



FRATERNAL LAW™

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Fraternity House Corporation Seeks Writ of Certiorari From the Supreme Court of the United States in Bloomington Zoning Case

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In the March 2021 Edition of *Fraternal Law*, we reported on the disappointing decision from the Indiana Supreme Court in *City of Bloomington Board of Zoning Appeals v UJ-Eighty Corp.*¹ In that decision, the Indiana Supreme Court reversed a decision where the court of appeals previously held that the definition of fraternity house in Bloomington's zoning ordinance was unconstitutional.

Since the Indiana Supreme Court's decision held that the Bloomington zoning ordinance did not violate the federal constitution, UJ-Eighty Corp., the fraternity house corporation that has litigated this matter for several years, had the option to petition the Supreme Court of The United States to hear this case. On July 23, 2021, UJ-Eighty Corp. officially petitioned the Supreme Court of the United States to grant a writ of certiorari and to take up the case. UJ-Eighty's petition was authored by attorneys at Arnold & Porter Kaye Scholer LLP and Manley Burke, LPA. A copy of the full petition can be found here:

¹ Timothy M. Burke, *Indiana Supreme Court Decides Bloomington Case*, 169 *Fraternal L.* 1 (Mar. 2021).

https://www.supremecourt.gov/DocketPDF/21/21-113/184824/20210723153238596_UJ-Eighty%20--%20Petition.pdf

The petition presents the question of whether or not the due process clause of the United States Constitution prohibits the government (like Bloomington) from vesting an economically self-interested entity (like Indiana University) with regulatory power over its rivals (like fraternity house corporations who compete with the University for the same potential tenants). The petition advances four primary reasons for why the Supreme Court should hear the case. They include: 1) The decision below deepens a division among state appellate courts and federal courts of appeals, 2) the decision below is wrong, 3) the question presented is exceptionally important and warrants review in this case, and 4) this case is the right vehicle to resolve the question presented.

Two amicus briefs were also filed, encouraging the Court to hear the case. The first was submitted on behalf of the North American Interfraternity Conference (NIC) and the National Panhellenic Conference (NPC) and was authored by Alexander Volokh of Emory Law School. The second was submitted on behalf of the Fraternity Forward Coalition (FFC) and the Fraternal Housing Association (FHA) and was authored by the McCarthy Law Office. Both amicus briefs discuss the national significance of this legal issue and how it impacts fraternities, sororities, and house corporations. Copies of the amicus briefs can be found here:

https://www.supremecourt.gov/DocketPDF/21/21-113/188650/20210826153512943_uj80-brief-3.wpd%208.26.21.pdf and here: https://www.supremecourt.gov/DocketPDF/21/21-113/188637/20210902132837628_20210902-132648-95754582-00000419.pdf

The Supreme Court grants writs of certiorari in less than five percent of the petitions that it receives, so any petitioner faces long odds. The petition (and amicus briefs) were distributed to

the Justices who are currently scheduled to conference on the petition on September 27, 2021.

Fraternal Law will certainly report further on this matter after the Supreme Court decides whether or not to hear the case.

Will Universities Increasingly View Chapter House Corporations as Competitors ?

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The Chronicle of Higher Education's Daily Briefing of August 3 linked to a story on TRIB live "Empty dorm rooms pose financial problems for Pennsylvania public universities". That article reported that many of the Pennsylvania state systems' universities were "struggling to deal with another consequence of declining enrollments: entire wings and floors of dorms sitting empty".

With declines in enrollment, not just related to COVID 19, those schools are not the only ones facing that problem. There was a time when colleges and universities provided sweetheart deals to fraternities and sororities incentivizing them to build chapter houses on their campuses to relieve the schools from that burden. That is certainly no longer the case. Today, universities are more likely to view chapter houses as competitors, just as the University of Southern California did when it planned the construction of new student housing at the same time deferred recruitment was imposed.

As a result, we are more likely to see efforts to gain on those competitors by delaying recruitment, encouraging the use of zoning to attempt to close chapter houses, or using the disciplinary process to do so.

Beware.

Collin's Law: What it Means For Fraternal Organizations In Ohio

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On July 6, 2021, Ohio Governor Mike DeWine signed into law, “Collin’s Law: The Ohio Anti-Hazing Act” (“Collin’s Law”). While Ohio already had in place an anti-hazing statute (Ohio Rev. Code § 2903.31), Collin’s Law significantly alters that existing statute, most notably by expanding the scope of the anti-hazing regulations in both application and definition. Moreover, Collin’s Law introduces new hazing-related provisions that previously did not exist. These new provisions impose reporting requirements (for known hazing activities) and also require certain institutions to ensure anti-hazing policies exist and that detailed hazing-related records are maintained. What follows is a brief summary of the various changes to the Ohio hazing law(s) that are most relevant to fraternal organizations.

As indicated in the Table below, there are important changes related to: (1) how hazing is defined, (2) to whom the hazing prohibitions apply, (3) the potential sanctions that could be imposed for violating the anti-hazing law, and (4) whether anyone has an affirmative duty to report known instances of hazing.¹

The prior anti-hazing statute limited the definition of “hazing” to just acts or coercive behavior that caused or created a substantial risk of causing mental/physical harm when required/engaged in as part of the *initiation* process to become a member of an organization. Collin’s Law retains this same prohibition against hazing as part of the initiation process, but also

¹ There are also new requirements that: (1) the chancellor of higher education develop a statewide educational plan for preventing hazing at colleges/universities (e.g. create a model anti-hazing policy); and (2) each higher education institution create an anti-hazing policy that may apply to both on- and off-campus hazing, and also maintain a report of all violations of that policy. *See* R.C. §§ 3333.0417, 3345.19.

extends the prohibition to the same types of acts/behaviors required for someone to *maintain or reinstate* his membership in an organization. In other words, Collin's Law expands the definition of hazing to include both pre- and post-initiation actions. Additionally, the Code now explicitly states that "coercing another to consume alcohol or a drug of abuse" constitutes hazing.

Both the prior and new versions of this provision indicate that no one is permitted to recklessly² participate in the hazing of another person, and that school administrators, employees, and faculty members are further prohibited from recklessly permitting the hazing of another person. However, Collin's Law expands the scope of the prohibition of "recklessly permitting hazing to occur" to include more categories of people/organizations to which it applies. Specifically, under the new version, in addition to the types of people already listed, teachers, consultants, alumnus, and other volunteers of an organization may not recklessly permit the hazing of anyone who is associated with that organization. "Organization" is defined to specifically include a "national or international organization with which a fraternity or sorority is affiliated." Stated differently, a fraternity or sorority, along with any volunteers, employees, or alums associated with that fraternal entity, may not recklessly allow any hazing to occur.

If a person or organization is found responsible for either participating in or permitting hazing to occur, the maximum sanctions that can be imposed now vary depending on whether the hazing involved any alcohol or abusive drugs, ranging from a second-degree misdemeanor to a third-degree felony. Previously, there was no distinction between hazing involving drugs/alcohol and other types of hazing for sanctioning purposes, and the maximum sanction for hazing was only a fourth-degree misdemeanor.

² Under Ohio law, "a person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature." R.C. § 2901.22(C).

Perhaps the most significant change in Ohio's anti-hazing law that fraternal organizations need to be aware of is the implementation of a new reporting requirement for any known hazing activities. While there was no requirement, let alone potential sanction, for someone knowing about hazing but not alerting the authorities in the past, Collin's Law changes that. Indeed, any administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization, including both educational institutions and fraternal organizations, who, while acting in her official and professional capacity, recklessly fails to report her knowledge³ of hazing to a law enforcement agency, violates the new law.

If no serious physical injuries result from the unreported hazing, then a violation of this new reporting obligation is deemed a fourth-degree misdemeanor. However, if the hazing does result in some serious physical injury, the failure to report knowledge of that hazing constitutes a first-degree misdemeanor.

To summarize, Collin's Law expands both the definition and scope of the prohibition against engaging in or permitting the hazing of another person. Additionally, Collin's Law creates a new reporting requirement for instances of known hazing. For fraternal organizations, this means that the organizations and their agents, employees, alums, and volunteers cannot engage in or permit hazing for either initiation or membership renewal/reinstatement purposes, and must immediately report to law enforcement any known instances of hazing.

This begs the question of how a national organization that receives a "tip" about potential hazing is supposed to respond. Should every tip be immediately reported to the police? Given the definition of "knowledge," reporting is only required when the hazing circumstances described

³ Pursuant to R.C. Section 2901.22(B), "a person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact."

“probably exist.” In other words, unless there is some reason to believe that a report of hazing has some legitimacy to it, there is likely no duty to notify the police of every single allegation of hazing a national organization hears about. However, there does appear to be an affirmative duty for anyone (who falls into one of the reporting categories described above) who hears about potential hazing to take the report seriously and do some investigation to determine whether it is a credible report. Finally, as with most things in life, when in doubt, it is best to error on the side of caution.

-	<u>Definition of Hazing</u>	<u>Prohibited Actions (Hazing)</u>	<u>Potential Sanctions (Hazing)</u>	<u>Prohibited Actions (Reporting)</u>	<u>Potential Sanctions (Reporting)</u>
Old Law	Any act or coercing another, including the victim, to do any <i>act of initiation into</i> any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person	1) Recklessly <i>participating in the</i> hazing of another person Applies to: Everyone AND 2) Recklessly <i>permitting the</i> hazing of any person Applies to: An administrator, employee, or faculty member	Fourth Degree Misdemeanor Max Fine: \$250 Max Jail Time: 30 Days	None	None
New Law	Any act or coercing another, including the victim, to do any <i>act of initiation into</i> any student or other organization OR ANY ACT TO CONTINUE OR REINSTATE MEMBERSHIP IN OR AFFILIATION WITH ANY STUDENT OR OTHER ORGANIZATION that causes or creates a substantial risk of causing mental or physical harm to any person, INCLUDING COERCING ANOTHER TO CONSUME ALCOHOL OR A DRUG OF ABUSE	1) Recklessly <i>participating in the</i> hazing of another person Applies to: Everyone AND 2) Recklessly <i>permitting the</i> hazing of any person Applies to: An administrator, employee, or faculty member, TEACHER, CONSULTANT, ALUMNUS, OR OTHER VOLUNTEER OF ANY ORGANIZATION	<u>If NO alcohol/drugs involved:</u> Second Degree Misdemeanor Max Fine: \$750 Max Jail Time: 90 Days <u>If alcohol/drugs involved:</u> Third Degree Felony Max Fine: \$10,000 Max Jail Time: 3 Years	1) Recklessly failing to immediately report to a law enforcement agency any known hazing Applies to: An administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer of any organization who is acting in an official and professional capacity	<u>If NO serious physical injury involved:</u> Fourth Degree Misdemeanor Max Fine: \$250 Max Jail Time: 30 Days <u>If serious physical injury involved:</u> First Degree Misdemeanor Max Fine: \$1,000 Max Jail Time: 180 Days

**Biden Administration Issues Q and A and Responds to Court Decision
on Title IX Regulations that May Predict New Regulations**

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Clearly, addressing the issue of sexual assault on campus remains a priority of the Biden administration.

CNN reported that on Thursday, July 28, President Biden spoke to a “Summit” sponsored by Its On Us, an organization that the Obama/Biden administration helped launch when he was Vice-President. CNN quoted the President as saying “I know how excited college students are to return to campus, getting back to spending time with friends and participating in activities, especially after the challenges of the past year. But as you do, please remember, you have a responsibility to be sure that everyone has a safe return to campus. Safe, not just from the virus, which you can protect yourself from by getting vaccinated – hope you all have – but safe from the threat of abuse and assault as well.”

The Biden Department of Education has already made it clear that it intends to amend the Title IX regulations published in the closing months of the Trump administration. That will take some time to go through the administrative rulemaking process.

But new guidance has already arrived. On July 20, 2021, the United States Department of Education, Office of Civil Rights, published a 56-page document entitled “Questions and Answers on the Title IX Regulations on Sexual Harassment”. Of the 67 Questions and Answers, it is worth taking a particularly close look at those that relate to university disciplinary hearings. Over the long term, those may provide guidance on how all university disciplinary hearings will be handled that may lead to substantial penalties against an alleged wrong-doer including those involving chapters of fraternities and sororities will be handled. Some notes from those:

Question 38: Live hearings may be conducted virtually.

Question 39: Cross-Examination – while the current rules do not provide for a party to conduct a cross-examination, a party’s “advisor” may ask questions on behalf of the accused.

Question 42 and 51: While parties and witnesses are not required to submit to cross-examination, the failure of a party or witness to submit to cross-examination means that any statements they have provided “cannot be relied on by the decision-maker in determining whether their respondent engaged in the alleged sexual harassment”.

Question 43: A school may implement rules regarding how a live hearing is conducted as long as those rules apply equally to both parties. Such rules may dictate whether or not there are opening or closing statements and can place reasonable time limits on a hearing.

Questions 46 and 47: Recognize that limits may be placed on cross-examination. Questions that are irrelevant or duplicative, repetitive, or abusive may be prohibited. And questions regarding a complainant’s prior sexual behavior, can and should be, severely limited.

Question 53: Makes clear that there are certain circumstances in which statements by a party can be used even when the party does not attend the hearing or submit to cross-examination. For example, when the statement itself is the harassment. The example used was an email which a faculty member says “I will give you a higher grade in my class if you go on a date with me”.

While it does appear that the Questions and Answers seek to somewhat limit the ability to utilize cross-examination, it stops far away from any attempt to prevent it. The latest action by the current administration came in the form of an August 24, 2021 letter addressed to “Students, Educators and Stakeholders” from the Acting Assistant Secretary for Civil Rights of the US Department of Education which announced that the Department would no longer enforce a provision in the Trump Devos Title IX regulations that mandated “If a party or witness does not

submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility...”.

This announcement grew out of a Federal court case, *Victim Rights Law Center et. al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021). In that case the court upheld all of the prior administrations Title IX regulations but ordered the Department of Education to reconsider the exclusionary provision of the rules which prohibited consideration of all statements not subject to cross-examination.

Neither the court decision nor the Department of Education’s letter eliminated the need for a live hearing or that there be some form of cross-examination available of witnesses that testify at such a hearing. The Court’s ruling is clearly limited to the “prohibition on all statements not subject to cross-examination”. Otherwise, the Final Rule adopted in 2020 is upheld and only that prohibition is “REMANDED to the agency for further consideration and explanation...”.

Even prior to the Trump/DeVos Title IX Regulations, a significant number of Federal Courts, both trial courts and courts of appeal required various forms of cross-examination in Title IX cases, finding that some form of cross-examination was constitutionally mandated when serious disciplinary consequences were at stake. Those court decisions were made by judges appointed by Presidents from both sides of the political aisle. Thus, it is highly unlikely that the new Biden administration Title IX Regulations would eliminate all cross-examination. They can’t. The Constitution won’t allow it.

“ALL COMERS” NON DISCRIMINATION POLICY:**InterVarsity Christian Fellowship et. al. v Board of Governors of Wayne State University;**

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United States District Court for the Eastern District of Michigan;

Case 3:19-CV-10375

Introduction:

Plaintiffs, InterVarsity Christian Fellowship et.al., brought this lawsuit against Defendants, who are board members and administrators at Wayne State University; after the University denied the group recognition as a registered student organization. The Complaint alleged violation of InterVarsity’s rights to internal management, free speech, freedom of association, freedom of assembly, and free exercise, and violation of the Establishment Clause of the United States Constitution. InterVarsity sought damages and injunctive relief.

Facts:

Wayne State's non-discrimination policy states:

[Wayne State] embraces all persons regardless of race, color, sex (including gender identity), national origin, religion, age, sexual orientation, familial status, marital status, height, weight, disability, or veteran status and expressly forbids sexual harassment and discrimination in hiring, terms of employment, tenure, promotion, placement and discharge of employees, admission, training and treatment of students, extracurricular activities, the use of University services, facilities, and the awarding of contracts

There are no written exceptions, although the policy states that the university is not precluded "from implementing those affirmative action measures which are designed to achieve full equity for minorities and women."

InterVarsity has operated a Christian student organization at Wayne State University since the 1930's. In 2017, Wayne State revoked InterVarsity's recognition as a student organization and cancelled its pending events on campus, because InterVarsity imposes certain limitations on which students can become leaders. InterVarsity allows all students to join the group as members, but leadership positions are limited to those who agree with its statement of faith.

Many registered student organizations at Wayne State require their leaders to adhere to its mission and purpose; including restrictions based on gender identity, political partisanship, ideology, ethnicity, GPA, and even physical attractiveness. However, religious groups were not allowed to require that its leaders share the group's religious beliefs. Registered student organizations include fraternities, sororities, and club sports teams which are single gender.

Registered student organizations are entitled to reserve free or reduced-price meeting spaces on campus; access to tables in the main Student Center to recruit new members; the ability to apply for funding from the school; access to special lockers; the opportunity to participate in the two main campus recruiting events; inclusion on a list of official student groups posted on the school's website; and access to an online school platform used to communicate with students and post a schedule of events. Unregistered organizations are not automatically entitled to these benefits.¹

¹ InterVarsity provided uncontested testimony that being delisted by the school and having to conduct outreach outside the normal venues of a registered student organization "sent a message that [Plaintiffs] [were] an outsider" and "[t]hat stigma made [Plaintiffs'] recruiting efforts less effective." ("Missing out on talking to students at WinterFest has made it harder to recruit new members for our chapter.") In fact, Plaintiffs' members were asked if Plaintiffs "were ...a real student organization."

Registered student organizations must submit information on its members and its constitution or operating agreement; must register annually; and are required to update student information and file their current constitution.

In defending its policy, Wayne State relied heavily on *Christian Legal Soc. v. Martinez*². Plaintiff, Christian Legal Society, did not admit homosexuals as members, based on religious objections. Defendant, Hastings Law School, denied Christian Legal Society recognition as a student organization, citing the membership prohibition as contrary to the school's no exceptions, "all comers" policy. The Court ruled that Hastings could deny Christian Legal Society recognition unless the organization abided by the policy. Christian Legal Society had the option to operate independently without college recognition, as did some fraternities and sororities, if it did not wish to follow the "all comers" policy,

The Court found the present case "readily distinguishable" from Christian Legal Society:

"...Even for groups that appear to be covered by the non-discrimination policy, Defendants have intentionally created exceptions and allowed them to select members and leaders based on protected categories. Club sports teams, sororities, and fraternities were permitted to exclude members who did not fall within the groups' sex or gender identity category... Defendants state explicitly that club sports teams, fraternities, and sororities were "exempt" from the non-discrimination policy, although no such exception is found in the language of the policy..." (Opinion, P. 49)

The court concluded that requiring religious groups to accept leaders whose views were hostile to the beliefs of the group violated its constitutional protections.

Decision:

² *Christian Legal Society v. Martinez*, 561 U.S. 661, 665 (2010).

The 83 page decision includes an extensive review and discussion of the relationship between universities and student organizations; and particularly enforcement of (“all comers”) nondiscrimination policies. Adjudicating various motions for summary judgment, the Court ruled, among other things:

1. That by denying recognition as a student organization; Wayne State violated InterVarsity’s rights to internal management, free speech, freedom of association, freedom of assembly, and free exercise as a matter of law.

2. That Wayne State violated the Establishment Clause of the United States Constitution, as a matter of law.

3. The Court enjoined Wayne State from revoking InterVarsity’s status as a registered student organization based on its religious criteria for student leadership selection.³

Commentary and Takeaways:

The District Court Judge declined to apply *Christian Legal Society* to Wayne State’s “all comers” policy based on constitutional grounds; and the inconsistent application, and many exceptions made by the administration. Inferentially, assuming that a policy is enforced uniformly; universities can apparently deny recognition to fraternities and sororities which do not comply; particularly given the commentary in *Christian Legal Society* acknowledging their ability to operate independently.

The opinion did not address whether institutions which allow single gender Greek organizations relying on the Title IX exemption are still precluded from enforcing an “all comers”

³ Wayne State reinstated InterVarsity as a registered student organization before the Opinion was rendered. The Court also awarded InterVarsity one (\$1.00) dollar in compensatory damages.

policy, nor whether Greek organizations have the right to operate independently at both public and private universities.

Eleven Questions That Advisors & Chapter Corporation Board Members Should Be Asking Their Undergraduates This Fall

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We've read the headlines and the stories. We know that hazing has persisted in our chapters. We know that with the advent of a return to "normalcy" on campuses this fall we may experience other tragedies—that the pent-up energy and frustration will surface in a variety of ways. And that includes the pledge process.

What can concerned and involved alums do to help address hazing in their chapters?

We can ask questions. Of our undergraduates.

Two key points:

- A. Don't focus on officers when asking these questions. In a chapter that utilizes hazing, one of the reasons those individuals were elected is that they understand their role when it comes to pledge/new member education: to provide vague and generalized responses to specific questions, to equivocate, to be evasive.

Therefore, ask members, especially younger members, these questions. And don't let them use the fraternal version of the triple option offense to pitch the conversational football to an officer— "*Ah, you should really ask the pledge educator about that*" Nope. I'm asking you.

- B. Listen carefully. This isn't cross-examination or a senate hearing. Ask questions in a calm and thoughtful manner and then listen. As a U.S. senator remarked recently, employ

“Eloquent listening” Don’t react to answers that might be upsetting. Be dispassionate in your response. Gather information first before making a judgment.

Questions

- 1) How long is pledging, in weeks? Please be specific. Many national organizations and many institutions have a maximum number of weeks for PNM education. Listen carefully for add-on weeks, such as extending the process because of fall break or for pre-initiation week. Or on the front end for the fraternal equivalent of a syllabus week—a week immediately after the pledging ceremony when, as an undergraduate described it to me, “The pledges can, ah, make up their minds if they made the right choice” It’s still pledging and it adds a week.
- 2) When does pledging begin—what day/date? Please be specific. I often use a desk top calendar taped to a wall when I conduct hazing investigations and I fill in key dates such as the first day of classes, formal recruitment and so forth. Identify a specific date.
- 3) When does pledging end—what day/date? Please be specific. Using the points from Question 1, determine precisely when pledging is finished. Make it emphatic. “*So, pledging ends on November 4th—do I have that right?*”
- 4) How does pledging end? Is there a ceremony? Special event? A period of days? Do you include that in the length of pledging or is that additional time? While the time-honored “Pre-initiation” week continues, some chapters employ “hell week” or a 2021 equivalent. You may also be told, “We just tell them pledging is over” If that is the response, ask more questions. It runs counter to human nature and fraternal experience for a chapter to simply tell its newest members, “Okay, you’re in. Welcome to the sisterhood/brotherhood”

- 5) When are “Bigs” (Big Sisters, Big Brothers) selected? What are the criteria for their selection, or how are they identified? The usual response is that the pledges pick three members and the PNM educator and/or president decide who gets matched up with whom. Ask when that process occurs. And if the role of the Big is to mentor, coach, support and assist their Little, why would you wait until four weeks into a six-week program before selecting/”Revealing” the Bigs? Why isn’t each Big standing next to their Little at the formal pledging ceremony?

Other questions go to qualifications. Is there a minimum GPA requirement for the Bigs? Minimum involvement in chapter operations—have they been involved or are they one of the Barnacle Brothers who are along for the ride?

Finally, ask about “Twins”—the term used when one Big has two Littles. Why is that used in the chapter? That may generate more discussion.

- 6) When are the Bigs “revealed” to their little sisters or brothers? Tell me about that process. Is alcohol involved in any way? Could an alum attend just to become familiar with the process?

For men’s fraternities in particular, big brother revealing night has become a deadly tradition. If there is one chapter practice of which alums should be asking direct questions, this is it. *“Tell me about the evening...where the revealing occurs...during what times...who’s present...and what happens afterward?”*

And ask if the revealing is held at the chapter house or at another location—an annex or other location. The “Away from the house” approach suggests that an effort is being made to keep the event under the radar. That applies to pledge activities in general if a house is involved. If there is no chapter house, ask where events or meetings are held. Be specific.

And beware of the “Hanging out”—“*Oh, we just hang out*” term, which is the standard answer from hazing chapter members when they don’t want to be specific. Demand specificity.

- 7) Walk me through a typical week of pledging beginning on Monday morning and concluding on Sunday evening? Tell me what happens each day. How many hours, in your estimation, are pledges expected to invest in pledging each week?

Using the Power Five (P5) conference designation as employed in collegiate athletics, it is not unusual for a fraternity pledge on a P5 campus to be required to invest 40 to 50 hours per week into pledging. Showing up at the chapter at 8 a.m., remaining in the house doing work, driving members (and their girlfriends) to class and picking them up, interviewing members, buying them food, and cleaning up dishes from hallways are just part of the package along with cleaning the house after events. Ask about philanthropic endeavors, too—on many campuses, those are pledge-only events. Ask how many members actively participate in this or that event.

- 8) Are pledge meetings held? If so, how often? Who calls or directs that a meeting be held? How do the pledges communicate with each other? With the pledge educator? Some men’s fraternity chapters no longer hold pledge meetings. The pledges gather each day or evening based upon a GroupMe from the pledge educator or other authority figure. Ask to see the announcements.

- 9) Is there a group or committee—some refer to it as the “Pledge Development Committee”—in our chapter? Who is in charge of the committee? Who serves on the committee? How often does the committee meet? What is the intended purpose? This group is supposedly involved in educating the pledges, although “educating” may be a stretch term along with “development” This is a hazing committee and the task for the committee is to devise and

oversee the hazing activities in the chapter. If you encounter equivocation or evasiveness in answering questions about the committee, keep asking.

- 10) What was the GPA for each of the most recent five pledge classes? Was that above or below the All-1st year GPA on campus? What was the attrition rate for each of those pledge classes—the number of pledges on the first day v. the number of initiates on the final day?

Data drives decisions and also reveals issues in an organization. Some—certainly not all—chapters have pledge classes that score below the All-First Year average for that gender on campus. Cross-check with the campus professional. And if the attrition rate of pledges is higher than 15%, that’s a good sign of issues. Cross-check with the campus and the national organization—how many pledges registered v. the number initiated.

- 11) Are pledge classes named or designated using Greek letters? What is the purpose of naming or designating pledge classes? Tell me how many “Families” are in the chapter. And those names? Do any of the families have traditions or specific activities that members engage in during pledging or otherwise?

While the naming of pledge classes using Greek letters or other terms is not in and of itself an indication of hazing, ask for the thoughts of the undergraduates regarding the impact of that practice in terms of pledge class unity (PCU). Hazing and PCU have a symbiotic relationship—each needs the other. Did a 1st year student join a pledge class or a sisterhood? Why do we focus upon unity (and therefore separation) if the goal is “fraternity among all”? The end result of PCU is a chapter separated into four or eight separate sub-groups, each with its own identity. And that separation is achieved by hazing.

As for families: Perhaps it is a socio-cultural dynamic that our undergraduates are seeking small group interaction when the chapter has 100+ members. But some of the families have their own traditions including hazing. Hence, the “Ask”

If you believe it is better to know than not to know, ask the eleven questions. Use thoughtful and dispassionate responses, and then, if changes are needed, you have a basis for change.

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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