

ATTORNEY GENERAL'S REPORT

UVM HOCKEY TEAM HAZING

February 3, 2000

Upperclassman's Statement to a Freshman Regarding the "Big Night":

**" . . . [I]t's going to be the worst, best night
of your life."**

Submitted by:

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Table of Contents

Summary Findings and Conclusions	2
Introduction	3
Scope of the Investigation	3
Definition of “Hazing”	4
The History	4
Corey Latulippe’s Story	5
The UVM Investigation and Subsequent Actions	6
The Players’ UVM Interviews	7
UVM’s Post-Interview Actions	7
FERPA Analysis	12
The Attorney General’s Investigation	14
Prosecution Analysis and Decisions	15
1. Alcohol Related Offenses	15
2. Credit Card Fraud	16
3. Simple Assault	17
4. Forced Use of False Identification	17
5. Lewd and Lascivious Conduct	17
Discussion and Recommendation	18
Conclusion	20

Summary Findings and Conclusions

1. The essence of virtually all of Corey Latulippe's hazing allegations relating to an October 2, 1999 hockey team party is true and supported by the facts.
2. In flagrant violation of a written directive from Coach Gilligan, the entire hockey team met, agreed to lie and was not truthful as to certain matters during the interviews conducted on behalf of UVM.
3. UVM's investigation of the alleged hazing was insufficiently thorough to ascertain the truth and, as designed or conducted, served primarily to buttress the University's position in the event of the filing of a civil lawsuit.
4. Dating back to at least the fall of 1996, the UVM hockey team has engaged in initiation parties and/or team bonding activities that have violated University rules against hazing. These events have in certain instances and in some respects involved conduct arguably more dangerous and more demeaning than the hazing that took place on October 2, 1999.
5. After having determined that hazing had in fact occurred, UVM officials made confusing statements about certain matters and acquiesced for an unreasonable period of time in Coach Gilligan's public statements denying that hazing had taken place.
6. Without violating its legal obligations under federal law, UVM could and should have referred the hazing allegations for law enforcement investigation prior to December 11, 1999.
7. Under the facts of this case and in the interests of justice, criminal prosecutions arising from this investigation will be limited to furnishing of alcohol to minors charges. The Attorney General's Office is recommending to the Chittenden County State's Attorney that such charges be filed against one or more upperclassmen.
8. Hazing is currently not against the law in Vermont. The legislature should give thorough consideration to enacting anti-hazing legislation calling for a range of penal sanctions depending on the severity of the hazing actions committed.

Introduction

On Saturday, December 11, 1999, the Office of the Attorney General was requested to look into allegations of hazing incidents involving members of the UVM hockey team and the University's response to the allegations. Ritchie Berger, privately retained counsel for UVM, communicated the request to the Attorney General while calling from the office of University President Judith Ramaley. In a lawsuit filed on December 10, 1999, Corey Latulippe, a former student and hockey player, had sued the University, its President and certain members of the hockey team. Among the allegations in the lawsuit were several relating to alleged hazing of Mr. Latulippe and other freshmen on the team.

Under Vermont's laws, the Attorney General has statewide criminal prosecution authority. Certain of the hazing allegations involved potential criminal conduct. The Attorney General agreed to conduct the investigation.

UVM is to be commended for acting in accordance with its pledge to cooperate with our investigation and, with limited exceptions, taking prompt and thorough actions to facilitate our inquiries into this matter.

It is important to note that much of the information we initially obtained during our investigation was obtained through a court proceeding called an inquest. An inquest is an investigative tool that prosecutors can use in the determination of whether criminal conduct has occurred in a given situation and, if so, to develop evidence helpful to prove the person or persons responsible for such conduct. Vermont law strictly limits the dissemination of information obtained through an inquest. Thus, this report will contain only the facts we gathered as a result of other aspects of our investigation.

Scope of the Investigation

The primary focus of the investigation has been to find out what happened during a hockey team party on the evening of Saturday, October 2, 1999, and to determine whether violations of Vermont's criminal laws took place in connection with the party, and by whom, and determine whether criminal prosecutions against any individuals should be commenced.

Secondary aspects of our efforts have been to analyze the University's own investigation of the hazing allegations and to review certain actions and inactions of UVM officials subsequent to the completion of its own investigation.

It should be noted that pursuant to an inquest subpoena issued on December 15, 1999, UVM forthwith provided us with copies of various documents. Otherwise, with very limited exceptions, our factual investigation of the alleged hazing has been conducted independently of the University.

Our investigation included reviews of the documents received pursuant to the above-mentioned subpoena, legal research and numerous interviews or discussions with many individuals, including members of the hockey team, people not affiliated with the hockey program, attorneys representing certain players, President Judith Ramaley, Coach Mike Gilligan, Athletic Director Richard Farnham, Assistant AD Jeff Schulman, Associate General Counsel Pamela Heatlie and private attorneys retained by UVM. We interviewed Corey Latulippe at length.

The player quotes herein are from players representing each of the four classes at the University.

Definition of “Hazing”

For purposes of this report, we have adopted UVM’s definition of hazing as being:

. . . any act, whether physical, mental, emotional or psychological, which subjects another person, voluntarily or involuntarily, to anything that may abuse, mistreat, degrade, humiliate, harass or intimidate him/her, or which may in any fashion compromise his/her inherent dignity as a person. In addition, any requirement by a member of an organization which compels another member to participate in any activity which is against University policy or state/federal law will be defined as hazing.¹

The History

“I definitely am against it 100% but it, I don’t know. It’s something that’s happened to me for years so in your mind it’s something that happens and something that I don’t know if it brings a team together. I can’t prove that, I can’t, but I know that it, I don’t know. I’m against it, but in a way you accept it. You know, you accept it.”

- UVM Hockey Player

It should first be made clear that hockey team bonding events, including a freshmen welcoming party, have for a number of years been a tradition at UVM. It should also be made clear that activities at these events, at least for the years commencing in the fall of 1996, appear to have violated University prohibitions against hazing. Such activities have included freshmen wearing costumes, consumption of significant amounts of beer and hard liquor, pouring of beer on freshmen, adulterated pie eating contests, extensive vomiting, interactions with strippers and player nudity. Some of the prior years’ activities have arguably been more dangerous and more demeaning than those experienced by this year’s freshmen players.

¹ “Documents Regarding Hazing Incidents and Investigation Involving Men’s Hockey Team,” University of Vermont Office of University Communications, January 4, 2000, Tab 3, p. 33.

One year, freshmen were made to engage in a nude "elephant walk" (parading in a line while holding the genitals of the person directly ahead) from the Leddy Park parking lot to the beach and then to do pushups in the cold waters of Lake Champlain. A player who suffered from an asthmatic condition that same year experienced breathing difficulties from the exertion in the water. As a result of the scare that this experience entailed, the cold water pushups have not been repeated. During at least two prior years' "initiation" parties, including those of 1996 and 1998, the freshmen were made to engage in a nude "olive run" involving carrying olives between their buttocks. In 1998, this activity included freshmen being struck with wooden cooking spoons and the dropping of the olives in a bucket. Thus, the alleged hazing incidents during the fall of 1999 fit into a pattern of conduct experienced by the upperclassmen during their earlier years at the University.²

In addition, incidents of hazing involving activities not unlike those investigated in this matter are reportedly a widespread tradition in junior hockey and even at high schools and prep schools. Several members of the hockey team either experienced or were aware of hazing activities involving rookies while they played junior hockey before enrolling at UVM. One player said he could not bring himself to describe his junior hockey experiences, which he said were much worse than anything at UVM. Other players refused to discuss their junior hockey hazing experiences, other than simply admitting they happened.

Corey Latulippe's Story

"And during all of this ...drinking of the warm beer, they're all sitting there laughing at us...just kind of peering in...because we were throwing up all over...and by this time a lot of guys are really complaining and bitching about it and they're like 'shut up'. So we go back in the closet...."

- Corey Latulippe

Corey Latulippe was flown to Vermont from the Midwest for an interview we conducted on January 17, 2000. His interview lasted for several hours. For the sake of brevity, it is summarized herein.

For some weeks leading to the "Big Night" (the October 2, 1999 party), the freshmen were taunted about what would occur at that event. For example, they were warned that they would be required to have sex with sheep at the party. Upperclassmen made sheep sounds to them in the locker room during those weeks. They were directed to wear togas and thong bikini underwear to the party, and to paint their nails and shave their pubic hair.

The party was held on October 2, at a house rented by Captain Kevin Karlander, other members of the hockey team and other students at 291 Colchester Avenue in Burlington.

² We expended little effort in trying to ascertain the hazing history prior to September of 1996.

On the appointed evening, the nine freshmen were transported to the party in the back of a pickup truck.³ At the door they were checked by upperclassmen to determine that they had arrived properly attired and that their pubic region had been shaved. They were immediately directed to the basement of the house where they were required to remove their togas and lie face down on the cement floor while some of the upperclassmen poured and spat beer on them. While still in this position they were handed a bottle of Jagermeister, a syrup-like liqueur, which was passed from one to the next until it had been consumed.

Thereafter, and not related necessarily in the order of occurrence, the freshmen were directed to participate in a pie-eating race. The pie was a seafood quiche with ketchup and barbecue sauce on it. Several players vomited, in a communal bucket, after ingesting the pie. A line was formed and the winner of the pie-eating race was given bread to chew. The bread was passed mouth to mouth down the line with line placement determined by the order of finish of the pie-eating contest. The players also engaged in a nude pushup contest, with a cup of beer strategically placed under the genitals of each.

At one point the nude freshmen were herded into a small, dark room in the basement. Thirty-two cans of beer, pre-heated to the temperature of warm tea, were brought into the darkened room and the nine were ordered to consume all of the beer within a matter of minutes. A plastic bucket was provided for the players and Latulippe believes every freshman vomited into the bucket while in the room. At another point they were told to line up in the nude and parade upstairs and through the house in a so-called "elephant walk". As a class, it was the sophomores who played the most active part in directing the evening's activities.

Finally, the freshmen were told to go upstairs, clean up and dress in the clothes they had previously been instructed to bring with them. The team then gathered and the freshmen had hockey socks placed over their heads. They were told to lie on the floor. Eventually, two female strippers participated in some sort of dance performance that terminated in the strippers removing the hockey socks from the heads of the freshmen. (The freshmen had previously been led to believe that the strippers were male.)

The UVM Investigation and Subsequent Actions

On or about October 28, 1999, a letter from Gail Westgate, an attorney for Corey Latulippe, was hand delivered to the office of President Ramaley. The letter described events at the October 2 party, alleged that Latulippe had sustained emotional and financial damages and indicated a desire to meet to discuss a financial settlement of his claims.

UVM Associate General Counsel Pamela Heatlie contends that UVM shortly thereafter decided on the "extraordinary" step of conducting a thorough independent investigation of the Latulippe allegations. The University had retained Attorney Ritchie Berger to

³ A tenth "walk-on" freshman, cut from the team either shortly before or after the party, was apparently not invited.

handle the civil claim by Corey Latulippe. When an out of state investigative expert on NCAA violations was not available, Berger recommended to Heatlie that Burlington attorneys Thomas McCormick, Daniel Burchard and Eric Johnson be retained to conduct the investigation. The attorneys agreed to interview the hockey team members and certain Athletic Department officials.

Each member of the hockey team received a memo dated November 4, 1999 from Coach Gilligan. The memo, prepared by Attorney Heatlie, directed each player to appear at a time and place on November 10 to be interviewed. Each player was informed of the obligation to "provide truthful and accurate information" during the interview and warned that in the event of a failure to do so, "you will be removed from the team...." The memo concluded as follows: "You must not discuss this matter with your teammates either before or after your interview."

The Players' UVM Interviews

"It's like we knew that if one person, one person said the truth, we're all in a big mess. But it was a big mess anyway."

- UVM Hockey Player

The interviews of the vast majority of players were recorded and ultimately transcribed verbatim. In the case of a player whose interview was not recorded, the attorney conducting the interview took detailed notes of the questions posed and the answers given. The attorney turned these notes into a narrative description of the interview.

The players were interviewed by the three attorneys simultaneously on November 10, 1999. The questioning covered UVM officials' actions relating to team rules against hazing from the beginning of the season until the date of the party. The questioning also dealt with the party itself and the players' pre-party preparation activities. The interviewers were informed that the party had in fact taken place and that much of what was alleged in the Westgate letter of October 28 had occurred at the party.

UVM's Post-Interviews Actions

Within a matter of days after the interviews were conducted, the transcripts and narrative descriptions of the players' testimony were completed and forwarded to Pamela Heatlie. The documents encompassed hundreds of pages. Copies were made and forwarded to Coach Gilligan, Athletic Director Richard Farnham, Assistant AD Jeff Schulman and Dean Batt, Vice President for Student Affairs. The players were provided the transcripts or narrative descriptions of their respective interviews and given the opportunity to make any necessary corrections.

Attorney Pamela Heatlie

We interviewed Pamela Heatlie on January 18. She claimed responsibility for directing the investigation and stated that its purpose was to find the facts and not to buttress the University's position in the civil dispute. She related that she met with the interviewers after the completion of the players' and athletic officials' interviews. A conference call during the same timeframe involved Heatlie, McCormick, Burchard, UVM General Counsel Francine Bazluke, Ritchie Berger and another attorney from the Berger firm.

No written report was requested from the investigating attorneys. Attorney Heatlie did not think that such a report was necessary. She did not ask the interviewing attorneys if they felt that any further action should be taken to better ascertain what had happened. She recalled that one of the interviewing attorneys made a suggestion as to some action or actions that might be taken to improve the University's defense in the event that a civil suit was filed. She stated that she did not ask the attorneys whether they felt the players had been honest during the interviews. Heatlie said that their subjective impressions as to the credibility of the players were "not relevant" to UVM's investigation.⁴

Thus, Attorneys McCormick, Burchard and Johnson provided little or nothing to UVM other than the verbatim transcripts or descriptions of the questions posed to the players and their answers to such questions. Yet Attorney Heatlie opined that the attorneys had found the essential facts of what had happened and had satisfied UVM's objectives for the investigation.

Attorney Heatlie stated that she carefully reviewed the transcripts and narrative descriptions. She felt that the players had been "essentially truthful" with the exception of perhaps just a few statements by one, two or three players. She could not specify what she thought might have been less than fully truthful answers because it had been about two months since she had read the statements.

Initially, Attorney Heatlie responded to a question by stating that everyone who attended the October 2 party was interviewed during the investigation. She then corrected herself to say that Donald Richardson had left the team between his receipt of the November 4 Gilligan memo directing him to appear for his interview and the scheduled date for the interview on November 10. Attorney Heatlie said that she had it "in the back of my mind" that Richardson should perhaps be interviewed. But she went on to say that since Richardson was not interviewed, she must have made a decision that it was not necessary to find him and see that he was interviewed. She also said that her review of the transcripts and narratives did not turn up any names of non-team members in attendance at the party. Thus, she believed that with the exception of Richardson, everyone in attendance at the party had been interviewed.

⁴ Because the interviewers were the only ones to have observed directly the players' demeanors, in our view their opinions as to the credibility of the players' statements were clearly relevant. Attorney Heatlie's assertion that their impressions were "not relevant" was particularly surprising in view of Coach Gilligan's November 4 memorandum (drafted by Attorney Heatlie), which had warned that the failure of any player to provide truthful and accurate information during the interviews would result in his removal from the team.

Coach Gilligan, AD Farnham and Asst. AD Schulman

Coach Gilligan, Richard Farnham and Jeff Schulman were interviewed on January 14. Each reported having spent several hours reviewing the players' statements when they received them in November. Schulman thought he might have spent up to six hours in his review. Each stated that he believed the players had been truthful during the interviews. Each also said that he had no knowledge of any hazing activities by the hockey team during any year prior to 1999. The three formed a committee with Dean Batt and Attorney Heatlie. The committee met on or prior to November 26 to make findings and decide what action should result from their findings.

Coach Gilligan stated that during the meeting no one expressed any doubts about the players' credibility. Heatlie, Gilligan, Farnham and Schulman acknowledged that the committee unanimously found that hazing had taken place in conjunction with the October 2 party. They agreed on rotating one-game suspensions for each of the team members. The players were notified of the findings of violations of team rules including hazing and their suspensions in a memo prepared by Attorney Heatlie and initialed by Gilligan, dated November 26, 1999.

On December 3, the University publicly announced that the men's ice hockey team had violated team and athletic department rules and that sanctions would be imposed. Coach Gilligan was interviewed by different reporters concerning the announcement and the hockey team's activities. In that evening's broadcast, a WCAX TV reporter stated:

"UVM broke their deafening silence today, but they still weren't saying much.... We don't know if the violations are serious. Gilligan gave indications that they weren't as serious as some may think."

Coach Gilligan stated on the broadcast:

"Oh, I don't think serious at all. The boys were guilty of a couple of things that most of the athletes on all college campuses are and we're addressing that right now. So, we've found some violations of my team rules and that's what we're taking care of presently...."

Later in the same news hour, a reporter stated: "UVM has announced that there will be sanctions for players on the UVM hockey team who violated team and athletic department rules. They have not admitted it was a hazing incident."

In an interview related to the University's announcement and published on December 4, the Burlington Free Press reported that Coach Gilligan stated his belief that no one was hazed. In a news story published on December 11 concerning the filing of the Latulippe lawsuit, there was reference to the Coach's December 3 comment and the fact he had then stated "I don't feel the boys hazed any person."

Both Farnham and Schulman either read of the Gilligan comment in the paper on December 4 or learned of its existence within a day or two of the newspaper account. Both Schulman and Farnham were asked about their reactions to learning that Gilligan had stated publicly his belief that there had been no hazing when Gilligan had joined in the committee's unanimous determination that hazing had in fact occurred. From the Farnham interview:

- Q. And, what did you do, if anything, after being made aware that Coach Gilligan had made that statement?
- A. Nothing, to my recollection...
- Q. After you became aware of what the coach had said publicly - was it important to you to speak with him about that issue?
- A. Because of the article? No.

And from the Schulman interview:

- Q. Well, either from the newspaper account or through some other source did you become aware of the fact that when the University publicly released this information about the imposition of discipline that Coach Gilligan stated that no hazing had taken place?
- A. I remember reading that. Yes.
- Q. And what did you do as a consequence of reading that?
- A. Nothing specifically.

President Judith Ramaley

We interviewed President Ramaley on January 28. She acknowledged that she did read the December 4 newspaper account of Coach Gilligan's comments that no hazing had taken place. She believed that he had been misquoted. In any event, she was not concerned about the apparent misstatement since she contended that in public statements she had consistently made clear that hazing had in fact taken place. She recalled doing so in conversations with a number of reporters on December 11:

"I do recall when we issued a statement on December 11th inviting you to conduct an independent investigation that I had several interviews with members of the press and I do recall discussing the fact that hazing had occurred with several individuals. Trying to remember who would be hard. That was the period when I was barely functional because of illness.... I do remember saying on camera that hazing is unacceptable at the University of Vermont so I'm guessing that I spoke to a number of different media people at that time. I certainly have not thought anything else since late November. I was clear that hazing had occurred."

In an "It's My Turn" distributed by the University on December 23, 1999 and published in the Free Press on December 26, Coach Gilligan acknowledged that hazing had in fact taken place. He wrote in part as follows:

"I believe that my reactions to the events of the past couple of months have been misunderstood. Let me be perfectly clear -- I have never felt that hazing has any place in intercollegiate athletics, and I believe my responses to the allegations made against our team have been appropriate to the seriousness of the incident. And this was certainly a serious incident.... Based on this investigation, it became clear to me that hazing had indeed taken place and that the players were responsible for violating team, athletic department and university rules."

In her own "It's My Turn" published in the paper on the same date, President Ramaley offered the assurances that: "As a public institution, UVM tries to communicate information thoroughly, accurately and promptly."

On December 10, a lawsuit against UVM, Gilligan, Ramaley and the team captains was filed on behalf of Corey Latulippe. With minor exceptions, the allegations in the civil complaint mirrored those in the October 28 letter from Westgate to Ramaley. On December 11, President Ramaley stated that "[t]he suit has raised different allegations than were raised previously." In its edition of December 19, the Free Press reported the contents and existence of the October 28 Westgate to Ramaley letter. It reported once again Ramaley's statement of December 11 concerning the allegations. The paper reported that President Ramaley on the preceding evening had declined to comment on the Westgate letter.

On December 21, President Ramaley issued a "clarifying statement" to the media:

"Several days ago I was quoted in newspapers as saying that Corey Latulippe's suit 'raised different allegations than were raised previously' and that the lawsuit contained new allegations that were 'different in character.'

In retrospect, it has become clear to me that my comments were poorly worded. Apparently, since the allegations in the lawsuit and a previous document are for the most part the same, some have concluded that I was attempting to assert that the most troubling allegations only surfaced in the lawsuit.

I regret that my comments left room for that conclusion. The fact remains that there is indeed a significant new allegation in the suit, namely credit card fraud. On the day I made those comments we had invited the Attorney General's Office to look into the matter, and this new claim stood out in my mind as particularly relevant. And, while I didn't refer to it specifically, newspaper accounts of the allegations included characterizations that do not appear in either document.

I hope the people of Vermont will trust that my imprecise comments were in no way meant to deceive or manipulate information that I knew would be open to public scrutiny. The allegations that were presented to us were serious in nature, we conducted a thorough and professional investigation, and we will continue to examine our response, policies and future strategies."

FERPA Analysis

UVM requested that our office investigate the hazing matter on December 11. This constituted the University's first referral of this matter to law enforcement for investigation. Several explanations have been put forth by UVM representatives for its failure to involve law enforcement earlier to address the Latulippe allegations. Ritchie Berger said that until the filing of the lawsuit, the University did not realize that any of the allegations potentially involved criminal conduct, other than the underage drinking. UVM has a policy, now under review according to President Ramaley, that off-campus alcohol offenses involving students are not referred to law enforcement.

It is difficult to read the Westgate letter of October 28 and not at least question whether criminal conduct, apart from underage possession, took place on October 2. UVM offers two reasons why it did not refer the matter to law enforcement officials earlier. First, the University argues that Latulippe did not himself report the matter to the police. Secondly, Latulippe's attorney, Gail Westgate, had indicated a willingness to try to reach "an amicable resolution of these issues **in a confidential manner.**" (Emphasis added.) However, the University does not address the fact that the Westgate letter describes activities involving eight other freshmen. There is no evidence that UVM ever sought permission from Latulippe or any other of the freshmen to refer the allegations for law enforcement investigation.

Primarily, the University has contended that federal law tied its hands and prevented a referral to law enforcement. In a document accompanying its release of the documents governed by Judge Bryan's December 15 order, UVM asserted that the Family Educational Rights and Privacy Act, 20 USCA §1232g (FERPA), rendered it "not free to disclose details of the allegations or the administrative investigation to either the University's law enforcement unit or to external law enforcement agencies for purposes of criminal investigation..." The document was prepared by the Office of General Counsel and the Office of Public Relations.

We respectfully disagree with UVM's interpretation of the law. FERPA does restrict the University's ability to disclose student educational records. However, the law and the regulations promulgated thereunder provide exceptions for referrals of alleged criminal conduct to a law enforcement agency. "Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation or to enforce any local, state or federal law." 34 CFR s. 99.8 (c)(1).

On December 12, the Free Press reported that President Ramaley on the previous day had stated that the UVM Police Services Department had been notified of the hazing allegations early in the investigation. When asked about this statement and the basis therefor, Ramaley responded that she did not recall making the statement. To a second question on the same topic she answered: "I really cannot reconstruct what I said at the time or what was on my mind.... I doubt I said what is paraphrased in the newspaper."

Another of the documents UVM released pursuant to court order on January 4 was an e-mail message from Police Services Chief Gary Margolis to Attorney Heatlie, dated November 12, and her reply of the same date. Margolis wrote in part as follows:

"...the Free Press called me and wanted me to comment on the current investigation on the hazing. I told them I know nothing of the details (**which is true**).... They also intimated that there are rumors of criminal activity. If this is in the least bit true, I would urge us to find some time together to discuss police involvement (whether it is us or Burlington PD). I know you would do this anyway, I just didn't want anything to fall through the cracks. We wouldn't want to ruin the criminal case and be accused of botching/covering up the incident."
(Emphasis added.)

Attorney Heatlie did not provide any substantive legal response to the Margolis request.

In its January 4 documents release, UVM cited FERPA as the reason "why Attorney Heatlie could not respond substantively to Chief Margolis' e-mail." We asked Attorney Heatlie what was different between the date of the e-mail and December 11, when there was a referral for investigation to our office. She responded that there was no factual difference. When asked why the University made the referral on December 11, Attorney Heatlie invoked attorney/client privilege.

President Ramaley was asked the same question and responded as follows: "We wished to get to the bottom of it. There were serious questions being raised publicly about what occurred during these events. The trustees and I agreed that we needed at this point to seek to get the full truth, whatever that truth might be."

Contrary to the University's public assertions about their legal restraints, during our interview, Attorney Heatlie acknowledged that Chief Margolis has jurisdiction to investigate off-campus alleged criminal conduct. She also acknowledged that the records generated by such a law enforcement investigation would not be considered educational records for the purposes of FERPA.

On February 2, 2000, Burlington Free Press reported that UVM has acknowledged that it was not FERPA that interfered with the University's ability to inform law enforcement personnel, but rather some deficiencies in UVM's own written policies regarding the release of information on its students.

The Attorney General's Investigation

"At one point we were just going to deny everything, completely lie about everything. We figured that that wasn't the best way to go...."

- UVM Hockey Player

Very early in our investigation we concluded that had the University conducted a more thorough investigation, it would have learned more about the events leading up to and the activities that took place during the initiation party. We suspected that a number of the players had not fully and truthfully cooperated in UVM's investigation. We thought it likely that many of the players had worked together to create a story to present to the University's investigators.

We felt that a number of individuals should have been questioned about the activities at the party. For example, we were puzzled as to why Donald Richardson, a sophomore hockey player, had abruptly departed the team and the University in early November. We immediately took steps to locate Richardson and made plans to travel to interview him. Because the full facts of what happened at the October 2 party were eventually revealed, interviewing Richardson and certain other individuals did not ultimately prove necessary.

We have questioned many players, some in the presence of their attorneys and others on their own. We have talked with at least one player from each class. We heard of the history of freshmen initiation activities dating back to the fall of 1996. We heard that some upperclassmen thought that the planned October 2 party should not be held or that at least the demeaning activities should not take place. Several players voiced these concerns to Captain Karlander. They were told that the planned events could not be stopped.

We were informed that the entire team, in direct violation of the coach's written directives in the November 4 memo, met on one or more occasions at the same house where the party took place to discuss what should be said during the November 10 interviews. Each player had the opportunity to speak his mind on what they should do. Opinions expressed ranged from admitting everything to denying everything. Ultimately the team reached consensus that all would deny the elephant walk, deny that there had been a pre-party meeting to plan hazing activities and try to avoid getting any particular player or players in trouble.

Besides denying that they had gathered and decided on a story and denying that there had been an elephant walk, we heard of other lies told by one or more of the players to whom we talked. There were untruths about a number of actions, including whether there had been a pre-party planning meeting, about the freshmen being nude during the party, about beer being poured on the freshman, about the freshmen being given warmed beer to drink and about hazing activities at prior years' parties. At the same time, we heard that some of the players with whom we talked had told the truth during the UVM interviews about these same matters, i.e., that the party had been discussed for weeks beforehand, that

there had been a pre-party planning meeting attended by the upperclassmen, and that indeed there had been nudity, the consumption of warmed beer, the pouring of beer on freshmen, etc. These inconsistencies should have made it abundantly clear to UVM officials that some hockey players had lied during the UVM investigative interviews.

Asked why the players met and concocted a story, we were told that the players were "scared." They were "embarrassed" about the elephant walk and concerned that it might be looked upon as "sexual harassment or a sex crime". It was felt that to admit the amount of pre-party planning might make the event look more like hazing.

On Friday, January 14, the University announced that it had come into possession of conclusive proof that players had not been truthful during their November 10 interviews. The day the University learned this information, it cancelled the remainder of the hockey season. We did not provide the information the University used to make its cancellation decision.

We did not interview every player. We saw no need to do so. When we had finished our player interviews, it was clear to us that the essence of Corey Latulippe's hazing allegations regarding the October 2 party were well supported by the facts.

Prosecution Analysis and Decisions

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."

Comment to Rule 3.8 of the Vermont Rules of Professional Conduct

A prosecutor's approach to a case typically includes questioning whether a crime has been committed, whether there is enough evidence to prove the commission of that crime and, if so, whether the likely punishment is appropriate for the perpetrator(s), given the totality of the circumstances.

In considering criminal prosecution for any offense relating to the October 2 party, other than involving the furnishing and possession of alcohol, we are mindful of the difficulties raised by issues of consent. The players with whom we talked, other than Corey Latulippe, hold firm to the position that no one was forced to do anything he didn't want to do. The event was described as "fun" and planned and carried out only to make the team a closer unit and better equipped to face the season ahead. Thus, issues of willing victims have played a significant part in our thinking.

1. Alcohol-Related Offenses

We have probable cause to believe that the October 2 party involved widespread possession of alcoholic beverages by underage hockey players. We also have probable cause to believe that certain upperclassmen provided the alcohol for the party and organized the party knowing that underage drinking would take place.

The Chittenden County State's Attorney and the Attorney General have concurrent, i.e., co-equal jurisdiction and authority to prosecute criminal activity committed in the county. State's Attorney Lauren Bowerman has been aggressively prosecuting underage drinking cases, particularly those individuals responsible for furnishing the alcohol and organizing parties at which underage drinking knowingly has occurred. She has expressed a desire to handle any alcohol-related prosecutions resulting from our investigation. We are most willing to have her office do so.

In consultation with State's Attorney Bowerman, for alcohol-related offenses at the initiation party, we have decided not to prosecute any minor for possession of alcoholic beverages. We do deem it appropriate to prosecute one or more upperclassmen for furnishing alcohol to minors. They had the opportunity and the ability to prevent the underage drinking activities. Convictions for this offense under 7 VSA § 658 provide for imprisonment for up to two years and/or a fine of not less than \$500.00 nor more than \$2,000.00. The State's Attorney will review our investigation and determine which individual or individuals will be prosecuted.

We also heard from Corey Latulippe and some of the players about another hazing incident on a school night during September of 1999. The freshmen were told to sleep in their clothes. At approximately 2:00 AM they were awakened by upperclassmen, brought to the rink complex and then driven to Dorset Park in South Burlington. Two bottles of hard liquor were brought for the freshmen. Once at the park, the freshmen were directed to participate in a number of races and games. In one they were told to strip and place their clothes in a large pile on one side of a tennis court. At the other side were upperclassmen, primarily but not exclusively sophomores, with the liquor. The freshmen had to race and pick up an article of clothing, race back and drink from one of the bottles and repeat this sequence until fully clothed. Freshmen who made too much noise between activities were made to drink more. It was estimated that some freshmen had approximately ten shots of liquor in the half-hour to hour that they were at the park. Some vomited as a result.

The information we have gathered concerning the Dorset Park activities, once transcripts are prepared and reviewed, will be forwarded to the Chittenden County State's Attorney for her consideration as to whether alcohol-related charges arising from this incident should be filed.

2. Credit Card Fraud

Corey Latulippe's credit card number was used by an upperclassman, with Latulippe's knowledge and arguably his permission, to reserve a team white water rafting excursion in Maine. The account was charged \$950.00 but credited \$900.00 the following day. Latulippe was reimbursed the \$50 by another hockey player some weeks later.

No one was defrauded or otherwise lost money as a consequence of this transaction. In our opinion, under the facts of this case, no crime was committed. To the extent that there was a technical violation of the law, we decline to prosecute.

3. Simple Assault

“It was pressured, you know. I wouldn’t say it was totally required. Everything was pressured.”

- UVM Hockey Player

Vermont law punishes by not more than one year in prison and/or a fine of not more than \$1000, one who recklessly causes bodily injury to another. Bodily injury is defined as “physical pain, illness or any impairment of physical condition”. 13 VSA §§1021 (1) and 1023 (a)(1).

It is certainly arguable that causing another to drink excessive amounts of warmed beer in a short timeframe resulting in the person vomiting into a bucket constitutes a violation of our simple assault law. Whether the victim was truly forced to drink the beer would be a determination for a judge or jury. The pending civil litigation seems an appropriate forum, given the current state of the law, to redress wrongs of a potentially assaultive nature perpetrated at the party.

Consequently, we decline to file charges of simple assault against any present or former member of the hockey team for the activities of October 2. At the same time, we note that we are indeed fortunate that the hazing activities did not result in the death or serious bodily injury of any player.

4. Forced Use of False Identification

We considered whether Corey Latulippe was coerced to use false identification in order to gain admission to and purchase alcoholic beverages at a Burlington bar during early September. Latulippe brought the fake ID to the bar. His photo was on the ID and he admittedly had used it on his own prior to the night in question. Latulippe displayed the ID to a state liquor inspector, perhaps at the suggestion of a senior hockey player. Latulippe was ticketed and paid a fine for this offense. We do not believe anyone else was criminally responsible for these actions.

5. Lewd and Lascivious Conduct

“With us, everybody is totally nude except for shoes, I think. And you line up in a line single file and each person goes between the other person’s leg and grabs their, their penis, I guess. And you have to walk single file holding on to the person in front of you, his penis. And you can’t break, you’re not supposed to break the chain, you know. You’re supposed to walk in single file and go wherever they tell you to go and keep walking like that.”

- UVM Hockey Player

Under Vermont law, a person guilty of open and gross lewdness and lascivious behavior has committed a felony punishable by not more than five years in prison and/or a fine of not more than \$300. 13 VSA § 2601. This is a very serious crime and one convicted of a violation of this statute is categorized as a sex offender and thereby likely subject to the ongoing registry and notification provisions of laws on the books in many states.

There is a wide range of conduct that falls within the prohibitions of this statute. The Vermont Supreme Court has found the "open" requirement met when there is only a single witness to the conduct. State v. Benoit (1992) 158 Vt. 359. Grabbing a female in the vaginal area and breast area has been conduct sufficient to sustain a conviction. State v. Gabert (1989) 152 Vt. 83.

During the elephant walk, players paraded while nude and grabbing the genitals of the player immediately ahead in line. There were numerous witnesses. In any prosecution under these facts, it would likely be argued that the conduct was consensual. The fact that the freshmen were compelled to drink excessive amounts of alcohol thereby arguably having lost the ability to consent would likely be a related matter for jury consideration.

In this case, it was the freshmen who grabbed other freshmen. But they did so at the behest of one or more of the upperclassmen. It is a serious felony under Vermont law to "incite ... another person to commit a felony." 13 VSA § 7. It is certainly arguable that the freshmen were incited to commit lewd and lascivious conduct.

We are not prepared to say that in conjunction with the elephant walk there was no felonious conduct on the part of one or more members of the UVM hockey team. We are prepared to say, however, that in the interests of justice and the facts of this case, we decline to prosecute any student for lewd and lascivious conduct or inciting to commit lewd and lascivious conduct.

Discussion and Recommendation

"[I]t's a bonding experience for us and I don't consider myself to be hazed when I was a freshman. I didn't say 'man, I got hazed.' It was - I enjoyed it. It was fun. And I can understand how people would call it hazing under the school's terms and under society's terms. I can definitely see how it's considered hazing. But for us and for the team, I don't consider it hazing and I don't think anybody on the team does."

- UVM Hockey Player

The hockey player quoted above spoke for many of his teammates. Still, there are others who feel very differently. Those who believe that they themselves were hazed and are opposed to the freshmen suffering similar experiences, face tremendous conflicts. In the words of one upperclassman:

“You don’t want to isolate yourself from a hockey team. You know, we’re just about to start our season. Also, you know, we’re a team and, okay, we don’t agree with it, but it pretty much is going to happen beyond our control...But I still went to the party to say ‘yes, I’m on the team’... You know, I didn’t want to isolate myself. But again, I didn’t agree with it.”

Hearing the players talk, hearing of the humiliations they endured, how they pretended in some respects that what they were doing was not really happening -- all of this was most sobering. Yet these same players talked more. We heard of the importance of tradition and other aspects of the value of the initiations they experienced and those they imposed on others. Consequently, just *some* of the challenges of effectively combating hazing came into focus.

The freshmen have spent much of their lives striving to become members of an elite team. They want to be accepted. They want to show that they can be relied upon in times of adversity. It is their elders, established members of the group, who have asked or demanded that they undergo these trials, trials they have endured themselves. The rewards of acceptance far outweigh the pains of initiation. With graduation they will lose some members of their group. The team needs new members next year and the years following in order to survive and excel. They wish to do their part during their time to contribute to the life of the team.

We have concentrated our efforts on the hazing conduct of one UVM team over a relatively short timeframe. To reach the conclusion that this is just a UVM hockey team problem, or just a UVM problem, ignores news accounts from Vermont and elsewhere, not to mention the personal experiences of so many people in their own lives or the lives of close friends and relatives. There is also the accepted norm of hazing-type activities in the military, activities designed and intended to conform behaviors and attitudes of the individual into those of the group.

We have seen and heard of many actual examples of hazing in its many manifestations involving sports teams and social organizations from the high school level to well into adulthood. Reports have ranged from the silly to the deadly – as, for example, from being required to fill out a job application at a fast food restaurant, to having to eat a banana protruding from the fly of another or being required to drink fatal amounts of hard liquor.

Clearly, UVM and other organizations must be more vigilant. Greater and more effective efforts must be made to know what students are doing, and perhaps more importantly, what and how they are thinking. Team or group bonding experiences that attain the desired results without hazing’s humiliations and dangers must be developed and promoted.

Hazing is not currently against the law in Vermont. Actions that constitute hazing can be violations of existing statutes ranging from possession of alcohol to simple assault to reckless endangerment, to lewd and lascivious conduct, to aggravated assault, to

involuntary manslaughter. As discussed above, the arguably voluntary nature of the participation of those being victimized by hazing renders criminal prosecutions difficult. There is also the fact that those responsible for hazing are not necessarily trying to assault or otherwise victimize. They are trying to haze.

Simply passing a law that prohibits hazing will not solve the problem. Attitudes need to change. Still, what happened to Corey Latulippe can be considered a crime of its own special nature and the legislature should make it so. Last year the Senate passed S. 76. It is currently being considered in the House. In its present form, a violation allows only the imposition of a civil penalty of not more than \$1000.00. Certainly there are hazing activities that warrant only a fine. There are others that should result in a more punitive response, including potentially lengthy imprisonment.

We suggest that the legislature consider enacting anti-hazing legislation providing for a range of punitive sanctions, civil to criminal, depending on the severity, risk and outcome of the hazing activities. Legislative findings should expressly clarify that prosecution arising from a hazing incident is not limited to charges under the anti-hazing statute. We offer to work with any legislative committee considering enactment of a new law governing hazing behavior.

Conclusion

Many individuals have made many mistakes in this matter. Lives have been scarred. There are likely more consequences to come. Yet, we can feel fortunate that the scars and the consequences have not been worse.

The challenges to students and administrators at UVM and to many other Vermonters are clear: to learn from this experience, to take appropriate corrective actions and to work together to change attitudes and behaviors. Individuals must be empowered to become committed and fully contributing members of teams and organizations without having to pay such a painful price for admission.