



## Social Host Liability: A Minefield Your Organization Must Navigate

by Jason Scott Luck, Attorney at Law and initiate of Kappa Alpha Order

Imagine this: your organization is having a party. Your friend from out-of-town comes by to visit you, in order to experience first-hand the fun you've been having. Your out-of-town friend is 20, but you give him/her a couple of beers anyway. Later that night your friend is driving home, crosses over the centerline and hits another driver head-on, leaving both drivers with grievous injuries.

Who can be liable for the injuries of the driver your friend hit? In many jurisdictions, *you* can. Who can be liable for your friend's injuries? In some jurisdictions, *you* can, despite the fact your friend is over 18 and technically an adult.

### What is "Social Host Liability"?

Under the old English Common Law, hosts that provided alcohol to their guests were not liable for that guest's injuries. Gradually, states modified the common law either through judicial decisions or the legislative process to allow for "dram shop" liability (i.e. bars) and "social host" alcohol liability (e.g. hosts of parties). Such alcohol liability can be even further subdivided into

"third party" (where a host/bar can be liable for the injuries caused by their guest to *other people*) and "first party" (where a host/bar can be liable for the injuries caused by their guest to *other people and the guest himself*). The advent of minimum drinking ages in the various states further complicated the issue of alcohol liability by creating two tiers of liability, one for people that met the minimum drinking age, and one for those that did not.



Social host liability for guests that meet the minimum drinking age is relatively rare. A majority of states do not recognize social host liability for the of-age.<sup>1</sup> A minority recognize "third party" liability<sup>2</sup> or "third party" and "first party" liability.<sup>3</sup>

Courts have been recently expanding the alcohol liability of social hosts for underage drinking. The majority of states<sup>4</sup> impose "third party" liability in this situation, with a smaller majority<sup>5</sup> imposing "third party" and "first party" liability. A minority of states<sup>6</sup> still follow the old common-law rule of no underage alcohol liability for social hosts.

(1) States which do not recognize social host liability for the of-age: AL, AK, AZ, AR, CA, CO, DE, DC, FL, HI, IL, IA, KA, KY, LA, MD, MN, MS, MO, NE, NV, NY, OK, PA, RI, SC, SD, TN, TX, VA, WA, WV, WI, WY

### Should my Organization be Concerned?

If alcohol is served at your party, yes. Organizations, not just individuals, have been held liable as social hosts in many jurisdictions: in *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, a fraternity was held liable for an off-campus ranch party where the underage were being served; in *Fassett v. Delta Kappa Epsilon*, all the fraternity members were found to be liable as accomplices at an off-campus apartment party where the underage were being served. The examples are endless, and are not limited to fraternities: businesses, social clubs, and even parents have been held liable.

### How Can my Organization Protect Itself?

Unfortunately, there is no silver bullet that will absolve an organization, or individual, of this liability. Case law suggests that measures such as refusal to serve underage guests and intoxicated of-age guests, and sober transportation from the party for intoxicated guests may have some small effect in diminishing liability. Ultimately, the best way to avoid social host liability remains to refrain from serving or consuming alcohol altogether. Because an alcohol-free party is a rarity for most organizations, it pays to be aware of the risks involved with your fun.

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(2) States which recognize "third party" liability: CT, GA, ID, IN, MA, MI, NJ, NC, ND, OH

(3) States which recognize "third party" and "first party" liability: ME, MT, NH, NM, OR, UT, VT

(4) States which impose "third party" liability of social hosts for underage drinking: AL, AZ, AR, CO, CT, DE, FL, GA, ID, IN, IA, KY, LA, ME, MA, MI, MS, MT, NH, NJ, NM, NC, ND, OH, OR, PA, RI, SC, UT, VT, WA, WV, WI, WY

(5) States which impose "third party" and "first party" liability of social hosts for underage drinking: AL, AZ, AR, CO, CT, DE, FL, IN, IA, KY, LA, ME, MA, MI, MS, MT, NH, NJ, NM, NC, OH, PA, RI, SC, VT, WA, WV

(6) States which following old common law for no underage alcohol liability for social hosts: AK, CA, CO, DC, HI, IL, KS, MD, MN, MO, NE, NV, NY, OK, SD, TN, TX, VA

## Chapter Websites...A Primary Risk For Fraternities

by Todd Mattox, Education Consultant, HRH/Kirklin & Co., LLC and initiate of Beta Theta Pi Fraternity

You only know what you know, or as Will Rogers once said, "all I know is what I read in the papers." Simply stated, what chapters and alumni groups post on websites for public view is often all that a visitor may know about the members and organization. The key question is what is displayed on and how will it be interpreted by those outside the organization?

The purpose of chapter websites is to assist in the promotion and communication of fraternal values upon which the organization was founded. As fraternal societies we subscribe to sound objectives and oaths. Be it in public or private ceremonies, these declarations of personal commitment maintain application within the organization and well beyond throughout our lives.

It is important that our deeds and conduct, as well as websites and other forms of external communication, are used to display our core values in a consistent manner with the mission, vision, and goals of our organizations, right?

A positive website can be a tremendous tool utilized in the development of alumni relations, communication within the undergraduate chapter, and for the overall promotion of the organization to prospective members, parents, and the community.

Echoing the website of the college or university, the chapter should provide content and information which states the underling objectives and vision of the organization, promotes membership, and is representative of both undergraduate and alumni members.

Yet, these simple methods of outreach can quickly become negated by content and material counter to the intentions of the organization. General guidelines for inappropriate website content to avoid are the following:

- *Pictures, graphics, or content wording with the inclusion of any illegal activities or behavior inconsistent with the policies, values, or ethics of the organization*
- *Reference to our encouragement of alcohol, drugs, controlled substances or other paraphernalia, including graphics, photos or content wording of any kind*
- *Links to or from facebook.com and/or other personal sites of members, advisors or other agents of the organization*
- *Distasteful or offensive downloaded/uploaded files, graphics, audio, video, or other animated presentations and links*
- *Explicit or vulgar content wording, photos, or graphics found within a website or on an external linked site*

Fraternal organizations continue to fight a public image problem reminiscent of "Animal House," which quite frankly is perpetuated on numerous chapter and personal websites throughout North America. They depict that the Greek community lacks proper values, seeks little commitment or value to academic expectation; and alcohol consumption dominates our existence.

A primary reason for the emphasis of appropriate website content is the understanding that fraternal organizations have faced litigation and subsequently high settlement costs from claims in which the chapter and/or member website served as key evidence of negligence. These judgements have revealed the inability to properly monitor, educate, and discipline members relative to the organization risk management policy and alcohol use guidelines; simply through the audit of chapter website content. Clearly, a concerning point for fraternity members and the subsequent entities which support its operation as the onset of the technology age continues to develop and influence websites such as facebook.com, myspace.com and webshots.com which quickly inundate college campuses and fraternal members.

Now more than ever, organizations are aware of the risks and liability incurred when preventative measures are not taken regarding the publication of websites and other communications of chapters.

Leadership of the chapter is responsible to assure information and content of the website is portrayed in a manner keeping with the values of the organization. Certainly, the development of the chapter website may be managed in an appropriate manner. It is quite feasible for an undergraduate wishing to pursue a career in website design to produce a professional, interactive and classy website; an aspect which can be highlighted when searching for post graduate careers.

As identified above, fraternal organizations must again respond to the increasingly litigious society clearly present within the operations of the college/university community and subscribe to the values and principles upon which they were founded.

Further information and resources concerning proper website content and material which should be avoided can be found online with HRH/Kirklin & Co., LLC at [www.kirklin.com](http://www.kirklin.com)

*This article was developed and derived from the external memorandum to fraternity leadership from Ray Galbreth, Executive Director of Delta Chi Fraternity, in February of 2004.*

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Alpha Sigma Phi	Kappa Alpha Order	Theta Chi
Alpha Tau Omega	Kappa Delta Rho	Theta Xi
Chi Phi	Phi Kappa Psi	Zeta Beta Tau
Chi Psi	Phi Kappa Tau	Zeta Psi

# Time to Save Lives

By Paul R. Chabot, Lieutenant Naval Intelligence Officer, Executive Director of the FreeStyle Foundation and initiate of Sigma Phi Epsilon

The Greek community has a tremendous task on our hands; understanding today's substance abuse problems on the college campus, to help save the lives of members and our organizations.



A quick quiz, how many of these substances do you know? GHB, MDMA, Ketamine, LSD, PCP, Cocaine, Marijuana, Heroin, R o h y p n o l , Methamphetamine. Every single one of these drugs is

prevalent within the college community. For the most part, our society has very little knowledge of these substances and how to deal with them. Once we learn, those at risk will listen, and together we can make a difference.

On Saturday, January 28, 2006, I celebrated 19-years of sobriety. I have dedicated my life to substance free living and helping others understand the dangers behind drug and alcohol abuse. What I find most surprising, our society is largely unaware of what is happening within the backyards of our Greek organizations. Clearly, substance abuse is a problem within every organization (yes, every Greek organization) and it is often the sole reason for policy violations, negative news coverage, death, suicide, loss of recognition, and closure.

If a fraternity is failing to recognize their members have a problem, then the organization is simply failing. We can either choose to be part of the problem, or part of the solution. Much like the 12 step program of Alcoholics and Narcotics Anonymous, the very first step is recognizing a problem exists.

As a professional speaker and consultant I have traveled to every corner of our country, speaking to communities and chapters large and small. No matter the size, location, or demographics, every institution is affected. Ten years in law enforcement working narcotics taught me a great deal about substance abuse. Six years working at the Office of National Drug Control Policy taught me a bit more. However, the real learning has occurred by simply visiting with students and asking them the direct question, "what is happening on your campus?" The results may take you by surprise.

♦*The age range with the largest substance abuse in America is that of our college freshmen and sophomores, ages 18-20.*

♦*Over 95% of Greeks know someone who uses illegal drugs.*

♦*Greek members believe most of America uses illegal drugs.*

♦*Less than 5% of Americans use illegal drugs and drug usage today is about half of what it was just a few decades ago; and down 19% amongst our youth.*

♦*Over 100,000 Americans die every single year by substance abuse – many of whom are college aged students.*

♦*Less than 1% of America's Greek members have heard of "group think" (individual decisions based on majority opinion)*

If we truly want to make a difference within our Greek organizations we have to do a few things:

1. Teach our members what group think is, and how to avoid it.
2. Get away from just "alcohol education" and move into "substance abuse education." It is more inclusive, and more realistic.
3. Hold the line. Get rid of those who use and violate our standards. We are not a drug or alcohol rehabilitation program.
4. Educate the alumni/ae of today's college environments. Alcohol is no longer the only problem. We now have numerous other drugs to worry about, many of which our older members have never heard .
5. Utilize the undergraduate leaders, Chaplain, Standards Chair or equivalent. Too often we treat this as a ritual position with little meaning to everyday fraternity life. False! They are the moral voice of the organization and need to understand their role in providing education and prevention programs while also holding members accountable for their actions.
6. Encourage substance free living. College freshmen are choosing to live in substance free environments. It is no surprise why. Have you visited a fraternity house lately? Would you want to walk on beer soaked carpet, find vomit on the toilet, and loud and obnoxious people punching holes in the wall? I would not.
7. Show members where and how to get help. It is everywhere. Community drug programs and health centers, Narcotics or Alcohol Anonymous, just for starters.
8. Develop a lasting substance abuse program that engages the members at least 3 times a semester. It is the "rubber band theory," always providing needed education, like pressure on a rubber band to prevent it from snapping back into its original form.

I am a proud member of my fraternity and enjoy serving as a regional volunteer. I am one of the biggest advocates for the Greek community. My love and devotion is clear, but so is my resolve to help save lives and better our entire community. It begins with recognizing our roles in helping to make a lasting and significant difference; to help save lives by educating members so they can do the same.

For more information, please visit [www.paulchabot.com](http://www.paulchabot.com). Paul may be contacted via email at [info@paulchabot.com](mailto:info@paulchabot.com)

The drug facts within this article were obtained from [www.whitehousedrugpolicy.gov](http://www.whitehousedrugpolicy.gov).

## Transporting chapter risk with professional drivers

By Todd Mattox, Education Consultant, HRH/Kirklin & Co., LLC

If a chapter utilizes some form of designated driver program, they greatly reduce the risks of members, right? Think again, here is a quick example.

A chapter of a national fraternity held an off-premise social event. In an effort to provide a safe and fun environment, the chapter rented a 15 passenger van to transport members and guests to and from the location of the event. During one of the return trips, the sober member who was driving the van became distracted, lost control of the vehicle and struck a telephone pole. The result of the crash was one passenger fatally injured and one seriously injured. Litigation soon followed and, ultimately, a substantial settlement was paid out on the claim.

It would appear that everything was done correctly. Clearly, this is not the case, so what went wrong?

- ✓ The driver of the vehicle was unfamiliar with the van and unable to properly maintain control
- ✓ The driver was not professionally trained or experienced with a passenger van



### Reduce the Exposure of Risk

Because of unfortunate and unpredictable situations such as this, it is recommended that chapters utilize professional drivers and transportation services only. Further, chapters should work to eliminate the use of members' vehicles as well as the use of leased or rented vehicles operated by members for the transportation of members and guests from fraternity functions.

### Resources Available to the Chapter

There are several resources already available for most students such as university/college safe ride home programs, which utilize van or shuttle services or agreements with local taxi services.



SafeCar Services ([www.safecarservices.com](http://www.safecarservices.com)) is a safe transportation company currently partnered with fraternal organizations and college communities. SafeCar offers prepaid membership cards which are used by students needing transportation. When a member needs a ride, they simply call the toll-free number of SafeCar who then dispatches a partnering taxi. Upon arrival at the final destination, the member swipes their membership card. Acting much like a debit card, the cost of the fare is deducted from their card balance. Certainly a positive way to offer a safe and affordable ride to members.

### A Community Effort

Liability exposure continues to be one the greatest challenges facing fraternal organizations. The objectives of a safe, healthy and valued experience for members cannot be accomplished without the support of the entire organization and community. It is important that sound risk prevention practices such as professional transportation are endorsed and implemented by the organization and entire Greek community, to assure future members are provided the safe and healthy experience they deserve.

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Your contact information will remain confidential and will not be solicited or provided to additional vendors or producers.

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## 2006 FRMT Risk Management College

June 27th in Indianapolis, Indiana

The 8<sup>th</sup> annual *Risk Management College* is scheduled for June 27th in Indianapolis, IN and will be held at the Hyatt Regency in downtown Indianapolis.

The 2006 *College* will offer two educational tracks, the first targeted to traveling consultants and the second track will serve the needs of directors, executives and senior staff members.

In addition to the *College*, we are pleased to announce the opportunity to participate in the supplemental education of the *Alcohol Skills Training Program (ASTP)*, facilitated by Dr. Jason Kilmer the day following the *College* on June 28<sup>th</sup>.

For additional information regarding registration and curriculum for the 2006 Risk Management College, please visit [www.frmtltd.org](http://www.frmtltd.org) or [www.kirklin.com](http://www.kirklin.com)