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HAZING IN HIGH SCHOOL ATHLETICS: AN ANALYSIS OF VICTIMS

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I. INTRODUCTION

On college campuses, students are forced into dangerous situations, such as high alcohol consumption and embarrassing activities, to join fraternities and other organizations.[1] At their most extreme, these situations end in death.[2] Often death results from neglect; members of Beta Theta Pi at Penn State waited twelve hours before calling 911 when pledge Tim Piazza fell down the stairs following excessive drinking.[3] Hazing may also include sleep deprivation, alcohol consumption, performing physical challenges, etc. Additionally, students who know they are breaking university rules may be less likely to go to officials when situations are out of control.[4] In the United States, according to data collected by Professor Hank Nuwer at Franklin College, 200 students have died from hazing-related incidents since 1838.[5] According to *Bloomberg*

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1. The Data Team, *Hazing Deaths on American College Campuses Remain Far Too Common*, ECONOMIST, Oct. 13, 2017, https://www.economist.com/graphic-detail/2017/10/13/hazing-deaths-on-american-college-campuses-remain-far-too-common.

2. *Id.*

3. Caitlin Flanagan, *Death At a Penn State Fraternity*, ATLANTIC, Nov. 2017, https://www.theatlantic.com/magazine/archive/2017/11/a-death-at-penn-state/540657/.

4. Katie Reilly, *Fraternity Hazing: Why It's So Hard to Stop Student Deaths*, TIME, Oct. 11, 2017, http://time.com/4976836/fraternity-hazing-deaths-reform-tim-piazza/.

5. The Data Team, *supra* note 1.

News reporters, since 2005, more than sixty people have died in incidents linked to fraternities and student organizations, not including serious injuries, assaults, and sexual crimes.[6] The pattern of candlelight vigils, outrage of victims' parents, student mourning, and universities promising reforms has continued after each death.[7] In 2017, a series of fraternity deaths fueled a national conversation about hazing.[8] Instead of seeing hazing as "boys-will-be-boys" activity, there is a recognition of the murder, manslaughter, assault, and battery that results.[9]

In 1874, the United States Congress passed the first hazing statute to prevent hazing at the Naval Academy in Annapolis, Maryland.[10] Since then, forty-four states have passed anti-hazing statutes.[11] Scholars and commentators have analyzed law's contours with regards to hazing.[12] However, what may yield more fruit—at least in regards to finding workable solutions to address hazing—is to discern not simply the law on books but, rather, how the law works—or does not.[13] If, for example, "criminal and quasi-criminal laws serve to regulate

6. Caitlin Flanagan, *The Dark Power of Fraternities*, ATLANTIC, Mar. 2014, https://www.theatlantic.com/magazine/archive/2014/03/the-dark-power-of-fraternities/357580/.

7. Reilly, *supra* note 4.

8. Katie Reilly, *These Are the Students Who Died in Fraternity Hazing in 2017*, TIME, Dec. 21, 2017, http://time.com/5071813/fraternity-hazing-deaths-2017/.

9. *Id.*

10. A. Catherine Kendrick, Comment, *Ex Parte Barran: In Search of Standard Legislation for Fraternity Hazing Liability*, 24 AM. J. TRIAL ADVOC. 407, 409 (2000).

11. *See* GREGORY S. PARKS, MAKING SENSE OF UNITED STATES ANTI-HAZING STATUTES – STATE BY STATE 1-3 (2018) (the only states that do not have an anti-hazing law are: Alaska, Hawaii, Montana, New Mexico, South Dakota, and Wyoming).

12. *See* Gregory S. Parks, *"Midnight Within the Moral Order": Organizational Culture, Unethical Leaders, and Members' Deviance*, 40 T. MARSHALL L. REV. 115 (2014); Gregory S. Parks & Wendy Marie Laybourn, *Asian American Fraternity Hazing: An Analysis of Community-Level Factors*, 22 ASIAN PAC. AM. L.J. 29 (2017); Gregory S. Parks & E. Bahati Mutisya, *Hazing, Black Sororities, and Organizational Dynamics*, 43 L. & PSYCHOL. REV. (forthcoming 2019); Gregory S. Parks & Sabrina Parisi, *White Boy Wasted: Race, Sex, and Alcohol Use in Fraternity Hazing*, 34 WIS. J.L., GENDER & SOC'Y (forthcoming 2019); Gregory S. Parks & Rashawn Ray, *Poetry as Evidence*, 3 U. CAL. IRVINE L. REV. 217 (2013); Gregory S. Parks & Tiffany F. Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQ. L. REV. 1 (2013); Gregory S. Parks et al., *Belief, Truth, and Positive Organizational Deviance*, 56 HOW. L.J. 399 (2013); Gregory S. Parks et al., *Complicit in Their Own Demise?*, 39 LAW & SOC. INQUIRY 938 (2014); Gregory S. Parks et al., *Hazing as Crime: An Empirical Analysis of Criminological Antecedents*, 39 LAW & PSYCHOL. REV. 1 (2015); Gregory S. Parks et al., *Victimology, Personality, and Hazing: A Study of Black Greek-Letter Organizations*, 36 N.C. CENT. L. REV. 16 (2013); Gregory S. Parks et al., *White Boys Drink, Black Girls Yell: A Racialized and Gendered Analysis of Violent Hazing and the Law*, 18 J. GENDER, RACE, & JUST. 97 (2015).

13. Gregory S. Parks, Note, *Toward a Critical Race Realism*, 17 CORNELL J.L. & PUB. POL'Y 683, 692 (2008) (citing Karl N. Llewellyn, *Some Realism About Realism: Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1222-24 (1931)).

behavior which is undesirable from a societal viewpoint,"[14] then court opinions or statutes are nothing more than a mere bundle of words. The heart of the matter, instead, are those factors that underscore, amplify, and propel behavior—in this context, hazing.

Hazing has been a persistent issue in a variety of contexts, institutions, and organizations. High school and college athletics are not singular in this regard. Here, the authors contend that hazing exists and persists for a myriad of reasons. Among those reasons are that hazing victims may struggle to engage in rational decision-making due to the presence of cognitive biases. As such, they make poor decisions about whether to "acquiesce" to hazing. Other factors may play a role in their decision-making, which we explore. In Section II, we highlight a range of high school athletic hazing incidents. In Section III, we provide some contextual understanding of about a decade and a half of athletic hazing, social scientific research. In Section IV, we investigate the ways in which errors in cognitive judgment may influence hazing victimization. In Section V, we investigate a broader range of dynamics that explain why individuals are victimized within the hazing context.

II. ATHLETIC HAZING INCIDENTS

While the dominant narrative about hazing is that it exists and persists within college fraternities, the reality is that it exists in a variety of contexts. In this section, we explore major hazing incidents in high school athletics. We employ these exemplars merely as a lens through which victim behavior at the individual level (e.g., barring group dynamics) in any type of organization is examined. In turn, we highlight high school, then college, hazing incidents.[15]

14. United States v. One Single Family Residence with Outbuildings Located at 15621 S.W. 209th Ave., Miami, Fla., 699 F. Supp. 1531, 1536 (S.D. Fla. 1988). Other courts have defined "law" similarly. *See* United States v. Safarini, 257 F. Supp. 2d 191, 200 (D.D.C. 2003) ("[T]he core purpose of the criminal law [is to] to regulate behavior by threatening unpleasant consequences should an individual commit a harmful act.") (quoting Warren v. United States Parole Comm'n, 659 F.2d 183, 188 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 950 (1982); Emp'rs Ins. of Wausau v. Smith, 453 N.W.2d 856, 866 (Wis. 1990) ("The strong common-law tradition is that the legislature's primary function is to declare law to regulate future behavior."); Thomas C. v. Physicians Ins. Co. of Wisconsin, 509 N.W.2d 81, 83 n.2 (Wis. Ct. App. 1993) ("[T]ort law seeks to deter unsafe behavior . . . ."); Wash. Metro. Area Transit Auth. v. Johnson, 726 A.2d 172, 176 (D.C. Cir. 1999) ("[O]ne aim of tort law is to deter negligent (and certainly reckless) behavior . . . ."); Gen. Motors Corp. v. Farnsworth, 965 P.2d 1209, 1218 (Alaska 1998) ("Tort law seeks to deter future behavior that exposes others to injury.").

15. In our discussion of various hazing incidents, the headings reflect the names of the victims. Where the victim's name is not known, the place of the incident is used in the header.

A. Criminal Litigation

In *Tryanowski v. Lodi Board of Education*, in 1992, Victor J. Tryanowski was a high school student who attended a football camp run by the Lodi Board of Education.[16] On August 27, 1992, Tryanowski and a few other students at the camp hazed another member of the camp by restraining him, "cover[ing] him with offensive substances, and forcibly shaving his head."[17] As a result, Tryanowski was charged with criminally restraining the hazing victim.[18] Tryanowski and his parents, in turn, sued the Board of Education for any resulting fees that came from the criminal and potential future civil lawsuits, claiming lack of guardianship at the camp.[19] The court denied the Tryanowski's motion.[20]

In *Texas v. Zascavage*, the Flower Mound High School Wrestling Booster Club sponsored a party for the wrestling team.[21] Though attendance was not mandatory, most teammates were present, along with their parents and Coach Zascavage.[22] During the party, as a form of initiation, older members repeatedly hit the new teammates in the stomach, threw footballs at their heads, kicked them in the groin, and forced them to scrape their backs against the side of the pool until they bled, sending one player to the emergency room.[23] It is unclear whether any adult in attendance was aware of these hazing activities, including Zascavage.[24] However, Zascavage was charged with four counts of hazing and he was accused of "failing to supervise students whom he had a duty to supervise [according] to the educator-student relationship."[25] Zascavage challenged the facial constitutionality, as well as the personal applicability, and the court ruled in his favor.[26] The State appealed, and the Court of Appeals of Texas affirmed the decision.[27] The Texas Court of Appeals held that: "(1) [the] section of the education code providing that [a] person commits personal hazing offense by recklessly permitting hazing to occur was facially unconstitutional,

16. Tryanowski v. Lodi Bd. of Educ., 643 A.2d 1057, 1058 (N.J. Super. Ct. Law. Div. 1994).
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. State v. Zascavage, 216 S.W.3d 495, 496 (Tex. App. 2007).
22. *Id.* at 497.
23. *Id.*
24. *Id.*
25. *Id.* at 496.
26. *Id.*
27. *Id.*

and (2) [the] section was unconstitutional as applied . . . .[28] Ultimately, the indictment against Zascavage was dismissed.[29]

In re R.D.U. arose from facts that emerged in August of 2007 when K.B., a member of the Tallmadge High School football team, was hazed by R.D.U. and several other members of the team.[30] K.B., was approached during a lunch break, thrown to the ground, and his pants were pulled down. R.D.U. then inserted a straw into K.B.'s rectum several times, each time leaving it there for five to eight seconds.[31] K.B. did not tell anyone what had happened, but his mother "noticed a change in his behavior after he came home from practice."[32] K.B. finally reported the assault on September 27, 2007, and criminal rape and hazing charges were filed against R.D.U.[33] R.D.U. was found guilty of both charges, and he was committed to the custody of the Department of Youth Services.[34] Furthermore, he was prohibited from having contact with the victim; sentenced to forty hours of community service; required to complete a substance abuse evaluation; ordered to individual counseling; and required to complete a letter of apology to the victim and his family; and to find a way, along with the assistance of his probation officer and his counselor, to make amends for his actions to both the victim and the community.[35] R.D.U. appealed the trial court's ruling on technical grounds; however, the appellate court ruled against him and upheld the trial court's conclusions.[36]

In *Richardson v. Huber Heights City Schools Board*, K. Richardson (K.R.), a freshman at Wayne High School in Huber Heights, Ohio, and a prospective baseball player, left the weight room and B.C. (a junior and member of the team), along with three other teammates, including R.M., followed him.[37] On his way back to the weight room, "R.M. put his hand on K.R.'s shoulder, shoved him into a corner, and held him down."[38] "B.C. then inserted his finger into K.R.'s anus for around 20 to 30 seconds."[39] Initially, K.R. did not report the incident; but later that night—after he cried and told his parents—K.R. and his

28. *Id.* at 495.

29. *Id.* at 496.

30. *In re* R.D.U., No. 24225, 2008 WL 5046970, at *1 (Ohio Ct. App. 2008).

31. *Id.* at *3.

32. *Id.*

33. *Id.*

34. *Id.* at *1.

35. *Id.*

36. *Id.* at *4.

37. Richardson v. Huber Heights City Schs. Bd., 651 F. App'x. 362, 363 (6th Cir. 2016).

38. *Id.*

39. *Id.*

parents reported the incident to Vice Principal Erica Ford the following morning.[40] A video surveillance tape partially captured the incident.[41] B.C. and R.M. were arrested and charged with rape.[42] B.C., R.M., and the two other students who observed the incident in the hallway were suspended.[43] A juvenile court found that B.C and R.M were guilty of assault; they were barred from playing baseball that year and ordered not to have any contact with K.R.[44] School officials insisted they had no knowledge of any "culture of hazing" occurring at the school.[45] "Richardson [K.R.'s father] brought claims against the Board under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, as well as under 42 U.S.C. § 1983, together with common-law tort claims against B.C. and R.M."[46] The claims against the school were dismissed because the court found that Richardson did not have sufficient evidence that the school was also liable.[47]

In *Hernandez v. Alavi*, Luis Hernandez became a member of the varsity soccer team at his high school in October 2011.[48] In November 2011, Hernandez was subjected to a hazing ritual known as the "Pole Tradition," which consisted of his teammates luring him into the coach's classroom, and asking whether he wanted it the "easy way" or the "hard way."[49] The "easy way" involved allowing the team members to sexually assault him with a sharp pole without resistance, while the "hard way" meant resisting, and would result in the eventual sexual assault, but the teammates would punch and kick him into submission.[50] The assault involved the members "prodding a sharp pole into the anus and all over the butt cheeks of the victim."[51] The "students taunted [Hernandez] during the assault and only stopped once they were 'satisfied' [that] he had been 'sufficiently abused and demeaned.'"[52] This assault was an

40. *Id.*
41. *Id.* at 364.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.* at 368.
48. Hernandez v. Alavi, No. LA CV14-06374, 2015 WL 3843459, at *1 (C.D. Cal. 2015).
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.* at *2.

"initiation tradition" that "existed for over a decade."[53] Hernandez filed a complaint against the school district and two members of the soccer team.[54]

In 2014, in *State v. Goins*, the Superior Court of Gaston County found high school teacher and wrestling coach, Gary Scott Goins, guilty of "numerous sex offenses" and hazing activities against his students.[55] The testimony of three students—Allen, Brad, and Carl—detailed numerous accounts of verbal, physical, and sexual abuse over several years and against many students.[56] These testimonies are corroborated by several former wrestlers.[57] Goins testified that he never participated in sexual activities with his students, and that the hazing activities described by the students were generally "wrestler initiated."[58] The jury found Goins "guilty of two counts of statutory sexual offense, six counts of taking indecent liberties with a minor, four counts of taking indecent liberties with a student, three counts of sexual activity with a student, and two counts of crimes against nature."[59] On appeal, the appellate court upheld the trial court's conviction.[60]

B. Civil Litigation

In *Rupp v. Bryant*, Robert Rupp and his father brought a suit against Glenn K. Bryant and Leroy Bryant—the school principal and faculty advisor—as well as the school board when the student severed his spinal cord while being hazed at an unsupervised initiation ceremony for a school club.[61] The club was a school-sanctioned organization and known "for conducting activities which violated school board regulations."[62] Thus, the school board was required to monitor the club's activities, the principal had to approve all of the club's extracurricular activities, and the faculty advisor had to be present at all club meetings and extracurricular activities.[63] The event at issue was not held with permission of or in the presence of the faculty advisor.[64] The court held that: (1) [the] student had a right to seek recovery from both [the] principal and

53. *Id.*
54. *Id.* at *1.
55. State v. Goins, 781 S.E.2d 45, 48 (N.C. Ct. App. 2015).
56. *Id.* at 48-53.
57. *Id.* at 53.
58. *Id.*
59. *Id.* at 54.
60. *Id.* at 64.
61. Rupp v. Bryant, 417 So. 2d 658, 660 (Fla. 1982).
62. *Id.*
63. *Id.*
64. *Id.*

faculty advisor under the *Filer-Modlin* standard prior to the 1980 amendments to the tort immunity statute; (2) the 1980 amendments to the statute were unconstitutionally retroactive insofar as they sought to abolish all pending rights to recover; (3) [the] claim that breach of a duty on part of the principal and the school advisor to supervise activities of [the] school club was a proximate cause of injuries sustained by [the] student [and] was sufficient in view of foreseeability to state a cause of action [of] negligence, notwithstanding alleged intervening negligence of fellow students; and (4) the student could not recover against [the] principal and faculty advisor for wanton and willful negligence absent evidence evincing a reckless disregard of human life or rights which was equivalent to an intentional act or a conscious indifference to consequences of an act.[65]

In *Jones ex rel. Reeves v. Besonen*, Jack Reeves brought a civil rights action against Owendale Gagetown Area Schools and football coach, Arnold Besonen, after sustaining injuries from a hazing incident on the team bus.[66] Older players called Jack to the back of the bus where he was subjected to a "hit line"—a long-standing hazing ritual in which team members would "rough up" other teammates.[67] Because of the "hit line," Jack sustained a broken nose and contusions to his ribs.[68] Besonen was driving the bus at the time, while an assistant coach sat behind the driver seat.[69] In Count I of his First Amended Complaint, the plaintiff alleged that the failure of the defendants to act appropriately was actionable under 42 U.S.C. Section 1983.[70] The plaintiff alleged that he was deprived of his "Fourth Amendment right to be secure in his person and effects against unreasonable seizure" and "against unreasonable and excessive force," as well as his "Fourteenth Amendment right not to be deprived of life, liberty, or property without due process of law, and the right to equal protection of the law."[71] Counts II and III of the complaint articulated state law claims.[72] The United States District Court agreed with Magistrate Morgan's recommendation that summary judgment be granted for the defendant with respect to Count I because the plaintiff had no claim under 42 U.S.C. Section 1983.[73] Specifically, the defendants' actions did not deprive the plaintiff of his

65. *Id.* at 658.

66. Jones *ex rel.* Reeves v. Besonen, 754 F. Supp. 1135, 1138 (E.D. Mich. 1991).

67. *Id.* at 1137.

68. *Id.* at 1138.

69. *Id.* at 1137.

70. *Id.* at 1138.

71. *Id.*

72. *Id.*

73. *Id.*

constitutional rights, and the defendants did not owe him a constitutional duty of protection against assault by his fellow students.[74] The dismissal of federal claims removed subject matter jurisdiction and the court dismissed the pendant state law claims without prejudice so that they would be presented at state court.[75]

According to the facts of *Seamons v. Snow*, in October of 1994, Brian Seamons, a member of the Sky View High School Football Team, and his parents, brought an action against Cache County School District, Sky View High School, Principal Myron Benson, and football coach Douglass Snow.[76] This was in response to an incident on October 11, 1993, in which five teammates assaulted Brian as he was exiting the shower area of the locker-room.[77] After the players secured Brian to a towel rack using athletic tape, the fifth player left the room, returned with Brian's homecoming date, and she was shown Brian in this restrained condition.[78] The next day, Brian informed Benson of the incident, and Brian's parents contacted the school.[79] After conversations between Brian, Snow, and other teammates, Snow suspended and dismissed Brian from the team.[80] The day after Brian was dismissed, defendant Larry Jensen, Superintendent of the Cache County School District, cancelled the remainder of Sky View High School's football season because of the taping incident.[81] Brian later transferred to a different high school.[82] Among several claims, the sole focus of the U.S. District Court for the District of Utah was to determine whether there was federal jurisdiction.[83] Specifically, the court considered whether the facts, taken as true, qualified the plaintiffs for relief under federal law, namely, Title IX of the Education Amendments Act of 1972 or the Constitution of the United States.[84] The district court found that the case did not belong in federal court and dismissed the plaintiffs' federal law claims with prejudice and the pendent state law claims without prejudice.[85] On appeal, the Tenth Circuit affirmed that it was not established that the incident was sexual but reversed and remanded the first

74. *Id.* at 1140.

75. *Id.* at 1142.

76. Seamons v. Snow, 84 F.3d 1226, 1229 (10th Cir. 1996).

77. *Id.* at 1230.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 1234.

83. *Id.* at 1229.

84. *Id.* at 1232.

85. *Id.* at 1229 n.2.

amendment claim because Seamon was denied a right to play because of his complaint.[86]

In *Caldwell v. Griffin Spalding City Board of Education*, Antwan Caldwell, a freshman on the Griffin High School varsity football team, was attacked by a group of players while attending the team's summer football camp.[87] The players beat Caldwell severely in an empty dormitory room, knocking him unconscious and requiring hospital care.[88] While the team had a history of initiation rituals, no witness testified that beatings, such as this one, had ever occurred previously.[89] As a result, Charles Caldwell, Antwon's father, filed a lawsuit against the Griffin Spalding County Board of Education, head football coach, Lloyd Bohannon, and Principal Larry White, claiming that the defendants knew or should have known that initiation rituals occurred annually but failed to prevent the attack.[90] The "trial court granted summary judgment to the Board based on sovereign immunity and to Bohannon and White based on official immunity."[91] Caldwell appealed this decision to the Court of Appeals of Georgia, but the decision was affirmed because Georgia law states that "the general task imposed on teachers to monitor, supervise, and control students has . . . been held to be a discretionary action which is protected by the doctrine of official immunity" and Bohannon's conduct did not indicate any intent to specifically harm Caldwell.[92]

In 2001, Kathleen Peay sued the Board of Regents of the University of Oklahoma Peay claimed that she had been "physically, emotionally, and sexually exploited during the 1997 to 1998 seasons."[93] The student's attorney said that he planned to file an amended lawsuit against the University, Fletcher, and an assistant coach, Missy Durham.[94] The U.S. District Judge, David L. Russell, said that the plaintiff had ten days to refile, a deadline that Peay's attorney did not meet.[95] On August 10, 2001, Peay's suit against the State of Oklahoma and the Board of Regents of the University of Oklahoma was dismissed with prejudice.[96]

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86. *Id.* at 1239.

87. Caldwell v. Griffin Spalding Cty. Bd. of Educ., 503 S.E.2d 43, 43-44 (Ga. Ct. App. 1998).

88. *Id.* at 44.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 46-47.

93. Joshua A. Sussberg, Note, *Shattered Dreams: Hazing in College Athletics*, 24 CARDOZO L. REV. 1421, 1422 (2003).

94. *Id.*

95. *Id.*

96. *Id.*

In *Hilton ex rel. Hilton v. Lincoln-Way High School*, Kimberly Hilton sued Lincoln-Way High School for an incident that occurred while on a marching band retreat where some members of the band were forced to wear paper bags on their heads—when led into the woods—and forced to participate in a medieval knighting ceremony, which included "sword-wielding" men dressed in costumes that resembled those of Ku Klux Klan.[97] Hilton became so frightened that she hyperventilated and blacked out.[98] Upon returning home, the plaintiff's mother took her to the "emergency room because of her anxiety, panic attacks, and impaired breathing."[99] The plaintiff brought an action against her high school and several of its employees and officials, claiming that the hazing activities violated her Fourth Amendment rights because they constituted an illegal seizure; her Fourteenth Amendment rights because she was deprived of her liberty; and various state laws including battery, false imprisonment, hazing, negligence, and intentional infliction of emotional distress.[100] The defendant subsequently filed a motion to dismiss the Fourth Amendment, Fourteenth Amendment, and state hazing claims.[101] The court denied the motion to dismiss the Fourth and Fourteenth Amendment claims, and the court granted the defendant's motion to dismiss the state hazing claim.[102]

According the facts of *Siesto v. Bethpage Union Free School District*, in 1999, Matthew Siesto, a junior varsity football player, sued Bethpage Union Free School District after he needed fifty-eight stitches due to being hit on the forehead by a weighted football practice pad during a locker room hazing ritual.[103] Siesto alleged that the school district was negligent in allowing the hazing to occur, arguing that school officials knew or should have known about the ritual based on its long history and the players' discussions of it in the presence of coaches.[104] The court dismissed the school's affirmative defense of assumption of the risk and comparative negligence, reasoning that injuries from hazing are not inherent risks in organized sports—even if a plaintiff has knowledge of hazing traditions or rituals—because hazing is an activity "which has no place in organized student athletics."[105]

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97. Hilton *ex rel.* Hilton v. Lincoln-Way High Sch., No. 97-C-3872, 1998 WL 26174, at *1 (N.D. Ill. Jan. 14, 1998).

98. *Id.* at *2.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at *10.

103. Siesto v. Bethpage Union Free Sch. Dist., N.Y. L.J., Dec. 30, 1999, at 21, 29 (as reported in *Student Athletes Do Not Assume the Risk of Injury from Hazing Rituals*).

104. *Id.*

105. *Id.*

In 2000, Matthew John Nice brought an action, in *Nice v. Centennial Area School District*, against the Centennial Area School District in response to a hazing incident that occurred while Nice was a member of the high school wrestling program.[106] The hazing included a ritual where the victim is forcibly held down while a teammate sat on his face with his exposed buttocks.[107] Nice stated that the defendants violated federal civil rights laws and various state common-laws.[108] The parties agreed to settle the case by payment of $151,000 to the minor plaintiff.[109]

According to the facts of *Meeker v. Edmunson*, in the fall of 2000, James Robert Meeker, a freshman at Rosewood High School in Wayne County, North Carolina, joined the school's wrestling team, which William Henderson Edmundson II coached.[110]

> [F]rom November 2000 through January 2001, Coach Edmundson frequently "initiated and encouraged" [teammates] [to] abuse Meeker . . . . During these attacks, at least two team members restrained Meeker . . . while additional teammates would pull up or remove his clothing and take turns "repeatedly beating [his] bare torso" until it turned red. Meeker received such beatings, referred to as "red bellies," at least twenty-five times during the few months he was a member of the team.[111]

Coach Edmundson allegedly "instituted, permitted, endorsed, encouraged, facilitated, and condoned" the abuse, using other students as his "instruments" to beat Meeker.[112] The Court of Appeals held that: (1) the "student's complaint supported claim of substantive due process violations, and" (2) the "student's substantive due process rights to be free from beatings allegedly encouraged by [the] wrestling coach was clearly established at the time of the alleged beatings.[113]

In 1999, Louis Cioffi, was Athletic Director and Director of Physical Education in Averill Park Central School District.[114] Cioffi and Kevin Earl, physical education teacher and varsity football coach, did not get along.[115] In

106. Nice v. Centennial Area Sch. Dist., 98 F. Supp. 2d 665, 666 (E.D. Pa. 2000).

107. *Id.*

108. *Id.*

109. *Id.*

110. Meeker v. Edmundson II, 415 F.3d 317, 319 (4th Cir. 2005).

111. *Id.*

112. *Id.* at 322.

113. *Id.* at 317.

114. Cioffi III v. Averill Park Cent. Sch. Dist. Bd. of Educ., 444 F.3d 158, 160 (2d. Cir. 2006).

115. *Id.*

November 2000, Cioffi and others complained about Earl's coaching of the football team, and they accused the football players of using performance-enhancing substances.[116] In October 2001, a parent informed Defendant McGreevy, President of the Board of Education, of hazing occurring in the boys locker-room, known as "tea-bagging."[117] Once Superintendent Johnson was informed, the school district acted to address the incident.[118] Cioffi complained about the way the incident was handled by the School Board, alleging that there was a cover-up to protect Earl.[119] Earl and all the other football coaches were suspended from coaching football for the 2002-03 school year.[120] In January 2002, the school re-organized the athletic department and abolished the athletic director position, causing Cioffi to transfer to another school district in 2003.[121] In 2004, Cioffi brought an action against the school board, school district, school board president, and superintendent.[122] He alleged three causes of action: First Amendment retaliation, due process, and conspiracy to violate plaintiff's civil rights.[123] Following a motion for summary judgment, the court dismissed the case, which the appellate court upheld.[124]

In 2002, James Cortese, a high school student, was a victim of hazing while on a school bus returning from a football camp.[125] Adam Lotis, a fellow student, was paid approximately $10.00 by other students to tackle Cortese to the ground and place his exposed genitals on Cortese's face.[126] Though rumors circulated throughout the school district, the incident was not investigated until after the regular football season had ended.[127] James and his parents, Anthony and Joni Cortese, filed a complaint in Allegheny County against Adam Lotis, the bus company, the school district, and several district employees.[128] Among the allegations were negligence, intentional infliction of emotional distress, civil conspiracy, and violation of Title IX.[129] The court dismissed the case for failure

116. *Id.*

117. *Id.* at 160-61.

118. *Id.* at 161.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 162-63.

124. *Id.* at 169.

125. Cortese v. W. Jefferson Hills Sch. Dist., No. 53 C.D.2008, 2008 WL 9404638, at *1 (Pa. Commw. 2008).

126. *Id.* at *4.

127. *Id.* at *5.

128. *Id.* at *1.

129. *Id.*

to provide sufficient evidence that Cortese was victimized.[130] The court also found that having only one bus driver on the bus did not constitute negligence on the part of the school.[131]

In *Doe v. Brimfield Grade School*, "Jane Doe" claimed that that her son, "John," was verbally and sexually harassed at school by six male students on the basketball team.[132] According to Jane, the school principal knew the boys routinely participated in a hazing ritual of "sac stabbing" from November 2004 through November 2005, where they grabbed, twisted, and hit John's testicles.[133] Subsequently, John experienced severe pain and swelling in his testicles.[134] The parents pressured the school to act, but the school failed to intervene.[135] As the harassment continued, John's father spoke directly to the basketball team—without success—but players mocked John, and the coach allowed the behavior to persist.[136] The parents filed a police report against the teammates.[137] Even after John's testicular surgery, a result from the harassment, he was teased at school and hit again in the testicles, causing the stitches to burst, and the incision to open.[138] No action was taken by the school.[139] The harassment persisted, and John was removed from the school in December 2005.[140] Eventually, the Doe's filed a lawsuit against the parents of the teammates who had engaged in the hazing ritual, the school, and the school district for allowing the hazing to occur.[141] Several motions to dismiss were filed by the defendants, the court found that there was no basis for the plaintiff to recover attorney fees on the battery and joint enterprise claims, so it recommended that the fees be stricken, and the court concluded that the Title IX allegations raised by the Doe's were sufficient and allowed the case to proceed.[142]

In *Duitch v. Canton City Schools*, the School District's "freshman-beating day was a tradition . . . endorsed by the school board and the high school

130. *Id.* at *7-10.

131. *Id.* at *7.

132. Doe v. Brimfield Grade Sch., 552 F. Supp. 2d 816, 819 (C.D. Ill. 2008).

133. *Id.* at 820.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* at 821, 825.

administration."[143] The day was arguably endorsed because the school district "did not enforce any policy against hazing and allowed the events to continue without correction or penalty."[144] As a result, one student, Nathan Duitch, was severely "beaten while on school property, receiving numerous bruises and injuries to his neck and back."[145] Additionally, Duitch "was threatened with other beatings in retaliation."[146] Duitch's family sued for claims of "personal injury, pain, suffering, anguish, attorney fees, costs of the action, general compensatory damages for humiliation, and embarrassment."[147] However, the court of appeals held that because the student was not being initiated into "any student or other organization," he was not subjected to "hazing," and the case was dismissed.[148]

In *Donna Independent School District v. Gracia*, Damon Gracia was employed as a teacher and football coach by the Donna Independent School District, but he was suspended and fired after hazing allegations surfaced in February 2005.[149] Gracia requested a hearing, but before it took place, the district and Gracia entered into a settlement agreement on May 11, 2005.[150] The agreement provided that Gracia would submit a letter of resignation and dismiss the motion for a hearing, and the district would provide a neutral recommendation for Gracia.[151] However, eight days after executing the agreement, Gracia was arrested and sued the district for "breach of contract, promissory estoppel, and negligence."[152] The district responded with a plea to the jurisdiction and the trial court denied the district's plea, and an appeal followed.[153] The court found that "Gracia's negligence claim [did] not fall within the legislature's limited waiver of sovereign immunity for property damage and personal injury"; and the court reversed the trial court's denial of the "[d]istrict's plea to jurisdiction and . . . dismiss[ed] Gracia's suit . . . ."[154]

143. Duitch v. Canton City Schs., 809 N.E.2d 62, 63 Ohio Ct. App. 2004).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at *66-67.

149. Donna Indep. Sch. Dist. v. Gracia, 286 S.W.3d 392, 393 (Tex. App. 2008).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 396.

In *Culbertson v. Fletcher Public School District*, "Jim and Peggy Culbertson are parents of high school student, L.C."[155] While attending Fletcher Public Schools (FBE), L.C. "was subjected to hazing and improper conduct by other students and [the] baseball coach[,] Jayson Wilson."[156] The Culbertson's "contend[ed] that the members of the FBE, its Superintendent, the High School Principal, Assistant Principals[,] and the Athletic Director failed to properly supervise the coach and students and failed to properly enforce policies prohibiting bullying and hazing."[157] The Culbertson's sought injunctive relief.[158]

In *Golden v. Milford Exempted Village School District Board of Education*, a fourteen-year-old high school student, R. Golden, was a member of the basketball team at Milford High School.[159] On February 7, 2008, teammates C., J., and T., pinned R. down and repeatedly punched him in the stomach.[160] T. rubbed his exposed penis on R.'s face and attempted to put his penis in R.'s mouth.[161] In 2008, the Golden's filed a complaint against the Milford Board of Education, Coach Kilgore, T., and T.'s parents.[162] The complaint included claims of "negligence per se, civil hazing, sexual harassment, negligent supervision, intentional infliction of emotional distress, and vicarious liability."[163] After the trial court dismissed the School Board's motion to dismiss, the Board appealed that decision to the court of appeals.[164] The appellate court found that the Golden's had stated a claim for hazing and remanded the case back down to the trial court.[165] On appeal, the court of appeals upheld the trial court's decision, holding that: (1) the "teammate's conduct toward [R.] did not constitute "hazing," within [the] meaning of [the] civil hazing statute"; (2) the "coach was immune from liability for negligent supervision"; and (3) the "trial court did not abuse its discretion in limiting the discovery requests of [R.] and his parents."[166]

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155. Culbertson v. Fletcher Pub. Sch. Dist., No. CIV-11-138-M, 2011 WL 3477112, at *1 (W.D. Okla. 2011).

156. *Id.*

157. *Id.*

158. *Id.*

159. Golden v. Milford Exempted Vill. Sch. Dist. Bd. of Educ., No. CA2010-11-092, 2011 WL 4916588, at *1 (Ohio Ct. App. 2011).

160. *Id.*

161. *Id.*

162. *Id.* at *3.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* at *1.

According to the facts of *Davis v. Carmel Clay Schools*, "[i]n the fall of 2009, M.D. was a freshman at Carmel High School and [was] the manager of the freshman boys' basketball team."[167] M.D. alleged that he was consistently harassed in the basketball locker room—before and after—practice by four senior basketball players (Robert Kitzinger, Scott Laskowski, Brandon Hoge, and Oscar Falodun) from November 2009 through January 2010.[168] The "four seniors allegedly 'flashed' M.D., taunted him with sexual innuendos, grabbed his genitals, and 'gooched' him."[169] Gooching is "used to describe anal penetration by another person's fingers, either over a layer of clothes or with skin-to-skin contact."[170] The "gooching" happed at least two or three other times, and the other harassment happened almost daily during that period.[171] On January 22, 2010, M.D. was on the bus and was grabbed by three seniors, who pulled him into one of the seats and one sat on his face.[172] The three seniors tried to remove his shoes and socks and pull down his pants.[173] They were successful in pulling down one pair of shorts; however, M.D. wore two pairs, but a player was still able to stick his fingers into M.D.'s lower buttocks over the shorts.[174] M.D. was pulled to the ground and alleged that he was then anally penetrated.[175] M.D. tried to return to the front of the bus, but other players blocked him with their legs.[176] He later told his mother what happened in January 2010 and she reported the incident to the school and police, who initiated an investigation.[177] Eventually, all four seniors were expelled and charged with misdemeanor battery and criminal recklessness.[178] The four coaches who were on the bus that night resigned from their positions.[179] M.D.'s family also filed a civil law suit against the school; however, the court dismissed the case because the M.D.'s family was unable to provide sufficient evidence to

167. Davis v. Carmel Clay Schs., No. 1:11-CV-00771-SEB-MJD, 2013 WL 5487340, at *1 (S.D. Ind. 2013).

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at *2.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* at *1, 3.

179. *Id.*

demonstrate that the school was aware that students were bullying/hazing M.D., prior to the last incident.[180]

In *Roe ex rel. Callahan v. Gustine Unified School District*, an incoming high school freshman, Roe, attended a football camp and was harassed, assaulted, and hazed by upperclassmen.[181] The first hazing incident occurred when a group of upperclassmen "chased [Roe] into the . . . locker room, held him down, and inserted a battery-controlled air pump into [Roe's] rectum" and inserted air into his rectum for a few seconds.[182] This assault was witnessed by others, and Roe witnessed the same individuals assault others with the air pump.[183] The other incidents included: (1) repeated verbal sexual harassment, to the point where there was a collective belief amongst the players that Roe was a homosexual; (2) having his buttocks grabbed by another student in the shower; (3) a pillow fight where pillow cases were filled with baby powder, football equipment, and other heavy objects; (4) being exposed to the same upperclassman's genitals; and (5) being slapped by the upperclassman's genitals in the face.[184] Roe never reported the hazing or harassment to coaches on-site, and the coaches allegedly were unaware of the incidents.[185] After the team returned from the camp, a different coach overheard students discussing the incidents and reported the information to the principal.[186] The principal involved law enforcement, and the upperclassmen went through expulsion proceedings.[187] Roe filed a civil suit against the school district and their employees for failure to prevent the hazing.[188] The court ultimately dismissed the claims against the individual employees, but allowed the claims against the school district to go forward.[189] Eventually, the case was settled out of court.[190]

According to the facts of *J.J. v Olympia School District*, J. Jackson (J.J.), joined the Capital High School basketball team and attended summer camp for the team where he was placed in the barracks with a coach.[191] One night, after taking a shower, J.J. was assaulted by three players who pinned him to his bed

180. *Id.* at *7-15.

181. Roe *ex rel.* Callahan v. Gustine Unified Sch. Dist., 678 F. Supp. 2d 1008, 1011 (E.D. Cal. 2009).

182. *Id.* at 1013.

183. *Id.*

184. *Id.* at 1014.

185. *Id.* at 1015.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.* at 1045.

190. *Id.*

191. J.J. v. Olympia Sch. Dist., No. C16-5060 BHS, 2017 WL 347397, at *1 (W.D. Wash. 2017).

and tried to digitally penetrate him in a hazing ritual known as "Boys Next Door" (BND).[192] Boys Next Door was practiced by older athletes at Capitol High School against younger athletes by digitally penetrating their anuses.[193] One assaulter kissed J.J. on his neck for thirty seconds while another tried to take off his towel.[194] Meanwhile, nearby teammates did not attempt to come to J.J.'s aid, whilst J.J. yelled for help.[195] Only when Coach Kraig Lathrop came into the room did this end.[196] Lathrop claimed that he did not see this attack, which J.J. confirmed, and no one reported the incident.[197]

In 2012, the team attended another summer camp at Western Washington University.[198] On one evening, one of the Capital High School students suggested to fellow players, including J.J., that they should "go get the freshman."[199] J.J. was standing by the door speaking with another player as others started wrestling with the freshmen and the older players subjected at least one freshman to BND.[200] After the older kids and J.J. left the room, one of the university basketball players asked what they had been doing, to which a kid replied, "[w]e were sticking our fingers up the kids' [sic] butt."[201] Even after being reprimanded, they decided to "get somebody else," thus four teammates "pinned [J.J.] down on a bed . . . [and] tried to digitally penetrate him through his basketball shorts."[202] The next morning, the university basketball player reported to the Capitol High School coaches what had happened, and the coaches conducted interviews with the players, cancelled camp, and reported it to district personnel, Washington State's Child Protective Services, and the police.[203] After the investigation, the district decided that the players were inadequately supervised during the 2012 incident, and they fired the head of the basketball program for Capitol High School, Coach Galloway.[204]

On January 22, 2016, Plaintiffs J.J. and Amanda Jackson filed a complaint against the school district in Tacoma, Washington, claiming that the school

192. *Id.* at *1-2.
193. *Id.* at *1.
194. *Id.* at *2.
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*

district did not protect J.J. from hazing when he was a high school student.[205] The court concluded that the claims made by the plaintiffs were too broad and not substantially founded, and ruled that the firing of the coach was reasonable.[206] The court decided that the government did not create an affirmative danger for J.J.[207] Although Coach Galloway left the team unsupervised while at dinner, the first attack in 2010 occurred under the coach's supervision and J.J. voluntarily attended the second summer camp in 2012; therefore, the court dismissed the case.[208]

In *J.H. v. School Town of Munster*, Joseph Hunt (J.H.), was a student at Munster High School and a member of the swim team, where hazing was so severe, J.H. quit the team and left the school.[209] Hazing begun around February 2010 when the team forced members to dye and cut their hair at a pre-sectionals party, and dragged J.H. into a bathroom to cut and dye his hair.[210] Hazing persisted, including: applying Icy Hot without consent to create a burning sensation; "five starring" (slapping with an open palm to leave a red "star") boys on their bare backs; beating team members with a plastic wiffle ball bat; removing younger members out of the shower stalls; hitting each other with swim equipment; stealing the equipment of younger members; forcing younger members to carry older members' lunch trays; and cleaning the locker-room and bus.[211]

J.H. told his mother, Karla Hunt, about the events and she approached Coach Pavlovich and Athletic Director Smith.[212] Both did not view these acts as hazing.[213] When J.H. refused to dye his hair again teammates violently attacked him in the locker room and carried him over to another team member holding electric hair clippers.[214] However, J.H. resisted and escaped after another team member dropped him to the cement floor on his back.[215] J.H. did not tell his mother until May 2011.[216] The school investigated the alleged hazing, but characterized the events as "pranks and horseplay."[217] J.H.'s grades

205. *Id.* at *1.
206. *Id.* at *6.
207. *Id.* at *10.
208. *Id.*
209. J.H. v. Sch. Town of Munster, 160 F. Supp. 3d 1079, 1085 (N.D. Ind. 2016).
210. *Id.* at 1083.
211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id.* at 1084.
217. *Id.*

suffered, he quit the swim team, and graduated early.[218] He also "suffered psychological effects such as anxiety, depression, and thoughts of suicide," all of which required treatment.[219] The Hunt's brought a 42 U.S.C. Section 1983 action against the school and school officials in their individual and professional capacities for "discrimination based on gender under the Equal Protection Clause and Title IX; retaliation under the First Amendment; and a negligence claim under Indiana state law.[220] The school motioned for summary judgment, which was granted in-part and denied in-part, dismissing claims against the official capacity of Superintendent Pfister, Principal Tripendfeldas, Smith, and Pavlovich, but the Equal Protection Clause claim moved forward to trial.[221]

In *J.D. ex rel. Dixon v. Picayune School District*, J. Dixon (J.D.) Jr. belonged to the Picayune Memorial High School's Baseball Team where the pre-game ritual was for older players to strike younger players in the chest with their closed fist.[222] The Dixon's alleged that this hazing conduct and assault occurred frequently and was known by the Picayune School District.[223] The Dixon's also argued that an event known as "whistle day" occurred, where coaches would leave practice and upperclassmen would assault the freshman players on the team—with the coaches' knowledge.[224] On April 19, 2011, J.D. Jr., was violently hazed by three teammates.[225] Before a game, while gathered on the field, a student called out J.D. Jr. as the player who would be the "victim of hazing and assault for that night" and a teammate held J.D. Jr.'s hands behind his back to prevent him from escaping or defending himself, while another teammate struck J.D. Jr. in the chest with a closed fist.[226] Due to being struck in the chest, J.D. Jr. suffered a seizure.[227] "He fell to the ground and suffered lacerations and facial trauma . . . ."[228]

Following the incident, J.D. Jr. did not return to school, and was homeschooled for the remainder of the year instead.[229] The next year, J.D. transferred to another high school that did not allow J.D. Jr. to pursue the

218. *Id.* at 1085.

219. *Id.*

220. *Id.* at 1082.

221. *Id.* at 1095.

222. J.D. v. Picayune Sch. Dist., No. 1:11CV514-LG-JMR, 2013 WL 2145734, at *1 (S.D. Miss. 2013).

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at *2.

advanced studies that was available at Picayune.[230] Because of the hazing, J.D. Jr.'s family sued the three students and school for various claims including negligence, gross negligence, civil conspiracy, negligent supervision, infliction of emotional distress, assault and battery, and false imprisonment.[231] Unfortunately, after reviewing the evidence, the court denied the Dixon's request for relief, stating that they did not find sufficient evidence to show that the teammates had hazed J.D. Jr.[232]

Similarly, in *Travis v. Stockstill*, during the 2011 school year, C. T. was a member of the Picayune High School Baseball Team.[233] C.T.'s father, David Travis, alleged that C.T. was repeatedly hazed during the 2011 season.[234] On one instance, K.S. assaulted C.T., resulting in a severe contusion and a fractured rib.[235] The emotional distress caused by these events led C.T. to quit the baseball team and transfer to a new school.[236] Travis filed suit against the boys, the school, and various members of the coaching staff, stating that they were well-aware of the hazing activities and took no action to stop, remedy, or prevent the inappropriate behavior.[237] Included in the complaint were "claims of negligence, gross negligence, assault, battery, infliction of emotional distress, civil conspiracy, negligent supervision, and violation of civil rights."[238] The team and school stated that they were only aware of two specific events of hazing, after which discipline was administered and the team was lectured about hazing; otherwise, they were not aware of any on-going physical acts of hazing.[239] The second argument led to the dismissal of the case, after the court found that this one incident was not enough to demonstrate a clear pattern, custom, or practice of the school—and the team—ignoring hazing activity.[240] Eventually, the case was dismissed without prejudice.[241]

In August 2008, members of a Las Vegas, New Mexico, high school football team physically and sexually hazed other teammates.[242] In fall 2010, Valencia High School football players began hazing younger teammates early

230. *Id.*

231. *Id.*

232. *Id.* at *11.

233. Travis v. Stockstill, No. 1:12CV173 HSO-RHW, 2013 WL 5204669, at *1 (S.D. Miss. 2013).

234. *Id.* at *2.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at *1.

240. *Id.* at *4.

241. *Id.* at *7.

242. C.H. v. Los Lunas Schs. Bd. of Educ., 852 F. Supp. 2d 1344, 1347 (D.N.M. 2012).

in the season.[243] In October of 2010, three seniors attacked R.H. in the locker room.[244] One member threw him to the ground, held him there, and other seniors physically and sexually assaulted him while teammates watched and encouraged the attack to continue.[245] Following the assault, "R.H. experienced physical pain, suffering, and emotional distress."[246] He transferred to another school for the spring 2011 semester, out of fear that he would face retaliation and threats from members of his team once he came forward.[247]

In response, R.H.'s mother, C.H., filed a lawsuit against the Los Lunas Schools Board of Education, the superintendent, the school principal, and the school football coaches for their alleged negligence that led to the physical and sexual assault of her son by his fellow football team members.[248] She eventually dismissed her claims against the individual persons, but maintained that the school board failed to protect her son when they failed to educate the football team about the school's hazing policies, and when they failed to provide better supervision to protect students in the face of a known dangerous condition.[249] In the end, however, the court denied her claim.[250]

In *Doe v. Torrington Board of Education*, John Doe had a learning disability and attended Torrington High School (THS) from August 2011 until April 5, 2013.[251] Doe experienced a series of bullying and hazing events at school, both during sports activities and in the classroom.[252] During football practice, a teammate pushed Doe to the ground, took his hat, and rubbed it on Doe's genitals.[253] After Doe reported the incident, students and staff on the team began to retaliate.[254] In fall 2011, a teammate tackled Doe and tried to initiate a fight.[255] This time, Doe did not report the incident, but his mother did.[256] Again at football practice, in January 2012, students, coaches, and Athletic Director Dan Dunaj called Doe a "pussy," "bitch," and "baby."[257] The incident was not

243. *Id.*
244. *Id.*
245. *Id.*
246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.* at 1347-48.
250. *Id.* at 1365-66.
251. Doe v. Torrington Bd. of Educ., 179 F. Supp. 3d 179, 183 (D. Conn. 2016).
252. *Id.* at 184-87.
253. *Id.* 184.
254. *Id.*
255. *Id.* at 185.
256. *Id.*
257. *Id.*

reported.[258] That spring, Doe was attacked by a teammate with rocks at track practice.[259] Again, Doe did not report the incident, but his mother did, and for the rest of the school year, Doe was assaulted by either those teammates or another student nearly every day.[260] Also in the spring, a student "karate chopped" Doe's head, which Doe returned in self-defense and both received in-school suspensions (ISS).[261] Because of the ISS, another incident occurred when Dunaj punished the football team with a strenuous workout, and after practice teammates physically attacked Doe.[262]

In August 2012, while playing in the park, Doe was sexually assaulted by another student in front of others, and did not report the incident.[263] Although the school guidance counselor, Johanna DeZurik, tried to take action, she could not because Doe refused to give names.[264] And, as a result, Doe began to miss school and his grades plummeted.[265] After a series of meetings, where faculty minimized Doe's experiences, Doe began counseling, yet students and teachers continued to harass Doe.[266] Ultimately, the State Police Department became involved and initiated an investigation, and Doe was removed from school after his mother learned of the sexual assault.[267] "During a June 5, 2013, PPT meeting, school officials 'denied any incidents of bullying, harassment, or retaliation.'"[268]

On September 26, 2014, after a trial, Student B was convicted of crimes related to the sexual assault of Doe, and Student B was sentenced to six months in prison and three years of probation.[269] Doe later filed a lawsuit against McSpiritt, Dunaj, DeZurik, Carbone, and Dziekan stating that they participated in/directed actions that they knew or should have known violated Doe's constitutional and state law rights.[270] Specifically, Doe argued that: they failed to follow bullying policies and procedures; failed to train staff; failed to maintain order and discipline; allowed students to assault Doe; and failed to

258. *Id.*
259. *Id.*
260. *Id.*
261. *Id.*
262. *Id.*
263. *Id.*
264. *Id.*
265. *Id.*
266. *Id.* at 186.
267. *Id.* at 187.
268. *Id.* at 188.
269. *Id.*
270. *Id.*

ensure Doe's safety and protect him from specific students.[271] Doe argued that the administration's continued non-response to harassment and violence led other students to understand that bullying would be tolerated, and alleged that the administration knew his disability limited his ability to stand up for himself, and that they relied on him to advocate for himself, which they should not have done.[272] However, upon a motion filed by the administration, the court dismissed Doe's case, arguing that he failed to provide sufficient factual evidence to prove his claims.[273]

In *J.K. ex rel. Kaplan v. Minneapolis Public Schools*, J.O. was a member of the Southwest High School Baseball Team, and in the spring of 2011, the team stayed overnight in a hotel—unsupervised.[274] During that night, J.K. and B.S. engaged in hazing J.O. by 'tea-bagging' him.[275] Tea-bagging is when one man presses his genitals into the face of another person.[276] On this night, J.K. wrestled J.O. to the ground, and B.S. dangled his penis and scrotum over J.O.'s face.[277] Because of this incident, J.K. was suspended and was home schooled for the remainder of the academic year.[278] J.K. appealed this decision arguing that his due process rights were violated because he was being expelled without the proper disciplinary review that accompanies an expulsion.[279] He also argued that this transfer would interfere with his ability to play high school varsity sports.[280] However, the court found that a transfer to another school was not the same as an expulsion, and that he did not have a right to play sports that would be protected by due process.[281] The court in turn dismissed the case.[282]

In *Jenkins Independent Schools v. Doe*, during the 2011-12 football season, members of the Jenkins Independent School District Football Team hazed the new members by forcibly sodomizing them with wooden objects.[283] According to John Doe, during a team dinner, two of the older teammates chased Doe outside, forced him down, and shoved a broomstick into his rectum.[284] Doe

271. *Id.* at 189.
272. *Id.* at 196.
273. *Id.* at 198.
274. J.K. ex rel. Kaplan v. Minneapolis Pub. Schs., 849 F. Supp. 2d 865, 867 (D. Minn. 2011).
275. *Id.*
276. *Id.*
277. *Id.*
278. *Id.* at 868-70.
279. *Id.* at 871.
280. *Id.*
281. *Id.* at 871-78.
282. *Id.* at 880.
283. Jenkins Indep. Schs. v. Doe, 379 S.W.3d 808, 810 (Ky. Ct. App. 2012).
284. *Id.*

yelled for them to stop, and then fled the dinner.[285] Because of the incident, the teammate committed suicide later that year.[286] On March 15, 2011, the Doe's filed a lawsuit seeking compensatory and punitive damages from the Jenkins Independent School District, the school superintendent, and football coaches Maggard, Holbrook, and Colwell.[287] "The complaint alleged that the Does's son had been the victim of a serious assault that was the result of a long-standing pattern of hazing at the school."[288] The Doe's stated that "school officials and coaches were aware of the ongoing hazing but did nothing to prevent it."[289] The school board, the school superintendent, and the coaches filed a motion to dismiss, claiming governmental or official immunity.[290] A hearing was held on September 29, 2011, and it was determined "that the motion was overruled until further discovery was conducted."[291] An appeal followed, and in 2012, it was determined that the order must be vacated "as it pertains to the individual actors and remand for the issue to be reconsidered by the trial court following discovery."[292] In 2015, four of the players who participated in the hazing pled guilty to misdemeanor assault.[293]

In *Doe v. Rutherford County Board of Education*, the Doe sisters attended and played basketball for Siegel High School (SHS), which was oversaw by the Rutherford County, Tennessee, Board of Education (RCBE).[294] Between November 29 and October 2, 2012, "Jane, June, and Sally Doe allege[d] that . . . Jane Roe (the coach's daughter) sexually assaulted them by placing her finger in or near their rectums or vaginas without their consent during and after practice on multiple occasions."[295] This harassment was an "initiation" ritual known as "cornholing."[296] Even though the Doe sisters reported these incidents multiple times—and at multiple levels within SHS and to the RCBE—they alleged that the administration: slow-walked its investigation of the incident; downplayed the seriousness of the allegations; meted out only token discipline to Jane Roe (and no one else); protected Jane Roe, the coach (her father), and

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* at 812.

293. *Id.*

294. Doe v. Rutherford Cty. Bd. of Educ., No. 3:13-CV-00328, 2014 WL 4080163, at *1 (M.D. Tenn. 2014).

295. *Id.*

296. *Id.* at *2.

the team over the Doe sisters's personal safety; retaliated against the Doe sisters for complaining about the sexual harassment; and constructively forced them out of the school.[297] "Based on these allegations, the plaintiffs assert[ed] claims under Title IX, 20 U.S.C. § 1682, for both discrimination and retaliation."[298] The RCBE requested summary judgment on both sets of claims, but the court denied the motion and allowed the case to proceed.[299]

In *Fenner v. Freeburg Community High School District No. 77*, Joshua Stark, a minor, was coming home from a varsity soccer game in Stanton, Illinois, on September 5, 2014, when—as part of a hazing ritual—members grabbed Stark and other freshmen and beat them in the back of the bus in full view of the bus driver and Assistant Coach Natalie Rushing.[300] Although the incident was reported, the school district allegedly failed to investigate or remediate the abuse.[301] The freshman was subsequently harassed by team members via social media, but the school district and its employees, again, "failed to properly investigate or remediate the abuse."[302] This led to Stark being constructively expelled from school because of a lack of a safe learning environment and being diagnosed with PTSD.[303] On July 6, 2015, Stark's mother filed a six-count complaint against Freeburg Community High School, Superintendent Andrew Lehman, and Rushing.[304] The complaint included claims of Title IX discrimination pursuant to 20 U.S.C. Section 1681; substantive due process violations, equal protection violations, and denial of liberty interests pursuant to 42 U.S.C. Section 1983; and intentional infliction of emotional distress.[305] The school filed a motion to dismiss the complaint for failure to state a claim.[306] The court denied the motion and allowed the case to proceed.[307] It found that the coach was aware of the ongoing hazing issue, and evidence was provided to show that the boys on the team were hazed while the girls were not (thus constituting sexual harassment).[308]

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297. *Id.* at *2-4.

298. *Id.* at *1.

299. *Id.* at *19.

300. Fenner v. Freeburg Cmty. High Sch. Dist. No. 77, No. 15-0729-DRH, 2016 WL 633898, at *1 (S.D. Ill. 2016).

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.* at *2, 5.

In 2015, in *Achcar-Winkels v. Lake Oswego School District*, several new members of the Lakeridge High School Dance Team claimed that the dance coach, Kayla Nordlum, hazed, harassed, and assaulted the new members while they were attending the dance teams's three mandatory summer events: (1) a bonding trip, (2) initiation, and (3) a boot camp.[309] After the incidents were reported, Suzanne Young, a volunteer for the dance team, retaliated against one of the new members by posting derogatory remarks about her mother on Facebook.[310] In response, the mother of the new team member filed a lawsuit against the high school, the school district, Nordlum, the former dance team assistant coach, Ashley Nordlum, and others.[311] The court later dismissed the case for failure to provide sufficient factual basis for the allegations.[312]

III. RESEARCH ON HAZING IN ATHLETICS

For at least a decade and a half, scholars have attempted to make sense of hazing in athletics—e.g., its prevalence, root causes, how it manifests itself. In this section, we review that literature.

A. Defining Hazing in Sports

In his work, Joshua Sussberg notes that there are notable differences between hazing in college athletics and that which occurs during fraternity and sorority pledge periods.[313] One major difference is that people volunteer to join fraternities, however, athletes are selected by coaches.[314] The latter is important with regards to the fact that with Greek life, one voluntarily assumes the risk involved in initiation, yet athletes are unaware of any risk until the moment it occurs (i.e. the student athlete has no real choice but to be hazed or suffer certain social costs).[315] Jennifer Waldron found that hazing within athletics is unique in that when rookies experience hazing on a sport team, they have already demonstrated that they are qualified to participate on the team, but endure hazing to be an accepted member of the team.[316] When veterans haze rookies it is usually only for a short period of time, but a rookie's choice is rather

309. Achcar-Winkels v. Lake Oswego Sch. Dist., No. 3:15-CV-00385-ST, 2015 WL 5522042, at *1-2 (D. Or. 2015).

310. *Id.* at *3.

311. *Id.* at *1.

312. *Id.* at *10.

313. Sussberg, *supra* note 93, at 1432.

314. *Id.* at 1434.

315. *Id.*

316. Jennifer J. Waldron, *Hazing in Sport*, *in* ROUTLEDGE INTERNATIONAL HANDBOOK OF SPORT PSYCHOLOGY 304 (Robert J. Schinke et al. eds., 2016).

limited.[317] Hazing present in athletics varies on a spectrum, ranging from less to more severe based on the amount of pain inflicted.[318] Less painful acts include shaving heads or singing in public, while more violent acts may be binge drinking, physical beatings, or rape.[319] One issue with labeling hazing on a spectrum, is that even those acts that cause little pain are ignored.[320]

Sarah Fields and colleagues believe sports-related violence represents a broad spectrum of interpersonal violence.[321] Previous research has broken down sports related violence into three subsets: (1) brawling (fights involving players, fights involving officials and coaches, and fights involving spectators at a sporting event); (2) hazing; and (3) foul play.[322] Fields and colleagues find that by separating the three subtopics and failing to recognize that their connection to sport connects them, scholars are unable to see how sports-related violence is a broad example of interpersonal violence.[323] The authors point out the fact that U.S. society sees sport violence as part of the game, yet the behavior in sports would be criminal outside of the arena.[324]

Brian Crow and Eric Macintosh found that college athletes are willing to do anything that veteran players demand to be a part of the team's "inner circle."[325] One overlooked factor that may contribute to hazing in college athletics is the dismissive way local and national media outlets cover hazing in professional sports.[326] The latter is significant considering that research has found that young athletes are impacted by the media's coverage of "harmless" hazing activities.[327] Studies have indicated that there is still a disconnect between what researchers believe is hazing and what student-athletes believe is hazing.[328] Most student-athletes define hazing in terms of physical force.[329] Further, these athletes believe that if a student consents to participate, it is not hazing.

317. *Id.*

318. *Id.* at 305.

319. *Id.*

320. *Id.*

321. Sarah K. Fields et al., *Conflict On the Courts: A Review of Sports-Related Violence Literature*, 8 TRAUMA, VIOLENCE, & ABUSE 359 (2007).

322. *Id.* at 360.

323. *Id.* at 361.

324. *Id.* at 365.

325. R. Brian Crow & Eric W. Macintosh, *Conceptualizing a Meaningful Definition of Hazing in Sport*, 9 EUR. SPORT MGMT. Q. 433, 433 (2009).

326. *Id.* at 435.

327. *Id.*

328. *Id.* at 438.

329. *Id.*

Similarly, if hazing is seen as productive, it is not qualified as hazing.[330] There is a gray area in what student-athletes perceive hazing to be (physically harmful and against the will of the participant) and what researchers consider hazing. This disconnect greatly restricts the development of clear and meaningful hazing prevention efforts.[331] Crow and Macintosh's meta-analysis found several problematic areas in athletics attempt to decrease hazing.[332] Concerning factors were: the lack of knowledge and awareness of hazing, unclear definitions of hazing, inconsistent punishments for hazing, and undeveloped prevention strategies.[333] The authors report that student athletes consider hazing to be a part of the team chemistry/tradition.[334]

The most commonly used definition of hazing is: "any activity expected of someone joining a group that humiliates, degrades, abuses, or endangers, regardless of the person's willingness to participate (i.e. this doesn't include rookies carrying balls, team parties with community games, or going out with your teammates, unless an atmosphere of humiliation, degradation, abuse or danger arises)."[335] Crow and Macintosh highlight the need for a new definition for hazing in athletics. For instance, in the case of sports, the component of "joining a group," does not apply (i.e. coaching staff picks who is part of the team).[336] Athletic hazing is often perpetrated by players who do not have control over which teammates remain on the team. A victim can be hazed and still be cut from the team by the coach or the teammate can refuse to be hazed and still be kept on the team by the coach.[337] With regards to who is *accepted* as part of the team, that responsibility tends to be the veteran players.[338] The latter power differential mandates new recruits' participation in hazing rituals.[339] Therefore, Crow and Macintosh understand hazing as: "any potentially humiliating, degrading, abusive, or dangerous activity expected of a junior-ranking athlete by a more senior team-mate, which does not contribute to either athlete's positive development, but is required to be accepted as part of a team, regardless of the junior-ranking athlete's willingness to participate (i.e. this includes any

330. *Id.*
331. *Id.* at 439.
332. *Id.* at 446.
333. *Id.*
334. *Id.* at 447.
335. *Id.* at 448.
336. *Id.*
337. *Id.*
338. *Id.*
339. *Id.* at 449.

activity that sets apart or alienates any teammate based on class, number of years on the team, or athletic ability).[340]

B. Hazing Prevalence and the Sport Ethic

Judy Raalte and colleagues also question the prevalence of hazing in sport. They found that a major reason for unreliable statistics of hazing relates to the fear of reporting such incidents. For example, Nadine Hoover found that only 12% of 61,258 athletes surveyed reported being hazed. On the other hand, when asked about the involvement with specific activities and not hazing, 80% reported experiencing one or more typical hazing rituals as part of their team initiations. News media is also a reliable source for the prevalence of hazing.[341] Hazing occurs because humans desire the possession of a group identity or membership. According to Festinger's theory of cognitive dissonance, the effort to join a group must be justified by the rewards of group membership.[342] Sport hazing would not induce cognitive dissonance, but instead it would increase the costs of membership without a commensurate increase in the rewards of membership. The embarrassment, pain, and effort inflicted by senior team members causes the individuals to have decreased attraction to the senior members as well as the team.[343]

Athletes blindly accept the sports ethic, a certain moral code for athletes to follow. The sports ethic includes making sacrifices for the game, striving for distinction, accepting risks, playing through pain, and refusing to accept limits in the pursuit of possibilities. Problem behaviors arise when athletes overconform and completely accept the sports ethic. To feel accepted by the team, team members engage in hazing. In addition, hazing is the result of over conformity to striving for distinction and making sacrifices for the game. Hazing allows athletes to strive for distinction between the accepted group and the outsiders. Hazing also allows athletes to make sacrifices for the game and prove to the team that they are worthy teammates. The complete acceptance of the sports ethic causes athletes to participate in hazing activities.[344]

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340. *Id.*

341. Judy L. Van Raalte et al., *The Relationship Between Hazing and Team Cohesion*, 30 J. SPORT BEHAV. 491, 492 (2007).

342. *Id.* at 495.

343. *Id.* at 496.

344. Mark Groves, *Hazing and Initiation Ceremonies in University Sport: Setting the Scene for Further Research in the United Kingdom*, 15 SPORT IN SOC'Y 117, 122 (2012).

Similarly, athletic identity can be defined as the degree that an individual adheres to, or associates with, the role of being an athlete.[345] A stronger athletic identity can lead to adherence to sport ethic which is based on traditional masculine characteristics such as dominance and competition.[346] Therefore, a greater athletic identity can lead to greater likelihood of hazing.[347] The strongest predictor of the type of hazing that occurs—mild or severe—largely depends on perceptions of teammates' approval of participating in hazing.[348] Essentially, powerful team norms result in more severe hazing rituals.[349] Therefore, the most effective way to hinder hazing behavior is to decrease team norms.[350] Early, multifaceted intervention and the option for alternative rituals based on loyalty, respect, and unity have the greatest effect in reducing hazing activities within a sports team.[351]

C. Sex Differences

Crow and Macintosh found that while male student-athletes seemed to be more involved in physical hazing, women student-athletes were shown to be increasingly involved in hazing activities.[352] However, Ryan Hamilton and colleagues found that within the institution of sport, sex differences exist in the rookie hazing experiences of varsity athletes and self-reported hazing perpetration.[353] For instance, men appear to be more involved in hazing than are women, yet the hazing practices of women are becoming increasingly similar to those of men, especially as women continue to enter traditionally male sporting environments.[354] Jeffrey Gershel and colleagues conducted a survey among sixth through twelfth grade athletes, finding that 17.4% had been subject to hazing.[355] Hazing occurred in every sport and at all grade levels. The highest frequencies were among gymnasts and cheerleaders, and boys were more likely to experience physical harm than girls. None of the athletes defined hazing as

345. Jennifer J. Waldron, *Predictors of Mild Hazing, Severe Hazing, and Positive Initiation Rituals in Sport*, 10 INT'L J. SPORTS SCI. & COACHING 1089, 1090 (2015).

346. *Id.* at 1091.

347. *Id.*

348. *Id.* at 1098.

349. *Id.*

350. *Id.*

351. *Id.* at 1100.

352. Crow & Macintosh, *supra* note 325, at 443.

353. Ryan Hamilton et al., *Applying Social Cognitive Theory to Predict Hazing Perpetration in University Athletics*, 39 J. SPORT BEHAV. 255, 267 (2016).

354. *Id.*

355. Jeffrey C. Gershel et al., *Hazing of Suburban Middle School and High School Athletes*, 32 J. ADOLESCENT HEALTH 333, 333-35 (2003).

illegal, although some described it as embarrassing.[356] In addition, only 40% of the athletes defined hazing "correctly," and 86% reflected that hazing had been "worth it." Boys were more likely to be subjected to physically dangerous hazing behaviors like violence, while girls were more likely to be forced to perform an action of their own accord.[357]

Jamie Bryshun and Kevin Young discuss hazing within sport and gender socialization, drawing upon the rookie-veteran hierarchy.[358] Male athletes feel pressure to conform to typically masculine ideals like physical dominance and heterosexism. Similarly, women are also socialized through sport and they express female identities within sport subcultures. Hazing ceremonies occur across various sports and these rituals are also historically grounded.[359] Bryshun conducted a study of sport-related hazing in three western Canadian cities.[360] Veterans commonly scheduled a "Rookie Night" for the new team members early in the sport season. This night entails various forms and levels of hazing from forced alcohol and food intake to pranks like getting a stranger's number at a bar.[361] Bryshun and Young state that many athletes need to understand hazing on a scale of relative deviance and seriousness, because athletes commonly trivialize their experiences with hazing.[362] The study found that hazing is linked to both gender and sport socialization.[363] Male and female veterans enforced hazing through the power-dynamics of seniority in initiating new members. However, women did not abide by forms of aggression, dominance, and punishment in their initiations as strictly as their male counterparts. The demand for power, status, and identity issues remained stable across genders in hazing occurrences.[364] The study also found an association between the nature of certain sports and the type of hazing. Therefore, the more violent and physical the sport, the more abusive the type of hazing. Athletes in physical contact sports experienced more abusive hazing and physical punishments than members of the non-contact sport teams.[365]

A lot of male hazing rituals involve homophobic elements that bring question to the privileged position of heterosexuality and work to humiliate or

356. *Id.* at 334.

357. *Id.* at 335.

358. Jamie Bryshun & Kevin Young, *Hazing as a Form of Sport and Gender Socialization*, *in* SPORT & GENDER IN CANADA 302 (2007).

359. *Id.* at 307.

360. *Id.* at 309.

361. *Id.* at 310.

362. *Id.* at 314.

363. *Id.* at 319.

364. *Id.* at 320.

365. *Id.* at 322.

feminize pledges.[366] This trend seems to appear most in Anglo-American societies that use homophobic and sexist masculine methods of hazing.[367] However, the use of homophobic elements in hazing is decreasing due to decreased homophobia and homohysteria within men in the category of "emerging adulthood."[368] In this stage between adolescence and adulthood, men experience more social freedoms, less pressure, and a significant decrease in homophobia.[369] A study conducted by Eric Anderson and colleagues regarding homohysteria found that homosocial tactility in the absence of homophobia resulted in changing what constitutes acceptable gendered behaviors and eroded homophobia, hazing becoming popular as a bonding experience or a rite of passage rather than to embarrass students or maintain hierarchies, and that emerging adulthood marks the phase of males' lives when they are more inclusive and open-minded which can result in more positive hazing rituals.[370]

D. Social Hierarchy and Acceptance

Jennifer Waldron and colleagues framed a study in Waldron and Krane's model of health-compromising behaviors in sport.[371] The model is based on the understanding that athletes will go to extremes to improve performance and become an accepted member of the team. Athletes follow the sport ethic because they possess a strong social approval goal orientation, and they are therefore determined to fit in and feel accepted by their teammates. Male dominance contributes to the foundation for team identities and acceptance of the sport ethic.[372] In addition, hegemonic masculinity also results in deviant behavior over conformity. Veterans subordinate new members to emphasize their own control and dominance as senior members. Veterans also commonly force new members into playing sexually submissive roles like making them wear women's clothing to emasculate and humiliate them. Athletes view submission to hazing as a representation of their willingness to make sacrifices for the team. Hazing reinforces hierarchical structures within the team and

366. Eric Anderson et al., *Male Team Sport Hazing Initiations in a Culture of Decreasing Homohysteria*, 27 J. ADOLESCENT RES. 427, 428 (2012).

367. *Id.* at 429.

368. *Id.* at 431.

369. *Id.*

370. *Id.* at 444.

371. Jennifer J. Waldron et al., *Duct Tape, Icy Hot & Paddles: Narratives of Initiation onto US Male Sport Teams*, 16 SPORT, EDUC. & SOC'Y 111 (2011).

372. *Id.* at 112.

forces rookies to comply with the conditions for being a true team member.[373] To fully understand athlete's experiences of hazing, the consequences of hazing, and the reasons for the persistence of hazing, Waldron, Lynn, and Krane conducted a study interviewing former male athletes about their experiences of being a target or perpetrator of hazing. One athlete described his exposure to hazing as only a group bonding experience and a major issue of acceptance. He reflected that the boys hazed you, because they liked you. Hazing made him feel like a tough individual as well as an accepted part of the team.[374] Hazing also involves humiliating the new members, and mere jokes can lead to hospital visits and violence.[375]

Waldron and Krane's model, Waldron and colleagues found that resistance to hazing rarely appeared in the study. Instead, social acceptance and adhering to team norms established in sport ethic were highlighted by the men's hazing experiences.[376] The athletes who resisted hazing were isolated from the team and directly targeted for more extreme episodes of hazing. The extreme consequences of hazing like hospital visits, death, and alcohol poisoning are all easily identifiable. However, it can be quite difficult to identify the less monumental consequences of hazing. In addition, hazing typically occurs in environments lacking adult supervision such as locker rooms, weight rooms, or hotel rooms.[377] In order to decrease the prevalence of hazing, the perceptions of social norms must also change. Hazing interventions must counter the pluralistic ignorance of athletes believing that others are not concerned with hazing behaviors. In addition, Leonard Berkowitz developed the idea of targeted social norm interventions. This idea represents the concept that team norms regarding hazing should be addressed in small, interactive groups. In these groups, athletes could come to a consensus on the degree of intolerance for hazing, be presented with data about the degree of intolerance for hazing, and contemplate ways to confront the hazers.[378]

Raalte and colleagues evaluated the contention that hazing is associated with enhanced team cohesion. The results showed that the more appropriate team building behaviors that athletes were involved in, the more socially cohesive they perceived their team to be. On the contrary, the more hazing activities they reported doing or seeing, the less cohesive they perceived their team to be in sports-related tasks. Therefore, hazing defies the argument that

373. *Id.* at 113.

374. *Id.* at 117.

375. *Id.* at 119.

376. *Id.* at 120.

377. *Id.* at 121.

378. *Id.* at 122.

hazing builds team cohesion. Instead, hazing is associated with less, not more team cohesion.[379] In the study, hazing was negatively correlated with task attraction and integration, and is unrelated to social attraction and integration. On the other hand, appropriate team building activities such as attending pre-season practice or completing a ropes course as a team are related to higher levels of social attraction and integration.[380] The attitudes and beliefs of athletes, coaches, and the administrators of collegiate sports programs may help identify strategies for reducing hazing. In addition, clear anti-hazing policies and vigorous enforcements may deter team veterans from hazing new members.[381]

Generally, within sports teams, team cohesion is a result of coaches knowing individual athletes, clarifying role expectations, and developing group pride and a group identity.[382] Furthermore, team cohesion is said to positively correlate with team performance.[383] However, despite an emphasis on team cohesion to perform successfully, 80% of athletes surveyed in a 2010 study by Christopher Kowalski and Jennifer Waldron stated that they had experienced hazing behaviors.[384] This may seem incongruent at first- one would think hazing hinders cohesion—but the correlation becomes clearer when western sports culture and its values are considered. These values include winning at all costs, power and dominance over others, and hierarchy of authority.[385] These values align directly with the goals of hazing such as making older team members superior over younger ones and encouraging over-conformity.[386] Some even support hazing because they believe it promotes group attitudes and skills, reinforces a hierarchy within the team, and creates a social dependence on the group.[387]

Predominately, coaches tend to have similar views to players who take part in or support hazing.[388] Coaches may differ in their degree of perceived responsibility. Some coaches believe they are powerless to hazing and that anti-hazing education is pointless.[389] Other coaches remain passive and fail to

379. Van Raalte et al., *supra* note 341, at 504.

380. *Id.* at 502.

381. *Id.* at 504.

382. *Id.*; *see also* Christopher Kowalski & Jennifer Waldron, *Looking the Other Way: Athletes' Perception of Coaches' Responses to Hazing*, 5 INT'L J. SPORTS SCI. & COACHING 87 (2010).

383. Van Raalte et al., *supra* note 341, at 494.

384. Kowalski & Waldron, *supra* note 382.

385. *Id.* at 88.

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.* at 89.

clarify misinterpretations regarding hazing prevention education, remove themselves from the process of hazing and ignore the act, or view any attempt to establish more constructive team activities as an increased burden on their workload.[390] The most common outcome, however, is that coaches are aware of hazing but choose to accept it.[391] The study asked the question of whether coach awareness of hazing is assumed or observed by athletes. The study identified coaches' actual responses to hazing as either a proactive stance against hazing or acceptance of it.[392] Furthermore, the responses indicated three roles coaches should assume during hazing experiences: a proactive stance against it, accepting it, or trying to remain actively unaware of it.[393] The most common response was that coaches are believed to have an awareness of hazing.[394]

Considering this information, many believe it becomes the coaches' responsibility to create positive team-building traditions, be supportive of athletes who walk away from hazing, continually address the issue, provide leadership, and maintain team satisfaction to keep athletes safe and promote team unity. [395]

E. Broader Theoretical Explanations

Hamilton and colleagues created a model of hazing founded in Social Cognitive Theory.[396] The authors highlight that over 81% of college athletes reported being subjected to at least one questionable hazing act as rookies, 51% reported participating in alcohol-related initiation, 21% reported engaging in an unacceptable act (i.e. simulating sexual activity).[397] While much of the literature on hazing has focused on the experience of rookie players, considerably less research has focused on hazing from the perspective of the hazing perpetrator.[398] Social cognitive theorists argue that behavior is determined by personal factors (i.e. ability to self-regulate), environmental factors (i.e. team size/degree of physical contact permitted in the sport), and behavior.[399] Personal factors, environmental factors, and behavior interact

390. *Id.*
391. *Id.* at 90.
392. *Id.* at 92.
393. *Id.* at 93.
394. *Id.*
395. *Id.* at 88.
396. Hamilton et al., *supra* note 353, at 261.
397. *Id.* at 256.
398. *Id.*
399. *Id.* at 258.

through certain human capabilities: symbolic, self-reflective, vicarious forethought, and self-regulatory.[400] The authors found vicarious (i.e. modeling), forethought (i.e. ability to anticipate one's own behavior), and self-regulatory (i.e. ability to control behavior) capabilities to be predictive of hazing perpetration.[401]

Further, Hamilton found that individuals who chose to perpetrate a greater number of hazing activities appear to be more prone to disengage moral self-regulation.[402] Social cognitive theorists state that our self-regulatory capability influences which behaviors we will choose to engage in and which we will choose to avoid; the disengagement of this capability has implications for behavior.[403] One important finding of Hamilton's study was that the degree of hazing endured as a rookie accounted for over 30% of the variance in hazing perpetration. Seventy-six percent of participants who were subjected to at least one hazing activity as a rookie went on to perpetrate at least one hazing activity as a veteran.[404] According to social cognitive theory (SCT), the vicarious capability allows individuals to learn through indirect experiences, typically through the observation of behavioral models.[405] Student-athletes who are often experienced with hazing as a result of exposure from high school initiations, and these previous experiences may serve to establish beliefs about what behaviors are acceptable in the initiation context.[406] The authors also found that individual differences in the number of different hazing activities perpetrated appear to be more dependent on personal factors rather than the situational influences associated with environmental factors in SCT.[407] Rookie hazing experiences and moral disengagement accounted for nearly all of the predicted variance in the number of hazing activities perpetrated.[408]

Waldron uses both evolutionary psychology and a post-structuralist approaches to explain hazing in sports.[409] With regards to evolutionary psychology, our ancestors had to resolve potential threats to group cooperation by forming coalitions with others.[410] Hazing serves as an initiation ritual that

400. *Id.*
401. *Id.*
402. *Id.* at 268.
403. *Id.*
404. *Id.* at 269.
405. *Id.*
406. *Id.* at 260.
407. *Id.* at 270.
408. *Id.*
409. Waldron, *supra* note 316, at 307-08.
410. *Id.* at 307.

solves the problem of free-riding.[411] Hazing allows rookies to display honest signals of their commitment to the group and their willingness to pay a cost for the benefits received via group membership. Post-structuralists focus more on self-identity.[412] Specifically, they believe that one's identity is created and sustained by language and discourse (i.e. statements we use to construct the meaning of a phenomenon).[413] Power is viewed as dynamic, relational, and maintained through discourse and language.[414] Team members structure the hazing experience by using and reproducing the discourse of athletes as tough and committed; hazing would not exist if all members did not participate in the discourses and the associated behavioral practices. Athletes who participate in hazing have internalized the dominant discourse and language which constructs athletes as tough and hazing as harmless fun.[415]

Jennifer Waldron defines hazing as a total institution like the military or prison. Sport is an enclosed social system where individuals must comply with specific codes of behavior.[416] Veteran members constantly monitor and enforce this behavior to control the lives of the new members. Even if there are instances in which hazing may promote team bonding, the severe psychological and physical consequences are detrimental to the athletes' health.[417] Waldron frames hazing from a poststructuralist perspective, highlighting that one's self or identity is created within daily language and discourse. Discourses are a set of resources or ways of thinking and speaking that provide us with conditions of possibility.[418] The media, coaches, and teammates draw upon a discourse that constructs athletes as tough and invincible, playing through the pain. Depending on the discourses, veterans will use language and certain behaviors unavailable to the rookies on the team. In addition, power is based on relationships between individuals and the use of certain resources maintains these relationships of power.[419] Because power is dynamic and reciprocal, hazing could not occur if the rookies and veterans did not support the discourse. Athletes belong to a limited discourse of toughness and masculinity, and the media even focuses on the tough athlete, neglecting the athlete who is injured and healing. Poststructuralist theories assert that people have agency and finite

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.* at 308.

415. *Id.*

416. Jennifer J. Waldron, *A Post-Structuralist Approach to Hazing in Sport*, *in* THE PSYCHOLOGY OF SUB-CULTURE IN SPORT AND PHYSICAL ACTIVITY: A CRITICAL APPROACH 31 (1st ed. 2015).

417. *Id.* at 32.

418. *Id.* at 33.

419. *Id.* at 34.

choices. Therefore, rookies and veterans do not have choice in hazing, instead they are limited by the discourses they follow when developing their identity. Rookies strive to prove themselves as members of the team, while veterans enforce the team norms.[420] Waldron also introduces the idea of the auxiliary teammate, a member of the team who is no longer a rookie but not yet a veteran. These members are usually bystanders of hazing and they do not actively participate in the events. On the other hand, rookies partake in hazing activities because they feel pressure to become a real teammate within the dominant discourse of being a committed and tough athlete.[421]

IV. COGNITIVE BIASES AND THEIR ROLE IN HAZING

Cognitive biases are systematic deviations from rational judgment that result in assumptions about other people and situations that may be illogical.[422] In this section we explore how a variety of cognitive biases influences the judgment and decision-making of hazing victims.

A. Bias Blind-Spot

Richard West and colleagues' work on the bias blind-spot suggests that individuals may observe and report biases more frequently in others than in themselves.[423] In multiple studies conducted by West and colleagues, they assessed whether participants displayed a bias blind-spot with respect to the classic cognitive biases. The goal of the study was to understand whether those who claimed to be unaffected by biases truly exhibited a more unbiased performance compared to other participants. In study after study, participants rated the average person as more likely to commit the bias than themselves.[424] An additional study by Emily Pronin and colleagues underscored the prevalence of the bias blind-spot.[425] Overall, their participants reported themselves and their parents as less susceptible to cognitive biases than the average American.[426] When participants were asked to rate their susceptibility to specific cognitive biases relative to their fellow classmates, they considered

420. *Id.* at 36.

421. *Id.* at 37.

422. *See* Martie G. Haselton et al., *The Evolution of Cognitive Bias*, *in* THE HANDBOOK OF EVOLUTIONARY PSYCHOLOGY 724, 725 (David M. Buss ed., 2005).

423. Richard F. West et al., *Cognitive Sophistication Does Not Attenuate the Bias Blind Spot*, 103 J. PERSONALITY & SOC. PSYCHOL. 506, 507 (2012).

424. *Id.* at 514.

425. Emily Pronin et al., *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 369 (2002).

426. *Id.* at 371.

themselves less biased but not necessarily less prone to procrastination and skilled at public speaking, for example.[427] Participants also viewed themselves as less susceptible to cognitive biases deemed low in social desirability but equally susceptible to those of high social desirability.[428]

B. Anchoring and Focusing Effect

Anchoring is a person's overreliance on the first piece of information offered when making decisions.[429] Amos Tversky and Daniel Kahneman first determined that when asked a comparative question, anchors result in different estimates, which are biased toward the initial values.[430] Bias allows decision-makers to make sense of information around the anchor, despite the value being a separate entity. Anchoring impacts judgments in a range of areas—e.g., general knowledge, probability estimates, legal judgment, pricing decisions, and negotiation.[431] In one anchoring study, participants estimated the percentage of African countries in the United Nations (UN).[432] Then, a wheel was spun, and participants were asked whether the value that the wheel landed on was higher or lower than the percentage of African countries in the UN. The wheel landed on different numbers for two groups of participants—i.e., ten and sixty-five, respectively.[433] Participants in the "ten condition" estimated the percentage of African countries in the UN to be 25%, while those in the "sixty-five condition" estimated the percentage to be closer to 45%.[434] Suggesting an anchoring effect, participants who held the initial value of ten in their mind were biased to lower their final estimate toward this value more than those who were given an initial value of sixty-five.[435]

C. Backfire Effect

The backfire effect occurs when a person's misconstrued beliefs appear to strengthen or increase when they are faced with contradictory, factual

427. *Id.*

428. *Id.* at 374.

429. Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124, 1128 (1974).

430. *Id.*

431. Thomas Mussweiler & Fritz Strack, *The Semantics of Anchoring*, 86 ORG. BEHAV. & HUM. DECISION PROCESSES 234, 234-35 (2001).

432. *Id.*

433. *Id.*

434. *Id.*

435. *See* Tversky & Kahneman, *supra* note 429.

evidence.[436] Backfire effect does not always impede persons from accepting information that counters their beliefs.[437] The effectiveness of counter information in changing people's opinions varies depending on: amount of information, clarity of information, and extent to which an individual has been exposed to similar information beforehand.[438] Certain conditions must be met for the backfire effect to strengthen misconstrued beliefs or conceptions—i.e., "motivated reasoning," where they are emotionally motivated to carefully select a message that fits the original belief.[439] One type of backfire effect is the familiarity backfire effect, where people continue to believe misinformation simply because it is more familiar than the truth. Researchers describe the second category as the overkill backfire effect, where too many arguments are presented against a certain point. Finally, the worldview backfire effect occurs when topics clash with people's world view or cultural identity. With the confirmation bias at play, counter-arguments regarding worldviews and/or cultural identity can make the original belief stronger.[440]

D. Motivated Reasoning

Motivated reasoning occurs when decision-makers desire a particular outcome in an evaluative task. These individuals then use this preference to arrive at that desired conclusion by engaging in biased processes for "accessing, constructing, and evaluating beliefs."[441] In the 1600s, this reasoning was recognized by Sir Francis Bacon:

> The human understanding when it has once adopted an opinion . . . draws all things else to support and agree with it. And though there be a greater number and weight of instances to be found on the other side, yet these it either neglects and despises, or else by some distinction sets aside and rejects; in order that by this great and pernicious predetermination the authority of its former conclusions may remain inviolate.[442]

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436. Brenden Nyhan et al., *The Hazards of Correcting Myths About Health Care Reform*, 51 MED. CARE 127 (2013).

437. *Id.*

438. *Id.*

439. Justin Reedy et al., *How Voters Become Misinformed: An Investigation of the Emergence and Consequences of False Factual Beliefs*, 95 SOC. SCI. Q. 1399 (2014).

440. *Id.*

441. Ziva Kunda, *The Case for Motivated Reasoning*, 108 PSYCHOL. BULL. 480, 480 (1990).

442. Francis Bacon, *Aphorisms Concerning the Interpretation of Nature and the Kingdom of Man*, *in* THE PHILOSOPHICAL WORKS OF FRANCIS BACON 259, 265 (John M. Robertson ed., 1905). *See* Charles G. Lord et

Concepts that are emotionally evocative have motivational influence over cognition.[443] When one's preexisting beliefs are challenged, and negativity is triggered, there is an increased intensity of cognitive processing.[444] A greater intensity of processing results in a search for new evidence that is fitting to one's previously-held beliefs. The decision-making process ends when information confirms personal beliefs and the urgency dissipates.[445] Ziva Kunda discovered that people may conduct either a selective, internal search through their memory or an external search of available information to find existing facts, beliefs, or rules that support the outcome they desire. Alternatively, people may "creatively combine accessed knowledge to construct new beliefs that could logically support the desired conclusion."[446] Information that is not consistent with preference is evaluated more critically than information that is consistent with the decision maker's preferred outcome.[447] In the visual perception process, people also search for preferred information by allowing their visual systems to "lower the threshold" required for a perceptual determination to be consistent with their desired result.[448] Motivated reasoning lies outside of conscious awareness.[449] The process is biased by individual goals; each goal results in a different knowledge base being accessed.[450]

E. Confirmation Bias and Congruence Bias

Confirmation bias is when an individual selectively searches for information to confirm prior beliefs or hypotheses.[451] For example, in the

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al., *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979).

443. *See* Shelley E. Taylor & Curtis D. Hardin, *Motivated Cognition: Phenomena in Search of Theory*, 10 PSYCHOL. INQUIRY 75, 75-76 (1999).

444. Leonard S. Newman, *Motivated Cognition and Self-Deception*, 10 PSYCHOL. INQUIRY 59, 60 (1999).

445. *Id.*

446. Kunda, *supra* note 441, at 483.

447. Peter H. Ditto & David F. Lopez, *Motivated Skepticism: Use of Differential Decision Criteria for Preferred and Nonpreferred Conclusions*, 63 J. PERSONALITY & SOC. PSYCHOL. 568 (1992); Shailendra Pratap Jain & Durairaj Maheswaran, *Motivated Reasoning: A Depth-of-Processing Perspective*, 26 J. CONSUMER RES. 358, 364-65 (2000).

448. Emily Balcetis & David Dunning, *See What You Want to See: Motivational Influences on Visual Perception*, 91 J. PERSONALITY & SOC. PSYCHOL. 612, 614 (2006). As Balcetis and Dunning note, "[P]eople literally are prone to see what they want to see." *Id.* at 613.

449. Emily Balcetis, *Where the Motivation Resides and Self-Deception Hides: How Motivated Cognition Accomplishes Self-Deception*, 2 SOC. & PERSONALITY PSYCHOL. COMPASS 361 (2008).

450. Kunda, *supra* note 441, at 483.

451. *See* R. Mendel et al., *Confirmation Bias: Why Psychiatrists Stick to Wrong Preliminary Diagnoses*, 41 PSYCHOL. MED. 2651 (2011); *see also* SCOTT PLOUS, THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING 233-34 (1st ed. 1993).

medical field, a physician may confirm a preliminary diagnosis without seeking out contradictory evidence to rule out wrong diagnoses.[452] When psychiatrists and medical students search for additional confirmatory information, such an approach leads to poorer diagnostic accuracy.[453] In one study 13% of psychiatrists and 25% of medical students searched for information in a confirmatory manner.[454] These participants were significantly less likely to make the correct medical diagnosis when compared with participants who searched for information in a balanced way.[455] Congruence bias occurs when people oversimplify the given problem, do not extensively search for competing evidence, or only consider a single hypothesis.[456] Individuals have difficulty evaluating negated relationships and are more likely to prefer or choose the positive form of the relationship, thereby exhibiting some form of congruence bias in their responses.[457]

F. Illusory Relationships

Illusory correlation occurs when an individual believes there to be a correlation between two things that are not in fact correlated, less strongly correlated than reported, or correlated in the opposite direction as reported.[458] David Hamilton and Robert Gifford investigated the role of illusory correlation in determining the frequency of behavior by recruiting participants to examine paired distinctiveness as a potential basis of stereotypes in decision-making.[459] Participants observed two groups of people—groups A and B, with about two-thirds of the observations in group A. Both groups exhibited an equal amount of undesirable behavior, performing desirable behaviors two-thirds of the time and undesirable behaviors one-third of the time, with the only discrepancy being that group B was a "minority," with a smaller number of people.[460] After observing the behaviors, the participants were asked to

452. Mendel et al., *supra* note 451, at 2651.

453. *Id.*

454. *Id.* at 2654.

455. *Id.* at 2655.

456. *See* Jonathan Baron et al., *Heuristics and Biases in Diagnostic Reasoning*, 42 ORG. BEHAV. & HUM. DECISION PROCESSES 88, 108-09 (1988) (concluding that congruence heuristics may involve a failure to carry out different "checks" on an initial decision to ask a question).

457. *See* P. C. Wason, *Reasoning About a Rule*, 20 Q.J. EXPERIMENTAL PSYCHOL. 273, 273-74 (1968).

458. Loren J. Chapman, *Illusory Correlation in Observational Report*, 6 J. VERBAL LEARNING & VERBAL BEHAV. 151 (1967).

459. *See* David L. Hamilton & Robert K. Gifford, *Illusory Correlation in Interpersonal Perception: A Cognitive Basis of Stereotypic Judgments*, 12 J. EXPERIMENTAL SOC. PSYCHOL. 392 (1976).

460. *See id.* at 394. ("[F]or both Groups A and B, there was a 9:4 ratio of desirable to undesirable behaviors.").

determine how many of the behaviors described members of group A or group B. Next, researchers asked how many of those statements had described undesirable behavior. Participants attributed significantly more undesirable behavior to group B than group A, even though the ratios of desirable to undesirable behavior were the same for each group.[461]

Similarly, the illusory truth effect is the tendency to believe information to be correct after repeated exposure, suggesting that information repeated over time gives the illusion of truth.[462] Studies suggest that people consistently judge repeated statements as relatively true compared to unfamiliar statements.[463] When judging a trivia statement, people use heuristic cues to assess the truthfulness of the statement.[464] Heuristics include the source of the statement, characteristics of the context in which it was presented, and attributes of the statement itself.[465]

G. Sunk-Cost Fallacy and Irrational Escalation of Commitment

Escalation theory focuses on why people persist in failing endeavors beyond a rationally defensible point.[466] Helga Drummond presents two main theories of irrational escalation. The first is the social-psychological theory, which views escalation because of decision error. When an individual decides, and that option fails, the individual is confronted by variety of social and psychological pressures. These factors pressure an individual to persist with their chosen option. This theory suggests that the motive for escalation is self-justification. Fear of failure causes decision-makers to escalate to conceal their initial mistake. Decision dilemma theory offers another explanation for irrational escalation, explaining that "the main problem decision makers face is that of obtaining sufficient clear and reliable information to enable them to

461. *Id.* at 399.

462. *See* Frederick T. Bacon, *Credibility of Repeated Statements: Memory for Trivia*, 5 J. EXPERIMENTAL PSYCHOL. LEARNING MEMORY & COGNITION 241, 251 (1979) (finding that statements judged to be repeated were perceived as true, regardless of whether they were actually repeated, actually true, or even contradictory); *see also* Alice Dechêne et al., *Mix Me a List: Context Moderates the Truth Effect and the Mere-Exposure Effect*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 1117 (2009).

463. *See, e.g.*, Bacon *supra* note 462, at 241 (discussing the first of such studies, which found that repeated statements were rated true more frequently than new statements and received higher truth ratings upon subsequent exposure).

464. *See* Alice Dechêne et al., *The Truth About the Truth: A Meta-Analytic Review of the Truth Effect*, 14 PERSONALITY & SOC. PSYCHOL. REV. 238, 239 (2010) (citing a finding that repeated statements are believed more than new statements in the context of trivia).

465. *Id.* at 238.

466. Helga Drummond, *Giving It a Week and Then Another Week: A Case of Escalation in Decision Making*, 26 PERSONNEL REV. 99 (1997).

exclude miscalculation from judgments about personnel or situations."[467] This theory purports that it may take time before the resulting problems become apparent and when the problems do emerge, it could then be reasonable to give the course of action another try. This theory views persistence as a rational response in some situations. Commitment to escalation stops when the negative feedback destroys the commitment.[468] Similarly, irrational escalation occurs where individuals justify decisions affecting prospective cost based on irrecoverable past costs. Experts tend to agree that relying on these past costs does not allow for an adequate and logical analysis of a decision, which should be based on merits and future consequences.[469] Reasoning of this type can detract from choosing the most efficient, progressive decision.

V. BROADER CONCEPTUAL ISSUES

In addition to cognitive biases, other factors may drive decisions among individuals to "acquiesce" to hazing. In this section, we explore such factors as lack of knowledge about hazing, dynamics that drive risk-taking, the role of emotion and brain functioning, and the powerful role of symbolism.

A. Lack of Knowledge

For a variety of reasons, people lack the knowledge needed to engage in effective judgment and decision-making. Here, we explore the ways in which the lopsided nature of some information and the rational decision not to seek out information about hazing likely impacts hazing victimization.

1. Asymmetric Information

Asymmetric information occurs when one party involved in a transaction has more or better information than the other party or parties.[470] Because one party knows more, or more valuable, information than another, the more knowledgeable party has the ability to take advantage of the other party and allows for opportunistic behavior such as adverse selection and moral hazards.[471] Adverse selection occurs when there is asymmetric information prior to the deal between the buyer and the seller, whereas moral hazard

467. *Id.* at 100.

468. *Id.*

469. T. Erik Conley, *The Sunk Cost Fallacy: What It Is and How to Avoid It*, ZENINVESTOR, https://www.zeninvestor.org/the-sunk-cost-fallacy-what-it-is-and-how-to-avoid-it/ (last visited May 9, 2019).

470. Pengcheng Xiang et al., *Construction Project Risk Management Based on the View of Asymmetric Information*, 138 J. CONSTRUCTION ENGINEERING & MGMT. 1303 (2012).

471. *Id.*

materializes when asymmetric information is present between two parties and one party changes behavior after the deal has been made.[472] Adverse selection is usually an undesired result due to one party having more accurate, different or better information than the other; therefore, the party with less information is at a disadvantage.[473]

2. Rational Ignorance

Rational ignorance occurs when it would be detrimental to an individual to gather and process all possible information.[474] We assume that all information has a value and a cost and that all people are rational beings. Sometimes the expected cost of acquiring knowledge is higher than its expected value.[475] These costs can come in many forms, including the cost of time, money or privacy.[476] However, cost is not the only problem; there are also the issues of too much knowledge and biased information—i.e., once a person learns something, they cannot easily forget it. As a society we place a stigma on ignorance, even though ignorance and closed-mindedness are just decisions not to consider a new fact or argument.[477] Therefore, as rational beings, there are some things a person is better off not knowing. Because a person who is rationally ignorant must choose what they want to learn, they need to have knowledge of what they do not know.[478] There is an infinite set of questions which a rationally ignorant person can choose from. However, the potential questions that fall into this category also have criteria. They must not presuppose anything that does not exist and there may not be an infinite number of answers that fit.[479]

B. Risk-Taking Drivers

There are also likely a variety of factors that drive risk-taking among hazing victims. Among them are that adolescents tend to be more predisposed to risk-taking than adults. Awareness of the costs of associated with various types of behavior lead individuals to desist from those behaviors. In addition,

472. Steven Nickolas, *Understanding Moral Hazard vs. Adverse Selection*, INVESTOPEDIA (Apr. 13, 2019), http://www.investopedia.com/ask/answers/042415/what-difference-between-moral-hazard-and-adverse-selection.asp.

473. *Id.*

474. Shawn J. Bayern, *Rational Ignorance, Rational Closed-Mindedness, and Modern Economic Formalism in Contract Law*, 97 CALIF. L. REV. 943 (2009).

475. *Id.* at 945.

476. *Id.*

477. *Id.* at 947.

478. *Id.* at 948.

479. *Id.* at 949.

adolescents' accurate, and especially inaccurate, perception of peer norms predicts deviant behavior. Here, we explore these dynamics.

1. Adolescents and Risk-Related Decision-Making

Part of why adolescents engage in risky behavior is because they assess risk and benefits differently than adults due to neuropsychological development.[480] Researchers find that adolescents tend to act more impulsively when engaging in risky behaviors such as drinking, sexual acts and dangerous driving. Grégoire Zimmerman connected impulsivity to risky behaviors among adolescents, particularly where said individuals have difficulty navigating their emotions in a healthy manner.[481] One thing that drive such behavior among these adolescents was that they defined risk very differently than adults do, due to their perception of what is normal.[482] Other researchers have underscored these findings—that adolescents sense of normative behavior is different from that of adults, in part because of their peer groups.[483] Patrick Hill and colleagues explored the relationship between adolescent risk assessment, physical danger and psychological risks.[484] A difference in neuropsychology often allows adolescents to adopt a feeling of invulnerability that makes them more likely to participate in risky behaviors, but also allows them to psychologically cope with stress in a self-promoting manner.[485]

2. Risk Appraisal

Risk appraisal, a person's belief about his vulnerability to a negative outcome, predicts risky behavior.[486] As a person's "risk perception" rises, his willingness to engage in risky behavior decreases.[487] In one study, Jonathan Roberti examined risk perception in the context of sensation seeking.[488] The

480. Grégoire Zimmermann, *Risk Perception, Emotion Regulation and Impulsivity as Predictors of Risk Behaviours Among Adolescents in Switzerland*, 13 J. YOUTH STUD. 83 (2010).

481. *Id.*

482. *Id.*

483. Lisa J. Knoll et al., *Social Influence on Risk Perception During Adolescence*, 26 PSYCHOL. SCI. 583 (2015); Patrick M. Carter et al., *Social Norms and Risk Perception: Predictors of Distracted Driving Behavior Among Novice Adolescent Drivers*, 54 J. ADOLESCENT HEALTH S32, S35 (2014) (Supplement).

484. Patrick L. Hill et al., *Subjective Invulnerability, Risk Behavior, and Adjustment in Early Adolescence*, 32 J. EARLY ADOLESCENCE 489 (2012).

485. *Id.*

486. Paschal Sheeran et al., *Does Heightening Risk Appraisals Change People's Intentions and Behavior? A Meta-Analysis of Experimental Studies*, 140 PSYCHOL. BULL. 511, 512 (2014).

487. *See id.*

488. Jonathan W. Roberti, *A Review of Behavioral and Biological Correlates of Sensation Seeking*, 38 J. RES. PERSONALITY 256, 257 (2004).

study determined that high sensation-seekers, generally, do not view their environment as threatening and leading to negative consequences.[489] Thus, certain individuals might be predisposed to engage in risky actions because they do not appraise situations as threatening, risky, or dangerous in the same way as others do.[490] In their work, Paula Horvath and Marvin Zuckerman investigated the relationship between risk appraisal and criminal behavior.[491] They found that the more risky an activity was judged to be, the less likely a person was to engage in the activity, particularly if the negative outcome is clearly defined (such as with criminal penalties).[492] In their study, Elizabeth Shulman and Elizabeth Cauffman investigated how the relationship between knowledge and risky behavior might vary amongst individuals.[493] For example, they hypothesized that "[r]eward bias—the tendency to rate a risky activity as more of a 'good idea'—increased with age across adolescence before declining in early adulthood."[494] Shulman and Cauffman found that this "reward bias was higher in adolescence than in either adulthood or preadolescence,"[495] and that "the relation between reward bias and law-breaking behavior was significantly stronger in middle adolescence than for younger and older age ranges."[496] In a study by Gregory Parks and colleagues, researchers specifically explored the relationship between risk appraisal and hazing.[497] They found that greater knowledge of rules and the laws about hazing led to less hazing behavior.[498]

3. Misperceived Norms

Social norms are the cultural and structural foundations on which individuals base their beliefs, behaviors, and gain meaning and purpose.[499] The social norms approach, in the area of youth alcohol and substance use, for

489. *Id.* at 269.

490. *See id.*

491. Paula Horvath & Marvin Zuckerman, *Sensation Seeking, Risk Appraisal, and Risky Behavior*, 14 PERSONALITY & INDIVIDUAL DIFFERENCES 41, 44 (1993).

492. *Id.* at 50.

493. Elizabeth P. Shulman & Elizabeth Cauffman, *Reward-Biased Risk Appraisal and Its Relation to Juvenile Versus Adult Crime*, 37 L. & HUM. BEHAV. 412, 419 (2013).

494. *Id.* at 413.

495. *Id.* at 416.

496. *Id.*

497. Gregory S. Parks et al., *Hazing as Crime: An Empirical Analysis of Criminological Antecedents*, 39 L. & PSYCHOL. REV. 1 (2015).

498. *Id.* at 48.

499. Shelly Campo, Book Review, 12 J. HEALTH COMM. 417 (2007) (reviewing LINDA LEDERMAN & LEA STEWART, CHANGING THE CULTURE OF COLLEGE DRINKING: A SOCIALLY SITUATED HEALTH COMMUNICATION CAMPAIGN (2005)).

example, posits that the tendency of individuals to overestimate the frequency and intake of others influences individuals to consume more than they normally would because of this false assumption.[500] Researchers contend that false consensus and pluralistic ignorance are other reinforcers for the tendency of individuals to conform or shift their own behaviors or attitudes to approximate the misperceived norms of a behavior.[501] According to the social comparison theory and social impact theory, the closer the proximity of reference groups the greater the influence on the behavior of an individual.[502] Researchers find that the perceptions of peers, or even best friends, are better predictors of alcohol consumption in college students; hence, making drinking among college students of great concern. A slew of research findings demonstrate that individuals are more greatly influenced by in-group than out-group sources, as in-group sources are more integral to one's identity.[503] However, research indicates that college students over-estimate the non-medical prescription drug use of their peers.[504] Misperceived norms and discrepancies are also prevalent in relationship and variance of sexual satisfaction in college students.[505] For instance, researchers find that college students overestimate the number of sexual partners and the acceptance and participation of risky sexual behaviors of their peers when compared to themselves.[506]

C. Emotions and Brain Functioning

Hazing victims may be initially driven to seek organizational membership that requires hazing, in part, because to overcome such obstacles fulfills their strong desire to accomplish a task. Even more, once the hazing begins, it may be difficult for a victim to desist, because (1) they have come to identify with the organization and outsiders evaluate the organization as prestigious and,

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500. *Id.*

501. *See* H. Wesley Perkins, *Misperception Is Reality: The "Reign of Error" About Peer Risk Behaviour Norms Among Youth and Young Adults*, *in* THE COMPLEXITY OF SOCIAL NORMS 11, 16 (Maria Xenitidou & Bruce Edmonds eds., 2014); *see also* Brian Borsari & Kate B. Carey, *Descriptive and Injunctive Norms in College Drinking: A Meta-Analytic Integration*, 64 J. STUD. ON ALCOHOL 331 (2003); Melissa A. Lewis & Clayton Neighbors, *Social Norms Approaches Using Descriptive Drinking Norms Education: A Review of the Research on Personalized Normative Feedback*, 54 J. AM. C. HEALTH 213 (2006).

502. Lewis & Neighbors, *supra* note 501, at 215.

503. *Id.*

504. Jason R. Kilmer et al., *Misperceptions of College Student Marijuana Use: Implications for Prevention*, 67 J. STUD. ON ALCOHOL 277 (2006).

505. Kyle R. Stephenson & Kieran T. Sullivan, *Social Norms and General Sexual Satisfaction: The Cost of Misperceived Descriptive Norms*, 18 CANADIAN J. HUM. SEXUALITY 89 (2009).

506. Susan D. Boon et al., *Pluralistic Ignorance and Misperception of Social Norms Concerning Cheating in Dating Relationships*, 21 PERS. RELATIONSHIPS 482 (2014).

ergo, the aspiring member, and (2) sleep deprivation that may hamper rational decision-making. We address all three in the following subsection.

1. Motivation for Achievement

Achievement motivation encompasses the driving force for the need of success and attainment of goals.[507] Motivation comprises the basic force which drives individuals' actions and behaviors. Most daily aspects of people's lives are characterized by the need and desire to obtain biological necessities, such as suppressing hunger, psychological needs, such as maintaining strong relationships with others, or the need to acquire success in occupations or competitive fields.[508] Overall, motivation for achievement is not only critical for one to be successful in various aspects of everyday life but is also necessary to achieve self-actualization to fulfill one's potential. Most motivational researchers subscribe to the view that achievement motivation is mainly developed from the interplay between implicit and explicit motive systems.[509] The interaction between these two motivational systems predicts the motivational behavior of the individual and relates to various aspects of personality.[510] Implicit motives define unconscious needs and basic "organismic needs," developing when individuals are young and remain insusceptible to the pressures of social demands.[511] Explicit motives are the self-attributed reasons for one's behaviors and actions.[512] They are present in the conscious realm and function as the values one associates with proper conduct, especially for obtaining success.[513] In regard to the dual interaction of implicit and explicit motives on achievement motivation psychology, these two different types of motives correspond to different aspects of the person, both unconscious and conscious and are both independently activated depending on the motivational context.[514] Implicit motives refer to the intrinsic factors that are needed for a motivational task while explicit motives are encouraged by situational factors of the task.[515] Not only do these two motives correspond to

507. Scott T. Rabideau, *Effects of Achievement Motivation on Behavior*, SAPA PROJECT TEST (Nov. 2005), http://www.personalityresearch.org/papers/rabideau.html.

508. *Id.*

509. Hugo M. Kehr, *Integrating Implicit Motives, Explicit Motives, and Perceived Abilities: The Compensatory Model of Work Motivation and Volition*, 29 ACAD. MGMT. REV. 479 (2004).

510. *Id.* at 480.

511. *Id.*

512. *Id.* at 481.

513. *Id.*

514. *Id.* at 482.

515. *Id.*

the internal and external factors that motivate one in differing contexts, but implicit and explicit motives also are important for analyzing behavioral tendencies that one will have overtime.

2. Need for Esteem and Organizational Prestige

Tom Pyszczynski and colleagues argue that people have a need for self-esteem.[516] Others, like J. Bryan Fuller and colleagues, investigated the role of need for self-esteem vis-à-vis how individuals come to identify with organizations—i.e., their "perceived oneness with an organization and the experience of the organization's successes and failures as one's own."[517] "[O]rganizational identification occurs when an individual's self-concept is tied to his or her organizational membership."[518] Among the antecedents of organizational identification is construed external image—i.e., "a member's beliefs about outsiders' perceptions of the organization" and, thus "a member's beliefs about how people outside the organization are likely to view the member through his or her organizational affiliation."[519] In other contexts, this is termed "organizational prestige"—an individual's perception of how people outside of an organization evaluate the prestige of the organization.[520] There are two forms of perceived organizational prestige: Social prestige, covering (1) quality of management, (2) quality of products or services, (3) ability to attract, develop, and retain talented people, (4) community and environmental responsibility, and (5) innovativeness; and economic prestige, covering (1) financial soundness, (2) long-term investment value, and (3) use of organization assets.[521] In their work, Fuller and colleagues found "no significant relationship between construed external image and organizational identification for individuals with low need for self-esteem," whereas "for individuals with a high need for self-esteem, the relationship [was] strongly positive."[522] These results are consistent with Fuller and colleagues' hypothesis that "outsiders' opinion of the organization is likely to strongly influence" the self-concept of individuals with high need for self-esteem "because their feelings of self-worth are strongly dependent on the attention and positive evaluations of other people," whereas individuals with a

516. Tom Pyszczynski et al., *Why Do People Need Self-Esteem? A Theoretical and Empirical Review*, 130 PSYCHOL. BULL. 435, 435, 438 (2004).

517. J. Bryan Fuller et al., *Construed External Image and Organizational Identification: A Test of the Moderating Influence of Need for Self-Esteem*, 146 J. SOC. PSYCHOL. 701, 701 (2006).

518. *Id.*

519. *Id.* at 702, 704.

520. Pyszczynski et al., *supra* note 516, at 444.

521. *Id.* at 446.

522. Fuller et al., *supra* note 517, at 711-12.

low need for self-esteem "are not strongly motivated by the need for others to view them positively."[523] When individuals believe that outsiders have positive perceptions of their organization, they identify more with the organization.[524] Abraham Carmeli and Anat Freund developed and tested a model that explores how perceived organizational prestige influences job satisfaction, affective commitment, and turnover intentions among Israeli social workers in the nonprofit sector.[525] Results of two separate studies showed that high levels of perceived organizational prestige cause members to develop high levels of commitment and satisfaction[526] and lower levels of intention to leave the organization.[527] This finding is consistent with previous research and further validates the relationship between organizational image and organizational attachment.[528]

3. Sleep Deprivation

Sleep deprivation results when an individual experiences prolonged periods of continuous wakefulness.[529] Individuals who get insufficient sleep are likely to experience microsleeps, or brief episodes of sleep where individuals fail to respond to cognitive performance demands.[530] Sleep deprived individuals also experience brief periods of inattention or failures to perform due to brief periods of low arousal, leading to abated motivation and task performance, reduced alertness, reduced vigilance and ability to think flexibly, and reduced capability to make sufficient decisions.[531] The prefrontal cortex is linked to innovative thinking, flexibility in cognitive functioning, and decision-based reasoning. These executive functions and qualities have shown to be crippled following just one night of sleep deprivation.[532] In fact, in an experiment to unearth the

523. *Id.* at 706.

524. Abraham Carmeli, *Perceived External Prestige, Affective Commitment, and Citizenship Behaviors*, 26 ORG. STUD. 443, 460 (2005).

525. Abraham Carmeli & Anat Freund, *Linking Perceived External Prestige and Intentions to Leave the Organization: The Mediating Role of Job Satisfaction and Affective Commitment*, 35 J. SOC. SERV. RES. 236, 237 (2009).

526. *Id.* at 242, 245, 247.

527. *Id.* at 242-43, 245-46.

528. *Id.* at 247.

529. Daniela Tempesta et al., *The Impact of One Night of Sleep Deprivation on Moral Judgments*, 7 SOC. NEUROSCIENCE 292 (2011).

530. Therese Kobbeltvedt et al., *Cognitive Processes in Planning and Judgements Under Sleep Deprivation and Time Pressure*, 98 ORG. BEHAV. & HUM. DECISION PROCESSES 1 (2005).

531. William D. S. Killgore et al., *Impaired Decision Making Following 49 H of Sleep Deprivation*, 15 J. SLEEP RES. 7 (2006).

532. *Id.*

effects of sleep deprivation on moral judgment, researchers found that sleep deprivation had an adverse effect, especially when these processes are reliant on the integration of emotion and cognition.[533] According to the feeling-as-information model, participants reported more pessimistic judgments, thus indicating that sleep deprivation has a negative effect on mood.[534] Many researchers demonstrated the similarities in decision-making deficits of sleep deprived individuals in comparison to patients with ventromedial prefrontal cortex lesions using Harrison and Horne's Iowa Gambling Task.[535] This evidence showed that participants bargained more aggressively, chose more risky selections and could not weigh immediate benefits of short-term awards against the greater costs of long-term penalties.[536]

VI. CONCLUSION

Anti-hazing laws and policies must be mindful that at the heart of what they're grappling with is human behavior. Rules in a vacuum, as such, will likely do little to curtail such conduct. Effective prevention and intervention for sports-related hazing need to address individual, interpersonal, institutional, community and social structure/policy factors.[537] In this Article, our focus was on what drives individual-level behavior, more specifically among victims. What they think, know, desire, and how they contemplate risk all serve as influencing factors behind their victimization. While there has been meaningful research on sports-related hazing, the reality is that little has contemplated the breadth and depth of factors that underlie such conduct. This includes the realms of behavioral and social science, the law, and the intersection of those domains. This Article, we hope, provides an auspicious beginning in that direction.

533. Tempesta et al., *supra* note 529.

534. Kobbeltvedt et al., *supra* note 530, at 2.

535. Killgore, *supra* note 531.

536. *Id.*

537. Fields et al., *supra* note 321, at 367.