



University of Kentucky
UKnowledge

Theses and Dissertations--Educational Policy
Studies and Evaluation

Educational Policy Studies and Evaluation

2018

THE EXAMINATION OF HAZING CASE LAW AS APPLIED BETWEEN 1980-2013

Christopher Keith Ellis

University of Kentucky, celli3@uky.edu

Digital Object Identifier: <https://doi.org/10.13023/ETD.2018.078>

[Right click to open a feedback form in a new tab to let us know how this document benefits you.](#)

Recommended Citation

Ellis, Christopher Keith, "THE EXAMINATION OF HAZING CASE LAW AS APPLIED BETWEEN 1980-2013" (2018). *Theses and Dissertations--Educational Policy Studies and Evaluation*. 59.
https://uknowledge.uky.edu/epe_etds/59

This Doctoral Dissertation is brought to you for free and open access by the Educational Policy Studies and Evaluation at UKnowledge. It has been accepted for inclusion in Theses and Dissertations--Educational Policy Studies and Evaluation by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

STUDENT AGREEMENT:

I represent that my thesis or dissertation and abstract are my original work. Proper attribution has been given to all outside sources. I understand that I am solely responsible for obtaining any needed copyright permissions. I have obtained needed written permission statement(s) from the owner(s) of each third-party copyrighted matter to be included in my work, allowing electronic distribution (if such use is not permitted by the fair use doctrine) which will be submitted to UKnowledge as Additional File.

I hereby grant to The University of Kentucky and its agents the irrevocable, non-exclusive, and royalty-free license to archive and make accessible my work in whole or in part in all forms of media, now or hereafter known. I agree that the document mentioned above may be made available immediately for worldwide access unless an embargo applies.

I retain all other ownership rights to the copyright of my work. I also retain the right to use in future works (such as articles or books) all or part of my work. I understand that I am free to register the copyright to my work.

REVIEW, APPROVAL AND ACCEPTANCE

The document mentioned above has been reviewed and accepted by the student's advisor, on behalf of the advisory committee, and by the Director of Graduate Studies (DGS), on behalf of the program; we verify that this is the final, approved version of the student's thesis including all changes required by the advisory committee. The undersigned agree to abide by the statements above.

Christopher Keith Ellis, Student

Dr. Kelly D. Bradley, Major Professor

Dr. Jeffery Bieber, Director of Graduate Studies

THE EXAMINATION OF HAZING CASE LAW AS APPLIED BETWEEN 1980-2013

DISSERTATION

A dissertation submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy in the College of Education at the University of Kentucky

By
Christopher Keith Ellis

Lexington, Kentucky

Director: Dr. Kelly Bradley, Professor of Educational Policy Evaluation

Lexington, Kentucky

2018

Copyright © Christopher Keith Ellis 2018

ABSTRACT OF DISSERTATION

THE EXAMINATION OF HAZING CASE LAW AS APPLIED BETWEEN 1980-2013

This study contributes to the knowledge and understanding of the application of hazing law and response of courts to case law where hazing has been alleged between the years of 1980-2013. This study expands upon the 2009 research conducted by Carroll, Connaughton, Spengler and Zhang, which used a content analysis methodology to look at anti-hazing case law as applied in cases where educational institutions were named as defendants, and the 2002 unpublished dissertation of Guynn which explored anti-hazing case law and its application in cases involving high school students. This study examines all court cases between 1980-2013 where a judicial opinion was written and an allegation of hazing or an injury resulting from hazing occurred.

This study uses content analysis methodology to identify, code and analyze cases and applies analogical reasoning to the case review to 1) examine the breadth of legal cases that occurred between 1980-2013, 2) identify the legal issues most likely to be created by an incident of hazing, and 3) apply predictive analysis for how those issues may impact individuals, organizations, and institutions.

The study identified that legal issues related to 1) tort liability and negligence, 2) allegations of violations of 42 U.S.C. Section 1983 of the Civil Rights Act, 3) hazing, 4) assault and battery, and 5) Title IX of the Educational Amendments of 1972 were most commonly argued in courts of law following an incident of hazing. A discussion of each area of law and the parameters under which a court would make decisions in this area of law were provided for discussion.

KEYWORDS: Hazing, Legal Issues, Content Analysis, Tort Liability, Negligence

Christopher Keith Ellis

April 26, 2018

Date

THE EXAMINATION OF HAZING CASE LAW AS APPLIED BETWEEN 1980-2013

By

Christopher Keith Ellis

Kelly D. Bradley, PhD

Director of Dissertation

Jeffery Bieber, PhD

Director of Graduate Studies

April 23, 2018

Date

ACKNOWLEDGMENTS

The completion of any project of significance in one's life is not done alone or without the support and encouragement of the ones closest to us. I would not have been able to complete this dissertation without the love and support of my wonderful wife Nichole Knutson who never allowed me to give up. The same can be said for the best supervisor I have ever had in my life, Dr. Kirsten Kennedy, who continued to push me to finish this dissertation and gave me the space I needed the past few months to get my writing completed. Kirsten's mentorship, guidance, and willingness to take a chance on me has been a true blessing in my life.

I would also like to thank my Dissertation Committee, Professor Kelly Bradley as chair of the project who agreed to take me on in a last-ditch effort to complete the writing, Professors John Thelin and Justin Bathon who were willing to allow me to continue these past many years, and Professor Neal Hutchens who has been there for me every time I had questions about the project, and who lent an ear each time I came back to the dissertation to try and re-start. Additionally, I would like to thank Professor Tricia Browne-Ferrigno who served as the outside reader and examiner for my defense, your feedback and edits to this document were crucial to producing a better final document. Without each of you, this could not have been accomplished.

I would like to thank the faculty of the Novak Institute for Hazing Prevention who served as guides and supporters for me through these many years as well. Kim Novak has been a friend and mentor to many for the past 10+ years and her passion for hazing prevention and willingness to bring me onto the faculty to engage my passion has meant a tremendous amount to me and my family. Dr. Linda Langford, Dan Wrona and Fred

Dobry have provided so much encouragement over the years and I hope that this manuscript helps us continue to inform the work we do each day around hazing prevention.

There are also friends and colleagues whose support cannot go unnoticed. To all the men and women, I have worked with at both the University of Kentucky and the University of South Carolina, you have all given to me more than I can return to you. Everyone's support in this adventure has meant a great deal.

As a fraternity man myself, I want to thank the brothers of Sigma Phi Epsilon at the University of Memphis (as an undergraduate) and today at the University of South Carolina (as an advisor) for proving that fraternity can exist without hazing. I am a better man today because of my experiences in Sigma Phi Epsilon these past 20 years.

Lastly, I would not be here today as a Ph.D. candidate without my parents and family who instilled in me from an early age a value and appreciation for education. My parents who as high school teachers provided the examples of true community impact through education still serve as the guiding light for me in my career.

TABLE OF CONTENTS

Acknowledgments.....	iii
List of tables.....	vii
Chapter 1: Introduction.....	1
What is Hazing?.....	2
Statement of the Problem.....	5
Negative Impact of Hazing.....	8
Purpose of the Study.....	10
Significance of the Study.....	10
Defining the Timeframe of the Study.....	12
Research Method.....	13
Summary.....	15
Chapter 2: Literature Review.....	16
Historical Overview of Hazing.....	16
Multiple Definitions of Hazing.....	22
Legal Definitions of Hazing.....	30
Legal Issues Associated with Hazing.....	31
Ambiguity and Vagueness.....	32
Constitutional Challenges to Hazing Legislation.....	35
Hazing Claims Made Under Civil Law.....	38
Application of Tort/Negligence Law in Hazing Cases.....	42
Applicability of Anti-Hazing Law.....	45
Summary.....	46
Chapter 3: Methodology	48
Data.....	48
Jurisdiction.....	51
Judicial Reliance on Precedent and Analogical Reasoning.....	54
Method of Analysis.....	56
Case Selection.....	57
Systematic Case Coding.....	58
Analyzing Cases.....	59
Chapter 4: Analysis of Legal Issues & Associated Case Law.....	62
Purpose of the Study.....	62
Data Analysis.....	63
Tort Liability and Negligence.....	65
Court Cases Alleging Negligence Following a Hazing Incident.....	68
Conclusion of Tort Liability and Negligence.....	85
42 U.S.C. Section 1983 of the Civil Rights Act of 1964.....	86
Court Cases Alleging Violations of 42 U.S.C. §1983.....	89
Conclusion of 42 U.S.C. §1983.....	105

Hazing Law as Specifically Alleged in Cases of Hazing.....	105
Court Cases Alleging Violations of Hazing Law.....	110
Conclusion of Allegations of Hazing Law.....	123
Assault and Battery.....	124
Court Cases Alleging Assault and Battery.....	124
Conclusion of Allegations of Assault and Battery.....	130
Title IX of the Educational Amendments of 1972.....	130
Court Cases Alleging Violations of Title IX.....	131
Conclusion of Allegations of Title IX.....	137
Summary.....	137
Chapter 5: Results, Implications, and Conclusion	139
Results.....	140
Cases Alleging Hazing.....	140
Hazing Cases in Criminal and Civil Courts.....	140
Other Legal Issues.....	143
Legislation as a Response to Hazing.....	159
Application of Other Criminal Statutes.....	161
Limitations of Available Data.....	161
Implications and Recent Developments.....	162
New Developments in Legislation.....	163
Institutional Responses to Hazing.....	170
Conclusion.....	177
References.....	179
Vita.....	202

LIST OF TABLES

Table 1, Legal Claims Following an Incident of Hazing.....	64
Table 2, Cases Alleging Negligence Following an Incident of Hazing.....	69
Table 3, Cases Alleging Violations of 42 U.S.C. §1983 of the Civil Rights Act.....	90
Table 4, State Hazing Law Characteristics.....	107
Table 5, Cases Alleging Violations of Hazing Law.....	111
Table 6, Cases Alleging Assault & Battery in Hazing Incidents.....	125
Table 7, Cases Alleging Violations of Title IX in Incidents of Hazing.....	132
Table 8, Legal Claims Following an Incident of Hazing.....	145

Chapter 1

Purpose of the Study

In 2011 student deaths at Cornell University and Florida A&M University represented the most tragic of outcomes that can occur from an incident of hazing (Associated Press, 2012; Crimesider, 2012; Kaminer, 2012; Mulvihill, 2011; Ng, 2012; Winerip, 2012). In the same year, high profile hazing incidents at Binghamton University in New York led to the university administration canceling spring pledging for fraternities, a report written by a former fraternity member who admitted to participating in grotesque hazing activities at Dartmouth University led to alumni and student pressure for the termination of the President of the institution, and an incident at Boston University left six young men kidnapped and tied up in the basement of a fraternity house (Cohen, 2012; Reitman, 2012). The deaths and injuries of these students, and the resulting criminal and civil legal cases, garnered attention from a wide array of national media outlets including CNN, CBS Morning News, and ESPN Outside the Lines.

These stories do not represent the full magnitude of harm and injury that occurs on a regular basis due to hazing incidents in high schools, colleges, military bases, sport teams, performing arts groups, and beyond. Research has shown that over 50% of students involved in at least one student organization on a college campus experiences hazing behaviors, and nearly 95% of incidents where students experience hazing go unreported to a university or other official (Allan & Madden, 2008). Typically, incidents of hazing only come to the attention of school and university officials when the activities result in traumatic injury or fatality (Drout & Corsoro, 2003). These two data points alone

underscore the fact that many hazing incidents do not result in physical injury and are left unknown to universities and other institutions.

This does not mean that students who experience hazing do not experience injury, as often students report psychological injury or academic issues immediately following a hazing incident or later in life (Owen, Burke & Vichesky, 2008). Incidents of hazing exist today as a cultural and societal phenomenon that puts the wellbeing of young men and women at heightened risk in an educational environment (Allan & Madden, 2008; Finkel, 2002).

What is Hazing?

Hazing has links to cultural rites of passage and tests of manhood throughout the history of society and has links to academic pursuits that can be traced back to the times of Socrates and Plato (Kuznich, 2000; Nuwer, 2004; Trota & Johnson 2004). Those who have a higher status within a group or organization (e.g., class, rank, age) use hazing as a tactic to bring potential new members into the same group. Hazing is often used as a formal introduction into an organization, marking the attainment of status for the potential new member (Carroll et al., 2009; Johnson & Holman, 2004; Lewis, 1991). In this way, hazing can take many forms as it “incorporates treatment such as the wearing of a beanie cap to the permanent disfigurement of the body” (Lewis, 1991, p. 125).

Some participants in hazing consider the activities themselves to be ‘fun’ or ‘exciting’ while others recognize the humiliating, dangerous, and potentially illegal aspects of hazing (Hoover & Pollard, 2000). Hazing activities can take on such innocuous forms as the practical joke played at a participant’s expense to the serious crime of assault, battery, or rape (Lewis, 1991; Solberg, 1998). This dichotomy of experiences

clouds the interpretation of hazing activities and the experiences of those participants in hazing, leaving each new experience to be either more dangerous or more enjoyable for the victim. Malszecki (2004) writes of his experience with hazing in the military:

Hazing is presented as 'games' that educate the initiate into the grammar of violence by playing out ritualized roles of submission and success. In hazing, the confusing mix of play and violence, pain and encouragement, fear and joy, ordeal and acceptance, and the hyper-exaggerated sense of brutality fueled by the mental dis-orientation of alcohol abuse, works to prove that honorable loyalty to the group is the highest good. (p. 35)

This struggle between positive and negative group experiences and loyalty to or hatred of the perpetrators of hazing leaves a vast expanse of interpretation and analysis of group behaviors and has led many legislatures to enact laws that cover every possible activity that may risk an individual's mental or physical health, or the safety of those involved in hazing activities (Govan, 2001; Kuzmich, 2000; Pelletier, 2002). Additionally, the dichotomous nature of hazing has created an environment that makes defining hazing extremely difficult (Ellsworth, 2006; Hollmann, 2002).

This difficulty in defining hazing has created numerous hazing definitions across the United States, each one slightly tailored for the organization creating the definition (Acquaviva, 2007; Carroll et al., 2009; Pelletier, 2002). Some states created hazing definitions that cover the gamut of potential hazing activities, making activities that cause mental and physical harm illegal for their citizens; while other states have limited the extent of hazing law to only those activities that cause severe physical injury or death (stophazing.org, 2012). This struggle to define hazing legally at a state level has led to certain activities in one state being permissible, while the same activity would be illegal in another state (Sussberg, 2003).

Even more complicated in defining hazing is the difference between definitions at institutions of higher education that define certain activities as inappropriate, while the state definition may allow those same activities under the criminal codes. Examples also exist within states and within institutions of higher education where hazing may not be allowed for certain organizations, such as fraternities and sororities, but hazing may be allowed for athletic teams or military groups (Crow & Phillips, 2004). This confusion with the definition of hazing has been supported by numerous research studies which show that students who report having participated in an experience that meets the criteria for hazing at an institution, do not label their experience as hazing (Allan & Madden, 2008; Campo, 2005; Ellsworth, 2006; Hoover & Pollard, 2000). This led Campo and colleagues (2005) to write:

Students have a narrow definition of hazing, including only extreme forms like being tied up, beaten or raped. Additionally, there may be psychological barriers to students recognizing their own involvement (in hazing) such as dissonance caused by feelings of guilt or hypocrisy. (p. 146)

This finding was supported by Allan and Madden (2012) where students only reported an activity as being hazing in its most extreme forms, and many students did not believe an activity constituted hazing if the activity had a productive purpose such as maintaining organizational traditions or group bonding activities, despite the dangerous nature or illegal aspects of the activity. Owen, Burke and Vichesky (2008) voiced the need for a uniform hazing definition when they wrote:

Clarifying the definition of hazing could help reduce illegal acts, because individuals who discover their conduct is considered hazing may cease problem behaviors, and victims who are more fully aware of hazing laws may be more forthcoming in reporting incidents which they otherwise would not consider to be violations. (p. 45)

The call for a uniform definition has been made consistently throughout the literature (Acquaviva, 2007; Ellsworth, 2006; Hollmann, 2002; Sussberg, 2003). As of yet, no empirical study exists that supports a clear definition of hazing will result in reduced incidents or higher reporting. Still the confusion surrounding the definition creates a void between student experience and student understanding (Allan & Madden, 2012; Hoover & Pollard, 2000).

Hazing is defined in this study as, those activities associated with membership or potential membership in an organization, group or team that appear unrelated to the purpose of the organization, group or team, by a reasonable observer. Hazing also includes activities that are related to the purpose of the organization, group or team, that are unnecessarily excessive in nature (Cimino, 2011; Ellis, 2012). This definition is derived from the writings of Cimino (2011) and diverges from the standard research definition developed by Hoover (1999) and considers the appropriateness of some activities that are related to a group's purpose while also defining hazing activities that are unrelated to a group's mission or purpose.

Statement of the Problem

Historically the practice and use of hazing has persisted as a means of *initiating* or *inducting* new members into an organization, team, or military unit. Today, the continued use of hazing as a process for membership induction continues to place individuals in harm's way and has taken on a potentially dangerous and occasionally deadly tone (Finkel, 2002; Nuwer, 2004). To date, no official statistic regarding the number of hazing or *hazing-like* deaths exists or is currently kept by a governmental agency, yet historian and journalist Hank Nuwer has kept a log of all incidents of hazing that he has been able

to uncover through research; as of 2012, he lists 151 incidents of death related to hazing or hazing-like activities (Nuwer, 2012). A similar study conducted in 2008 reviewed news reports in English speaking countries and tracked 55 deaths related to hazing between the years of 1950 and 2007 (Srabstein, 2008). In the study, Srabstein reports that 80% of hazing deaths occurred in the United States, and 87% of deaths related to hazing occurred with the victim in an age range between 18 and 24 years old. The stories of these students, the lives they led, and the tragedy of their deaths identify hazing as a significant risk for high school and college-aged students.

The resulting injuries and deaths from instances of hazing over the past 150 years of American history have led 44 states to adopt anti-hazing laws. Many of these laws were written and enacted in the 1980s and 1990s as a result of the lobbying efforts of an organization called Committee to Halt Useless College Killings (C.H.U.C.K.) and other similar organizations (Acquaviva, 2007; Lewis, 1991; stophazing.org, 2012). These laws were enacted without the benefit of the first truly comprehensive research studies on student hazing conducted by Alfred University in 1999 and 2000, and the 2008 National Study on Student Hazing conducted by Maine University (Allan & Madden, 2008; Hoover & Pollard, 2000; stophazing.org, 2012). These seminal studies explored hazing in high schools and on college campuses and in all student organizations including fraternities and sororities and athletic teams.

Among the 44 states with anti-hazing legislation, the definition of what constitutes hazing, the populations that can be held responsible for committing hazing, and the authority of the state in adjudicating hazing cases varies widely providing ambiguity across state lines for determining the criminal standard for hazing (Crow &

Phillips, 2004). The ambiguity around hazing is heightened when one considers the differences that exist in the definition of hazing as defined by institutions of education and learning, and the definition of hazing as applied in criminal and civil law.

Additionally, the legal standard for an individual to be found guilty of hazing has been set extremely high, and few cases that go to trial result in a guilty verdict for hazing (Pelletier, 2002).

Finally, in instances where extreme injury or death are the result of hazing, public outcry, state representatives, and members of the media often respond by calling for stricter legislation at the states level or for the creation of a National Hazing Law (Barr, 2012; Cohen, 2012). The proponents of stricter legislation maintain the belief expressed by attorney Douglas Fierberg who specializes in representing the families of hazing victims against social fraternities that “the industry will not be made safer and ultimately fewer people will experience the traumatic injury and death that has come with fraternities (hazing) until change (in the law) is made” (Cohen, 2012 online). This outcry propagates a response to hazing focused on a specific incident or series of incidents, yet more recent public health and prevention research conducted by the United States Department of Education’s Higher Education Center for Alcohol, Drug Abuse and Violence Prevention has outlined a need for hazing to be explored as a public health concern and as a part of a larger cultural issue facing institutions of education (Langford, 2008). This study will explore legal cases alleging hazing to discern if the pursuit of stricter laws and national anti-hazing legislation are worthwhile.

Negative Impact of Hazing

Drout and Corsoro (2003) identify that the public is most often only made aware of hazing incidents that end in extreme physical injury or fatality of a hazing victim; however, many of the negative effects of hazing cannot be seen by a visual scan of the many participants in hazing each year. It is in fact the psychological impact of hazing that has the most negative consequences for those who are participants in hazing (Villahba, 2007). Hazing leaves mental scars upon its participants that may show up immediately, or may not present themselves for years later, leaving the victim to experience emotional pain including anger, fear, nightmares, and suicidal tendencies (Acquaviva, 2007; Edelman, 2005).

Hoover (2001) found that “71% of students subjected to hazing reported negative consequences such as getting into fights, being injured, fighting with parents, doing poorly in school, hurting other people, having difficulty eating, sleeping or concentrating, or feeling angry, confused, embarrassed or guilty” (p. 1). This study was among the first to identify initial psychological injuries as a result of hazing and has led to future research exploring the long-term effects of hazing upon the individual. Campo and colleagues (2005) identified that students who experienced hazing struggled with a cognitive dissonance of making sense of the experiences forced upon them by their peers and revealed that some of those students went on to haze others as a way of ‘meaning making’ and rationalization of their own negative experiences. Edelman (2004) writes:

According to psychologists, hazing perpetuates through a vicious cycle, which requires new members to behave subserviently. Older members demand subservience because they believe it will help them to restore their own dignity, which they themselves lost as victims of hazing incidents. Even though hazing perpetrators expect to feel *schadenfreude* (enjoyment derived from the misfortune of others), in the end, hazing harms all parties. Hazing victims suffer from

physical and emotional pain, witnesses are tortured by their fear of confronting hazers, and hazers themselves suffer from guilt associated with their wrongdoing. (p. 18)

This description of hazing as an act that has negative consequences for all parties involved identifies one of the deeper issues related to hazing and a key reason why hazing has persisted through history into today's educational environment.

The psychological effects of experiencing hazing lead to the rationalization, acceptance, and future defense of the activity while also perpetuating the creation of future organizational hazers (Campo et al., 2005; Kimmel, 2008). Additionally, Allan & Madden (2012) identified that students who experience prolonged hazing tended to dismiss institutional and legal definitions of the activity and began to minimize the potential harms that may result from experiencing hazing. Finkel (2002) goes so far as to recommend that physicians who interact with hazing victims should treat the patient as a victim of violent crime, not a willing participant in the activity that led to their injury, stating "prolonged hazing can lead to a feeling of hopelessness or to the idea that after so much harassment, it would be foolish to quit" (p. 231). These negative experiences can lead the victims of hazing to define themselves as the organization or group defines them. If the organization instills a belief in the individual that they are unworthy of respect, over time the individual begins to accept this belief; if the individual in turn receives positive reinforcement by completing hazing activities (in the form of illegal, harmful, or dangerous actions), the participant then becomes defined by the negative influences of hazing and seeks to pass these experiences on (Nuwer, 2004; Sweet, 2004). Thus, in addition to the potentially injurious and fatal side of hazing, hazing activities also have significant psychological impacts on generations of impressionable young adults.

Purpose of the Study

This study seeks to provide a thorough analyses of the total body of civil and criminal legal cases regarding hazing between the years of 1980-2013, and expand upon the 2009 research conducted by Carroll, Connaughton, Spengler and Zhang, which used a content analysis methodology to look at anti-hazing case law as applied in cases where educational institutions were named as defendants, and the 2002 unpublished dissertation of Guynn which explored anti-hazing case law and its application in cases involving high school students. Specifically, this study seeks to address these research questions:

1. How have cases with allegations of hazing been applied by criminal and civil courts?
2. How many cases alleging hazing as a precipitating factor have been heard in Federal or State District Courts (or higher) since 1980?
3. What other legal issues have been brought before the court in cases alleging hazing as a precipitating factor?
4. Is the creation of stricter anti-hazing laws an applicable response to incidents of hazing?
5. In an incident of hazing, are other criminal acts more applicable than the anti-hazing law itself?

Significance of the Study

The months following the incidents at Cornell University, Florida A&M University, Boston University, and Binghamton University in 2011-2012 brought increased media scrutiny around the criminal nature of hazing related injuries and deaths. State Representatives and Senators in Florida and New York immediately began drafting legislation to strengthen the anti-hazing laws of their states and to increase the penalties for those found guilty of committing criminal hazing (Barr, 2012). Similarly, legislators in the state of Georgia considered legislation in 2012 that would restrict state educational funding for students found guilty of hazing in the state, and the state of New Mexico became the 44th state to adopt anti-hazing legislation (Alexander, 2012; Turner, 2012).

As more states consider legislation creating stricter anti-hazing laws as a response to hazing injuries or deaths in their states, a study that analyzes the various state laws and criminal and civil cases where hazing was alleged would be useful to inform the basis for new legislation. One of the difficulties in tracking instances of hazing across the United States can be attributed to the lack of a clear definition of hazing by the law as 44 states have independently adopted laws and policies against the use of hazing in activities associated with organizations that are affiliated with educational institutions (stophazing.org, 2012). The full extent of these laws varies from state to state as some states have adopted laws which make the act of hazing a felony, while other states have adopted policies that outline rules against hazing for the public institutions of higher education in their state. The states have adopted varying degrees of penalty for hazing as,

Statutes differ from state to state in their definition of what constitutes hazing actions. The laws frequently differ in classification of crime and in the degree of severity associated with the criminal action. They also carry a diverse course of punitive and management action for perpetrators, and compensation and recourse for the victims. (Crow & Phillips, 2004, p. 20)

The differences that exist from state to state regarding what behaviors organizations can or cannot engage in to bring new members into their ranks causes hazing law to be among the most difficult to prosecute in a criminal or civil court (Kuzmich, 2000; Pelletier, 2002).

This study is significant as it seeks to inform legislatures about whether or not anti-hazing legislation is an effective response to incidents of hazing in their state, or if the time, energy, and resources of the state would be better used in developing alternative response strategies. Further, when one considers the initial hearings of the 2012 hazing trial involving the three men charged with and acquitted of the hazing of George

Desdunes, a study that identifies the various legal issues that surround an incident of hazing may assist prosecutors in determining if a charge of hazing is worth pursuing, or if the parties involved should be pursued under separate legal statutes such as negligence, assault, kidnapping. (Associated Press, 2012; Kaminer, 2012; Villalba, 2007).

Finally, this study is significant as it provides a full analysis of the body of hazing case law across the 44 states that have adopted anti-hazing legislation, building upon previous studies that have focused solely on case law that involved institutions of higher education, or incidents of hazing that occurred in high schools. By focusing upon the full body of criminal and civil cases involving hazing, this study provides a complete picture of the challenges inherent in adjudicating cases involving hazing.

Defining the Timeframe of the Study

The United States of America has seen waves of focus applied to legislating the issue of hazing in educational institutions including the passing of the first piece of legislation in the United States Congress in 1874 outlawing hazing in the Military Colleges (Kuzmich, 2000; Lewis, 1991). In 1901, the State of Illinois became the first state legislature to pass a statutory anti-hazing law, yet many states failed to see the need of such legislation for many decades (Lewis, 1991). Anti-hazing legislation saw its greatest period of growth in the 1980s and 1990s “due in large part to the efforts of the Committee to Halt Useless College Killings (C.H.U.C.K.) and similar organizations” (Acquaviva, 2007, p. 312). States during this period began to make efforts that would prohibit and/or criminalize hazing behaviors in response to an increase in hazing-related deaths at the college level (Carroll et al., 2009; Lewis, 1991). The laws created during this time varied dramatically, and still lack uniformity today (Crow & Rosner, 2002;

Lewis, 1991). This period of dramatic growth in legislation identified 1980 as the ideal date to begin the review of case law involving incidents of hazing.

The year 2013 marked a shift in the amount of attention popular media paid to the issue of hazing. The death of Robert Champion at Florida A&M University sparked the nation's attention to the topic of hazing in a way that was rarely seen before (Associated Press, 2012; Crimesider, 2012; Kaminer, 2012; Mulvihill, 2011; Ng, 2012; Winerip, 2012). The addition, availability, and growth of social media outlets during this time increased the amount of attention drawn to a death that (five years prior) may have been only a local news story (Biemiller, 2018). This new attention was likely to change the way state legislatures and in turn state courts would address the issue of hazing and thus the end date of 2013 was chosen to bookend this study.

Research Method

This study builds upon the work and method used in the 2009 research study conducted by Carroll, Connaughton, Spengler, and Zhang, *Case Law Analysis Regarding High School and Collegiate Liability for Hazing*, which used a content analysis methodology to look at anti-hazing case law as applied in cases where educational institutions were named as defendants. The content analysis methodology of legal research is the process of, "collecting a set of documents, such as judicial opinions on a particular subject, and systematically reading them, recording consistent features of each and drawing inferences about their use and meaning" (Hall & Wright, 2008, p. 64).

This method of analysis provides a reproducible and empirical study by focusing on the whole body of case law. Traditional legal scholarship and case analysis does not include an explanation of the full detail and structure of an empirical content analysis

(Hall & Wright, 2008). The content analysis method involved looking at a breadth of cases and applied equal value to each case. Traditional legal analysis that looks in depth at one influential case, or a group of influential cases, and provides commentary about all cases based only upon the small grouping (Hall & Wright, 2008). Content analysis in contrast, looks at a larger group of similar cases to identify patterns amongst the application of the law in those cases. Regarding criminal and civil cases involving anti-hazing laws, a wide look at many cases is more likely to provide the analysis needed to make determinations on how legal standards have been applied across the 44 states that have adopted such laws. Using content analysis “aims for a scientific understanding of the law as found in judicial opinions and other legal texts” (Hall & Wright, 2008, p. 64) and allows the researcher to use a variety of methods to explain the cases in whole.

To address the research questions the study identifies all criminal and civil cases where hazing or hazing-like behaviors were alleged and tried in a court of law. LexisNexis was used as the main research database to collect the cases. LexisNexis exists as an online research tool, which contains a backlog of most legal decisions that have occurred in the multiple jurisdictions within the United States legal system (Berkum et al., 2006). LexisNexis also maintains a breadth of secondary source law reviews and journal articles within its database and provides the researcher the ability to perform a keyword search about a law and the ability to search the *factual concepts* that are involved in a case. By searching both the law and the facts within a case, applicable cases involving alleged hazing activities were pulled if they were relevant to the study but did not come up in a search for a law but may be similarly related (Kunz et al., 2004).

Legal reasoning by analogy or example was utilized as the method to analyze cases once they were identified. Legal reasoning by analogy is the process of comparing cases to one another utilizing the similarities between the two and is built off the work of Edward Levi (Sunstein, 1993). Levi's approach to the interpretation of case law continues to be utilized as sound legal analysis.

The basic pattern of legal reasoning is reasoning by example. It is reasoning case by case. It is a three-step process described by the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law, then applied to a next similar situation. (Levi, 1948, p. 501)

A comparison of case law across states utilizing legal reasoning by analogy provides a full picture of the treatment of hazing cases despite the differences in the state laws.

Summary

The act of hazing has been present on college campuses for centuries. Numerous men and women have been physically or mentally injured because of experiencing hazing, yet incidents persist (Nuwer, 2004; Srabstein, 2008). State and federal legislatures have attempted to regulate the behavior by creating laws (dating back to 1901 in the United States) and policies (dating back to 1874 in the United States) against the practice of hazing (stophazing.org, 2012). This study seeks to determine how criminal and civil courts have applied hazing laws and if anti-hazing laws have been written to accurately define the practice of hazing, or if the act of hazing is better legislated by other criminal acts (such as negligence, kidnapping, assault). The next chapter will provide a brief historical overview of hazing in academia and in the United States, an in-depth analysis of the literature surrounding the definition of hazing, and a synopsis of legal reviews and critiques of existing hazing law.

Chapter 2

Review of the Literature

This chapter provides a review of the literature relevant to the topic of hazing in the United States. The chapter begins with a historical overview of hazing, tracing the activity from the Middle Ages to the present. Following the historical context, the chapter provides a review of the definition of hazing as defined in research studies and a review of the legal definition of hazing as enacted by state legislatures. Finally, the chapter presents a synthesis of law review articles, which analyze and comment on the courts' opinions on hazing law.

Historical Overview of Hazing

The first written accounts of hazing trace back to medieval times when “in Western Europe in the 12th century, hazing and hazing traditions became an integral part of both academic and social life” (Trota & Johnson, 2004, p. xi). Hazing was utilized in the Middle Ages as a way for students to show their commitment to the educational rigors of their institution of higher learning. It was not uncommon for the men of the Middle Ages to spend the early years of their education performing acts of servitude for the older students to gain their acceptance at the university (Kuznich, 2000). Hazing became so present and distracting during the early years of medieval education that some universities in France and Germany began passing anti-hazing regulations as early as the fourteenth century (Nuwer, 2004).

The origin of the word *hazing* and its use in reference to the activities of bringing/maintaining new men or women into an organization has been traced back to two different locations (Etymology Online, 2012). One origin of the word is linked to an

old nautical tradition whereby crewmembers were required to perform *unpleasant and unnecessary hard work* as a form of punishment for their transgressions while at sea. This origin of the term has a direct link to the common use of the word *hazing* as it is described in Richard Henry Dana, Jr.'s 1842 writing entitled *Two Years before the Mast*. The author's description in this writing depicts how the nautical sense of "hazing as punishment" transitioned into *hazing as torture* or *hazing as welcoming* and describes a full account of *unnecessary* tasks required of new hands to a ship.

In this account, the author describes crewmembers being required to stand upon the ship's deck during a rainstorm while at port performing meaningless tasks. This depiction of hazing outlines a culture within the navy of treating new crewmembers poorly until they have *proven* their worth to the crew. This culture can also be seen in the traditional Pollywog ceremony that is conducted on many ships as the ship and its crew cross the equator. The Pollywog to Shellback tradition dates back centuries and has roots in the many merchant marines and navies around the world (Desa Online, 2012). The ceremony describes many similar attributes to a hazing ceremony that may be seen in conjunction with sports teams or student organizations, and the ceremony involves the public ridicule, abuse, and harassment of any member of the crew who is crossing the equator for the first time, including commanding officers.

The link from utilizing the term *hazing* as a nautical word describing punishment to the first appearance of the word in *Harvard Magazine* in 1860 describing "the absurd and barbarous custom of hazing which has long prevailed in college" may have been this confusion between "unnecessary and unpleasant work" as a form of punishment and "unnecessary and unpleasant" treatment as one crosses the equator (Solberg, 1998, p.

233). Once the term *hazing* was connected to the customs of sophomore/freshman *rushes* in American higher education by *Harvard Magazine* in 1860, the term began to take on new meanings related to this new setting.

Hazing was first presented as a method of training young boys “long before the organization of the first civilized armies” (Malszecki, 2004, p. 44). Early civilizations used hazing as a way to separate the soldier from his civil identity and recreate him in the mold of the warrior with a bond to the men around him. The common belief for the military was that “one cannot wait until hostilities break out to test future warrior-soldiers. The motivating, testing, and affirming of the untried is accomplished through punishing basic training and through initiations into the fighting unit” (Malszecki, 2004, p. 35). The armies of the world put their soldiers through harassing drills on a regular basis to prepare them for the battles that would come, and when the drills led by officers were over, the men of the unit took their own rights in bringing new soldiers into the group. Hazing would become a method employed by most units in most armies to build bonding, brotherhood, and subservience to the will of the unit within the soldier.

Hazing was recorded in writings within the American system of higher education for the first time in the 17th century when the first students won a settlement against a fellow student in 1657 (Nuwer, 1990). The first punishable offense of hazing occurred in 1684 when a student by the name of John Webb was punished at Harvard for striking fellow students when they did not submit to his needs (Nuwer, 1990). As 18th century colleges and universities developed, and more students attended colleges, hazing practices became more ingrained into the institutional culture, with new students serving as servants to the older students (Trotta & Johnson, 2004). As institutions developed, and

as student organizations began to take form, hazing was utilized more to bring new students into the institution or organization as the upperclassmen intimidated fear into the freshmen students. Nicholas Syrett in his 2009 book, *The Company He Keeps*, writes of the typical hazing behavior of students in this time:

The fiercest rivalry was traditionally between the freshmen and sophomores. This commenced at the beginning of each school year with a terrifying campaign of hazing visited by the sophomores upon the freshmen, a practice descended from sets of “Freshmen Laws” that had been in place at many colleges from the seventeenth and eighteenth centuries onward whereby sophomores “tutored” freshmen in the manners of college life. Freshmen were kidnapped, stripped, carried off on trips, painted, shorn of their hair, tarred, feathered, bound, gagged, and left in cemeteries. Those freshmen who had been punished the year before often exacted a misplaced revenge on the next year’s newly arrived freshmen. (p. 18)

The establishment of rules for the freshman class and the expectation that freshmen should submit themselves to the wills of the upperclassmen was a concept that was borne on the college campus in the colonial era (Sheldon, 1901). “‘Freshman Laws’ created a social system where the sophomores instructed the freshmen in the ways of the college, and the new students were expected to run errands for the upper classmen” (Barber, 2012, p. 2). At the turn of the 18th century, most institutions had done away with the formalized *Freshman Laws*; however, the upper-class students continued the practice of *welcoming* the freshman class to the institution through any number of hazing activities.

Students confronted each other in ‘rushes,’ violent free-for-alls that pitted the sophomores and the freshmen against each other. To enter college the freshman endured the physical and psychological pain of initiation. The sophomore his primary enemy made him feel distinctly unwelcome, fighting him in the streets, denying him the right to carry the principal undergraduate weapons of defense, the club or cane, excluding him from the turf of the college. Sophomores stole the personal items of freshmen, forced them to endure humiliation, and subjected individuals who refused to be good sports to brutal hazing. (Horowitz, 1987 p. 42)

The first reported hazing death occurred during this post-bellum timeframe at Cornell University during a Kappa Alpha ritual (Nuwer, 1990; Syrett, 2009; Torta & Johnson, 2004). In 1873 members of the Kappa Alpha fraternity dropped Mortimer Leggett and his pledge brothers off in the woods and instructed them to find their way back to campus. All the pledges were wearing blindfolds when they were dropped off; when Mortimer was found after falling to his death in a gorge in upstate New York, he was still wearing his blindfold. Tragically, the death of Mortimer Leggett would only be the first among many hazing related injuries and deaths in American higher education.

States, colleges, and national fraternal organizations would soon recognize that hazing was a growing danger to their students' well-being (Kuzmich, 2000; Syrett, 2009). Much like the attempts of some universities in France and Germany in the 14th century, in 1874 the United States Congress would be the first to write a statute outlawing the practices of hazing for any organization (Kuzmich, 2000; Lewis, 1991). Recognizing the dangerous outcomes of hazing within military units, Congress outlawed hazing at the United States Naval Academy to protect the students and cadets there. In 1894, Phi Kappa Psi became the first social fraternity to pass national legislation outlawing hazing as a practice for its members and recognizing that the use of the practice was detrimental to the development of their organization nationally (Syrett, 2009). Finally, in 1901, the state of Illinois would become the first to outlaw hazing at its state institutions and to define the behavior for students in the state (Lewis, 1991). These statements are the first attempts to define the concept of hazing in a legal and social environment.

The growing attention to legal issues of hazing between 1900-1960 did not change much to deter hazing on the college campus. Accounts of hazing behaviors can be

found in historical records of social fraternities and colleges throughout this period, much like the account of one Dartmouth alumnus from Delta Kappa Epsilon in the 1920s:

Initiations of the 1920s had distinct phases made up of running a gauntlet, extensive paddling, eating a concoction of oysters and asafetida, and a number of other rituals that were more 'elevated in tone.' One of these was a ritual branding whereby the 'ΔKE' was seared into the forearms of the newly initiated brothers. The process of branding also had import: by withstanding the pain of the 'red hot pronged branding iron,' the neophytes proved their masculinity, and they did so in the service of their fraternity. (Syrett, 2009, p. 203)

The adherence of the fraternity to the practice of hazing was firmly ingrained in tradition and ritual for most social fraternal organizations of this time, and despite attempts by college administrators and faculty to rid the university students of these practices, hazing would continue.

As campus-wide hazing of the freshman class began to diminish, some social fraternities began adopting hazing practices for their yearly welcoming of new members to the organization. Self-proclaimed as the protectors and preparers of America's elite, social fraternities believed that obtaining a place among the upper echelon of society was not something that should be easily gained (Syrett, 2009). Franklin Delano Roosevelt wrote these words to his mother of the impending hazing practices upon his selection into Delta Kappa Epsilon fraternity at Harvard University. "I have been admitted to a secret fraternity that required its members to undergo arduous initiation rites that have been aptly described as 'a curiously primitive rite of passage'" (Karabel, 2005, p. 16). But Roosevelt accepted these rites without complaint, writing to his mother that "I am about to be slaughtered, but quite happy nonetheless" (Karabel, 2005, p. 16). These practices of hazing continue in American higher education through the Great Depression, the Civil

Rights era, and into the 1980s before most Legislative bodies begin to address them (Syrett, 2009).

Multiple Definitions of Hazing

The understanding and definition of the term *hazing* should consider two separate categories: (1) the research definition as defined by the scholarly writing done regarding the topic, and (2) the legal definition as defined by state legislatures and enforced by courts through case law. Each of these definitions provides a different perspective on the term *hazing* which can lead to an understanding of the greater concept of hazing and will be explored below.

The *Oxford English Dictionary* defines hazing as “a sound beating, a thrashing, a species of brutal horseplay practiced on freshmen at American colleges” (Oxford English Dictionary, 2012 online). This definition identifies the practice of hazing as a significant piece of the American college experience yet limits in scope the broader aspect of hazing as it applies to many different arenas including secondary schools, athletic fields, workplaces, and military units. This narrow definition of hazing also ignores the many non-physical aspects that hazing can include.

Pelletier (2002) builds upon the definition of hazing in the dictionary, describing hazing as “to subject to treatment intended to put one in ridiculous or disconcerting positions” (p. 378). The expansion of the definition in this way specifies the intentionality of hazing the subject, creating the outcome of the hazing as placing the subject in a ridiculous situation, or a situation that leaves the subject uncomfortable and potentially unnerved. The inclusion of the intentionality of the behavior strengthens this definition of hazing as it is generally understood.

The definition used by Wozniak (1995) maintains the significant pieces of the definition used by Pelletier (2002) but adds an important qualifier to the term *hazing*; an initiation process (Acquaviva, 2007; Wozniak, 1995). In Wozniak's definition, "hazing is the act of putting another in a ridiculous, humiliating or disconcerting position as part of an initiation process" (Acquaviva, 2007 p. 308). Under this definition, any activity that occurs outside of the process of an initiation should not be linked to the term *hazing*. This is an important distinction for the general understanding of hazing and its application. Wozniak's definition implies that to be hazed, one must be undergoing a process of initiation into something. This definition potentially leaves out numerous activities and hazing accounts that occur outside of a formal or informal initiation process.

Wozniak (1995) is not the only author to set the qualifier of initiation upon the term *hazing*; the Merriam-Webster dictionary goes one step further and defines hazing as "an initiation process involving harassment" (Merriam Webster Dictionary, 2012 online). Taken literally, the Merriam-Webster definition does not qualify hazing as a part of an initiation process, but instead qualifies initiation processes as hazing processes involving harassment. The potential downfall of this definition is the same as the downfall of Wozniak's definition, not all hazing occurs as a part of a formal or informal initiation process and many hazing accounts occur in settings where no initiation process exists.

Despite this omission in the Merriam-Webster definition, Trota and Johnson (2004) expand upon the Merriam-Webster definition in their introductory chapter to the book *Making the Team: Inside the World of Sport Initiations and Hazing* that "hazing is by definition a rite of passage wherein youth, neophytes or rookies are taken through traditional practices by more senior members in order to initiate them into the next stage

of their cultural, religious, academic or athletic lives” (p. x). By including the transition from one form of membership within a group to another form of membership within the same group, Trota and Johnson make significant additions to the definition of hazing. First, the Trota and Johnson definition provides an important qualifier for the term *initiation*, being that regardless of whether a formal or informal initiation ceremony exists, hazing (in these terms) is simply the process of moving a *new member* of an organization or team to the next stage of their membership. The Trota and Johnson definition also identifies an important piece of future hazing definitions, that hazing occurs within a group setting. The group setting is important to the understanding of the term *hazing* because it is the one significant difference between the definition of bullying and the definition of hazing.

Hazing has come to be understood through definitions like Trota and Johnson’s to be more about the process of inclusion into a group, whereas bullying is done as a process of exclusion and separation from a group (Allan & Madden, 2012). Trota and Johnson’s (2004) definition highlights the importance of hazing occurring within a group or team setting and that the intentionality of the hazing process is created to move members from being new to the next stage of membership. The Trota and Johnson definition is predicated on all processes of moving members to new stages of membership be considered *hazing*. This predication creates a definition of hazing that includes both positive experiences and negative experiences, associating membership processes that create solely positive outcomes and experiences with a word that maintains a negative connotation.

Sussberg (2003) has a similar take on hazing, believing that all membership activities are hazing, and encouraging an appropriate definition for hazing that “does not forbid all hazing, but only those acts which create a strong likelihood for mental or physical injury” (p. 1489). Allan and Deangelis (2004) offer a different perception of hazing and initiation activities, encouraging the separation of the two from definitions:

It is important to note that while the term ‘initiation’ is commonly associated with the term hazing, the terms are not synonymous. Initiations do not by definition involve hazing practices. Anthropologists have long studied initiations and rituals as important elements of any culture. Hazing, however, carries a much more specific meaning and involves humiliating, degrading and/or abusive behavior expected of someone in order to become a member, or maintain one’s full status as a member of a group. (p. 63)

The distinction between appropriate initiations and rites of passage and inappropriate hazing behaviors is important when defining hazing. If the definition of hazing is written so broadly to include positive group activities, then the word itself may become much more difficult to understand.

In 1999, Nadine Hoover published the first comprehensive study of hazing in college athletics at Alfred University in New York. The definition given to the participants in the 1999 Alfred study was the first to be used to define hazing in a research setting. 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 balls, team parties with community games, or going out with your teammates unless an atmosphere of humiliation, abuse or danger arises. (Hoover, 1999, p. 8)

The Hoover definition of hazing narrows the definition of hazing in previous writings. Hoover allows that within a group dynamic there may exist certain requirements of rookies or new members that are humbling but not objectionable and adds the qualifier

that if an activity that might otherwise be acceptable is presented in an environment or context that creates *humiliation, abuse or endangerment* then the normally acceptable behavior may also be considered hazing. This change in the definition allows groups and teams to create positive meaningful experiences for new members to bond with one another and with the older members of the group or team.

In 2000 Alfred University released the second comprehensive study of hazing, focusing on the hazing experiences of high school students across the United States. The 2000 study attempted to hone the research definition of hazing, identifying hazing as: “any humiliating or dangerous activity expected of you to join a group, regardless of your willingness to participate” (Hoover & Pollard, 2000, p. 4). This definition of hazing eliminated the qualifiers provided in the 1999 study and reduced the number of descriptors for activities identified as hazing eliminating *abuses and degrades* from the definition. The assumption within this definition is that some of these descriptors are redundant, identifying that most degrading activities are in some form humiliating and that most abusive activities are also dangerous in nature.

The 2000 Alfred study assumes that context and environment are implied in hazing activities with the removal of the qualifying statement: “unless an atmosphere of humiliation, abuse or danger arises” (Hoover & Pollard, 2000 p. 4). Despite the simplification of the definition of hazing used in the 2000 study, future research on the topic of hazing dismissed the definition used in the 2000 study in favor of the definition used in the 1999 study (Allan & Madden, 2008; Crow & Rosner, 2002; Edelman, 2004; stophazing.org, 2007;).

An alternate research definition for hazing has been offered by Aldo Cimino in his 2011 article, *The evolution of hazing: Motivational mechanisms and the abuse of newcomers*. In this study, Cimino examines the motivational causes of hazing to identify why groups utilize hazing activities as a means of membership and group identification. In this study, Cimino states that “much of the literature that is pertinent to the study of hazing does not concern ‘hazing’... and may include non-trivial components and have not designed their theories to explain hazing itself or hazing outside of certain populations” (Cimino, 2011, p. 243).

Cimino (2011) identifies that much of the writing concerning the subject of hazing confuses group-relevant activities with activities that are inappropriate and irrelevant to the purpose of the group and that much of the writing is done to define hazing in specific populations. As an alternative approach to the definition of hazing, Cimino writes that:

Hazing is defined here as the generation of induction costs (i.e., part of the experiences necessary to be acknowledged as a ‘legitimate’ group member) that appear un-attributable to group-relevant assessments, preparations, or chance. Hazing may also be manifest in unduly excessive assessments or preparations. (p. 242)

Put another way: ‘hazing is defined as those activities associated with membership or potential membership in an organization that appear unrelated to the purpose of the organization by a reasonable observer. Hazing also includes unnecessarily excessive activities’” (Ellis, 2012 presentation).

This definition of hazing relies on the ideas of context and environment to determine if hazing is or is not occurring. Under this definition, an activity does not need to be described as humiliating, degrading, abusive, or dangerous to be considered hazing.

Instead the activity must only be determined as attributable to the purpose and preparation of membership within the group (and not excessive) to be determined as hazing or not hazing. This definition allows the activity (or activities) within the group context to be deemed hazing or not, and this definition of hazing is not reliant upon the voluntary or involuntary participation of individuals in the activity (the activity itself either is or is not attributable to the group's purpose).

By providing this alternative as a research definition, Cimino (2011) increases the ability of qualitative researchers to determine if an activity is hazing or not based on the context of the group and side steps the issues of transferability to each individual group. Conversely, Cimino's definition of hazing is not generalizable to every group, which creates issues for future empirical research across populations and group dynamics (i.e., an activity such as calisthenics would be appropriate in a military and athletic team context but would not be appropriate for a fraternity or sorority). Despite the lack of generalizability, Cimino's definition identifies the need for hazing to be defined in the context of group and environment like the way Hoover (1999) did initially.

Since the 1999 Alfred study was written, most researchers have utilized Hoover's definition to define hazing in their own writings, *any activity expected of someone joining a group that humiliates, degrades, abuses or endangers, regardless of the person's willingness to participate* (Allan & Madden, 2008; Crow & Rosner, 2002; Edelman, 2004; stophazing.org, 2007). This definition identifies the major components of hazing as defined by research which includes the following: (1) hazing occurs as the process of joining (or continuing membership in) an organization or team; (2) hazing includes activities that have the potential for humiliation, degradation, abuse, or endangerment;

and (3) hazing occurs regardless of whether a person voluntarily participates or is forced to participate. To these three qualifiers for hazing provided by Hoover (1999), Cimino (2011) adds: (4) hazing occurs when the activity is not attributable to the purpose of the group or team.

These qualifiers identify how hazing differs from other activities an individual may participate in and are important to include in any definition of hazing. Without the group context, hazing activities may be confused with bullying activities, or with activities associated with domestic violence or general assault. The inclusion of voluntary and involuntary participation classifies hazing behaviors as inappropriate no matter the circumstance. Research has shown that individuals will voluntarily submit to many forms of inappropriate, painful, abusive, or degrading activities to belong to a group (National Geographic, 2011). The same research also identified that 18-25-year olds rank *the sense of belonging* to a group as being as important as food or shelter in their lives; this understanding brings into question the volunteer nature of one's involvement in inappropriate, painful, abusive, or degrading activities. Hazing does occur regardless of the willingness to participate in the activity. Lastly, hazing is dependent upon the context and environment of the group requiring the activity and a single activity may not be generalizable as hazing across all groups. With these parameters set for the research definition of hazing and the general definition of hazing, there exists one more realm of definitions to explore: the legal definition of hazing. The next section will look at law reviews and articles that discuss hazing across the United States of America.

Legal Definitions

Hazing has been difficult for courts and state legislatures across the United States of America to uniformly define. As of 2018, 44 states have adopted hazing laws and policies independent of one another, and each state law defines hazing differently from the others (stophazing.org, 2012). To date, no singular definition of *hazing* has been uniformly adopted by the courts or state legislatures. Sussberg (2003) highlighted the challenges of legally defining *hazing* in his law review note, *Shattered Dreams: Hazing in College Athletics*: “states have struggled in attempting to define ‘hazing’ and it is not surprising that many definitions have resulted. Because of varying definitions, what is criminal in one state may be permissible in another” (p. 1429). Sussberg identifies that the lack of uniformity in defining hazing across the states has created confusion around the activities and behaviors that may (or may not) be constituted as hazing. This confusion represents itself in many different forms of the law; state-to-state, hazing laws differ regarding whom the law applies to, how the law should be applied, what activities constitute hazing, and when an activity may be considered hazing.

Prosecutors face many difficulties in charging those accused of illegal hazing. One is the definition of the activity. An overly broad definition may encompass relatively harmless activities that might not warrant the necessary time and expense to prosecute. A too narrow definition might ‘handcuff’ prosecutors in their pursuit of justice. Some definitions only apply to institutions of higher education, while others exclude athletic teams. Still others only allow for hazing during pre-initiation or actual initiation activities, and do not cover post-initiation events. (Crow & Phillips, 2004, p. 21)

Anti-hazing legislation saw its greatest period of growth in the 1980s and 1990s “due in large part to the efforts of the Committee to Halt Useless College Killings (C.H.U.C.K.) and similar organizations” (Acquaviva, 2007, p. 312) States during this period began to make efforts that would prohibit and/or criminalize hazing behaviors in response to an

increase in hazing-related deaths at the college level (Carroll et al., 2009; Lewis, 1991).

The laws created during this time varied dramatically, and still lack uniformity today

(Crow & Rosner, 2002; Lewis, 1991). An analysis of current state hazing statutes

demonstrates the following:

1. The majority of states consider hazing to be a misdemeanor that does not change the penalty or definition of any activity covered by other criminal statutes.
2. Statutes in only seven of the forty-three (now forty-four) states with anti-hazing laws include language that bars observing or participating in hazing and failing to notify authorities.
3. Thirteen states with anti-hazing laws require only that anti-hazing policies be developed and disseminated at public schools.
4. Twenty states specifically state in their codes that implied or express consent, or a willingness on the part of the victim to participate in the initiation is not an available defense. (Crow & Rosner, 2002, p. 89)

This variety in anti-hazing legislation can make the prosecution of hazing in a court of law a difficult process and may lead prosecutors to pursue defendants under different

legal avenues or may lead to criminal hazing cases being under-pursued in a court of law.

Despite the 30-year existence of anti-hazing legislation across the United States, Edelman

(2005) writes that: “in recent years, hazing has emerged as a vicious problem, requiring proactive solutions. To date, the legal system has failed to provide these solutions.

Consequently, hazing has exacerbated” (p. 340). This section will focus on nuances

within anti-hazing legislation and some of the different challenges that have been raised against anti-hazing legislation within law review articles and journals.

Legal Issues Associated with Hazing

The next section of this chapter will outline common issues associated with hazing in a court of law. Among these are the issues of, (1) Ambiguity and vagueness, (2) constitutional challenges, (3) civil laws, and (4) the applicability of hazing laws.

Ambiguity and Vagueness Challenges

A consistent challenge to anti-hazing legislation stems from the claim that some states have written legislation that is ambiguous in nature, especially where no physical contact may occur (Lewis, 1991). While anti-hazing legislation in most states outlaws the common form of physical hazing, that conduct which could also be considered assault or battery, some states only outlaw extreme physical harm and many overlook instances of hazing that may not involve any form of physical contact whatsoever. The ambiguity in much of the anti-hazing legislation lies in those instances where no physical contact may occur, or in the differences between physical harm and extreme physical harm (Lewis, 1991).

These ambiguities often bring up the common legal challenge of vagueness against anti-hazing legislation. “Under the void for vagueness doctrine, all such laws must provide fair notice to persons before making their activity criminal” (Kendrick, 2000, p. 412). Using this doctrine, many state anti-hazing statutes may be open to challenges due to the lack of specificity within the statute regarding the question *what is hazing*. If the statute is not explicit enough, the charges may be disregarded in court or, if the statute includes items such as mental and emotional distress, the court may not be able to come to agreement regarding what constitutes mental distress. Additionally, if a statute were to include terminology like Kansas State Law where the threshold is *great bodily harm* there may be disagreement and ambiguity within the court about what distinguishes *great bodily harm* from *bodily harm* (Kan. Stat. Ann. §21-5418, 2018).

Each of these areas raises potential challenges to anti-hazing law under the vagueness doctrine, and yet some states have had their laws upheld in court using the

New York Supreme Court ruling from *People v. Lenti I*. The court in *Lenti* dismissed vagueness as a defense stating: “‘Hazing’ is a word which incorporates treatment such as the wearing of a beanie cap to the permanent disfigurement of the body. It would have been an impossible task if the legislature had attempted to define hazing specifically” (Lewis, 1991, p. 125). The New York State Supreme Court recognized in the *Lenti I* ruling that hazing is an activity that is not necessarily definable by the actions, or activities one is required to participate in or the resulting injury that occurs, but instead hazing may be defined by the intent of the person conducting the activity. The “intent of the hazer” creates more ambiguity in anti-hazing legislation across states, as “it is questionable whether one must look to the intent of the hazer or the resulting state of mind of the hazee to determine whether outlawed activity has occurred” (Lewis, 1991, p. 129).

It is not clear in anti-hazing legislation whether intent to harm or intent to haze must be present for someone to be guilty of hazing, or whether the action of requesting an inappropriate action from a member seeking a certain status within an organization is intent enough. Most hazing is not conducted with the intention of harming an individual, or group, but instead is performed for a variety of reasons “that certainly lacks a single causal explanation” (Cimino 2011, p. 245). Cimino’s study examined the theories about why hazing may occur within an organization. The three areas explored in his study were “(a) hazing generates group solidarity; (b) hazing is an expression of dominance; and (c) hazing allows for the selection of committed group members” (p. 243). The study found that while hazing may manifest itself in expressions of coercion, dominance, and group cohesiveness, the hazing occurred as a result of withholding automatic group benefits

from new members. With this study in mind, the intent of an occurrence of hazing may not be to harm an individual, thus looking for intent to harm may only exacerbate the ambiguity of anti-hazing law.

A secondary area of ambiguity and vagueness in anti-hazing law also results from the consideration of participation in an organization that hazes is not required, and that membership in such organizations is often considered voluntary. Crow and Rosner (2002) identify that 20 of the 44 states with anti-hazing legislation do not consider consent of the victim to be a defense of hazing; however, there are more states with anti-hazing legislation that continue to allow the consent of the victim defense in litigation.

A prevalent example of this is the State of Alabama where an Alabama trial court ruled against the plaintiff in the case of *Jones v. Kappa Alpha Order* asserting that the plaintiff assumed the risks of hazing by voluntarily participating in the hazing to become a member of the fraternity (*Jones v. Kappa Alpha Order*, 1997; Kendrick, 2000). The Alabama Supreme Court upheld the trial court's decision stating that "Jones knew and appreciated the risks involved because Jones knew hazing was illegal and against school rules, but repeatedly lied about the hazing to school officials, his doctor and his family" and "as a responsible adult in the eyes of the law, Jones cannot be heard to argue that peer pressure prevented him from leaving the very hazing activities that, he admits, several of his peers left" (*Jones v. Kappa Alpha Order*, 1997; Kendrick, 2000, p. 419). This case in the state of Alabama highlights that some states still consider the voluntary nature of participation in an organization that hazes precludes an individual from bringing criminal or civil charges of hazing against that same organization. This consideration

further highlights the ambiguous nature of anti-hazing legislation across the United States.

Constitutional Challenges

Another area of debate regarding anti-hazing legislation occurs around the topics of the First Amendment, Fifth Amendment, and Fourteenth Amendments of the United States Constitution. These challenges relate not only to the creation of anti-hazing legislation and its targeting of specific audiences, but also to the requirement of states to enforce legislation to protect its citizens (Ball, 2004; Kendrick, 2000; Pelletier, 2002). Under the First Amendment, some legal analysts argue that anti-hazing legislation may limit the ability of certain organizations to associate and assemble freely and may limit the freedom of speech of organizations (Pelletier, 2002). The arguments against freedom of assembly and association stem from anti-hazing legislation's attempt to restrict the means through which members may be brought into an organization, or the assumption that some of those means are inappropriate. Organizations who utilize the First Amendment to defend their right to haze claim that membership within the organization is voluntary in nature and because the organization itself is a private entity, the states should not have the ability to restrict their membership processes.

A freedom of assembly claim would include the right of the organization to form in the manner of its choosing, and a state law which attempts to restrict that formation is over-broad and overstepping the state's authority. A freedom of speech claim would extend from the organization's right to freely express itself through any means it chooses, including the hazing of potential new members or the hazing of current members. Claims

against anti-hazing legislation based on First Amendment challenges are not overly common, but have been expressed in court (Pelletier, 2002).

Conflicts with the Fifth Amendment are more prevalent regarding anti-hazing legislation. Some state anti-hazing statutes include language stating: “It is unlawful for any student in attendance at any university, college or school to engage in hazing, or to aid or abet any other student in the commission of this offense” (North Carolina General Statute § 14-35). A strict reading of anti-hazing legislation written that includes this language may place the victim of hazing in a position where he or she would self-incriminate if he/she were to come forward with information about hazing (Ball, 2004; Pelletier, 2002). This language extends itself to members of an organization who may have been present for the hazing and not participated or may have had knowledge of the incidents but may not have been present. The individual may place himself/herself at risk by coming forward and presenting information regarding the incident to the appropriate authorities; this limits the willingness of the individual to come forward or could dismiss the individual’s testimony because it would self-incriminate where no statute for immunity exists.

Another Fifth Amendment concern has also been raised regarding the granting of immunity in hazing cases. “Hazing presents interesting issues of Fifth Amendment privilege and the paradox of immunity granted for those who participate in a hazing incident and thereafter report the incident to the police” (Ball, 2004, p. 483). Ball presents an instance where an individual who may have committed the acts of hazing comes forward with information regarding the incident and receiving immunity from the courts for committing the very acts he or she is reporting. This situation may play itself out in

numerous ways in a courtroom, one potentially being where a member may testify against the organization regarding the acts committed; this could lead to an organization being found guilty of the act of hazing while the perpetrators of the act go free, leaving no individual to be held accountable for the crime.

Another challenge in cases of fraternity hazing regard the issue of who is to be held responsible. In many states, fraternities exist as voluntary unincorporated bodies, allowing the officers and alumni representatives of the groups the opportunity to not respond to court summons (Pelletier, 2002). In the case of the death of MIT student Scott Kruger, this left no one available to speak on behalf of the fraternity during the trial, and no one the state could pursue as a representative of the group. The local chapter of a fraternity, which was immediately disbanded following the death of Scott Kruger and the prevailing criminal charges, was held responsible for the actions, yet there was no recourse available to the family under the law (*Krueger v. Phi Gamma Delta*, 2001). While the Fifth Amendment did not play a direct role in the case of Scott Kruger, it does represent a scenario that could be played out should the perpetrators of hazing be given Fifth Amendment rights to not incriminate themselves.

A final constitutional challenge to anti-hazing legislation occurs under the Fourteenth Amendment's Equal Protection Clause (Kendrick, 2000). The challenge that is presented here is based on most of anti-hazing legislation's focus on the specific protection of students in a collegiate and university setting, or within the laws, the specific focus and protection of only members of fraternal organizations. Those who make Fourteenth Amendment claims against anti-hazing legislation state that the law is unconstitutional on the grounds of a violation of the Equal Protection clause which states:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws” (United States Constitution 14th Amendment).

An anti-hazing law that applies only to certain populations, in certain instances may be unconstitutional. Because anti-hazing legislation in many states is only directed at students enrolled in colleges, and in some cases only students involved in fraternities and sororities in colleges, the legislation does not offer protection to all persons within the state’s jurisdiction. In the State of Illinois in the case of *Illinois v Anderson*, the courts upheld the law stating, “The State certainly has a legitimate interest in protecting people from physical injury, and we conclude that there is a rational basis for limiting the reach of the hazing statute since it is reasonable to assume that most hazing occurs in colleges, universities, and other schools” (*Illinois v. Anderson*, 1992, p. 469). One may wonder if this rationale can be carried into other states with recent research showing that a significant percentage (30-45%) of high school students are reporting experiencing hazing connected to their athletic or student organizational experiences (Allan & Madden, 2008; Hoover & Pollard, 2000).

Anti-Hazing Claims Made Under Civil Law

While some anti-hazing cases have been filed in criminal courts, a larger number of cases claiming acts of hazing have been filed in civil courts across the United States under tort law and negligence claims (Edelman, 2005; Kendrick, 2000; Villalba, 2007). In Chapter 3 of this study, a review of the American Court System is provided identifying the differences between criminal and civil courts. The section below offers a brief

explanation of negligence and tort theory and its application to hazing law as reviewed in legal journals.

Tort law. Tort law is a legal concept that traces its roots back to medieval England when “civil liability for certain forms of accidental personal injury and property damage” were applied in medieval courts (Abraham, 2008, p. 14). The concept developed out of a need for individuals to have some protection for themselves and for their property from the wrongdoings of another. While some claims of injury could be and are often criminal, with intent to harm being the key component, other claims became civil or financial, either when the individual may not have had criminal intent, thus being accidental, or when a financial recovery of property was necessary to be added to the criminal act. Bickel and Lake (1999) identify that there are three methods for lawsuit under tort law: negligence, intentional torts, and strict liability. In general, hazing claims are not made under strict liability and intentional tort law, leaving negligence as the area of tort law that is most broadly applied in instances of hazing.

Negligence did not find its way into law generally until the middle of the 19th century and then only with limited scope until the 20th century (Abraham, 2008). Today, negligence is applied broadly and is the “basis for imposing liability in the overwhelming majority of cases involving accidental bodily injury or property damage” (Abraham, 2008, p. 171). The establishment of negligence “injury to another caused by a failure to maintain a standard of care” allowed the expansion of torts to a broader societal group (Hennessy & Huson, 1998, p. 63). Where originally torts were applied between individuals, the standard of care was more broadly applied to corporations and organizations in the late 19th century and early 20th century. The applications of the law to

corporations grew out of the expansion of commercial shipping and travel using railroads and nautical shipping. As more and more corporations began trusting their freight to the commercial shipping industry, and more individuals trusted their travel to the railroad industry, more duty of care was provided for the safe arrival of the freight and the individual (Abraham, 2008). Courts began applying the *duty of care* to corporations when it was established that a party suffered some form of injury, and the corporation did not act reasonably to avoid the injury or loss of goods (Kaplin & Lee, 2007).

The standard of care was applied to colleges and universities in the 1920s through the *Hamburger v Cornell University* 148 N.E. 539 (N.Y. 1925). In the initial hearing of the case, the court found that Cornell University and its faculty were responsible to provide reasonable oversight to students in the classroom where there is an increased level of risk, and initially awarded the plaintiff a sum of \$25,000 for the negligence of the Cornell faculty member (Bickel & Lake, 1999). The decision of the trial court was later overturned by the New York Court of Appeals, but a shift in thinking and the application of negligence and tort law was hinted at in this case. While it would not be until 1941 in the case of *Brigham Young v Lilly White* 118 F.2d 836 (10th Cir.1941) that a university was held liable for the injuries of a student, institutional organizations were being established by courts as having the same standard of care which was being applied to corporations and individuals.

Negligence Defined. There are many ways in which an institution, individual, corporation or organization can be considered negligent (Bickel & Lake, 1999). Negligence is found in the upkeep of buildings and grounds, or in the failure to inform the public of dangerous persons on the loose. Negligence can be found in the failure to

complete one's job duties that leads to an individual being harmed or in the failure to properly supervise a field trip or recreational activity. Despite the many forms of negligence that would allow personal remedy through the courts, "the law of negligence regulates the basic form that almost every negligence case must take" (Bickel & Lake, 1999, p. 66). To that end, a negligence case must be shown to have four basic elements for negligence to be proven. Those elements are: (1) duty, (2) breach of duty, (3) causation and (4) damage. For a legal claim of negligence to be proven, all four elements of negligence must be proven by the plaintiff. If just one element of a negligence claim is missing, then the case is likely to be dismissed.

The initial conversation of a negligence claim hinges on the concept of duty and breach of duty (Bickel & Lake, 1999; Kaplin & Lee, 2007). Without duty, no claim of negligence can exist. "Duty is about setting limits on responsibilities owed to others" (Bickel & Lake, 1999, p. 67). The concept of duty sets the parameters on the legal relationships individuals have with each other.

Once duty has been established in a case of negligence, the second question that is applied is, *was that duty breached?* To answer the question of breach of duty, courts again apply the reasonable person test. In this application of the reasonable person test, the court seeks to discover if the defendant did what was reasonably expected of him/her to protect the plaintiff (Bickel & Lake, 1999; Kaplin & Lee, 2007). The court does not ask if the individual or defendant did everything possible to protect the plaintiff from harm, as it is often the case with any injury that more could have been done; however, the standard of minimalism (did you do what was minimally expected) comes into play. If it can be shown that the defendant did exactly what a reasonable person would have done,

then typically no breach of duty exists; however, if the individual did less than what could be minimally expected, then it is likely that a breach of duty occurred.

If a plaintiff has successfully established that the defendant owed him/her a duty, and that the defendant did in fact breach that duty, the third element of a successful negligence case must then be proven. This element, causation, is broken down into two specific areas, factual causation and proximate causation (Bickel & Lake, 1999; Kaplin & Lee, 2007). Factual causation is grown out of the premise that the defendant's breach of duty caused the injury to occur, that is, there is a direct link between the defendant's breach of duty and the injury of the plaintiff. If there is no link, there is no causation; if there is a link, the defendant still has an opportunity for defense through the concept of proximate causation. Proximate causation allows a jury to still find the defendant not responsible even when there is a breach of duty and that breach led to the injury of the plaintiff. Proximate causation also leans on the concept of foreseeability to prove that the breach of duty caused the injury and that there were no other intervening factors in the injury. Proximate causation allows the jury to use intuition in the decision of negligence cases, not just breach-fault.

The fourth element of a negligence case is *damage*. In most cases, damage is shown through either a physical injury, or a form of mental distress and anguish. If it is not the case that the causation resulted in either physical or mental injury, then it is not likely that a negligence case will be seen through.

Application of Tort Law in Hazing Cases

When a hazing claim is made in a civil court utilizing tort/negligence law as its basis, there are several issues that present themselves. Initially,

A plaintiff alleging negligence must prove each of the following six elements by a preponderance of evidence: duty, standard of care, breach of duty, causation, proximate cause and damages. [Additionally], the concepts of assumption of risk, comparative negligence and negligence per se are relevant to cases examining liability for hazing. (Kuzmich, 2000, p. 1106)

In most scenarios where a hazing claim is made, the damages to the victim involve a form of physical harm that resulted from the participation in some activity or task related to the individual seeking membership in the organization. The plaintiff in these cases is making the claim that the organization in question held:

(1) A duty of care on the part of the organization members; (2) A breach of that duty; (3) A causal connection between the organization members' conduct and the injury; and (4) An actual loss or damage as a result of the injury. (Schoen & Falcheck, 2000, p. 130)

Most often in hazing cases, the courts have found that organizations do in fact have a duty to protect the individuals who are seeking membership in that organization from being harmed during the membership process, and "few cases have failed to find that a duty of care existed for an organization that required hazing as part of its initiation (or membership) activities" (Kendrick, 2000, p. 420). Thus, the first three elements of negligence theory (duty, standard of care, and breach of duty) are generally established in hazing cases where an individual has been injured during the membership process; however, plaintiffs in hazing cases do face challenges in establishing hazing claims.

The two defenses that are most often used in hazing cases under negligence and tort law are the assumption of risk and comparative negligence (Edelman, 2004; Kendrick, 2000; Kuzmich, 2000). Under the assumption of risk defense, defendants often make three claims: (1) membership in the organization is voluntary and the individual could choose to leave at any point; (2) the plaintiff had prior knowledge that hazing was involved in the membership process; and (3) the plaintiff willingly consented to

participate in the activity (Kuzmich, 2000). These claims are made to shift the fault for the injury from the organization to the victim, or at least to share the fault between the two. For this reason, many states with anti-hazing legislation have included in their laws that the consent of the victim is not a defense against the action of the organization (Crow & Phillips, 2004).

An additional question is the voluntary nature of the participation in hazing activities. A whole body of research exists to discover if participation in hazing activities is truly voluntary, or if participation is coerced through an individual's need to belong, search for social status, succumbing to peer pressure, or search for rite of passage (Ball, 2004; Campo et al., 2005; Cimino, 2011; Ellsworth, 2006; Finkel, 2000; Kuzmich, 2000; Owen, Burke & Vichesky, 2008; Ruffins, 1998; Solberg, 1998). Each of these studies provides indication that participants in hazing activities may voluntarily join organizations, but that the perception that these individuals willingly participate in hazing activities with full knowledge of the risks involved may be flawed. Additionally, these studies indicate that deeper psychological needs may drive individuals to participate in hazing activities. Still, courts maintain that hazing victims may be, or in fact are, at least partially responsible for their fate (Kuzmich, 2000). This raises the concern of comparative negligence wherein a judge or jury may be asked to determine the extent to which the plaintiff is responsible for his/her own actions, and the extent to which the organization is responsible for the injuries sustained during those activities (Kendrick, 2000; Kuzmich, 2000).

Lastly, in hazing cases involving the consumption of alcohol (whether forced, coerced, or voluntarily consumed), issues of negligence become even more relevant to

hazing. “In hazing litigation involving the excessive consumption of alcohol and related injuries, coercion is almost automatically established, a duty is established by the party who forces the plaintiff to drink excessively, and the standard by which the plaintiff is judged is that of a disabled person” (Govan, 2001, p. 694). While a direct link between hazing and alcohol consumption is not always present, in most cases where injury or death results from hazing, alcohol can be found to be a contributory factor (Nuwer, 2004). When alcohol is involved in an incident of hazing, the standard of care is increased, and the ability of the victim to give informed consent is often decreased. The organization is in a much more precarious position regarding duty and breach of duty. Where the link between hazing and alcohol consumption cannot be made, the plaintiff often has a much more difficult path to establishing duty, breach of duty, and lack of informed consent (Govan, 2001).

Applicability of Anti-Hazing Law

Another theme that presents itself in law review journals surrounding anti-hazing legislation is the applicability of the law, most specifically the ability of prosecutors to successfully pursue hazing claims, and the potential redundancy of hazing law.

The recipe for success in prosecuting those who haze requires only a few ingredients: a victim who is willing to come forward and discuss the incident, a defendant who is able to be charged under the state’s anti-hazing laws, and an effective state anti-hazing statute. As demonstrated by case law and newsworthy hazing incidents, achieving this balance is rare and nearly unprecedented. (Pelletier, 2002, p. 411)

This quote from Pelletier identifies a significant issue with anti-hazing legislation: the extreme difficulty for the law to be applied. Due to the secrecy of most hazing scenarios, it is often difficult to find a victim that is willing to come forward and discuss the incident with police, university or school officials, lawyers, parents, or other parties

unless the victim is severely injured (Allan & Madden, 2008). In those scenarios where the victim is willing (or able) to come forward, there is often an inability to corroborate the victim's story with others leaving the individual isolated from his or her peers who may in turn be charged as defendants in the hazing claim (if applicable). In some states (as identified earlier) it is also unclear as to who can be charged with incidents of hazing, and/or the groups that anti-hazing law establishes as potential defendants.

In many states it is unclear as to whether anti-hazing law is applicable to athletic teams, as identified by Acquaviva (2007), or whether anti-hazing law is applicable to men and women enlisted in the military or ROTC, or just to those men and women enrolled in military academies as identified by Pelletier (2002). In states where the law is written to only apply to student organizations and not athletic teams, or states where the law protects only those students enrolled in colleges, but not in secondary institutions, the effectiveness of the law is greatly diminished. Lastly, there is some discussion in the literature that the existence of anti-hazing legislation is redundant. With pre-existing laws that protect citizens against crimes such as "battery, assault, false imprisonment, kidnapping and involuntary manslaughter" (Villalba, 2007, p. 101) some legal theorists believe that anti-hazing law is unnecessary as most activities that result in hazing are covered by these pre-existing laws. This study seeks to add to this body of literature and legal commentary by reviewing legal cases where hazing was alleged to identify the overall applicability of these laws.

Summary

Chapter 2 provided a review of the literature relevant to the foundational issues of this study. Significant among those issues is an historical review of hazing and the

conceptual framework surrounding its existence in the United States, an exploration of the different definitions of hazing ranging from the generic definition as expressed in common literature sources, and a review of the definition of hazing as utilized in research circles, concluding with a review of hazing as defined by state laws. Lastly, a synopsis of law review articles was provided outlining the numerous challenges posed to anti-hazing legislation, among them the challenges of ambiguity and vagueness; challenges based on the constitutionality of anti-hazing legislation; challenges based on the applicability and redundancy of anti-hazing legislation; and a brief discussion of negligence and tort law as applied to hazing scenarios. Chapter 3 will provide a review of the American Court System as a background for this study, a discussion of the process of legal research, and the methodology used for this study.

Chapter 3

Research Design and Methodology

This study builds upon previous reviews and analyses of anti-hazing law, expanding upon the work of Carroll and colleagues (2009), Crow and Phillips (2004), and Guynn (2002) to examine the breadth of anti-hazing case law as determined in the American Court System. This comparative analysis will draw from criminal and civil cases that have been heard in a court of law beginning in 1980 through 2013. This analysis will compare the breadth of anti-hazing case law and not limit itself to one specific population of cases as previous analyses have done. Specifically, the study will address the following research questions:

1. How have cases with allegations of hazing been applied by criminal and civil courts?
2. How many cases alleging hazing as a precipitating factor have been heard in Federal or State District Courts (or higher) since 1980?
3. What other legal issues have been brought before the court in cases alleging hazing as a precipitating factor?
4. Is the creation of stricter anti-hazing laws an applicable response to incidents of hazing?
5. In an incident of hazing, are other criminal acts more applicable than the anti-hazing law itself?

Data

Legal research is conducted through the review of three primary categories of legal information: “primary sources, secondary sources and research (or finding) tools” (Russo, 2006, p. 7). Primary sources of the law are those sources created by the government itself. Primary sources are created through three main areas of governmental work: legislatures, courts, and governmental agencies. Each of these areas of government creates a different form of law. The legislative branch of government creates law through the passing of state and federal statutes in the form of legislation. Legislation is the

formal aspect of law “exercising the power and function of making rules (as laws) that have the force of authority by virtue of their promulgation by an official organ of the state” (Merriam-Webster Dictionary, 2013, online).

The second primary source of law is created by the judicial branch of government through the means of judge-made common law or case law (Russo, 2006). “Common law refers to judicial interpretations of issues that may have been overlooked in the legislative or regulatory process or that may not have been anticipated when the statute was enacted” (Russo, 2006, p. 10). This form of law refers to the way that courts either interpret the laws that have been created by the legislature or make rulings in areas the law may not cover.

The third primary source of law is created by governmental agencies. Governmental agencies are those groups created by the government to make decisions in specific areas of governmental work. For example, the Department of Education exists as a governmental agency with the ability to recommend and create law based on the needs for education in the United States. Agencies create law by “issuing decisions, which resemble judicial cases in that they simultaneously resolve specific disputes and operate as precedent for future disputes (and by) promulgating regulations, which resemble statutes in that they address a range of behavior and are stated in general terms” (Kunz et al., 2004, p. 7). This study focuses upon the law as created by state legislatures and the interpretations of those laws created through judicial opinion and case law. State court cases and anti-hazing statutes exist as the primary sources of data for this study.

The Westlaw and LexisNexis electronic databases were used to locate state court cases involving anti-hazing law. These databases were used based on their access to both

published and unpublished cases or for access to cases which are not yet available in a hard copy (paper) form (Kunz et al., 2004). Westlaw and LexisNexis provide the ability to search “factual concepts” that are involved in a case. This allowed the opportunity to expand searches beyond state-defined hazing activities that potentially violated the law to include, in database searches, activities inside a case that were “hazing-like” or that may be defined as hazing in other states.

To conduct a search in Westlaw or LexisNexis, the researcher should begin by identifying the database within either grouping to search. The selection of the initial database reflected the jurisdictional precedent of the case or law being researched and progressed to other jurisdictions in order to provide additional context. Upon completion of the initial search, both databases provided a listing of cases relevant to anti-hazing law. Utilizing these case citations, a new search was conducted for opinions citing each case and source of law beginning the process of *citating* or *shepardizing* those cases. The process of *citating* is done by “typing in a case’s citation in the Shepard’s or KeyCite box” (Kunz et al., 2004, p. 173) within the database. This search then brought up a history of other cases that have referred to the case in hand in either negative or positive ways. *Citating* is a useful tool for identifying how the courts have treated previous cases, providing weight to those judicial opinions. If a case has been overruled or treated negatively by various courts, this identifies that the legal decision should be treated cautiously when applying that case’s findings of law, and that other cases provided a more accurate interpretation of the law. Cases that were treated positively by other courts (i.e., was used to assist in determining the application of the law) were identified as reliable findings of the law during analysis.

Citating and *shepardizing* are built upon the concepts of precedent and jurisdiction within the American court system. In the United States, courts exist as a series of individual units (federal or state, civil, or criminal) that have been given authority (or jurisdiction) over a certain area of the country, or over certain laws or types of legal claims. To appropriately analyze case law, one must understand the different concepts of jurisdiction and precedent. The next section will explain each of these concepts (jurisdiction and precedent) in more detail.

Jurisdiction

Within the United States legal system there exist multiple levels of jurisdiction for the courts. The first distinction of jurisdiction can be made between state courts and federal courts. State courts exist as those courts charged with making rulings based on the laws that have been enacted by a state. State courts have the power to hear cases involving the constitutions and statutes created by the states themselves (Kunz et al., 2004; Russo, 2006;). In the instance of hazing law, the federal government has left the act of hazing to be a state's rights issue; however, legislation has been introduced on the federal level to make the act of hazing universally illegal (Crow & Phillips, 2004). To this date, hazing has only been made illegal in those states that have adopted their own laws against hazing. While Federal courts can hear and rule on state issues, when presented in conjunction with federal law issues, federal courts would not be the primary source of case law involving the hearing or deciding of hazing related cases.

Within most states, there exist three levels of courts: "a trial court, an intermediate appellate court and a court of last resort" (Russo, 2006, p. 10). The trial courts exist to hear most of the cases against the laws of the state or regarding citizens of the state. The

intermediate appellate courts exist to hear those cases where one party is not satisfied with the decision of the court and seeks a “discretionary review” of the case (Russo, 2006). The appellate court will review the case at hand and will look for any errors in the application of the law by the trial court. While the trial court provides most rulings on the law, it is traditionally considered that appellate courts provide the interpretations of the law that are used to set binding and persuasive precedent.

In the instance that one party is dissatisfied by the decision of the appellate court, he/she has the option to request a “writ of certiorari” from the State Supreme Court. The State Supreme Court has the option to ignore the writ of certiorari (leaving the appellate decision in place), or to grant to writ of certiorari and review the case based on the state law. A decision of the State Supreme Court is deemed to be the final decision and shall have binding authority on all rulings of that law within that state (Russo, 2006). The interpretation of a state law by a State Supreme Court shall be carried through by all other courts (trial and appellate) within that state. Additionally, state courts are only bound to the decisions of higher internal state courts regarding the interpretation of the law or the Federal Supreme Court in some cases.

Federal courts have a similar structure to state courts but carry much more weight in their decisions. Federal courts exist to make decisions primarily on federal laws, “interpretation of the United States Constitution, federal statutes, federal regulations,” and cases involving citizens of two different states where the amount in controversy is at least \$75,000” (Russo, 2006 p. 11). Federal district courts are located in each state. The intermediate appellate courts exist based on thirteen circuits (groups of states). The Circuit Court of Appeals exists in a similar manner as the state appellate courts where a

party has the right to appeal their decision if they are dissatisfied with the outcome. The highest jurisdiction lays with the Federal Supreme Court of the United States (Russo, 2006). The jurisdiction of the Federal Supreme Court covers all citizens in all states regarding all federal laws. The Federal Supreme Court has the authority to choose only those cases it deems worthy of hearing, and the decisions of the Federal Supreme Court are binding on all courts in all states.

In certain cases, there also exists the concept of “concurrent jurisdiction over certain claims stated in federal court” (Kunz et al., 2004, p. 132). In these cases, Congress has given both state and federal courts the ability to hear cases of federal law. In this scenario, state courts would be bound by the decisions set forth by higher courts throughout the federal court system.

The clear distinctions that need to be made in understanding jurisdiction are: what law has been broken, and what entity created the law. A federal court only has the ability to hear cases where federal law is involved and cannot (and will not) make a ruling on a state law issue unless combined with some other federal court issue. State courts only have the jurisdiction to hear cases that violate the law of the state where the “crime” occurred. In terms of anti-hazing law, the primary source of case law was pulled from state courts as anti-hazing legislation has been enacted on a state-by-state basis and no federal anti-hazing law exists. An appropriate analysis of anti-hazing case law will look to the individual state’s hazing case law in order to make a determination on the interpretation of that state’s hazing laws. Additionally, only case law from the state that created the law will have binding authority over future decisions regarding the interpretation of the anti-hazing law within that specific state.

Judicial Reliance on Precedent and Analogical Reasoning

As mentioned previously, courts also use the idea of precedent to help interpret and apply laws. Precedent is “the result, rules and reasoning in a decided case (which are) generally...followed in the resolution of future similar disputes within the court’s jurisdiction” (Kunz et al., 2004, p. 7). The concept of precedent is the application of the interpretation of laws by higher courts in which the details of the case are the same (Lamond, 2016). The idea of precedent is explained as having practical authority where the decision in a current case in which the circumstances of the current case are the same as the circumstances in a prior case would reasonably follow the same outcome pattern (Lamond, 2016). This type of precedent is often referred to as binding authority i.e., lower courts are bound by the decisions of higher courts to interpret the same laws the same way (Russo, 2006).

A second form of precedent, known as persuasive precedent, is also used by courts in the interpretation of the law. “Persuasive precedent, a ruling from another jurisdiction, is actually not precedent at all. That is, as a judge in Indiana seeks to resolve a novel legal issue, the judge would typically review precedent from other jurisdictions to determine whether it has been addressed elsewhere. A court is not bound to follow precedent from another jurisdiction” (Russo, 2006, p. 10). Persuasive precedent is the review of decisions about similar cases from other jurisdictions. The judge in this case can review similar cases from different jurisdictions and determine whether a similar decision should be made in his/her jurisdiction.

Analogical reasoning on the other hand is the reliance of law on decisions in prior cases where the circumstances are similar but not the same (Lamond, 2016; Levi, 1949).

In the use of analogical reasoning, “the rule arises out of a process in which if different things are to be treated as similar, at least the differences have been urged” (Levi, 1949, p. 504). The courts use analogical reasoning to review a variety of decisions across similar cases where the decision of the court may have differed based on the slight deviation in characteristics of the case. Using analogical reasoning, the differences between cases must be emphasized to draw out the appropriate conclusion to the current cases. Analogical reasoning can be useful when reviewing a case with an alleged violation of a rarely argued statute (like hazing in most states). The court can use analogical reasoning to review judicial decisions in cases in other states with similar fact patterns to inform the decision of the judge in the current case.

Using the case of the alleged hazing death of Florida A&M University student Robert Champion to elaborate this point, whichever court in the state of Florida that hears the case of Robert Champion shall be bound by prior decisions made regarding anti-hazing law in the State of Florida. Thus, the decision of the court in earlier cases of hazing in the State of Florida (see the case of Marcus Jones, FAMU student, 2006) will affect the impending court case involving the alleged hazing of Robert Champion. If the cases allege fact patterns that are the same, the court will rely on precedent to make the final decisions. If the fact pattern is however similar but there are important differences from the previous case, the court will rely on analogical reasoning to determine which fact pattern the current case is most like. The Florida court may also review the case of *Texas v. Boyd & Chapa* (Nos. 14-98-00402-CR, 14-98-00403-CR) as an opportunity to review the application of hazing law in Texas; however, the Florida court is not bound to use the same standards and tests, nor come to the same conclusions as the Texas court

did. However, it may be bound by the decisions, standards, and tests used in *Morton v. State* (No. 1D07-1623).

The concepts of jurisdiction, precedent, and analogical reasoning play an important role in the analysis of case law. The American legal system depends heavily upon the decision of prior cases. Understanding these concepts creates a link between each judicial decision, but can also identify divergent opinions between states, or between time periods. Identifying those divergent opinions creates an opportunity to further understand the changing legal environment around a specific issue or law.

Method of Analysis

This study uses content analysis to analyze the relevant cases with hazing as a precipitating factor between the years of 1980-2013. The theoretical framework of the mixed-methods analysis is built upon Hall and Wright's (2008) article *Systematic Content Analysis of Judicial Opinions*. In this article, Hall and Wright outline the steps of conducting a content analysis methodology as "(1) selecting the cases; (2) coding the cases; and (3) analyzing the case coding, often through statistical methods." (Hall & Wright, 2008, p. 80). This method of legal analysis diverts from traditional legal study that identifies a few seminal cases and interprets those cases to provide legal opinion for a specific legal topic. The traditional method of legal analysis is like, "auditioning a crowd of singers to find the best soloists. (The) objective was to select particular cases that eloquently stated the rules of law or illustrated a trend" (Hall & Wright, 2008, p. 77).

On the contrary, content analysis uses the breadth of law to create a full picture of a legal issue, examining all cases thoroughly with equal value placed on each judicial opinion. "Content analysis works best when the judicial opinions in a collection hold

essentially equal value, such as where patterns across cases matter more than a deeply reflective understanding of a single pivotal case” (Hall & Wright, 2008 p. 66). By reviewing all cases where hazing was alleged or was involved, a pattern of legal issues was identified. This pattern of behaviors alleged in hazing cases helps provide the full picture of different legal issues that may arise following an incident of hazing. In traditional legal study, the selection of only a few seminal cases may not identify all potential legal issues surrounding hazing.

Additionally, due to anti-hazing legislation being state specific, the content analysis method was chosen to provide equal value to all cases across states. While a case may set one precedent in one state, that same case may be interpreted differently by another court in another state that is not bound by the same precedent. The treatment of each case with equal value allows all legal issues, precedents, and court opinions to be presented to identify the most likely outcome of a case of hazing within the courts.

Case Selection

The first step of the content analysis methodology is to set the criteria for case selection. This study is examining cases where hazing is a precipitating factor (i.e., the incident creating the legal issue) for the case. The second criterion was time of hearing. This study is reviewing all cases that occurred between 1980-2013, with 1980 recognized as the year when most states began passing hazing legislation. The third criterion was judicial review. Cases for this study were limited to those that were heard at the District Court or higher. Judicial review was chosen as a criterion as the case results in an opinion written by a judge upon review of the case. Judicial review allows insight into the specific legal issues of a case that may not be present in trial court.

Westlaw and LexisNexis searches were conducted to identify cases where hazing was alleged. Westlaw and LexisNexis are used as the primary research tools in legal research (Russo, 1996). These databases provide access to state court cases where hazing was alleged, or the background of the incident involved hazing. Both databases permit keyword and terms and connectors searches for cases and statutes based on the topic of the research (Kunz et al., 2004). The terms and connectors search were performed by ‘keying in words, with or without root expanders, and connectors, and a space for or’ (Kunz et al., 2004, p. 152). This method of research allows the researcher to utilize the root of a word (such as haz!), to search for all other forms of that word throughout the case law database (haze, hazing, hazed, etc.). Once a case was found, it was used to identify additional historical cases cited by the current case as a way of identifying precedent. The keyword search and shepardizing search returned a total of 167 cases heard in the courts between 1980-2013 to be included in this study. These cases represent only those that were heard in court and ruled upon by a judge and do not represent cases where one party pleaded *guilty* or *no contest*, or those cases that were settled before or after trial proceedings began.

Systematic Case Coding

The second step in the content analysis methodology was to conduct “systematic case coding” (Hall & Wright, 2008). To successfully code case law, the researcher must create the set of standards for the case to be reviewed.

A defined coding scheme focuses attention more methodically on various elements of cases and is a check against looking for confirmation of predetermined positions. The effort to articulate beforehand the features of a case worth studying...strengthens the objectivity and reproducibility of case law interpretation. (p. 81)

This study uses cases where hazing has been alleged and identifies the myriad of issues that may be argued in a court of law. The cases were examined individually, and as new legal theory was introduced, a new category for legal examination was added to the coding. In total, 27 categories for legal issues resulting from incidents of hazing were created. Categories included: hazing (as law), constitutionality, assault & battery, Civil Rights 1983 (sub categories of First Amendment, Fourth Amendment, and Fourteenth Amendment were a few), liability, negligence, duty, immunity, wrongful death, and others. A full list is provided in Chapter 4 Table 1. Within these categories, an “x” was placed if a certain legal issue was argued in a case. This is in line with the Hall and Wright’s (2008) recommended research method,

Coding experts advise researchers to create more coding categories, and to make coding more fine-grained, than they may ultimately want to analyze. Though this produces more information than the project will eventually require, this process enables the researcher to test different categorization schemes to learn through trial and error which work best. (p. 109)

Additionally, codes were created for the state where the case was heard, and for the outcome of the case (affirmed, denied, dismissed).

Analyzing Cases

The third step of the content analysis methodology is to analyze cases using mixed-methods analysis. Cases were analyzed utilizing coding to identify patterns and associations quantitatively. This study will not however utilize complex statistics to analyze the cases, instead “counts and frequencies (percentages) were used to show how often a given feature appears in the cases” (Hall & Wright, 2008, p. 117). The quantitative analysis will assist in the identification of the categories of legal issues that should be examined utilizing analogical reasoning.

Analogical reasoning is the most common method of analysis of case law.

Analogical reasoning is based on the writings of Edward Levi and is often associated as “the most common form of legal reasoning” (Hutchens, 2007, p. 47). This form of analysis is based on the legal reliance on precedent where cases are analyzed in accordance to the similarities between them, and decisions are made based on consistent interpretations of the law (Levi, 1949). This method of analysis allows the researcher to draw upon historical decisions made in hazing cases to interpret the application of the law in the present and predict the application of the law in the future.

There are three steps to Levi’s method of analogical reasoning: “similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case” (Levi, 1949, p. 2). In this way, legal standards are constantly under review and altered by new and developing cases within the court system. Where cases are similar, it is likely that similar decisions will be made; where cases are different, courts utilize reasoning to make decisions that are informed by other areas of the law or in response to new and developing social climates. By utilizing analogical reasoning, scholars can make predictions on the rule of law through a thorough examination of prior cases (Levi, 1949).

Analogical reasoning can also be particularly helpful in the interpretation of the intention of state legislatures. Levi writes, “Interpretation with intention when dealing with a statute is the way of describing the attempt to compare cases based on the standard thought to be common at the time the legislation was passed” (Levi, 1949, p. 505). This study will rely heavily on cases which allege violations of hazing which is a legislative statute in 44 states. In most states, violations of hazing are not commonly argued (as this

study will show). By using analogical reasoning, the courts have interpreted the intention of the state legislature in their decision-making processes where no prior case law exists. Analogical reasoning is helpful too in evaluating fact patterns in hazing cases that are not likely to be the same but are likely to be similar.

When coupled with content analysis review, analogical reasoning will allow this study to examine the breadth of legal cases that occurred between 1980-2013, identify the legal issues most likely to be created by an incident of hazing, and allow predictive analysis for how those issues may impact individuals, organizations, and institutions. These areas will inform the body of research on how criminal and civil courts have responded to the issue of hazing.

Chapter 4.

Analysis of Legal Issues and Associated Case Law

This chapter examines the case law data for court cases that appeared in Federal District Court (or higher) or State District Court (or higher) between the years of 1980-2013, where hazing was a precipitating component of the case. The LexisNexis and Westlaw databases were utilized to identify relevant cases as outlined in the previous chapter. The keyword search and shepardizing/citing process revealed a sample of 167 cases with written judicial opinions in Federal District Court (or higher) or State District Court (or higher). These cases were reviewed using 3 parameters: (1) categories of law, (2) state of origin and (3) criminal or civil charges. The results are presented in this chapter based on patterns, themes, and the prevalent legal issues of cases where hazing was a precipitating factor.

Purpose of the Study

This study builds upon previous reviews and analyses of anti-hazing law, expanding upon the work of Carroll and colleagues (2009), Crow and Phillips (2004), and Guynn (2002) to examine the breadth of anti-hazing case law as determined in the American Court System. This comparative analysis draws from criminal and civil cases that have been heard in a court of law between 1980 through 2013. This analysis compares the breadth of anti-hazing case law over a span of 33 years. Five research questions guide the analysis:

1. How have cases with allegations of hazing been applied by criminal and civil courts?
2. How many cases alleging hazing as a precipitating factor have been heard in Federal or State District Courts (or higher) since 1980?
3. What other legal issues have been brought before the court in cases alleging hazing as a precipitating factor?

4. Is the creation of stricter anti-hazing laws an applicable response to incidents of hazing?
5. In an incident of hazing, are other criminal acts more applicable than the anti-hazing law itself?

Data Analysis

To address the first three research questions, this chapter begins by looking at the legal claims brought to the courts following a hazing incident. Table 1 outlines the categories of legal claims that resulted from incidents of hazing between the years of 1980-2013. Claims fell across 28 initial categories; however, two subcategories have been created: (1) civil claims related to Tort Liability and Negligence, and (2) civil claims related to 42 U.S.C. §1983 of the 1964 Civil Rights Act. Within these categories, Tort Liability and Negligence includes all claims related to: (1) Liability, (2) Premises Liability, (3) Negligence, (4) Duty, (5) Agency, and (6) Qualified Immunity. Claims associated with 42 U.S.C. §1983 of the 1964 Civil Rights Act were violations of (1) First Amendment Rights and Freedom of Association, (2) Fourth Amendment Rights, 3) Fifth Amendment Rights and Due Process, 4) Fourteenth Amendment Rights, and 5) Fifteenth Amendment Rights.

The remaining legal claims in the chart may or may not have intersectionality with the subcategories. Court cases are not limited to one claim or allegation argued at a time, and there are many cases represented in the chart that allege criminal and civil behaviors at the same time. The percentages in the right-hand column report the frequency (%) of the legal claim, the middle column (*n*) reports the total number of claims.

Table 1. Legal Claims Following an Incident of Hazing

Coded Variables	n	%
Hazing Law	35	20.95
Assault	21	12.57
Constitutionality	8	4.79
42 U.S.C. § 1983	36	21.56
1st Amendment	5	2.99
4th Amendment	10	5.99
5th Amendment	2	1.19
14th Amendment	15	8.98
15th Amendment	1	0.59
Freedom of Association	3	1.79
Due Process	19	11.38
Tort Liability & Negligence	83	49.7
Liability	80	47.9
Premises Liability	10	5.99
Qualified Immunity	36	21.56
Negligence	83	49.7
Duty	65	38.92
Agency	13	7.78
Wrongful Death	8	4.79
Breach of Contract	4	2.39
Title IX	15	8.98
Defamation	9	5.39
Public Records	2	1.19
Wiretap	1	0.59
Intentional Infliction of Emotional Distress	8	4.79
Discrimination	8	4.79
Whistle Blower	1	0.59
Injunctive Relief	1	0.59
Worker's Compensation	3	1.79

Table 1 identifies the types of legal claims that occur following a hazing incident and the breadth of the number of claims that may be brought to court for resolution. Of

all claims, issues of tort liability and negligence are most frequent carrying 49.7% of the total claims, followed by civil claims related to 42 U.S.C. §1983 of the 1964 Civil Rights Act at 21.56%. Hazing as its own legal issue was challenged in 20.95% of cases (constitutionality of the hazing law was challenged in 8 of those cases), Assault was associated in 12.57% of cases and Title IX was challenged in 8.98% of cases. These five categories and the case law associated with hazing cases will be explained individually in the next section.

Tort Liability and Negligence

For a tort claim to be made against an individual or organization there must exist some form of wrongdoing done by one party against the other, and the seeking of a remedy for that wrong. The most common tort claim associated with incidents of hazing is negligence (Kaplin & Lee, 2007). Negligence is defined in the *Restatement of Torts* 2nd as, “conduct which falls below the standard established by the law for the protection of others against unreasonable risk of harm” (Areen, 2009, p. 813). For negligence to be applied, the plaintiff must show that the defendant did not establish a reasonable level of care for the plaintiff during their period of interaction. This standard of care is often referred to as a ‘duty’ within the legal environment. The *Restatement of Torts (Third)* establishes that, “an actor ordinarily has a duty to exercise reasonable care when the actor’s conduct creates a risk of physical harm” (Abraham, 2008, p. 172). The duty established by the law is created when an actor of the organization or the organization’s actions increase the risk of harm for another who can establish a “relationship” with the organization.

Relationship is established when there is reasonable interaction between the two parties, enough so that it can be shown in a court that the organization or its agents had *reasonable cause* to protect the individual or when an organization or institution establishes a special relationship by undertaking an action on behalf of the plaintiff that may create a duty to protect (Areen, 2009; Kaplin & Lee, 2007). For example, a general passerby of a social fraternity activity would not have an established relationship with the organization simply by passing by the event; however, if the actions of the organization created a high risk environment for the general passerby, and his or her safety was put in danger by actions of the organization that a reasonable individual under the given circumstances would recognize as increasing risk, then a relationship may be established. Tort claims of negligence hinge on these two established circumstances, duty and relationship, and both must be present for a tort claim to be successful in court.

As a reminder from Chapter 2, for a negligence case to be successful in court, four basic elements of negligence must be proven: (1) duty, (2) breach of duty, (3) causation and (4) damage. If just one element of a negligence claim is missing, then the case is likely to be dismissed.

“Duty is about setting limits on responsibilities owed to others” (Bickel & Lake, 1999, p. 67). The concept of duty sets the parameters on the legal relationships individuals have with each other. The concept of foreseeability applies most generally if the action an individual undertakes could predictably lead to harm, or if the type of activity may likely lead to harm. If this is the case, then the individual, organization, or institution owes a duty to the individual to protect them from the foreseeable outcome. In

the absence of predictable or likely harm, the individual and/or institution does not generally owe a duty to protect to the individual.

Once duty has been established in a case of negligence, the second question that is applied is *Was that duty breached?* To answer the question of breach of duty, courts again apply the reasonable person test. In this application of the reasonable person test, the court seeks to discover if the defendant did what was reasonably expected of him/her to protect the plaintiff (Bickel & Lake, 1999; Kaplin & Lee, 2007).

If a plaintiff has successfully established that the defendant owed him/her a duty, and that the defendant did in fact breach that duty, the third element of a successful negligence case must then be proven. This element, causation, is broken down into two specific areas, factual causation and proximate causation (Bickel & Lake, 1999; Kaplin & Lee, 2007). The fourth element of a negligence case is damage. In most cases, damage is shown through either a physical injury, or a form of mental distress and anguish. If it is not the case that the causation resulted in either physical or mental injury, then it is not likely that a negligence case will be seen through.

Once the four elements of a negligence case are proven, the defendant has the right to present various forms of affirmative defense, qualified immunity, contributory negligence, or assumption of risk (Bickel & Lake, 1999). Contributory negligence is the claim that the individual did not use reasonable care in protecting themselves from injury. Assumption of risk is, “a plaintiff voluntarily proceeded in the face of known danger effectively demonstrating that the plaintiff was willing to accept the responsibility for any injury caused by the risk” (Bickel & Lake, 1999, p. 75).

Qualified or Sovereign Immunity is another form of defense used in cases of negligence and liability. Qualified Immunity “protects officials from constitutional tort claims so long as ‘their conduct does not violate clearly established...constitutional rights of which a reasonable person would have known’” (Chen, 2006, p. 229). In the cases in this study, qualified immunity is used by various governmental entities and governmental employees as a defense against hazing activities that were either precipitated by the employee or where the plaintiff believes that the employee, school board, city government, etc. should have known that hazing was occurring prior to the incident. Qualified Immunity acts as a shield for governmental employees against lawsuits where the employee was acting within the scope of their job (Bittner, 2016). The defense of Qualified Immunity extends to individuals and government organizations if the employee is acting within the scope of their government assigned duties. An example in one of the cases in this study, *Travis v. Stockstill*:

The plaintiff filed a §1983 claim against the coach and other officials of his high school, alleging that the defendants allowed other students to commit acts of hazing against the plaintiff. The court reasoned that the school – and by extension, its agents- had no affirmative duty to prevent an incident without notice of its occurrence, citing ‘this single incident is insufficient to establish a pattern, custom or practice of defendants ignoring hazing activity.’ (Bittner, 2016, p. 227)

Qualified Immunity is argued in 36 of the cases where negligence and liability were claimed in a hazing incident.

Court Cases Alleging Negligence Following a Hazing Incident

Table 2 lists all cases alleging negligence following an incident of hazing between the years of 1980-2013. The table includes the name, state of origin, year, and type of case for all 83 cases that occurred during this time frame. The cases are organized alphabetically by plaintiff.

Table 2. Cases Alleging Negligence Following a Hazing Incident

Case Name	Year	State of Origin	Type of Claim
A.W. v. Lancaster County School District	2010	Nebraska	Civil
Alexander v. Kappa Alpha Psi Fraternity	2006	Tennessee	Civil
Alton v. Major General Ted Hopgood	1998	Texas	Civil
Autry v. Hooker	2009	Tennessee	Civil
Ballou v. Sigma Nu Fraternity	1986	South Carolina	Civil
Bizilj v. St. John's Military School	2009	Kansas	Civil
Brueckner v. Norwich University	1999	Vermont	Civil
Bryant v. Rupp	1981	Florida	Civil
C.H. v. Los Lunas Schools Board of Education	2012	New Mexico	Civil
Caldwell v. Griffin Spalding County Board of Education	1998	Georgia	Civil
Cappello v. Mucke	2012	Connecticut	Civil
Carpetta v. Pi Kappa Alpha	1998	Ohio	Civil
Cerra v. FEX Fraternity Fraternal Organization	1986	Wisconsin	Civil
Clifford v. Regents of University of California	2012	California	Civil
Cortese v. West Jefferson Hills	2008	Pennsylvania	Civil
Cox v. Thee Evergreen Church	1992	Texas	Civil
Culbertson v. Fletcher Public Schools	2011	Oklahoma	Civil
Day v. James Towle et al	2001	Massachusetts	Civil
Del Valle v. United States of America	1988	Puerto Rico	Civil
Delta Tau Delta v. Tracey Johnson	1999	Indiana	Civil
Dutch v. Canton City Schools	2004	Ohio	Civil
E.F. v. Oberlin City School District	2010	Ohio	Civil
Easler v. Hejaz Temple	1985	South Carolina	Civil
Edwards v. Kappa Alpha Psi	1999	Illinois	Civil
Elbaz v. Beverly Hills Unified School District	2007	California	Civil
Ex Parte Barran	1998	Alabama	Civil
Foster v. Beta Mu of Beta Theta Pi	1991	Indiana	Civil
Freeman v. Busch	2003	Iowa	Civil
Furek v. University of Delaware	1988	Delaware	Civil
Garofalo v. Lambda Chi Alpha	2000	Iowa	Civil
Gigger v. Delta Sigma Theta	1998	Oklahoma	Civil
Quinn v. Sigma Rho of Beta Theta Pi	1987	Illinois	Civil

Table 2. Continued

Case Name	Year	State of Origin	Type of Claim
Grand Aerie Fraternal Order of Eagles v. Marlene Carneyhan	2005	Kentucky	Civil
Greenfield v. Michigan State University	1996	Michigan	Civil
Grenier v. Commissioner of Transportation	2012	Connecticut	Civil
Griffen v. Alpha Phi Alpha	2007	Pennsylvania	Civil
Haben v. Anderson	1992	Illinois	Civil
Hancock v. North Sanpete School District	2012	Utah	Civil
Harden v. United States	1980	Georgia	Civil
Harden v. United States II	1982	Georgia	Civil
Helbing v. Hunt	2012	Texas	Civil
Hernandez v. Delta Tau Delta	1995	Arizona	Civil
Hilton v. Lincoln Way High School	1998	Illinois	Civil
Jolevare v. Alpha Kappa Alpha	2007	DC	Civil
Jones v. Kappa Alpha Order	1997	Alabama	Civil
Kenner v. Kappa Alpha Psi	2002	Pennsylvania	Civil
Knoll v. Board of Regents Univ of Nebraska	1999	Nebraska	Civil
Kruger v. Phi Gamma Delta Fraternity	2001	Massachusetts	Civil
Landmark American Insurance Company v. Rider University	2010	New Jersey	Civil
Lapp v. Jackson Township Board of Ed	2006	New Jersey	Civil
Lloyd v. Alpha Phi Alpha	1999	New York	Civil
Maines v. Cronomer Valley Fire department	1980	New York	Civil
Marcinczyk v. State of New Jersey Police Training Commission	2010	New Jersey	Civil
Martin v. North Metro Fire Rescue District	2007	Colorado	Civil
McCarthy v. Omega Psi Phi	2011	Illinois	Civil
Meeker v. Edmundson	2005	North Carolina	Civil
Morrison v. Kappa Alpha Psi	1999	Louisiana	Civil
Nisbet v. Bucher	1997	Missouri	Civil
Nkemakolam v. St. John's Military School	2012	Kansas	Civil
Oja v. Theta Chi Fraternity	1997	New York	Criminal
Pawlowski v. Delta Sigma Phi Fraternity	2010	Connecticut	Civil
Pelham v. Board of Regents	2013	Georgia	Civil
Perkins v. Commonwealth	2001	Massachusetts	Civil
Perkins v. Massachusetts	1995	Massachusetts	Civil
Pik v. The University of Pennsylvania	2010	Pennsylvania	Civil
Poway Unified Schools v. Superior Court of San Diego County	1998	California	Civil

Table 2. Continued

Case Name	Year	State of Origin	Type of Claim
Prime v. Beta Gamma Chapter of Pi Kappa Alpha	2002	Kansas	Civil
Quinn v. Sigma Rho of Beta Theta Pi	1987	Illinois	Civil
Redden v. Alpha Kappa Alpha Sorority	2010	Ohio	Civil
Reeves v. Arnold Besonen and Owendale Gagetown Area Schools	1991	Michigan	Civil
Rocha v. Faltys	2002	Texas	Civil
Roe v. Gustine Unified School District	2009	California	Civil
Rupp v. Bryant	1982	Florida	Civil
Sharkey v. Board of Regents Univ of Nebraska	2000	Nebraska	Civil
Skinner v. City of Miami	1995	Florida	Civil
Smith v. Delta Tau Delta	2013	Indiana	Civil
Travis v. Cayne Stockstill	2013	Mississippi	Civil
Vega v. Sacred Heart University	2012	Connecticut	Civil
Waddill v. Phi Gamma Delta Fraternity	2003	Texas	Civil
Wakulich v. Mraz	2003	Illinois	Civil
Walker v. Phi Beta Sigma Fraternity	1997	Louisiana	Civil
Wencho v. Lakewood	2008	Ohio	Civil
Williams v. Lincoln Tower Associates	1991	Illinois	Civil
Yost v. Wabash College	2012	Indiana	Civil

Table 2 identifies that 82 of the 83 cases (98.79%) alleging negligence appear in Civil Court and seek monetary damages following the incident. One case *Oja v. Theta Chi Fraternity* (1997) involved both civil claims of negligence and criminal charges of hazing. Additionally, negligence cases were argued in 32 states and 2 districts (DC and Puerto Rico) with the State of Illinois having the most number of negligence cases (seven), followed by Texas (five), and Georgia (five). This data reveals that *negligence per se* following a hazing case is the most predominantly argued legal claim and occurs across the largest number of states. Within *negligence per se* cases, liability is argued in 96.39% of cases (80/83), duty is argued in 78.31% of cases (65 of 83), premises liability

is argued in 12.05% of cases (10 of 83), sovereign or qualified immunity is used as a defense in 43.37% of cases (36 of 83) and agency is argued in 15.66% of cases (13 of 83). The next section discusses the cases courts have relied upon to set precedent using legal reasoning.

***Ballou v. Sigma Nu* (1986) 291 S.C.140; 352 S.E.2d 488 (S.C.)**

In *Ballou v. Sigma Nu* the plaintiff, acting on behalf of a deceased pledge who died because of acute intoxication from a hazing incident, brought suit against the local and national fraternity. The civil trial ensued over issues of negligence, duty, proximate cause, and contributory negligence. The Court of Appeals of South Carolina ruled in favor of the plaintiff stating, "under South Carolina law, a fraternal organization owed a duty of care to its initiates not to cause them injury in the process" (*Ballou v. Sigma Nu*, 1986, p. 488). Defendant fraternity claimed that the actions of the deceased led to the death and that even if a duty existed, the proximate cause of death was the deceased's consumption of alcohol, not the breach of duty. The court held that the jury could reasonably have found that the fraternity was the proximate cause of the decedent's death. "Based on evidence, it was reasonable to infer that the decedent would not have consumed a fatal amount of alcohol without the prompting of the active brothers" (*Ballou v. Sigma Nu*, 1986, p. 494).

The court reasoned that the deceased was responsible for a portion of the risk (assumption of risk), but the deceased may not have been aware of the full danger involved in his intoxication.

As we view the evidence in the instant case, Barry (deceased) voluntarily assumed the risk of the dangers imposed by a situation involving verbal and physical hazing and consumption of alcohol to the point of intoxication; however, he did not as a matter of law freely and voluntarily with full knowledge of its

nature and extent incur the risk of the dangers created by Sigma Nu's action of promoting extreme intoxication. (*Ballou v. Sigma Nu*, 1986, p. 495)

The court ruled that the deceased may have understood that hazing would occur within the fraternity (based on previous knowledge of the organization) but assumed only the risks associated with verbal and physical abuse, not the risks associated with extreme intoxication. The local fraternity was found to have been negligent in its actions, to have breached a duty not to injure the deceased, and to have caused actions that led directly to the damage (death) of the plaintiff.

The national fraternal organization was also found by the court to have some responsibility in this matter.

Because it was within Sigma Nu's interest that new members be received, we are satisfied that the local chapter in conducting hell night and in requiring the pledges to participate in hell night as a condition of membership in Sigma Nu acted within the scope of the apparent authority conferred on it by Sigma Nu (National). Sigma Nu, then, was bound by the acts of its local chapter in this instance since they were performed within the apparent scope of its authority. (*Ballou v. Sigma Nu*, 1986, p. 496)

This was in reaction to the argument by Sigma Nu National Fraternity that the National Organization did not owe a duty of care to the plaintiff as the national organization was not involved in the day to day operations of the local chapter. This is a common argument among national fraternities to escape liability from the actions of a local chapter and in this instance, the argument was not successful. The next case, *Garafalo v. Lambda Chi Alpha* (2000) alleged a similar set of circumstances, but the plaintiff was not forced to consume alcohol as a part of the hazing and initiation procedures.

***Garafalo v. Lambda Chi Alpha* (2000) 616 N.W.2d 647 (Iowa)**

In a similar set of circumstances, *Garafalo v. Lambda Chi Alpha* (2000) presented a case where the local fraternity and national fraternity were found not to have breached a

duty in the death of plaintiff Garafalo. This case was heard by the Supreme Court of Iowa on appeal of summary judgement regarding breach of duty against a fraternity and its members following the death of a new member from pulmonary asphyxiation due to alcohol consumption post a *Big Brother ritual* (*Garafalo v. Lambda Chi Alpha*, 2000).

In this case the Supreme Court found that no duty existed because the member was not coerced or forced to consume alcohol, but instead was offered alcohol by the upper-class members of the organization. The decision was that Garafalo's decision to consume alcohol beyond the point of intoxication was the proximate cause of death and the fraternity members did not owe a duty to Garafalo to not allow him to continue consumption. This case offered a dissenting opinion to the majority on behalf of the Plaintiff:

We have said that negligence is the breach of duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks. It has been defined as conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. It is immaterial whether the standard is one imposed by the rule of common law requiring the exercise of ordinary care not to injure one another. (*Garafalo v. Lambda Chi Alpha*, 2000, p. 656)

The dissenting opinion identified that though there is no legal statute that has specifically outlined the duty to protect someone from the specific risk of alcohol assumption, the spirit of the law was to protect against 'unreasonable risks' such as over-consumption that leads to death. An important distinction when reviewing legal cases is the difference between decisions made by strict adherence to the law as written, and decisions made by interpreting the 'spirit of the law.' The next case, *Quinn v. Sigma Rho Chapter* (1987), provides a court decision in Illinois where social-host liability is provided as a shield for the injury of a student.

***Quinn v. Sigma Rho Chapter* (1987) 155 Ill. App. 3d 231; 507 N.E.2d 1193 (Ill. App.)**

The Appellate Court of Illinois set a new standard for the state of Illinois allowing a social host to be considered negligent if (1) consumption of alcohol is coerced and (2) it is in relation to a hazing incident (*Quinn v. Sigma Rho Chapter*, 1987). In previous case law, a social host was considered to have no duty to protect against injury following the consumption of alcohol by a guest in the State of Illinois. By adding an additional condition “fraternities could be held liable for injuries sustained when requiring those seeking membership to engage in illegal and very dangerous activities,” the *Quinn* ruling moved away from Dram-Shop Act and social host laws to a new era of liability (*Quinn v. Sigma Rho Chapter*, 1987, p. 1198).

The facts describe a fraternity function where plaintiff was required to drink to intoxication in order to become a member of the fraternity. We cannot close our eyes to the fact that the abuse illustrated in the present case could have resulted in the termination of life and the plaintiff was coerced into being his own executioner. (*Quinn v. Sigma Rho Chapter*, 1987, p. 1197)

The Appellate Court of Illinois provided voice to the joint responsibility for hazing and alcohol consumption in this case.

Plaintiff's actions in participating in the ceremony were voluntary. Yet, membership in the defendant fraternity was a 'much valued status.' It can be assumed that great social pressure was applied to plaintiff to comply with the fraternity's membership qualifications perhaps to the extent of blinding plaintiff to any dangers he might face. (*Quinn v. Sigma Rho Chapter*, 1987)

The court spoke of the coercive nature of an organizational environment where membership in the organization brings additional benefit to the individual. The court identified that in this case there is importance in recognizing the action of consuming alcohol, the coercion of the surrounding members, and the value of ongoing membership in the organization when determining negligence in these cases. The fraternity was

deemed to have a duty not to harm the plaintiff during the new member process. The provision and consumption of alcohol in this process may divert some assumption of risk to the plaintiff, but the organization could not lean on social-host liability as a shield for negligence and duty. The next case, *Oja v. Theta Chi Fraternity* (1997) builds upon the *Quinn* ruling in the State of New York.

***Oja v. Theta Chi Fraternity* (1997) 174 Misc.2d 966; 667 N.Y.S.2d 650 (N.Y.)**

In the Supreme Court of New York, defendant Theta Chi Fraternity made a motion to dismiss the “private right of action” in this criminal case (with civil implications) (*Oja v. Theta Chi Fraternity*, 1997). The overall motion to dismiss was denied. The court accepted that plaintiff father Oja on behalf of his deceased son alleged that the fraternity action of hazing caused the plaintiff to consume alcohol and the subsequent death of the plaintiff may have resulted from the negligence of the fraternity.

Like Illinois, the Supreme Court of New York states:

No such revulsion (to the rewarding of youthful drunks) seems justified in relation to the injuries and deaths sustained by adolescents who trade their insecurities and free will for the promise of acceptance, and prestige, that fraternity membership appears to confer. A jury might find that the stoic acceptance of pain and discomfort by a pledge, as the price of admission to the fraternal mysteries is not truly voluntary. (*Oja v. Theta Chi Fraternity*, 1997, p. 652)

Through this case, the State of New York leaned on *Quinn v. Sigma Rho Chapter* to set precedent for future cases that the promise of status related to fraternity membership can overcome social-host liability laws that were put into place to protect against the “self-indulgence of youthful drunks” (p. 652). This earning of status was enunciated by this quote from the court, “Hazing assumes a degree of willingness by college youths to be bullied and humiliated in exchange for the social acceptance which comes with

membership in a circle which may seem alluring and even exalted" (*Oja v. Theta Chi Fraternity*, 1997, p. 652).

The Supreme Court of New York provided further commentary about the coercive environment of hazing stating, "Courts have recognized the enormous peer pressure operating upon young men, who find themselves in the throes of male bonding. ...the coercive effect of the initiation ritual and related issues of culpable conduct, are questions for the trier of fact to resolve" (*Oja v. Theta Chi Fraternity*, 1997, p. 652). With this decision, the Supreme Court of New York allowed the members of Theta Chi Fraternity to be held both criminally responsible for the death of the plaintiff, and for civil actions for negligence and liability to run concurrently. Not all states were as quick to adopt and apply the duty of the fraternity to not injure a new member as discussed in *Jones v. Kappa Alpha Order* (1997) and *Ex Parte Barran* (1998).

***Ex Parte Barran* (1998) 730 So. 2d 203 (Ala.)**
***Jones v. Kappa Alpha Order* (1997) 730 So. 2d 197 (Ala.)**

Ex Parte Barran (1998) was a continuation of *Jones v. Kappa Alpha Order* and set a different standard for assumption of risk in a hazing case in the State of Alabama. *Jones v. Kappa Alpha Order* was heard in the Civil Court of Appeals of Alabama, and negligence was remanded back to trial court. The trial court ruled that by joining an organization known for hazing, the pledge assumed the risk of hazing and could not in turn sue the local fraternity for damages associated with the hazing. The reversal of summary judgement in the Civil Court of Appeals granted that just because a pledge voluntarily continued his membership in a fraternity that engaged in hazing, the pledge did not release the individual members and chapter from negligence and duty (*Jones v. Kappa Alpha Order*, 1997). The Civil Court of Appeals stated:

We conclude that in today's society numerous college students are confronted with great pressures associated with fraternity life and that compliance with the initiation requirements places the students in a position of functioning in what may be construed as a coercive environment. Thus, we believe that fair-minded persons in the exercise of impartial judgment could reasonably infer that Jones's decision to remain a pledge, under the circumstances, was, in fact, not voluntary. (*Jones v. Kappa Alpha Order*, 1997, p. 200)

The Civil Court of Appeals acknowledged that hazing occurs in an environment that coerces the individual to continue in order to gain the social status of association with the organization. This environment could lead reasonable individuals to endure activities that they would not otherwise endure to continue their membership. The Civil Court of Appeals of Alabama asserted a duty upon organizations to conduct membership processes free of hazing. "We conclude that the individual KA members had a legal duty to conduct a pledging process/initiation ceremony free from hazing tactics, and that civil liability may properly arise from a breach of that duty" (*Jones v. Kappa Alpha Order*, 1997, p. 203).

In *Ex Parte Barran*, the Alabama Supreme Court reversed the decision of the Appellate Court and determined that the victim of hazing assumed the risk associated with hazing by joining and participating in a voluntary association. With this ruling, the fraternity was deemed not to be negligent in the conduct or injury of a pledge following a hazing incident; however, the individual hazer may face charges related to assault or other criminal offenses, but the organization shall not be named negligent.

Jones's deposition indicates that before he became a KA pledge he was unfamiliar with the specific hazing practices engaged in at KA, but that hazing began within two days of becoming a pledge; that despite the severe and continuing nature of the hazing, Jones remained a pledge and continued to participate in the hazing activities for a full academic year; that Jones knew and appreciated that hazing was both illegal and against school rules; and that he repeatedly helped KA cover up the hazing by lying about its occurrence to school officials. (*Ex Parte Barran*, 1998, p. 206)

The Alabama Supreme Court placed the assumption of risk upon Jones for his continued involvement in the organization after the hazing began and after seeing other members of his pledge class quit the organization. The fact that Jones was ultimately injured by an act of hazing only matters in an individual capacity and the organization was freed of any duty to protect Jones from injury. The Alabama Supreme Court added that the coercive environment did not create proximate cause for Jones's injury.

Jones claims a coercive environment hampered his free will to the extent that he could not voluntarily choose to leave the fraternity. College students are not children. Save for very few legal exceptions, they are adult citizens, ready, able, and willing to be responsible for their own actions. (*Ex Parte Barran*, 1998, p. 206)

With this decision Alabama became the only state where consent to participate in hazing could be used as a defense of hazing by an organization. It is important to note the dissenting opinion in *Ex Parte Barran* (1998):

I cannot condone a practice that exploits the desire to be admitted to 'the fraternity' to the extent it is exploited here. As I understand it, a pledge must be willing to undergo the degrading, disgusting, and no doubt, health-threatening practices to meet 'the fraternity's' high standards for admission. No one should be required to wallow in feces, vomit, and urine to gain admission to any 'club.' The sadness is that so many are willing to do so. I believe the legislature meant to address this practice by enacting β 16-1-23. (p. 208)

The dissenting opinion does not alter the law as it was adjudicated in Alabama; however, it provided a basis for judicial review by other states, one that may alter the interpretation of consent as a defense in the adjudication of hazing in the future. Moving to the responsibility of universities to protect against injury of students in their care, *Furek v. Delaware* (1991) discusses the role of the University.

***Furek v. Delaware* (1991) 594 A.2d 506 (Del.)**

Furek v. Delaware (1991) involved a student who was injured as part of a fraternity-hazing incident where horseplay got out of hand and a cleaning solution was poured onto the plaintiff. The Supreme Court of Delaware determined that the local and national fraternities were not party in this case. The local fraternity had been dissolved following the incident and as an unincorporated organization, no person was able to stand in representation of the organization.

The Superior Court granted both motions ruling that in order to serve a defunct unincorporated association, as Sig Ep became when its charter was revoked, service was required to be made on each of the former members and not simply upon a former officer. Because Furek had failed to serve each of the members of the local fraternity, the action against the local fraternity was dismissed. (*Furek v. Delaware*, 1991, p. 512)

The national organization was deemed to not have control over the actions of the local fraternity when the local fraternity represented itself to the national fraternity as following the rules and regulations set forth by the national organization (*Furek v. Delaware*, 1991).

The University in this case maintained some liability in areas where it had attempted to control behavior.

The evidence in this record strongly suggests that the University not only was knowledgeable of the dangers of hazing, but, in repeated communications to students in general and fraternities, emphasized the University policy of discipline for hazing infractions. The University policy against hazing like its overall commitment to provide security on its campus thus constituted an assumed duty which became 'an indispensable part of the bundle of services which colleges afford their students.' (*Furek v. Delaware*, 1991, p. 520)

Because the University had knowledge of previous hazing incidents on the campus and had instituted policies to address hazing on campus, the University created a duty of care and that duty was breached in the injury of plaintiff Furek. Building upon the *Furek*

ruling, *Knoll v. University of Nebraska* (1991) discusses premises liability and foreseeability in a hazing incident.

***Knoll v. Board of Regents of the University of Nebraska* (1999) 601 N.W.2d 757
(Nebraska)**

In *Knoll v. Board of Regents*, the trial court ruled that, following a hazing incident, the University of Nebraska did not have a duty to protect its students from harm. The Supreme Court of Nebraska reversed the decision of the lower court finding that a university has a duty to protect against harm in property controlled by the university (*Knoll v. Board of Regents*, 1999). In this incident, the university had been aware of other hazing incidents on campus and of the previous misbehavior of a fraternal organization prior to the injury of plaintiff during a hazing incident. For this reason, the university was found to have been negligent in their oversight and to have breached a duty to protect.

The University was aware of at least two hazing incidents involving other fraternities and was aware of several instances of criminal conduct involving Fiji members. There is evidence that the University exercised control over the FIJI house by considering it to be a student housing unit subject to the Code of Student Conduct. The Code contained regulations prohibiting certain conduct including consumption of alcohol; unreasonably dangerous conduct, including but not limited to hazing and violation of Nebraska laws, which prohibit hazing and the provision of liquor to minors. The facts show that the University was aware of prior hazing instances where students had grabbed and physically removed other students from buildings, had coerced other students into drinking alcohol, and had engaged in other harassing activities. As such we conclude that the University owes a landowner-invitee duty to students to take reasonable steps to protect against foreseeable acts of hazing, including student abduction on the University's property, and the harm that naturally flows therefrom. (*Knoll v. Board of Regents*, 1999, p. 764)

Knoll provided that Universities have a duty to provide reasonable care for their students in properties owned or overseen by the University, or in properties that have jurisdiction to the University Code of Student Conduct. By having knowledge of previous incidents

of misbehavior within the FIJI organization, and knowledge of other fraternities conducting similar hazing incidents on campus, the Supreme Court of Nebraska ruled that a reasonable person could conclude that the injury of plaintiff Knoll was foreseeable and liability and negligence on behalf of the institution can be reasonably argued in a trial (*Knoll v. Board of Regents*, 1999). Beyond premises liability lies the discussion of Sovereign Immunity by governmental employees and government agencies. *Bryant v. Rupp* (1981) looks at this issue in a high school.

***Bryant v. Rupp* (1981) 399 So. 2d 417 (Fla.)**

***Rupp v. Bryant* (1982) 417 So. 2d. 658 (Fla.)**

Bryant v. Rupp (1981) was heard by the District Court of Appeal of Florida on appeal of a trial court decision to “dismiss negligence complaints against appellees school board, faculty advisor, and principal” (p. 417) based on sovereign immunity. In this case, plaintiff, a high school student, was injured as part of a hazing incident during initiation into the Omega Club. Defendant Rupp served as an advisor to the club, and the High School had been made aware of previous violations of school board regulations during club activities. Additionally, the school had a rule that a faculty advisor must be present at all activities that occurred outside the normal school day (*Rupp v. Bryant*, 1981).

Appellate court reversed the order of lower court stating:

Father and son ‘sufficiently alleged proximate cause and foreseeability in connection with appellant son’s injury at an off-campus, school sponsored extracurricular club’s initiation ceremony. Appellants alleged that Rupp knew of the club’s reputation, the planning session, the initiation, and planned the hazing ceremony. Assuming these facts to be true, the school board and its agents had a duty to execute and implement board policy without negligence.’ (*Rupp v. Bryant*, 1981, p. 417)

In reversing the decision, the court identified that Rupp and Principal of the school were negligent in their failure to supervise the activities of an organization that was known to

conduct activities against school board policy. This negligence in the “willful and wanton” failure to perform their duties removed the sovereign immunity from these individual actors.

Rupp v. Bryant (1982) was heard by the Supreme Court of Florida on appeal of the lower court decision. The Supreme Court upheld the decision of the Appellate Court in part and reversed in part. The Supreme Court agreed that Rupp and defendant Principal Stasco had a responsibility to supervise the activities of the Omega Club and that these responsibilities were not discretionary and thus defendants do not enjoy official immunity (*Rupp v. Bryant*, 1982).

Under the circumstances of this case, the specific duty to supervise the club was required by the school board’s own regulations, we have no difficulty in denominating such a duty as ministerial. Because the duty does not involve discretion in the policy-making sense, neither the principal nor the teacher may raise the shield of official immunity. (*Rupp v. Bryant*, 1982, p. 22)

The court acknowledged that the school had assumed a duty to protect and supervise the activities of its students by requiring all student organizations to have an advisor assigned to them. Defendant Rupp’s inattention to their initiation planning meeting was determined to have some proximate cause in the injury to plaintiff.

The Supreme Court of Florida however diverted from the decision of the lower court on the issue of “willful and wanton negligence” (*Rupp v. Bryant*, 1982). The court determined that though the plaintiff used language that describes the actions of defendant as reckless, this did not make the actions so.

Gross negligence must be established by facts evincing a reckless disregard for human life or rights which is equivalent to an intentional act or a conscious indifference to the consequences of an act. The facts alleged simply cannot support imputation to defendants of intent or conscious indifference, and therefore fail to state a cause of action for exemplary damages. (*Rupp v. Bryant*, 1982, p. 36)

The Supreme Court ruled that the actions of defendant Rupp were indeed negligent in his supervision of the organization but were not indifferent or intent to cause harm upon the plaintiff. This distinction altered the level of damages available to the plaintiff and the severity of claims against the defendant. This case in the whole identified that negligence could be applied to state actors in their individual capacities through the failure to perform duties that the state has put in place for the protection of others. Even when sovereign immunity is applied, it did not provide the individual actor full protection from state tort claims. *Harden v. United States* (1980 & 1982) looks at the application of immunity and the concept of comparative negligence.

***Harden v. United States* (1980) 485 F. Supp. 380 (US Dist.)**

***Harden v. United States* (1982) 688 F.2d 1025 (US App.)**

These cases were first heard in the District Court for the Southern District of Georgia and then on appeal by the government in the Court of Appeals for the Fifth Circuit. The case involved a hazing incident that occurred at a campsite where young men were stripped naked, had various food items poured upon them, and were ordered to run through other campsites (*Harden v. United States*, 1980). While on their excursion, fellow campers complained to the park ranger who encountered plaintiff son Harden and ordered him to stop. When Harden (and friend) did not stop the Ranger moved to fire a warning shot, but in the process of firing the shot, his truck stalled, and the Ranger's gun was discharged at Harden mortally wounding him.

The District Court of Georgia found the Ranger liable for the death of Harden but also ruled that Harden was contributorily negligent in his own death.

I have concluded that the defendant is liable for the death of Clay Harden. However, Clay Harden also was negligent. He failed to exercise ordinary care and diligence in several ways. He, too, owed a duty to the public and other users of

the Ridge Road campsites. It is true that he was only walking along the side of the road when he was shot. Nevertheless, he had failed to heed the command to halt given by Ranger Strang (*Harden v. United States*, 1980, p. 391).

Contributory negligence utilizes a percentage of fault and liability for an incident, and in this case, the District Court ruled that the Ranger and Army Corps of Engineers (who provided the truck that stalled) were 75% responsible for the death of Harden and that Harden's own actions contributed 25% of the fault. This distribution of damages was the subject of appeal in *Harden v. United States* (1982).

On appeal, the Court of Appeals for the Fifth Circuit upheld the decision of the District Court that the Ranger and Army Corps of Engineers were 75% liable for death, and that Clay Harden was 25% liable for his own death (*Harden v. United States*, 1982). The Court of Appeals remanded the decision for inflationary damages back to the lower court based on Georgia state law for percentages of wrongful death suits. Of note in this case was the contributory and comparative negligence of the Ranger and of Harden, but not the organization that created the hazing environment.

Conclusion of Tort Liability for Negligence

The cases above present judicial opinions in 12 cases across 12 states where tort liability for negligence and duty was claimed. The cases represent those cited most for future opinions on negligence, liability, and duty when hazing has been alleged as a precipitating factor. The cases also present the range of issues associated with incidents of hazing in civil cases including, sovereign immunity, premises liability, comparative negligence, contributory negligence, social-host liability, and agency. These factors are important in considering how the courts may treat incidents of hazing in relation to tort liability and negligence.

42 U.S.C. §1983 of the Civil Rights Act of 1964

The Civil Rights Act of 1964 was put in place by the Federal Government to protect the rights of citizens against public action by the state or by the actions of other individuals (Chambers, 2008). This act outlined the prohibition of discrimination “based on race, color, sex, religion, and national origin in places of public accommodation, in federally assisted programs, in employment, in schools, and with respect to voting rights” (Chambers, 2008, p. 326). This seminal piece of legislature set up eleven Titles of varying purposes. Some of the original Titles of the Civil Rights Act of 1964 have been superseded by subsequent acts, but Titles II, VI, VII & IX are relied upon by the courts heavily still today (Chambers, 2008).

§ 1983 of the Civil Rights Act remains as an “unsettled technical problem of litigation” in today’s courts (Kates & Kouba, 1972, p. 131). § 1983, the Civil Action for Deprivation of Rights states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered a statute of the District of Columbia. (Government Publishing Office, Retrieved March 14, 2018)

This section of the law provides that citizens of the United States and its territories are assured their constitutional rights and the protections provided by law, and that no other person within the United States or territories shall be allowed to deprive a citizen of these rights. Should a citizen be deprived of their constitutional rights, an action under 42

U.S.C. § 1983 may be brought to Federal Civil Court for remedy (Kates & Kouba, 1972; Blackman, 1985). Important to note is that 42 U.S.C. § 1983 did not create new rights for citizens of the United States but instead guaranteed the rights already provided by the United States Constitution and its Amendments. This section of law is used widely as the basis for tort claims when a citizen perceives an injury to have occurred (Blackman, 1985).

Under the Civil Rights Act of 1964, the basic constitutional rights of the United States of America are guaranteed. Thirty-seven cases of hazing in the United States from 1980-2013 have alleged violations of these Constitutional Rights, including violations of the First Amendment, Fourth Amendment, Fifth Amendment, Fourteenth Amendment, and general discrimination (as protected by the Civil Rights Act). The First Amendment reads, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (United States Constitution First Amendment, 1776). The First Amendment protects the citizens’ right to freedom of religion, speech, the press, and association. In cases alleging hazing, the violation of freedom of association and freedom of speech are most often claimed under 42 U.S.C. § 1983.

The Fourth Amendment of the United States Constitution states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized” (United States Constitution Fourth

Amendment, 1776). The Fourth Amendment protects against unreasonable searches and seizures by the government or by another individual. In cases alleging hazing, the violation of unreasonable seizure is most often claimed under 42 U.S.C. § 1983. The Fifth Amendment of the United States Constitution states,

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (United States Constitution Fifth Amendment, 1776)

The Fifth Amendment protects against self-incrimination and double jeopardy within the United States judicial system. In cases alleging hazing, the violation of self-incrimination is most often claimed under 42 U.S.C. § 1983. In some states, hazing is required to be reported and those who fail to report hazing are subject under the law to be in violation. The fifth amendment comes into play as the victim of a hazing case would be committing self-incrimination by reporting that he/she had participated in the hazing. Section one of the Fourteenth Amendment of the United States Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (United States Constitution Fourteenth Amendment, 1776).

The Fourteenth Amendment provides the citizens' equal protection to due process of law and to not be punished without the due process of the law. In cases alleging hazing, the violation of punishment without due process and equal protection is most often claimed under 42 U.S.C. § 1983.

Section 601 of Title VI of the Civil Rights Act of 1964 states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (Civil Rights Act Online). This is the first mention of non-discrimination based on race, color, or national origin by the federal government. The government would go on to add protections against discrimination based on sex, religion, age, and disability in subsequent legislation. In cases alleging hazing, violations of non-discrimination are claimed based on the belief that certain members of a group, company, organization, team, etc. were hazed because of their race, color, national origin, sex, religion, or other protected status.

Court Cases Alleging Violations of 42 U.S.C. §1983 of the Civil Rights Act of 1964

Table 3 lists all cases alleging violations of 42 U.S.C. §1983 of the Civil Rights Act following an incident of hazing between the years of 1980-2013. The table includes the name, state of origin, year, and type of case for all 36 cases that occurred during this time frame. The cases are organized alphabetically by plaintiff.

Table 3 identifies that 36 of 37 cases (97.29%) alleging violations of 42 U.S.C. §1983 of the Civil Rights Act appear in Civil Court and seek monetary damages following the incident. One case, *Missouri v. Allen*, (1995) appears as a Criminal case that also alleges Civil Rights violations. Additionally, violations of 42 U.S.C. §1983 of the Civil Rights Act were argued in 21 states with California, Massachusetts, and Texas each having four cases. This data reveals that violations of 42 U.S.C. §1983 of the Civil Rights Act following a hazing case is the second most predominantly argued legal claim.

Table 3. Cases Alleging Violations of 42 U.S.C. §1983 of the Civil Rights Act

Case Name	Year	State of Origin	Type of Claim
Alton v. Major General Ted Hopgood	1998	Texas	Civil
Alton v. Texas A&M	1999	Texas	Civil
Autry v. Hooker	2009	Tennessee	Civil
Cardenas v. Tulare County Sheriff's Department	2013	California	Civil
Chisler v. Johnston	2010	Pennsylvania	Civil
Cioffi v. Averill Park Central School Board	2005	New York	Civil
Clifford v. Regents of University of California	2012	California	Civil
Culbertson v. Fletcher Public Schools	2011	Oklahoma	Civil
Davis v. Carmel Clay Schools	2013	Indiana	Civil
Day v. James Towle et al	2001	Massachusetts	Civil
Day v. Massachusetts Air National Guard	1999	Massachusetts	Civil
Diaz v. City of Springfield Illinois	1998	Illinois	Civil
Dixon v. Picayune School District	2013	Mississippi	Civil
Fink v. California State University Northridge	2006	California	Civil
Givens v. Quinn	2005	Virginia	Civil
Greenfield v. Michigan State University	1996	Michigan	Civil
Hancock v. North Sanpete School District	2012	Utah	Civil
Hilton v. Lincoln Way High School	1998	Illinois	Civil
Johnson v. Atlantic County	2010	New Jersey	Civil
Martin v. North Metro Fire Rescue District	2007	Colorado	Civil
Meeker v. Edmundson	2005	North Carolina	Civil
Mentavlos v. Anderson	2001	South Carolina	Civil
Mentavlos v. Anderson	2000	South Carolina	Civil
Missouri v. Allen	1995	Missouri	Criminal
Perkins v. Commonwealth	2001	Massachusetts	Civil
Perkins v. Massachusetts	1995	Massachusetts	Civil
Phelps v. Colby College	1990	Maine	Civil
Pik v. The University of Pennsylvania	2010	Pennsylvania	Civil
Reeves v. Arnold Besonen and Owendale Gagetown	1991	Michigan	Civil
Roe v. Gustine Unified School District	2009	California	Civil
Seamons v. Snow	1996	Utah	Civil
Sechrist v. Unified Government of Wyandotte	1999	Kansas	Civil
Skinner v. City of Miami	1995	Florida	Civil
Travis v. Cayne Stockstill	2013	Mississippi	Civil
Vaughn v. Pool Offshore Company	1982	Texas	Civil
Williams v. Walter	2008	Illinois	Civil
Wolf v. Webb	2012	Texas	Civil

cases (13/37), violations of the Fourth Amendment (unreasonable search and seizure) is argued in 27.02% of cases (10/37), violations of First Amendment (freedom of speech and freedom of association) are argued in 13.51% of cases (5 of 37), and discrimination-based race or gender is argued in 18.92% of cases (7 of 37). It is important to note that cases are not mutually exclusive of each other and there is overlap between the alleged violations of 42 U.S.C. §1983 of the Civil Rights Act. The next section provides a look at the cases used to set precedent that allege violations of 42 U.S.C. §1983 of the Civil Rights Act of 1964 following a hazing incident.

***Seamons v. Snow* (1996) 84 F.3d 1226 (US App.)**

This case was brought before the United States Court of Appeals for the Tenth Circuit on appeal from the US District Court for the District of Utah. Plaintiff Seamons was the victim of a hazing incident associated with his membership on the football team at his local high school. The incident alleged that Seamons was tied naked in the locker room and exhibited to other students (*Seamons v. Snow*, 1996). Following the incident, Seamons reported the incident to the school administration and was eventually dismissed by defendant Snow from the team for failure to apologize to the team for making the report. Plaintiff alleged that he suffered additional harassment from other students after the football team was forced to forfeit the post-season game due to their involvement in the incident. Upon hearing the complaints from plaintiff, administrators at the High School encouraged plaintiff to attend a different school in a different city to escape and avoid the harassment at plaintiff's original high school (*Seamons v. Snow*, 1996).

Seamons brought forth allegations of violations of his constitutional rights based on 42 U.S.C. § 1983, claiming he was deprived of his Fourth Amendment right to

protection against unreasonable search and seizure, First Amendment rights to freedom of speech, and violations of Title IX for sex and gender-based discrimination (*Seamons v. Snow*, 1996). The district court dismissed all claims based on failure to state a claim, and US Court of Appeals for the Tenth Circuit affirmed the decision related to the Fourth Amendment and Title IX claims and reversed and remanded the decision on the First Amendment. For Title IX the court stated:

There is an important difference between (1) a 'hostile' environment created primarily by a student body which disapproved of Brian's response to his assault and which, rightly or wrongly, attributed responsibility to Brian for the cancellation of the school's post-season football game, and (2) a sexually charged hostile environment cognizable of sexual harassment. (*Seamons v. Snow*, 1996, p. 1232).

The court determined that Seamons's claim of discrimination based on sex was not valid and there was a difference between a student body that was hostile toward an individual and a culture of sex-based discrimination where students are kept from certain rights and privileges because of their sex.

On the Fourth Amendment claim, the court ruled that plaintiff Seamons "failed to allege facts to support the defendants (coach, administrators, and school board) acted with an intent to harm him. In fact, the case showed that school officials attempted to punish the football team for the assault on Brian" (*Seamons v. Snow*, 1996, p. 1236). Plaintiff's claim that his due process rights were violated failed due to a failure to allege facts that he was harmed by the actions of the principal and school board following the incident. The court also determined that plaintiff did not have a right to attend a specific school in a specific school district and his choice to change schools did not equate to a loss of constitutionally provided rights or privileges (*Seamons v. Snow*, 1996).

The Court of Appeals did however reverse the decision of the lower court related to the first amendment, stating that it was Seamons's right to report the physical assault and he should not have been denied that right by administrators (*Seamons v. Snow*, 1996). “In regard to Brian, it appears he was denied a benefit (participation on the football team) because of his decision to tell his parents and school officials about the incident in the locker room. Brian’s actions certainly constitute speech (*Seamons v. Snow*, 1996, p. 1237). By removing plaintiff from the team following his report to school officials, the coach and others involved violated the plaintiff’s right to free speech as it was in his interest to speak out against the physical assaults he was party to and Seamons should not have feared any repercussions for doing so. On this count, the Coach and other defendants did not enjoy qualified immunity and could be held liable for their actions under 42 U.S.C. § 1983.

***Missouri v. Allen* (1995) 905 S.W.2d 874 (Mo.)**

This case was brought before the Supreme Court of Missouri on appeal from the Circuit Court of the City of St. Louis. Defendant Allen in this case was convicted by the trial court on five counts of hazing and brought this challenge before the court claiming that his constitutionally protected rights (First, Fourth, Fifth, and Fourteenth Amendments) were violated by the hazing law (*Missouri v. Allen*, 1995). Additionally, the defendant claimed that the law itself was over-broad, vague, and underserving. The Supreme Court of Missouri affirmed the convictions and upheld the hazing law.

Allen claimed that the hazing law itself was “vague, unclear and overbroad” and invoked challenges to the Fifth Amendment guarantee of due process which was “made applicable to the states through the Fourteenth Amendment” (*Missouri v. Allen*, 1995, p.

876). Challenges in the court for overbreadth and vagueness are commonly related to hazing statutes and the Supreme Court of Missouri dismisses them stating,

It is of course virtually impossible for the legislature to employ the English language with sufficient precision to satisfy the mind intent on conjuring up hypothetical circumstances in which commonly understood words seem momentarily ambiguous. The constitution however, does not demand that the General Assembly use words that lie beyond the possibility of manipulation. Instead, the constitutional due process demand is met if the words used bear a meaning commonly understood by persons of ordinary intelligence. (*Missouri v. Allen*, 1996, p. 877)

This statement by the court revealed that arguing over language and words that can be manipulated to mean anything does not make a piece of legislation vague nor overbroad. The court utilized the common person's test to examine the language in the law and deemed that an ordinary person would be able to understand the wording of the law. This decision dismissed the Fifth and Fourteenth Amendment claims from the case.

Allen's next claim was that the overbreadth of the law impeded upon his freedom of association as guaranteed by the First Amendment (*Missouri v. Allen*, 1995). The court again dismissed this claim outlining that in no part of the legislation are a student's rights to assemble infringed upon, nor does the law prevent the organization from using protected speech.

The statute informs the organization that it and its members may not recklessly endanger the mental or physical health or safety of a prospective member as a condition of admission into or preservation of membership in the fraternity. Allen does not produce, nor does our independent research reveal, any case in which a court has recognized a constitutional right in members of an organization to recklessly endanger the mental or physical health or safety of members or potential members of that organization by physically beating them. (*Missouri v. Allen*, 1995, p. 878)

Here the court discussed that the limitation of reckless endangerment did not limit speech, and there was no constitutional right to the reckless endangerment of another citizen.

Allen's final claim was that the law was under-serving because it only applied to students in institutions of Higher Education, and not to students in secondary schools (*Missouri v. Allen*, 1995). The court responded with reasoning:

Students attending secondary education institutions generally live under the watchful, concerned care of parents with whom they have frequent and regular contact. These proximate parents are often able to discover bruises and detect other signs of mental and physical abuse and can protect their child from an organization that conditions membership on hazing. The General Assembly could reasonably conclude that the threat of criminal liability was a necessary and appropriate measure to protect students from hazing by organizations in colleges and universities while students were distanced from their parents' presence. (*Missouri v. Allen*, 1995, p. 878)

The distinction between post-secondary education and secondary education was outlined as related to the ability of a watchful adult to monitor the behavior and general welfare of a student in secondary education; however, as institutions of higher education do not stand *in loco parentis* for students, it was important for the legislature to provide protection against the criminal act of hazing. The next two cases *Reeves v. Besonen* (1991) & *Meeker v. Edmundson* (2005) will explore allegations of Civil Rights Violations by high school officials.

***Reeves v. Besonen* (1991) 754 F. Supp. 1135 (US Dist.)**

This case was presented in the United States District Court for the Eastern District of Michigan, Southern Division on appeal from a Magistrate's Document. Plaintiff Reeves was a high school football player at Owendale Gagetown Areas Schools and was allegedly subject to a hazing ritual on a school bus following a school football game

(*Reeves v. Besonen*, 1991). Defendant Besonen was the head football coach for the team and bus driver. During the hazing ritual, older members of the team called Reeves to the back of the bus and subsequently punched and kicked him ultimately breaking his nose. Reeves claims that his Fourth Amendment right to protection against unreasonable search and seizure and his Fourteenth Amendment right to equal protection from substantive due process were violated under 42 U.S.C. § 1983 (*Reeves v. Besonen*, 1991).

The District Court granted defendant's motion for summary judgment on the Fourth and Fourteenth Amendment claims. On the Fourth Amendment claim, the court found no evidence that a search or seizure occurred by any person acting on behalf of the State (*Reeves v. Besonen*, 1991). The simple act of riding a bus did not qualify as a seizure, capture, or incarceration in the eyes of the court. On the Fourteenth Amendment claim, the judge wrote, "[the] Supreme Court has made very clear that substantive due process does not entitle every individual under the care of state authorities to protection from physical injuries" (*Reeves v. Besonen*, 1991, p. 1139). The participation in an activity hosted by the state or under guidance of a state official does not provide the participant protection from injury and/or equate to a violation of constitutional rights if an injury occurred. The participant must acknowledge their own voluntary status in the participation in an activity, otherwise there would be no difference between State activities and Constitutional protections.

If the court were to accept the plaintiff's argument here that the Constitution somehow imposes a duty on school officials to provide for the safety of students with respect to extracurricular activities...then there would no longer be any practical distinction between ordinary state-law negligence claims and federal constitution violations. (*Reeves v. Besonen*, 1991, p. 1140)

The court specified here that the coach of the team could not be held responsible for the actions of the student participants that he did not have knowledge of. State actors are not mandated to protect individuals from injury just because the individuals are under their care. The next case *Meeker v. Edmundson* (2005) will highlight this important distinction ***Meeker v. Edmundson* (2005) 415 F.3d 317 (U.S. App.)**

This case was heard in the United States Court of Appeals for the Fourth Circuit on appeal of a decision by the district court that denied qualified immunity to a wrestling coach at a local high school for his role in the hazing of plaintiff Meeker. The Court of Appeals affirmed the decision of the lower court and determined that enough evidence existed that a trial court could find the defendant liable for violations of 42 U.S.C. §1983 of the Civil Rights Act of 1964 (*Meeker v. Edmundson*, 2005). Plaintiff claimed that his Fourteenth Amendment due process rights and Fourth Amendment constitutional right of unreasonable search and seizure were violated. Additionally, the plaintiff alleged that defendant Edmundson was liable for negligence and breach of duty. The facts of the case alleged that Edmundson “frequently initiated and encouraged abuse of Meeker” at least “twenty-five times during the few months while he was on the team” by way of having teammates “pull up or remove his clothing and take turns repeatedly beating his bare torso” (*Meeker v. Edmundson*, 2005, p. 319). These acts were used as a means of discipline on the team or to force weaker members of the team to quit.

The court found in favor of the plaintiff on the allegations of violations to the Fourteenth Amendment stating:

The fact that the beatings were not administered pursuant to an established procedure, but instead arbitrarily ordered for no legitimate disciplinary purpose, makes it more, not less, likely that they constitute a malicious abuse of power violative of the Due Process Clause. (*Meeker v. Edmundson*, 2005, p. 324)

This statement by the court acknowledged that Edmundson's actions of using physical violence to remove students from his wrestling team clearly violated those students' constitutional rights to due process and right to a fair disciplinary proceeding. The defendant argued on behalf of two other prior cases (*DeShaney v. Winnebago County, 1989* & *Reeves v. Besonen, 1991*) that he did not have a duty to protect Meeker from violence conducted by another person. The court did not agree:

Contrary to Edmundson's contentions, and unlike the plaintiffs in *DeShaney* and *Reeves*, Meeker does not allege that a state actor merely failed to come to his defense or protect him from harm inflicted by others. Rather, Meeker's complaint asserts that Coach Edmundson used students as his 'instruments' to abuse Meeker. The complaint states that Edmundson 'initiated and encouraged the student wrestlers to seize and beat' Meeker; that he 'instituted, permitted, endorsed, encouraged, facilitated, and condoned' the beatings of Meeker; that he warned Meeker that the beatings would continue until he 'toughened up' and that on at least one occasion, he even informed Meeker in advance that he would be beaten by team members. (*Meeker v. Edmundson, 2005, p. 322*)

The Court of Appeals made clear that the use of another individual or individuals to carry out punishments without due process was a violation of 42 U.S.C. §1983. The coach as a state actor did not have the authority to issue punishments maliciously without cause to anyone under his care. "Edmundson cannot escape liability simply because he did not administer the beatings with his own hands" (*Meeker v. Edmundson, 2005, p. 323*).

Meeker's Fourth Amendment complaint was abandoned from the case for failure to state a claim. In Meeker's initial brief, he made two references to a violation of his "rights to be free from unreasonable seizures and excessive force" (*Meeker v. Edmundson, 2005, p. 325*) but failed to cite any relevant case law or reasons for the complaint. This did not mean that a Fourth Amendment violation might not have occurred, but simply that the requisite arguments were not presented before the court. The court could not rule on complaints alone and must have reason and evidence to

support the claims. Lastly, Edmundson attempted to claim qualified immunity as a state actor:

The law is clearly established for qualified immunity purposes not only when ‘the very action in question has previously been held unlawful,’ but also when ‘pre-existing law’ makes the ‘unlawfulness’ of the act apparent. The question is whether a reasonable educator could have believed that repeatedly instituting the unprovoked and painful beatings of one of his students was lawful, in light of clearly established law. (*Meeker v. Edmundson*, 2005, p. 323)

The court found that these beatings were unlawful, and the law clearly provided guidance relevant to this ruling. Edmundson’s actions in ordering the beatings of his students vacated his qualified immunity status. The next case(s) *Alton v. Hopgood* (1998) & *Alton v. Texas A&M* (1999) will expand upon qualified immunity of state actors.

***Alton v. Hopgood* (1998) 994 F. Supp. 827 (US Dist.)**
***Alton v. Texas A&M* (1999) 168 F.3d 196 (5th Cir.)**

In the case of *Alton v. Hopgood* (1998), a cadet student at Texas A&M University, “alleged that he was beaten and mistreated by the students during activities of a cadet corps” (*Alton v. Hopgood*, 1998, p. 829). The plaintiff, Alton, claimed that his 14th Amendment right to bodily integrity was violated under 42 U.S.C. §1983 by the student hazers and that non-student defendants, Hopgood et al., were negligent in their responsibility to supervise the activity of the Corps and their failure to supervise equated to deliberate indifference. Defendant Hopgood et al. moved to dismiss the claims via qualified immunity. The case was heard on appeal of the trial court decision by the United States District Court for the Southern District of Texas (*Alton v. Hopgood*, 1998) and again on appeal by the United States Court of Appeals for the Fifth District (*Alton v. Texas A&M*, 1999). The District Court granted the defendants’ motion for summary

judgment for University Officials named in the case but denied summary judgment regarding the student defendants.

To understand the decision of the case and the claims made by Alton, it is important to understand the composition of the Texas A&M Corps of Cadets and their purpose. The Texas A&M Corps of Cadets is “a voluntary military training organization consisting of approximately 2100 of the school’s 40,000 students. Members of the Corps live together, wear uniforms, participate in daily drill, stand for inspections, and physically train on a daily basis” (*Alton v. Hopgood*, 1998, p. 830). “Organized much like the military, the Corps has a rigid chain of command which ultimately ends with the cadet Corps Commander, a senior student, who answers to the Commandant of the Corps, a retired General employed by the University. Many Corps members receive ROTC scholarships, and many more enter active military service upon graduation” (*Alton v. Hopgood*, 1998, p. 830). These facts are important in the allegations of the case as the retired general was a state employee of Texas A&M University and retained all rights as other state employees but was not considered a military employee and did not retain the rights common with military doctrine.

During the incidents in question, Alton was regularly hazed by older members of the *Fish Drill Team*, and prior to the final incident Alton spoke to Captain Dalton (another university employee) but downplayed any alleged hazing (*Alton v. Hopgood*, 1998). The following weekend, Alton was significantly injured in a more severe incident. During this time, Captain Dalton spoke with other university officials to investigate further the rumors of hazing. On Monday morning following the incident, General Hopgood met with student Alton and recognized he had been beaten and immediately

took him to the police department to file charges. The nine student advisors to the Fish Drill Team were subsequently suspended and expelled for their involvement in the beatings.

Alton's legal claim against General Hopgood et al. was based on the University's failure to stop the last incident from occurring, the negligent response to the rumors of hazing, and the alleged deliberate indifference to Alton's situation. These claims were brought under 42 U.S.C. §1983. The non-student defendants in this case were granted qualified immunity by the court based on their status as government employees and the failure of Alton to substantiate evidence that the defendants were negligent in their actions. The court had this to say: "This case consists of those actions taken by the nonstudent defendants to prevent hazing and those actions taken by the nonstudent defendants once hazing was reported. The court finds that reasonable officials in the shoes of the nonstudent defendants, could have concluded that their actions would prevent constitutional violations" (*Alton v. Hopgood*, 1998, p. 836). Based on the evidence provided, the defendants showed that they acted upon the initial rumor of hazing, were misled by plaintiff's own statement, continued to investigate despite this information, and ultimately helped the plaintiff file his claims with the police. These actions proved that the defendants were in fact acting within the color of the law and on behalf of the plaintiff.

The court acknowledged that though the defendants in this case were granted qualified immunity, there was more that could have been done to prevent the injury of Alton and issued this charge to the Texas A&M administration:

There is a vast difference between the rigorous training required to equip future soldiers with the mental and physical skills they need to "close with and destroy

the enemy," and the equally valid desire of the University to matriculate persons with the compassion and enlightened skills necessary to succeed in modern society and business. American society's desire to have a strong and capable military must be carefully balanced against its equally valid desire to treat others with respect in accordance with evolving societal norms. When those charged with balancing these equally valid concerns are no more than twenty years old, serious mistakes are sometimes made, and as in this case, the victims are starry-eyed children. (*Alton v. Hopgood*, 1998, p. 838)

The intent of the court was to remind the administrators that, though they were technically found at fault, the university may have had a duty to be more engaged with the day to day operations of the Corps of Cadets and should consider a stronger presence in the training of new members of the Corps of Cadets. For final record, the United States Court of Appeals for the Fifth Circuit affirmed the decision of the lower court without prejudice (*Alton v. Texas A&M*, 1999). The next case(s) will explore protections provided by the constitution to military personnel via the Feres Doctrine.

Day v. Massachusetts Air National Guard (1999) 167 F.3d 678 (US App.)
Day v. Towle (Mass. Super. 2001)

On appeal from the United States District Court for the District of Massachusetts, the case of *Day v. Massachusetts Air National Guard* (1999) alleged violations of 42 U.S.C. §1983 where he was subjected to at least two different incidents of hazing during his military service. Day also alleged violations of Massachusetts state laws of "assault, battery, intentional and negligent infliction of emotional distress and negligent enlistment and supervision" (*Day v. Massachusetts Air National Guard*, 1999, p. 679). These claims were ruled upon in *Day v. Towle* (2001).

In this incident, the specific actions of the individual defendants were not important. The district court dismissed all federal claims against all defendants citing the

Supreme Court ruling *Feres v. United States*, 340 U.S. 135, 95 L. Ed. 152, 71 S. Ct. 153 (1950).

In *Feres*, Federal Tort Claims Act did not extend to a suit by a deceased soldier's estate for the negligent medical treatment by army surgeons resulting in the soldier's death...no precedent allowed a soldier to recover for negligence against his superiors or his government, and...he concluded that the statute did not extend to suits for "injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." (*Day v. Massachusetts Air National Guard*, 1999, p. 681)

The *Feres* doctrine protects the United States Government and its actors from federal torts that occur during or in the act of service to the military. The Court of Appeals for the First Circuit cited the *Feres* doctrine as its reasoning for dismissal of Federal Tort claims in this case as the hazing occurred during Day's service to the military and on property owned by the military. There was an important distinction in this case that the court identified:

The Supreme Court has not yet taken the step of converting *Feres* into immunity for individuals against state law claims. To do so would mean that military service personnel who were victims of serious intentional torts inflicted by other service personnel on base would effectively be denied any civil remedy against a wrongdoer who was not acting within the scope of his military employment. (*Day v. Massachusetts Air National Guard*, 1999, p. 684)

The court outlined this difference to vacate the decision of the lower court on the grounds of state law claims and remanded the case to the lower court for further proceedings and decisions. By making this decision, the court chose not to expand the *Feres* doctrine beyond the civil rights claims originally alleged and left open the ability of future military service personnel to seek remedy under state tort liability. To this end, *Day v. Towle* (2001) resulted in the awarding of \$1,500,000 for assault and battery, intentional infliction of emotional distress, and negligent infliction of emotional distress against the individual actors responsible for the injury. The last case in this section, *Martin v. North*

Metro Fire Rescue District (2007) will look at civil rights claims related to sexual harassment.

***Martin v. North Metro Fire* (2007) 102 Fair Empl. Prac. Cas. (BNA) 696 (US Dist.)**

The case of *Martin v. North Metro Fire* (2007) was presented in the United States District Court for the District of Colorado and alleged violations of 42 U.S.C. § 1983 that the “Defendants violated his constitutional rights under the Equal Protection Clause of the Fourteenth Amendment based on both his probationary status as a firefighter and based on his gender” (*Martin v. North Metro Fire*, 2007, p. 1). Defendants motioned to dismiss all claims of this case and the court denied defendant motion. The court found substantial evidence that violations of the Fourteenth Amendment equal protection clause and sexual harassment may have occurred and allowed the case to move forward to a trial.

The initial claims of equal protection based on the plaintiff’s status as a probationary firefighter did not meet the protected classes of 42 U.S.C. § 1983 (*Martin v. North Metro Fire*, 2007). The court moved then to a ‘class of one’ equal protection claim where the plaintiff must show evidence that he was “singled out for persecution due to some animosity, meaning that the actions of [defendants] were a spiteful effort to get [plaintiff] for reasons wholly unrelated to any legitimate state activity” (*Martin v. North Metro Fire*, 2007, p. 7) Under this claim the plaintiff set forth evidence that probationary firefighters were treated substantially different than non-probationary firefighters, and there was significant history of the disparate treatment. For these reasons, the judge ruled the case could move forward on violations of the Fourteenth Amendment. Additionally,

the nature of the activities or methods used to provide the disparate treatment were consistently of a sexual nature which allowed the sexual harassment charge to continue.

Conclusion of 42 U.S.C. § 1983 Civil Rights Act of 1964

The cases above present judicial opinions in nine cases across seven Federal Court Districts where violations of 42 U.S.C. § 1983 of the Civil Rights Act of 1964 were claimed. The cases represent those cited most for future opinions on violations of the First Amendment, Fourth Amendment, Fifth Amendment, Fourteenth Amendment, and discrimination when hazing has been alleged as a precipitating factor. These factors are important in considering how the courts may treat incidents of hazing in relation to violations of 42 U.S.C. § 1983 of the Civil Rights Act of 1964.

Hazing Law as Specifically Alleged in Cases of Hazing

To date the federal government has not taken up legislation to unify hazing as a legal issue and has left hazing to the states to legislate on their own (Crow and Phillips, 2004). As of 2018, 44 states have adopted hazing laws and policies independent of one another, and each state law defines hazing differently from the other (stophazing.org, 2012). As noted in Chapter 2, anti-hazing legislation saw its greatest period of growth in the 1980s and 1990s “due in large part to the efforts of the Committee to Halt Useless College Killings (C.H.U.C.K.) and similar organizations” (Acquaviva, 2007, p. 312) States during this period began to make efforts that would prohibit and/or criminalize hazing behaviors in response to an increase in hazing-related deaths at the college level (Carroll et al., 2009; Lewis, 1991). The laws created during this time varied dramatically, and still lack uniformity today (Crow & Rosner, 2002; Lewis, 1991). An analysis of current state hazing statutes demonstrates the following:

1. The majority of states consider hazing to be a misdemeanor that does not change the penalty or definition of any activity covered by other criminal statutes.
2. Statutes in only seven of the forty-three (now forty-four) states with anti-hazing laws include language that bars observing or participating in hazing and failing to notify authorities.
3. Thirteen states with anti-hazing laws require only that anti-hazing policies be developed and disseminated at public schools.
4. Twenty states specifically state in their codes that implied or express consent, or a willingness on the part of the victim to participate in the initiation is not an available defense. (Crow & Rosner, 2002, p. 89)

In Table 4, a state by state comparative analysis is provided to explore the variety of issues that are addressed in hazing laws across the United States. This table was originally presented in Nicholas Bittner's 2016 article *A Hazy Shade of Winter: The Chilling Issues Surrounding Hazing in School Sports and the Litigation That Follows*. This table serves as a visual representation of the differences in how states have legislated hazing.

Table 4 presents the areas of hazing legislation the courts must be aware of when a hazing incident occurs. In 77.27% of states with an anti-hazing law (34/44), hazing is a misdemeanor offense and can result in jail time. In 34.09% of states with anti-hazing legislation (15/44), the aggravated risk of injury as a result is specifically outlined and more severe penalties for committing hazing are available to the prosecution (Bittner, 2016). Failure to report hazing to a proper authority is specified in 15.91% (7/44), of hazing laws, and the offender can be held monetarily liable for having knowledge of hazing and not reporting. 59.09% of states have specifically said that consent to participate in hazing cannot be used as a legal defense by the perpetrator of hazing.

Seventeen states (38.64%) have created legislation that holds a third party liable for the injury of another following a hazing incident if the third party had prior knowledge of the incident (Bittner, 2016). 54.54% (24/44) of states with anti-hazing

Table 4. State Hazing Law Characteristics

	Misdemeanor	Aggravated Result or Risk	Failure to Report	No Defense of Consent	Student Perpetrator Only	Third Party Liable	Civil Action	Inchoate Liability	Mental or Social Harm	Reckless Risk of Harm	Higher Education Only	School Policy Only	Year
Alabama	x		x			x		x	x				1981
Arizona				x	x	x		x	x			x	2001
Arkansas	x		x		x	x		x	x				1983
California	x	x					x	x					1976
Colorado	x							x					1999
Connecticut				x				x	x		x		1988
Delaware	x			x				x	x				1992
Florida	x	x	x	x				x		x			2002
Georgia	x			x				x					1988
Idaho	x				x	x		x	x				1991
Illinois	x	x	x										1901
Indiana	x	x								x			1976
Iowa	x	x		x						x			1989
Kansas	x							x		x			1986
Kentucky								x	x	x	x	x	1986
Louisiana				x		x		x	x	x			1920
Maine									x	x			1989
Maryland	x			x						x			2002
Massachusetts			x	x		x		x	x	x			1985
Michigan	x	x		x						x			1931
Minnesota						x		x		x		x	1997
Mississippi	x									x			1990
Missouri	x	x		x					x	x	x		1987
Nebraska	x			x					x	x			1994
Nevada	x	x		x						x			1999
New Hampshire	x		x	x		x		x	x	x			1993
New Jersey		x		x		x		x		x			1980
New York	x	x								x			1983

Table 4. State Hazing Law Characteristics Continued

	Misdemeanor	Aggravated Result or Risk	Failure to Report	No Defense of Consent	Student Perpetrator Only	Third Party Liable	Civil Action	Inchoate Liability	Mental or Social Harm	Reckless Risk of Harm	Higher Education Only	School Policy Only	Year
North Carolina	x				x	x		x					1913
North Dakota	x	x							x	x			1995
Ohio	x			x		x	x		x	x			1982
Oklahoma	x			x					x	x			1990
Oregon	x			x	x					x			1983
Pennsylvania	x			x					x	x	x		1986
Rhode Island	x	x				x		x	x	x			1909
South Carolina	x		x	x		x		x		x			1987
Tennessee					x				x		x		1995
Texas	x			x		x		x	x	x			1995
Utah	x	x		x		x		x	x	x			1989
Vermont				x	x	x	x	x	x				1999
Virginia	x			x			x			x			1975
Washington	x					x		x	x	x	x		1993
West Virginia	x	x		x					x	x	x		1995
Wisconsin	x	x		x						x			1983

legislation provide for liability only if there was intent to harm the victim during the hazing incident. Four states (9.09%) have specified a specific civil action in response to incidents of hazing within their legislation, and twenty-four (54.54%) states have provided that creating mental harm (not just physical harm) can be considered as a violation of hazing law. In 70.45% of states (31/44), the victim of a hazing incident must be able to prove that the perpetrator of hazing was reckless in their action.

In a *special* class of hazing legislation are the seven states where hazing law only applies to student defendants or to initiation into student organizations. In these states, hazing is not legislated in organizations, teams, work environments, etc. that are not student related (Bittner, 2016; Crow & Phillips, 2004; Guynn, 2002). Additionally, there are seven states where hazing is only legislated in environments of Higher Education and the law does not apply to High School students, police academies, professional sports teams, or other relevant groups. In three states (Arizona, Kentucky, and Minnesota), hazing is not a criminal offense in any way and the state legislation only states that institutions of higher education and schools must have policies against hazing (Bittner, 2016; Crow & Phillips, 2004; Guynn, 2002).

Bittner (2016) provides a caution to the interpretation of hazing law through tables alone stating, “this representation downplays the differences between the various states. While many states share similar wording or approaches, other states have significant limitations on their statutes which a general categorization does not reflect” (p. 217). Inside of the various categories Bittner creates, states may still have wide and varying disparities in how they have legislated hazing and it is important to go directly to the law for questions regarding how a state has treated hazing (Carroll et al., 2009; Crow & Phillips, 2004; Guynn, 2002). These discrepancies in law between the states make it difficult for courts to use precedent from court decisions in other states as the anti-hazing laws may be vastly different. In that case the state courts may be reliant only on the case law within their own state first to make judicial opinions.

Court Cases Alleging Violations of Hazing Law

Table 5 lists all cases alleging violations of hazing following an incident of hazing between the years of 1980-2013. The table includes the name, state of origin, year, and type of case for all 35 cases that occurred during this time frame. The cases are organized alphabetically by plaintiff.

Table 5 identifies that 19 of 35 cases (54.29%) alleging violations of hazing appear in Civil Court and seek monetary damages following the incident. Criminal cases are represented in 16 of 35 cases (45.71%). Additionally, violations of hazing law were argued in 14 states with Texas (five), Ohio (four), and Illinois (four) having the most cases. This data reveals that violations of hazing law following a hazing incident is the third most predominantly argued legal claim. The next section provides a look at the cases used to set precedent that allege violations of hazing law following a hazing incident.

***Haben v. Anderson* (1992) 232 Ill. App. 3d 260; 597 N.E.2d 655 (Ill.)**
***Illinois v. Anderson* (1992) 148 Ill.2d 15; 591 N.E.2d 461 (Ill.)**

Perhaps the most often cited hazing case of hazing law is *Haben v. Anderson* (1992), which was heard in the Appellate Court of Illinois on appeal from the trial court of the dismissal of plaintiff's wrongful death suit and defendants' voluntarily assumed duty to care. The appellate court reversed the decision of the trial court and remanded case on grounds that the negligence and wrongful death suits had merit. The facts of the case alleged that members of a lacrosse team used forced alcohol consumption and hazing as a practice of bringing new members into the team (*Haben v. Anderson*, 1992). The appellate court determined that individuals on the lacrosse team should stand trial for their involvement in this action and their negligence in providing care to Haben once it

Table 5. Cases Alleging Violations of Hazing Law

Case Name	Year	State of Origin	Type of Claim
Auto Owners v. American Central	1999	Alabama	Civil
Carpetta v. Pi Kappa Alpha	1998	Ohio	Civil
Dutch v. Canton City Schools	2004	Ohio	Civil
E.F. v. Oberlin City School District	2010	Ohio	Civil
Edwards v. Kappa Alpha Psi	1999	Illinois	Civil
Ex Parte Barran	1998	Alabama	Civil
Ex Parte Cornelious Smith	2006	Texas	Criminal
Ex parte Filmon Fasil Berhe	2004	Texas	Criminal
Ex Parte Smith	2004	Texas	Criminal
Grenier v. Commissioner of Transportation	2012	Connecticut	Civil
Haben v. Anderson	1992	Illinois	Civil
Helton v. State of Indiana	1993	Indiana	Criminal
Hilton v. Lincoln Way High School	1998	Illinois	Civil
Hunt v. County of Sacramento	2008	California	Civil
Illinois v. Anderson	1992	Illinois	Criminal
Jones v. Kappa Alpha Order	1997	Alabama	Civil
Landmark American Insurance Company v. Rider University	2010	New Jersey	Civil
McKenzie v. State of Maryland	2000	Maryland	Criminal
Missouri v. Allen	1995	Missouri	Criminal
Morrison v. Kappa Alpha Psi	1999	Louisiana	Civil
Morton v. Florida	2008	Florida	Criminal
Ohio v. Brown	1993	Ohio	Criminal
Oja v. Theta Chi Fraternity	1997	New York	Criminal
People v. Lenti	1965	New York	Civil
Perkins v. Commonwealth	2001	Massachusetts	Civil
Perkins v. Massachusetts	1995	Massachusetts	Civil
State v. Khalil H.	2010	New York	Criminal
Texas v. Boyd	2001	Texas	Criminal
Texas v. Zascavage	2007	Texas	Criminal
United States v. Hill	2012	Military	Criminal
United States v. Ryan	2007	Military	Criminal
United States v. Zacatelco	2008	Military	Criminal
Vinicky v. Pristas	2005	Ohio	Civil
Waddill v. Phi Gamma Delta Fraternity	2003	Texas	Civil
Yost v. Wabash College	2012	Indiana	Civil

was determined that his safety was in danger. The court also found that by forcing Haben to drink as part of the initiation, the team members placed Haben in danger. The members of the team assumed an additional duty of care by taking Haben back to their dormitory room and allowing Haben to sleep on the team members' floor but failing to check on him throughout the night (*Haben v. Anderson*, 1992). This ruling remanded the Civil Case back to the lower court for further proceeding.

Illinois v. Anderson (1992) handled the criminal case in this matter and was heard by the Supreme Court of Illinois. The criminal case was heard on appeal following the trial court dismissal of hazing charges claiming the law was unconstitutional. The trial court ruled that the legislation was overbroad, vague, and violated equal protection (*Illinois v. Anderson*, 1992). The Supreme Court of Illinois reversed the decision of the trial court and remanded the proceedings for further hearing. The following sections are the response of the Supreme Court to the defendants' challenges of the law.

The first challenge to the law was overbreadth and a violation to the defendants' rights to protection under the First and Fourteenth Amendment (*Illinois v. Anderson*, 1992). The court dismissed this argument stating, "we believe the intention was to deter conduct that is likely to result in injury by punishing conduct which causes injuries that could have been avoided...we believe the statute was intended to deter reckless (or worse) conduct resulting in injury and the State must prove recklessness or intent" (*Illinois v. Anderson*, 1992, p. 465). This section dismissed the defendants' claim the hazing was an *absolute liability offense* and that the language of the law was written to provide remedy for any injury perceived or real. The court then moved:

Viewing the hazing statute interpreted correctly, it is clear that defendants' overbreadth argument fails. The hazing statute reaches only conduct which

recklessly, knowingly or intentionally results in bodily injury of a person...[and] it is unlikely to implicate speech or conduct protected by the first amendment at all. (*Illinois v. Anderson*, 1992, p. 466)

The court moved in this statement to define the law and dismiss the hypothetical situations which the defendants brought before the court.

The next argument for defendants was vagueness and failure to clearly define whom the law applies to and what activities might be considered “pastime or amusement” and “hold up to ridicule” (*Illinois v. Anderson*, 1992, p. 467). The court again dismissed the defendants’ claims as the hazing law clearly stated that it applied to students at universities within the state and that “we will not require the legislature to specify every activity that could be a ‘pastime or amusement’ or in which a person might be held up to ridicule” (*Illinois v. Anderson*, 1992, p. 467). The defendants’ claim that these phrases were too vague and attempted to set the expectation that the legislature must clearly define every activity that could be considered illegal. The court understood that this expectation was set too high for common word usage.

Finally, the defendants claimed that the law violated their Fourteenth Amendment right to Equal Protection as it only applied to people connected with educational institutions in the state (*Illinois v. Anderson*, 1992). The court again dismissed this claim asserting:

The State certainly has a legitimate interest in protecting people from physical injury, and we conclude that there is a rational basis for limiting the reach of the hazing statute since it is reasonable to assume that most hazing occurs in colleges, universities, and other schools. (*Illinois v. Anderson*, 1992, p. 469)

For this reason, the equal protection violation claim was dismissed as the State of Illinois has recognized a specific interest in protecting citizens from hazing in educational institutions. This limitation in the scope of the law did not create a violation of equal

protection as there was a legitimate public interest in providing these specific protections to this specific population. The next two cases, *McKenzie v. State of Maryland* (2000) and *Carpetta v. Pi Kappa Alpha* (1998), examined challenges to the Maryland and Ohio state hazing laws for overbreadth and vagueness. Maryland Courts have a similar finding, but results in the Ohio Courts differed slightly from the Illinois Courts.

***McKenzie v. State of Maryland* (2000) 748 A, 2d 67 (Md.)**

The Maryland Court of Special Appeals heard this case on appeal from the lower court when plaintiff's motion for dismissal was denied and he was "convicted and sentenced after pleading guilty to an agreed statement of facts" (*McKenzie v. State of Maryland*, 2000, p. 67). Appellant issued a challenge to the Maryland Code Ann. Art. 27, § 268H for overbreadth and vagueness and violations of plaintiff rights to First Amendment freedom of speech and Fourth Amendment equal protection. The Court of Appeals of Maryland affirmed the decision of the lower court that the hazing statute did not infringe a citizen's rights and was not unconstitutionally vague or overbroad.

Like Illinois and Ohio, the Maryland Court ruled the "statute was not void for vagueness because the definition of hazing provided sufficient notice of the prohibited conduct and the statute did not authorize arbitrary enforcement" (*McKenzie v. State of Maryland*, 2000, p. 67). The vagueness argument did not hold up to the hazing statute as it applied only to conduct and behavior that was already prohibited by other state laws and existed to add the "consent is not a defense clause to those previously proscribed offenses.

The statute reaches only conduct that is already proscribed under other Maryland criminal statutes. In fact, its real effect is to bar a narrow band of actors from using the defense of consent for such criminal conduct. The statute does not reach such conduct as yelling at or insulting pledges. It does not reach such conduct as

requiring pledges to don matching tee shirts, memorize silly songs, or run errands for and serve meals to regular members. It does not reach such conduct as requiring pledges to tutor underprivileged children or play intramural sports. The statute only reaches conduct “which recklessly or knowingly subjects a student to the risk of serious bodily injury.” Secondly enforcement only occurs when hazing actually causes serious bodily injury. “A person who hazes a student so as to cause serious bodily injury” is the only person reached under the statute. (*McKenzie v. State of Maryland*, 2000, p.72)

The opinion of the court outlined that the only activities that result in a violation of the hazing statute are those that result in *serious bodily harm* and used examples of activities that were not hazing under the color of the law, but that may be considered hazing by a social science definition. This set the threshold an activity must reach to be considered a violation of the hazing statute. This distinction is the important point of emphasis for the case of *McKenzie v. State of Maryland* (2000). *Carpetta v. Pi Kappa Alpha* (1998) discussed the issue of whether *mental harm* was proscriptive enough to be applied by law.

***Carpetta v. Pi Kappa Alpha Fraternity*, (1998) 718 N.E.2d 1007 (Ohio)**

Carpetta v. Pi Kappa Alpha (1998) was heard by the Court of Common Pleas in the State of Ohio on a challenge by the defendant fraternity to dismiss a lawsuit against the fraternity for violations of the civil hazing statute. The Court of Pleas granted the defendant motion in part and denied in part the motion to dismiss acknowledging the hazing statute was not facially overbroad, but that certain protections provided in the civil statute (Ohio Rev. Code Ann β2307.44) may be unconstitutionally vague (*Carpetta v. Pi Kappa Alpha*, 1998). The defendants also challenged that the statute violated their First Amendment right to Free Speech. The relevant discussion follows.

The court first reviewed the claim that the Ohio Statute for hazing was overbroad, and the court determined that it is not (*Carpetta v. Pi Kappa Alpha*, 1998).

First, the unambiguous scope of the statute addresses acts that cause harm. The hazing statute does not expressly proscribe First Amendment freedoms. Second, the hazing statute was enacted to strike at a specific social threat; society is well aware of the dangers facing student and other initiates...and [seeks] to protect the health and safety of the public by proscribing conduct rather than First Amendment expressions. (*Carpetta v. Pi Kappa Alpha*, 1998, p. 53)

The court leaned upon the decisions in *Missouri v. Allen* (1995) and *Illinois v. Anderson* (1992) to determine that the hazing statute stated specifically the conduct that was dangerous to the safety of its citizens and did not interfere with its citizens' rights to freedom of expression. This determination drew a line between acts of individual expression of thought and conduct that may be harmful to the physical safety of another individual. In general, conduct and expression were ruled to be different in the eyes of the court. The court went on to say that:

In allegations of hazing various occurrences of solely offensive and insulting speech may be protected expressions. Thus, the expressions would not properly constitute incidents of hazing...Evidence regarding the exact nature of the expressions must be proffered before a determination can be made as to whether these expressions are constitutionally protected. (*Carpetta v. Pi Kappa Alpha*, 1998, p. 55)

This clarification by the court ruled that there may be instances where speech and expression are used in or interpreted as an incident of hazing. These incidents may be determined to include protected speech, and if so would be deemed to not be violations of the hazing statute, but in those incidents, the court must review the evidence to make that determination. The court refused to rule the whole statute as void for overbreadth for the few instances of protected speech that may occur and reserves the right to review these incidents on a case-by-case basis.

Moving to the defendant claim of vagueness, the court determined that most of the claims defendants make are not vague (challenges for the terms: coercion, acts of

initiation, mental harm, and substantial risk of mental harm), but the court agreed that the term *mental harm* is problematic (*Carpetta v. Pi Kappa Alpha*, 1998).

Unlike physical harm, mental harm is not defined in R.C. Title 29, in R.C. 2903.31 or in Ohio case law...The court finds 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. (*Carpetta v. Pi Kappa Alpha*, 1998, p. 57)

This ruling by the Ohio Court determined that the hazing statute could only apply to physical injury and not to mental injury as mental injury had not been defined clearly enough by the state legislature in any related code. Thus, an act of hazing in Ohio must result in a form of physical injury of the victim to be susceptible to criminal or civil litigation. The next case explored the Ohio hazing statute as it applied to high school students and how membership in an organization is defined.

***Duitch v. Canton City Schools* (2004) 809 N.E.2d 62 (Ohio)**

Duitch v. Canton County Schools (2004) was heard on appeal of summary judgment by the Court of Appeals of Ohio, Fifth Appellate District. The plaintiff (mother of juvenile son) alleged that freshmen at the local high school, Canton County Schools, had been subjected to hazing by physical assault by older students during the first few days of the school year (*Duitch v. Canton County Schools*, 2004). The lower court granted summary judgment in favor of the School Board stating that "the behavior was not governed by Ohio Rev. Code Ann β 2903.31 and Ohio rev. Code Ann. B 2307.44" (*Duitch v. Canton County Schools*, 2004, p. 61). The appellate court affirmed the decision of the lower court.

The trial court found R.C. 2307.44 provides a civil liability for hazing and refers to initiation activities or hazing as it relates to student organizations. The trial court found undisputed facts of this case are not contemplated by the statute. The

court found student organization, means specific organizations, as opposed to the entire student body (*Duitch v. Canton County Schools*, 2004, p. 64)

The appeals court confirmed the finding of the trial court that a student organization means exactly a student organization and not the entire student body. Hazing as initiation into the student body was not specified in the legislation and resulted in the claim of plaintiff being dismissed. The appeals court added further context to student organization stating:

We find initiation into an organization implies membership in the organization is voluntary, and that the victim has through his or her actions or otherwise, consented to the hazing. This is the reason why the legislature chose to include the language finding negligence, consent, and assumption of the risk by the plaintiff are not defenses (*Duitch v. Canton County Schools*, 2004, p. 66)

The court's elaboration interpreted the intent of the legislature to say that the denial of consent as a defense implied that consent must be given for hazing to occur. If membership was not voluntary, and the participant did not willingly participate (whether via negligence or assumption of risk) then an activity, while deplorable, may not be considered hazing. The next case looked at the applicability of hazing law to police academies in the State of Massachusetts, and the ability of an employee to file a civil action for hazing.

***Perkins v. Commonwealth of Massachusetts Public Safety* (Mass. Super. 1998)
Perkins v. Commonwealth (2001) 752 N.E.2d 761 (Mass. App.)**

Perkins v. Commonwealth of Massachusetts Executive Office of Public Safety (1998) handled the case of a police academy trainee who sought damages based on her allegations for wrongful termination and alleging violations of 42 U.S.C. § 1983 for hazing. The defendant police academy filed a motion for summary judgment in this case which was granted by the Superior Court of Massachusetts. The pertinent question in this

case was the applicability of the hazing statute to a Training Academy as it is not a student organization. The Superior Court of Massachusetts interpreted that the law does apply to police academies:

This court begins by concluding that the hazing statute does apply to the Academy. The hazing statute prohibits initiation into a student organization...The Academy trains individuals to perform the role of Massachusetts State Troopers. There is an application process, and acceptance to the Academy. From these minimal characteristics, it is not erroneous to consider the Academy an organization of students seeking training for their desired field. (*Perkins v. Commonwealth of Massachusetts Executive Office of Public Safety*, 1998, p. 17)

The Superior Court laid out criteria for being considered as a student organization to mean a collection of students who have applied and been accepted into training for a shared interest. This interpretation appeared facially to expand the definition of the statute beyond student organizations as they were generally understood.

The interpretation of the hazing statute as applicable to the Academy did not however assist the plaintiff in her claim that her constitutional rights were violated because of hazing. The court clearly enumerated that the hazing statute only outlined criminal hazing activity and did not confer civil protections upon the victim of hazing (*Perkins v. Commonwealth of Massachusetts Executive Office of Public Safety*, 1998). For this reason, the defendant motion for summary judgment was granted.

On plaintiff appeal to the Appeals Court of Massachusetts, *Perkins v. Commonwealth* (2001), affirmed the decision of the Superior Court but disagreed about the interpretation of the Police Academy as a student organization.

There is no Legislative directive or enunciated public policy that precludes the Academy, a quasi-military training institution, from discharging a cadet who cannot tolerate the rigors and discipline required of other recruits...the hazing statute is not applicable to the Academy, as it is not a student organization, but rather a school, an educational institution. (*Perkins v. Commonwealth* 2001, p. 180-181)

The appeals court took a narrower interpretation of the term *student organization* and determined that the hazing statute was not applicable to the Police Training Academy as the academy itself was an educational institution and had purpose beyond the scope of a student organization. The next case *State of New York v. Khalil H* (2010) further explored the idea of what constitutes an organization.

State of New York v. Khalil H. (2010) 80 A.D.3d 83; 910 N.Y.S.2d 553 (New York)

This hearing in the Supreme Court of New York, Appellate Division, *State of New York v. Khalil H. (2010)* discussed whether initiation into a gang was considered under the New York hazing statute. Plaintiff, a juvenile, was convicted on actions that (if committed by an adult) would have “constituted the crimes of conspiracy in the sixth degree and attempted hazing in the first degree” (*State of New York v. Khalil H., 2010, p. 553*). At discussion was the ruling of whether a gang is an organization covered under the hazing statute.

On discovery, the gang Lost Boys was determined to have specific requirements for admission including an initiation process, related paraphernalia to identify gang members, and members received benefits of membership from each other (*State of New York v. Khalil H., 2010*). The prosecuting agency argued that these elements created the gang as an organization covered under the law. The defendant argued that there is no stated purpose for the organization and the law is not specific in its definition of an organization. The court determined that though the legislature had never defined an *organization*, its intent in including the term organization in the law was to employ the common meaning of the word. “Any organization is thus defined as a body of persons...formed for a common purpose. The hazing statute’s legislative history supports

the interpretation that organization should be given a broad and inclusive meaning” (*State of New York v. Khalil H.*, 2010, p. 558). The fact that the gang met regularly for the common purpose of protection and the common wearing of paraphernalia made the gang an organization considered under the color of the hazing law. The next two cases looked at challenges to the Texas hazing statute, one (*Texas v. Boyd*, 2001) for unconstitutional deprivation of Fifth Amendment Rights against self-incrimination, and one (*Texas v. Zascavage*, 2007) discussion of the vagueness challenge that is upheld.

***Texas v. Boyd* (2001) 38 S.W.3d 155 (Texas)**

Texas v. Boyd (2001) was a review by the Court of Criminal Appeals of Texas on the state’s petition for discretionary review of the Texas Hazing Statute section 37.152(a)(4). The trial court requested review of a Fifth Amendment challenge for self-incrimination of the Texas hazing law that required defendants “report information about activity which they could reasonably believe would be available to prosecuting authorities, and which would surely provide a significant link in a chain of evidence tending to establish their own guilt in the criminal offense of hazing” (*Texas v. Boyd*, 2001, p. 156). The argument and challenge to the hazing statute was that by providing the evidence pertinent to this case, the defendants would ultimately be required to provide information related to their own culpability in the actions. The Court of Criminal Appeals disagreed with this interpretation.

The lower court used a ruling from another case *Marchetti* (1968) to set the test for compelled disclosure and released a preliminary determination that if *Marchetti* is applied, then Texas Hazing Statute section 37.152(a)(4) is unconstitutional (*Texas v. Boyd*, 2001). The Court of Criminal Appeals replied, “Applying the test in

Marchetti...standing alone, violates the Fifth Amendment's constitutional protection against self-incrimination. However, the Court of Appeals failed to analyze sufficiently the immunity provision to the hazing statute in Tex. Educ. Code Ann. Section 37.155" (*Texas v. Boyd*, 2001, p. 156). The immunity section of the Texas statute allowed the court to grant immunity from judicial action to those individuals who brought forward information related to a hazing incident. The inclusion of provision 37.155 allowed provision 37.152 to be applied by the courts and made null the argument of the law being unconstitutional.

***Texas v. Zascavage* (2007) 216 S.W.3d 495 (Texas)**

Texas v. Zascavage (2007) was argued in the Court of Appeals of Texas, Second District on appeal by the state from the lower court. The lower court dismissed the indictment of defendant Zascavage, a high school wrestling coach who attended a student a party and was witness to several student members of the wrestling team slapping and striking other members of the team as a form of initiation (*Texas v. Zascavage*, 2007). The trial court posture was that Texas Educational Code Annotated § 37.152(a)(3) was unconstitutional. The State appealed.

The Court of Appeals of Texas affirmed the decision of the trial court stating, "In affirming the decision to dismiss the indictment, the reviewing court agreed with the trial court that § 37.152(a)(3) was unconstitutionally vague on its face. The court reasoned that the statute failed to identify any person or class of persons upon whom a duty to act was imposed; instead, it simply imposed a duty on every living person in the universe to prevent hazing" (*Texas v. Zascavage*, 2007, p. 498). The vagueness challenge was upheld in this case because the language of the statute stated only that a duty to act to prevent

hazing existed, but the statute does not place that duty upon any one class of persons. The Court of Appeals identified that this lack of definition is too vague for the law to be applied to any one person.

The Court of Appeals went on to clarify that the statute was also unconstitutional as applied to the defendant. "While educators could stand in loco parentis under immunity cases, it was unclear whether they could be criminally charged for failing to prevent hazing. It was also unclear whether defendant as a wrestling coach was an "educator." Even if defendant was an educator under the circumstances of the party, he assumed neither actual care nor custody of the students because the party was not mandatory, and the students' parents were not excluded from attending" (*Texas v. Zascavage*, 2007, p. 499). The assumption by the state was that the law meant to impose a duty to protect upon educators associated with schools in the state of Texas, but the court failed to adopt this argument. Educators may be interpreted by reasonable persons to include only teachers and administrators, but not coaches. For this reason, the vagueness challenge was again upheld.

Conclusion of Application of Hazing Law

The cases above present judicial opinions in 10 cases across 6 states where challenges to the Hazing Law were claimed. The cases represent those cited most for future opinions on violations of hazing law and the constitutionality of those laws. This section did not include previously discussed cases, *Missouri v. Allen* (1995) and *Ex Parte Barran* (1998) which were discussed in previous sections of this chapter, nor discussion of *Morton v. Florida* (2008) which did not add new knowledge to the discussion. The issues of overbreadth, vagueness, equal protection, applicability, and freedom of

expression are important factors in considering how the courts may treat incidents of hazing and the application of state hazing statutes.

Assault and Battery as Alleged in Cases of Hazing

Assault and battery is a state's law issue that is adjudicated in the state in which the offense occurs (Currul-Dykeman, 2014). Assault is defined differently by the different states but is generally referenced as the intent to injure or threat to injure another person (Currul-Dykeman, 2014). Battery is the act of striking or harming another person or group of persons (Currul-Dykeman, 2014). Assault and battery are alleged in incidents of hazing 21 times between the years of 1980-2013. Assault is used in hazing incidents as the physical threat of violence or intent to injure that victim.

Court Cases Alleging Violations of Assault & Battery in Incidents of Hazing

Table 6 lists all cases alleging violations of assault and battery in incidents of hazing between the years of 1980-2013. The table includes the name, state of origin, year, and type of case for all 21 cases that occurred during this time frame. The cases are organized alphabetically by plaintiff.

Table 6 identifies that 11 of 21 cases (52.38%) alleging violations of assault and battery appear in Criminal Court and 10 of 21 cases (47.62%) appear as Civil cases. Additionally, violations of assault and battery in hazing incidents were argued in 14 states with the Texas having the most cases (four). Three cases alleging assault and battery appear in Military Court as well. This data reveals that allegations of assault and battery following a hazing incident is the fourth most predominantly argued legal claim. The next section provides a look at the cases used to set precedent that allege violations of assault and battery following a hazing incident.

Table 6. Cases Alleging Assault & Battery in Hazing Incidents

Case Name	Year	State of Origin	Type of Claim
Alexander v. Kappa Alpha Psi Fraternity	2006	Tennessee	Civil
Culbertson v. Fletcher Public Schools	2011	Oklahoma	Civil
Day v. James Towle et al	2001	Massachusetts	Civil
Durr v. Mississippi	1998	Mississippi	Criminal
Ex Parte Barran	1998	Alabama	Civil
Ex Parte Cornelious Smith	2006	Texas	Criminal
Ex parte Filmon Fasil Berhe	2004	Texas	Criminal
Ex Parte Smith	2004	Texas	Criminal
Griffen v. Alpha Phi Alpha	2007	Pennsylvania	Civil
Hancock v. North Sanpete School District	2012	Utah	Civil
Helton v. State of Indiana	1993	Indiana	Criminal
Hilton v. Lincoln Way High School	1998	Illinois	Civil
Maines v. Cronomer Valley Fire department	1980	New York	Civil
Nkemakolam v. St. John's Military School	2012	Kansas	Civil
Ohio v. Brown	1993	Ohio	Criminal
Pelham v. Board of Regents	2013	Georgia	Civil
Peters v. New York	2007	New York	Criminal
Texas v. Boyd	2001	Texas	Criminal
United States v. Johanson	2012	Military	Criminal
United States v. Ryan	2007	Military	Criminal
United States v. Zacatelco	2008	Military	Criminal

Ex Parte Smith (2004) 152 S.W.3d 170 (Texas)

Ex Parte Smith (2006) 185 S.W.3d 887 (Texas)

Ex Parte Smith (2004) was heard on appeal from the trial court in the matter of defendant Smith's involvement in the hazing of a fellow Southern Methodist University student who was hospitalized after being forced to consume large quantities of water during his initiation. Smith challenged the charge of aggravated assault and requested that his original charge be reviewed under the hazing statute and not the aggravated assault statute because "the hazing statute was more specific" (*Ex Parte Smith, 2004, p. 171*). Because the hazing statute was a misdemeanor, appellant argued, the district court had no

jurisdiction over the prosecution. Defendant Smith argued that there because there was a statute that specifically addressed hazing and that because that statute only carried with it a misdemeanor charge (instead of the felony aggravated assault charge), that a violation of hazing should have been his only charge. The Court of Appeals of Texas Fifth Circuit affirmed the trial court decision stating:

There is a valid statute under which the aggravated assault protection is being brought. Appellant does not raise a challenge that would render his prosecution void. He does not assert the aggravated assault statute is unconstitutional on its face or that the prosecution is barred by the statute of limitations. (*Ex Parte Smith*, 2004, p. 172)

The court opinion was that despite there being a statute for hazing which may also cover the offense in question, the prosecution had the right to choose which offense to charge the defendant with. The facts of the case alleged that the defendant violated the statute of aggravated assault as well as hazing, and aggravated assault, carrying a stricter penalty, was the charge brought to trial.

Ex Parte Smith (2006) was the response of the Court of Criminal Appeals of Texas to the defendant's continued appeal via the *in pari materia* doctrine.

This doctrine is a rule of statutory construction for determining which statutory provision controls when a general statutory provision and a more specific statutory provision deal with the same subject matter and they irreconcilably conflict. It would appear the aggravated assault statute and the hazing statute do not deal with the same subject matter. The aggravated assault statute defines a result-oriented offense and is generally implicated when it is the actor's conscious desire to harm another. The hazing statute defines a conduct-oriented offense and is generally implicated when the actor intentionally engages in conduct that harms another irrespective of whether it is the actor's conscious desire to harm another. In other words, the hazing statute might not be implicated if the prosecution can prove that it was the appellant's conscious desire to seriously injure the victim. (*Ex Parte Smith*, 2006, p. 888)

The Criminal Court of Appeals made the distinction evident between the two statutes by outlining the intent of the perpetrator as a defining characteristic. For a case of

aggravated assault to be successfully tried, the prosecution must prove that it was the defendant's intent to harm the victim, whereas the hazing statute defined behavior that one intentionally engages in that may or may not result in injury to the victim. The layer of intent to harm became the defining factor between the two statutes, and the Criminal Court of Appeals did not rule out that a trial court may choose to return a verdict for hazing and not aggravated assault if the prosecution could not prove intent. The next case, *Maines v. Cronomer Valley Fire Department* (1980), discussed the difference between intent to commit an act and intent to harm.

***Maines v. Cronomer Valley Fire Department* (1980) 50 N.Y.2d 535 (New York)**

Plaintiff Maines case was heard on appeal to the Court of Appeals of New York after a lower court deemed he could not bring a civil suit against his fellow firemen for their role in his injury when he had already filed a workers' compensation claim (*Maines v. Cronomer Valley Fire*, 1980). The Court of Appeals reversed the decision of the lower court, allowing the civil suit to move forward. Civil suit and Worker's Compensation claims aside, the case alleged "defendants 'in concert with one another caused the plaintiff to be physically restrained, and failed to discontinue their actions upon plaintiff's resistance, requests and cries, and used physical force on the plaintiff for no legitimate or lawful purpose" (*Maines v. Cronomer Valley Fire*, 1980, p. 545). In reversing the decision of the lower court, the Court of Appeals of New York identified that defendants' actions were not in line with their day-to-day duties and constituted an intentional action taken upon plaintiff Maines despite his protestations. This act of negligence outside the scope of duties allowed the civil case to move on.

Additionally, the court takes up the idea of intent to injure versus intent to engage in an action that may cause injury:

The complaint could be interpreted as alleging that the individual defendants in throwing plaintiff into the dumpster committed an intentional assault upon him; moreover, plaintiff need not allege that defendants intended to bring about the harmful consequences that ensued, since the complaint in an action against a co-employee for an assault committed outside the scope of the co-employee's employment need only allege deliberate intent or conscious choice to do the act which results in the injury. (*Maines v. Cronomer Valley Fire*, 1980, p. 538)

The intentional act of restraining the plaintiff and throwing him in the dumpster resulted in the injury to the plaintiff. This original intent to engage in the activity constituted a violation of the assault statute. The next case *Helton v. State of Indiana* (1993) discussed the difference between misdemeanor assault and battery associated with the hazing statute and felony criminal recklessness as associated with the Indiana Criminal Gang Statute.

***Helton v. State of Indiana* (1993) 624 N.E.2d 499 (Indiana)**

On appeal to the Court of Appeals of Indiana, plaintiff Helton challenged his conviction under the Indiana Criminal Gang Statute for committing battery on another individual (*Helton v. Indiana*, 1993). Helton brought a challenge to the Gang Activity Statute for vagueness and overbreadth and claimed that he should be charged with a misdemeanor under the Hazing Statute. The following discussion is pertinent to this study:

Hazing is a Class B misdemeanor if the act involved creates only a risk of substantial bodily injury to another person. A person commits criminal recklessness, a class D felony, if the hazing act results in serious bodily injury to a person. A person may be prosecuted under the Gang Statute for a class D felony, if among other requirements, he is a member of a group which consists of five or more persons which requires the commission of a felony or an act that would be a felony if committed by an adult or a battery as a condition for membership or continued membership. (*Helton v. Indiana*, 1993, p. 512)

A couple of important points stood out from the judge's opinion on this case. First there was a difference between engaging in activity that created a *risk of bodily harm* and an activity that *resulted in serious bodily injury*. Again, a state specified intent to engage in an activity as a violation of the hazing statute. This case set up future case law where a hazing activity that resulted in injury is adjudicated under the Criminal Recklessness statute. The court also outlined that the Criminal Gang Activity Statute automatically results in a felony charge if the activity is consistent with battery as a condition of membership. In the opinion, the court went on to identify that fraternities, sororities, and other organizations could also have charges brought under the Criminal Gang Activity statute if the prosecution chose to do so (*Helton v. Indiana*, 1993). The next case *Pelham v. Board of Regents of the University System of Georgia* (2013) dealt with assault and battery as performed by a third party and a state actor's involvement in this action.

***Pelham v. Board of Regents of the University System* (2013) 743 S.E.2d 469 (Georgia)**

In the Court of Appeals of Georgia, Plaintiff Pelham appealed the decision of the lower court to dismiss his claim of negligence, negligence per se and negligent training and supervision (*Pelham v. Board of Regents*, 2013). The facts stated that Pelham was a member of the football team at Georgia Southern University and was injured at football practice when the "head coach ordered Pelham and other players to fight each other during practice" (*Pelham v. Board of Regents*, 2013, p. 791). The lower court dismissed the claims relying on Georgia Tort Claims Act, OGCA § 50-21-20 et seq. (GTCA). In the GTCA, there was an assault and battery exception and this exception "has been interpreted to mean that where a loss results from assault and battery, there is no waiver of sovereign immunity, even though a private individual or entity would be liable under

like circumstances” (*Pelham v. Board of Regents*, 2013, p. 794). This exception barred plaintiff claims against the coach and against the Board of Regents as the facts alleged an assault by a third party fellow student and not at the hands of the coach himself. The Court of Appeals affirmed the decision of the lower court and provided this important distinction in reviewing hazing cases that alleged assault and battery.

Conclusion of Assault and Battery as Alleged in Cases of Hazing

The cases above present judicial opinions in five cases across four states where assault and battery are alleged in cases of hazing. The cases represent those cited most for future opinions on assault and battery as alleged in a hazing incident. This section did not include previously discussed cases, *Day v. Towle* (2001) and *Texas v. Boyd* (2001), which were discussed in previous sections of this chapter. The issues of intent to commit an act, intent to injure, criminal recklessness, aggravated assault, and immunity from tort liability are important factors in considering how the courts may treat incidents of assault and battery as alleged in hazing.

Title IX of the Civil Rights Act as Alleged in Cases of Hazing

Title IX of the Educational Amendments of 1972 “is a comprehensive Federal law that prohibits discrimination based on sex in federally funded education program or activity” (Justice Department, Retrieved 3/17/18). Title IX was created to ensure the fair distribution of resources at educational institutions where federal funding is received and avoid the use of resources to promote sexual discrimination in educational institutions (Kaplin & Lee, 2007). Claims of violations of Title IX at institutions of higher education began under the disparate access to resources section of Title IX, but more recently

claims of violations of Title IX are more likely to be related to sexual harassment, hostile environment or sexual assault (Kaplin & Lee, 2007).

An institution would be liable under Title IX for a student's sexual harassment of another student if: '(i) a hostile environment exists in the school's programs or activities, (ii) the school knows or should have known of the harassment, (iii) the school fails to take immediate and appropriate corrective action.' (62 Fed. Reg. at 12039 in Kaplin & Lee, 2007, p. 314)

These three characteristics are the foundations of most instances of hazing that allege violations of Title IX in an educational environment.

Court Cases Alleging Violations of Title IX in Incidents of Hazing

Table 7 lists all cases alleging violations of Title IX in incidents of hazing between the years of 1980-2013. The table includes the name, state of origin, year, and type of case for all 15 cases that occurred during this time frame. The cases are organized alphabetically by plaintiff.

Table 7 identifies that 15 of 15 cases (100%) alleging violations of Title IX appear in Civil Court. Additionally, violations of Title IX in hazing incidents were argued in 11 states with the State of California having the most cases (three). This data reveals that allegations of Title IX following a hazing incident is the fifth most predominantly argued legal claim. The next section provides a look at the cases used to set precedent that allege violations of Title IX following a hazing incident.

Greenfield v. Michigan State University (1996) No.180170 (Michigan)

The first case was heard in the Court of Appeals of Michigan on plaintiff appeal from the trial court. Lower Court decision granted the university and employees summary disposition for student claims of sexual harassment, gross negligence, and intentional infliction of emotional distress (*Greenfield v. Michigan State, 1996*). The allegations for

Table 7. Cases that Allege Violations of Title IX in Incidents of Hazing

Case Name	Year	State of Origin	Type of Claim
C.H. v. Los Lunas Schools Board of Education	2012	New Mexico	Civil
Clifford v. Regents of University of California	2012	California	Civil
Cortese v. West Jefferson Hills	2008	Pennsylvania	Civil
Davis v. Carmel Clay Schools	2013	Indiana	Civil
Greenfield v. Michigan State University	1996	Michigan	Civil
Hoffman v. Saginaw Public Schools	2012	Michigan	Civil
Infante v. County of Los Angeles Civil Service Commission	2003	California	Civil
Mentavlos v. Anderson	2001	South Carolina	Civil
Perkins v. Alamo Heights Independent School District	2002	Texas	Civil
Roe v. Gustine Unified School District	2009	California	Civil
Sanches v. Carrollton Farmers Branch	2011	Texas	Civil
Seamons v. Snow	1996	Utah	Civil
Sechrist v. Unified Government of Wyandotte County	1999	Kansas	Civil
Wencho v. Lakewood	2008	Ohio	Civil
Zaccaro v. Parker	1996	New York	Civil

sexual harassment presented at trial were “band staff members participated in, tolerated, or had knowledge of the following band activities: giving and using nicknames of a sexual nature, discussing masturbation techniques and sexual preferences, requiring plaintiff to participate in ‘assing’ and simulated masturbation” (*Greenfield v. Michigan State*, 1996, p. 1).

The court ruled that while these allegations were offensive, they did not state a sexual harassment claim under Title IX (*Greenfield v. Michigan State*, 1996). To meet the criteria for a claim of sexual harassment, the complaint must have alleged “conduct of the same nature as sexual advances or sexual favors” and harassment based on the plaintiff’s

gender was insufficient (*Greenfield v. Michigan State*, 1996, p. 5). The simple inclusion of a discussion of activities that may make the plaintiff uncomfortable did not equate to sexual advances or sexual favors. For this reason, the Court of Appeals affirmed the lower court decision to dismiss sexual harassment. In *Mentavlos v. Anderson* (2001 & 2001) a discussion of students as state actors was highlighted.

***Mentavlos v. Anderson* (2001) 249 F.3d 301 (4th Cir.)**
***Mentavlos v. Anderson* (2000) 85 F. Supp 2d 609 (South Carolina)**

Mentavlos v. Anderson (2000 & 2001) dealt with the issue of gender-based discrimination in the treatment of hazing by cadets at The Citadel. The Citadel is a state funded institution of higher education that uses a military-based structure as a part of its educational process. Plaintiff Mentavlos claimed that she was treated differently and more harshly during her time at the Citadel by two upper class students (Anderson and Saleeby) and that the administration of the Citadel had knowledge of this disparate treatment (*Mentavlos v. Anderson*, 2000 & 2001). The defendants' motion for summary judgment was initially heard by the United States District Court for the District of South Carolina in 2000 and again on plaintiff appeal by the United States Court of Appeals for the Fourth Circuit in 2001. The Fourth Circuit Court affirmed the granting of summary judgment by the District Court based on Mentavlos failing to state a claim of gender-based harassment.

The court opinion was based on two main points: (1) the defendants in question were not state actors and (2) there was no evidence to support gender-based harassment (*Mentavlos v. Anderson*, 2000 & 2001). First, The Citadel education is based on what is called the *Fourth-Class System* whereby the seniors at the Citadel are given leadership roles in the control and discipline of the lower three classes (*Mentavlos v. Anderson*, 2000

& 2001). Each subsequent class has a higher *rank* at the institution and has responsibility for similar upholding of discipline by the lower classes. In this case, Mentavlos was reporting abuse by the sophomores in her unit. The court determined that:

The Fourth-Class System established by the school has known risks of abuse as well as disincentives to reporting any abuse, these risks are inherent in the unique educational opportunity offered at The Citadel. To require that the risks be eliminated would be to eliminate the very system of education on which the school is based. This is not to say that the risks can be ignored. However, if the school makes genuine and reasonable efforts to minimize the risks, it cannot be said to endorse the abuses that might result. (*Mentavlos v. Anderson*, 2000, p. 620)

This discussion was used to identify that the alleged abuse of the sophomores, while offensive, did not subject the plaintiff to a claim against the state as the sophomores were not considered state actors acting on behalf of the institution, despite their higher rank, as the Citadel was not a recognized military institution (*Mentavlos v. Anderson*, 2000 & 2001).

Secondly, there was no evidence to support that the Citadel was indifferent to the behaviors utilized by the defendants in this action. The court pointed to the record that Anderson and Saleeby were both punished and addressed once the complaints were made known and the court found the response sufficient to the alleged abuses (*Mentavlos v. Anderson*, 2000 & 2001). Lastly on this point, there was no evidence provided that pointed to Mentavlos's treatment and abuse by Anderson and Saleeby being related to her gender but was characteristic with other abuses that may have occurred during the defendants' time at the Citadel. For these reasons, the summary judgment was affirmed related to Title IX gender discrimination claims. The next case, *Roe v. Gustine Unified School District* (2009), identifies a 'test' for institutional liability for sexual harassment in a hazing case.

***Roe v. Gustine Unified School District* (2009) 678 F. Supp. 2d 1008 (California)**

Roe v. Gustine Unified School District (2009) was heard by the United States District Court for the Eastern District of California on motion for summary judgment by the defendant school system and coaches in their individual capacity. Plaintiff Roe alleged that he was hazed during the high school football camp. Plaintiff alleged that upper-class members of the team violated his Title IX rights in a variety of ways, including (1) the exposure of genitals to the plaintiff and others on the team, (2) being verbally abused with terms like *homo* and *fag*, (3) being touched on his buttocks in the shower, and (4) being held down in the locker room and having the upperclassmen use an air pump to blow air in his rectum (*Roe v. Gustine Unified School District*, 2009). Upon learning of these incidents, the school administration punished the upper-class perpetrators.

The court granted defendants motion to dismiss Title IX violations in their individual capacities as Title IX does not apply to individual defendants (*Roe v. Gustine Unified School District*, 2009). “The Government’s enforcement power may only be exercised against the funding recipient, and we have not extended damages liability under Title IX to parties outside the scope of this power” (*Soper v. Hoben*, 1999, p. 854). Civil damages under Title IX as instituted by the Federal Government were only available from the educational institution that receives money from the federal government, not the individual actors who operated on behalf of the educational institution.

The court moved on to examine if the tests for school district liability of sexual harassment occurred, relying on the four principals created in *Reese*, 208 F.3d at 739:

1. The school district must exercise substantial control over both the harassed and the context in which the known harassment occurs;

2. The plaintiff must suffer sexual harassment...that is so severe, pervasive and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school;
3. The school district must have actual knowledge of the harassment; and
4. The school district's deliberate indifference subjects its students to harassment. (*Roe v. Gustine Unified School District*, 2009, p. 1025)

Using these four characteristics to determine if there was substantial evidence to support the plaintiff's claim, the court examined the facts of the case. First, the school district was in substantial control of the plaintiff and student defendants as the football camp happened on school grounds with oversight of school coaches and administrators. Second, the activities suffered by the plaintiff were deemed to be 'severe, pervasive and offensive' (*Roe v. Gustine Unified School District*, 2009). The plaintiff ultimately removed himself from the school following these incidents, creating a triable fact of deprivation of access to educational opportunities.

Third, the plaintiff argued that the school district met the actual knowledge threshold by one of the coaches observing the group of upperclassmen using the air hose on a fellow student in a similar manner on day two of camp, and up to 15 students being assaulted in a similar manner (*Roe v. Gustine Unified School District*, 2009). The court determined again that enough evidence existed that the Coaches may have had knowledge of these incidents to allow the trial to go to court. Fourth, the deliberate indifference claim made by plaintiff related to the amount of time it took for the Coach to inform the Principal, discuss the incident with other coach witnesses, and inform the police. Based on these four requirements of school district liability for claims of Title IX violations having been met, the court denied defendant's motion for summary judgement on the Title IX claims.

Conclusion of Title IX as Alleged in Cases of Hazing

The cases above present judicial opinions in four cases across three states where violations of Title IX are alleged in cases of hazing. The cases represent those cited most for future opinions on Title IX as alleged in a hazing incident. This section did not include previously discussed case, *Seamons v. Snow* (1996), which was discussed in previous sections of this chapter. The issues of state actor status, institutional liability, hostile environment, gender-based discrimination, and sexual harassment are important factors in considering how the courts may treat incidents of Title IX violations as alleged in hazing.

Summary

The data presented in this chapter looked at all hazing cases that occurred between 1980-2013 with written judicial opinions. The data were presented across the 27 categories of legal claims and allegations made in the cases and five major categories were identified: (1) tort liability and negligence, (2) violations of § 1983 of the Civil Rights Act of 1964, (3) cases where a violation of the statutory hazing law is claimed, (4) violations of assault and battery, and (5) violations of Title IX of the Educational Amendments of 1972.

Within each of these major categories, the precedent-setting cases were analyzed, and the prevailing court opinion was presented. This resulted in the presentation of 40 court opinions identifying the unique perspectives of each individual case and the collective voice of the challenges facing the courts related to allegations of hazing. This data showed that hazing is rarely a singular issue presented before the court and there are many potential legal claims that surround an allegation of hazing. Chapter 5 will provide

the results of the data in this study, the primary conclusions that can be drawn and the answers to the research questions this study sought to address.

Chapter 5

Results, Conclusions, Limitations and Recommendations

This study sought to provide a thorough analyses of the total body of civil and criminal legal cases regarding hazing between the years of 1980-2013. Additionally, this case sought to expand upon the 2009 research conducted by Carroll, Connaughton, Spengler, and Zhang which used a content analysis methodology to look at anti-hazing case law as applied in cases where educational institutions were named as defendants, and the 2002 unpublished dissertation of Guynn which explored anti-hazing case law and its application in cases involving high school students. Specifically, this study sought to address these research questions:

1. How many cases alleging hazing as a precipitating factor have been heard in Federal or State District Courts (or higher) since 1980?
2. How have cases with allegations of hazing been treated by criminal and civil courts?
3. What other legal issues have been brought before the court in cases alleging hazing as a precipitating factor?
4. Is the creation of stricter anti-hazing laws an applicable response to incidents of hazing?
5. In an incident of hazing, are other criminal acts more applicable than the anti-hazing law itself?

To answer these questions the study identified all criminal and civil cases where hazing or hazing like behaviors were alleged and tried in a court of law between 1980-2013. LexisNexis was used as the main research database to collect the cases. The cases were read and examined individually for their relevance to this study and to the research questions. Issues of law were coded for each case that alleged hazing and as new legal theory was introduced, a new category for legal examination was added to the coding. 27 categories of legal issues resulting from incidents of hazing were identified and the cases were sorted into those categories. Five major categories were identified and analyzed

further, (1) tort liability and negligence, (2) violations of § 1983 of the Civil Rights Act of 1964, (3) cases where a violation of the statutory hazing law is claimed, (4) violations of assault and battery, and (5) violations of Title IX of the Educational Amendments of 1972. Within these major categories, the precedent-setting cases were analyzed, and the prevailing court opinions were presented in Chapter 4. Based upon that data, conclusions and resulting recommendations are presented.

Results

This section examines the outcomes of the case law data presented in Chapter 4 and provides answers to the research questions guiding this study. Following the discussion of each prevailing issue resulting from an incident of hazing, a list of the key characteristics or key questions the courts have used to review the legal issue is provided.

Cases Alleging Hazing

This study identified 167 cases that were heard by Federal or State District Court (or higher) between 1980-2013. Of these cases, 136 heard claims made in Civil Courts, 22 were heard in Criminal Court, and the other nine (9) were cases of administrative, procedural, insurance law, or military law. 66 cases were heard in Federal courts, four (4) were heard in military court, and 97 of the cases were heard in state courts. Cases were heard in 37 states alleging violations of 27 different laws or legal standards.

Hazing Cases in Criminal and Civil Courts

This study began with the belief that hazing would be tried as a criminal or civil violation in all legal cases where the factors of the case included an allegation of hazing. The research found that of the 167 cases with allegations of hazing as a precipitating factor to the case, only 35 of them were brought before the court arguing a violation of

the state hazing statute. The other 132 cases were brought to the court for decisions on other matters of state and federal law that occurred because of hazing.

In the 35 cases where hazing was alleged, or the hazing law was challenged, the court upheld the charges of hazing or the constitutionality of the hazing law 17 times. In *Missouri v. Allen* (1995), *Illinois v. Anderson* (1992), *McKenzie v. Maryland* (2000), *Carpetta v. Pi Kappa Alpha* (1998), *The Matter of Khalil H.* (2010), *Texas v. Boyd* (2001), and *Morton v. Florida* (2008), the courts upheld most of the state statutes to challenges of overbreadth, vagueness, and equal protection. These decisions affirmed that state legislatures need not write laws that are so specific as to spell out every activity that may be constituted as hazing, but instead write legislation that can be “commonly understood by persons of ordinary intelligence” (*Missouri v. Allen*, 1996, p. 877).

Texas v. Boyd (2001) upheld the clause within the statute that if a person chooses to come forward and report hazing, that person can be held immune by the courts for their participation in the hazing. This decision may be important to inform future state legislators of an opportunity to increase reporting of hazing incidents by allowing victims (and perpetrators perhaps) with immunity from prosecution should they choose to come forward.

The state courts have differed on their interpretations of hazing law from a strict or loose adherence to the language contained within the statutes. *Perkins v. Commonwealth* (2001) walked back the decision of a lower court to apply hazing law to police academies noting that the statute only specifically stated student organizations as being applicable to the law; whereas, the State Court of New York *In the Matter of Khalil*

H. (2010) interpreted a gang with no official connection to an institution to be an organization and under jurisdiction of the hazing statute.

Some challenges to the state hazing laws were upheld, however, in the cases of *Ex Parte Barran* (1998), *Carpetta v. Pi Kappa Alpha* (1998), and *Texas v. Zascavage* (2007). *Ex Parte Barran* identified that a member of an organization who enters an organization with knowledge that hazing may occur and chooses to subject himself to hazing in that organization does not reserve the right to later sue the organization for injury from the hazing. This ruling by the Supreme Court of Alabama increases the challenge of upholding the Alabama state hazing statute. The threshold for adjudicating hazing in Alabama has been raised beyond that of other states.

In *Carpetta* (1998) and *Texas v. Zascavage* (2007) the void for vagueness exception was successfully argued. In *Carpetta* (1998) the term *mental harm* was found to be too vague to be applied in any setting and too imprecise to provide citizens of the State of Ohio with clear direction of how to avoid causing someone *mental harm*. *Zascavage* (2007) identified that a statute may not be written so broadly as to place a duty to prevent hazing on everyone in the universe, and state legislatures must remember to specify the persons or groups of people on whom a duty to prevent hazing has been placed.

Eighteen cases of alleged violations of hazing law were either dismissed from court, or the defendant in the case was granted summary judgment. In these cases, several issues resulted in the finding for the defendant. *Duitch v. Canton County Schools* (2004) and *E.F. v. Oberlin City School District* (2010) both brought challenges of hazing in a public city school and the courts identified that hazing cannot be considered when

participation in the group is not voluntary (i.e., being a member of the freshman class). This ruling applies to all students of public schools where traditions of hazing by the upperclassmen are still promulgated today. But this ruling brings to mind an important question of hazing as it relates to collegiate sports teams or programs of study where participation on the team may not be voluntary based on the offer and use of an academic scholarship to be on the team. This might be an important distinction for the courts to make in the future.

In other cases, *Texas v. Zascavage* (2007) and *Hilton v. Lincoln Way High School* (1998), qualified or sovereign immunity was granted to school officials who knew or should have known that hazing was occurring and the duty to protect others from harm was not extended to the victim. In two other cases, *Yost v. Wabash College* (2013) and *Grenier v. Commissioner of Transportation* (2012), the prior hazing actions of defendants were ruled to not have had effect on the resulting injury of the plaintiff and the courts ruled that the plaintiffs failed to state claims in the civil actions.

After reviewing the 35 cases where a violation of the state hazing law is alleged, the court is most likely to find in favor of the plaintiff if (1) there is a victim willing to come forward and make a report, (2) the victim is associated with an institution of higher education, (3) the victim is seeking membership in a voluntary organization (usually a fraternity), and (4) a physical injury has occurred. Outside of these parameters, there are few examples of the application of hazing law through judicial opinion.

Other Legal Issues

In the 167 cases reviewed by this study, claims fell across 27 overall categories of law. Claims related to tort liability and negligence (i.e., negligence, duty, liability,

agency, premises liability, qualified immunity) were grouped together under one sub-category and claims related to violations of 42 U.S.C. §1983 of the 1964 Civil Rights Act (First, Fourth, Fifth, Fourteenth, and Fifteenth Amendment violations) were grouped in a second sub-category. Additional categories of legal claims related to incidents of hazing were: (1) assault and battery, (2) Title IX of the Educational Amendments of 1972, (3) defamation, (4) laws related to the use of wiretaps as evidence, (5) challenges of due process in educational conduct hearings, (6) public records requests, (7) Workman's Compensation law, (8) whistleblower laws, (9) intentional infliction of emotional distress, (10) wrongful death, (11) breach of contract, (12) discrimination, and (13) injunctive relief. Table 1 is reintroduced here to represent the wide range of legal issues and legal claims that may follow an incident of hazing.

This study explored the five most commonly argued legal issues following an incident of hazing. Those issues are: (1) tort liability and negligence at 49.7% of the total claims, 2) civil claims related to 42 U.S.C. §1983 of the 1964 Civil Rights Act at 21.56%, 3) hazing as its own legal issue was challenged in 20.95% of cases, 4) assault and battery was associated in 12.57% of cases, and 5) Title IX was challenged in 8.98% of cases. The next section will explore common issues in these four additional categories (of note, most 42 U.S.C. §1983 of the Civil Rights Act of 1964 claims overlap with issues of liability and negligence).

Liability for alcohol consumption in a hazing incident. When considering the topic of liability for consumption of alcohol, court decisions were drawn from *Ballou v. Sigma Nu* (1986), *Quinn v. Sigma Rho Chapter* (1987), *Haben v. Anderson* (1992), *Nisbet*

Table 8. Legal Claims Following an Incident of Hazing

Coded Variables	n	%
Hazing Law	35	20.95
Assault	21	12.57
Constitutionality	8	4.79
42 U.S.C. § 1983	36	21.56
1st Amendment	5	2.99
4th Amendment	10	5.99
5th Amendment	2	1.19
14th Amendment	15	8.98
15th Amendment	1	0.59
Freedom of Association	3	1.79
Due Process	19	11.38
Tort Liability & Negligence	83	49.7
Liability	80	47.9
Premises Liability	10	5.99
Qualified Immunity	36	21.56
Negligence	83	49.7
Duty	65	38.92
Agency	13	7.78
Wrongful Death	8	4.79
Breach of Contract	4	2.39
Title IX	15	8.98
Defamation	9	5.39
Public Records	2	1.19
Wiretap	1	0.59
Intentional Infliction of Emotional Distress	8	4.79
Discrimination	8	4.79
Whistle Blower	1	0.59
Injunctive Relief	1	0.59
Worker's Compensation	3	1.79

v. Bucher (1997), *Oja v. Theta Chi Fraternity* (1997), *Garafalo v. Lambda Chi Alpha* (2000), and *Prime v. Beta Gamma Chapter* (2002). Each of these decisions relies upon the others in this category to interpret, analyze and adapt the law for the states involved.

In *Ballou* (1986) the court held that the jury could reasonably have found that the fraternity was the proximate cause of the decedent's death. "Based on evidence, it was reasonable to infer that the decedent would not have consumed a fatal amount of alcohol without the prompting of the active brothers" (*Ballou v. Sigma Nu*, 1986, p. 494). The court also ruled that the deceased may have understood that hazing would occur within the fraternity (based on previous knowledge of the organization) but assumed only the risks associated with verbal and physical abuse, not the risks associated with extreme intoxication. The resulting injury of the deceased plaintiff was ruled to have been related to the actions of the fraternity and not solely related to the consumption of alcohol.

Quinn v. Sigma Rho Chapter (1987) used the decision in *Ballou* to re-interpret Illinois state law related to alcohol consumption and deaths related to fraternities, setting a new standard that allowed a social host to be considered negligent if (1) consumption of alcohol is coerced and (2) it is in relation to a hazing incident. The court wrote:

The facts describe a fraternity function where plaintiff was required to drink to intoxication in order to become a member of the fraternity. We cannot close our eyes to the fact that the abuse illustrated in the present case could have resulted in the termination of life and the plaintiff was coerced into being his own executioner" (*Quinn v. Sigma Rho Chapter*, 1987, p. 1197)

The court identified that there is importance in recognizing the action of consuming alcohol, the coercion of the surrounding members, and the value of ongoing membership in the organization when determining negligence in these cases. The fraternity in *Quinn* (1987) was deemed to have a duty not to harm the plaintiff during the new member process and the forced consumption of alcohol was a breach of that duty.

Haben v. Anderson (1992) further supported the decision of the *Quinn* court in Illinois by relying on the precedent set in *Quinn* to hold an organization accountable for

their involvement in forcing a new member to consume alcohol as part of an initiation. The *Haben* court added an assumed duty of care when the older members of the team took Haben back to their dormitory room and allowed Haben to sleep on the team members' floor but failed to check on him throughout the night (*Haben v. Anderson*, 1992). Plaintiff Haben ultimately died because of asphyxiation due to alcohol consumption and the members of the team were found negligent in the forcing of Haben to drink and the failure to provide appropriate care. The *Nisbet* (1997) and *Oja* (1997) courts have similar outcomes based on similar sets of circumstances.

Garafalo v. Lambda Chi Alpha (2000) resulted in a different outcome based on the change in one single detail. In this case the Supreme Court of Iowa found that no duty existed because the member was not coerced or forced to consume alcohol, but instead was offered alcohol by the upper-class members of the organization. The decision was that Garafalo's consumption of alcohol beyond the point of intoxication was the proximate cause of death and the fraternity members did not owe a duty to Garafalo to not allow him to continue consumption (*Garafalo v. Lambda Chi Alpha*, 2000). The *Garafalo* court made the distinction between the coerced and non-coerced behaviors of a new member in an organization and the choices an individual made to consume or not consume alcohol. The *Prime* (2002) court came to a similar decision in the state of Kansas.

On the topic of liability for consumption of alcohol it is important to remember that each state is bound by different laws as set by the individual state legislature. The courts utilize analogical reasoning to apply the decision in similar cases in other states when there is no body of case law in their own state. The characteristics that apply in

liability for consumption of alcohol are: (1) did the organization (or individual) have a duty to the claimant to protect or not injure, (2) did the organization breach that duty (generally through coercive action or failure to provide care), (3) was there causation (i.e., did the claimant choose to consume alcohol on their own or did the organization coerce the individual to consume) and (4) was there damage (transport to the hospital, resulting brain damage or in extreme cases death). If these four characteristics are met, there is likely a cause of action in a tort liability and negligence claim for alcohol consumption related to hazing.

Institutional liability. When considering the topic of institutional liability for hazing, decisions were drawn from *Furek v. Delaware* (1991), *Alton v. Texas A&M* (1998), *Brueckner v. Norwich* (1999), *Knoll v. University of Nebraska* (1999), and *Martin v. North Metro Fire Dept.* (2007). These decisions lay the foundation for court interpretation of institutional liability for hazing incidents.

Furek v. Delaware (1991) was the first case in this period to examine university liability for hazing. In *Furek*, the Delaware Supreme Court determined that the University maintained some liability in areas where it had previously attempted to control behavior.

The evidence in this record strongly suggests that the University not only was knowledgeable of the dangers of hazing, but, in repeated communications to students in general and fraternities, emphasized the University policy of discipline for hazing infractions. The University policy against hazing ...thus constituted an assumed duty which became 'an indispensable part of the bundle of services which colleges afford their students.' (*Furek v. Delaware*, 1991, p. 520)

Because the University had knowledge of previous hazing incidents on the campus and had instituted policies to address hazing on campus, the University created a duty of care and that duty was breached in the injury of plaintiff Furek.

Alton v. Texas A&M (1998) provided more detail for institutions and their response to reports of hazing. *Alton* involved the investigation of rumors of hazing at Texas A&M University and the ensuing investigation into those rumors by University officials. The court in this case found that the University was not responsible for the injury to Alton stating, “the court finds that reasonable officials in the shoes of the nonstudent defendants, could have concluded that their actions would prevent constitutional violations” (*Alton v. Hopgood*, 1998, p. 836). Based on the evidence provided, the defendants showed that they acted upon the initial rumor of hazing, were misled by plaintiff’s own statement, continued to investigate despite this information, and ultimately helped the plaintiff file his claims with the police. These actions proved that the defendants were in fact acting within the color of the law and on behalf of the plaintiff. In this case (as opposed to *Furek*) the University followed appropriate procedures to prevent further injury and were misled by the plaintiff’s original statements prior to his injury. The court ruled that in this case there was not a breach of duty to the plaintiff.

Brueckner v. Norwich (1999) followed a similar fact pattern as *Alton* (1998) but with a different outcome based on small but important changes in the University response. Plaintiff Brueckner was a student at Norwich University, a military college in the state of Vermont. Brueckner attended Norwich for a total of sixteen days and was subjected to “a regular barrage of obscene, offensive, harassing language, interrogation at meals preventing him from eating” (*Brueckner v. Norwich*, 1999, p. 1089) and a series of assaults by the upper-class ‘cadre’ who were responsible for the transition and orientation of new students to Norwich. The court determined that the administration of Norwich

University was aware of hazing incidents of this kind in the past by previous cadre yet failed to address the behavior to prevent hazing from continuing and prevent new students at Norwich from facing injury. Due to this failure to address previous behaviors, the court ruled in favor of plaintiff Brueckner and allowed damages to be awarded.

In *Knoll* (1999), the plaintiff was injured during a hazing incident following a similar pattern to other hazing incidents that occurred at The University of Nebraska in previous years. Because of this injury and the pattern of behavior it followed, the court ruled that Universities have a duty to provide reasonable care for their students in properties owned or overseen by the University, or in properties that have jurisdiction to the University Code of Student Conduct. By having knowledge of previous incidents of misbehavior within the FIJI organization, and knowledge of other fraternities conducting similar hazing incidents on campus, the Supreme Court of Nebraska ruled that a reasonable person could conclude that the injury of plaintiff Knoll was foreseeable and liability and negligence on behalf of the institution can be reasonably argued in a trial (*Knoll v. Board of Regents*, 1999). The important distinction in *Knoll* from *Alton* (1999) is that there was previous knowledge of like hazing incidents in other fraternities and there was previous bad behavior exhibited by the specific fraternity Knoll was injured by. This combination of circumstances allowed the court to determine that The University of Nebraska could have done more to protect Knoll from this foreseeable injury.

Martin v. North Metro Fire (2007) is an example of a non-university entity being found liable for incidents of hazing within its organization. Plaintiff Martin was subjected to numerous incidents of beating and sexual harassment during his time as a probationary firefighter. Under this claim the plaintiff set forth evidence that probationary firefighters

were treated substantially different than non-probationary firefighters and there was significant history of the disparate treatment. For these reasons, the judge ruled the case could move forward and that individual firefighters and those who supervised but failed to respond to reports of hazing could be found responsible by a court of law (*Martin v. North Metro Fire*, 2007).

The characteristics that apply in institutional liability for hazing include: (1) did the institution have prior knowledge of incidents of hazing, 2) did the institution appropriately investigate these prior incidents, 3) was the injury to the plaintiff foreseeable and 4) did the institution work appropriately to prevent the foreseeable injury. In these cases, the responsibility is on the institution to appropriately investigate and provide discipline for all knowledge of alleged hazing within the institution. In cases where an institution has appropriately followed up, courts have generally ruled favorably, however in cases where institutions were shown to have ignored complaints of hazing or to have had knowledge of hazing but to not have addressed the behavior, the institution has been generally found to be negligent.

Consideration of qualified immunity. As a reminder, qualified immunity “protects officials from constitutional tort claims so long as ‘their conduct does not violate clearly established...constitutional rights of which a reasonable person would have known’” (Chen, 2006, p. 229). In the cases in this study, qualified immunity is used by various governmental entities and governmental employees as a defense against hazing activities that were either precipitated by the employee or plaintiff belief that the employee, school board, city government, etc. should have known that hazing was occurring prior to the incident. Qualified Immunity acts as a shield for governmental

employees against lawsuits where the employee was acting within the scope of their job (Bittner, 2016). The defense of qualified immunity extends to individuals and government organizations if the employee is acting within the scope of their government assigned duties. The compelling cases of qualified immunity related to hazing are, *Bryant v. Rupp* (1981), *Rupp v. Bryant* (1982), *Reeves v. Besonen* (1991), *Meeker v. Edmundson* (2005), and *Pelham v. Board of Regents* (2013).

The oldest case relating to qualified immunity and hazing is *Bryant v. Rupp* (1981) (and its corollary *Rupp v. Bryant* (1982)). In *Bryant* (1981) the court identified that Rupp and the principal of the high school were negligent in their failure to supervise the activities of an organization that was known to conduct activities against school board policy. The resulting injury to plaintiff Bryant, because of the hazing he endured by the club Rupp was assigned to supervise, resulted in the court's decision to remove the sovereign immunity from these individual actors.

Rupp v. Bryant (1982) was heard by the Supreme Court of Florida on appeal of the lower court decision. The Supreme Court upheld the decision of the Appellate Court as it relates to the waiving of sovereign immunity. The Supreme Court agreed that Rupp and defendant Principal Stasco had a responsibility to supervise the activities of the Omega Club, and that these responsibilities were not discretionary and thus defendants do not enjoy official immunity (*Rupp v. Bryant*, 1982).

Under the circumstances of this case, the specific duty to supervise the club was required by the school board's own regulations, we have no difficulty in denominating such a duty as ministerial. Because the duty does not involve discretion in the policy-making sense, neither the principal nor the teacher may raise the shield of official immunity. (*Rupp v. Bryant*, 1982, p. 22)

The court went on to acknowledge that the school had assumed a duty to protect and supervise the activities of its students by requiring all student organizations to have an advisor assigned to them. Defendant Rupp's inattention to the initiation planning meeting was determined to have some proximate cause in the injury to plaintiff. In this case, high school officials are held responsible for the failure to perform duties that resulted in the injury of a student.

Reeves v. Besonen (1991) reviews a similar fact pattern, but in this case, the football coach was present for the supervision of the team but did not have knowledge of the hazing that occurred. Based on this piece of evidence, the football coach defendant maintained his qualified immunity as the judge writes, "[the] Supreme Court has made very clear that substantive due process does not entitle every individual under the care of state authorities to protection from physical injuries" (*Reeves v. Besonen*, 1991, p. 1139). The participation in an activity hosted by the State or under guidance of a state official did not provide the participant protection from injury and/or equate to a violation of constitutional rights by suffering injury. The participant must acknowledge their own voluntary status in the participation in an activity, otherwise there would be no difference between state activities and constitutional protections. The court specified here that the coach of the team could not be held responsible for the actions of the student participants when he did not have knowledge of these actions. State actors are not mandated to protect individuals from injury just because the individuals are under their care. The resulting decision is that if a state actor performs their assigned duties, they maintain their status of qualified immunity even if the actions they are charged with supervising result in the injury of a student under their care.

Meeker v. Edmundson (2005) highlights an incident of hazing where the coach of a high school wrestling team did not maintain qualified immunity. Edmundson utilized physical assaults carried out by older members of the wrestling team to haze the weaker members of the team. The court acknowledged that Edmundson's actions of using physical violence to remove students from his wrestling team clearly violated those students' constitutional rights to due process and right to a fair disciplinary proceeding (*Meeker v. Edmundson*, 2005). The defendant argued that he did not have a duty to protect Meeker from violence conducted by another person and claimed qualified immunity as a state actor. The court disagreed with his defense stating:

The law is clearly established for qualified immunity purposes not only when 'the very action in question has previously been held unlawful,' but also when 'pre-existing law' makes the 'unlawfulness' of the act apparent. The question is whether a reasonable educator could have believed that repeatedly instituting the unprovoked and painful beatings of one of his students was lawful, in light of clearly established law. (*Meeker v. Edmundson*, 2005, p. 323)

The court found that these beatings were unlawful, and the law clearly provided guidance relevant to this ruling. Edmundson's actions in ordering the beatings of his students vacated his qualified immunity status. For Edmundson, his actions in ordering the physical assaults led directly to the injury of the student in his care and his status as a state employee did not allow him to willfully conduct unlawful acts.

The decision in *Pelham v. Board of Regents* (2013) explored in further depth the issue of coaches using fighting as a means of hazing new members of the team. The facts state that Pelham was a member of the football team at Georgia Southern University and was injured at football practice when the "head coach ordered Pelham and other players to fight each other during practice" (*Pelham v. Board of Regents*, 2013, p. 791). The lower court dismissed the claims relying on Georgia Tort Claims Act, OGCA § 50-21-20

et seq. (GTCA). In the GTCA, there is an assault and battery exception and this exception ‘has been interpreted to mean that where a loss results from assault and battery, there is no waiver of sovereign immunity, even though a private individual or entity would be liable under like circumstances’ (*Pelham v. Board of Regents*, 2013, p. 794). This exception barred plaintiff claims against the coach and against the Board of Regents as the facts allege an assault by a third party fellow student and not at the hands of the coach himself. The Court of Appeals affirmed the decision of the lower court and provided this important distinction in reviewing hazing cases that allege assault and battery. In the state of Georgia, there is an exception provided for assault carried out by a third party. This exception allows a state actor to maintain their qualified immunity in the case of an assault if the assault was carried out by a third party.

Qualified Immunity carries with it a difficult set of standards to apply across state lines. The courts must be aware of the individual state regulations for qualified immunity and the special exceptions provided within the state. The doctrine of qualified immunity provides a few characteristics to be aware of: (1) is the individual a state actor, (2) is the state actor performing the duties associated with the job for which they are employed, (3) is the action in question a clear violation of a law, and (4) are there special considerations within the state that provide further guidance for the action. The courts will use these guidelines to make decisions in cases claiming qualified immunity.

Assault and battery. The cases of, *Maines v. Cronomer Valley Fire* (1980), *Helton v. State of Indiana* (1993), and *Ex Parte Smith* (2006) have provided guidance in claims of assault and battery following an incident of hazing. The major components of

these cases are 1) risk of injury versus result in injury, and 2) applicable state statute. The following is the progression of the cases.

Maines v. Cronomer Valley Fire (1980) first explored the difference between intent to injure and an action resulting in injury following a hazing case in this era. The Court of Appeals of New York identified that defendants' actions of wrapping Maines in a blanket, carrying him to a dumpster and throwing him inside the dumpster were intentionally taken upon plaintiff Maines despite his protestations. This represented a string of intentional actions that, while not intending to injure the plaintiff, were engaged in knowingly by the defendants and resulted in injury.

The court takes up the idea of intent to injure versus intent to engage in an action that may cause injury, stating,

The complaint could be interpreted as alleging that the individual defendants in throwing plaintiff into the dumpster committed an intentional assault upon him; moreover, plaintiff need not allege that defendants intended to bring about the harmful consequences that ensued, since the complaint in an action against a co-employee for an assault committed outside the scope of the co-employee's employment need only allege deliberate intent or conscious choice to do the act which results in the injury. (*Maines v. Cronomer Valley Fire*, 1980, p. 538)

The intentional act of restraining the plaintiff and throwing him in the dumpster resulted in the injury to the plaintiff. This original intent to engage in the activity constitutes a violation of the assault statute and highlights the important characteristic in considering assault charges after an incident of hazing. *Helton v. State of Indiana* (1993) further supports this position that the important characteristic when considering assault and battery in a case of hazing is the intent to engage in the activity, not the intent to injure. Rarely does one come across a hazing case where the alleged entered the activity with an intent to injure the victim, but these cases commonly show intent to engage in the hazing.

Ex Parte Smith (2004) examined the application of aggravated assault as a charge following an incident of hazing in lieu of the charge of hazing. The Court of Appeals of Texas Fifth Circuit stated

There is a valid statute under which the aggravated assault protection is being brought. Appellant does not raise a challenge that would render his prosecution void. He does not assert the aggravated assault statute is unconstitutional on its face or that the prosecution is barred by the statute of limitations. (*Ex Parte Smith*, 2004, p. 172)

The court opinion was that despite there being a statute for hazing which may also cover the offense in question, the prosecution has the right to choose which offense to charge the defendant with. The facts of the case alleged that the defendant violated the statute of aggravated assault as well as hazing, and aggravated assault carrying a stricter penalty was the charge brought to trial.

The decision of the prosecution to charge an alleged perpetrator with assault and battery, hazing, aggravated assault, kidnapping, criminal recklessness, or other applicable charge is not limited by the availability of a hazing statute in the state. The court supports the decision of the prosecution to bring forth charges based on the violations alleged, and the presence of a hazing statute does not limit the available charges of the prosecution.

Title IX of the Educational Amendments of 1972. Violations of Title IX of the Educational Amendments of 1972 following an incident of hazing have different fact patterns based on the specific allegation in the case. Most often, the hazing itself is not considered to be a violation of Title IX as seen in the case of *Greenfield v. Michigan State University* (1996). In *Greenfield* (1996) the court determined that while the activities engaged in were offensive and gross, to meet the criteria for a claim of sexual harassment the complaint must allege “conduct of the same nature as sexual advances or

sexual favors” (*Greenfield v. Michigan State*, 1996, p. 5). The use of sexual innuendo, offensive language, and exposure of genitalia in the hazing did not necessarily result in sexual harassment because the actions were not eliciting sexual advances. (This was also evidenced in *Seamons v. Snow* (1996)).

In *Mentavlos v. Anderson* (2000), the court opinion to dismiss claims of Title IX violations was based on two main points: 1) the defendants in question are not state actors, and 2) there was no evidence to support gender-based harassment (*Mentavlos v. Anderson*, 2000 & 2001). *Mentavlos* (2000) showed that hazing is not a violation of Title IX unless it can be proven that the victim was hazed because of their status as a female (or male). Additionally, if the perpetrators in the hazing are not state actors or acting on behalf of the state, it cannot be shown that a hostile environment was created.

Roe v. Gustine Unified School District (2009) was the only case to show a potential violation of Title IX by a school district, and the court used the tests for school district liability of sexual harassment from *Reese*, 208 F.3d at 739:

1. The school district must exercise substantial control over both the harassed and the context in which the known harassment occurs,
2. The plaintiff must suffer sexual harassment...that is so severe, pervasive and objectively offensive that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the school,
3. The school district must have actual knowledge of the harassment, and
4. The school district’s deliberate indifference subjects its students to harassment. (*Roe v. Gustine Unified School District*, 2009, p. 1025)

The presence of these factors in the *Roe* (2009) case successfully alleged a potential violation of Title IX by the school district but dismissed the case against the individual state actors, as individuals cannot be held accountable for creating hostile environments. However, this is not specific to hazing and is generally applicable to school districts for all allegations of harassment and Title IX violations. This body of law relevant to Title IX

is less likely to be applied by the courts following an incident of hazing, as claims in this area most often involve the use of sexual humor, exposure of genitalia, harassing comments of a sexual nature and other offensive contact as methods of hazing, but the episodic behavior does not meet the thresholds set by the courts for violations of Title IX.

Legislation as a Response to Hazing Incidents

Based on the data provided by the review of these cases, there is no evidence to support the argument that the creation of stricter anti-hazing laws would result in the reduction of the number of hazing incidents that occur in the United States or beyond. The states of Florida and Texas have perhaps the most well-written, comprehensive, and strict hazing laws within the United States; however, the presence of stricter legislation has not resulted in more cases alleging hazing in those states or more convictions of hazing in those states. Across the body of 167 cases between 1980-2013, only 35 cases alleged violations of the state hazing statute. This low number of cases argued in courts versus the pronounced number of people who experience hazing each year (Allen & Madden, 2008, showed that over 50% of students involved in a student organization at the collegiate level experienced hazing) shows that hazing laws do not increase the number of hazing incidents reported, or the likelihood that a prosecutor would bring a charge of hazing following an incident of hazing.

Stricter anti-hazing legislation often follows a significant injury or death of a student at an institution of higher education and is written with the goal of criminalizing the behavior that leads to the injury or death. Florida's legislation deemed the "Chad Meredith Act" added criminal felony charges as an option for prosecution if the result of an incident of hazing is the death of the victim (Fla. Stat. §§1006.63, 135). The addition

of felony charges certainly makes hazing a costlier act to engage in, but there is no evidence to support that criminalizing the behavior would alter the use of hazing in new member processes. A more likely reason states adopt stricter anti-hazing legislation following a hazing death is that passing a law gives the community a sense of “doing something” about the death of a student.

A more effective strategy for legislatures to consider could be to adopt more uniform definitions of hazing in their legislation and to broaden the applicability of the law to more organizations than just student groups and institutions of higher education. The goal of the legislation does not have to be the criminalization of the behavior, but more the protection of the citizenry that sees hazing appear more often today in middle and high schools than it did 10 years ago (Nuwer, 2013). Laws that in some states are only applicable to institutions of higher education have no ability to prevent hazing on sports teams and in student organizations at a middle school level. These incidents of hazing may be “minor” in comparison to the forced alcohol consumption and physical assault of incidents of hazing in college, but the learned behaviors are the same. Absent the guidance in the creation of appropriate methods of welcoming new members into an organization or onto a team, individuals may seek inappropriate methods of creating group norms (McCreary, 2012). It is more important that our legislatures direct guidance and resources to teachers, coaches, and advisors than it is to create a larger body of criminals in our penal system. Guidance can be provided through clearly written, uniform definitions of hazing and setting expectations of oversight and engagement of educators and coaches at all levels of youth interaction.

Application of Other Criminal Statutes

The research from this body of case law shows that other laws may be more applicable in the adjudication of hazing, but not necessarily criminal laws. The cases reviewed in this study only revealed 22 cases where criminal charges were brought to court following an incident of hazing. The logical answer to the question is that prosecutors should bring forward the most appropriate charges based on the evidence and facts of the cases as incidents of hazing may involve assault and battery, kidnapping, sexual assault, manslaughter, criminal recklessness, and other like crimes. The reality of this body of case law showed that civil charges are more often presented before the courts, and the issues of Tort Liability and Negligence cover more than half of all cases during this time.

The issue with the criminalization of hazing and the applicability of other criminal charges is proving the intent of the crime committed. As shown in the cases of assault and battery, the act of hazing is engaged in intentionally by the perpetrator, but the intent to injure is not often present. Further research on the background of each potentially applicable crime in a hazing incident should be done to determine the threshold at which the crime is committed before determining if those other available charges are more applicable. This study can inform prosecutors of criminal acts when hazing is alleged to evaluate other criminal acts for their applicability in each scenario.

Limitations of Available Data

It is important to note that this study focuses solely on legal opinions of judges following incidents of hazing heard in a court of law. This data required that an allegation of hazing or injury following hazing be filed with a court, adjudicated in a trial court (or

civil court), and appealed to a District Court or higher for a judicial opinion to be rendered. This data is not inclusive of all cases filed in a court of law during this timeframe, as those cases that are settled by the defendant pre-trial (and generally sealed), or those cases where the defendant pled guilty are not (and could not) be included in this study. Therefore, it is likely that there are other cases in this timeframe that were heard in a trial court or were alleged in a court of law that could have been applicable that were not reviewed. The existence of these other cases could have different implications for the applicability of anti-hazing legislation within the courts.

Another limitation of this study is the use of keyword searches in Westlaw and LexisNexis databases as the keywords only reveal cases containing those specific charges. In this study the main keyword search included all variations of the word hazing (including haz!, haze, hazing, hazed) but did not expand to searches specifically focused on assault, battery, kidnapping, sexual assault, and others. There is a possibility that other incidents of hazing have been heard in a court of law where the word *hazing* was not used in the case log and would not have been found with the existing keyword search. Shepardizing and citing were used extensively to cut down on this possibility, but it still exists.

Implications and Recent Developments

Since 2013 an additional 20 hazing related deaths have occurred in the United States and 19 of them were associated with a Greek letter organization (Nuwer, 2018). Many of these deaths are still being adjudicated in the court system at the time of this writing. The research of this study shows that the criminal application of anti-hazing law has not provided a large enough body of cases to prove its effectiveness. The number of

civil cases heard in the courts following an incident of hazing is more than double that of criminal cases, yet the number of successful civil cases across the 33 years of this study serves as only a fraction of a percent of the number of hazing incidents that occur each year (based on Allen & Madden's 2008 report).

The question remains then *who is responsible for addressing hazing*. This section will focus on recent developments associated with legislative responses to hazing and potential institutional responses to hazing (including new developments in the legal system).

New Developments in Legislation

Three student deaths between 2014-2017 have resulted in new developments in legislation in three different state legislatures. South Carolina, Pennsylvania, and Louisiana state legislatures have each taken up discussion on new legislation following the deaths of Tucker Higgs at Clemson University (2014), Tim Piazza at Pennsylvania State University (2017), and Max Gruver at Louisiana State University (2017). The legislation in Pennsylvania and Louisiana looks to increase the penalties associated with existing anti-hazing law while legislation in South Carolina expands the transparency of transgressions against fraternities and sororities at institutions of higher education in South Carolina (Biemiller, 2018; SC statute 59-101-210, 2015). These three new pieces of legislation represent a continuation of the responsive thinking of state legislatures to hazing deaths within their states where the immediate course of action is to increase the penalty for committing an act of hazing in hopes that fear of punishment will alter behavior. A brief discussion of the history of each incident and the resulting legislation follows.

Tucker Higgs Law. Tucker Higgs was a freshman at Clemson University in the Fall of 2014 when he mysteriously fell to his death from the “S.C. 93 bridge over the Seneca River at Lake Hartwell” (Monk & Cahill, 2015 online). The fall was allegedly the result of a confrontation between Tucker and one of the upperclassmen members of Sigma Phi Epsilon during a required early morning pledge run. The confrontation resulted because “Tucker had not gotten McDonalds’ breakfasts for 27 pledges that morning” (Monk & Cahill, 2015 online) and the upperclassman was angry with Tucker. After completing the run, the fraternity members waited several hours to report Tucker’s missing body to authorities and the months following the investigation revealed attempts by the fraternity to cover up the hazing and the activities that led to Tucker’s death on the morning in question. The Higgs family subsequently filed a “\$50 million lawsuit against Clemson University, Sigma Phi Epsilon Fraternity and three fraternity brothers” (Monk & Cahill, 2015 online). The South Carolina state legislature subsequently took up new legislation in fall 2015 to address the transparency of fraternity and sorority transgressions.

In June 2016 the South Carolina state legislature passed the Tucker Higgs Transparency Act which took effect in the 2016-2017 academic year. The act stated:

Public institutions of higher learning...shall maintain reports of actual findings of certain misconduct by members of fraternities and sororities formally associated with the institution, to specify information that must be included and must be excluded, to provide requirements for updating and preserving reports, to provide members of the public may seek redress for suspected violations under the freedom of information act. (SC stat. 59-101-210)

Most important in this legislation is the requirement of institutions of higher education in the State of South Carolina to make public all information related to fraternity and sorority misconduct. The basis of this law is the belief that students and parents will

utilize the conduct reports produced by the universities relating to the past misconduct of the fraternities and sororities to make informed decisions about joining a specific organization. Additionally, there is belief that the law will keep fraternities and sororities from engaging in misbehavior for fear of that behavior being made public. While these are noble claims, there exists little evidence that the publication of these conduct reports has had any impact on the decision making of students and parents regarding the joining of certain organizations or on the behavior of fraternities and sororities. Also, of note is the exclusion of all other student organizations from the mandated reporting. This omission maintains a narrow view that hazing only occurs in fraternities and sororities on a college campus and ignores existing research that hazing occurs across all student organizations and athletic teams. (Allen & Madden, 2008).

Max Gruver Act. Max Gruver was a freshman at Louisiana State University in the Fall of 2017 when he died from asphyxiation following a night of forced alcohol consumption at the Phi Delta Theta fraternity house (Crisp, 2018). The fraternity conducted a *ritual* they titled *Bible Study* which required new members of the fraternity to consume 190-proof liquor while responding to questions about the fraternity's history. Gruver died while sleeping on the fraternity sofa and toxicology reports later revealed that Gruver had a blood alcohol level of .495 (legal driving limit .08). The state legislature of Louisiana has since taken up multiple pieces of legislation to address hazing, including the Max Gruver Act (Louisiana House Bill No. 78, 2018) which was passed by a vote of 87-0 in the House of Representatives in March of 2018.

The Max Gruver Act increases the penalties for hazing in the State of Louisiana. In cases where hazing results in death, the possible penalties for an individual were

increased to fines up to \$10,000 and/or up to five years in prison (Crisp, 2018). For organizations who contributed to the death of a student following an incident of hazing, penalties are also increased up to \$10,000 in fines. The hope of the House of Representatives in Louisiana is that the increase in penalty for incidents of hazing will further deter organizations and citizens from participating in hazing activities.

The Louisiana State Senate also heard recent legislation regarding hazing activities within the state including Senate Bill 91. This bill included penalties for “anyone found responsible for a hazing-related death could face additional civil penalties. That could include penalties for individual perpetrators, as well as universities and national chapters of organizations that don’t have clear anti-hazing policies” (Crisp, 2018 online). This legislation could have additional impact for national fraternal organizations if their anti-hazing policies are deemed to be unclear; however, the bill does not outline what the threshold for clarity is. Regardless it is clear that the State of Louisiana will be passing additional legislation under the 2018 Spring General Session. Given the current provisions of the bills being heard and the research included in this study it would not appear that increasing penalty for hazing will have the intended impact of preventing hazing in the state. There are other pieces of anti-hazing legislation being considered in Louisiana that increase provisions for hazing education and prevention activities, but none have gained enough support to schedule a formal hearing (Crisp, 2018).

Timothy Piazza Antihazing Law. Timothy Piazza was a 19-year-old sophomore at Pennsylvania State University in the Spring of 2017 when he died of “severe head and abdominal injuries after falling several times” (Scolforo, 2018) at the Beta Theta Pi fraternity house following the acceptance of his bid into the fraternity. The death of Tim

Piazza began a criminal investigation into the activities associated with the Beta Theta Pi fraternity that resulted in fraternity members charged with involuntary manslaughter, reckless endangerment and hazing. Many of these charges were initially dismissed from court in September 2017 preliminary hearings and again in March 2018 hearings following the discovery of new evidence. This court case has gained extensive news coverage and national attention since it began in 2017 (Biemiller, 2018). In March 2018 the Judiciary Committee of the General Assembly of Pennsylvania took up the Timothy J. Piazza Antihazing Law for discussion (Penn. Stat. SB 1090 PN1583).

The proposed Pennsylvania law combines some of the recent efforts of the State of South Carolina and the State of Louisiana by outlining mandated reports regarding incidents of hazing and increasing the penalties associated with serious bodily injury or death following incidents of hazing. This legislation creates a new category of criminal code for *aggravated hazing* which occurs when hazing results in serious bodily injury and has the penalty of being a felony in the State of Pennsylvania. Additionally, the new legislation outlines the definition of *organizational hazing* which too carries increased penalties. Among the penalties for organizational hazing is the potential forfeiture of assets (including property) that was used during the hazing (Penn. Stat. SB 1090 PN1583).

The inclusion of forfeiture of property is an interesting take on organizational penalties. If passed through the state legislature and upheld by the courts, the forfeiture of property could result in fraternities and sororities (or other organizations) losing houses and other properties that carry significant value following an incident of hazing. On paper, this appears to be a significant inclusion, but like the case of *Kruger v. Phi Gamma*

Delta (2001) and other fraternity hazing cases, finding a defendant for the case may prove difficult. In most instances after a significant injury or death resulting from hazing, the fraternal organization is suspended or disbanded as an unincorporated association within the state. Once the association dissolves, some states do not provide an available recourse to the injured party as no one is available to stand trial and represent the organization in court as the individual membership status has either been suspended or revoked. The national organization for the fraternity may stand trial, but the research of this study showed that courts have been reluctant to hold national fraternal organizations accountable for the day-to-day operations of the local fraternity chapter unless it can be proven that the national organization had prior knowledge that similar transgressions existed. It will be interesting to see how Pennsylvania courts respond to future incidents of hazing with the inclusion of forfeiture of property in the proposed Timothy J. Piazza Antihazing Law.

Upon further review. One Pennsylvania state court took a different approach in the response to hazing in a January 2018 decision by state judge Margherita Patti-Worthington. This judge issued a ruling to ban a fraternity from operating within the State of Pennsylvania for a period of ten years (Thomason, 2018). The decision came after the 2013 death of Chun Hsein Deng at Baruch College where five men were charged initially with third-degree murder. Four of the men charged pled guilty to voluntary manslaughter and had sentences reduced to two years in prison, while the fraternity was acquitted of the murder charges.

This court ruling has quite possibly the greatest potential impact as a response to incidents of hazing in fraternities and sororities. Should the ten-year ban be upheld, this

could mean that other fraternal organizations (operating in Pennsylvania) could face similar penalties. Transferring this decision to the Timothy Piazza case, if another Pennsylvania court were to apply the outcome of the Deng case to the case against Beta Theta Pi, the national organization would face the potential of losing five additional chapters in the State of Pennsylvania and 283 total current undergraduate members (beta.org, 2018). The financial impact of those losses on a national fraternal organization would be significant. Additionally, the loss of those chapters could impact property ownership on each of those campuses, and future startup costs should Beta Theta Pi be allowed to reopen chapters after the ten-year ban was lifted. While having limited impact on the prevention of hazing, a penalty of this nature could cause a significant shift in the fraternity and sorority industry. It is doubtful that this penalty would be upheld through the State Supreme Court (or US Supreme Court) as there would likely be First Amendment implications (freedom of association) but it will be interesting to follow.

Legislators looking to make a difference on the issue of hazing would benefit from exploring the impact of the existence of a law on the decision making of those engaging in the illegal behavior. This study does not dive into that topic but does show that hazing law is not being regularly applied by the courts and that incidents of hazing continue to occur despite the existence of anti-hazing legislation. It is likely the population these laws are created to protect do not see the existence of law as being a deterrent from engaging in high risk behaviors. One need not look hard to find statistics on 16-24-year-old male and females engaging in illegal behavior such as underage drinking, contributing to the delinquency of a minor, use of marijuana or other narcotics, and hazing. Further criminalization of these behaviors may not be the most appropriate

response to increase the safety and security of this population. Legislatures may be better served to lean on existing research to inform practices for educators to engage in effective prevention techniques as outlined by Dr. Linda Langford in her 2008 paper *A Comprehensive Approach to Hazing Prevention in Higher Education Settings* where she outlines the need for colleges to utilize a public health approach (as successfully applied to alcohol prevention and violence prevention) to examine the culture of hazing and create solutions to prevent hazing from occurring in the first place. This does not exclude the need for a criminal or civil response to incidents of hazing that result in significant injury or loss, but those mechanisms are already in place.

Institutional Responses to Hazing

Continuing this dialogue, this section will focus on implications and developments for institutional responses to hazing. Included here will be: (1) descriptions and recommendations for the use of the court tests for the application of Title IX law to incidents of hazing institutionally, (2) information regarding the recent California Supreme Court decision in *Regents of the University of California v. Superior Court of Los Angeles* (2018) and its implications for institutions of higher education, (3) a brief examination of the current climate of institutional responses to fraternity and sorority hazing incidents and (4) a brief expansion on the call for campuses to engage in hazing prevention work.

Application of Title IX tests for institutional response. On April 4, 2011 the Department of Education through the Office of Civil Rights sent communication to institutions of higher education providing guidance for the new application of Title IX regulations to institutions receiving federal funding (Larkin, 2016). The letter specifically

outlined that institutions of higher education would be required to take *immediate action* if the institution knew or should have known that student on student harassment and/or sexual violence was occurring (Ali, 2011). This letter enforced the expectation of the federal government that colleges and universities could not ignore gender-based harassment on their campuses and led to the creation of many new policies and protocols at individual institutions for response to Title IX issues (Larkin, 2016).

The Office of Civil Rights (OCR) and Department of Education reinforced this message by engaging in investigations of Title IX violations on college campuses across the country. Since the April 2011 letter was sent to colleges and universities, The Chronicle of Higher Education has tracked 458 OCR investigations into violations of Title IX and only 121 of those investigations have been resolved to date (Title IX, 2018). This increased attention on investigations has placed a significant emphasis on college and university handling of Title IX allegations and has improved the likelihood that a fair and balanced hearing for allegations of harassment and assault will occur on most college campuses.

This background is important to hazing as the application of Title IX tests to institutions of higher education are the same as those applied when institutions have been found liable by the courts for violations of hazing; namely, (1) did the institution have prior knowledge of incidents of hazing, (2) did the institution appropriately investigate these prior incidents, (3) was the injury to the plaintiff foreseeable and (4) did the institution work appropriately to prevent the foreseeable injury. The federal government's pressure on institutions of higher education to apply the questions of prior knowledge, investigation, foreseeability, and prevention to Title IX and the historical application of

these same questions to institutions of higher education by the courts identifies an opportunity for colleges and universities to be held accountable for any existing non-attention to incidents of hazing on their campus. This study should serve to inform institutions of higher education that appropriate attention should be paid to all reported incidents and suspected incidents of hazing on the college campus.

The major difference today is that no federal agency is placing emphasis on hazing as a systemic issue across colleges and universities and no agency (other than the courts) is holding colleges and universities accountable for their non-attention to the issue of hazing. It is also clear that, at some institutions, attention will not be paid to the issue of hazing until an agency with the ability to threaten funding holds those institutions accountable for their non-action as is indicated by some colleges and universities retracting their Obama-era responses to Title IX because the new presidential administration has indicated that Title IX response is no longer a major focal area for the Office of Civil Rights (Larkin, 2016). Prior behavior suggests that without agency mandate and until a critical mass of college students are seriously injured or killed due to hazing, colleges and universities will not universally pay appropriate attention to the prevention of this issue.

Regents of the University of California v. Superior Court of Los Angeles (2018).

A recent decision by the Supreme Court of California could have significant impact on the relationship colleges and universities have with their students going forward. In this case, the California Supreme Court determined that a university “has a special relationship with their students and a duty to protect them from foreseeable violence during curricular activities” (*Regents v. Superior Court*, 2018 p. 2). The decision of the

court outlines specifically how the relationship between a student and the university meets the court definition of *special* by meeting the tests of (1) dependency, (2) control, (3) boundaries, and (4) benefit. The decision leaves open-ended the definition of *curricular* and *activities closely related to the delivery of educational services* and a concurring opinion is provided in the case outlining the problems with leaving these terms undefined.

The case in question involves the attack of a student known to the university for having potential mental health concerns including auditory hallucinations and paranoid thoughts (*Regents v. Superior Court*, 2018). The student in question had shown behavior related to possible violence and had informed his teaching assistant that a specific student (Rosen, the future victim) in his chemistry lab was a potential harasser (though given the attacker's mental health concerns, the harassment was likely a result of the hallucinations and paranoia). Within two days of reporting a specific person to the teaching assistant, the student attacked the victim while in chemistry class with a knife, stabbing the victim twice. The victim sued the university for negligence established by a special relationship and alleging that:

UCLA had a special relationship with her as an enrolled student, which entailed a duty 'to take reasonable protective measures to ensure her safety against violent attacks and otherwise protect her from reasonable foreseeable criminal conduct, to warn her as to such reasonable foreseeable criminal conduct on its campus and in its buildings, and/or to control the reasonably foreseeable wrongful acts of third parties/other students.' (*Regents v. Superior Court*, 2018 p. 7)

The Supreme Court of California agreed with the victim that the university was engaged in a special relationship with its students and that the relationship created the duty alleged by the victim.

The California court's decision relies on *Furek v. Delaware* (1991) as one of the cases that helps establish the special relationship between the college and the student highlighting that many aspects of student life are influenced by the university. This influence extends both inside and outside the classroom and because of the special relationship between the university and the student, the university has a duty to protect students against foreseeable harm and violence.

Despite this special relationship, the Supreme Court does acknowledge that there are many parts of a student's life that the university has no control over. Those areas where the university lacks control set the boundaries for the relationship between the student and the university. "Colleges generally have little say in how students behave off campus, or in their social activities unrelated to school. It would be unrealistic for students to rely on their college for protection in these settings" (*Regents v. Superior Court*, 2018 p. 18). This statement by the court acknowledges that expecting a university to control student social behavior off campus is unrealistic but leaves open interpretation regarding how far a university's control may extend. "Colleges are in a special relationship with their enrolled students only in the context of school-sponsored activities over which the college has some measure of control" (*Regents v. Superior Court*, 2018 p. 18).

It is this last statement that raises significant questions for colleges and universities as it relates to institutional responses to hazing behavior. The California court waivers on defining exactly the boundary of institutional control over student behavior. In one sentence the court defines the relationship as it relates to "curricular activities" (*Regents v. Superior Court*, 2018 p. 2) and in another sentence defining the relationship

“in the context of school sponsored activities” (p. 18). If the relationship is confined to the boundary of the *curriculum* then universities would likely not be implicated in expanding the relationship to include control over the foreseeability of hazing; however, if the relationship is expanded to include *school sponsored activities* then the university may be compelled to take more action related to the foreseeability of hazing and the impact hazing can have on a student’s safety.

The decision in *Regents v. Superior Court* (2018) feels like an extension of previous court decisions in *Furek* (1991), *Knoll* (1999), and *Brueckner* (1999) where universities were determined to have liability for injuries related to hazing. Universities would be well suited to heed the advice of the court in *Regents v. Superior Court* (2018) and “take reasonable steps to protect students when it becomes aware of a *foreseeable* threat to their safety. The reasonableness of a school’s actions in response to a potential threat [will be] a question of breach” (p. 29). While hazing in specific organizations mostly remains a secret from colleges and universities, the likelihood of hazing occurring in organizations, clubs, and teams is not a secret. Data presented in this study showcases that hazing is an occurrence in many organizations (Allen & Madden, 2008). The threat of injury because of hazing is not as high, but it is foreseeable. The California Supreme Court decision in *Regents* should lead universities to engage more in the prevention and education of students around the topic of hazing.

Institutional responses to fraternity misbehavior. Hazing is not a fraternity issue alone; the research conducted by Allen and Madden (2008) showed that student athletes were just as likely to experience hazing as fraternity men, yet when a student is killed or injured by hazing, it is most likely to be a fraternity man that is the victim. The

fall of 2017 extended this likelihood as three university campuses faced tragedy following the hazing deaths of fraternity men (Biemiller, 2018). These incidents led to the temporary suspension of fraternity and sorority life at Florida State University, Louisiana State University and Texas State University. This does not encompass all suspensions of fraternity and sorority life within the past year as a quick internet search for *fraternity community suspensions* returned information about the University of Michigan, Ohio State University, the University of Kansas, and Indiana University. This *modus operandi* of universities identifies a significant behavioral issue amongst the national fraternity and sorority community.

Related to this study, colleges and universities should expect to be held more accountable for their control over the fraternity and sorority community. As incidents of hazing continue to result in the injury and death of college students, courts are likely to put more pressure upon colleges and universities to exert more control over the behavior of their students. This could lead to college and university presidents examining the value fraternities add to the college environment (provision of leadership, provision of student housing, alumni donations, et al.) and weighing that value against the cost of fraternity misbehavior (negative media presence, cost of staffing, use of university resources, cost of university response, et al.). The argument can be made that fraternities continued use of hazing as a means of bringing a new member into their organization will lead to universities refusing to recognize fraternities as legitimate associated student organizations (Biemiller, 2018).

Institutional engagement in hazing prevention work. Mentioned previously in this study is the work of Dr. Linda Langford as outlined in her 2008 paper A

Comprehensive Approach to Hazing Prevention in Higher Education Settings. Dr.

Langford applies the framework of prevention as utilized in public health settings to the issue of hazing in colleges and universities. The paper argues that colleges and universities should be using the same tactics in the prevention of hazing as the tactics currently being utilized on college campuses in the prevention of sexual assault, alcohol abuse, and physical violence. These tactics include looking at hazing as both episodic but also as a product of the culture and environment of the institution. The traditional institutional response to hazing looks only at the incident. Dr. Langford's model encourages the institution to look at all incidents of hazing within the institution to develop strategies and tactics to address the whole of the problem, not just one specific episodic issue.

Utilizing this approach to the prevention of hazing, colleges and universities can make changes to the overall institutional environment that can stop hazing before it occurs. This approach allows colleges and universities to increase the safety of their students involved in student organizations and allows the colleges and universities to engage the voices of their students, staff, and faculty to discover the factors that allow hazing to happen at their institutions. Based on the data of this study, a prevention approach is more likely to be successful in addressing hazing than relying on the law to be a deterrent to hazing.

Conclusion

This study identified several issues to be considered by the courts following an incident of hazing. Many different permutations of case law can be involved including civil or criminal implications, violations of an individual's civil rights, and the

protections provided by the United States Constitution, organizational and institutional implications for liability and negligence, and legislative implications for the constitutionality of the law are all potentially present in a hazing incident. The lack of a uniform legal standard for hazing across all states has forced the courts to utilize analogical reasoning to examine issues of hazing across state lines, but also across state definitions of the act of hazing. This has resulted in different interpretations of hazing in different states and fails to provide guidance to organizations and individuals for the potential outcomes of a hazing incident. The victims of hazing are left in this scenario without clear guidance by case law toward the appropriate process to seek justice for the injury(s) they suffered.

Despite these challenges, in most instances judges are appalled by the behavior presented before them in incidents of hazing and are willing to utilize the law to the extent they can to provide justice for the victims of hazing. It is also clear that the youth and young adults of the United States will continue to allow themselves to be subjected to incidents of hazing for the promise of social status or the acceptance an organization can provide to them and the threat of injury or subjection to several types of degradation and humiliation are not a deterrent from their willingness to engage in these behaviors. It is up to our legislatures, teachers, coaches, advisors, mentors, parents, and other adult figures in this country to work diligently to protect this population of youth and young adults from welcoming the potential harms of hazing into their lives. We all must continue to guide our youth in the appropriate rites of passage into organizations and onto teams, so they may avoid the dangers that accompany hazing in their organizations.

References

- A.W. v. Lancaster County School District* (2010). 280 Neb. 205 (Neb.)
- Abdulrehman, R.Y. (2007). *The Cycle of abuse in sport hazing: Is it simply a case of boys being boys?* (Doctoral Thesis). Retrieved from ProQuest Dissertations and Theses database.
- Acquaviva, G. (2007). Protecting students from the wrongs of hazing rites: A proposal for strengthening New Jersey's anti-hazing act. *QLR*, 26, 305-336.
- Adebite v. Murdoch* (2013). Civ. No. 12-520 (U.S. Dist.).
- Allan, E. & DeAngelis, G. (2004). Hazing, masculinity, and collision sports: (Un)becoming heroes. In J. Johnson, & M. Holman (Eds.), *Making the team: inside the world of sport initiations and hazing* (pp. 61-82). Toronto: Canadian Scholars Press.
- Allan, E. & Madden, M. (2008). Hazing in view: College students at risk. Initial findings from the National Study of Student Hazing <http://www.hazingstudy.org>
- Allan, E. & Madden, M. (2012). The nature and extent of college student hazing. *International Journal of Adolescent Medical Health*, 24 (1), 1-8.
- Alexander v. Cumberland County Board of Education* (2005). 171 N.C. App. 649 (N.C. App.)
- Alexander v. Kappa Alpha Psi* (2006). 464 F. Supp. 2d 751 (M.D. Tenn.).
- Alexander, B. (2012, January 11). Lawmaker introduces tougher anti-hazing legislation. Retrieved from <http://www.11alive.com/news/article/221699/40/SANDY-SPRINGS--Lawmaker-introduces-tougher-anti-hazing-bill>

Ali, R. (2011, April 4). Dear colleague letter. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

Alton v. Major General Ted Hopgood (1998). 994 F.Supp. 827 (U.S. Dist.)

Alton v. Texas A&M University (1999). 168 F. 3d 196 (5th Cir.).

Amica Mutual v. St. Paul Fire & Marine (2003). Civil Action No. 3:01-CV-0677-N (U.S. Dist.)

Arnold, W.E. (2005). A comparison of hazing attitudes in student affairs professionals at select historically black institutions of higher education in Tennessee (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No 3167769).

Associated Press (2012, June 28). Cornell Cleared in Hazing Death of Student. Retrieved from <http://www.nydailynews.com/news/fraternity-found-guilty-hazing-death-student-article-1.1103994>

Areen, J. (2009). *Higher education and the law: Cases and materials*. New York: Thomson Reuters/Foundation Press.

Auto-Owners v. American Central (1999). 739 So. 2d 1078 (Ala.)

Autry v. Hooker (2009). 304 S.W.3d 356 (Tenn. App.)

Bahdwar, N.K. (2009). The Milgram experiments, learned helplessness, and character traits. *Journal of Ethics*, 13, 257-289.

Baker-Bey v. Delta Sigma Theta (2013). 941 F. Supp. 2d 659 (U.S. Dist.)

Ball, J. (2004). This will go down on your permanent record (but we'll never tell): How the federal educational rights and privacy act may help colleges and universities keep hazing a secret. *Southwestern University Law Review*, 35, 477-495.

- Ballou v. Sigma Nu* (1986). 291 S.C. 140 (S.C. App.)
- Barr, B. (2012, January 20). Moves for tougher anti-hazing laws are ill-advised. Retrieved from <http://dailycaller.com/2012/01/20/moves-for-tougher-anti-hazing-laws-are-ill-advised/>
- Bauer-Wolf, J. (2018). Duty to Protect. Retrieved from <https://www.insidehighered.com/news/2018/03/26/california-supreme-court-rules-public-colleges-must-protect-students-education>
- Bernstein v. The Village of Piermont* (2013). 11 Civ. 3677 (U.S. Dist.)
- Beta.org (2018) Pennsylvania chapter listings. Retrieved from <https://my.beta.org/ors/chapterslisting.aspx?state=PA>
- Bickel, R.D. & Lake, P.F. (1999). *The rights and responsibilities of the modern university*. Durham: Carolina Academic Press.
- Biemiller, L. (2018, March 4). Fraternity deaths drew intense media coverage in 2017, but will that prompt real change? Retrieved from <https://www.chronicle.com/article/What-s-Different-About/242668>
- Bittner, N. (2016). Hazy shade of winter: The chilling issues surrounding hazing in school sports and the litigation that follows. *Jeffrey S. Moorad Sports Law Journal* 23(1), 211-254.
- Bizilj v. St. John's Military School* (2009). Civil Action No. 08-CV-2036-CM (U.S. Dist.)
- Blackmun, H. A. (1985). Section 1983 and federal protection of individual rights-will the statute remain alive or fade away. *New York University Law Review* 60(1), 1-29.
- Borova v. Churchill County School District* (2013) 3:11-cv-0336-LRH-VPC (U.S. Dist.)

- Brown, V.L. (1990). College fraternities and sororities: Tort liability and the regulatory authority of public institutions of higher education. *Education Law Reporter*, 1-12.
- Brueckner v. Norwich University* (1999). 730 A.2d 1086 (Vt.).
- Bryant v. Rupp* (1981). 399 So. 2d 417 (Fla. App.)
- Burlington Free Press v. University of Vermont* (2001). 172 Vt. 303 (Vt.)
- C.H. v. Los Lunas Schools Board* (2012). 852 F. Supp. 2d 1344 (U.S. Dist.)
- Caldwell v. Griffin Spalding Board of Education* (1998). 503 S.E.2d 43 (Ga. App.).
- Cameron v. Camden Military Academy* (2013) 3:12-846-JFA (U.S. Dist.)
- Campo, S., Poulos, G., & Sipple, J. (2005). Prevalence and profiling: Hazing among college students and points of intervention. *American Journal of Health Behavior*, 29, 137-149.
- Canepa, H. (2011). Need for belonging and attachment style in relation to college students' participation in negative group initiation practices. (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No. 3452330).
- Cantwell v. Franklin* (2012). 2012-Ohio-2273 (Ohio App.)
- Cappello v. Mucke* (2012). 11-6021745-S (Conn. Super.)
- Cardenas v. Tulare County Sheriff's Department* (2013). 1:11-cv-01394-JLT (U.S. Dist.)
- Carpetta v. Pi Kappa Alpha* (1998). 718 N.E.2d 1007 (Ohio Misc.)
- Carroll, M.S., Connaughton, D.P., Spengler, J.O., & Zhang, J.J. (2009). Case law analysis regarding high school and collegiate liability for hazing. *European Sport Management Quarterly*, 9(4), 389-410.

- Cerra v. Fex Fraternity Fraternal Association* (1986). 130 Wis. 2d 540 (Wisc. App.)
- Chambers, H.L. (2008). *Civil Rights Act of 1964*, in *Encyclopedia of the Supreme Court of the United States*, (D. Tanenhaus ed., Macmillan 2008).
- Chang, G.C. (2011). *The Hidden curriculum: Hazing and professional identity*. (Doctoral Dissertation). Retrieved from the ProQuest Dissertation and Theses database. (UMI No. 3464754).
- Chappel v. Franklin Pierce School District* (1967). 71 Wn.2d 17 (Wash.)
- Chen, A. K. (2006). The facts about qualified immunity. *Emory Law Journal* 55(2), 229-278.
- Chisler v. Johnston* (2010). Civil Action No. 09-1282 (U.S. Dist.)
- Cimino, A. (2011). The evolution of hazing: Motivating mechanisms and the abuse of newcomers. *Journal of Cognition and Culture*, 11, 241-267.
- Cioffi v. Averill Park Central* (2006). 444 F.3d 158 (U.S. App.)
- Clifford v. Regents of University of California* (2012). 2:11-CV-02935-JAM-GGH (U.S. Dist.)
- Cohen, D. (2012). *Clearing up hazing: Opponents are pushing for stricter laws*. Retrieved from http://www.abajournal.com/magazine/article/clearing_up_hazing_opponents_are_pushing_for_stricter_laws/
- Cookson v. Brewer School Department* (2009). ME 57; 974 A.2d 276 (Me.)
- Cornell University School of Law. (n.d.) *First Amendment of the United States Constitution*. Retrieved from http://www.law.cornell.edu/constitution/first_amendment

- Cornell University School of Law. (n.d.) *Fourth Amendment of the United States Constitution*. Retrieved from http://www.law.cornell.edu/constitution/fourth_amendment
- Cornell University School of Law. (n.d.) *Fifth Amendment of the United States Constitution*. Retrieved from http://www.law.cornell.edu/constitution/fifth_amendment
- Cornell University School of Law. (n.d.) *Fourteenth Amendment of the United States Constitution*. Retrieved from <http://www.law.cornell.edu/constitution/amendmentxiv>
- Cortese v. West Jefferson Hills School District* (2008). No. 53 C.D. (Pa. Commw.)
- Cox v. Thee Evergreen Church* (1992). 836 S.W. 2d 167 (Tex.)
- Crisp, E. (2018, April 2). Max Gruver Act to create harsher penalties for hazing. Retrieved from http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_0a86de08-36c7-11e8-b244-43b7f218103a.html
- Crimesider Staff (2012, May 23). Florida A&M Band Hazing Death: Robert Champion agreed to initiation ritual, band mates say. Retrieved from http://www.cbsnews.com/8301-504083_162-57440138-504083/florida-a-m-band-hazing-death-robert-champion-agreed-to-initiation-ritual-bandmates-say/.
- Crow, R.B. & Rosner, S.R. (2004). a. Hazing and sport and the law. In H. Nuwer (Ed). (2004). *The hazing reader*. (pp. 200-223). Bloomington, IN: University Press.

- Crow, R.B. & Rosner, S.R. (2004). b. Institutional liability and hazing-mainly athletics related. In H. Nuwer (Ed). (2004). *The hazing reader*. (pp. 224-251).
Bloomington, IN: University Press.
- Crow, R.B., & Phillips, D.R. (2004). Hazing: What the law says. In J. Johnson, & M. Holman (Eds.), *Making the team: inside the world of sport initiations and hazing* (pp. x-xvi). Toronto: Canadian Scholars Press.
- Crow, R.B., & Macintosh, E.W. (2009). Conceptualizing a meaningful definition of hazing in sport. *European Sport Management Quarterly*, 9(4), 433-451.
- Currul-Dykeman, K. (2014). Assault and Battery. *Encyclopedia of Criminology and Criminal Justice*. Retrieved from
<https://doi.org/10.1002/9781118517383.wbeccj545>
- Culbertson v. Fletcher Public Schools* (2011). CIV-11-138-M (U.S. Dist.)
- Davis v. Carmel Clay Schools* (2013). 1:11-cv-00771-SEB-MJD (U.S. Dist.)
- Day v. Towle* (2001). 20-0176 (Mass. Super.)
- Day v. Massachusetts Air National Guard* (1999). 167 F.3d 678 (U.S. App.)
- Delta Tau Delta v. Johnson* (1999). 712 N.E.2d 968 (Ind.)
- DeSantis, A. (2007). *Inside Greek U.: Fraternities, sororities, and the pursuit of pleasure, power and prestige*. Lexington, KY: University Press of Kentucky.
- DeSousa, J., Gorson, M.V.M., & Kimbrough, W.M. (2004). Pledging and hazing in African-American fraternities and sororities. In H. Nuwer (Ed). *The hazing reader* (pp. 106-109). Bloomington, IN: University Press.
- Diaz v. City of Springfield* (1998). No. 97-2532 (U.S. App.)
- Dixon v. Picayune School District* (2013). 1:11CV514-LG-JMR (U.S. Dist.)

- Drout, C. & Corsoro, C. (2003). Attitudes toward fraternity hazing among fraternity members, sorority members and non-Greek students. *Social Behavior and Personality*. 31(6), 535-544.
- Duitch v. Canton City Schools* (2004). 809 N.E.2d 62 (Ohio Ct. App.).
- Durr v. State of Mississippi* (1998). 722 So. 2d. 134 (Miss.)
- E.F. v. Oberlin City School District* (2010). Ohio-1370 (Ohio App.)
- Easler v. Hejaz Temple* (1985). 285 S.C. 348 (S.C.)
- Edelman, M. (2004). Addressing the high school hazing problem: Why lawmakers need to impose a duty to act on school personnel. *Pace Law Review*, 25, 15-47.
- Edelman, M. (2005). How to prevent high school hazing: A legal, ethical and social primer. *North Dakota Law Review*, 81, 309-341.
- Edwards v. Kappa Alpha Psi* (1999). 98 C 1755 (U.S. Dist.)
- Elbaz v. Beverly Hills Unified School District* (2007). B195563 (Cal. App. Unpub.)
- Ellis, K. (2012) *Hazing prevention: Your responsibility for the future*. Presentation to the fraternity and sorority community at Saint Louis University, St. Louis, MO.
- Ellsworth, C. (2006). Definitions of hazing: Differences among selected student organizations. *Oracle: The Research Journal of the Association of Fraternity Advisors*, 2(1), 46-60.
- Enrique Mercado Del Valle v. United States* (1988). 856 F.2d 406 (U.S. App.)
- Ex Parte Barran III* (1998). 730 So. 2d 203 (Ala.)
- Ex Parte Berhe* (2004). No. 05-04-00922-CR (Tex. App.)
- Ex Parte Smith* (2004). 152 S.W.3d 170 (Tex. App.)
- Ex Parte Smith* (2006). 185 S.W.3d 887 (Tex. Crim. App.)

Fink v. California State University Northridge (2006). B183977 (Cal. App. Unpub.)

Finkel, M. (2002). Traumatic injuries caused by hazing practices. *American Journal of Emergency Medicine*, 20 (3), 228-233.

Foster v. Beta Mu of Beta Theta Pi (1991). 567 N.E.2d 865 (Ind. App.).

Freeman v. Busch (2003). 349 F.3d 582 (U.S. App).

Furek v. University of Delaware (1991). 594 A.2d 506 (Del.).

Garafalo v. Lambda Chi Alpha Fraternity (2000). 616 N.W.2d 647 (Iowa Sup.)

Gayadeen, S.M. (2011). Ritualizing social problems: Claimsmakers in the institutionalization of anti-hazing legislation. (Doctoral Dissertation). Retrieved from the ProQuest Dissertations and Theses database. (UMI No. 3495188).

Geisert, C.M. (2010). Athletic hazing in the Nebraska state college system: An Introductory investigation (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No. 3437618).

Gendelman v. Glenbrook North High School (2003). 03 C3288 (U.S. Dist.).

General Assembly of Pennsylvania. Senate Bill No. 1090 Session of 2018

Gennep, Arnold van. (1960). *The rites of passage*. Monika B. Vizedom and Gabrielle L. Caffé, trans. Chicago: University of Chicago Press.

Gigger v. Delta Sigma Theta (1998). CIV-97-0802-T (U.S. Dist.).

Givens v. O'Quinn (2005). 121 Fed. Appx. 984 (U.S. App.).

- Godwin, K.A. (2011). The influence of standards on the college fraternity man: An evaluative study on the impact of the 2004 implementation of the North American Inter-fraternity Conference standards for member organizations. (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No. 3487294).
- Govan, D.A. (2001). "Hazing out" the membership intake process in sororities and fraternities: Preserving the integrity of the pledge process versus addressing hazing liability. *Rutgers Law Review*, 53, 679-714.
- Government Publishing Office. (n.d.). *42 United States Code Section 1983 of the Civil Rights Act of 1964*. Retrieved from <http://www.gpo.gov>
- Grand Aerie Fraternal Order of Eagles v. Carneyhan* (2005). 169 S.W.3d 840 (Ky.).
- Greenfield v. Michigan State University* (1996). 180170 (Mich. App.)
- Grenier v. Commissioner of Transportation* (2012). 306 Conn.523 (Conn.).
- Griffen v. Alpha Phi Alpha* (2007). Civil Action No. 06-1735 (U.S. Dist.).
- Guynn, K.L. (2002). Hazing in public and private high schools: An analysis of legal responses to hazing (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No. 3041637).
- Haben v. Anderson* (1992). 597 N.E.2d 655 (Ill. App.).
- Hall v. Utah State Department of Corrections* (2011). 24 P.3d 958 (Utah).
- Hall, M.A. & Wright, R.F. (2008). Systematic content analysis of judicial opinions. *California Law Review*, 96, 63-122.
- Hancock v. North Sanpete School District* (2012). 2:12-cv-00072 (U.S. Dist.).
- Harden v. United States* (1980). 485 F. Supp. 380 (U.S. Dist.).

- Harden v. United States* (1980). 688 F.2d 1025 (U.S. App.).
- Helbing v. Hunt* (2012). 402 S.W.3d 699 (Tex. App.).
- Helton v. State of Indiana* (1993). 624 N.E.2d 499 (Ind. App.).
- Hennessy, N.J., & Huson, L.M. (1998). Legal issues and greek letter organizations. In E.G. Whipple (Ed.), *New challenges for greek letter organizations: Transforming fraternities and sororities into learning communities* (p. 61-78). San Francisco: Jossey-Bass Inc.
- Hernandez v. Delta Tau Delta* (1995). 924 P.2d 1036 (Ariz. App.).
- Hilton v. Lincoln-Way High School* (1998). No. 97 C 3872 (U.S. Dist.).
- Hinkle, S. (2005). Cognitive dissonance in athletic hazing: The roles of commitment and athletic identity. (Doctoral Dissertation). Retrieved from ProQuest Dissertation and Theses database (UMI No. 3202451).
- Hoffman v. Saginaw Public Schools* (2012). Case No. 12-10354 (U.S. Dist.).
- Holland, M.D. (2011) Personality traits as predictors of hazing: The role of sociotropy and autonomy. (Doctoral Dissertation). Retrieved from ProQuest Dissertation and Theses database (UMI No. 3476069).
- Hollmann, B. (2002). Hazing: Hidden campus crime. *New Directions for Student Services*, 99, 11-23.
- Holman, M. (2004). A search for a theoretical understanding of hazing practices in sport. In J. Johnson, & M. Holman (Eds.), *Making the team: inside the world of sport initiations and hazing* (p. 50-60). Toronto: Canadian Scholar's Press.
- Hoover, N., & Pollard, N. (1999). Initiation rites and athletics: A national survey of NCAA sports teams. Alfred University and Reidman Insurance Co., Inc.

Hoover, N. & Pollard, N. (2000). *Initiation Rites in American High Schools: A national survey*. Alfred: Alfred University Press.

Horowitz, H.L. (1987). *Campus life: Undergraduate cultures from the end of the eighteenth century to the present*. Chicago: The University of Chicago Press.

Hunt v. Sacramento (2008). C053886 (Cal. App. Unpub.).

Hutchens, N.H. (2007). A comparative legal analysis of state constitutional autonomy provisions for public colleges and universities (Doctoral Dissertation). Retrieved from ProQuest Dissertations and Theses database. (UMI No. 3297356)

Illinois v. Anderson (1992). 591 N.E.2d 461 (Ill.).

Infante v. County of Los Angeles Civil Service Commission (2003) B155829 (Cal. App. Unpub.).

Iota Xi v. Patterson (2009). 566 F.3d 138 (U.S. App.).

Iowa Beta Chapter v. State of Iowa (2009). 763 N.W.2d 250 (Iowa Sup.).

J.K. v. Minneapolis Public Schools (2011). 849 F. Supp. 2d 865 (U.S. Dist.).

Jenkins Independent Schools v. Jim Doe (2012). 379 S.W.3d 808 (Ky. App.).

Johnson v. Atlantic County (2010). Civil No. 07-4212 (RBK/AMD) (U.S. Dist.).

Johnson, J., & Holman, M. (2004). *Making the Team: Inside the World of Sport Initiations and Hazing*. Toronto: Canadian Scholars' Press Inc.

Jolevare v. Alpha Kappa Alpha (2007). 521 F. Supp. 2d 1 (U.S. Dist.).

Jones v. Kappa Alpha Order (1997). 730 So. 2d 197 (Ala. Civ. App.).

Jones v. Northern Illinois University (1996). No. 95 C 50162 (U.S. Dist.).

Kates, D.; Kouba, J. (1972). Liability of public entities under section 1983 of the civil rights act. *Southern California Law Review* 45(1), 131-167.

- Kaminer, A. (2012, June 27). Ex-students Acquitted of Hazing in Cornell Death. Retrieved from http://www.nytimes.com/2012/06/28/nyregion/ex-cornell-students-acquitted-of-hazing-in-death-of-fraternity-member.html?_r=1.
- Kaplin, W.A., & Lee, B.A. (2007). *The law of higher education*. San Francisco: John Wiley & Sons, Inc.
- Keating, C., Pomerantz, J., Pommer, S., Ritt, S., Miller, L., & McCormick, J. (2005). Going to college and unpacking hazing: A functional approach to decrypting initiation practices among undergraduates. *Group Dynamics: Theory, Research, and Practice*, 9(2), 104-126.
- Kendrick, A.C. (2000). Ex parte barran: In search of standard legislation for fraternity hazing liability. *American Journal of Trial Advocacy*, 24, 407-440.
- Kenner v. Kappa Alpha Psi Fraternity* (2002). 808 A.2d 178 (Pa. Super.).
- Kimmel, M. (2008). *Guyland: The Perilous World Where Boys Become Men*. New York: Harper-Collins.
- Knoll v. Board of Regents of the University of Nebraska* (1999). 601 N.W.2d 757 (Neb.).
- Knutson, N.M., Akers, K.S., Ellis, C.K., & Bradley, K.D. (2011). Applying the Rasch Model to explore new college sorority and fraternity members' perceptions of hazing behavior. Retrieved from http://www.uky.edu/~kdbrad2/MWERA_Nikki.pdf
- Krueger v. Fraternity of Phi Gamma Delta* (2001). 13 Mass. L. Rep. 665 (Mass. Super.).
- Kunz, C.L., Schmedemann, D.A., Bateson, A.L., Downs, M.P., & Catterall, S.L. (Eds.). (2004). *The process of legal research* 6th Edition. New York: Aspen Publishers.

- Kuznich, M.J. (2000). In vino mortuus: Fraternal hazing and alcohol-related deaths. *McGeorge Law Review*, 31, 1087-1129.
- Lamond, Grant. (2016). "Precedent and Analogy in Legal Reasoning", The Stanford Encyclopedia of Philosophy (Spring 2016 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2016/entries/legal-reas-prec/>>.
- Landmark American Insurance v. Rider University* (2010). Civil Action No. 08-1250 (FLW) (U.S. Dist.).
- Langford, L. (2008). A comprehensive approach to hazing prevention in higher education settings. Newton, MA: US Department of Education's Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention
- Lapp v. Jackson Township Board of Education* (2006). No. A-5938-04T3 (N.J. Super. Unpub.).
- Larkin, M. (2016, November 25). The Obama administration remade sexual assault enforcement on campus. Could Trump unmake it. Retrieved from <http://www.wbur.org/edify/2016/11/25/title-ix-obama-trump>
- Lee-Olukoya, E. (2010). Sisterhood: Hazing and other membership experiences of women belonging to historically African-American sororities. (Doctoral Dissertation). Retrieved from the ProQuest Dissertations and Theses database. (UMI No. 3485925).
- Leemon, T.A. (1972). The rites of passage in a student culture; A study of the dynamics of transition. New York: Teachers College Press, Columbia, University.
- Lewis, D. (1991). The criminalization of fraternity, non-fraternity and non-collegiate hazing. *Mississippi Law Journal*, 61, 111-153.

Liberty v. California Tau Chapter of Sigma Alpha Epsilon (2013). No. 2:11-cv-02626-ODW(FFMx). (U.S. Dist.).

Liberty v. California Tau Chapter of Sigma Alpha Epsilon (2012). No. 2:11-cv-02626-ODW(FFMx). (U.S. Dist.).

Lloyd v. Alpha Phi Alpha (1999). 96-CV-348 (U.S. Dist.).

Maines v. Cronomer Valley Fire Dept. (1980). 50 N.Y.2d 535 (N.Y.).

Malszecki, G. (2004). "No mercy shown or asked"- Toughness test or torture: Hazing in military combat units and its "collateral damage." In J. Johnson, & M. Holman (Eds.), *Making the team: inside the world of sport initiations and hazing* (pp. 32-49). Toronto: Canadian Scholars Press.

Marcinczyk v. State of New Jersey (2010) A-4340-07T3 (N.J. Super. Unpub.).

Martin v. North Metro Fire Recue District (2007). 102 *Fail Empl Prac. Cas.* (BNA) 696 (U.S. Dist.).

McCarthy v. Omega Psi Phi Fraternity (2011). 954 N.E.2d 834 (Ill. App.).

McCreary, G.R. (2012). *The Impact of moral judgment and moral disengagement on hazing attitudes and bystander behavior in college males.* (Doctoral Dissertation). Retrieved from the ProQuest Dissertation and Theses database. (UMI No. 3540085).

McKenzie v. State of Maryland (2000). 748 A.2d 67 (Md. App.).

McMillan v. Broward County Schools (2003). 834 So. 2d 903 (Fla. App.).

Meeker v. Edmundson (2005). 415 F.3d 317 (4th Cir.).

Mentavlos v. Anderson (2001). 249 F.3d 301 (U.S. App.).

Mentavlos v. Anderson (2000). 85 F. Supp. 2d 609 (U.S. Dist.).

- Missouri v. Allen* (1995). 905 S.W.2d 874
- Monk, J. and Cahill, H. (2015, April 16). Tucker Hipps' parents want two things: The truth and change. Retrieved from <http://www.thestate.com/news/local/crime/article18729777.html>
- Morrison v. Kappa Alpha Psi Fraternity* (1999). 738 So.2d 1105 (La. App. 2 Cir).
- Morton v. State of Florida* (2008). No.1D07-1623.
- Mulvihill, G. (2011, August 24). Cornell Moves to End Hazing After George Desdunes Death. Retrieved from http://www.huffingtonpost.com/2011/08/24/cornellhazing_n_935537.html
- Nesmith v. Grimsley* (1988). 702 F. Supp 122 (U.S. Dist.).
- Ng, C. (2012, May 24). Inside the Bus During Drum Major Robert Champion's Fatal Hazing. Retrieved from http://abcnews.go.com/US/hazing-assault-famu-drum-major-robot-champion-detailed/story?id=16415215#.T8u6_o5uGFK.
- Nisbet v. Bucher* (1997). 949 S.W.2d 111 (Mo. App.).
- Nkemakolam v. St. John's Military School* (2012). 12-cv-2132-JWL-KGG (U.S. Dist.).
- Nuwer, H. (1990). Broken pledges: The deadly rite of hazing. Atlanta: Longstreet Press.
- Nuwer, H. (1999). Wrongs of passage: Fraternities, sororities, hazing and binge drinking. Bloomington, IN: Indiana University Press.
- Nuwer, H. (2004). Introduction: Exterminating the frat rats. In H. Nuwer (Ed) *The hazing reader*. Bloomington, IN: University Press.
- Nuwer, H. (2004). *The hazing reader*. Bloomington, IN: Indiana University Press.
- Nuwer, H. (2013). Unofficial clearinghouse for hazing and related risks in the news. Retrieved June 19, 2013 from <http://www.hazing.hanknuwer.com>.

O'Brien, T. (2017), Limit liability by preventing, addressing hazing among student-athletes. *College Athletics and the Law*, 13: 1–3. doi:10.1002/catl.30291

O'Brien v. Village of Valley Stream (2012). 951 N.Y.S.2d 87 (N.Y. Misc.).

Oja v. Grand Chapter of Theta Chi (1997). 667 N.Y.S.2d 650 (N.Y. Misc.).

Owen, S., Burke, T., & Vichesky, D. (2008). Hazing in student organizations: Prevalence, attitudes and solutions. *Oracle: The Research Journal of the Association of Fraternity Advisors*.3(1), 40-58.

Pawlowski v. Delta Sigma Phi Fraternity (2010). CV030484661 (Conn. Super.).

Pelham v. Board of Regents (2013). 743 S.E.2d 469 (Ga. App.).

Pelletier, A. (2002). Regulation of rites: The effect and enforcement of current anti-hazing statutes. *New England Journal on Crime and Civil Confinement*, 28, 378-414

People v. Lenti (1965). 260 N.Y.S.2d 284 (N.Y. Misc.).

Peoples, S.D. (2011). Tragedy or tradition: The prevalence of hazing in African American fraternities and sororities. (Doctoral Dissertation). Retrieved from the ProQuest Dissertations and Theses database. (UMI No. 3465498).

Perkins v. Alamo Heights Independent Schools (2002). 204 F. Supp. 2d 991 (U.S. Dist.).

Perkins v. Commonwealth of Massachusetts (1998). 95-0953-B (Mass. Super.).

Perkins v. Commonwealth (2001). 752 N.E.2d 761 (Mass. App.).

Permuth, S., & Mawdsley, R.D. (2006). School law and research in the 21st century. In S. Permuth, & R.D. Mawdsley (Eds.), *Research methods for studying legal issues in education* (pp. 1-4). Dayton: Education Law Association.

Peters v. New York (2007). 06 Civ. 7096 (DAB) (U.S. Dist.).

Phelps v. Colby College (1990). No. CV-90-287 (Me. Super.).

Pik v. University of Pennsylvania (2010). No. 08-5164 (U.S. Dist.).

Poway Unified Schools v. Superior Court of San Diego (1998). 73 Cal. Rptr. 2d 777 (Cal. App.).

Psi Upsilon of Philadelphia v. University of Pennsylvania (1991). 591 A.2d 755 (Pa. Super.).

Quinn v. Sigma Rho Chapter (1987). 507 N.E.2d 1193 (Ill. App.).

Red & Black Publishing v. Board of Regents (1993). 427 S.E.2d 257 (Ga.).

Redden v. Alpha Kappa Alpha (2010). 1:09CV705 (U.S. Dist.).

Regents of the University of California v. Superior Court of Los Angeles County (2018). S230568 (Cal. Supreme Court Unpub.).

Reeves v. Besonen (1991). 754 F. Supp. 1135 (E.D. Mich.).

Reitman, J. (2012 April 12). Confessions of an ivy league frat boy. *Rolling Stone*. 44-53.

Rocha v. Faltys (2002). 69 S.W.3d 315 (Tex. App.).

Roe v. Gustine Unified School District (2009). 678 F. Supp. 2d 1008 (U.S. Dist.).

Romero v. Shinseki (2010). No. 08-0579 (U.S. App.).

Rose v. Bostitch (1987). 523 A.2d 1221 (R.I.).

Rosner, S., & Crow, B. (2002). Institutional liability for hazing in interscholastic sports. *Houston Law Review*, 39 (2), 276-300.

Rupp v. Bryant (1982). 417 So. 2d. 658 (Fla.).

Russo, C.J. (2006). Legal research: The ‘traditional’ method. In S. Permuth, & R.D. Mawdsley (Eds.), *Research methods for studying legal issues in education* (pp. 5-24). Dayton: Education Law Association.

Sanches v. Carrollton-Farers Branch School District (2011). 647 F.3d 156 (U.S.App.).

Schnur, S. (2007). Fraternity hazing: A Multi-perspective analysis of a universal phenomenon. (Doctoral Dissertation). Retrieved from ProQuest Dissertation and Theses database. (UMI No 3283339).

Schoen, E.J. & Falchek, J.S. (2000). You haze, I sue: A fraternity stew. *The Journal of Legal Studies Education*, 18, 127-142.

Scolforo, M. (2018, March 28). Judge again tosses most serious charges in Penn State fraternity death. Retrieved from <https://www.usatoday.com/story/news/nation/2018/03/28/judge-tosses-most-serious-charges-penn-state-fraternity-death/466601002/>

Scott, D.G. (1998). Rites of passage in adolescent development: A reappraisal. *Child and Youth Care Forum*, 27(3), 317-335.

Scott v. State of Kansas (1999). No. 80,704 (Kan. App. Unpub.).

Seamons v. Snow (2000). 206 F.3d 1021 (10th Cir.).

Sechrist v. Unified Government of Wyandotte County (1999). No. 98-2219-KHV (U.S. Dist.).

Sharkey v. Board of Regents of University of Nebraska (2000). 615 N.W.2d 889 (Neb.).

Silva v. Merenda (2008). A-1884-067T2 (N.J. Unpub.).

Skinner v. City of Miami Florida (1995). 62 F.3d 344 (U.S. App.).

Skrzypkowski v. Simmons (2013). 1-12-2340 (Ill. App.).

Smith v. Delta Tau Delta (2013). 988 N.E.2d 325 (Ind. App.).

Smith v. Getschow (2000). 616 N.W.2d 526 (Wisc. App.).

Solberg, W. (1998). Harmless Pranks or Brutal Practices? Hazing at the University of Illinois, 1868-1913. *Journal of the Illinois State Historical Society*, 233-259.

Srabstein, J. (2008). Deaths linked to bullying and hazing. *International Journal of Adolescent Medical Health*, 20(2), 235-239.

South Carolina State Statute 59-101-210

State of New York v. Khalil H. (2010). 80 A.D.3d 83 (N.Y. App.).

Sussberg, J. (2003). Shattered dreams: Hazing in college athletics. *Cardozo Law Review*, 24, 1421-1491.

Sweet, S. (1999). Understanding fraternity hazing: Insights from symbolic interactionist theory. *Journal of College Student Development*, 40, 355-364.

Sylve v. Kappa Alpha Psi (2001). 803 So. 2d 960 (La.).

Syrett, N. (2009). *The company he keeps: A history of white college fraternities*. Chapel Hill, NC: University of North Carolina Press.

Texas v. Boyd (2001). 732 N.E.2d 969 (Tex. Crim. App.).

Texas v. Zascavage (2007). 216 S.W.3d 495 (Tex. App.).

The State Ex Rel. Ohio Patrolmen's Benevolent Association v. City of Mentor (2000). 732 N.E.2d 969 (Ohio).

Thomas v. Lamar University and Omega Psi Phi Fraternity Inc. (1992). 830 S.W. 2d 217)

Thomason, A. (2018, January 8). After a pledge's death, fraternity is banned for 10 years in Pennsylvania. Retrieved from <https://www.chronicle.com/article/After-Pledges-Death/242183>

- Title IX Sexual Assault Investigations. (2018). [Graph Illustration April 18, 2018].
Tracking Sexual Assault Investigations. Retrieved from
<https://projects.chronicle.com/titleix/>
- Travis v. Stockstill* (2013). 1:12CV173 HSO-RHW (U.S. Dist.).
- Trota, B., & Johnson, J. (2004). Introduction: A brief history of hazing. In J. Johnson, & M. Holman (Eds.), *Making the team: inside the world of sport initiations and hazing* (pp. x-xvi). Toronto: Canadian Scholars Press.
- Turner, D. (2012 Feb. 1). Georgia lawmakers consider anti-hazing bill. Retrieved from
<http://m.chronicle.augusta.com/news/metro/2012-02-01/ga-lawmakers-consider-anti-hazing-bill>
- United States v. Hill* (2012). 71 M.J. 678 (CCA).
- United States v. Jackson* (1999). 177 F.3d 628 (U.S. App.).
- United States v. Johanson* (2012). 71 M.J. 688 (CCA).
- United States v. Nali* (1991). No. 91 0842 (CMR).
- United States v. Ryan* (2007). NMCCA 200401577 (CCA).
- United States v. Smith* (2008). 544 F.3d 781 (U.S. App.).
- United States v. Zacatelco* (2008). NMCCA 200700588 (CCA).
- Van Berkum, D., Buckner, K., & Lane, K. (2006). Conducting legal research using technological tools. In S. Permuth, & R.D. Mawdsley (Eds.), *Research methods for studying legal issues in education* (pp. 163-184). Dayton: Education Law Association.
- Vaughn v. Pool Offshore Company* (1982). 683 F.2d 922 (U.S. App.).
- Vega v. Sacred Heart University* (2012). 871 F. Supp. 2d 81 (U.S. Dist.).

- Veloz-Gertrudis v. United States* (1991). 768 F. Supp. 38 (US. Dist.).
- Villalba, D. (2007). Matt's Law: Chapter 601 targets the epidemic of hazing in California educational institutions. *McGeorge Law Review*, 38, 95-106.
- Vinicky v. Pristas* (2005). 839 N.E.2d 88 (Ohio Ct. App.).
- Waddill v. Phi Gamma Delta Fraternity* (2003). 114 S.W.3d 136 (Tex. App.).
- Wakulich v. Mraz* (2003). 785 N.E.2d 843 (Ill.).
- Walker v. Phi Beta Sigma Fraternity* (1997). 706 So. 2d 525 (La. App.).
- Wencho v. Lakewood School District* (2008). 895 N.E.2d 193 (Ohio App.).
- White v. Averill Park Central School District* (2003). 759 N.Y.S.2d 641 (N.Y. Misc.).
- Williams v. Lincoln Tower Associates* (1991). 566 N.E.2d 501 (Ill. App.).
- Williams v. Walter* (2008). 530 F.3d 584 (U.S. App.).
- Winerip, M. (2012, April 12). When a Hazing Goes Very Wrong. Retrieved from <http://www.nytimes.com/2012/04/15/education/edlife/a-hazing-at-cornell.html>
- Winslow, D. (2004). Rites of passage and group bonding in the Canadian Airborne. In H. Nuwer (Ed.), *The hazing reader* (pp. 147-170). Bloomington, IN: University Press.
- Wolf v. Webb* (2012). 6:11cv255 (U.S. Dist.).
- Yost v. Wabash College* (2012). 976 N.E.2d 724 (Ind. App.).
- Zaccaro v. Parker* (1996). 645 N.Y.S.2d 985 (N.Y. Misc.).
- Zacharda, C.S. (2009). How peer leadership impacts hazing in the arena of non-revenue generating college athletics. (Doctoral Dissertation). Retrieved from ProQuest Dissertation and Theses database. (UMI No. 3368681).

Zimbardo, P. (2007). *The Lucifer Effect: Understanding How Good People Turn Evil*.
New York: Random House.

VITA

Christopher Keith Ellis

Education

University of Memphis, Bachelor of Arts in Philosophy, 1998-2002

University of Kansas, Master of Science in Education, 2003-2005

Professional Positions Held

Interim Coordinator of Student Union Activities, University of Kansas, 2005

Assistant Director Student Involvement, University of Kentucky, 2005-2008

Assistant Dean of Students, University of Kentucky, 2008-2011

Chair of the Students of Concern Committee, Univ. of Kentucky, 2010-2011

Assoc. Dir. Fraternity & Sorority Life, Univ. of South Carolina, 2011-2012

Director of Residence Life, University of South Carolina, 2013 – Present

Professional Honors

2011 SEIFC Dr. Tom Shoemaker Advisor of the Year Award

2010 Zeta Tau Alpha Award for Innovation in Campus Hazing Prevention

2011 Zumwinkle Student Rights Award Recipient

2012 Lambda Chi Alpha Fraternity Advisor of the Year

2014 Sigma Phi Epsilon Volunteer of the Year, District 8

2014 New Staff Member of the Year Mid to Senior Level

Publications

Are You “Waiting on the World to Change?”; October 2008, Vol. 41, No. 4,
Campus Activities Programming

From Graduate Assistant to Full-Time Professional—Tips to Make Yourself at Home; May 2008, Campus Activities Programming

Collaboration, Experience, Networking and Personal Development: Making the Most out of Your Graduate Assistantship; November 2007, Campus Activities Programming

Alcohol and Fraternity Recruitment: Why the two do not mix; October 2011, Phi Delta Theta National Collegiate Alcohol Awareness Week Blog Series

Applying the Rasch Model to Explore New College Fraternity and Sorority Members’ Perceptions of Hazing; October 2011, Mid-west Educational Research Association