It is quite possible that suits concerning “duty of care” are the most prevalent type of court case in higher education. Part of reason for this may be the difficulty of finding a balance between the contradictory concepts of duty of care and *in loco parentis*. Students, upon reaching the university, want to be regarded as adult members of society, and trusted to make their own decisions. The moment they become injured, however, the same students are quick to claim that they were not enough of an adult to recognize the risk associated with activity in which they were engaging. In the more general “duty of care” cases involving higher education, the “no duty” Bradshaw v. Rawlings reasoning is often employed. However, this does not hold true in every situation, especially hazing.

Hazing traditions are particularly difficult for universities to eliminate, because so much of hazing occurs behind closed doors. Hazing goes on, unreported, more often than anyone would like to admit, but students very rarely report any hazing until someone is injured. This is probably the biggest challenge for meeting the “duty of care” owed to university students – that the university cannot see everything that goes on, yet can potentially be held responsible for those events they do not know about or cannot see.

There are five factors considered in determining negligence, and “foreseeability” is one of those factors. In many hazing cases in which the university (or Greek organization) is found negligent, the language found in the reasoning includes the term “foreseeable”. Furek v. University of Delaware (594 A.2d 506) is one such case. Furek was a Sigma Phi Epsilon pledge who suffered first- and second- degree burns after oven cleaner was poured on his head during a secret ceremony with required attendance for pledges. This ceremony was held at the fraternity house, off-campus on land leased to the fraternity from the university. Furek claimed that the University owed him a duty of care for this hazing incident. The court ruled in favor of the plaintiff, stating that because the university had a hazing policy, this opened them up for liability, and that “the university had a duty to regulate and supervise **foreseeable** dangerous activities occurring on its property”.

In Knoll v. Board of Regents of the University of Nebraska (601 N.W.2d 757), a student (Knoll) injured in a hazing incident claimed that the university was negligent in enforcing its hazing prohibition. The court found that “the landowner liability theory applied”, and because the university “knew of prior acts of hazing that had occurred, it owed appellant a duty to take reasonable steps to protect him from **foreseeable** harm”.

In Kenner v. Kappa Alpha Psi (808 A.2d 178), an initiate who had paid a membership fee was beaten with a paddle over 200 times at an “interest meeting”. This beating caused renal failure and seizures. The court found that a contractual relationship existed between Kenner and the fraternity, because he had paid the membership fee. “The **foreseeable** nature of the harm” was one of the factors that led the appellate court to conclude that the fraternity owed Kenner a duty.

It seems that it would be prudent, then, for Student Affairs professionals to exert an extra effort into improving their foresight. The importance of looking at all potential outcomes and possibilities of both the university’s actions and its constituents’ actions is paramount. While foreseeability would most likely be claimed as the most difficult factor to investigate, this only means that it needs all the more attention of administrators. It also requires a very proactive approach toward hazing prevention, rather than remaining reactive and simply catching fraternities and/or sororities red-handed. But again, the challenge here is that universities are being told that something that happens behind closed doors is “foreseeable”. Unfortunately, I do not think this will change, because universities do have a responsibility to prevent hazing from occurring. It will simply be all the more necessary for administrators to get creative and come up with new and effective ways to educate on hazing as well as prevent it from happening.