Hazing: It’s Not Fun and Games

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The Legal Risks of Hazing

March 27, 2014: SUNY Oswego student sues state over fraternity hazing.

March 28, 2014: Maryland Senate Votes to Increase penalties for hazing after serious incident at Salisbury U.

January 13, 2014: SUNY-Canton fraternity members criminally charged with hazing during fall pledging: branding pledges with hanger, forcing them to eat excrement, rubbing hot sauce on crotch.

February 14, 2014: Homicide ruled in December 2013 death of Baruch College freshman Michael Deng dies during Pi Delta Psi hazing ritual that involved being tackled and hit repeatedly by fraternity brothers.
The FAMU Band

• The Incident
  ▪ Crossing Bus C
  ▪ Fatal injury to Robert Champion

• Hazing Reports Prior to the Incident
  1998  2010
  2001  2011
  2007
The FAMU Band

• The Aftermath
  ▪ Criminal prosecutions
  ▪ Dismissals
  ▪ Resignations
  ▪ Suspensions
  ▪ Probation
  ▪ Reports
  ▪ Lawsuit
  ▪ March 27, 2014: First band member sentenced. Manslaughter, one year in jail.
Sociology of Hazing

• The Perfect Storm
  ▪ Developmental/Social Conditions
  ▪ Environmental Conditions
  ▪ Tradition
Hazing Hot Spots

<table>
<thead>
<tr>
<th>Club Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Varsity Athletics</td>
<td>74%</td>
</tr>
<tr>
<td>Social Fraternity</td>
<td>73%</td>
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<tr>
<td>Club Sport</td>
<td>64%</td>
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<tr>
<td>Performing Arts</td>
<td>56%</td>
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<tr>
<td>Service...</td>
<td>50%</td>
</tr>
<tr>
<td>Intramural Team</td>
<td>49%</td>
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<tr>
<td>Rec Club</td>
<td>42%</td>
</tr>
<tr>
<td>Other</td>
<td>30%</td>
</tr>
<tr>
<td>Academic Club</td>
<td>28%</td>
</tr>
<tr>
<td>Honor Society</td>
<td>20%</td>
</tr>
</tbody>
</table>
Hazing Behaviors

- Alcohol: 29%
- Sing: 13%
- Ostracize: 9%
- Sleep Deprivation: 15%
- Verbal Abuse: 8%
- Liquids: 8%
- Roast/Skit: 4%
- Exposure: 4%
- Sex Acts: 5%
- Costume: 5%
- Ostracize: 9%
- Sex Acts: 5%
- Verbal Abuse: 8%
- Liquids: 8%
- Roast/Skit: 4%
- Exposure: 4%
- Alcohol: 29%
- Sing: 13%
Source: National Study of Hazing, U of Maine.

Students at Risk

- Male
- Rural Campus
- Swimmers/Divers Life
- Soccer Team
- Lacrosse Team
- East Coast
- South
- Campus with Greek Life
- Residential Campus
The Legal Risks of Hazing

• **Criminal prosecution:**
  
  – Students can be criminally prosecuted in every state except: AK, HI, MT, NM, SD, and WY.
  
  – Organizations also subject to criminal prosecution and fines.
Criminal Risks for Institutional Personnel:


School officials – all paid administrators, faculty, counselors, staff, coaches – engage in criminal misdemeanor if:

- While acting as school official
- Personally observes an “unsanctioned” act that results in bodily harm to any person; and
- Fails to report to supervisor or, in event of “death of great bodily harm”, directly to law enforcement.
The Legal Risks of Hazing

Texas Hazing Law, Ch. 4, Education Code, 4.52

- Defines Hazing:
  - Knowing or “reckless” act
  - On or off campus
  - Endangers mental or physical health
  - For purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in
  - Any organization whose members are students at an educational institution.
  - Consent to hazing is not a defense.
The Legal Risks of Hazing

TX Hazing Law (cont.). Hazing Defined:

- Physical brutality (whipping, beating, striking, placing harmful substance on body)
- Sleep deprivation, exposure to element, confinement in small space, or calisthenics when creates unreasonable risk of harm to student or adversely affects the mental or physical health or safety of student.
- Consumption of food, liquid, alcoholic bev., liquor, drug or other substance when creates unreasonable risk of harm to student or adversely affects the mental or physical health or safety of student.
- Any activity that threatens ostracism + extreme mental stress, shame, humiliation if they don’t do it; or that would cause a reasonable person to leave the organization/institution rather than do it.
The Legal Risks of Hazing

TX Hazing Law: Who Is Responsible?

- Individuals who:
  - Engage in hazing
  - Solicit, encourage, direct, aid with hazing
  - *Intentionally, knowingly, or recklessly permits hazing to occur*
  - Have firsthand knowledge that hazing being planned/has occurred, knowingly fails to report it *in writing* to Dean of Students/other school officials.
The Legal Risks of Hazing

TX Hazing Law: Who Is Responsible?

- Organizations that:
  - Condone or encourage hazing.
  - Commit hazing
**The Legal Risks of Hazing**

**TX Hazing Law: What Are Penalties?**

- **Failing to Report:** misdemeanor, fine up to $1,000, jail up to 180 days.

- **Hazing offense, no serious bodily injury:** misdemeanor, fine between $500-$1,000, jail between 90-180 days.

- **Hazing offense, serious bodily injury:** misdemeanor, fine between $1,000-$5,000, jail between 180 days-1 year.

- **Hazing offense, death:** misdemeanor, fine between $5,000-$10,000, jail between 1 year-2 years.

- **FOR ALL:** Community service may be imposed.

- **Organizational offense:** Misdemeanor, fine between $5,000-$10,000, or, if actual property damages, personal injury, or loss, fine of up to $2x the actual damage or injury amount.
Civil Liability

Civil Suit: Hazed Student v. Institution

1. Landowner Premises Liability
2. Assumption of Duty
3. Negligent Infliction of Emotional Distress
4. Breach of Contract
5. Vicarious Liability
6. Title IX and Gender Discrimination
Civil Liability

1. Landowner Premises Liability

- Most prevalent claim by hazed students
- Theory: The university, as a landowner, has “a duty to take reasonable precautions to protect their invitees from foreseeable criminal attacks, i.e., hazing.”
  - Was the hazing reasonably foreseeable?
Civil Liability

1. Landowner Premises Liability Cont.
   - **Yost v. Wabash College:** (1. rejecting the idea that the college’s general knowledge of prior hazing incidents on campus, including knowledge of “alcohol consumption incidents, and physical labor incidents”, constituted notice to the college, as landlord, that the specific alleged hazing involving the plaintiff, called “showering”, was foreseeable. 2. rejecting the idea that the college’s code of conduct, policies against hazing, and implementation of those policies meant college “assumed duty” to protect Yost. Court: “To the contrary, colleges and universities should be encouraged, not disincentivized, to undertake robust programs to discourage hazing.”)
Civil Liability

1. Landowner Premises Liability Cont.

On the other hand…

• *Knoll v. Board of Regents of the University of Nebraska* (holding that a landlord-invitee theory should have been enough to get a hazing claim to the jury)
Civil Liability

2. Assumption of Duty

• Basis in Restatement Second of Torts § 323

- *Furek v. University of Delaware* (holding that the university’s policy against hazing, like its overall commitment to provide security on its campus, thus constituted an *assumed duty* which became “an indispensable part of the bundle of services which colleges… afford their students”)

  – Also found “a claim for recovery… may be posited upon Furek’s status as an invitee on University property”
Civil Liability

2. **Assumption of Duty Cont.**

   - *Morrison v. Kappa Alpha Psi Fraternity et al.* (finding that “universities which allow and regulate fraternal organizations have a duty toward their students to act within reasonable bounds to protect against illegal and proscribed hazing”)
Civil Liability


but…

• *Yost v. Wabash College* (rejecting the notion that Wabash’s efforts to educate students and fraternities about hazing and enactment of anti-hazing policy meant that Wabash assumed a duty to prevent every hazing incident on campus)

• *Lloyd v. Alpha Phi Alpha Fraternity & Cornell University* (holding that the university did not assume a duty when it’s involvement did not rise to the level of monitoring and encouraging pledge participation)
Civil Liability

3. **Negligent Infliction of Emotional Distress / Breach of Contract**

- Breach of contractual obligation to “keep safe”
- Infliction of emotional distress upon student by failing to ensure a “hazing-free” environment
3. **Negligent Infliction of Emotional Distress / Breach of Contract Cont.**

- *Vega v. Sacred Heart University, Inc.* (dismissing the breach of contract claim, but finding that SHU’s failure to protect Vega from the suspended sorority sisters created a foreseeable risk of emotional distress severe enough to cause, and actually causing the bodily harm that occurred)
Civil Liability

4. Vicarious Liability

• Most typical in the military school context

• *Brueckner v. Norwich University* (holding that the hazing process could reasonably be construed as part of, or incidental to, the “indoctrination” process at Norwich, when upperclassmen had been specifically appointed by the university to “indoctrinate and orient” freshmen)
4. **Vicarious Liability Cont.**

to the contrary…

- *Alton v. Texas A&M University* (rejecting a vicarious liability claim against officials at Texas A&M University for hazing by leaders of the university’s Corps of Cadets)

- The court cited *Monell v. Department of Social Services*, stating that “[supervisory officers… cannot be held liable under § 1983 for the actions of subordinates, like cadets, on any theory of vicarious liability.”
5. Title IX / Gender Discrimination

- Institution’s response to hazing is inadequate and in violation of student’s right to be free from gender discrimination under Title IX
Civil Liability

5. Title IX / Gender Discrimination Cont.

• *Clifford v. Regents of University of California* (finding Clifford could not show that the conduct relied upon for his Title IX claim was “severe or pervasive” nor that UC-Davis acted with indifference)

• The Court also dismissed Clifford’s § 1983 claims against individual employees, finding no due process violations.
Civil Liablility

Civil Suit: Hazed Student vs. Organization

• 3 key elements when plaintiffs win:

  1. The court considers hazing to involve more than mere negligence, but willful and wanton conduct, which negates many defenses, including consent.

  2. Forced drinking has a significant role as the disabling mechanism against the social host non-liability defense.

  3. The appearance of control establishes a vital link between the local misconduct and the national Greek organization.

- from Davies v. Butler
Civil Liability

1. **Death by Consumption of Alcohol**
   - *Davies v. Butler* (finding that “consent cannot be given when the battery is excessively disproportionate to the consent, given or implied”)
   - *Nisbet v. Bucher* (finding the plaintiff’s organization liable for hazing when his “consumption of alcohol was required as a condition to his becoming a member of the St. Pat’s Board and played a key role in the initiation activities”)
     - “This is not a situation where defendants supplied [Plaintiff] with a quantity of alcohol and did nothing else.”
Civil Liability

Civil Suit: Challenges to Anti-Hazing Enforcement

No punishment of punishment goes unpunished!

- When disciplining hazing activity on campus is met with legal action brought by those who have been disciplined
  - Equal protection
  - Free association
  - Free expression
Civil Liability

• *Williams v. Wendler* (holding that the “white fraternities” were not similarly situated when the sorority sisters held positions of authority, and the hazing was qualitatively dissimilar)
  
  ▪ Equal protection and Title VI claims failed
Civil Liability

- *Vega v. the Citadel, et al.* (holding that Plaintiff had a full student conduct trial, there was nothing “arbitrary and capricious” about the process that would give rise to a substantive due process claim, and the process to which Plaintiff was subject was gender-neutral)

  - Substantive & procedural due process and equal protection claims failed
Civil Liability

• *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, et al.* (rejecting the free association claim, and finding that the fraternity members were free to join any other organization on campus)

  ▪ process and expressive association claims failed

  ▪ The court found that the university may have violated students’ free speech, but determined it did not matter, because the sanctions imposed were warranted due to improper conduct on campus.
Civil Liability

• *Psi Upsilon of Philadelphia v. the University of Pennsylvania* (holding that, because Penn was a private institution, it need only provide “fundamentally fair” disciplinary procedures and then follow them)
  - free speech and free assembly claims failed

• *Mu Chapter of Delta Kappa Epsilon v. Colgate University* (holding that at a private institution, the “inquiry is limited to whether [the University] substantially complied with its published guidelines regarding procedures in a disciplinary hearing”)
  - due process claims failed
Civil Suit: Lawsuits from Faculty

- Two non-tenured instructors at Young Harris College in Georgia recently filed a lawsuit claiming that they were improperly terminated for reporting concerns about hazing to administrators.
  - Breach of contract
  - Negligence
  - Title IX
Risk Mitigation Measures, and Challenges

Options:

1. Eliminate or Modify the Greek System
2. Dry Campus?
3. “No Pledge” Policy
4. Insurance
5. Education and Action
1. Eliminate or Modify the Greek System
   - Colby College: decision to eliminate Greek activity in 1984 upheld in the face of legal challenges
   - Colgate University: policy on unrecognized organizations enforced by penalties including suspension or expulsion
     - more difficult for state institutions due to free association challenges
2. Dry Campus?

- Mitigate hazing involving alcohol by barring it completely or restricting on-campus consumption to a central university-controlled bar.
  
  ▪ Less successful than offering alcohol-free options on campus
3. “No Pledge” Policy
   - Some schools eliminate a pledge period altogether.
     - might be driving pledging underground
Risk Mitigation Measures, and Challenges

4. Insurance

– Require fraternities or sororities to procure general commercial liability insurance naming the institution as an additional insured.

  ▪ insist policy has no “hazing” exclusion
  ▪ no policy = not allowed to exist
Risk Mitigation Measures, and Challenges

4. Insurance (cont’d) - Sample hazing endorsement:

It is agreed that Comprehensive General Liability Policy, and other conditions are hereby amended as follows:

Hazing Liability Coverage:
1. The definitions of “Bodily Injury and Occurrence” are extended to include the term hazing, and this policy is understood and agreed to afford coverage therefore understanding and accepting the potentially “Expected or Intended” nature of such occurrences.
2. This insurance does not apply in any jurisdiction in which such insurance is not permitted.
3. The insurance afforded with respect to the term hazing is subject to the following additional exclusion:
   A. Coverage shall not apply to any insured who directly or indirectly, actively or passively, directs or directly causes or perpetrates such injury to any person.

As used in this policy “Hazing” means without limitation:
Any act or situation created by an insured, with or without the consent of another party, including:
punishment, harassment, disturbance, embarrassment, intimidation, ill-treatment, discomfort, personal abuse, persistent torment, criticism, or ridicule, of a physical or mental nature, which is imposed upon any person via the execution upon them, their subjection to, or the extraction from them of any unnecessary, needless, unpleasant, disagreeably difficult, absurd, abusive, offensive, or ridiculous, tricks or tasks, including those of a foolish, deceptive, or fraudulent nature.
5. Education and Action

- Zero tolerance policy
- Education for all students about hazing during National Hazing Prevention Week
- Hotlines established and publicized where students can place anonymous calls
- “Good Samaritan” policy
5. Education and Action (cont’d) - Sample Good Samaritan Policy: (From Rider University’s 2012-2013 Student handbook, The Source)

Members of Rider’s community have an obligation to contact the Department of Public Safety or a Residence Life staff member when they believe an intoxicated person may be in need of assistance. No intoxicated community member seeking and/or receiving assistance for themselves or others will be subject to sanctions by the University under Rider’s Alcohol Policy. Intoxicated individuals seeking and/or receiving assistance will be required to complete educational or counseling initiatives which are intervention and prevention based and will be subject to action under the Code of Conduct for failure to complete those initiatives. This policy does not preclude other appropriate authorities from taking action for violations which may be associated with the illegal possession or consumption of alcoholic beverages, or the University from taking action for violations associated with vandalism, theft, physical assault, sexual assault, hazing or other policy violations. Furthermore, community members who demonstrate a consistent and repeated pattern of behavior, after appropriate intervention and education have been provided, will not be considered under this policy. Repeated incidents will require alcohol consultation and may necessitate the imposition of involuntary medical withdrawal from the University.
Hazing: A New Approach
University of Pennsylvania

National hazing statistics

- 55% of college students involved in clubs, teams and organizations experience hazing.
- 95% of cases did not report their hazing experiences to campus officials.
- 36% of students wouldn’t report hazing primarily because “there’s no one to tell,” and 27% feel that adults won’t handle it right.

SOURCE: HazingPrevention.org
At the University of Pennsylvania, proactive steps are being taken to combat hazing on campus with a different approach, one that does not focus solely on Greek Life.

An Anti-Hazing Working Group has been formed with the goal of creating a set of recommendations for the University on how to combat hazing at Penn. The “hope is that some of these recommendations may be implemented by the fall but there is no target date yet for issuance of a final set of recommendations”.

Working Group is chaired by the Executive Director of the Office of Student Affairs. The group consists of four administrators, student representatives from Greek life, performing arts groups, Undergraduate Assembly, and student athletes.

**ENGAGE STUDENTS IN A CONVERSATION ABOUT HAZING CULTURE ON PENN’S CAMPUS**
Hazing: A New Approach
University of Pennsylvania

HIGHLIGHTS

• A wide spectrum of hazing activities occur among all student organizations, regardless of organization type
• Majority of students still identify hazing with very extreme physical activities
• Students cite the lack of “amnesty policy” as a reason for not reporting hazing activities to University staff
• Individual students are more comfortable standing up to hazing internally with their groups, specifically when it affects their individual experience
  ▪ The culture at Penn, however, is not to stand up to hazing
• Students feel that a challenge to stopping hazing is the broad definition of hazing. They are “daunted” with coming up with alternatives
• Students need help in coming up with alternatives, they can’t do it alone
• Hazing as Bullying, this association resonates with students
• Competition with unofficial or underground organizations who openly haze
• University must challenge our students to find other values to sell to their membership, both existing and future