

## Hazing Through the Lawyer's Lens

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The call comes, as they often do, at oh dark thirty.

The normally confident voice of an undergraduate leader is now anxious, uncertain, and tremulous. *“We don’t know what happened...some guys were supposedly doing something with the pledges...I wasn’t there...he’s at the health center.”*

Within hours—sometimes within an hour—the details begin to emerge. No doubt about it: this was hazing. The leaders have lawyered up, and they are already ensconced in their bunker mentality, emerging only to point fingers at “rogue” members while citing the \$27,514 the chapter raised recently for a national philanthropic project as a response.

And where does this leave you as the campus professional? Perhaps you go into work very early that morning and double check the files. Let’s see: the President signed off on the anti-hazing statement...check. At least 50% of the members attended an anti-hazing presentation...check. We’re okay, right? Right?

Not always. Sometimes the fraternity and sorority advisor is named in a lawsuit. While that does not translate into instant liability or a huge settlement, it does complicate life for you.

Three phrases to keep in mind:

1. *“Standards mean nothing unless you are willing to enforce them.”*
2. *“The wheels of justice grind slowly but oh so finely.”*
3. *“Knew or should have known...”*

Phrase 1: If you use standards, requirements, and policies, then live up to those standards, requirements and policies. Use whatever means are necessary to achieve the standard. Do not allow Chapter A to “get that to you sometime this month” when Chapters B & C submit their anti-hazing forms on time.

Phrase 2: If a civil lawsuit is filed, the discovery phase may occupy many, many hours of your time.

“Discovery” means producing everything that might be relevant to the case, often going back a number of years. You might have been an undergraduate in 2002 but that may be the year that the plaintiffs use as a starting point for information regarding the chapter. And that means producing everything that the plaintiff requests. What is relevant? Do not ask. It is not your call.

The discovery list may include the number of students who attended a regional leadership conference, the workshops or presentations offered each year that relate to hazing or risk management or other topics, the definition of hazing was posted on the “U” website beginning in what year?

The better course is to meet with your university attorney and clarify document retention now—what should you be keeping or retaining and what can be discarded, including electronic and virtual data? And then follow that policy to the letter.

Phrase 3: This is the tricky one: “*Knew or should have known.*” Translation: Would a reasonable person have inferred, deduced or extrapolated that hazing might have been occurring in this chapter and therefore have taken steps to address it prior to someone being injured...or worse?

Sometimes the answer is plainly, “Yes.” No deductive reasoning is necessary. Consider the following examples.

What about the campus professional that learns about hazing in the chapter from an undergraduate but is told by the undergraduate, “*If you report this our nationals (sic) will close us down,*” or “*If you report this my butt will be on the line with other members.*” And, you promise, “If you change I won’t say anything!”

Or, when told by one of your favorite council leaders that some “hazing with a ‘little h’ is occurring” in his chapter and you use the time-honored, “Don’t let this (hazing) occur again!” You and I know that it usually will occur again.

What about the numerous signs, signals, and indications that occur with hazing? The PNM attrition rate that is 20% or higher; low GPAs; various reports from students, RAs, faculty members about pledges returning late at night sweating and with condiments in their hair, sleeping through classes, withdrawing from friends? Reports from parents—who often do not want to identify their sons or themselves—that provide details about hazing activities? Information from a hazing hotline or other means of anonymous reporting?

There are many more signs—50 at the minimum in a list that I have compiled—that hazing is either likely occurring or is occurring. One of the ironies associated with hazing is that a practice that is illegal in 44 states is so often displayed for all to see. For our campus professionals: were you in a position to see, hear about, or be made aware of hazing practices? And once made aware, what action if any did you take?

In their book, *The Rights and Responsibilities of the Modern University*, Robert D. Bickel and Peter F. Lake (1999) identify seven factors that in their collective opinion courts have used to impose liability upon colleges. Those factors include classic tort terms such as foreseeability of harm (was the action or activity foreseeable given the circumstances); the nature of the risk and the closeness of the connection between the act or omission of the college and the injury to the student; the social policy of preventing future harm (will a finding of liability tend or help to prevent harm to others similarly situated in the future); and the burden upon the college and larger community if duty (to do something or not to do something) is recognized by the court.

Your author will argue that no one expects fraternity and sorority advisors to don trench coats and fedora hats and sneak around their respective communities searching for hazing or to hire helicopters with stealth capabilities and hover over chapter houses at midnight yelling through a loudspeaker, “PLEDGES! PLACE YOUR BLACK BOOKS AND PADDLES ON THE GROUND AND STEP BACK! LEMME SEE THOSE HANDS!” Remember the word *reasonable*.

But, what did you do when you were presented or made aware of information, reports, statements, concerns regarding hazing? What did you do when you observed activity that might be hazing? Bystander behavior is not restricted to 19-year-old students.

Knowing hazing is not restricted to our communities—teams, bands, clubs and other organizations are just as likely to engage in hazing—what did you and other administrators do to address the issues? In addition to presentations and discussions, what other steps did you take?

Liability for campus professionals is a difficult concept to grasp for most of us. My encouragement is to have a clear understanding of the university liability insurance coverage, meet with the university attorney at least once a year along with the university risk manager to review what you are doing and why, and if you see or smell smoke—even just a wisp—check it out. It is better to know than not to know.

## References

Bickel, R.D. & Lake, P.F. (1999). *The Rights and Responsibilities of the Modern University*. Carolina Academic Press.