

Protect Your Rights: Hazing Law

Hazing, the Real Problems

The staggering number of serious injuries and deaths of college students has never received proper attention from the public. This is true even following the recent example of violence at Virginia Tech, as far too little attention is given to the large numbers of school and fraternity hazing, sexual assaults and other forms of violence regularly occurring on college campuses across the country.

The statistics are revealing: between 1995 and 2000, college students were victims of more than *half a million* crimes of violence *annually*, including school and fraternity hazing, school and fraternity rape/sexual assault, robbery, aggravated assault, and simple assault. In forty-one percent of these incidents, "the offender was perceived to be under the influence of drugs and/or alcohol." The U.S. Department of Education tracks reported incidents of violent crime, including forcible sex offenses. In 2003, the last year in which the statistics have been compiled, there were 1,808 reported sexual assaults in campus residence halls. Without limiting the statistics to residence halls, the Department of Education documents nearly 4,000 sexual assaults involving college students. These statistics do not reflect the extent of the problem: Non-stranger rape is reported to account for 84 percent of all reported rapes, and professionals estimate that only 5 percent of these types of sexual assault are reported. To be sure, each unique, often preventable, incident involves real pain and sadness, particularly for young people who have left home for the first time only to be terribly victimized. It takes but a minute to review some of the publicly available information about the tragedies at Virginia Tech and Columbine High School to gain some insight into the painful reality of school violence.

For example, at Virginia Tech, lives could have been saved and catastrophic injuries avoided had the University not failed numerous duties to protect students, staff, and the campus community: from a disturbed, violent student whom professors and professional staff knew from prior incidents was an imminent threat to others; and, following the violent murder of two students in a dormitory in the early hours of April 16, 2007, when critical time (seconds, minutes, hours) passed without *any* warning to the campus community, despite knowledge of the police and university administrators that a double-murderer (as yet truly identified) was on the loose (and likely in immediate proximity of unsuspecting students and staff). The University delayed giving any warning to the campus and, then, decided against giving an accurate warning. The "warning," finally issued hours later, mere minutes before the massacre began, and after students/staff had already checked e-mail, left the safety of their dormitories/homes, and unwittingly gone to class in the midst of grave danger, consisted of a watered-down advisory that a "shooting incident" had taken place and was being investigated by police.

The August 2007 Report of the Virginia Tech Review Panel, commissioned by Governor Timothy M. Kaine, states, in part: "No mention was made in the initial message sent to the students and staff of a double murder, just a shooting, which might have implied firing a gun and injuries, possibly accidental, rather than two murdered. . . The University was not put on high alert by the actions of the university administration and was largely taken by surprise by the events that followed. Warning the students, faculty, and staff might have made a difference.

Putting more people on guard could have resulted in quicker recognition of a problem or suspicious activity, quicker reporting to police, and quicker response of police. **Nearly everyone at Virginia Tech is adult and capable of making decisions about potentially dangerous situations to safeguard themselves. So the earlier and clearer the warning, the more chance an individual had of surviving.**" The Report also concluded: "The Virginia Tech police may have erred in prematurely concluding that their initial lead in the double homicide was a good one, or at least in conveying that impression to university officials while continuing their investigation. They did not take sufficient action to deal with what might happen if the initial lead proved erroneous. The police reported to the university emergency Policy Group that the 'person of interest' probably was no longer on campus. **The VTPD erred in not requesting that the Policy Group issue a campus-wide notification that two persons had been killed and that students and staff should be cautious and alert. Senior university administrators, acting as the emergency Policy Group, failed to issue an all-campus notification about the WAJ killings until almost 2 hours had elapsed. University practice may have conflicted with written policies.**" (Emphasis added).

Many of the incidents involving sexual assault are perpetrated by non-strangers, who have exploited the victim's trust, used alcohol or drugs to disorient and disempower, or benefited from a lack of appropriate security or supervision on or around campus. Several relevant publications on these subjects worth reviewing include: Warshaw, R., *I Never Called it Rape* (Harper & Row 1988); Lindquist, S., *The Date Rape Prevention Book, the Essential Guide for Girls & Women*, (Sourcebooks, Inc. 2000); Epstein, J., *Sex, Drugs and Flunking Out, Answers to the Questions Your College Student Doesn't Want You to Ask*, (Hazelden 2001); Wechsler, H. & Wuethrich, D., *Dying to Drink, Confronting Binge Drinking on College Campuses*, (Rodale 2002). Too often, we have been called upon to review incidents and represent victims of sexual assault in fraternities, as these seem to be a central location on college campuses for this particularly heinous crime.

One area of law developing quickly to deal with incidents of sexual assault (and certain other discriminatory misconduct) is under Title IX of the Education Amendments of 1972. Under Title IX, a school may be held liable to a student where its deliberate indifference causes a student to undergo or become more vulnerable to severe and objectively offensive sexual harassment. Schools must have clear harassment grievance procedures that can be accessed promptly by a student, and the university must take responsive action once it receives notice of harassment. Issues relating to sexual assaults and sexual harassment converge when students bring claims before universities or other schools to enforce regulations and protect their right to remain at school free from the danger or harassing presence of their attacker. The manner in which school officials handle and resolve these claims is becoming the focus of claims brought by rape and sexual harassment victims against schools and school officials under Title IX, resulting in significant protections for victims. *See Davis v. Monroe County Board of Education*, 119 S.Ct. 1661 (1999).

I particularly encourage you to review the information gathered and published by Security on Campus ("SOC") (<http://www.securityoncampus.org>). SOC and its dedicated founders and staff are true leaders in the fight to protect students and make schools safer. SOC is helping make widespread legislative changes that will make students safer, it is actively involved

in assisting numerous victims of the tragedy at Virginia Tech, and it is conducting training sessions on safety issues at colleges across the country. Already, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act has made campuses safer. The Clery Act requires colleges and universities to disclose certain timely and annual information about campus crime and security policies. All public and private institutions of post-secondary education participating in federal student aid programs are subject to the Clery Act, which requires that schools publish an annual report each October 1st that contains three years worth of campus crime statistics and certain security policy statements including sexual assault policies, the law enforcement authority of campus police, and where students should go to report crimes. The Act also requires schools to issue timely warnings advising students and staff of risks so that they can take appropriate actions to protect themselves. Additional information is available from Campus Watch (<http://www.soconline.org/>). Other information and statistics on campus crime are available from the U.S. Department of Education and the Department of Justice. For the most comprehensive information about incidents of hazing, you may wish to consult Hank Nuwer's writings and his website, which are identified in the "Resources" tab on this site.

My work has also included representation of victims of the crimes of hazing, including fraternity death. The laws regarding hazing differ from state to states. At least 44 states have anti-hazing statutes. These statutes have also had some measure of success in causing the prosecution of wrongdoers. Nonetheless, most of these statutes only make hazing a low-grade misdemeanor, and many only criminalize conduct which causes severe physical injury (ignoring entirely those hazing activities which are intended to or are likely to cause psychological harm). For an example of these sorts of differences, you may wish to compare the laws of Maryland and Alabama, Md. Ann. Code art. 27, § 268H (1996) and Ala. Code § 16-1-23 (1975), respectively. The following cases and materials are instructive of the range of the legal principles at issue in civil hazing cases: *Oja v. Theta Chi Fraternity, Inc.*, 667 N.Y.S.2d 650 (S. Ct. Tompkins County 1998); *Haben v. Anderson*, 597 N.E.2d 655 (Ill. App. CT 1992); *Jones v. Kappa Alpha Order, Inc.*, 730 So.2d 203 (Ala. 1998); Doty, D. Enough is Enough: The Legal Responsibility of Public Schools and Universities to Prohibit Hazing 134 Ed.Law Rep. 423 (July 8, 1999). Recently, a jury in Kentucky (*Blackstone v. Omega Psi Phi Fraternity, Inc.*) awarded a student approximately \$930,000 for his compensatory and punitive damages against Omega Psi Phi in a case which involved severe, life-threatening physical injuries.

Take Control

If you have been a victim of school or fraternity hazing, or other school or fraternity violence, I hope you will have the courage to report this to the appropriate authorities, seek help and, ultimately, empower yourself by understanding your rights and options. I hope the information contained in this site will contribute to your efforts. Taking control over the resolution of a painful circumstance, often regardless of when, how or how much, can be a very important step. Feel free to contact me directly if you have any questions or concerns about this site or any other matter. You can email me at dfierberg@bode.com.