



FRATERNAL LAW™

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NIC Responds to 60 MINUTES Story

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On Sunday November 28th 60 MINUTES featured story described the terrible alcohol fueled hazing related death of Sam Martinez. It was a terrible tragedy. The actions leading to his death violated the law, university rules and the policies and regulations of the Alpha Tau Omega (ATO), the fraternity he was joining.

The 60 MINUTES story appeared to place responsibility for illegal hazing and alcohol abuse on national fraternities, failing to even include any of an interview with Judson Horras, the CEO of the North American Interfraternity Conference (NIC) and cutting ATO's CEO Wynn Smiley's responses to minimize all of the efforts national fraternities and sororities engaged in to stamp out hazing.

Shortly after the story ran, NIC issued the following statement to provide those details:

Tonight, 60 Minutes ran a segment on the tragic death of Sam Martinez. Our condolences go to Sam's family as we continue the fight to end hazing.

As an important stakeholder for fraternities, we want to ensure that you know about fraternities' efforts to combat hazing through increased education, transparency and most importantly, accountability.

When NIC leadership communicated with 60 Minutes in July, the producers said the segment's intended focus was to raise awareness of hazing and educate viewers on how fraternities and universities were addressing hazing. With this aim, NIC CEO Judson Horras agreed to sit down with Anderson Cooper to interview for the program.

Following his interview, the NIC shared [thorough information](#) with producers to ensure they had key facts as they prepared their segment. Unfortunately, the broadcast didn't include much of this information or Jud's interview, which focused on the progress our member fraternities — including Alpha Tau Omega — and the Anti-Hazing Coalition are making to directly address the concerns the segment raised.

Here's the critical information missing from tonight's broadcast:

With almost half of high school students exposed to hazing and 55% of college students involved in clubs, athletics and organizations experience hazing, it is on all of us to educate all students on the danger. Hazing and hazing deaths have been documented since long before the United States was founded with one of the first documented U.S. deaths in 1737.

The sheer scale and longevity of this societal problem clearly demonstrates that having anti-hazing policies, advisors, reporting hotlines, and education on its dangers are important to moving the needle, but are not enough. To impact this issue, we must recognize this is misconduct of individual students. Individuals who haze must feel impactful penalties.

To further address the issue, we formed the Anti-Hazing Coalition in 2018 as a collaboration of the North American Interfraternity Conference the National Panhellenic Conference and parents whose children were tragically killed by acts of hazing. The Coalition now includes nine additional interfraternal associations, hazing experts and higher education partners. Through our Coalition, fraternities and sororities are educating and advocating at both state and federal levels for tougher anti-hazing laws.

We've championed federal legislation to increase transparency around collegiate hazing incidents. The Report and Educate About Campus Hazing (REACH) Act and End All Hazing Acts would require colleges and universities to annually publish hazing incidents on their websites for all student organizations and teams, just as they do for other critical safety information required under the Clery Act.

For the past three years, the NIC and our Coalition have helped organize thousands of alumni, students and parents to actively lobby Congress in-person and virtually for passage of both Acts. To our knowledge, we are the only coalition that has invested resources at this scale focused on strengthening federal and state hazing laws.

The state level is where we can best impact criminal law. Our Coalition worked with prosecutors, legislators and parents to develop model state legislation to strengthen accountability for individuals, organizations or campuses involved in hazing.

Coalition lobbying efforts have thus far resulted in stricter hazing laws in Ohio, New Jersey, Pennsylvania, Texas, Florida, Georgia and Louisiana. In Ohio for example where NIC President and CEO Judson Horras testified to urge passage, Collin's law broadens the definition to hazing, increases penalties, requires reporting of hazing to authorities, and mandates education for all students and advisors.

The Coalition is also committed to education around hazing. Our parents' programs in the last three years have provided education to over 130,000 college students on more than 100 campuses and virtually. It is critical to build a culture that empowers students with "if you see something, say something."

Our efforts to educate and advocate continue. We are seeking to better inform our efforts with upcoming research studies around hazing through the Postsecondary Education Research Center (PERC) at the University of Tennessee, Knoxville, and the Timothy J. Piazza Center for Fraternity and Sorority Research and Reform at Penn State.

In addition to our anti-hazing efforts, all members of the North American Interfraternity Conference came together to pass new, critical health and safety standards that built upon existing fraternal prevention efforts and programs. Three important measures included implementing medical Good Samaritan policies, raising the bar for health and safety programming and addressing alcohol abuse. A further effort, which went into effect in 2019, is a hard alcohol prohibition in fraternity chapter facilities and events.

Hazing, or bullying as it is sometimes known to younger students, has been a pervasive issue across this country for centuries. Rather than ignore it or shift responsibility for change to others, fraternities are leading in efforts to make an impact for a safer campus community. We invite other organizations to work with us to change the culture.

Sincerely,

The members of the North American Interfraternity Conference Governing Council

New LawsUIT Filed Alleging Hazing At Texas A&M

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On October 18, 2021 a lawsuit was filed in the Harris County District Court in Texas on behalf of two Plaintiffs, students at Texas A&M University, who were pledges of the chapter of the Sigma Alpha Epsilon Fraternity (SAE). The Complaint named as Defendants, SAE, its Texas Tau Chapter and 8 individuals.

The Complaint claims the Plaintiffs were “escorted into the SAE House barn” where various foreign substances were poured on them including an industrial strength cleaner described as a “high alkaline solvent-based, extra heavy-duty industrial cleaner.” It is claimed

that said substance caused serious burns requiring the Plaintiffs to be transported to Houston, Texas to undergo multiple emergency skin graft surgeries. It is alleged that both Plaintiffs were left permanently disfigured.

Rather than concentrate on the individuals who allegedly caused the injury, the Complaint starts out claiming that SAE is liable under Texas' "Organization Hazing Offense, Texas Education Code Section 37.153." That Section provides, in part, that:

"An organization commits an offense if the organization condones or encourages hazing or if an officer or any combination of members, pledges, or alumni of the organization, commits or assists in the commission of hazing."

That is a criminal statute. Organizations found guilty of the provision face fines of between \$5,000 and \$10,000. It is far from clear that a court would impose either criminal or civil liability on the national organization based on the fact that a small group of members engaged in hazing in violation of both SAE policy and the Texas law.

The Complaint also claims that SAE "failed to promulgate national standards" relating to hazing. That has become a typical Plaintiff's claim in such litigation. But it is simply not true. SAE, like virtually every other national fraternal organization, has taken a strong position against hazing. That is made clear even on SAE's public website.

In an open letter to parents of members and perspective members, the Fraternity reminds that SAE was the first fraternity to eliminate pledging entirely. And for then strongly states:

We do not believe in or support hazing of any kind. If we are alerted to its occurrence, we take every action possible to hold individuals or chapters accountable while helping to correct the course. In August, 2018, as part of our National Leadership School, we hosted and coordinated an educational program titled 'Love Mom and Dad'. We have encouraged every member, alumnus, volunteer and university administrator to watch it. You will find a short 5-minute version and an extended 20-minute version (which is also a facilitation guide) of the presentation online. We hope you will make time to view it

and then reinforce with your son why participating or contributing to hazing is wrong. If they ever see or experience it, they should feel empowered to speak up.

We partner with Hazing Prevention.org and they provide an anonymous hotline for students, friends and families to use whenever they have concerns. We investigate any calls we receive and act when the information proves true. You may reach us directly at (847) 475-1856, which is our central office number or at (888) NOT-HAZE.”

Texas also has a Personal Hazing Offense, Texas Education Code Section 37.152.

Depending on the severity of injury that hazing may have caused, those convicted of it may face sentencing for a misdemeanor (180 days to one year in jail and fines of up to \$4,000) or in the case of a death a “state jail felony” (180 days to two years in state jail and a fine of up to \$10,000). The Personal Hazing Offense includes a failure to report hazing. While it is not as rigid as Ohio’s new law, it does provide that a person violates the law if they have:

First-hand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or first-hand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge in writing to the Dean of Students or other appropriate official of the institution.

That provision, failing to report as required, subjects an individual to sentencing of up to 180 days in county jail and a fine of up to \$2,000.

Like any lawsuit, the initial Complaint presents only one side of the story and the allegations contained in a Complaint, may or may not, be true. But if it is true, that individuals violated the national policies of SAE and actually poured very harmful solvent on the Plaintiffs, it is highly likely that they have direct liability for their actions. That may include both civil and criminal liability. But whether they actually did or didn’t remains to be proven.

Indiana University Prevails in CrimsonCard Case

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In November 2020, *Fraternal Law* reported on a case that had been filed by individual students against Indiana University (“IU”) regarding IU’s tracking of those students’ movements using swipe data from their student ID cards (“CrimsonCards”).¹ As part of an investigation into potential hazing occurring within the Beta Theta Pi fraternity, IU compared the students’ swipe data to their testimony regarding their whereabouts at the time of alleged hazing incidents. Ultimately, IU sanctioned Beta Theta Pi following the investigation, although none of the individual students who brought the subsequent lawsuit were individually found responsible for any wrongdoing.

Nonetheless, the students filed suit against the University and its President, alleging that the University’s gathering of data from their university identification cards that tracked their movements across campus violated their rights under the Fourth and Fourteenth Amendments. The students also asserted a claim for breach of contract. The Plaintiffs sought nominal damages, declaratory relief, attorney’s fees and costs, and requested that IU be enjoined from further using swipe data in internal investigations. The Defendants moved to dismiss Plaintiffs’ Complaint.

On September 1, 2021, the U.S. District Court for the Southern District of Indiana granted the Defendants’ Motion to Dismiss as it related to Plaintiffs’ federal constitutional claims.² The Court

¹ Tim Burke, *Indiana University Uses Student ID Cards To Track Student Movements*, 167 FRATERNAL L. 1, 7 (Nov. 2020).

² *Gutterman v. Ind. Univ.*, No. 1:20-cv-02801-JMS-MJD, 2021 U.S. Dist. LEXIS 165841 (S.D. Ind. Sep. 1, 2021).

also dismissed the breach of contract claim upon declining to exercise supplemental jurisdiction over the remaining state claim.

Regarding the constitutional claims, Court concluded that, pursuant to the Eleventh Amendment, the Defendants were entitled to sovereign immunity on each of those claims that sought monetary or declaratory relief.

Moreover, the Court analyzed the constitutional claims that sought injunctive relief against IU's President by evaluating whether, assuming the use of the swipe data constituted a "search," the search was reasonable. Here, the Court referenced the express terms and conditions related to using a CrimsonCard as support for its determination that "it is not reasonable to conclude that Plaintiffs expected their use of the CrimsonCard—which, in turn, reflected which IU facilities and services they accessed—to be private."³ The Court continued, noting that this is "particularly true in today's day and age, when Plaintiffs were likely carrying cell phones which also could be used to track their locations to some extent, and where cameras on buildings, traffic lights, and businesses were likely to capture many of Plaintiffs' public movements."⁴ The Court also highlighted that any such search was reasonable "Based on IU's limited, non-prosecutorial use of the Swipe Data to confirm that Plaintiffs were not present during a hazing incident," an interest the Court found to be "plainly legitimate."⁵

It is likely that other courts will reach similar decisions in the future, particularly if the written terms and conditions associated with using a school's identification card are clear. As such, students must be mindful of how and when they are using their cards and should be reminded that

³ *Id.* at *19-20.

⁴ *Id.* at *20.

⁵ *Id.* at *22.

being found responsible for dishonesty during a university's investigation can make an already undesirable situation significantly worse for both themselves and their organizations.

Supreme Court of the United States Declines to Hear Bloomington Zoning Case

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In the September 2021 Edition of *Fraternal Law*, we reported that UJ-Eighty Corp., a fraternity house corporation that owns property in Bloomington, Indiana, petitioned the Supreme Court of the United States to grant certiorari and hear an appeal of 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.

As they do with the overwhelming majority of petitions for certiorari, the Supreme Court declined to take up the case. Since the issue of fraternity house zoning has recently been litigated in numerous states including Delaware, New Hampshire, Indiana, and Pennsylvania, there was hope that the Supreme Court of the United States may view the UJ-Eighty case as one of significant enough national importance. Since that did not occur, it is likely that this issue will continue to be litigated in different states throughout the country over the coming years.

¹ Micah E. Kamrass, *Fraternity House Corporation Seeks Writ of Certiorari From the Supreme Court of the United States in Bloomington Zoning Case*, 171 *Fraternal L.* 1 (Sept. 2021).

COVID-19 Vaccine Mandates

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Vaccine mandates are not new. As more mandates are being issued by employers and booster shots are becoming available, the vaccine mandates issue is back in the forefront. However, with booster shots and new government mandates it is important to note that the basics regarding vaccine mandates have not changed. What that means is generally federal employment laws such as the American with Disabilities Act (ADA), Title VII and other federal employment non-discrimination laws do not prohibit an employer from requiring all employees physically entering the workplace to be fully vaccinated against COVID-19.¹

Of course, it would not be a rule without exceptions. Under Title VII and the ADA an employer must enter into an interactive process with the employee to see if a reasonable accommodation is available if the employee claims he or she cannot receive a COVID-19 vaccine because of either (1) a disability or (2) a sincerely held religious belief. Reasonable accommodations are not absolute. If providing a reasonable accommodation would pose an undue hardship on the operation of the employer's business, the employer is not required to offer it.

While the basic laws have not changed regarding these vaccine mandates, additional federal and state laws have been implemented either requiring vaccines or, in limited cases, prohibiting vaccine mandates. The most recent move in COVID requirements comes from the Biden Administration's federal vaccine mandate requiring federal employees and contractors to

¹ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

be fully vaccinated against COVID-19. This mandate has been challenged in a few federal courts and only time will tell how those challenges will play out.

Several federal agencies have also issued updated guidance regarding vaccines and vaccine mandates. At the beginning of November, the Occupational Safety and Health Administration released its Emergency Temporary Standard which established minimum vaccination, vaccination verification, face covering and testing requirements for COVID-19.² The Equal Employment Opportunity Commission also continues to update its guidance regarding COVID-19 to address the new and continuing issues faced by employers regarding COVID-19. In its most recent guidance, the EEOC has included its religious accommodation request form to assist employers in the increase in religious accommodation requests.³

Given the foregoing, there are a few important things that employers should keep in mind when issuing mandatory vaccine policies:

1. If you have a COVID-19 policy, make sure you follow the policy and apply the policy uniformly.
2. Be prepared for reasonable accommodation requests and engage in an interactive process with the employees. This includes having a clear process for employee requests and training the individuals evaluating the requests how to handle both disability and religious accommodations.
3. Be aware of the current federal, state and local guidance and adjust policies accordingly.

² <https://www.osha.gov/coronavirus/ets2>

³ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

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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