"The Law Off-Campus." In this session, we will explore the potential legal liability of colleges and universities arising out of their many off campus activities, including internships and academic programs; alumni tours and events; student field trips, including recreation and adventure activities; international programs; activities of campus police off campus; student discipline for off-campus behavior; and issues involving off-site employees. The focus of this session will be recent court decisions and pro-active steps institutions can take to help reduce risk and avoid legal liability for their off campus activities.

Introduction

The purpose of this presentation is to explore the potential legal liability of colleges and universities arising out of the many off campus activities in which their students participate in light of a transition in the legal landscape, changing student populations, and a shift in the role of higher education. While William Hoye, my co-presenter, will focus on recent court decisions and pro-active steps institutions can take to help reduce risk and avoid legal liability with internships & academic programs, international programs, alumni tours & events, fraternities and sororities, and other off-campus activities, my role is to raise some of the questions, address some of the emerging issues, and provide a framework for practice based in light of the millennial students on traditional campuses today, their parents, the Baby Boomers, and a broader environment. Those constant and timeless questions are:

- What is the college or university’s role in the ‘local’ community? Is it: 1) maintaining behavioral standards for students, or 2) town-gown relations, or 3) promoting the blending of college or university and community?

- What behavior, committed off-campus, has a ‘significant’ impact on the college or university community?
• How deep should services and resources or extension of influence be off-campus, if not for meeting the ‘developmental’ needs of students?

• And what should the role of the college or university, particularly student affairs professionals, be with off-campus behaviors and activities?

Over the course of a 20-year career in student affairs, I have worked at five different institutions—public & private, small & large, urban and more college town-ish. On each campus, the college or university’s role in the local community varied and the degree to which off-campus behavior was an issue was unique to the context and the students at that institution. For example, one campus was established by a grant of land from the city to the Methodist church conference to provide another institution of higher education in that city where the state had established a historically black college. Other campuses have been a central part of the town’s economy becoming the largest employer and businesses arising to meet the needs of those at the college or university either steadily or intermittently, such as for football weekends. Each presented a unique community context.

An example of the uniqueness of students and off-campus behavior is working in a School of Nursing which means students older than average (average age = 30). They have to present a ‘clean’ record at the end of their undergraduate education or not be certified to sit for licensure. It is strict; even writing bad checks can keep one from licensure as a nurse. Aware of these stipulations for certification, student affairs professionals work diligently with faculty to bring that information to students as early in their nursing school experience as possible, continuing to reinforce and remind them throughout and work with them to address the record with the Board of Nurse Examiners. That behavior—writing bad checks—was off campus, but had a direct impact on the educational outcome and student affairs played a significant role with a unique student body.

At another institution, the majority of students are members of the military and their dependents. Their military activity is often a factor in their ability to participate in both curricular and co-curricular programs at the college. Their needs for student government or traditional student activities are different than the more traditional students, and their behavior even outside of their military ‘jobs’ per se is governed by their commanding officer structure. Since the military is a predominant influence in the community, often the college and the military are partners in the soldier-students’ success.
Therefore, my expertise as a student affairs professional has come in evaluating the questions and understanding the role of the college or university in the various contexts of the local communities and with a predominant focus on the students’ developmental needs, and adapting the programs, services and resources accordingly. Additionally, my dissertation research (Binzer, 1995) was on the acquisition of information used by chief student affairs officers in decision-making, so environmental scanning for demographic, social/cultural, technological, economic, and political/regulatory (legal) and strategic planning processes are a special area of my interest.

When we speak of “off-campus” both in context and students, the first thoughts by student affairs professionals or student service providers are those students who do not live in the residence halls or on campus. While that is an aspect of what it means, ‘off-campus’ also has broader contexts, because even students living on campus in residence halls conduct some of their activity beyond the physical boundaries of the campus. In short, off campus activity or behavior ranges from housing/living arrangements, to academic activity via technology or remote from the physical campus, and from organizational behavior, to the misbehavior of individuals. Therefore, virtually every aspect of student affairs is concerned with off-campus behavior. With the conversation increasingly about the behavior of our students off-campus, the issue is at what point does that behavior spark the college or university’s interest and/or when is the college or university the best leader, educator, or authority figure in the mix? So, in a litigious society, the savvy student affairs professional is exploring and evaluating the legal liabilities in their program design and implementation. Throughout the literature I reviewed for this presentation, the caveat or advice was to be aware of the legal liabilities and proceed judiciously so that you can explore ways to meet students’ developmental needs, but not so that you compromise the mission of student affairs or the development of the student (Elkins, Helms & Pierson, p. 77). It was and is a clarion call to get smart, but to stay in the student development business, fully engaged. It may be that we have an ethical responsibility to use the ability to see around the corner (as mature practitioners) to educate the students.

To be smart practitioners then, if we stipulate that the most effective model for our times is the ‘facilitator model’ described in Bickel & Lake’s (1999) Rights & Responsibilities of the Modern University—as a guide which provides as much support, information, interaction, and control as is reasonably necessary and appropriate in the situation (p. 193)--and acknowledge
what we understand about millennial students with their very involved parents as two parameters
for designing and implementing, or at least evaluating and updating, the services and resources
provided to off-campus students and their activities, then we see the landscape of liability more
clearly.

In addition to the times changing and the roles of colleges and universities shifting, the
students are changing. Levine (1998) has characterized students in colleges and universities
nationally as ‘non-traditional.’ Other demographers are also telling professionals working at
colleges and universities about the millennial students, the more traditional aged students who, in
fact, are more ‘emerging adults’ (About Campus, Sept-Oct 2001, p.14) and their ‘helicopter
parents’ who hover (USA Today, Forbes, 2001).

Millennial Students & their Parents

An increasing phenomenon for this generation of college students, known as ‘millenials,’ is
overly active parents (Forbes, 2001). These students were born since 1980 and represent some
distinctly different demographics than previous generations. For example, they grew up in times
when only 26% of U.S. households were married parents with children, and 70% of mothers
work full-time as compared to 19% in the 1960’s, and 37% of all children live in single parent
homes; with 2.2 million students being raised by their grandparents (Forbes, 2001). This
represents a real change in family life and the resultant descriptors for millenials are
“disengaged, competitive, and overwhelmed” (Sax, p.15). Additionally, based on the
Cooperative Institutional Research Program data,

“today’s freshmen are more academically optimistic, service
oriented, and politically engaged. They also have less experience
with alcohol and cigarettes. Students are studying less than ever
before, are more worried about financing college, and are less
committed to working on important issues such as the environment
and race relations” (Sax, p.19).

Their developmental needs are not the same as those even just the generation before them, much
less the experience of most professionals. They demonstrate “increased likelihoods for cheating,
date rape, ethnic disparagement, growing celerity to accuse faculty of improprieties, and a
mounting sense of being victims” (July-August 2001, p. 5). Howe and Strauss in Millenials
Rising (2000) argue that this generation of children is the focus of the “most sweeping youth
safety movement in history” (p.43). That their parents are going to unprecedented lengths to
avoid their worst fear—that harm will befall their child—and they are largely succeeding. This has brought a significant increase in the extent of parental involvement in the lives of college students along with their expectations that colleges and universities will keep them safe (About Campus, Sept Oct 2001, p. 12).

In addition to the higher expectations of parents for protecting the safety of students, those for colleges and universities to protect liberty and property rights are increasing as well, especially as the cost of higher education rises. That has direct implications for the processes by which students are held accountable for their behavior, both on and off the campus, especially if it means their separation from the institution. This shift is not really a return to in loco parentis as some have suggested, because in fact, their parents are very involved--sometimes before the student has become engaged with professional staff (Forbes, 2001 & Strauss, 2001)--rather than delegating that authority or responsibility. But from a legal perspective, colleges and universities have been held to higher standards for the protection and physical safety of their students. The stakes are raised and the stakeholders are watching closely.

In fact, as student affairs professionals we are often confronted with parents attempting to do business or access services and resources for their student(s), instead of their student(s). Colleges and universities, generally, appreciate collaborating with parents, but this goes beyond collaboration. This not only has privacy implications for professionals or practitioners, but also completely avoids the opportunity of the professional to use/create a ‘teachable moment’ that might result in the further growth and development of the student(s).

Standards for Services, Programs and Resources

While most of what is offered by off-campus areas are more service and resource oriented, as opposed to developmental programming, they address more of Maslow’s hierarchy wherein basic needs for food and shelter must be met before persons can address reaching their potential for self-actualization, which on a university campus is defined loosely as academic success.

For student affairs professionals or student service providers, guidance for much of the programming, services and resources offered to/for students has come from the Council for the Advancement of Standards in Higher Education (CAS) (http://www.cas.edu/) since 1979 “for the ultimate purpose of fostering and enhancing students’ learning and achievement academically,
psychologically, physical, socially, and in general, to promote good citizenship.” “They respond to real-time student needs, the requirements of sound pedagogy, and the effective management of 29 [now 30] functional areas, consistent with institutional missions” (http://www.cas.edu/). The standards are reviewed and revised biannually, so they can reflect the environmental response, or context from which professionals can operate.

For the provision of services to ‘commuter’ students, defined by CAS as off-campus, the standards call for equal access to services and resources, to comparable programming for students, and their related activities, and with appropriate staffing as compared to those on-campus students and activities (http://www.cas.edu/). Since most of the campuses cannot house on-campus all of their students, and do not attempt to—in fact, in an age where distance learning is increasing exponentially---off-campus students are a given and serving their needs a routine function within student affairs or student services. So, when we think about the legal liabilities and responsibilities of colleges and universities in the context of this decade and these students, boundaries seem non-existent, so what a ‘good faith’ effort or what shared governance looks like takes on new dimensions. The “facilitator model” as described by Bickel & Lake (1999) calls for using the predominant standards and engaging in an exchange with stakeholders so that shared responsibility for the development of the students involved, their safety, and the activities that they participate in and with which they take a leadership role is more clearly delineated. Using that lens when reviewing students and their activities makes for a more accurate picture of the liability landscape and seems to be the soundest approach to moderating legal liability.

**Off-Campus Living**

When reviewing what most campuses offer or provide in the way of services and resources to the off-campus student(s), a majority have an office or functional area responsible for off-campus housing with lease advice and listings of available properties (in some cases) within their division of student affairs. With increasing frequency, those student affairs professionals working in that area (off-campus student services) are training as lease consultants and familiarizing themselves with standard lease agreements within their area. Many also include information about roommate conflict, being a good neighbor, and some general ‘partying’ guidelines. Some have references to the city ordinances or state laws that specifically address community living standards. Larger institutions seem to also offer student legal services
(and/or mediation) for disputes with landlords. Beyond that, services, and perhaps more importantly, programming were more difficult to find via a website review. Whatever educational or information programming occurs is a unique response to the context and the students at a particular college or university.

Relative to off-campus housing, increasingly parents/families are purchasing off-campus residences for use by their students. Recent lowering of mortgage rates, as well as a bonanza of new construction, has served as a catalyst for this trend. With parents as landlords or owners and their students as property managers with roommates, there is an increase in the number of calls to student affairs for the university to handle or deal with the property manager’s fellow students when conflict arises over rent, cleanliness, pets, parking or occupancy. And, while those seem like very low level issues, they may in fact reveal a student with psychological difficulties, or alcohol or drug abuse issues, or other larger concerns.

In the recent past, a call came from a parent who wanted staff to do something because his child was living in her car. Her roommates had kicked her out. They were living in a private, off-campus residence hall. Their (father and daughter) relationship was not close, because he had learned of her status well after it had originated. She had asked him not to interfere and so he wanted the university to ‘do something’ without letting her know that he had called. We would not have learned of her dilemma without his informing us. Her grades were solid, as was her attendance. Her involvement in co-curricular activities was also consistent. She was showering in the Student Recreation Center. After some deliberation, we told the father that we would stand ready to be helpful to her if she would only contact us. She did not, but we were alert and it caused a discussion about how many other of our students might be ‘homeless’. So, colleges and universities need to have a place to hear those kinds of concerns, hence an important and appropriate organizational structure wherein off-campus services is within student life or with the purview of the Dean of Students.

At Texas A&M, the Off-Campus Student Services are housed with Adult and Graduate Student Services in the Department of Student Life, and while other entities within the institution provide services and resources to off-campus students, this office is the only program area where off-campus students are a named focus. Collaboratively with community agencies and law enforcement authorities, the student organization, Off-Campus Aggies, provides for monthly community gatherings to facilitate neighbors meeting one another and becoming introduced to
community services, like utilities, waste management, the neighborhood association, fire, police, etc. These gatherings circulate the park system of the community, so that a wide area is covered over the year. In addition, again with law enforcement, student affairs professionals join officers in going door-to-door in neighborhoods to leave information and answer any questions. Community officers report a 50% decrease in the number of complaints from areas where they have ‘walked and talked’ after the visitation. It has made a significant difference and will remain a part of the complement of services, in cooperation with community agencies, especially police, for the foreseeable future given the nature of college communities where turnover of students is the norm.

What does the University do when students are in the community, and whether behaving well or badly, represent the university by their association? The community is asking the college or university to better police their students. So, the issue is the college or university’s interest in off-campus behavior. Several colleges and universities report working with their city officials regarding zoning laws and ordinances related to noise violations, and other bad neighbor behaviors. Some have strong consequences for landlords—such as keeping the property vacant for a period of one year and increasing fines for repeated violations. Other communities, such as around Texas A&M, University of Michigan and Western Michigan University, have zoning ordinances restricting the number of non-related adults who can live in a dwelling. These community-based ordinances give both law enforcement and the college or university, student affairs practitioners, the opportunity to educate students, as well as their parents, the landlords, and property managers about the policies and the consequences. In addition, building a coalition among property managers and private residence halls creates a significant resource for programming, services and resources to students off-campus; it extends the staff who are working to guide and support students, and can provide a funding partner when, in an effort to market themselves, property managers contribute for programming, educationally or socially. They also make good partners in their concern for safety issues and can be plugged into the college or university through relationships with student affairs professionals and law enforcement officials.
Issues of Sexual Violence

Because sexual violence can rise to the level of a felony, is under-reported nationally, and is insidious in breaking down community (university) ties, colleges and universities often review sexual violence cases for local action. In many cases of sexual violence, alcohol or other drug use is an antecedent. On college and university campuses, sexual violence cases are most often ones in which the perpetrator is known to the victim—date or acquaintance rape—which deepens the college or university’s interest in the impact of the case on its community. Sexual violence has become less tolerable to the public and so again colleges and universities are asked by their communities to do something as a part of the larger concern for physical safety (Bickel & Lake, p. 187). Because of the consequences of the accusation of sexual violence both for the victim and the perpetrator, there is great reluctance to report to either law enforcement or to the college or university. So, many universities have adapted special processes or allowances for treating victims within their judicial processes when sexual violence is to be addressed. But, additionally, student affairs professionals have created response protocols to take care of victims medically, emotionally, academically, and physically, as well as provide community resources, regardless of the students’ willingness to make an official report of the incident. Again, to reiterate strongly, the shared responsibility between the college or university, law enforcement, the community and the students is a key to providing the education and prevention programs, as well as the victims’ assistance programs and slowing the incidences of sexual violence if not eliminating them. It is about changing a culture, which is difficult to do without wholesale support.

Issues of Alcohol Abuse & Impaired Driving

Because alcohol abuse and drunk driving are such a problem nationally for college and university campuses and a leading cause of death of their students, and because it can be such a blight to a community to have a preponderance of students living among them with this culture of invincibility and alcohol consumption to excess as the perceived norm, colleges and universities have elevated evidence of alcohol abuse and prevention efforts for local review and action. There is significant funding assistance for campuses willing to mount education and prevention programs to combat alcohol abuse and impaired driving.
Colleges and universities rely on local law enforcement and are working so diligently to both educate and collaborate with providers and distributors of alcohol. This may be where a predominance of the time and energy of student affairs professionals is spent. Research suggests (Wechsler, 1994) that peer influence is critical to the success of education and prevention programs, so many have established campus programs through Bacchus and Gamma. A part of that peer education is ‘social norming’ or the sharing of accurate information about the behavior of students at a particular university, so that those who might are not drinking to live up to some perceived level, but rather are aware that the average student consumes from 0-3 drinks per week while at college, for example. At Texas A&M, C.A.R.E., the Coalition on Alcohol Responsibility and Education has been established and its board has members of the Texas Alcoholic Beverage Control Board, Distributors, Bar Owners, Independent School District and Law Enforcement officials, University, and student representation. It is facilitated by the University and has received community funds in support of their programming and risk management efforts. In addition, a model student organization, CARPOOL offers rides Thursday through Saturday evenings from the local bars at no charge to students. Community officers report, anecdotally, that this makes an enormous difference in the calls and incidences of impaired driving. Over the last year, Alcohol & Drug Education Programs at Texas A&M hosted 11,000 students at one program or another, including the majority of freshmen (4800) who participate in extended orientation (FISH Camp), Greek chapters, residence hall communities, student organizations, and individuals referred to an education workshop by student judicial services. Because of this community-wide effort, there seem to be fewer cries for the university to ‘do something.’

Greek Life: Fraternities & Sororities

If physical safety, alcohol, hazing, sexual violence and bad neighbor behavior are the primary off-campus liability concerns for colleges and universities, then Greek Life represents the quintessential off-campus liability discussion. Hazing and alcohol are often a part of the discussion with these student organizations—fraternities and sororities. Wechsler et al (1998) maintains that binge drinking poses the ‘single most serious public health problem confronting American colleges.” (p.57) and (Wechsler, 1994) reports too that the number one predictor of binge drinking is fraternity membership. They are quintessential in a liability discussion because
the organizations are most often recognized or in relationship with/to the college or university while living in an affiliated community. In many cases, fraternity and sorority members are also living together in a house that may or may not be owned by the college or university, so there are the neighbor behavior issues as well. Fraternities, and sororities to a somewhat lesser extent, embody the majority of off-campus concerns in one organization. [Note: some colleges and universities own the property on which sorority and fraternity houses are built and it changes the liability—generally increasing the college or university’s liability exposure.] In addition, these groups (fraternities & sororities) most often have alumni involvement with the chapters, perhaps a house corporation board to address the property issues, and national or international headquarters governing their behavior as affiliated members of a large organization. There are again multiple stakeholders attempting to influence and therefore sharing in responsibility, so partnerships rise to new levels of importance. The existence of a chapter as a discernible entity (student organization) is the lever for the college or university’s role to be heightened. Janosik’s (2004) article on risk management for student organizations discusses the legal landscapes for advisors, which is another liability discussion tangential to this.

National and International Headquarters for sororities and fraternities have really embraced risk management and all have programs in place including policies which especially address hazing and alcohol and education programs. In addition, they require recognition by the college or university and compliance with college/university, local, state, and federal laws. For the National Panhellenic Council sororities, most if not all of the 26 groups, have banned alcohol in their houses and without exception the rules prohibit the women from ‘drinking’ while wearing their letters, regardless of the age of the students or the state law. However, with the growth in diversity, chapters with houses no longer represent the totality of Greek Life. So, those with houses are a sub-set of the Greek Life on a university campus. Most Multicultural Greek and National Pan Hellenic organizations do not have houses. Concerns with alcohol, hazing and sexual violence still predominate, however.

Colleges and universities have, as have the national/international headquarters, spelled out what a ‘sponsored’ event might look like. For the most part, those definitions sound something like whenever two or more are gathered…could be perceived as a chapter event. Yet, students seem to want to defend behavior on the basis of “everyone does it” or it was not officially sponsored. So, in cases involving student organizations, colleges and universities are
interested in the behavior of the groups and their sponsorship, officially or unofficially, of activities, and remain less interested in the behavior of individual students. For example, if a fraternity sponsored an event at which members who were underage were permitted to drink alcohol, the college or university would focus accountability on the organization as a whole, rather than the individual minor in possession.

From the National/International Headquarters perspective, Greek organizations are trying to return their chapters to their ‘rituals’ and their founding values. If organizations, and their members, are true to their espoused values, then there technically should be no behavior that is harmful, much less illegal. So, the gap is the difference between the guiding principles and published policies, and the traditions or the current culture on campuses.

A comprehensive review of the cases involving alcohol and fraternities brought several points to light (Elkins, Helms & Pierson, 2003). First fraternities are more likely than other student organizations to have an incident that is alcohol related and to be named in the lawsuit for negligence. Colleges and universities have fared reasonably well in the past in terms of being named in such suits. It ‘remained proportional over the last two decades (Elkins, Helms & Pierson, p. 72) and as did having a favorable outcome. National organizations were also faring favorably over the last decade, with the onus being on the local organization(s). It was shown that relationship statements have little or no impact on the legal liability; that property ownership may be a factor in determining liability; and most importantly, that state law influences which cases are brought as illustrated in the study (p. 77). From an educational perspective, simply stating the rules and legal liabilities, while important, seems insufficient if the goal is to effect changes in behavior related to alcohol and risk management. The study further showed that concentrating on the student leaders might be a faulty strategy since their perceptions and behavior are among the most abusive and they shape the culture with the responsibility for the organization and the inculcation of its new members (Cashin, et al., 1998, p.69 & Kuh & Arnold, 1993). Institutional liability pertaining to alcohol and fraternities generally falls under the purview of state tort laws (Kaplan & Lee, 1997), specifically the concept of negligence (Elkins, Helms & Pierson, p. 69). Further, through the comprehensive review of cases relating to alcohol and fraternities, colleges and universities were faring less well. As Elkins, Helms & Pierson report that “choosing not to take positive intervention steps with fraternities out of concern for increased legal liability, for instance, leaves campus fraternity chapters and individual students at
heightened risk for negative consequences of alcohol use as well as legal liabilities. Such strategies would appear counterintuitive to the mission of the student affairs profession” (p. 75). Recommended actions include partnering and engaging in developmental education, not obviating ethical responsibility by only speaking to institutional liability (p. 77).

**Discipline for Off-Campus Behavior**

Colleges and universities are often accused of turning a blind eye to behaviors and while it must sometimes seem like that to an outsider, the events that come to light, usually because of a third party report or a first hand accounting, offer the college or university no choice but to respond and investigate. Student Judicial processes have a statement about their jurisdiction or the guideline for behavior that rises to the level of interest most often explicated in their published student rules. At Texas A&M for example, the rule reads:

**TAMU Student Rules: 24.5 Off-Campus Conduct**—When a student violates 24.3 of this Student Conduct Code by an offense committed off the campus and that is not associated with a university-connected activity, the disciplinary authority of the university will not be used merely to duplicate the penalty involved for such an act under applicable ordinances and laws. The university will take disciplinary action against a student for such an off-campus offense only when the nature of the offense is such that, in the judgment of the vice president for student affairs, the continued presence of the student on campus is likely to interfere with the educational process and the orderly operation of the university.

If the vice president for student affairs determines that the offense affects the university as stated above, then Student Conflict Resolution Services in the Department of Student Life, or if the student is a member of the Corps of Cadets, the Office of the Commandant, shall hold a prompt administrative hearing to consider whether the offense is of such nature as set out above, whether or not the student committed the offense, and take appropriate action. The action of the university administrative hearing officer shall be made independent of any off-campus authority. ([http://student-rules.tamu.edu](http://student-rules.tamu.edu))

Rules written in this manner allow the authority to adjudicate matters from off-campus, but do not give the college or university the responsibility to do so. Therefore, depending on the information available, perhaps the cooperation of law enforcement officials in sharing or communicating that information, the college or university can discern on a case by case basis their interests for the good of the campus. This necessarily causes consternation for those who
would like a prescription for the handling of judicial matters, but there are too many factors to be able to codify all the possibilities. For example, if you decide to review all cases of sexual violence, does it matter how far off campus an act of sexual violence occurs before it is of interest to the university? Boyfriends and girlfriends in their hometowns, versus in their local off-campus apartment complex? And, there is an additional layer of interest when diversity is an issue. Perhaps there are cultural overlays when international students are involved, for example. Are the laws and standards of behavior for domestic violence different, for instance?

At a recent meeting of Big XII Deans, there was conversation about the increasing interest in off-campus behavior as a means to respond to the community who is asking university administrators to do something! This increasing interest in the behavior of students while they are off-campus is not a new trend, but it is a resource question. How many judicial officers would it take to process all of the complaints about students’ off-campus behavior, and could conceivably those complaints multiply if the college or university is known to handle them and hold students accountable, especially if it is perceived that one could get action without entering the matter into a civil or criminal complaint, but rather leave it to the student judicial services—the college or university, perceived as less permanent or detrimental.

A popular strategy emerging is for colleges and universities to collaborate in event planning and risk management when it is a rival or championship sports contest such as University of Texas versus Texas A&M or Western Michigan versus Central Michigan Universities. That is, bringing all of the counterparts to the table for a review of the facility, the law enforcement, and the crowd control strategy. And, while that is not the typical off-campus issue, it does bring to bear the question of the college or university’s concern about behavior at an event as a student member of the campus community.

These are decisions and discussions that must be weighed by each college or university in light of the town-gown relations, the programs, resources and services that the college or university offers as a means for raising awareness of students to their shared responsibilities in these matters, and the resources available to take on the adjudication of the majority of cases of off-campus behavior. Of course, some of the decisions and discussions about what colleges and universities should concern themselves with are influenced by the federal reporting requirements of the Clery Act which includes the information from the campus and its contiguous areas.
Implications of the Clery Act

There is some discourse in the literature about the value of crime statistics and the reporting of sexual violence via the Clery Act. In this age of millennial students, and their involved parents, the Clery Act reporting may be creating a heightened focus on the aspects of physical safety of students from too limited a perspective; that of strangers violating their space and endangering their safety. In fact, the focus on safety, or on better risk management, should also be on their own (the students’) activities and leadership. With statistics showing that a preponderance of sexual violence on college campuses has alcohol as an antecedent and is committed among persons who are at least acquainted, the focus of physical safety is/should be on protecting oneself and raising awareness from within the community. Some feel that the Clery Act allows that focus to be diffused and has parents’ expectations of the institution held without onus on the students themselves (Janosik & Gehring, 2003). Research also has shown (p. 83) that neither prospective students, nor their parents where using the reported information in making their decisions about which colleges and universities to attend.

One study by Janosik and Gehring (2003) suggests that students are not largely aware of the Clery Act, nor does it influence their behavior relative to physical safety of themselves or their property, but rather colleges and universities should focus on programs that do prove to influence their (students’) crime reporting behavior, as well as their attention to their physical safety and that of their personal property (p. 91). The Clery Act has served to increase/enhance confidence in campus police and local law enforcement authorities and to promote a climate where crime is more likely reported (p. 90). The study reported a very high perception of feeling safe on a college campus, as well as off-campus in a college town.

Whatever its limitations, the laudable intent of the Clery Act is to provide an opportunity for awareness and adjusted behavior in the face of risk, opening an opportunity for partnership and a sharing of the responsibility for personal safety. The legislation has especially helped the relationships between campus police and student judicial officers because of the shared responsibility for collecting the data to report accurately for each college or university campus (Gregory & Janosik, p 778).
Who at the College/University is Responsible?

The focus of this presentation has been on the opportunities for student affairs practitioners or professionals to raise appropriate questions about the issues at hand on college and university campuses and perhaps take a lead role in bringing to the table those who most appropriately share in the responsibility for off-campus behavior and activities of students, in particular. It is critical to foster relationships with off-campus officials such as local law enforcement (beyond campus police), the district attorney, the mayor and city council as appropriate, the fire department and other emergency responders, and the local chamber of commerce. But, it is important to note that it is not the sole responsibility of student affairs to engage students, or the community, in the provision of services, resources, and programs. Faculty and administration bear some responsibility as well. For this perspective, it has been helpful to review Birnbaum’s concept of ‘loose or tight coupling’ with regard to How Colleges Work (1988) for additional insight when reviewing what is offered for off-campus students and their activities, both curricular and co-curricular. Understanding the structure(s) within the college or university and those relationships may assist student affairs professionals in identifying internal partners more clearly.

Summary & Conclusion

In conclusion, when standards are stipulated for the provision of resources and services, as a benchmark, then to protect us from liability, colleges and universities need to directly address meeting those standards. In the case of off-campus—the standard is equal or same provision of access, resources and programming as for those students living on campus. Given what we know of millennial students and their involved parents as two of the stakeholders, and the community as another major stakeholder, when our college/university communities extend beyond the physical borders of the campus, that may mean re-thinking the provision of educational programming in particular and services and resources in general for the off-campus students and their activities.

Most simply, it boils down to a resource game. With the issue of what behavior from off-campus is of interest to the college or university, or affects the community, the balance may be logistics—how many judicial officers is enough staff to deal with all that is of interest?
Throughout the history of higher education, it seems that the issues have been largely the same in “kind”, but the “degrees” to which colleges and universities have engaged or have risk managed them has changed as a function of who these current students are and the involvement of their parents, or other stakeholders, and the litigious nature of society. Returning to the ‘facilitator model’ as a guide, the soundest approach for addressing legal liabilities for off-campus behaviors and activities may be a range of strategies to provide the best information, guidance, …(Bickel & Lake, p. 193) and clearly delineate those who share in the responsibility for the development and safety of the students. This should require ongoing conversations and involvement with the students in the very truest form of student affairs practice. While there is no prescription for avoiding all of the legal liabilities relating to off-campus behavior several things are increasingly clear: 1) more and more of a college or university’s activities are happening off of the physical campus property or boundaries, and 2) the legal landscape for liability is in transition. Therefore, some practical implications for the state of student affairs practice:

- First and foremost, understand the milieu in which you work
- Give yourself (the college or university) the authority within the Student Rules to deal with off-campus matters, but not the responsibility. That allows the college or university to make determinations on behaviors and activities to address as resources and University interests dictate or allow.
- Attend to the standards expressed by CAS for the provision of educational programming, services and resources and appropriate staffing. That would address the state of the practice while allowing each college or university to shape and deliver programs, services and resources unique to their context and student body, since the Council for the Advancement of Standards (CAS) provides benchmarks or templates for the provision of services and resources.
- Develop close and clear (collaborative/cooperative) relationships with local law enforcement authorities. Hosting face to face meetings with introductions and overviews of policies and procedures can be invaluable. Those relationships allow an appropriate communication flow and sense of cooperation among agencies whose mission of safety for the community is the same, but whose approaches may differ significantly. Whether
it is responding to emergencies, compiling statistics for the federal reporting requirements for the Clery Act, or addressing the local off-campus behavior of students, student affairs administration, and judicial officers in particular, benefit greatly from these relationships and ultimately then, so do the students.

- Work proactively with community relations folks, landlords, neighborhood associations, and city officials to program and build coalitions to share in the work of town-gown community building and addressing the activities of students living off-campus among all of the stakeholders. References were made earlier to walk and talk and neighborhood block parties as examples of proactive programming. In addition, building a coalition among property managers and off-campus residence hall management lends itself to providing services and resources to students.

- Use publications to share information about best practices and resources, as well as penalties as appropriate.

- Continue to bring detail to websites, adding to the educational and informational dimensions, and track their usage, however primitively at first.

- Incorporate into leadership training and citizenship translation of ‘college’ experience to real world as neighbors, as fellow community members.

- Use examples in training and development programs where integrity carries into off-campus contexts—most of student activities risk management deals with discussing third party vendors, liabilities relating to alcohol & other issues of event planning.

- Recognize or reward the students and their activities when they are done well, so that those who might operate outside good guidelines and counsel become more the outliers, rather than the norm—help all to know that fun and other goals can be met when appropriate risk management is applied.

- Make the message consistent that students represent the college or university both on and off the campus, therefore, the institution is/may be interested in their behavior both on/off physical boundaries of the campus.

- Educate professionals to the state laws. Part of the education of student affairs professionals needs to be not only an overview of the legal precedents relating to higher education, but to the specific laws of the state in which they practice or work. In a way
similar to the bar exam, licensing someone in a particular state based on core legal principles in the context of the state in which they choose to practice or work.

- Use the knowledge that comes from experience to forewarn or educate students about likely issues and means for problem solving.
- Take a lead in connecting the partners with the students for their best developmental opportunity in the model of shared responsibility.
- Encourage the sharing of information and best practices across campuses through professional associations and networks.
- Engage the college or university’s general counsel to assist in “painting the parameters” for legal issues pertaining to administrative decisions.
References


