

INADEQUATE SECURITY

Crime on college campuses

Female students are at high risk of violence, especially sexual assault. Litigation based on assumption of duty, foreseeability, and other straightforward premises theories can ensure that colleges live up to their promises to keep students safe.

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College campuses are high-crime areas. A person is more likely to be a crime victim on a college campus than almost anywhere else in the country. Most colleges know this, yet the institutional response to the problem is often just a cover-up.

Of all violent crimes that occur on campus, rape is the most common.¹ One in four college women is the victim of rape or attempted rape. One study found that in just seven months, there were 35 rapes for every 1,000 female students.² Ninety percent of women who are raped on campus know their assailants—usually classmates, friends, boyfriends, or ex-boyfriends.³ Most of the rapes occur at parties or in dormitory rooms. Students are most vulnerable to rape during the first few weeks of their freshman and sophomore years.⁴

Several factors may contribute to this heightened risk: frequent unsupervised parties, private dormitory rooms, and the abundance of alcohol and drugs, for instance. Many college students, typically away from home for the first time and unaware of the dangers facing them, may have a false sense of safety on campus.

Over half of campus rapes happen in the victim's residence; 10 percent take place in fraternities.⁵ While most of these crimes are reported, about a third are not, mostly because the victims fear reprisal.⁶

In short, rape is a clearly foreseeable occurrence on many campuses: Indeed, a Department of Justice report concluded that at a college with 10,000 female students, more than 350 rapes a year could occur.⁷

Sexual assault devastates a woman's physical and emotional well-being and can even affect her schoolwork and career plans. Rape victims can experience shock, humiliation, anxiety, depression, suicidal thoughts, social isolation, anger, distrust of others, fear of AIDS, guilt, and sexual dysfunction.⁸ Many drop out of school, often because they cannot tolerate continued interactions with their attacker.⁹

Institutional response

Colleges typically assure their students that they will be safe on school grounds. Their admissions materials often emphasize safety and note the presence of campus police officers and se-

curity guards. Student handbooks often set out standards of conduct that restrict alcohol or drug use and prohibit certain types of dangerous social events such as "open" parties (parties that anyone can attend, including nonstudents). Student clubs, fraternities, and other groups accept responsibility for the behavior of their members, alumni, and guests, in exchange for maintaining a presence on the campus. Unfortunately, these rules are often not enforced.

Students come to college not fully prepared for the freedoms of adult life and without the continued, active intervention of their families. Because acquaintance rape is less random and more preventable than stranger rape,¹⁰ the responsibility colleges bear is clear.

Federal response

The courts and Congress recognize that colleges need to better inform students about the risk of campus crime. The 1990 Student Right to Know and Campus Security Act, now known as the Clery Act, requires colleges to re-

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port statistics on all campus crimes and information about the colleges' security measures.¹¹ The Campus Sexual Assault Victim's Bill of Rights, passed in 1992, amended the security provision by requiring schools to develop policies specifically aimed at reducing campus rape.¹²

Under the Clery Act, each college must publish an annual report and keep a daily log of all crimes that occur on campus. These must be available for public viewing and produced upon request.

might be assaulted on campus.

As landowners, colleges might be held liable for inadequate security under the law of premises liability. Because most colleges assume the duty of providing security on campus, they may also be liable under the assumption-of-duty theory. Finally, colleges can be sued civilly under Title IX for sex discrimination and student-on-student sexual harassment.

Proving duty of care. Many courts have determined that a duty of care, founded on premises liability, exists be-

led her out of the building. He raped her in the college dining hall.¹⁶

Before this, there had been no violent incidents reported on the campus, but there had been a burglary there a year earlier, and the night before Mullins was attacked, a man had climbed the campus fence and entered a building close to her dorm. There were two security guards on duty at the time. Her attacker was never caught.

The *Mullins* court found that a group of young women living together provides an opportunity for criminal behavior and that the possibility of students being assaulted was "self-evident." The court noted that students are hardly in a position to install alarms, hire guards, install additional locks, and the like. In some cases, the short periods students reside in their dorms (usually nine months or less) give them little incentive to make such changes, and in others, to do so may actually be against college regulations. The court said it was reasonable for parents, students, and the general community to expect that colleges would take precautions such as hiring security guards and installing additional locks.

Assumption of duty. The *Mullins* court also found that a college may assume a duty to provide a secure campus and noted that a duty assumed voluntarily also presumes a certain level of care. Adopting the language of the *Restatement (Second) of Torts*, it stated:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.¹⁷

In this case, the court said, the college's assumption of duty was not "gratuitous" and noted that students pay for their security, through tuition or through a dormitory fee. It found that both parents and students have a reasonable expectation that a school will keep its students safe.¹⁸

Totality of the circumstances. In an-

A college's responsibility to protect students from crimes committed by third parties is firmly grounded in Mullins: The court found that the principles of foreseeability and assumption of duty provided a sufficient legal basis for this duty.

The 1989 Drug-Free Schools and Campuses Act requires that to receive federal financial assistance, a college must certify that it has adopted and implemented a program to prevent unlawful drug and alcohol use by students and employees.¹¹ The school must prepare a biannual review rating the effectiveness of its alcohol and drug programs and the consistency of enforcement. This information, too, must be available to the public and provided on request.

But while these laws address the serious matter of college violence, they specifically exempt colleges from civil liability and do not establish a standard of care. You can use them, however, to develop information about prior crimes and the school's policies.

Legal redress

Several avenues of redress are available to victims of violence on campus. Campuses have large concentrations of young women who are at greater risk of sexual assault than women in the general population or in a comparable age group. Colleges are fully aware of this risk and may therefore have a duty to warn students of the possibility that they

tween a student and an educational institution. A person attending school has the legal status of a business invitee.¹¹ And while a landowner is not the insurer of a business invitee's safety, it does have a duty to take reasonable steps to protect an invitee from foreseeable crimes.

The courts have held that sexual assault on a college campus is foreseeable, and therefore the college has a duty to prevent harm to its students. Courts have also held that although the modern college is not required to ensure its students' safety, it can voluntarily assume a protective duty, which includes the obligation to warn students about sexual assault.¹⁵ Several key cases illustrate these concepts.

In *Mullins v. Pine Manor College*, the plaintiff was a first-year student, and school regulations required her to live on campus. After returning to the dorm one evening, Mullins went to talk with a friend in the dorm room next door, leaving her own door open. When she returned, she locked her door and went to sleep. Around 4:30 a.m. she was awakened by an intruder, who threatened her, put a pillowcase over her head, and

other case, *Delta Tau Delta, Beta Alpha Chapter v. Johnson*, the plaintiff, a student at Indiana University, was sexually assaulted by a member of the school's Delta Tau Delta fraternity chapter. During a party at the chapter house, they had several drinks together, and he offered her a ride home. According to court records, before leaving the party he took her into a private room, locked the door, and raped her.¹⁹

In the two years before this incident there had been several instances of alcohol abuse at fraternity parties on the same campus, including one where a female student was forced to drink until she became ill and then was physically abused when she tried to stop drinking. Just one month before Johnson's assault, Delta Tau Delta national headquarters had sent its chapters informational pamphlets about college rape, including a discussion of recent lawsuits against fraternities for cases involving alcohol abuse and sexual assault.

Applying the totality of the circumstances test, the Indiana Supreme Court ruled that Delta Tau Delta owed Johnson a duty of reasonable care. The court said calling a sexual assault in this situation "not foreseeable as a matter of law" would ignore the facts:

While this may be the exceptional case wherein a landowner in a social host situation is held to have a duty to take reasonable care to protect an invitee from the criminal acts of another, when the landowner is in a position to take reasonable precautions to protect his guests from a foreseeable criminal act, courts should not hesitate to hold that a duty exists.²⁰

In *Stanton v. University of Maine*, the plaintiff met a man at a party, who later walked her back to her dormitory. When they got there, she left the door to her room partially open when she went in. He entered the room and sexually assaulted her.²¹

Stanton argued that the university never warned her of any dangers and that it had a duty to do so. Citing *Mullins*, the *Stanton* court ruled that while there was no evidence of prior crimes at the college, foreseeability could be based on the existence of the university's safety measures, because these measures

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would make sense only if criminal activities were foreseeable.²²

A college's responsibility to protect students from crimes committed by third parties is firmly grounded in the law. The *Mullins* court recognized that the relationship between colleges and their students is distinct from other landlord-tenant relationships.²³ It found that the two principles of foreseeability and assumption of duty provided a sufficient legal basis for this duty, and it concluded, "the risk of such a criminal act was not only foreseeable, but was actually foreseen."²⁴

Other causes of action

Once a college has assumed the duty to protect students, it cannot be negligent. This duty is implicit in dormitory agreements that require students to live on campus, in student handbooks that outline the school's safety regulations, and in the behavior expected of student groups such as fraternities and athletic teams.

Many colleges also require fraternities to adopt the risk-management standards set by the Fraternity Insurance Purchasing Group (FIPG) regarding alcohol use and the types of parties held at chapter houses. Following FIPG guidelines may help to limit the group's exposure to liability and protects both fraternities and their guests.²⁵

Enforcement of these policies, however, is a different issue. Colleges may be responsible if they assume the duty to oversee student groups or clubs and fail to properly do so, resulting in harm. Many colleges also have their own programs to educate students about sexual assault. Proving failure to properly implement these programs is another avenue of redress for a plaintiff who has been raped on a college campus.

Colleges also must ensure that they properly train security guards, campus police officers, counselors, dorm residents, and other students on how to report a sexual assault. Ninety-five percent of college rape victims do not report the crime to state or college authorities, but two-thirds of them do report it to their friends. Those friends need to make

sure these complaints are addressed properly.

Most colleges have their own security guards—and at some schools, even police officers—charged with investigating crimes against students.²⁶ Failure to properly investigate complaints of rape or to provide adequate security may also create a cause of action against the college.

Although colleges know very well that campus crime is a problem, they fail to take the steps necessary to protect students. Parents send their children off

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to schools unaware of the risks and assured of their children's safety.

Acquaintance rape is the most preventable crime that occurs on college campuses.²⁷ With a combination of education, awareness, and prevention, colleges can stop acquaintance rape from happening. Unfortunately, many choose not to implement the appropriate measures, often fearing that doing so might garner negative publicity. It is time for these colleges to take whatever reasonable steps they can to uphold the promise of safety they give their students and their students' families. ■

Notes

1. PETER FINN, HIGHER ED. CTR. FOR ALCOHOL AND OTHER DRUG PREVENTION, PREVENTING ALCOHOL-RELATED PROBLEMS ON CAMPUS: ACQUAINTANCE RAPE—A GUIDE FOR PROGRAM COORDINATORS (1995); ELISSA WEITZMAN ET AL., HIGHER ED. CTR. FOR ALCOHOL AND OTHER DRUG PREVENTION, ALCOHOL AND ACQUAINTANCE RAPE: STRATEGIES TO PROTECT YOURSELF AND EACH OTHER (1999).

2. BONNIE FISHER ET AL., NAT'L INST. OF JUSTICE & BUREAU OF JUSTICE STAT., THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN (2000).

3. *Id.*

4. See CURTIS OSTRANDER & JOSEPH SCHWARTZ, CRIME AT COLLEGE: THE STUDENT GUIDE TO PERSONAL SAFETY (1994); MARTIN D. SCHWARTZ & WALTER DEKE-

SEREDY, SEXUAL ASSAULT ON THE COLLEGE CAMPUS: THE ROLE OF MALE PEER SUPPORT (1997).

5. FISHER ET AL., *supra* note 2.

6. *Id.*

7. *Id.*

8. Elizabeth A. Yeater & William O'Donohue, *Sexual Assault Prevention Programs: Current Issues, Future Directions, and the Potential Efficacy of Interventions with Women*, 19 CLINICAL PSYCHOL. REV. 739 (1999).

9. FINN, *supra* note 1.

10. FISHER ET AL., *supra* note 2; see also Melissa J. Himlein, *Risk Factors for Sexual Victimization in Dating: A Longitudinal Study of College Women*, 19 PSYCHOL. WOMEN Q. 31 (1995).

11. 20 U.S.C. §1092(f).

12. P.L. 102-325, §486(c); 20 U.S.C. §1092(f)(8).

13. 34 C.F.R. pt. 86; P.L. 101-226, §22(b).

14. *Schultz v. Gould Acad.*, 332 A.2d 368, 370 (Me. 1975); *Jay v. Walla Walla Coll.*, 335 P.2d 458, 460 (Wash. 1959).

15. *Stanton v. Univ. of Maine Sys.*, 773 A.2d 1045, 1049 (Me. 2001); *Delta Tau Delta, Beta Alpha Chapter v. Johnson*, 712 N.E.2d 968, 972-73 (1999); see also *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300, 312 (Idaho 1999) (university breached its voluntarily assumed duty where intoxicated student was injured after falling from sorority balcony); *Schleszler v. Ferrum Coll.*, 236 F. Supp. 2d 602, 609-11 (W.D. Va. 2002) (college assumed a special relationship with student who committed suicide).

16. 449 N.E.2d 331 (Mass. 1983).

17. *Id.* at 336.

18. *Id.* at 355.

19. 712 N.E.2d 968 (Ind. 1999).

20. *Id.* at 974.

21. *Stanton*, 773 A.2d 1045.

22. *Id.* at 1050 (citing *Mullins*, 449 N.E.2d 331, 337).

23. *Mullins*, 449 N.E.2d 331, 337. In a footnote, the court also noted that the college allowed male guests to stay overnight on weekends; that the presence of men in a woman's dormitory may create risks; and to the extent those risks are foreseeable, the college should take reasonable measures to guard against them.

24. *Id.*

25. www.fipg.org.

26. In a private university setting, where a certified police force with full law enforcement powers is used, the public may be entitled to that force's documents compiled under the state's open records act.

27. FISHER, *supra* note 2.