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# BEYOND THE FRATERNITY HOUSE — ATHLETIC TEAM HAZING EXPOSED

Within the past year, the popular press has paid a great deal of attention to hazing occurring in the context of athletics. In August 1999, Alfred University released a comprehensive, empirical study on "initiation rights and athletics." The Alfred study defined hazing as:

> "any activity expected of someone joining a group that humiliates, degrades, abuses or endangers, regardless of the person's willingness to participate. This does not include activities such as rookies carrying the balls, team parties with community games, or going out with your teammates, unless an atmosphere of humiliation, degradation, abuse or danger arises."

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Under this definition, the Alfred study found that 80 percent of the 2,027 anonymous, NCAA student-athlete respondents "reported being subjected to one or more typical hazing behaviors as part of their team initiations."

During the 1999 fall semester at the University of Vermont, the findings of the Alfred University study hit home. A member of the UVM hockey team reported that for several weeks during September, upperclass hockey players taunted freshman players about an upcoming "Big Night." For example, they were warned that they would be required to have sex with sheep at the party. During the weeks leading up to the party, upperclassmen made sheep sounds to them in the locker room. The freshmen were directed to wear togas and thong bikini underwear to the party, and to paint their nails and shave their pubic hair. Prior to the "Big Night," university officials were informed about the event. Despite specific warnings from athletic department officials, the hockey team went forward with the party.

The party was held on October 2, 1999 at a house rented by one of the team's captains and other members of the hockey team. At the party, the freshmen were required to engage in a variety of sexually suggestive activities, forced consumption of alcohol and were required to eat a seafood quiche with ketchup and barbecue sauce on it, resulting in several players vomiting in a communal bucket. According to reports, the sophomores played the most active part in directing the evening's activities.

Several weeks after the party, an attorney representing the player who originally informed the University about the planned event delivered a letter describing the events of the October 2nd party to the president of UVM. The letter indicated that the player had sustained emotional and financial damages and indicated the desire to meet to discuss a financial settlement of his claims. The University then decided to conduct its own independent investigation into the player's allegations, established a university committee to oversee the investigation and retained outside attorneys to conduct the investigation. The attorneys were to interview the hockey team members and certain athletic department officials.

Prior to the interviews, each member of the hockey team received a memo indicating a time and place for the interview and informing the players of their obligation to "provide truthful and accurate information" to the investigators and that the failure to be truthful would result in their removal from the team. The players were also advised that they should not discuss the matter with their teammates either before or after the interviews.

The interviewers were informed that the party had in fact taken place and that much of what was alleged by the freshman player had occurred at the party. The UVM committee investigating the hazing determined that hazing


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had taken place in conjunction with the October 2nd party and decided on a rotating one-game suspension for each of the team members. On December 3, 1999, the University publicly announced the suspension. The hockey coach was interviewed by the local press about the University's findings and said in one interview:

> "Oh, I don't think it is serious at all. The boys were guilty of a couple of things that most of the athletes on all college campuses are and we're addressing that right now. So, we've found some violations of my team rules and that's what we're taking care of presently."

Initially, the coach denied that hazing took place but subsequently acknowledged that hazing had in fact taken place.

On December 10, 1999, a lawsuit was filed on behalf of the freshman player against UVM, the hockey coach, the university president and the hockey team captains. On December 11, 1999, the Vermont Attorney General was requested to look into allegations of hazing incidents involving members of the UVM hockey team and the University's response to the allegations. Prior to the conclusion of the Attorney General's investigation, UVM canceled the last 15 games of the hockey season after it was determined that the entire team had lied to University investigators about the October party. On February 3, 2000, the Vermont Attorney General issued a report following his investigation finding that hazing had indeed taken place and criticizing the University's response to the initial allegations and its subsequent investigation. The Attorney General concluded that while University officials did not cover-up the investigation, they did not pursue the investigation as thoroughly as they should have. In fact, the investigation found one other hazing incident in September 1999 and that similar hazing incidents occurred at least as far back as 1996. The attorney general's office decided to prosecute several individual hockey team members for their role in furnishing alcohol to minors. In addition, the Attorney General recommended that the state legislature "consider enacting anti-hazing legislation providing for a range of punitive sanctions, civil to criminal, depending on the severity, risk and outcome of the hazing activities."

On February 25, 2000, a committee appointed by the UVM president released its report on the prevention of hazing in intercollegiate sports at the University of Vermont. The committee, representing a cross-section of the university community, issued a comprehensive report on its findings and made recommendations for the University to consider in dealing with hazing. In its report, the president's committee made a variety of conclusions that have been apparent to the fraternity world for some time, such as the fact that "[h]azing, in its many and varied forms, permeates diverse settings throughout our society (e.g., social clubs, athletics, the military, places of employment, etc.); it is deeply embedded in and reflective of pervasive cultural norms, making it difficult to eradicate" and that "[h]azing activity ranges from potentially harmless and humorous to highly humiliating, criminal, dangerous and even fatal."

While emphasizing that UVM is first and foremost an educational institution, the president's committee found that the university's current definition "appears to students (and many faculty and staff) as so 'all-inclusive' that they (particularly students) find it both confusing and difficult to take seriously" and that "most athletes with whom we spoke do not feel that many of the behaviors that are defined as 'hazing' according to UVM policy are actually 'off-limits'." As a result, the president's commission recommended that a consistent definition of hazing be adopted for the entire campus community, that the University describe hazing in a way that more clearly differentiates why particular behaviors and situations are of concern and that sanctions for hazing violations vary based on the severity of the hazing activity. Among its 53 specific recommendations, the committee urged the University to improve the way it communicates UVM's hazing policy to all segments of the community, including at first-year student orientations and during the athletic recruiting process. A number of the recommendations also focused on improving the University's ability to respond to allegations and incidents of hazing.

If the public reaction and the media coverage of the UVM Hockey Team hazing and other recent athletic team hazing incidents are any indication, the issue of hazing in general will be brought more into public focus. While universities have had to deal with hazing by fraternities, bands and social clubs on campus for years, unless a death or serious physical injury was involved, the level of public attention was relatively small and short-lived. The efforts expected to be made by colleges and universities to prevent athletic team hazing may help fraternities get the message across to those students who have refused to follow the fraternities' policies against hazing. With colleges and universities fearful of losing all or part of an intercollegiate athletic team's season as a consequence of hazing incidents, there is likely to be an increased emphasis on campus about the negative consequences of hazing and funding for education about ways to bring new members onto teams or into groups without hazing. This will hopefully bring a greater awareness to all college students. Unless individual students realize that there are potential serious, personal consequences associated with hazing others, they will likely continue to haze. Education is the best way to show these students that hazing is wrong.

• Gary E. Powell

# DEBATE: ALCOHOL-FREE? OR NOT?

"There is no more difficult problem in colleges today than how to reduce the risks of dangerous college-age drinking."[1]

Eleven men's fraternities have resolved to convert their houses into alcohol-free residences for their members. They are not prohibiting alcohol at fraternity functions that are held away from their houses, but they are stopping the service of alcohol in their houses. As Robert Miller, Executive Vice President of Phi Kappa Sigma puts it, "We are not prohibiting alcohol. We just do not want fraternity houses to serve the function of neighborhood saloons." In most fraternities that are adopting an alcohol-free housing policy, the practice is to prohibit alcohol from being served or consumed in the fraternity house. This has long been the practice of Farmhouse Fraternity and of women's fraternities.

Different groups are evolving in different ways. Many provide incentives to the chapters to move ahead of schedule. For example, Phi Delta Theta already has ninety-eight (98) chapters with houses which are alcohol-free. Phi Delta Theta has one hundred and forty (140) chapters with houses and thirty (30) chapters without houses. Experience in the alcohol-free houses has been that recruitment has risen, fellowship has risen, grades have risen, house conditions have improved and alumni support has increased. Concurrently, insurance rates have gone down. The decline in insurance rates is not exclusively the result of the discontinuance of alcohol, but the product of a wide variety of risk management efforts.

Theta Chi has been moving to encourage voluntary conversion of houses into alcohol-free residences. Of its 140 chapters, 9 are already alcohol-free. At the Theta Chi convention in the summer of 2000, the initiative to promote voluntary adoption of alcohol-free housing will be launched. According to David Westol, Executive Director of Theta Chi, "chapters are encouraged to have alcohol-free houses by incentives and persuasion." The incentives include scholarship funds from the Theta Chi Foundation and reduced insurance costs. All Theta Chi houses must be alcohol-free by July 1, 2003.

In 1997, and again in 1998, the National Panhellenic Conference passed a resolution supporting fraternities in their efforts to convert their houses to alcohol-free facilities. The National Panhellenic Conference resolved to encourage their chapter members to support the alcohol-free movement among the men's groups. The table which accompanies this article shows sixteen (16) men's fraternities have required new chapters that have houses to keep their houses alcohol-free, and thirty-two (32) men's fraternities impose alcohol-free housing as a sanction for misbehavior by a chapter.

The benefits of the alcohol-free housing initiative are even supported by law enforcement authorities. In the state of Virginia, there were five (5) deaths in 1997 involving college students and excessive alcohol consumption. The attor-

## 1998-1999 Fraternity Executive Association Survey

| Alcohol-Free Housing Program in Place: All Chapters | Alcohol-Free Expansion Policies: | Alcohol-Free Housing As A Form of Chapter Discipline: | |
|---|---|---|---|
| | Alpha Sigma Phi | Acacia | Phi Kappa Psi |
| Alpha Kappa Lambda | Alpha Tau Omega | Alpha Epsilon Pi | Phi Kappa Sigma |
| Delta Sigma Phi | Beta Theta Pi | Alpha Gamma Rho | Phi Kappa Tau |
| Delta Upsilon | Sigma Alpha Epsilon | Alpha Kappa Lambda | Phi Sigma Kappa |
| Farmhouse | Sigma Alpha Mu | Beta Sigma Psi | Pi Kappa Alpha |
| Kappa Delta Phi | Alpha Kappa Lambda | Beta Theta Pi | Pi Lambda Phi |
| Phi Delta Theta | Delta Sigma Phi | Delta Chi | Psi Upsilon |
| Phi Gamma Delta | Delta Upsilon | Delta Tau Delta | Sigma Alpha Epsilon |
| Phi Kappa Sigma | Farmhouse | Delta Upsilon | Sigma Alpha Mu |
| Sigma Nu | Kappa Delta Phi | Farmhouse | Sigma Chi |
| Theta Chi | Phi Delta Theta | Kappa Delta Phi | Sigma Nu |
| Phi Kappa Theta | Phi Gamma Delta | Kappa Delta Rho | Sigma Pi |
| | Phi Kappa Sigma | Kappa Sigma | Sigma Tau Gamma |
| | Sigma Nu | Lambda Chi Alpha | Theta Chi |
| | Sigma Pi | Phi Delta Theta | Theta Xi |
| | Theta Chi | Phi Gamma Delta | Zeta Psi |

ney general appointed a special task force on drinking by college students. The task force involved representatives of all the state universities. The report urged that the "college leadership rebuild their college cultures from one that tolerates illegal and binge drinking to one that promotes personal responsibility, scholarship and citizenship." It also called for college administrators and law enforcement agencies to collaborate to enforce Virginia's alcohol laws. The attorney general's report also called for education on the health hazards of binge drinking and drug use, state alcohol and drug policies and penalties, and college and university alcohol and drug policies and penalties. The report included sixty-five specific recommendations. With regard to fraternities, it stated universities should, "Request that local fraternities comply with the National Inter-Fraternity Conference's recommendation that 'strongly encourages its fraternities to pursue alcohol-free chapter facilities, especially at campuses where the host institutions commit themselves to support such an initiative, or other programs designed to address the misuse of alcohol'."

Robert Metcalfe, an Assistant Attorney General for Virginia, said the effort has met with some success. Cooperation between law enforcement and college administrators has been "driving down the numbers." Attorney General Mark Enely visits four or five large state university campuses during freshman orientation each year. He sometimes takes with him the parent of a student who died from alcohol. Metcalfe reports that anecdotal evidence is that there are fewer intoxicated students showing up in medical emergency rooms around universities in Virginia now than before the anti-binge drinking campaign started in 1997. There were five (5) alcohol-related college student deaths in 1997. There have been none, to Mr. Metcalfe's knowledge, since the Attorney General's Task Force Report was released.

Not everyone welcomes the alcohol-free housing initiative. Some college administrators are skeptical, however. The concern is that if college students do not drink in fraternity houses, they may drink in areas where they will be required to drive. Leroy C. Atkins, II, Associate Dean of Students at Washington & Lee University wrote to a national fraternity president in 1998

> "Unfortunately, decisions by several national fraternities with chapters on our campus to require alcohol-free houses in the near future create some problems for us.
>
> "First, this decision, made without our input, denies this University a voice in deciding what is best for our students on our campus. It ignores the fact that well before the national fraternities took this problem seriously enough to do something so drastic, the University had spent over $13 Million to renovate our fraternity houses with two major goals in mind. One was to provide a stately, elegant environment in which the true values of fraternity life could be rediscovered, nurtured and perpetuated, a setting where alcohol abuse and irresponsible behavior would be inappropriate and eventually scorned. The other goal was to include in each fraternity chapter house a part of the facility attractive enough to become the primary location for chapter social events. The success of these facilities allowed the University to more directly oversee the safety of our students in an environment where they could be encouraged, if they chose to use alcohol, to do so responsibly and legally.
>
> "Second, the university does not view prohibition as a successful means of dealing with the alcohol problem ***
>
> "Third, we believe that both the college and the fraternities are more effective when we mutually establish expectations which encourage our students to rise to the occasion and respond like adults to their own instincts, instincts consistent with the values and culture of the collegiate and fraternal institutions. We fear that moving social life where alcohol is involved totally out of the chapter houses will lead to the notion that irresponsible use and behavior become someone else's agenda and responsibility.***"

Washington & Lee spent $13 Million Dollars to acquire and refurbish the fraternity houses. The basements of the houses were converted into party areas, many with exterior entrances that bypassed the rest of the house.

The University prohibits the use of chapter funds or funds collected among chapter members to purchase bulk alcohol. The University enforces a "Bring Your Own Bottle Policy" and emphasizes that if an individual student is above the age of 21 and chooses to give an underage student alcohol, he does so at his own risk. At Washington & Lee, like most campuses, at least eighty percent (80%) of the students are under the age of 21. There is a great emphasis on individual responsibility.

Recently, President John Elrod of Washington & Lee stated: "Washington & Lee is committed to addressing alcohol abuse at its campus and has developed a detailed program to do so. We have confidence in this three-pronged initiative, including education, counseling and discipline and believe in the long run, it will be more effective than the alcohol-free policies adopted by some national fraternities."

The four fraternities on the Washington & Lee campus

that have adopted the alcohol-free initiative are Phi Delta Theta, Phi Gamma Delta, Phi Kappa Sigma and Sigma Nu.

David Howison, Dean of Students at Washington & Lee for ten years, favors alcohol-free housing if it is done by incentives to encourage the chapter to embrace an alcohol-free policy rather than by a national convention mandate.

According to Dean Howison, Washington & Lee's BYOB policy adopted three years ago has encouraged personal responsibility and the increase in reliance on personal responsibility has reduced alcohol abuse on the Washington & Lee campus.

"One of the things we have achieved is a greater awareness of a student's duty to help his peers in trouble," according to Dean Howison.

The program at Washington & Lee has tried to change the culture of Washington & Lee away from one that tolerates binge drinking to one that supports responsible behavior. Dean Howison says that Washington & Lee is working to balance its policies with the law and the reality that at least fifty percent (50%) of the freshmen who enter college have consumed alcohol before they reached the campus.

• Robert E. Manley

[1] Robert D. Bickel and Peter F. Lake: The Rights and Responsibilities of the Modern University (1999, p. 203).

# OHIO COURT DECLARES HAZING STATUTE VAGUE

In a newly reported decision, an Ohio trial court struck down a portion of Ohio's Anti-Hazing statute for vagueness, but allowed a hazing victim's claim to proceed. Charles Carpetta was a student at the University of Toledo who pledged the Pi Kappa Alpha Chapter there. While pledging, Carpetta went through a series of acts he alleged were humiliating and mentally damaging. While there appeared to have been no long-term physical harm, the ridicule, offensive language, abusive scavenger hunt and continued cajoling and threats were alleged to have caused Carpetta to drop out of school.[1]

The lawsuit brought against the fraternity and the other defendants was based solely on Ohio's hazing statute. In response to the lawsuit filed against the national fraternity, the chapter and some of the individual members, the national and the chapter filed motions to dismiss[2] alleging that the hazing law was unconstitutional. It states, in part:

> "As used in this section, 'hazing' means doing any act, or coercing another, including the victim, to do any act, of initiation to any student or other organization that causes, or creates a substantial risk of causing, mental or physical harm to any person."[3]

Considering the motions to dismiss, the Court first overruled defendant's claim that the statute created an overbroad restriction on the First Amendment Freedom of Speech rights. The Court adopted the reasoning employed by two other states in finding that the Ohio Hazing Statute sought "to protect the health and safety of the public by proscribing conduct rather than First Amendment expression."[4]

A statute which prohibits both protected First Amendment speech as well as unprotected conduct may be found to be overbroad. That is, it regulates too much. Here, there was no freedom of speech right to haze and cause harm.

What the Court did ultimately find was that the prohibition of the statute against the causing of "mental harm" was unclear and vague. While finding that physical harm was a well-defined term in American jurisprudence, the Court clearly had difficulty with what was intended in the statute by the causing of "mental harm." It specifically found that "the phrase 'mental harm' is too unclear and imprecise to afford either notice to persons of what is prohibited, or clear and exact enforcement standards to law enforcement officers." As a result, the Court found that the unconstitutionally vague phrase "mental harm" prevented Carpetta from recovering for mental harm inflicted upon him in violation of the statute. However, the Court also found that Carpetta could proceed to recover those damages which he could prove arose from the physical harm sustained in violation of the statute and for the mental and physical pain and suffering resulting from such acts. While the Court did not specifically say it, the decision suggests that there is no direct recovery under the statute for mental harm, but where prohibited acts resulted in physical harm, the damages that a plaintiff could recover included both damages for physical and mental harm.

Following this decision, the case was settled without appeal.

• Timothy M. Burke

[1] Carpetta v. The Pi Kappa Alpha Fraternity (1998), 100 Ohio Misc.2d 42 [1st published Ohio State Bar Association Report, November 22, 1999, Volume 72, No. 47].

[2] A motion to dismiss may be filed by defendants even before they are required to file an answer to a complaint. Essentially, it alleges that even if everything stated in the complaint against it is true, as a matter of law, no liability against the defendants can be found on the basis of the claimed facts.

[3] O.R.C. 2903.31.

[4] State v. Allen (Mo. 1995), 905 S.W. 2d 874, 877-878; and People v. Anderson (1992), 148 Ill.2d 15, 31, 591 N.E.2d 461, 469.

# DID M.A.D.D.'S LOBBYING ENCOURAGE BINGE DRINKING?

According to a survey by the Harvard School of Public Health, 50% of male and 39% of female students surveyed reported that they had engaged in binge drinking within the preceding two weeks. About 30% reported engaging in unplanned sexual activity as a consequence of their drinking.

The survey prompted the writer, Jack Hitt, to publish an essay in The New York Times magazine of 24 October 1999 entitled "The Battle of the Binge."

His argument is that binge drinking increased after the Mothers Against Drunk Driving lobbied through Congress a law to require that all states raise the drinking age to 21. He likens it to a restoration of prohibition for undergraduates.

Some of us are old enough to remember multi-generational parties when we could observe people who reached maturity in the 1920s. Typically, they either did not drink or those who drank seemed to have more difficulty holding their liquor than either younger or older generations. For some reason, having reached maturity in the period of prohibition developed lifelong habits of alcohol misuse in a large percentage of the population that went through young adulthood during prohibition.

Mr. Hitt asserts that the current nationwide laws on the age of alcohol consumption revive prohibition for undergraduates. He suggests that the legal prohibition on alcohol for people under 21 is preventing them from learning how to drink responsibly and fostering the practice of binge drinking.

Citing Ohio University's policy, he notes that 7% of the 16,000 student body was disciplined for alcohol abuse last year. He also reports that notwithstanding the University's aggressive anti-alcohol position, binge drinking is at 60% on the Ohio University campus.

Mr. Hitt makes good points, but the proper audience is Congress and the state legislatures. People who are responsible for the management of fraternities and the management of university student personnel policies have no choice but to obey the law. The fact that the law makes it difficult for university role models to teach undergraduates how to handle alcohol in a responsible manner is beyond the control of the managers of fraternities or the administrators of universities.

• Robert E. Manley

## BEWARE OF E-MAIL

E-mail is convenient. It is fast. It is efficient. It is also dangerous.

Because of the ease of sending e-mail, people frequently write and dispatch messages without much thought. The university official, fraternity officer, or field representative of the fraternity should consider whether to make detailed reports on recent incidents by e-mail. E-mail messages are likely to be written in haste. When one writes in haste, one often says careless things.

A year or two later when that e-mail author is deposed in a lawsuit, the e-mail messages will be analyzed in a microscopic manner. A hasty statement, an unfounded conclusion, or a rash judgment will be blown way out of proportion and perhaps damage innocent people or organizations.

Anytime anyone is dealing with a crisis or risk prevention, it is probably wise to avoid hasty e-mails.

## STUDENT FEES UPHELD

On March 22, 2000, the United States Supreme Court ruled unanimously that the University of Wisconsin does not violate the First Amendment rights of students when it uses their mandatory-fee payments to finance campus groups that they oppose. The Supreme Court ruling overturned a 1998 decision which struck down the University's fee policy as unconstitutional. While the Supreme Court generally upheld the University's right to collect student fees to support student groups, the case was returned to a lower court to review more fully one of the methods used by the Wisconsin student government to decide which groups are to receive funds. The case is captioned *Board of Regents of the Univ. of Wisconcin Sys. v. Southworth* , 2000 U.S. LEXIS 2196.

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The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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