An Examination of The Modern University’s Legal Accountability for its Students: From In Loco Parentis to Students Going Loco

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I. INTRODUCTION

People disagree tremendously when it comes to education law. Whether we’re talking about private schools or public, high school or college, there will always be debate about the way a school should be run—from religious observance and freedom of expression to politics, taxation, and equitable funding. Yet amidst all of the debate surrounding school systems and the rights of its students, there is one significant problem nearly all can agree on—parents, administrators, and politicians alike—and that is the problem of high-risk alcohol and drug consumption among America’s youth and the increasing number of substance abuse related deaths. It’s hard to turn on the news without hearing about another tragic story of a student death from a drug overdose or binge drinking. This is a nationwide problem with no foreseeable end in sight.

In this article, I will focus on the substance abuse problem at the university level from a legal perspective. In particular, I will explore the issue of who, if anyone, can or should be held accountable for the death of a student that is caused by drug and alcohol consumption on campus. I will show that while there are sound policy reasons for not holding universities accountable for alcohol and drug-related deaths on campus, there is a line that needs to be drawn. Given the increasing number of tragedies occurring, universities need to be held to a higher standard in guarding against alcohol related injuries and deaths.

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1 While there is also a prevalent problem of alcohol and drug consumption among high school students, for the purposes of this article, the focus will be at the university level where students are away from their parents.
First, Part II will give a brief history of the legal relationship between university and student—focusing on the significant shift that occurred around the 1960’s. Part II will explore how prior to the 1960’s the university was thought of as assuming the role of the parent, otherwise known as the role *in loco parentis*, and how that changed and progressed as time went on. Part III will then provide statistics and data on alcohol and drug consumption at the university level. Part IV will briefly explore recent lawsuits that have been filed by the parents of a deceased child against the university. Lastly, Part V will discuss the need for higher accountability on the universities.

II. A BRIEF HISTORY OF *IN LOCO PARENTIS*

The term *in loco parentis*, Latin for “in the place of a parent,” refers to the legal responsibility of a person or an organization to take on some of the functions and responsibilities of a parent.2 *In loco parentis* is rooted in the British and American common law traditions.3 In 1765, William Blackstone, a British legal scholar, wrote that a parent may “delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and had such a portion of the power of the parent committed to his change, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.” From the mid-1800’s to the 1960’s, American colleges assumed this responsibility over their students lives in a manner that went well beyond academics.4 It was said that constitutional rights stopped at the college gates—at both private and public institutions.5 In legal challenges to

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5 In his inaugural address as the first President of Johns Hopkins University, Daniel Coit Gilman stated:
university rules and subsequent discipline for violations thereof, courts routinely upheld the university’s authority. In 1866, in one of the “earliest judicial articulations of the relationship between universities and their students,” the Supreme Court of Illinois found in favor of Wheaton College for the suspension a student for joining a secret society. In 1891, the Supreme Court of Illinois ruled in favor of the University of Illinois, who expelled a student who violated the rule of mandatory attendance to religious chapel service. The Court held, “By voluntarily entering the university, or being placed there by those having the right to control him, he necessarily surrenders very many of his individual rights.”

Starting in the 1960’s, courts started to recognize the constitutional rights of university students—‘sounding the death knell’ for in loco parentis. In the groundbreaking case Dixon v. Alabama, Alabama State College expelled a group of African American students for participating in a civil rights demonstration after they were refused service at a lunch grill without any notice, hearing, or opportunity for appeal. The

The College implies, as a general rule, restriction rather than freedom; tutorial rather than professional guidance; residence within appointed bounds; the chapel, the dining hall, and the daily inspection. The college theoretically stands in loco; it does not afford a very wide scope; it gives a liberal and substantial foundation on which the university instruction may be wisely built.

Lee, supra note 2 at 67.

6 People ex rel. Pratt v. Wheaton College, 40 Ill. 186 (1866), available at http://a2z.my.wheaton.edu/pratt-v-wheaton-college (“A discretionary power has been given to regulate the discipline of their college in such a manner as they deem proper, and so long as their rules violate neither divine nor human law, we have no more authority to interfere than we have to control the domestic discipline of a father in his family.”).

7 North v. Board of Trustees of University of Illinois, 27 Ill. 54 (1891).

8 Id. For more cases where the court upheld the decision of a university, see Gott v. Berea College, 156 Ky. 376 (1913) (Kentucky Supreme Court upheld a rule forbidding students from entering eating houses in Berea not controlled by the College); Stetson University v. Hunt, 88 Fla. 510 (1924) (Florida Supreme Court upheld Stetson University’s suspension of a student for ringing cow bells and parading the halls of dorms at forbidden hours); Anthony v. Syracuse University, 224 App. Div. 487 (1928) (Court upheld the expulsion of a student at Syracuse University based on rumors that she caused trouble and was not “a typical Syracuse girl”).

9 Lee, supra note 2 at 70.
students challenged their expulsions as violations of their constitutional rights to due process and succeeded. Between *Dixon v. Alabama* and numerous other court cases, the Civil Rights Movement of the 1960’s, the Free Speech Movement, and the ratification of the 26th Amendment to the U.S. Constitution lowering the minimum voting age to 18, by the 1970’s *in loco parentis* at universities was a relic of the past.

The complete movement away from *in loco parentis* affected the way the universities were perceived not only in terms of their power, but also in terms of their affirmative duty to protect their students. Since universities were no longer allowed to take drastic disciplinary action in the name of *in loco parentis*, what followed was the lack of a requirement to additionally protect their students. This was recognized in *Baldwin v. Zoradi*, a 1981 California case where the court denied the plaintiff relief from the university for her alcohol-related injury. The court held:

Prior to the 1970’s, college administrators and faculties assumed a role in loco parentis. A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college. However, a dramatic reapportionment of responsibilities and social interests of general security has taken place. ... College administrators no longer control the broad arena of general morals. At one time, exercising their rights and duties in loco parentis, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives.  

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10 See In Knight v. State Board of Education, 200 F.Supp. 174 (1961) (Tennessee federal trial court held that suspension of students for participating in Mississippi freedom rides was in violation of students’ due process rights); Boynton v. Virginia, 364 U.S. 454 (1960) (U.S. Supreme Court overturned a judgment convicting an African American law student for trespassing for being in a restaurant at a bus terminal that was designated for “whites only”).

11 Since most college students would reach this lower age of majority while still enrolled, universities were hard pressed to justify its temporary parent status over these now young adults. Lee, *supra* note 2 at 70.

Illinois also recognized the effect that the shift away from *in loco parentis* had on tort actions against universities. In *Rabel v. Illinois Wesleyan University*, the court held:

>[C]olleges and universities are educational institutions, not custodial. Their purpose is to educate in a manner which will assist the graduate to perform well in the civic, community, family, and professional positions he or she may undertake in the future. It would be unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students and to charge it with responsibility for preventing students from illegally consuming alcohol and, should they do so, with responsibility for assuring their safety and the safety of others. Fulfilling this charge would require the institution to babysit each student, a task beyond the resources of any school. But more importantly, such measures would be inconsistent with the nature of the relationship between the student and the institution, for it would produce a repressive and inhospitable environment, largely inconsistent with the objectives of a modern college education.  

In sum, since the late 1970’s, the general rule nationwide has been that no special relationship exists between a university and its students such that a university can be held legally responsible for the alcohol consumption of a student and any resulting injury. Courts are simply unwilling to hold a university liable as the university is no longer considered an “insurer of the safety of its students.”

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16 *Freeman*, 349 F.3d at 587.
III. SUBSTANCE ABUSE AT THE UNIVERSITY LEVEL

According to the National Institute on Alcohol Abuse and Alcoholism, each year 1,825 college students between the ages of 18 and 24 die from alcohol-related unintentional injuries.\(^{17}\) More than 690,000 students between the ages of 18 and 24 are assaulted by another student who has been drinking and more than 97,000 students are victims of alcohol-related sexual assault or date rape.\(^{18}\) 599,000 students receive unintentional injuries while under the influence of alcohol and about 25% of college students report academic consequences of their drinking including missing class, falling behind, doing poorly on exams or papers, and receiving lower grades overall.\(^{19}\) More than 150,000 students develop an alcohol-related health problem and between 1.2 and 1.5 percent of students indicate that they tried to commit suicide within the past year due to drinking or drug use.\(^{20}\) About half of college student drinkers engage in heavy episodic consumption, commonly defined as having five or more drinks in a row for men and four or more drinks for women at least once in a two-week period.\(^{21}\) In other words, the number of students who engage in high-risk drinking on U.S. campuses exceeds the population of New York City.\(^{22}\)

\(^{17}\) College Drinking, NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM (last visited May 1, 2015), http://www.niaaa.nih.gov/alcohol-health/special-populations-co-occurring-disorders/college-drinking. For a non-exclusive list of student deaths gathered via media tabloids, see Alcohol-Related Student Deaths, COMPELLED TO ACT (last visited May 3, 2015), http://compelledtoact.com/Tragic_listing/Main_listing_victims_date.htm.

\(^{18}\) Id.

\(^{19}\) Id.

\(^{20}\) Id.


\(^{22}\) Id.
IV. A SAMPLING OF RECENT LAWSUITS AGAINST UNIVERSITIES

In 2012, a 2nd District Court judge dismissed a lawsuit against the University of Idaho filed by the parents of a student who fell from a fraternity window and suffered debilitating injuries, holding that the University did not have a special duty to aid or protect the student under the circumstances of the case. The parents argued that the university was liable for their daughter’s injuries because it oversees the campus Greek system, works with it on safety issues, encourages students to live in fraternities and sororities, has the ability to enforce sanctions against them, and maintains policies against underage drinking. The University in return argued that it cannot control the lives of its students, arguing that the student was acting as an adult when she chose to consume alcohol on the night of her incident. The court held, “The University and Board of Education did not have legal duty, nor assume a duty to protect Ms. Andaverde from consuming alcohol, or protect or keep her safe from any unsafe living conditions at the [Greek organization].”

In 2014, in a closely watched case, the Supreme Court of Indiana affirmed summary judgment in favor of Wabash College, rejecting the plaintiffs’ claim that Wabash had a duty as a landowner, not via their role in loco parentis. The plaintiffs argued, “Aside from Wabash’s duty as the lessor of the property, Wabash assumed a duty to protect Yost from this incident when it prohibited hazing and responded to the many previous incidents of hazing with disciplinary measures.” The Supreme Court of Indiana, however, held that “Wabash’s policies and investigations with respect to hazing do not

rise to the level of a specific undertaking that demonstrate a special relationship so as to justify the imposition upon Wabash of a gratuitously assumed duty to protect Yost.”

These cases, in conjunction with the numerous other cases filed against universities, represent numerous legal issues. On one hand, the outcome of these cases represents sound policy. If the courts were to find that universities assumed a duty by providing educational programming and imposing disciplinary systems, it would disincentivize universities to do so, which would have negative effects. As the Supreme Court of Indiana noted, “Colleges and universities should be encouraged, not disincentivized, to undertake robust programs to discourage hazing and substance abuse.

To judicially impose liability under a theory of gratuitously assumed duty is unwise policy.” On the other hand, these cases leave parents without legal recourse for the enormous, grievous loss of their child.

V. THE NEED FOR CHANGE

As previously noted, while all cases involving the death of a student are extremely tragic, from a policy standpoint it is understandable why courts are highly reluctant to

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25 Id.


impose liability on the university. However, just as with all protections from liability, the line has to be drawn somewhere. Though the university no longer plays the role *in loco parentis*, universities need to be held to a higher standard of accountability when it comes to ensuring the safety of its students. In *Rabel v. Illinois Wesleyan University*, in determining that the University did not have a duty, the court considered “the likelihood of the injury . . . the magnitude of guarding against it and the consequences of placing the burden on the defendant.” But does the burden really have to be that high? Is it not possible to heighten our standards without imposing too significant of a burden?

Rather than continuously warding off litigation with the cloak of immunity, universities should preemptively take steps to improve the safety of their students. It’s nearly undeniable that the largest cause in alcohol related deaths on college campuses is Greek life—which is supported by the fact that in several of the aforementioned lawsuits, Greek chapters are co-defendants with the university. As such, universities need to take a larger role in Greek life on campus. Universities should have a no tolerance policy when it comes to hazing and the forced consumption of alcohol. Universities need stricter guidelines for when fraternities are allowed to have social events and they should take an active role in the risk management of those events. Universities should work with the headquarters of each of their Greek chapters to ensure that the Greek chapter’s policies with regard to risk management and hazing are in line with those of the university. Universities have a right to know what’s going on in the fraternity houses—they have a right to know when they are having events with alcohol, how they plan to manage those events. If the fraternities cannot provide risk management that suffices to the university standard, they simply should not be able to host events. In sum, although universities

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should not be held to the standard of the in loco parentis role, something needs to change.

VI. CONCLUSION

Just last year, on February 15, 2015, Nicholas Barnes was found dead in his dorm room at the age of 20 years old.  

He had been dead for more than seven days before the University of Chicago noticed he was missing. His body was only discovered after complaints of a foul odor were reported coming from his room. He had gone more than a week without swiping his ID card anywhere on campus, yet went missing unnoticed for over a week. His parents suffered a grievous loss, not only for the death of their son but also for not being able to properly bury or cremate their son in the way they would have wished to. The body was too far decomposed for the parents to even see. Universities cannot keep track of all of their students—asking that would be placing a burden too high. Yet given the enormous amount of tragic occurrences that have happened over the past few years, we are at a time when something simply needs to be done differently. Policies need to be implemented. Action needs to be taken. Universities can impose stricter rules without violating a student’s constitutional rights—and this is especially true for the Greek chapters that are affiliated with the university. The deviation from in loco parentis was a significant move forward in our history—and it was certainly a positive, powerful change. Yet we should be cautious so as not to allow universities to swing too far on the opposite end of the spectrum—a blanket “no accountability” that leaves students in danger and families without legal recourse. Universities need to find a balance between in loco parentis and allowing their students to go “loco”—otherwise, the trend of alcohol-related deaths will never end.