocol for universities that wish to screen recruits (Gardiner, 2005).

Regarding those universities that choose to conduct criminal background checks for prospective student-athletes, what may be the institutional liability to a third party on campus (another student) who is injured by an athlete who had committed a prior crime of violence but was recruited and admitted regardless of that crime? There may be liability based on the tort of negligent admission. This tort, as with any tort based on negligence requires: 1) a duty of care owed; 2) a breach of the duty of care; 3) causation; and 4) damages.

In the situation under discussion, a plaintiff has a considerable advantage in asserting that a duty of care exists since colleges that perform background checks assume a duty of care. Under Restatement (Second) Torts 323, if one undertakes a service for the protection of another's safety then there is liability for the failure to exercise reasonable care to perform the service.

Therefore, the discussion must focus on what is reasonable care in this situation? How does a university act reasonably in dealing with the information uncovered in the course of the background check? Part of this analysis is contextual-what is the mission of the university and the athletic department? To whom is the greater obligation owed-the student-athlete seeking a second chance or the university community seeking a safe environment?

Essentially then a university must balance redemption against the foreseeable risk of recidivism when it engages in a risk analysis seeking to decide whether to recruit/admit a particular student-athlete who has already committed a crime of violence. According to Stokes and Groves (1996) some factors to consider in conducting such a risk analysis would be: 1) the nature of the crime including the level of violence and any mitigating factors surrounding it; 2) evidence of rehabilitation since the crime, which includes the level of remorse shown by the offender and the acceptance of responsibility for what transpired; 3) the amount of time since the crime was committed; and 4) the likelihood of recidivism.

Reasonable care would dictate that universities develop a risk analysis protocol incorporating the above factors. Further a university should not ignore pertinent information. Once relevant information about a prospective student-athlete is uncovered the risk analysis protocol must be followed regardless of whether the athlete is a "blue chip" recruit or a third string linebacker. Experts who are competent to assess the relevant factors must be used in the analysis. Finally, coaches should not be involved in the process to avoid conflicts of interest (Sharp & Sheilley, 2006).

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There may also be Title IX liability for the criminal actions of a student-athlete. In *Williams v. University of Georgia* (2006), the Eleventh Circuit held that the district court erred in dismissing Title IX claims against the university and the university athletic association. The plaintiff, a university student, who had been sexually assaulted by three university basketball players, asserted liability under Title IX for sexual harassment. The appellate court agreed that the actions of the athletic director in: 1) knowingly recruiting one of the players who had a record of previous criminal misconduct; 2) responding "sluggishly" to the plaintiff's complaint; and 3) failing to implement effective procedures for dealing with sexual harassment, rose to the level of "deliberate indifference" (the requisite standard for student-on-student sexual harassment) for the safety of the plaintiff as a female member of the university community.