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Should Colleges Be Forced to Swiftly Report Rapes to the Police?

Proposals in some states trouble victims' advocates and raise questions for colleges

By Katherine Mangan

Two former football players are convicted of raping an unconscious student at Vanderbilt University while their friends record the assaults on their cellphones. A star swimmer at Stanford University is charged with raping another intoxicated, passed-out woman and is banned from the campus.

The headlines, coming one day apart last week, were striking not only because of the boost they gave sexual-assault victims who contend their complaints go nowhere.

They were also notable because both campuses had worked closely with local law-enforcement officials rather than simply settling the matters in house.

Given the explosiveness of the two cases, that's not surprising, but it's unclear whether the police would have joined in so quickly if cellphone videos, in the Vanderbilt case, and witness accounts, at Stanford, hadn't been available.

Sexual-assault cases usually rely heavily on one student's word over another's. They commonly involve alcohol-fueled encounters between two people who are impaired, but not unconscious, and not all cases involve force. Few of those cases end up being prosecuted.

But the issue of when to alert outside law enforcement and when to handle complaints internally is timely, as lawmakers in at least two states are debating bills that would require reporting by colleges. Supporters say that colleges are ill suited to handle potentially criminal acts and that they have incentives to keep

such matters quiet. But critics, including some women's advocacy groups, say the reporting requirement might make some victims afraid to come forward.

Among the questions being raised on campuses and in statehouses:

- Should colleges be compelled to report all sexual assaults to the local police?
- What if the victim doesn't want to file charges? Do public-safety concerns ever outweigh privacy issues?
- Will mandatory reporting cause some victims to stay silent?
- Are colleges equipped to offer a process that's fair to both the accuser and the accused?

Surveillance Video Spurs Investigation

The Vanderbilt case involved an assault that took place in 2013 but that came to light two months later, when campus workers were combing a surveillance video and came across footage of an apparently unconscious woman being carried into a dormitory.

It culminated in rape convictions on Tuesday against two former football players, Cory Batey and Brandon Vandenburg. Two other former players are awaiting trial.

Vanderbilt officials notified the Nashville police as soon as they saw the video, according to a statement the university's chancellor, Nicholas S. Zeppos, posted on the university's website on Thursday.

"We have worked closely with the Davidson County district attorney's office ever since," he wrote. "Not for a second did anyone consider sweeping the incident under the rug or according special treatment to our student-athletes."

One day after that news broke came the Stanford case. A former standout Stanford swimmer, Brock Allen Turner, was charged with five felony counts, including raping an unconscious person. Two graduate students on bikes came across him on top of an apparently unconscious woman outside, on the grounds of the campus, according to prosecutors.

The 19-year-old student ran, but the men chased him and held him down until the police arrived, officials said of the January 18 incident. Mr. Turner voluntarily withdrew from Stanford last week and has been banned from the campus.

Stanford's department of public safety investigated and, within a few days, filled in prosecutors.

Local newspapers reported that Mr. Turner had admitted fondling the woman, who was not a Stanford student, after meeting her at a campus party where both were drinking heavily, but that he had denied raping her.

Unlike the Stanford case, where bystanders immediately intervened to stop the alleged assault, a number of Vanderbilt students witnessed the attack there and didn't report it, the video indicates.

Of course, the Stanford incident happened just months after the White House announced a nationwide effort to encourage men to step in to prevent sexual assaults, and the message was fresh on the minds of many.

Still, the Vanderbilt chancellor said he was "deeply troubled that some students who knew or should have known about the incident that led to this week's convictions failed to take any positive action."

Vanderbilt is one of more than 90 colleges nationwide that are under investigation by the Department of Education's Office for Civil Rights for their handling of sexual-harassment and sexual-assault cases.

Colleges risk losing all of their federal money if they're found to have violated Title IX, the federal civil-rights law banning gender discrimination in education. Many are now moving more aggressively to investigate and adjudicate complaints. That has prompted some to complain that the pendulum has swung too far and that innocent men are being branded as rapists.

Giving accused students a fair shake is one reason some favor

turning such matters over to the local police. Cracking down on crime is another.

'A Blunt Instrument'

A bill making its way through the Virginia legislature would require any faculty member, administrator, or full-time staff member at a public college to notify law-enforcement officials within 24 hours if he or she "obtains information alleging that a criminal sexual assault has occurred." Failing to do so would be a Class 1 misdemeanor. Crisis counselors and members of the clergy would be exempt.

The bill's Republican sponsor, Sen. Richard H. Black, said that when colleges handle complaints internally, serious crimes can be swept under the rug, allowing serial rapists to strike again. A case in point, mandatory-reporting advocates say: A man linked to the killing of a Virginia Tech student in 2009 has been charged in the abduction and killing of a University of Virginia student. He had also been accused of a string of other assaults.

Rhode Island lawmakers have also introduced legislation that would require colleges to immediately notify law-enforcement authorities of sexual-assault reports.

Mandatory-reporting requirements trouble victims' rights groups like the Virginia Sexual and Domestic Violence Action Alliance, a statewide advocacy group. Reporting should be required, they believe, only in cases of suspected felony-level assault.

In the vast majority of cases, "we believe survivors should have the right to decide whether or not to report the assault to police," said Kate McCord, a spokeswoman for the group. Some women just want the men they've accused of attacking them moved to another dormitory or expelled, victims' rights advocates say.

"Mandatory-reporting requirements are a blunt instrument that shouldn't be applied in cases that require a more nuanced approach," Ms. McCord said. "They assume that the criminal-justice system is helpful to victims and serves justice, but that isn't always true."

That point was made in an emotional appeal last month by a 2013 University of Virginia graduate. She told a state Senate subcommittee that she would not have reported to campus authorities that she'd been raped if that would have prompted them to turn the matter over to the police, who, she contended, often lack the sensitivity that campus officials have in dealing with traumatized victims.

Victims' wishes should always be a paramount concern when deciding whether to handle rape cases internally or to notify outside authorities, said Steven J. Healy, a co-founder and managing partner of Margolis Healy, which advises colleges on campus-safety issues.

"I reject any law that would force the disclosure of a victim's identity when they don't want it disclosed," said Mr. Healy, a former public-safety director at Princeton University. "Sexual-assault survivors first and foremost have to regain control of their lives," and forcing them to disclose information can retraumatize them and "take away that control," he said.

"Colleges often have to balance concerns for safety with the wishes of the victims, but at the end of the day, I feel victims must be able to decide whether to go to police or pursue justice through internal proceedings," Mr. Healy said.

While victims' rights advocates say they have a responsibility to point out to rape victims the challenges they might face if they report their attacks to the police, some law-enforcement officials say the longer they wait to report an attack, the harder it will be to investigate. Both points were made during a roundtable discussion in June that was organized by U.S. Sen. Claire McCaskill, Democrat of Missouri.

Some Virginia colleges also have qualms about mandatory reporting.

"Our worst fear is that some survivors of sexual violence will not come forward if they believe they will be forced into a legal process they don't want to take part in," Brian Whitson, a spokesman for

the College of William and Mary, said in a written statement. "In addition, it would be incredibly difficult to pursue a criminal case when the witness does not wish to testify."

UVa's president, Teresa A. Sullivan, echoed that sentiment in an interview that appeared on Sunday in *The Daily Progress*, a newspaper in Charlottesville, Va. "Our objective is to find a way that mandatory reporting does not take any agency away from the victim," Ms. Sullivan said. "There may be ways to do that, and we're exploring what those might be."

Katherine Mangan writes about community colleges, completion efforts, and job training, as well as other topics in daily news. Follow her on Twitter @KatherineMangan, or email her at katherine.mangan@chronicle.com.

18 Comments

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State Federal



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There is a similar bill in Oklahoma, too. Essential to this coverage is the fact that FERPA does not have a crime disclosure exception, so this states legislating this mandate for reporting can't overturn a federal prohibition. FERPA allows for emergency health and safety disclosures, but not all rapes will qualify. Further, OCR has talked much about confidentiality under Title IX, but never spelled out its contours clearly. Would release to local police without a victim's consent violate Title IX? Perhaps it is time for OCR to weigh in. The NCHERM Group. www.ncher.org



John Banzhaf

Five Experts Address Campus Rapes - NYT
They Suggest Various Remedies, Some Conflicting

Five experts recently were asked by the New York Times to address the problem of rapes at colleges and universities, and their individual responses offered different approaches and solutions, but some appear to conflict, some offer broad generalizations without specifics, and there may even be constitutional problems.

NYT - Justice and Fairness in Campus Rape Cases @ <http://nyti.ms/1wonBKz>
More specifically, the five addressed this problem: Especially in light of the recent Rolling Stone debacle, how can women who say they have been raped be treated supportively and sensitively while their accounts are fully investigated and the accused get fair treatment

The contribution of public interest law professor John Banzhaf appears below:

Many argue that rapes should be reported to police and not to colleges since they are serious felonies.

But since most are date/acquaintance rapes where the only evidence is the ~~testimony of the two participants, it is often impossible to prove lack of consent~~