Hazing: An Old Risk with Renewed Attention

Higher Education Compliance Conference

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Timothy P. Hedley, PhD, CPA, CFF, CFE
Maurice L. Crescenzi, Jr., MA, CCEP

KPMG LLP

Agenda

- Definitions and Categories
- History and Psychology of Hazing
- Fact and Fiction
- Key Statistics
- Hazing and the Law
- Select Hazing Litigation
- Preventing, Detecting, and Responding to Hazing Incidents
- Strategies for Evaluating Your Anti-hazing Program
Definitions and Categories

“Hazing” is defined differently depending on the source:

- “An initiation process involving harassment.” (Merriam-Webster)
- “An action taken or situation created intentionally that causes embarrassment, harassment or ridicule and that risks emotional and/or physical harm to members of a group or team whether new or not.” (StopHazing.org)
- “Any activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them regardless of a person’s willingness to participate.” (HazingStudy.org)

For the purposes of today’s discussion, “hazing” is defined as:

- “Any activity or non-activity expected of, or initiated by, someone joining or participating in or on a team, club, group, or association that humiliates, degrades, abuses, or endangers those directing or participating in the activity or the non-activity – regardless of the willingness of those involved.”
Definitions and Categories (continued)

- The examples of hazing are as infinite as the human imagination.
- Hazing activities range from illegal or violent activities to more subtle activities.
- Hazing activities can be organized into three categories:
  - Type A: violent assaults, rape, poisoning, burning skin, destroying or stealing property, kidnapping, animal cruelty, etc.
  - Type B: forced consumption of alcohol, ingestion of vile substances, sex acts, forced head or body hair shaving, being yelled at, public nudity, cheating on an exam, “drop-offs,” being duct-taped, etc.
  - Type C: sleep deprivation, mental distress, personal servitude, ostracizing, prank phone calls, wearing embarrassing clothing, hygiene deprivation, etc.
- While sanctions, fines, and penalties may vary according to the type of hazing, university policies should prohibit all forms of hazing.

History and Psychology of Hazing
History of Hazing

Our research reveals that …

- Hazing is a behavioral norm that dates back thousands of years, as far back as the sixth century.
- Hazing of first year university students appears in written records from the Middle Ages.
- In the early 1900s, many university presidents condoned hazing as a way of establishing precedent and loyalty.
- Until the mid-1920s, most campus hazing deaths occurred in freshman-sophomore altercations.
- Until the 1970s, hazing deaths occurred infrequently enough that they could be considered isolated accidents.
- However, in the mid-1970s, the number of hazing-related deaths began to increase, particularly in African American fraternities.

Psychology of Hazing

External Rationales
- Expression of tradition
- Rite of passage
- Demonstration of power
- Revenge
- Secrecy/lack of constraints
- Inflicting harm as a way to ensure conformity
- Lack of regard for rights and safety of others

Personal Rationales
- Need or desire to belong
- Need for esteem
- Need for intimacy
- False notions of toughness
- Fear of retribution or reprisal
- Perceived lack of alternatives

Personal Side Effects
- Physical harm
- Emotional/psychological harm
- Death
- Thoughts of suicide

Personal Side Effects
- Relationship trouble
- Guilt or depression
- Lack of concentration
- Anger/need for revenge
Fact and Fiction

1. Positive, productive, and constructive initiation activities are not considered hazing.
2. Hazing occurs in athletics, Greek-letter organizations, marching bands, academic clubs, recreational clubs, student government, etc.
3. Hazing is victimization.
4. Most states and many school policies adopt zero-tolerance.
5. Hazing victims seldom respect their hazers.
6. Most states do not recognize consent as a defense.
7. If there is a gray area, it is probably prohibited hazing.

Fiction and Fact

Fiction
- All initiation activities are prohibited.
- Hazing only occurs in Greek-letter organizations.
- Hazing amounts to nothing more than harmless pranks.
- A little hazing is permissible.
- Hazing teaches respect and discipline.
- If a student consents, hazing is permissible.
- Hazing is difficult to define due to "gray areas."

Fact
Key statistics

Our research reveals …

- The U.S. Department of Education reported that the total fall enrollment for degree-granting institutions was 20,994,113 students.
- In 2011, the NCAA reported that 252,946 men and 191,131 women were involved in NCAA athletics.
- Approximately 75% of college athletes experience some form of hazing (deduction/assumption: 333,000 athletes in 2011).
- 55% of college students involved in clubs, teams, and organizations experience hazing.
- In 95% of the cases where students identified their experience as hazing, they did not report the event to campus officials.
- There have been 171 hazing deaths between 1838 and 2012.
- Since 1970, there has been at least one hazing-related death on a college campus each year.
Hazing and the Law

Traditionally, colleges were seen as the parents or supervisors of students under the common law doctrine *In Loco Parentis*.

- In *Gott v. Berea* (1913), the court permitted the university to prohibit its students from patronizing a local restaurant.
- As universities began to exercise the rights established by *In Loco Parentis*, courts began to recognize a correlative legal duty to protect students.

*In Loco Parentis* began to erode in the 1960s, 1970s, and 1980s with a string of "no duty" cases. Two examples ...

- *Bradshaw v. Rawlings* (1975) (holding that, since the students were no longer minors, the college was not responsible for the injuries suffered by plaintiff due to defendant driving intoxicated).
- *Rabel v. Illinois Wesleyan University* (1987) (ruling that the university was not responsible for injuries suffered by plaintiff as a result of being grabbed, picked up, and accidentally dropped on the ground by a fraternity member).

However, in 1991, the court in *Furek v. University of Delaware* held that, where a fraternity pledge who suffered first- and second-degree burns in an on-campus fraternity house after a fraternity member poured oven cleaner on his head and back, the university was responsible because it had implemented an anti-hazing policy, communicated the dangers of hazing to its students, and emphasized its policy for hazing violations.
Hazing and the Law (continued)

- The contradictory nature of *In Loco Parentis*, “no duty” cases, and *Furek*, creates a paradox – recognizing students as adults on the one hand, but not able to avoid a danger on the other hand.
- In hazing cases, a duty must be found on the part of a university in order to be held responsible for a student’s hazing-related injuries or death.
- Furthermore, where a duty exists, plaintiffs must establish that the university’s negligence was the proximate cause of the student’s injuries or death.
- Foreseeability is a determining factor in whether a duty exists.
- However, there is no definitive ruling as to when universities can be held responsible for hazing injuries or deaths.
- Case law suggests that universities can adopt one of two approaches to minimize liability for hazing-related injuries or death:
  - Relinquishing all recognition and control over student organizations where hazing typically occurs (“no agency”)
  - Adopting rigorous anti-hazing compliance policies, procedures, and programs.

Hazing and the Law (continued)

- Forty-four States have anti-hazing laws (Alaska, Montana, South Dakota, Hawaii, New Mexico, and Wyoming do not)
- By way of example, anti-hazing legislation in the State of Texas …
  - Establishes scope and defines “educational institutions,” “students,” and “pledging”
  - Provides list of prohibited hazing activities
  - Makes it an offense to engage in, solicit, encourage, direct, or aid hazing
  - Establishes graduated scale of fines and penalties (monetary and imprisonment)
  - Creates organizational liability for condoning or participating in hazing
  - Confirms that consent of those hazed is not a defense
  - Allows immunity from prosecution for those who report hazing or those subpoenaed to testify
  - Establishes immunity for medical practitioners who treat individuals who suffer injury due to hazing
  - Requires organizations covered by the legislation to publish or distribute to each student during the first three weeks of each semester a summary of the law and a summary of hazing violation cases
## Select Hazing Litigation

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<tr>
<th>Year</th>
<th>Basis for Lawsuit</th>
<th>Outcome</th>
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<td>2013</td>
<td>Plaintiff sued his fraternity, alleging that he was hazed and subjected to beatings with canes, whips, and paddles, punched in the ribs, punched for smiling; shot with a BB gun; and drenched with flour and chocolate. Plaintiff suffered bruises, scrapes, scabs and cuts. He was partially paralyzed and lost bladder control. He underwent back surgery for herniated discs.</td>
<td>One hazer pleaded no contest and received three years’ probation and time served. He was ordered to pay restitution to McClanahan for expenses incurred as a result of the crime.</td>
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<td>2013</td>
<td>Family of freshman son filed a wrongful death suit against fraternity and six fraternity members for the death of their son caused by consuming more than a quart of hard liquor in 90 minutes.</td>
<td>Three fraternity members were charged with misdemeanor hazing and furnishing alcohol to a minor.</td>
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<td>2013</td>
<td>Plaintiff sued his fraternity for $1.7 million for a series of humiliations including being forced to eat unknown materials until he vomited, and having hot sauce poured on his genitals.</td>
<td>Pending.</td>
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<td>2011</td>
<td>Decedent’s family sued the university and 12 students for the hazing-related death of their son. Decedent, a member of the marching band, was punched, kicked and struck with fists or other objects by 12 members of the marching band suffering hemorrhagic shock due to blunt force trauma.</td>
<td>12 charged with 2nd degree manslaughter, (15 years imprisonment) 10 of 12 charged with hazing (up to 5 years in prison) Marching band director resigned Marching band suspended Family rejected $300,000 settlement offer</td>
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<td>2011</td>
<td>Decedent’s mother sued her son’s fraternity for $25 million after members allegedly kidnapped her son, blindfolded him, bound his hands and feet with zip ties and duct tape, and forced him to drink so much alcohol that he passed out and died. Decedent’s blood alcohol level was .409, more than five times the legal limit.</td>
<td>Fraternity released a statement underscoring its zero-tolerance policy. Fraternity was suspended for five years at university Three former students acquitted of hazing and unlawfully dealing with a child in 2012 $25 million wrongful death suit against fraternity is pending.</td>
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Elements of an Effective Anti-hazing Compliance Program

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<th>Response</th>
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<td>■ Board of Trustees/Board of Directors</td>
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<td>■ University/Organization Executive Management</td>
<td>■ Case Management &amp; Investigations</td>
<td>■ Monitoring and Auditing</td>
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<td>■ Compliance, Legal, Academic Affairs, Student Affairs, etc.</td>
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<td>■ Cultural Assessments</td>
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<td>■ Program Design Gap Assessments</td>
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<td>■ Codes of Conduct and Policies</td>
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<td>■ Training and Education</td>
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Elements of an Effective Anti-hazing Compliance Program

Strategies for Evaluating Your Anti-hazing Compliance Program
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- Assess design of your anti-hazing program
- Interview faculty, administrators, coaches, alumni, and students
- Organize focus groups and workshops
- Implement confidential anonymous surveys for students, coaches, administrators, and parents
- Review hotline data to detect reports or trends of hazing
- Conduct share forums with universities, fraternal organizations, etc.

Questions?
References

Books

Statutes
- Texas Education Code, § 2, Chapter 4, Subchapter B, Hazing, et seq.

Cases
- Gott v. Berea, 161 S.W. 204 (Kentucky 1913).

References (continued)

Articles
- Spaziano, Jennifer L. It’s All Fun and Games Until Someone Loses an Eye: An Analysis of University Liability for Actions of Student Organizations. 22 Pepperdine Law Review, Issue 1, Article 7 (2012).

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- www.hanknuwer.com
- www.hazingprevention.org
- www.hazingstudy.org/
- www.hazing.cornell.edu
- www.stophazing.org
- www.umaine.edu/hazingresearch/
Thank you

Timothy P. Hedley
+ 1 212 872 3496
Thedley@kpmg.com

Maurice L. Crescenzi, Jr.
+ 1 646 522 8475
Mcrescenzi@kpmg.com