



Restorative Justice: Isolation to Empowerment in the Campus Rape Adjudication Process

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Abstract

Violence against women is a serious problem on colleges and university campuses in the United States today. This review finds that the current system of adjudication of campus sexual assaults is hostile and irresponsible to the needs of the victims and fails to protect or include the community in redressing the harm. This article highlights the state of sexual assaults on colleges and university campuses today and reviews the campus adjudication system under the standards of Title IX. In light of these findings, this article introduces restorative justice as an alternative form of justice to reform the adjudicatory process in campus sexual assault cases while complying with the mandates of Title IX. Restorative justice refers to a non-traditional approach to crime and justice intended to repair the harm to victims and justice intended to restore safety to victims, relationships and communities (Umbreit & Armour, 2010). To the extent that the present quasi-judicial system of adjudication of campus sexual assaults routinely fails victims and the community, the author argues that restorative justice can be an approach used to respond to sexual assault on campus.

Research Questions

1. Does the quasi-criminal justice, investigative and judicial process effectively respond to sexual misconduct on campus?
2. Can Restorative Justice be used to effectively respond to campus sexual behavior with the goals of supporting the victim, eliminating misconduct, preventing its recurrence, and remedying its effects?



Research Findings

- The disciplinary process at most schools follow the adversarial format modeled after the criminal justice system which tends to protect the accused students at the expense of the victim (Cantalupo, 2011).
- The campus rape adjudication process fails support rape victims and include the community in redressing the harm.
- Restorative justice offers a viable response that meets the justice needs of the victim and complies with the goals and requirements of Title IX.
- Restorative justice offers the social acknowledgement, the validation and redress of harm that victims of sexual assault seek (Koss, 2006).

Main Arguments

INADEQUACIES OF THE CAMPUS GRIEVANCE PROCESS

Rape is often defined as a disempowering act of violence (Du Toit, 2009). Rape survivors will often describe rape as denying them their status of personhood (Henderson, 1988). “The needs of the rape victims are at times diametrically opposed to the judicial process. Victims need social acknowledgment and support while the system requires them to endure a public challenge to their credibility.” Victims need an opportunity to tell their stories in their own way...the hearing requires them to respond to a set of questions that does not reflect a coherent and meaningful narrative (Herman, 2005, p. 574). Rape survivors often need “to have input into how to resolve the violation, receive answers to questions, observe offender remorse and experience a justice process that counteracts isolation in the aftermath of the crime” (Koss, 2006, PP 208-209 Lacey, 2008).

A. The Campus Grievance Process Fails to Serve Victims’ Needs

Research finds that the adversarial process of adjudication for campus sexual assault is grounded in patriarchal ideology and cultural norms that blame women for their victimization (Herman, 2005 Koss, 2006). Rape survivors are often forced to testify about graphic details of the rape while their credibility and the experience of their trauma is being scrutinized and questioned (Ullman, 2010). The adversarial model often leaves the victim feeling as if they are the one on trial (Koss, 2006). The potential for re-traumatization of the victim, starts with the police interrogation requiring victims to discuss graphic and personal details of their trauma experience often with little sensitivity to the emotional state of the victim (Koss, 2006). The re-traumatization continues with the grievance process where the victim is made to relive the rape while the cross-examination of the victim is geared towards the University’s agenda of protecting their reputation or safeguarding their star athlete (Cantalupo, 2011)

B. The Campus Grievance Process Fails To Protect the Community

The grievance process often fails to acknowledge that a crime was committed and the perpetrator faces no meaningful punishment. The perpetrators are left to believe that there was nothing wrong in their behavior leading them to feel empowered and emboldened to continue the same pattern of behavior posing a threat to members of the community. According to a recent investigation into the outcomes of disciplinary proceedings at 26 higher education institutions, the study found that many schools, upon report of a sexual assault, failed to initiate an investigation or dismissed the complaint before reaching the grievance process (Lombardi, 2010). Of the cases that did proceed those found responsible for sexual assault often faced little or no punishment, even when the assailant was adjudicated “responsible”. This rarely led to expulsion even in cases where the assailant was a repeat offender (Lombardi, 2010). When underlying actions and beliefs of the perpetrator goes unchallenged they see no reason for behavior modification nor do they see a need for remorse (Bibas & Bierschbach, 2004). Furthermore, with no consequence to their actions offenders face no deterrence in repeat offending, thus continuing to pose a threat to the community.

C. The Campus Grievance Process Fails to Involve the Community To Address the Harm

One of the significant problems in the grievance process in cases of sexual assault on many university campuses around the country is the secrecy around the complaint and the disciplinary process. This shroud of secrecy fails to recognize and address the way in which the action harmed the community and fails to allow community participation. In failing to allow community participation, the school fails to validate the harm caused to the entire community.

Proposal for Resolution RESTORATIVE JUSTICE

Given the need for reform of the present grievance process in campus sexual assault cases, colleges and universities should look to adopt the RESTORE empowerment model to add restorative justice elements to the current adjudication process. It’s main objective would be to meet victims’ justice needs and foster a credible deterrence of sexual violence on campuses. The program would focus on support for victims, offender accountability and responsibility, community participation and community education. All of which are consistent with the spirit of Title IX. The program would be premised on the victim’s voluntary participation and the offender’s accepting responsibility for the harm. The program would be restricted to first time offenders. The stakeholders would receive the assistance and counseling of trained facilitators. Victims and family members would have access to counseling and the criminal justice system for additional remedies, such as restraining orders if needed. In practice, restorative justice may operate either within or outside the traditional justice system. (Zehr, 2002).

Unlike the present grievance process on college campuses, the restorative justice approach would allow all participants to share their perspectives and through a collaborative process, the parties would discuss and determine how to repair the harm.

Conclusion

Restorative justice offers the elements of retribution, rehabilitation, reintegration, individual and public protection while addressing the survivor’s needs to be heard and meeting their desires for justice (Koss, 2006). Restorative justice can bring the victim from a place of isolation to a place of empowerment.

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