SPECIAL SECTION: RESEARCH REPORT

COLLABORATION BETWEEN FRATERNAL ORGANIZATIONS AND COLLEGES AND UNIVERSITIES IN ADDRESSING STUDENT CONDUCT ISSUES

A White Paper Prepared for the Fraternity Executives Association

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In fall 2011, Kim Novak, a risk management consultant and Larry Wiese, then president of the Fraternity Executives Association (FEA) and Executive Director of Kappa Alpha Order approached the author about writing a White Paper that examined collaboration between staff from inter/national fraternity headquarters, chapter alumni leadership and administrators at colleges and universities in addressing student conduct by members of a chapter. The White Paper was presented at the FEA annual meeting in July 2012. The content of this article remains largely unchanged from the original White Paper and is published with permission from FEA.

Not a month goes by without a headline of inappropriate behavior by members of an undergraduate chapter. Some headlines from August/September 2011 include: "UT Fraternity Accused of Live Sex Shows, Hazing" (Kreytak, 2011), "University of South Carolina Suspends Fraternity Rush" (Hoover, 2011), "Princeton to Ban Freshman Affiliation with Fraternities, Sororities as of fall 2012" (Staff, 2011), and "After Student's Death, Cornell Moves to End Hazing" (Associated Press, 2011). As stated in an August 26, 2011 article in *The Chronicle of Higher Education*, colleges and universities have,

> a perpetual but perhaps futile goal: to preserve the best and prevent the worst of the Greek system. Of course, fraternities aspire to ideals of leadership and service, and often achieve them. But then, too often, initiates get hurt – or die (Lipka, 2011, para. 2).

Colleges and universities face greater expectations from parents and the public for the safety and security of students than ever before. The public perception is that college and university campuses have become violent and dangerous places. According to Sloan and Fischer (2010), because colleges and universities do not adequately address campus safety and security, they have failed in their duty to protect students from dangerous conditions. Fraternity houses create special difficulties for colleges and universities and inter/national fraternity headquarters. Often these houses are owned or leased by a local housing corporation and may be off campus.

Both colleges and universities and inter/national fraternity headquarters have limited authority and ability to change the behavior of a chapter that does not want to change. Kappa Alpha Order headquarters discovered how difficult it can be when a local fraternity chapter refused to accept the suspension of its charter from the inter/national headquarters

and formed a local fraternity in the same house (Kreytak, 2011). Colleges and universities experience similar frustrations when a chapter's recognition is suspended by the college or university and the chapter continues to operate in the community with the support of inter/national headquarters.

Situations like these create greater tension between inter/national fraternity headquarters and colleges and universities; however, colleges and universities are not without blame. It would not be uncommon for a college or university senior administrator to voice his or her strong displeasure with behavior by fraternity members, especially when an injury or death is involved. Lower level administrators will be pressed to find a way through existing conduct processes to meet the senior administrator's expectations. College or university administrators will feel it necessary to make a public statement condemning the acts and indicate that strong action will be taken against those responsible.

Trust can be difficult when the stakes are high. When there is a serious injury or a death a fraternity, it is very difficult for colleges and universities and inter/national fraternity headquarters to trust each other. In the opinion of the author, legal counsels for colleges and universities and inter/national fraternity headquarters too quickly insert themselves in the situation. The role of legal counsel is to protect the entity they represent. It is natural that legal counsels for colleges and universities do not want staff sharing information with inter/national fraternity headquarters that might somehow harm the college or university in a lawsuit. Legal counsels for inter/national fraternity headquarters similarly advise their clients.

The role of the alumni chapter advisor and housing corporation cannot be overlooked. It has been the author's experience that chapter advisors who are dedicated to the ideals and values of the fraternity and understand the place of fraternities and sororities in the education of young adults are interested in collaborating with colleges and universities. In turn, these institutions are interested and willing to collaborate with and support the chapter advisors. On the other hand, some chapter advisors are absent, meaning they rarely visit the chapter and advise the chapter leadership, or are not interested in working with the college or university and, perhaps, not the inter/national headquarters.

Fundamental to collaboration is effective and timely communication as well as trust between the parties. Ideally, there are regular communications between colleges and universities and inter/national fraternity headquarters. However, it seems communication between colleges and universities and inter/national fraternity headquarters often occurs only when there is a problem. It is difficult to build trusting relationships when the first time these entities communicate is when there is a serious incident involving a fraternity. The result is frustration between the entities and a perception that neither entity is truly interested in working with each other to address conduct issues with a fraternity.

In exploring the tensions between colleges and universities and inter/national fraternity headquarters the author examines the need for collaboration and the difficulty in achieving it. The philosophy regarding student conduct at colleges and universities and key legal issues and court decisions are explored. The author shares findings from dialogue with student conduct officers, fraternity/sorority advisors, senior student affairs officers, higher education legal and risk management specialists, and inter/national headquarters staff. The paper concludes with recommended procedures for collaboration between college and university administrators and inter/national fraternity headquarters staff in addressing inappropriate behavior by undergraduate chapter members.

History of Student Conduct

Much has changed since the founding of the colonial college. The first colleges in America (Harvard, Yale, The College of William and Mary, Princeton, etc.) were established to provide training of affluent young (as young as 12 years old) males for the clergy. Live-in tutors tightly controlled student behavior acting in place of the parent with the president having final say on a course of action (Brubacher & Rudy, 1976). During the Colonial period, the first Greek letter student organization at a college in America, Phi Beta Kappa, was founded at the College of William and Mary (Binder, 2003, p. 32).

The Changing Student Era

The Morrill Act of 1862 opened a college education to the masses with the founding of land grant colleges to provide a more career-oriented education in agriculture and mechanics (engineering). The second Morrill Act of 1890 established historically Black colleges and universities, mostly across the south. The Servicemen's Readjustment Act of 1944 (GI Bill) brought an older student to campus, one that expected to be treated as an adult.

The counter culture movement of the 1960s changed how students at colleges and universities were viewed and treated. The youth of that era challenged traditional authority and materialism while advocating civil rights and women's rights, and an end to America's involvement in Vietnam. Students protested these issues on college campuses across the country and in the community. Colleges and universities took disciplinary action, sometimes harsh action, against students participating in protests. In response, students challenged the college's actions in court. In many cases, the courts found in favor of the students and established reasonable due process considerations in student conduct cases. The days of a college or university administrator summarily deciding the fate of students without providing due process were gone. No longer could administrators make decisions and claim they were acting in place of the parent, in loco parentis.

The Bystander Era

Bickel and Lake (1999) characterize the period of the 1970s and 1980s as the Bystander era in higher education. Students were no longer considered under the control of their parents, but were not yet mature adults. Based on court decisions at that time, colleges and universities adopted a "hands off' approach to dealing with student organizations. With this approach, colleges and universities operated in the role of bystanders with no legal duty to protect students. Four court cases – *Bradshaw v. Rawlings* (1979), *Baldwin v. Zoradi* (1981), *Beach v. University of Utah* (1986), and *Rabel v. Illinois Wesleyan University* (1987) - represent the no-duty philosophy of the courts during this era.

In *Bradshaw v. Rawlings* (1979), a student was seriously injured while riding as a passenger in a vehicle driven by an intoxicated fellow student. The students had been at a sophomore class event at an off campus park. Fliers for the event were copied on college duplicating equipment and posted around campus. The class president, although underage, purchased at least six kegs of beer from a local distributor for the event. The Third Circuit in announcing its findings stated,

> Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students. By constitutional amendment, written and unwritten law, and through the evolution of new customs,

> rights formerly possessed by college administrations have been transferred to students.

Injuries suffered in a car wreck during a speeding contest involving underage drinking were the impetus for *Baldwin v. Zoradi* (1981). Baldwin asserted the university failed to enforce its own rules prohibiting the consumption of alcohol in university residence halls; thereby creating an unsafe condition. In other words, the university had a duty to prevent students from harming themselves by consuming alcohol in the residence halls then getting in cars to drive under the influence of alcohol. The appellate court found that "there was a lack of close connection between the failure of the trustees and dormitory advisors to control on-campus drinking and the speed contest."

In *Beach v. University of Utah* (1986), a student wandered off from the group on a required field trip, fell off a cliff and was rendered quadriplegic. The student had been drinking alcohol along with other students and the faculty advisor on the trip immediately prior to falling off the cliff. Citing the *Bradshaw v. Rawlings* (1979) and the *Baldwin v. Zoradi* (1981) court decisions, the *Beach* court stated, "Not only are students such as Beach adults, but law and society have increasingly come to recognize their status as such in the past decade or two. Nowhere is this than in the relations between students and institutions of higher education." Thus, the University did not have a duty of care for the student.

As part of a fraternity "tradition," a fraternity member abducted a female student from a residence hall lobby, placed her over his shoulders, and began to run through a gauntlet of fraternity brothers. While running the student fell resulting in a crushed skull for the female he was carrying. The female student was left with permanent brain injuries. The fraternity member had consumed alcohol at a fraternity party immediately prior to entering the residence hall and grabbing the female student. The injured student filed suit against the fraternity member, the fraternity, and the university. The fraternity member and the fraternity settled out of court. The court determined that "there was no duty owed to the plaintiff by the university and no issue as to the negligence of the university" (*Rabel v. Illinois Wesleyan University*, 1987).

The Duty Era

Since the mid 1980s the courts have steadily eroded the legal concept of no duty to care for the student and replaced it with a "shared responsibility and a balancing of university authority and student freedom (Bickel & Lake, 1999, p. 105). Expanded liability for colleges and universities has been defined in court decisions when dangerous conditions exist, when dangerous practices are common, and when dangerous activities occur without attempts to minimize risk.

The Delaware Supreme Court decision in *Furek v. Delaware* (1991) illustrated the new era of shared responsibility. Furek was a fraternity pledge at the University of Delaware. During a "hell night" activity, a fraternity member poured oven cleaner over Furek, which resulted in chemical burns and permanent scarring. In its review of lower court decisions, the Delaware Supreme Court stated,

> While we acknowledge the apparent weight of decisional authority that there is no duty on the part of a college or university to control its students based merely on the university-student relationship, where there is direct university involvement in, and knowledge of, certain dangerous practices of its students, the university cannot abandon its residual duty of control (*Furek v. Delaware*, 1991, @ 520).

The lesson for higher education in *Furek* was that universities should take all reasonable steps to prevent an incident from occurring; but students also have some responsibility for their behavior.

However, the court in *Furek v. Delaware* (1999) determined that the national fraternity was not responsible for the actions of a fraternity member in part because the national fraternity did not have control over the day-to-day activities of a local chapter. Courts took similar positions in *Walker v. Phi Beta Sigma Fraternity* (1997) and *Jones v. Kappa Alpha Order* (1997). In contrast, the court in *Ballou v. Sigma Nu* (1986) determined that the national fraternity did have a duty to care for pledges participating in an initiation ceremony. In reaching its decision the court noted that Ballou was required to participate in initiation activities to become a member of Sigma Nu; that the active chapter members created a hazardous situation by forcing Ballou to consume large amounts of alcohol in a short period of time; that the active chapter members failed to recognize Ballou's condition and seek medical treatment; and that the active chapter members were operating within the scope of authority granted to them by the national fraternity.

Another case in which the court determined the university had a duty to protect the student is *Knoll v. Board of Regents of the University of Nebraska* (1999). Knoll, a fraternity pledge, was "kidnapped" by fraternity brothers from a university building, taken to the fraternity house, forced to consume large amounts of alcohol, and handcuffed to a pipe in a house bathroom. Knoll broke free and fell three stories attempting to escape from the fraternity house. He suffered serious injuries from the fall. The Nebraska Supreme Court determined, "… 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."

The 1980s and 1990s were also marked by a change in the relationship between students, parents and the university. An age of consumerism developed as institutions increased tuition and fees charged students to make up for declining financial support from state and federal governments. Parents had ever-increasing expectations for institutions of higher education in part based on the feeling they could demand what they were paying for. Parents said that they expected the university to provide for the safety of their son/daughter and take whatever means necessary to prevent harm. The nature of consumerism implied a contract between the student and the university. While contractual relationships had been used by the courts to describe the relationship between private institutions and students, this was a new adaptation to public universities (Frank, Janosik & Paterson, in press).

A tragic rape and murder of a student in her residence hall room at Lehigh University in 1986 forever changed how colleges view their responsibility to care for its students. The killer entered the residence hall and gained access to the student's room through three propped-open doors. The parents of the student, Howard and Jeanne Clery stated,

We learned from the outcome of our lawsuit against Lehigh that campus administrators have a duty to protect their students from crime. In addition, we became convinced that such litigation may be the single most effective way to pressure academic officialdom to: 1) recognize campus violence as the threat that it has become; and, 2) do something about it (Clery & Clery, 2011).

The Clery's went on to found Security On Campus, "a not-for-profit organization dedicated to the prevention of criminal violence at colleges and to assisting campus victim nationwide" (Clery & Clery, 2011). Security On Campus is most known for working with Congress to pass the Crime Awareness and Campus Security Act of 1990, which required

colleges and universities to report crime statistics. Security on Campus continues to push for legislation to address violence at colleges and universities.

Post Virginia Tech Era

Ferraro and McHugh (2010) noted, "the ideal university is an institution of social harmony built on charitable foundations that works to enhance the intellectual abilities and professional capabilities of all members of a collaborative community" (p. 1). On April 16, 2007 that belief was shattered as a single student attacker killed 32 members of the Virginia Tech community, including 27 students. This tragedy resulted in federal and state mandates that place even greater responsibility on the university to protect its students from harm.

The Higher Education Opportunity Act of 2008 amended annual security reporting requirements of the Clery Act that requires institutions to:

- Report their policies regarding emergency response and evacuation procedures;
- Immediately notify campus community upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health and safety of students or staff, unless the notification at that time will compromise efforts to contain the emergency;
- Publicize emergency response and evacuation procedures on an annual basis to students and staff; and
- Test emergency response and evacuation procedures annually.

Some states approved laws that established additional campus safety requirements. For example, the Illinois Legislature approved the Campus Security Enhancement Act of 2008. This Act requires universities to develop and implement an all hazards campus emergency plan that coordinates response to a crisis with local, state and federal emergency response agencies. A campus violence prevention plan and a campus threat assessment team are also requirements of the Act.

Clearly, there is an expectation from parents and society that universities should and can prevent violent acts on their campuses and thus insure the safety of its students. In their book, T*he Dark Side of the Ivory Tower: Campus Crime as a Social Problem*, John Sloan and Bonnie Fischer (2010), posit that messages spread by mass media have led to public acceptance of campus crime as a social problem and a norm on university campuses. They suggest that the public believes universities are more violent and dangerous places today. The public perceives a "party culture" on campuses that encourages alcohol abuse and leads to student deaths. By permitting this "party culture" to exist, the public believes that universities have failed in their legal duty to protect students from criminal victimization.

New pressures, regulatory and media, have been applied to universities to act swiftly in notifying the campus of emergencies and to be aggressive in protecting the safety of students, faculty, staff and visitors. With the prevalence of cell phone and other electronic devices today, word of an incident often spreads before emergency responders have had a chance to investigate the incident. These informal communications shape public perception often making it difficult to address incidents in a logical step by step approach.

Philosophy of Student Conduct

The underpinnings of universities' approach to student conduct can be found in student affairs' foundation document, *The Student Personnel Point of View* (American Council on Education, 1937). Among other emphases, *The Student Personnel Point of View* strongly advocated

for the importance of educating the whole student and student affairs role in providing this education. This emphasis remains true today as student affairs administrators who "advocate for the common good and champion the rights of the individual; encourage intelligent risk taking and set limits on behavior; encourage independent thought and teach interdependent behavior" (National Association of Student Personnel Administrators, 1987, p. 19).

Perhaps the philosophical foundation for student conduct can best be described by the mission of the Association for Student Judicial Affairs (ASJA), the first professional association dedicated solely to student conduct officers and those working in related areas of higher education and the law:

> The mission of this Association shall be to facilitate the integration of student development concepts with principles of judicial practice in a post-secondary educational setting . . . (ASJA, 1987, p. I).

Student conduct administrators understand that interpersonal and intrapersonal changes occur during the time a student is enrolled in college and there are many factors that influence a student's intellectual and ethical development during this time (Evans, Forney, & Guido-DiBrito, 1998). Thus, the purpose of the student conduct process is to help the student gain a greater self-understanding and accept responsibility for their actions (Waryold & Lancaster, 2008).

A recent movement in student conduct is the application of social justice principles in the conduct process. Jennifer Meyer Schrage and Nancy Geist Giacomini in their book Reframing *Campus Conflict: Student Conduct Practice through a Social Justice Lens* (2009), suggest a spectrum of resolution options to conduct issues on university campuses. The spectrum ranges from informal to formal options. At the informal end of the spectrum are the options of no conflict management followed by dialogue/debate/discussion, and conflict coaching. These options require little to no structure or administrative involvement. The involved parties control the process and outcome. Moving along the spectrum, facilitated dialogue, mediation, restorative practices, and shuttle diplomacy are structure options where the parties control the outcome and administrators are involved as third-party facilitators. At the formal end of the spectrum are adjudication (informal) and adjudication (formal hearing). In adjudication the outcome is controlled by administrators or a hearing panel through a defined process. This spectrum suggests that student conduct officers at universities have several tools to address inappropriate behavior by students and that a formal hearing is not always necessary or the best method.

Freedom of Association

Do fraternities have a legal right to exist on university campuses? The answer to the question can be found in a strange association between fraternities and radical groups of the 1960s. With the turbulent activities on campuses in the 1960s as a background, Central Connecticut State University sought to deny the recognition of the Students for a Democratic Society (SDS) as a student organization on its campus. SDS chapters on other campuses were widely involved in civil disobedience, which sometimes led to vandalism and seizure of buildings. The U.S. Supreme Court in *Healy v. James* (1972) stated that "the College, acting here as the instrumentality of the state, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent" (at 187-188). The Court distinguished the importance in protecting the advocacy of ideas, but not lawless actions (Burke, 2003, p. 253).

Freedom of association is not a one-size fits all right. Rather, there are three primary distinctions of freedom of association under

the First Amendment. The right to intimate association is best characterized by a family. This type of association is recognized as the strongest freedom of association. Recognizing the strength of family bonds, government attempts to avoid actions that would interfere with family bonds. Expressive association is the second strongest freedom of association. The right to form groups around common ideas and to express those beliefs characterizes expressive association. These groups range from religious organizations to Mothers Against Drunk Driving to Occupy Wall Street. Social association is considered the weakest of these forms of protected speech. Social organizations are generally thought of as groups that form for no real purpose than having fun (Lukianoff, 2011).

The Higher Education Amendments of 1998, as adopted by Congress, set out to address private colleges' ability to restrict fraternities from existing on their campuses. The "Sense of Congress" sought to require private colleges to recognize and respect the constitutional rights of their students. It was commonly believed that the Congressional action was intended to protect fraternities and their members (Burke, 2003, p. 269).

In his commentary in the *Huffington Post,* Lukianoff (2011) suggests that fraternities might well not have association rights because they are viewed as social organizations. He cites the court decision in C*hi Iota Colony of Alpha Epsilon Pi Fraternity v. City University of New York* (2007) in which the U.S. Court of Appeals, Second Circuit, characterized the fraternity as a social organization with limited associational rights and allowed the university to deny recognition to the fraternity. Lukianoff also cites at Third Circuit Court decision in which the court found that the fraternity did not have an expressive association claim (*Pi Lambda Phi Fraternity Inc. v. University of Pittsburgh*, 2000). In its decision, the Court stated, "While the intentional organization of Pi Lambda Phi has admirable history that includes being the country's first non-sectarian fraternity, there is no substantial evidence in the record that the University chapter of Pi Lambda has done anything to actively pursue the ideals underlying this stance."

In 2010, the U.S. Supreme Court considered the right of universities to require organizations requesting recognition by the university to "allow any student to participate, become a member, or seek leadership positions in the organization, regardless of [her] status or beliefs" (as cited in Pavela, July 9, 2010). The court case, *Christian Legal Society v. Martinez* (2010), followed a series of lawsuits that questioned common practices at universities to require recognized student organizations to abide by institutional non-discrimination policies. The Supreme Court concluded that the so-called all-comers policy at Hastings College of Law was "a reasonable viewpoint –neutral condition on access to the student-organization forum." The Court further noted that "substantial alternatives for expression" exist even without registered student organization status.

Citing *Christian Legal Society v. Martinez* (2010), the Ninth Circuit Court in Alpha Delta v. Reed (2011) ruled that San Diego State University could refuse recognition to a Christian fraternity and sorority who asked that members share the group's faith (Creely, 2011). The court noted that it could not find a "material distinction between San Diego State's student organization program and the student organization program in C*hristian Legal Society*" (as cited in Creely, 2011).

Due Process

In very simple terms, due process means what procedures (process) are students entitled (due) when alleged to have committed a violation of the institution's student conduct code. Due process has two parts – procedural due process (fair procedure) and substantive

due process (fair outcome) (Pavela, January 29, 2010). While the US Supreme Court has never issued a decision that due process is a requirement of colleges, lower court decisions commonly have been believed to establish reasonable due process standards for colleges.

The Fifth Circuit decision in *Dixon v. Alabama State Board of Education* (1961) is the case that first defined expectations for due process in college student conduct cases. The court established that a student was entitled to a notice of the charges and an opportunity to be heard. More specifically, the court stated, "The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion."The court is careful to not suggest that a "full-dress judicial hearing" is necessary for conduct proceedings. However, the court defined the elements it believed were appropriate for a conduct proceeding to include providing the accused student with the names of witnesses against him[or her], a report of the facts, and an opportunity to present a defense to an administrator or board.

In *Esteban v. Central Missouri State College* (1969), the Eighth Circuit Court of Appeals upheld a college's authority to promulgate rules, expect students to follow those rules, appropriately discipline students, and protect the college and its property. In terms of procedural due process, the court determined that a college should provide:

> adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures; that school regulations are not to be measured by the standards which prevail for the criminal law and for criminal procedure; and that the courts should interfere only where there is a clear case of constitutional infringement (at 1090).

The courts have held that due process in educational settings is not a rigidly defined process (*Goss v. Lopez*, 1975 and *Gorman v. University of Rhode Island*, 1988). The courts recognize that institutions are structured differently and that a simple noise violation committed by a student is differently from an assault with injury. Specifically, the First Circuit Court in *Gorman* stated, "Due process, which may be said to mean fair procedure, is not a fixed or rigid concept, but, rather, is a flexible standard which varies depending upon the nature of the interest affected, and the circumstances of the deprivation" (at 13). Thus, the nature and amount of due process afforded a student is dependent upon the potential for a more severe sanction.

The introduction of attorneys in the student conduct process is often a point of contention between a student's attorney and the college. Attorneys often are not familiar with student conduct procedures and attempt to impose criminal trial procedures into the student conduct process. In *Gabrilowitz v. Newman* (1978), the First Circuit ruled that students have the right to have an attorney at student conduct proceedings to serve as an advisor, but not actively participate in the proceeding by presenting a defense for the student or cross-examining witnesses (Carletta, 1998, p. 44). Having an attorney advise a student in a conduct proceeding is most appropriate when the student faces criminal charges resulting from the same incident.

Due Process at Private Institutions

In discussing the distinction between public institutions and private institutions under the law, Peter Lake (2011), a professor at Stetson College of Law, stated, "Actually the public/private is a complex and related set of distinctions and, in many ways, they are lawyers' distinction" (p. 76). That said, the basic legal

principle is that public institutions are subject to the authority of the government that created them, most often the state, whereas private institutions are protected from governmental control. In student conduct cases, courts have applied contract theory to support the need for due process. In *Carr v. St. John's University* (1962), the court stated, "… there is an implied contract between the student and the university …The university cannot take the student's money, allow him to remain and waste his time in whole or in part … and then arbitrarily expel him" (at 633). Similarly, the New York Supreme Court ruled in *Kwiatowski v. Ithaca College* (1975) that an institution's conduct charges against a student "…must be predicated on procedures which are fair and reasonable and which lend themselves to reliable determination" (at 45). As a matter of practice, private institutions provide due process rights to students in conduct proceedings that mirror those found at public institutions.

Student Conduct Processes

A *21st Century Model Student Conduct Code* developed by Stoner and Lowery (2004), is commonly held as the model that institutions should follow in developing or revising their codes of student conduct and student conduct procedures. The code is based on "generally prevailing law and practice" (p. 16). Stoner and Lowery emphasize that student conduct proceedings are not criminal proceedings and institutions should avoid using any language in the code that suggest otherwise. The model code is not intended to be adopted by institutions without revision. In drafting the model code, Stoner and Lowery recognized that institutional culture and practice impact the student conduct practice on that campus. Instead, the model code serves as a "checklist" when revising a campus code of conduct and in training hearing boards and hearing officers. They remind us that "the institution will want to remember the basic student affairs precept that it is important to treat all students with equal care, concern, honor, fairness, and dignity" (p. 15).

Thomas R. Baker (2005) discusses complaint resolution models commonly used by colleges and universities to address student conduct issues in *Judicial Complaint Resolution Models for Higher Education: An Administrator's Reference Guide*. As Baker states, resolving student conduct complaints involves three simple concepts:

1. Determining what happened
2. Determining whether one or more institutional rules were violated
3. Determining whether disciplinary sanctions should be imposed.

However, the task of making the determinations identified in these concepts become complex as colleges and universities insert their culture of decentralization and separation of duties into resolving student conduct complaints. The complaint resolution process may be assigned to one institutional representative, an institutional committee or board, or involve a series of individuals and boards. Depending upon the size and complexity of the college or university, it is common to employ division of labor to varying extents. For example, one person may conduct an initial investigation of the incident to determine the facts. This information would be shared with the student conduct office, which would assign a staff member to determine if there is sufficient information to initiate charges against a student for violations of the code of student conduct and, perhaps, initially attempt to resolve the charges informally. If the charges cannot be resolved informally, the case may be sent to hearing panel to determine if a violation occurred and appropriate sanctions if a violation was found. Another staff member, usually at a higher administrative level (Dean of Students or Vice President for Student Affairs), may hear the appeal, if the student chooses to file one or a board might hear the appeal.

At small colleges, one person may conduct the investigation; determine if there is sufficient information to issue charges; conduct both informal and formal hearing processes; and determine if a violation occurred and appropriate sanction if a violation was found. Another person or a board would hear an appeal. Baker describes eight models for resolving student conduct complaints that provide various degrees of formality. Colleges and universities to fit institutional culture and practice may adapt the models.

Stoner and Lowery's (2004) model code of conduct and Baker's (2005) judicial (conduct) complaint resolution models are intended for use for both individuals and student organizations. In student organization cases, the organization president serves as its representative. Typically, there is some type of investigation prior to addressing the concerns through an informal or formal process. Sanctions taken against student organizations may be similar to those issued individual students (censure, probation, suspension, expulsion) but have different implications. When a student organization is suspended, the student organization loses its recognition from the college or university and cannot operate as a student organization on campus or represent itself as an organization affiliated with the college or university. However, colleges and universities lack the authority to prevent members from affiliating with each other or organizing as a group not affiliated with the college or university. The conditions of an expulsion are similar except that under an expulsion the organization will not be permitted to affiliate with the college or university at any time in the future. With a suspension, the organization may request to regain its affiliated status with the college or university sometime in the future. Educational sanctions may also be imposed.

Baker's (2005) judicial (conduct) complaint resolution models use an informal review for the appeal. An informal review means a college or university would review the information from the original hearing and make a determination on whether or not to uphold that decision, modify the sanction(s), or find insufficient evidence to support a finding of a violation. Many conduct resolution processes have a formal appeal that is heard by a board. However, even these formal appeals have limitations. Formal appeals are not de novo hearings, but are reviews to assure the process utilized to reach the original finding or decision was fundamentally fair.

A recent Office of Civil Rights (OCR) "Dear Colleague Letter" questions university practices for addressing sexual violence and prescribes expectations for universities to address sexual harassment, including sexual violence, under Title IX. Among the expectations, "If a school [university] knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects" (Ali, 2011, p. 4). OCR further indicates that universities must address sexual harassment complaints regardless if the conduct occurred on or off campus. Universities must conduct impartial investigations of allegations of sexual harassment and should not wait for the conclusion of police investigations or criminal investigations before proceeding with their own investigation. Universities must provide appropriate due process considerations in a conduct process to both the alleged perpetrator and alleged victim. Thus, individuals and student organizations may be subject to procedures including investigations and immediate action by the college or university to stop the harassment, prevent it from reoccurring, and address its impact on individuals and the campus.

The Association of Title IX Administrators has developed a model grievance process to comply with the Office of Civil Rights expectations for addressing sexual harassment. The basic components of the model are:

- Notice of alleged sexual misconduct received by university
- Initial remedial action, if necessary
    - Duty to Warn under Clery Act
    - Interim suspension
- Preliminary investigation
    - No reasonable cause of violation of sexual violence policy (Title IX) or conduct code, then investigation ends.
    - If reasonable cause of sexual violence policy (Title IX) or conduct code, the process continues.
- Formal Investigation
- Investigation Findings (preponderance of evidence)
    - No further action if evidence not support potential violations
    - Notice of Charges if evidence supports potential violations
- Hearing(s) (preponderance of evidence)
    - No violation/Violation of sexual violence policy
    - No violation/Violation of conduct code
- Sanction(s), if violation
- Appeal

(Association of Title IX Administrators, 2012)

As previously mentioned, the concept of social justice has made its way into student conduct processes. One component of social justice that is incorporated in many college and university conduct processes is the principle of restorative justice. Instead of violations of the code of student conduct being viewed as actions against the college or university, they are viewed as violations of people, relationships, and the community. According to Zehr (2002),

> Restorative justice considers that these violations create obligations, the greatest of which is to identify and repair the harm. This is accomplished, to whatever extent possible, by holding offenders directly responsible to those harmed, rather than or in addition to the state [institution]. This is usually done in face-to-face encounters.

The community is a very important component of restorative justice. The restorative justice process seeks to create change in the community and prevent similar actions from recurring while addressing the needs of victims and holding offenders accountable.

Perspectives on Student Conduct Processes

To garner perspectives on the relationship between colleges and universities and inter/national fraternity headquarters and on their involvement in student conduct processes, the author created four groups of "experts" that were asked questions about their perceptions. The four groups included (1) senior student affairs officers, (2) legal and risk management specialists, (3) fraternity and sorority life staffs and student conduct officers, and (4) fraternity executives. The number of members in each group was purposely small to encourage dialogue and manage the responses. Similar questions were asked of each group and group members were encouraged to comment on the responses from other members of the group. The questions were submitted to members of the groups through email and respondents were asked to respond to all to stimulate a discussion between group participants on each question. The responses provided some interesting perspectives and showed difference of views based upon their roles. The respondents participated with the understanding that they would not be personally identified in this White Paper. Formal research methods were not employed in determining group membership, gathering the information or analyzing the responses. The information presented is simply

a representation of comments from those invited to participate in the dialogue.

The members of the senior student affairs officers group included five vice presidents for student affairs who are recognized as leaders in their profession. Three of the vice presidents are at public universities and two of the vice presidents are at private colleges They were hand-selected by the author because of their knowledge and experience in student affairs and in working with fraternities and sororities on their campuses.

The legal and risk management specialists group included attorneys, higher education faculty, college general counsel, and risk management specialists. The two higher education faculty members have a national reputation on higher education legal issues, publish in this area, and are frequent presenters on legal issues. The two risk management consultants are nationally known for their work with colleges and universities. The author chose these individuals for their knowledge of risk management and higher education law.

The student conduct officers/fraternity and sorority life group included student conduct officers and professional staff employed at colleges and universities with responsibility for Fraternity and Sorority Life. The members of this group were recommended by valued colleagues who serve as student conduct officers and are active in the Association for Student Conduct Administrators as well as valued colleagues who serve as Directors of Fraternity and Sorority Life and are active in the Association of Fraternity Advisors. Three of the persons in this category serve as student conduct officers at their universities. Two of the members of the group serve as directors of fraternity and sorority life on their campuses. Three of the members are employed at private universities and two members at public universities.

The members of the fraternity headquarters group were recommended to the author. There were five members of the fraternity headquarters group. Group members included two fraternity executive directors and three fraternity headquarters staff members. Unfortunately, the timing of the informal study was not convenient for fraternity headquarters staff. Thus, the responses from this group were limited.

Questions Posed and Responses

Effective collaboration

Members of the fraternity headquarters group, the senior student affairs officers group, and the student conduct/fraternity and sorority life advisor group were asked to describe briefly a situation where the college/university worked collaboratively with the chapter, local fraternity alumni (house corporation), and fraternity headquarters staff to address the conduct violations and reach a positive result.

While the situations described were based upon the individuals' experiences, there were common themes. Respondents from all groups repeatedly mentioned timely notification of the incident. Although notification typically involves the college/university notifying fraternity headquarters, one respondent indicated that the university learned of an incident from a fraternity headquarters weeks after fraternity headquarters was aware of the situation. By contrast, one student conduct officer shared a situation where, "Within 72 hours, HQ was on campus and concurrently running an investigation for organizational/membership purposes." Another student conduct officer commented, "Almost immediately upon learning of the incident, the national headquarters was notified by our student activities staff. . . Reps from the national office visited campus and conducted their own independent investigation."

A second theme was communication. Respondents emphasized the importance of communications between involved parties throughout the conduct process. One senior

student affairs officer wrote, "The national and alumni were accessible and very communicative with us as we investigated and they investigated and we each came to our conclusions." Another senior student affairs officer wrote, "Our goal was that the national fraternity and the university would be on the same page regarding the findings, the seriousness of the violations, and the appropriate disciplinary action. The national permitted us to conduct the investigation and then we shared everything with them." A fraternity headquarters staff member commented, "The host institution provided great insight as to larger issues currently plaguing the chapter and how they connected to the violations that took place."

The third theme was collaboration. A fraternity headquarters staff member stated, "The University spoke to Chapter officers/members, local advisors, and fraternity headquarters staff in determining the facts surrounding the incident and what course of action would best serve to educate the chapter, give them consequences and show that the University was taking the situation seriously since there was so much media attention surrounding the incident." A fraternity and sorority life staff member commented, "As per our protocol, we invited the national fraternity to assign a staff member to work with our Student Affairs investigation team. . . . Following the conduct proceedings . . . they [national fraternity] initiated a new membership program that would require commitment from both the alumni and the university – this usually results in a positive result." One senior student affairs officer commented about fraternity headquarters staff alerting the institution of an incident involving the fraternity chapter. "They [fraternity headquarters] investigated and shared the information with us, they took action to sanction members and the chapter and worked collaboratively with us."

Ineffective collaboration

These groups then were asked to briefly describe a situation where the university and the fraternity headquarters staff did not work collaboratively to address conduct violations resulting in a negative result. Naturally, college/university officials reported issues with fraternity headquarters and local alumni while fraternity headquarters staff reflected on college/university failures to cooperate.

A fraternity headquarters staff member best summarized the issue from a national fraternity perspective when he stated,

Because we were unable to work in partnership through investigation, there was no opportunity to collaborate together and compare information obtained in our respective investigations. . . the General Fraternity was then made to decide whether to A) support the chapter's appeal of the University decision and possibly cause harm to the relationship between the University and General Fraternity or B) not support the chapter's appeal and possibly cause harm to the relationship between General Fraternity and chapter.

Conduct officers, fraternity and sorority life staff, and senior student affairs officers described situations where fraternity headquarters chose not to become involved in the situation and created adversarial relationships. One student conduct officer wrote, "The local leadership and national office spent several weeks arguing about our process and how it was unfair. . . . the organization had their lawyers write their appeal and they wrote an appeal which was personally insulting to members of the university administration." A senior student affairs officer commented, "When the university suspended the group, the national did not pull the charter. The local continued to accept new members into the group during the entire time it was suspended and all were accepted by the national as members in good standing."

Another senior student affairs officer described how they discovered that a national sorority was investigating the same alcohol related incident as the university. "They [fraternity headquarters] never indicated that they even cared about it when we contacted them. After we contacted them [again] they said they were finding things that disturbed them but would not share anything."

Senior student affairs officers, student conduct officers, and Greek advisors also commented on the difficulty in working with chapter alumni. One conduct officer bluntly stated, "We've found that the local or regional representatives are more likely to be obstructionist or 'run interference' and challenge the University's actions." A fraternity and sorority life staff member described a particular case where "the fraternity's national organization turned over control to the alumni board for them to provide oversight. . . . However, alumni do not live locally and have only had regular contact via telephone and email communication, with monthly meetings with officers. Consequently, behavior issues have continued." Another conduct officer described how after the fraternity national decided not to collaborate with the University in investigating hazing incidents, "Several alumni and advisors to the organization filled the void, and took an adversarial approach to both the investigation and with the University." In discussing the college's attempts to address a host of behavioral issues inside a fraternity house owned by the college, a senior student affairs officer stated, "Eventually we stopped receiving responses from the national office when we expressed concerns about recent behaviors and the lack of action from local advisors appointed by the national."

Partnerships seem to be the key to successful fraternity chapters even when there may be a conduct violation. As one senior student affairs officers stated, "A successful Greek chapter has four partners: the students, the national office, local alumni, and the college. If any of those four partners is not constructively engaged in the life of the chapter, the group will not survive." Another senior student affairs officer added, "The only way to assure successful outcomes in these types of cases is to have all stakeholders fully engaged and ultimately on the same page."

Changing relationships

The legal issues and risk management specialists had lively online discussions to a different set of questions. The first question addressed the changing relationship between universities and inter/national fraternities. They concluded that both universities and inter/national fraternities are more likely to be held liable for the actions of individual chapters and/or chapter members than 30 years ago. According to an attorney in the group, colleges and universities liability arises from the failure to establish and enforce reasonable policies; whereas inter/national fraternity liability most often arises from the failure to adequately train chapter leadership and alumni advisors. The group concluded that "neither nationals nor colleges can be sure of a commonality of interests in court."

The next two questions dealt with universities collaborating with fraternity headquarters on investigations and conduct proceedings. Again, the assumption that a commonality of interests exists between universities and fraternity headquarters was questioned. As a college general counsel stated, "Fear of liability in an increasing litigious society has had the effect of pushing colleges and fraternities apart and leading to more finger-pointing, particularly in high-stakes cases." Most of the group indicated that they support collaboration between universities and fraternity headquarters in investigations of alleged conduct violations and in determining appropriate sanctions, both from the university and the inter/national fraternity. There was discussion concerning the ability of inter/national fraternities to conduct

appropriate investigations. The discussion focused on the maturity of chapter consultants and the lack training they receive on conduct processes.

The next question addressed how a university should balance individual and organization rights in student conduct proceedings. The balance of rights seems especially difficult to maintain when the offense may result in criminal charges and various entities (criminal investigators, district attorney, inter/national fraternity headquarters, and chapter alumni) all believe they should control the process. One attorney suggested that memoranda of understanding (MOU) be developed with local legal entities and other invested parties from the beginning. The MOU should address expectations for sharing reports and communicating with each other, the investigation process including how to proceed with different investigations without interfering or obstructing justice, how decisions will be made regarding moving forward with stakeholder processes, and how the media will be addressed. It is wise to develop relationships with stakeholders before a serious incident occurs. A general MOU might be shared with local law enforcement and district attorneys and their support garnered in advance of incidents. All members of the group agreed that it is important to set expectations and seek the support of those stakeholders who have a vested interest in the proceedings.

Rethinking Fraternity and Sorority Advising

A recent article in Leadership Exchange, "Rethinking Fraternity and Sorority Advising: The Role of Coaching and Technology" (Hogan, Koepsell & Eberly, 2011), was shared with the groups by the author to promote discussion. The article derives from discussion at the 2011 Greek Summit of senior student affairs officers and national fraternity and sorority leaders. The question being addressed by participants in the Greek Summit was how can campuses and national organizations maximize the impact of the staff and volunteers they deploy to support fraternity and sorority life on campus?

The Summit participants recognized that campus fraternity/sorority advisors, chapter consultants, volunteer faculty and alumni advisors "often have common personal experiences in a fraternity or sorority, limited professional experience in student and/or organizational development, and little or no training" (p. 13). Instead of continuing the current central campus advising model, the article authors suggest that a new model be employed that expands the use of volunteer alumni, redefines their role, and provides for a certification process.

Coaching Student Leaders Model

1. Shift the focus to leadership coaching
2. Take a team approach.
3. Expand volunteer alumni involvement as coaches and advisors
4. Reshape the roles of fraternity/sorority advisor and chapter consultant.
5. Provide uniform training to certify coaches and advisors.
6. Encourage preparation programs to address volunteer development as a required professional skill (Hogan, Koepsell & Eberly, 2011, pp. 13-14).

While supportive of a coaching model, senior student affairs officers voiced concern for the time and effort such a model would take and skepticism about change the model might bring. As one senior student affairs officer stated, "I have fraternities now that have very positive engaged alumni groups and the chapter generally performs better when that is the case. But I also have chapters that suffer from lack of alumni engagement and those who suffer from negative alumni influence . . . to assure a positive alumni coaching team within each of

these environments would be a challenge." The higher education legal experts concurred with the senior student affairs officers. As a general counsel wrote, "In theory, this sounds like a great approach, but in practice, I can't imagine it would work out as described very often. It would require a great deal of commitment and work from people whose reasons for participating probably aren't these [attempt to improve individual performance of student leaders within a team context] and who probably aren't invested in making it work." One student conduct officer responded, "I don't think they need to reinvent the wheel." Fraternities and sororities do not use the resources available to them now. Why would we think fraternities and sororities would use the resources in a new model?

All groups involved in the discussions recognized that current processes are not working as well as they should. The place to start improving relations in the student conduct process is to develop a shared understanding of investigative and student conduct processes followed by collaboration in conducting investigations.

Recommendations for Addressing Student Conduct

Recommendation 1

The Fraternity Executives Association (FEA) should spearhead the development of a training module for conducting investigations of alleged conduct code violations involving fraternities and sororities and implementation of a pilot project involving selected colleges and universities and inter/national headquarters. Support for the investigation module and pilot project should be garnered from the Association of Fraternity Advisors (AFA), Association for Student Conduct Administrators (ASCA), and the National Association of Student Personnel Administrators (NASPA). Fraternity and sorority life staff, fraternity and sorority chapter consultants, and campus student conduct officers would receive the training and be asked to utilize the training in conducting collaborative conduct investigations. An outline of suggested components of the training appears later in this paper.

Recommendation 2

Develop and implement a pilot project involving selected colleges and universities and inter/national fraternity headquarters to train staff in the conduct investigation process and to conduct collaborative investigations of alleged conduct violations involving fraternities and sororities for a period of one year.

NOTE: If plans exist to create a pilot project for the Coaching Student Leaders Model suggested at the 2011 Greek Summit, conduct investigation training might be included in the education of fraternity and sorority life staff, chapter consultants, and alumni advisors.

Recommendation 3

Conduct a thorough evaluation of the investigation training program and collaborative investigations at the pilot program colleges and universities. Determine if the pilot program was successful and should be expanded. If so, determine what improvements can be made to the training and investigations. Determine how to provide the training on a larger scale.

Investigation Training

When the author served as Dean of Student Life at Texas A&M University, he recognized the need for training staff to conduct investigations of alleged violations of code of student conduct. Many, but not all, of the investigations were of alleged hazing violations that involved student organizations including fraternities and sororities and the Corps of Cadets. Quite frankly, the department did not have the staffing

in its Student Conflict Resolution Services Office to spend time investigating incidents and also conduct hearings. It was also an attempt to avoid a conflict of interest where the investigator was also the hearing officer. The author bases the recommended outline for investigation training largely upon the Conducting Student Investigations training manual developed by the Department of Student Life at Texas A&M University, a presentation by the author at the Stetson College of Law, Law and Higher Education Conference (see appendix), a webinar on investigating hazing incidents presented by Dave Westol for HazingPrevention.org, and lessons learned by the author.

Key Components of Investigation Training Program

1. Purpose of investigations
2. Authority to initiate investigation
    - Authority within college or university
    - Authority of inter/national fraternity headquarters
3. Role of investigators
    - Promptness
    - Thoroughness
    - Impartiality
4. Preparation for investigation
    - Referrals of incidents
    - Timeline for investigation
    - Who to interview
    - Interview questions
    - Investigation File
    - Applicable university and inter/national fraternity policies
5. Conducting the investigation – Investigation interviews
    - Responsibility of students, advisors, staff, and alumni to participate in investigation interviews
    - Group vs. individual investigation interviews
    - Role of advisor or support person in investigation
    - Access to investigation records
    - Written statements vs. verbal statements
    - Interviewing witnesses
    - Clarifying interviews with witnesses
6. Preparation of investigative report
7. Submission of report
8. Role plays of investigation
9. Report writing practice
10. Review of investigations and roles
11. Brief Overview of Student Conduct Processes
    - Notice of Charges
    - Hearings
    - Sanctions
    - Appeals

Pilot Project Participants

FEA along with the other participating professional associations would identify colleges and universities to participate in the pilot project. FEA would identify which inter/national fraternity headquarters would participate in the project.

1. Identify and gain commitment from senior student affairs officers at 10 colleges and universities in the United States to participate in the pilot project. Author recommends that the pilot project group include five public universities, three private universities, and two small colleges (less than 3,000 students).
2. Identify and gain commitment from inter/national fraternities with chapters on the identified campuses to participate in the pilot project.
3. Conduct investigation training for fraternity and sorority life staff, student conduct officers, and other faculty/

staff who may serve as investigators on the pilot campuses.

4. Conduct investigation training for inter/national fraternity headquarters staff who may serve as investigators.
5. Provide consultation services (investigation training facilitators) to campuses and inter/national fraternity headquarters regarding investigations on campuses.
6. Check on status of investigations on campuses at least four times during the academic year.
7. Provide status update to FEA and other participating associations in December with final report in July.

Obviously, there are considerable logistics to be finalized before such a program could be implemented. The author suggests that the 2012-2013 academic year be spent in gaining support for the program and addressing the logistics of implementing the pilot program in summer 2013.

Conclusion

A close colleague of the author and the author were recently lamenting how student conduct processes have changed since both were student conduct officers early in their careers. Student conduct processes are becoming more complex every year despite attempts by many to simplify procedures. Expectations of parents and special interest groups and regulation from state and federal government have created quasi legal systems to address alleged acts of behavior that violate institutional codes of conduct. Gone are the days of what the author refers to as the Dean's chat, where the Dean of Students would sit with a student and discuss the reported inappropriate behavior before determining what action would best help the student learn from his/her mistake(s). Colleges and universities find themselves in a new era of compliance where state and federal regulations govern nearly every aspect of college and university operations including conduct processes.

Colleges and universities are being held more accountable for the actions of its students and for taking preventative measures to assure that students do not harm themselves or others. The time is right for colleges and universities to improve collaborations with inter/national fraternity headquarters on prevention efforts and processes that address conduct violations.

Persons interviewed by the author in developing this paper agreed that collaboration is necessary and would improve relations between colleges and universities and inter/national fraternity headquarters. All sides voiced an eagerness to improve relationships while citing distrust based on poor experiences. The reality is that colleges and universities are very diverse as are the administrations that run these institutions. Institutions will seek to protect themselves when situations may lead to legal action and/or media coverage. Similarly, inter/national fraternities are diverse in their values and ways they operate. Complicating this factor is the maturity of the staff, both at colleges and universities and inter/national fraternities charged with working with collegiate fraternity chapters. Many Greek advisors and chapter consultants are recent college graduates who lack professional maturity in addressing significant problems.

The original premise for the paper was to consider ways for collaboration in the student conduct process. Many campuses already involve inter/national headquarters staff in investigations of alleged violations of the code of student conduct involving campus fraternity chapters. However, untrained headquarters staff and perhaps, untrained staff at colleges and universities are conducting investigations. To be truly collaborative, staff from both entities should be trained in the same methods of

investigation.

The author believes that both colleges and universities and inter/national fraternity headquarters will benefit from receiving consistent training in conducting investigations. It will be important to define the roles of the investigators and have an understanding of acting as equal participants with one common goal. Communication and collaboration are the keys to success with not only investigations, but also successful relationships between colleges and universities and inter/national fraternity headquarters

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