



2022-2023 Mock Trial Competition

Estate of Sarah Ormsby
v.
Eureka University

Thank you

We extend our thanks to the **Washoe County Bar Association** for their continued support of the Mock Trial Program including logistics and funding.

Many thanks to the **Nevada Bar Foundation**. The state bar's Mock Trial Program is sustained through a Foundation grant funded by the Charles Deaner Living Trust. Chuck Deaner was a Nevada attorney and ardent supporter of law-related education. The state championship round is named in his honor.

Mock Trial Committee Members

Andrew Chiu, Chair, Head of Staff Counsel for AIG

Kelly Brill, Washoe County Public Defender's Office

Lisa Bruce, Bruce Law Group

Sandra DiGiacomo, Henderson City Attorney's Office

John Giordani, Clark County District Attorney's Office

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John Shook, Shook and Stone

Emily Strand, Pitaro & Fumo

Shannon Wise, Claggett & Sykes

STIPULATIONS

1. All exhibits included in the problem are authentic and accurate in all respects, and no objections to the authenticity of the exhibits will be entertained.
2. The Witness Statements are assumed to have been signed and other documents are also assumed authentic.
3. This trial is on the issue of liability alone. The parties shall not address damages in this phase of the trial.
4. The Incident Reports of Rai Henderson, Campus Security Officer, serve as Rai Henderson's witness statement.
5. No separate autopsy or toxicology report exists. For mock trial purposes, Campus Security Officer Henderson received information from the State Medical Examiner's Office that the toxicology report was negative. Officer Henderson was present at the autopsy and can testify as to the Medical Examiner's cause of death finding.
6. The "Comstock Club" is a recognized University entity, chartered by the University and subject to University rules, policies, and regulations.
7. The claims of Plaintiffs are not barred by the doctrine of sovereign immunity or any other rule of law.

WITNESSES

The following witnesses are available to be called by the parties:

For the Plaintiff-

Security Officer Rai Henderson

Vic Walker

Chaz Austin

For the Defendant-

Ryan Sparks

Dean D. Whitney Wendover

Robin Dayton

All witnesses may be portrayed by a person of any gender and may use any preferred pronouns.

The decedent, Sarah Ormsby, was female. This does not affect the gender of the witnesses involved nor does it have an impact on the relationships between the decedent and the witnesses.

EXHIBITS

The following exhibits may be used by teams in competition. They are pre-marked and are to be referred to by number, as follows:

Exhibit No.

Exhibit Description

- | | |
|---|--|
| 1 | Campus Security Report of Officer Rai Henderson |
| 2 | Architectural Plans of the False Roof |
| 3 | Graphic Drawings of the SSO House |
| 4 | Page 7 of Sign-In Sheet for SSO Orientation Meeting |
| 5 | Note Delivered to Sarah Ormsby and Vic Walker |
| 6 | Hazing Policy Statement for SSOs at Eureka University |
| 7 | The Plaintiff may provide a dark colored pillowcase - replicating the hood referred to in the statement of Officer Henderson, and it may be introduced into evidence. No objections regarding "chain of custody" will be recognized. |

1 **IN THE TWELFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
2 **IN AND FOR THE COUNTY OF RHYOLITE**

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4
5 WILLIAM ORMSBY and
6 MARGARET ORMSBY, Individually and
7 as Personal Representatives of the
8 ESTATE OF SARAH ORMSBY,

Case No. 22-CV-1031-1864

Dept. 1

9 Plaintiffs,

10 vs.

11 NEVADA SYSTEM OF HIGHER EDUCATION,
12 d/b/a EUREKA UNIVERSITY, a political
13 subdivision of the STATE OF NEVADA,

14 Defendant.
15 _____ /

16 COME NOW, William and Margaret Ormsby, Individually and as Personal
17 Representatives of the Estate of Sarah Ormsby, their biological daughter, and for their claim
18 against the Defendant, Eureka University, respectfully state to the Court as follows:

19 **GENERAL ALLEGATIONS**

20 1. Plaintiffs, who reside in Summerlin, Clark County, Nevada, are the natural
21 parents of Sarah Ormsby, and are all the legal heirs of Sarah Ormsby.

22 2. By Letters of Administration dated May 8, 2021 issued by the Twelfth Judicial
23 District Court of Rhyolite County, in Case No. 22-PR-00777, Plaintiffs are the duly appointed
24 personal representatives of decedent's estate.
25

1 3. Defendant Eureka University (“University”) is part of the Nevada System of
2 Higher Education, a political subdivision of the State of Nevada doing business as an institution
3 of higher learning located in Rhyolite County, Nevada.

4 4. Decedent, Sarah Ormsby, was a resident of Rhyolite County at the time of the
5 injury and death.

6 5. On or about March 15, 2021, decedent, Sarah Ormsby, was participating in a
7 University-sanctioned and sponsored event at the Comstock Club, an unincorporated association.
8 Said Comstock Club is located at Rhyolite County, Nevada, in a University-owned building.

9 6. Said event was sponsored and encouraged by the University. The University
10 through its agents, Dean D. Whitney Wendover and elected governing members of said
11 Comstock Club, including but not limited to, Ryan Sparks, was aware of and directed the events
12 that occurred on March 15, 2021.

13 7. Said events included “hazing” of those students seeking admittance to the
14 Comstock Club.

15 8. Representatives of the University including, Dean D. Whitney Wendover and
16 Ryan Sparks, as well as others, were aware of the type of activities engaged in by the Comstock
17 Club and sanctioned such activities.

18 9. Said activities included inappropriate conduct which caused mental and physical
19 discomfort, embarrassment, harassment and ridicule to those pledges who participated in such
20 activities.

21 10. Said activities of the Comstock Club as sanctioned by the University also
22 endangered the physical well being of prospective pledges.

23 11. Said activities were in direct contravention of the expressly stated policies of the
24 University regarding pledge activities and hazing. The University’s policy expressly prohibits
25 such activities including, but not limited to,

- 1 a) Activities that cause either mental or physical discomfort, embarrassment,
2 harassment or ridicule;
3 b) Activities that endanger the physical well being of the prospective pledge;
4 c) Any type of contact sport and/or activity that is designed to place a pledge
5 in a state of physical exhaustion.

6 12. In addition to generalized activities of an inappropriate nature, the pledges were
7 required to walk, hooded, without the benefit of sight, on a constructed ledge. It was the specific
8 intent that said pledges would be in fear for their lives as said ledge was meant to mimic a more
9 dangerous area where a 35-foot drop exists.

10 13. The pledges were hooded, deprived of sight and forced across the ledge as part of
11 the activities of March 2021, and the University was aware of the nature of these activities.

12 14. Decedent, Sarah Ormsby, was walking across said constructed ledge in a
13 successful manner until the ledge was shoved by University representative, Ryan Sparks, causing
14 decedent, Sarah Ormsby, to fall. The injuries sustained in such fall led to severe pain and
15 suffering and ultimately to Sarah Ormsby's death.

16 **First Claim for Relief**

17 **(Wrongful Death - Negligence)**

18 15. Plaintiffs replead paragraphs 1 through 14 as if each were set forth in full herein.

19 16. The construction of said ledge created a dangerous condition on the University
20 premises which the University knew would be inappropriately used to terrify and endanger
21 students to whom it owed a duty of care.

22 17. Said ledge was constructed in such a manner so as to create danger to students
23 and that the construction of such ledge was negligent.

1 18. All parties to the incident including, Dean D. Whitney Wendover, Ryan Sparks
2 and others, were acting within the scope of their employment, agency, or representation of the
3 University.

4 19. Pursuant to the relationship of Respondeat Superior, the University is liable for
5 the conduct of its employees, agents and representatives at the scene of decedent's death.

6 20. The above-described injury resulted from the University's negligence in one or
7 more of the following particulars:

- 8 a) Failing to provide warning to the pledges of a dangerous condition;
- 9 b) Failing to act with due regard for the safety of pledges and students;
- 10 c) Failing to enforce University rules and requirements relating to hazing of pledges;
- 11 d) Failing to act properly with respect to the conditions existing and to alleviate
12 those conditions;
- 13 e) Failing to govern the conduct of its representatives in such a manner as to prohibit
14 the construction and existence of said ledge for hazing purposes.

15 21. Defendant's negligence was a proximate cause of the injury and ultimate death of
16 Decedent Sarah Ormsby.

17 22. As a proximate result of the Defendant's negligence, the Plaintiffs suffered the
18 following damages which exceed \$15,000:

- 19 a) the present value of the additional amounts Decedent Sarah Ormsby would
20 reasonably be expected to have accumulated as a result of her own effort if she had
21 lived out the term of her natural life;
- 22 b) the reasonable burial expenses of Decedent Sarah Ormsby;
- 23 c) pre-death medical expenses;
- 24 d) pre-death physical and mental pain, suffering and disfigurement; and
25 e) grief and sorrow.

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1 **IN THE TWELFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
2 **IN AND FOR THE COUNTY OF RHYOLITE**

3 WILLIAM ORMSBY and
4 MARGARET ORMSBY, Individually and
as Personal Representatives of the Estate of
5 SARAH ORMSBY,

6 Plaintiff,

Case No. 22-CV-1031-1864

7 vs.

Dept. 1

8 NEVADA SYSTEM OF HIGHER EDUCATION,
9 d/b/a EUREKA UNIVERSITY, a political
subdivision of the STATE OF NEVADA,

10 Defendant.
11 _____/

12 COMES NOW the Defendant, Eureka University, and in response to the Petition at
13 Law respectfully states to the Court as follows:

14 **GENERAL ALLEGATIONS**

- 15 1. Defendant admits the allegations contained in paragraph 1.
- 16 2. Defendant admits the allegations contained in paragraph 2.
- 17 3. Defendant admits the allegations contained in paragraph 3.
- 18 4. Defendant lacks knowledge or information sufficient to form a belief as to the
19 truth of paragraph 4.
- 20 5. Defendant admits that the Comstock Club is located at Rhyolite County in a
21 University owned building, but denies that Plaintiff's Decedent, Sarah Ormsby, was participating
22 in an event at the Comstock Club for lack of information upon which to form a belief, and denies
23 all other allegations contained in paragraph 4.
- 24 6. Defendant denies the allegations contained in paragraph 6.
- 25

7. Defendant denies the allegations contained in paragraph 7.

8. Defendant denies the allegations contained in paragraph 8.

9. Defendant denies the allegations contained in paragraph 9.

10. Defendant denies the allegations contained in paragraph 10.

11. Defendant admits that the University's policy expressly prohibits activities that cause mental or physical discomfort, embarrassment, harassment, or ridicule, that endanger the physical wellbeing of the prospective pledge, and any type of contact sport or activity that is designed to place a pledge in a state of physical exhaustion. Defendant denies all other allegations contained in paragraph 11.

12. Defendant denies the allegations contained in paragraph 12.

13. Defendant denies the allegations contained in paragraph 13.

14. Defendant denies the allegations contained in paragraph 14.

First Claim for Relief
(Wrongful Death - Negligence)

15. Defendant restates its answers to paragraphs 1 through 14 as if each were incorporated in full herein.

16. Defendant denies the allegations contained in paragraph 16.

17. Defendant denies the allegations contained in paragraph 17.

18. Defendant denies the allegations contained in paragraph 18.

19. Defendant denies the allegations contained in paragraph 19.

20. Defendant denies the allegations contained in paragraph 20.

21. Defendant denies the allegations contained in paragraph 21.

22. Defendant denies the allegations contained in paragraph 22.

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23. Defendant restates its answers to paragraphs 1 through 22 as if each were

24. Defendant denies the allegations contained in paragraph 24.

25. Defendant denies the allegations contained in paragraph 25.

26. Defendant denies the allegations contained in paragraph 26.

27. Defendant denies the allegations contained in paragraph 27.

28. Defendant denies the allegations contained in paragraph 28.

Third Claim for Relief
(Civil Assault and Battery)

29. Defendants restates its answers to paragraphs 1 through 28 as if each were set

30. Defendant denies the allegations contained in paragraph 30.

31. Defendant denies the allegations contained in paragraph 31.

32. Defendant denies the allegations contained in paragraph 32.

33. Defendant denies the allegations contained in paragraph 33.

Fourth Claim for Relief
(Intentional Infliction of Emotional Distress)

34. Defendants restates its answers to paragraphs 1 through 33 as if each were set

35. Defendant denies the allegations contained in paragraph 35.

36. Defendant denies the allegations contained in paragraph 36.

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2. Decedent Sarah Ormsby was comparatively at fault and such fault bars or reduces any recovery of damages. Such comparative fault exists by virtue of Decedent Sarah Ormsby's knowledge and understanding of the risks, and her unreasonable and voluntary undertaking of the risks.

/s/ D. Niles Wynn
Betts, Cheatham & Wynn, PLLC
ATTORNEYS FOR DEFENDANT

REPORT OF CAMPUS SECURITY OFFICER RAI HENDERSON

Attached to the Incident Report and dated March 16, 2021

1 On March 15, 2021, at approximately 2345, I received a page to proceed to the
2 "Fortress," home of the Comstock Club, a SSO on the Eureka University campus.

3 Following my arrival in the dining room, one of the club members quickly advised me as
4 to what had happened and told me that the victim had already been taken to the hospital by
5 paramedics, accompanied by other members of Campus Security. I contacted the hospital and
6 was informed by the doctor attending the emergency room that the student was already deceased.
7 I then concentrated on talking to any and all potential witnesses in order to determine precisely
8 what happened. As such, I was both the scene supervisor and the investigating detective in this
9 case.

10 I have been a member of the Eureka University Campus Security detail for the past 15
11 years. I received advanced forensic training while serving as a Military Police officer. Given my
12 background, therefore, I am frequently assigned to work on specialized investigations. In the
13 course of my 15-year tenure at the University, I have investigated thefts, accidental deaths,
14 sexual assaults, and other criminal activities. The small size of the Rhyolite County Sheriff's
15 office necessitates that the Campus police take the lead in any University investigation. If
16 necessary, the University security office shares its information with local law enforcement
17 authorities. It is up to the Rhyolite County Sheriff and the Rhyolite County District Attorney to
18 determine if criminal charges are to be brought.

19 Every time I think I've been in this business too long and I won't see anything new, I get
20 surprised. In a room full of people standing in close proximity to this alleged accident, virtually
21 everyone claimed that they did not see what had taken place at the Comstock Club that night.
22 Some claimed they were looking the other way, and others claimed that it was too dark. I then
23 observed that the room was lit by 3 massive medieval-looking chandeliers, which had been

24 converted to electricity. The light was now controlled by a dimmer switch located by the main
25 entrance door. I requested that one of the club members place the dimmer switch in
26 approximately the same position it had been at the time of the alleged accident. This was done.
27 Although the room and the light were dim, it was apparent to me that anyone could have seen
28 what had happened, assuming their eyes had adjusted to the light. When I made this observation,
29 one of the club members then spoke up and said that perhaps the light had been actually dimmer.

30 At this point, having isolated the persons that were in the room at the time of the
31 accident, I informed them that they could each be subject to a Grand Jury subpoena, which
32 would compel them to present testimony under oath as to what they observed. I also told them
33 that if they lied before the Grand Jury, they could expect to serve time in a Nevada prison. I
34 noticed nearly all of them looking at each other with great concern. I then told them that I would
35 speak to them one at a time in a side room, and they could tell me whatever they wanted to in
36 private.

37 The individual interviews were not much more successful than the group interview.
38 Virtually all of the club members continued to deny that they had seen anything. One individual
39 by the name of Chaz Austin told me that s/he had seen what occurred. Chaz informed me that to
40 the best of her/his recollection, the roof apparatus had moved slightly just before the student had
41 fallen. Chaz told me that the only one in a position to do this was Ryan Sparks, who was the
42 pledge master who had been standing at the far end. I thanked Chaz for the information and told
43 him/her that s/he would probably be interviewed in greater detail at a later point in time.

44 At least 3 other persons present told me that they thought they heard the sound of
45 furniture moving immediately prior to the fall. None of the others claimed to have heard
46 anything.

47 I interviewed Ryan Sparks last. Sparks admitted that s/he was the pledge master in charge
48 of this particular stunt, but that s/he had taken all precautions to ensure that nothing could go

49 wrong. Sparks also told me that s/he had observed what had occurred, and the student Sarah
50 simply slipped and fell in a freak accident. Sparks told me that it happened so fast that no one
51 was in a position to catch her or prevent her head from hitting the top of the ledge.

52 When I confronted Sparks with the fact that I had already interviewed everyone else and
53 some of the information that I had received suggested that s/he had moved the roof or shaken the
54 roof immediately prior to the fall, a rather nasty look crossed his/her face, and s/he informed me
55 promptly that was an outright lie. I then lied to Sparks and told her/him that at least 5 of the
56 people there had seen the roof move, when in fact, only one person had informed me of that fact.
57 I simply wanted to test his/her reaction. Spark's response was, "Well, maybe I bumped the roof
58 in an attempt to get into place, but I didn't deliberately do anything." S/he then said, "My dad's a
59 lawyer. I don't know why I'm talking to you anyway." I then pointed out to Sparks that I was not
60 talking to him/her as a suspect, but was attempting to interview witnesses who may have seen
61 how an accident had occurred. Frankly, it surprised me how defensive Ryan was getting. S/he
62 responded, "That may be so, but I know enough not to talk to you unless I talk to my dad first." I
63 told Sparks, "Fine, we'll end the interview right here."

64 A careful examination of the floor revealed scrape marks at points where the 2x4's came
65 in contact with the hardwood floor. However, I was unable to determine whether the marks had
66 been created during the construction of the fake roof, or whether it was the result of someone
67 moving it at a later point in time.

68 While investigating this case that evening, I recovered a dark colored hood that was worn
69 by the alleged victim near the fake roof. I collected this as evidence and secured it in an evidence
70 bag.

71 A supplemental report will follow.

SUPPLEMENTAL REPORT OF OFFICER RAI HENDERSON

Filed August 6, 2021

1 Since my original incident report dated 031621, I have reviewed the toxicology report
2 and attended the autopsy, as the Rhyolite County Sheriff was not available. The autopsy report
3 concludes that Sarah Ormsby died of massive internal hemorrhaging of the brain caused by a
4 blunt impact injury to the left rear portion of her skull. The autopsy report also revealed a young
5 person in top physical condition, with no other deformities or abnormalities. Stomach content
6 consisted of a small amount of pork and some vegetable matter. The toxicology report was
7 negative for alcohol, prescription medicines, narcotics, or any other substance.

8 My other line of investigation in this case related to the dark colored hood. After the hood
9 was returned from the crime lab, I conducted experiments to see whether or not it was possible to
10 see through the fabric in various lighting conditions. I even returned to the Comstock Club to
11 conduct these tests. After doing so, it was apparent to me that one could only see shapes through
12 the hood in light equaling normal daylight. In any sort of dimmed light, it was virtually
13 impossible to see through the fabric. I concluded from this that the alleged victim had been
14 unable to see anything through the hood at the time that the alleged accident had occurred. The
15 hood was returned to my personal evidence locker at work.

16 On April 19, 2021, after reviewing all of the information, I forwarded my conclusions to
17 the Rhyolite County Sheriff and to the Rhyolite County District Attorney. The District Attorney
18 presented the findings to a Grand Jury who returned no indictment or arrest warrant.

STATEMENT OF VIC WALKER

1 Sarah Ormsby was my best friend. We went through grade school and high school
2 together, and we both ran on the track and cross-country teams. We were also involved in other
3 activities together like mock trial, history day, student government, and the school newspaper.
4 Although I was a pretty good athlete, Sarah was exceptional. Sarah was recruited heavily by
5 many colleges, and finally decided to go to Eureka University. I visited the University with her,
6 liked it, and we both enrolled together.

7 At Eureka, we both excelled in our own areas. Sarah qualified for the national cross-
8 country championships and was named an "All American." I have served in the Student Senate
9 since my Freshman year. I am on the editorial board of the University newspaper, the Lode
10 Runner, and also am the lead attorney on our nationally ranked college mock trial team.

11 Social life at Metropolitan is pretty much organized around Student Social Organizations,
12 "SSOs" as the school likes to call them. The SSOs replaced fraternities and sororities at Eureka
13 many years ago after the alcohol-related injuries and hazing accidents became too much for the
14 University to handle. Each SSO seems to cater to some particular group, such as athletes,
15 musicians, etc. Neither Sarah nor I were particularly interested in joining any of these SSOs
16 until we were both invited to apply to the Comstock Club in our Junior year.

17 The Comstock Club is a special organization on campus. It has a long and storied past
18 and enjoys special benefits from the University. The club consists of the top athletes, student
19 government leaders, and other recognized student leaders. Application for membership is by
20 invitation only. Many of the most successful Eureka University alumni were members of the
21 Comstock Club and continue to support it financially. It is one of the highest honors that a
22 student at Eureka can receive to be asked to apply to the Comstock Club. Despite our
23 reservations about joining an SSO, Sarah and I both jumped at the chance to be among the
24 "chosen ones."

Even though the Comstock Club is made up of select campus leaders and stars, a lot of the members seemed to be jerks, especially Ryan Sparks. Sparks used to snicker at us, and tell us that no member of the cross-country team had ever been a member of the Comstock Club, and that my friend and I were not about to be the first exceptions. Sparks and others would chide us, saying that cross country was “super basic,” and that mock trial is “totally cringe.” We even received anonymous notes warning us that no one involved in “trails or trials” would survive the ordeal of “Entry Night.” I’ll admit that the notes kind of shook Sarah and I up a bit. We had already heard stories about the club initiation process. The notes made it sound like the club had something “special” in store for Sarah and me. Although Sarah told me that it was just part of pledging an SSO, I could see the concern and fear in her face when Entry Night was discussed. I could tell that she was upset by Sparks’ attitude about cross country team members. I think Sarah was worried about not making it into the Comstock, and she wanted to prove to Sparks that she could make it.

In the first week of Spring semester, all students interested in or invited to join SSOs were required to attend an assembly given by Dean Wendover. In addition, all the SSO presidents and pledge masters were there. A brochure was given out entitled "Orientation Session Guidelines," which set forth the University's rules and procedures with regard to SSOs and pledging activities.

I remember some students at the meeting questioned why the University's pledging policies were so strict. Dean Wendover explained that college kids often fail to recognize the risk of serious injury to pledges who are subjected to aggressive hazing. The Dean said it was not uncommon at fraternities and sororities in colleges throughout the country, especially on nights of final rites of passage, for students to become carried away during events that start off as relatively innocent hazing activities. Dean Wendover then gave us some examples of actual deaths that had taken place during hazing activities. I specifically remember him talking about

50 some kid who was told to dig his own grave and get in it. Apparently, it accidentally caved in,
51 and the kid suffocated to death. Dean Wendover told us that after this incident, many state
52 legislatures had passed criminal laws regarding hazing, and the University's policies were
53 modeled after those laws. I found this discussion highly unnerving, but I remember seeing Ryan
54 Sparks and a group of other SSO big shots sneering, snickering, and laughing derisively when
55 the Dean was talking about people getting hurt from hazing activities.

56 About a week before Entry Night, I started to get cold feet. I asked Sarah why she was so
57 interested in joining the Comstock and not some other organization. She told me that she was
58 well aware some of the members were jerks, but others were really nice. Sarah also said that she
59 wanted to be remembered as being among Eureka University's elite. She also told me that she
60 really liked the Comstock House and wanted to live there beginning in the Fall. I had to agree
61 with Sarah about this - the Comstock House was a monstrous Victorian-type structure that
62 looked almost like a fort. In fact, most of the people on campus refer to it as "the Fortress." The
63 house is three stories high, with a Victorian style cupola on each corner. If you climbed out of
64 the cupola window, you could actually walk across the peak of the roof to the next cupola. This
65 wasn't too difficult in the daytime, because the peak (nicknamed "the summit" by club members)
66 was actually relatively flat for about 8 inches. If you slipped and fell to the inside, you would
67 only drop down about 4 feet to where the roof flattened out and everybody did their sunbathing.
68 However, if you slipped off on the outside, and didn't catch yourself right away, you would slide
69 off the roof and drop down to an almost certain death. The fall was at least 35 feet.

70 During the afternoon before Entry Night, I started getting really nervous about what
71 Sparks would make the pledges do that night. I called Sarah and asked her if she wanted to
72 hang out together before going to the SSO House. Sarah wasn't doing anything, so we decided
73 to get something to eat at Roselli's, the local pizza joint. I could tell Sarah was pretty nervous
74 herself about Entry Night. She kept saying she knew that nothing bad would really happen, but

75 that she just wanted to get this night over with. Neither Sarah nor I drink much alcohol, so we
76 just had a few sodas with our pizza to help us calm down a little.

77 On the night of Sarah's murder, I was next in line behind her. About 45 students had been
78 invited to pledge the Comstock. After first attending a BBQ, where the pledges were to cook 2
79 pigs and feed them to the existing members, we were then herded into the basement of the
80 Comstock House. We were told that we would be attending various "stations," each "station" in
81 a different room. Sparks then told us that the last station would be walking "the summit"
82 blindfolded. I almost had a heart attack. Sparks then assured us that no one would get hurt, but
83 s/he really wanted to make sure that this year's pledges had what it took to be proper Comstock
84 members. S/he also told us that we could crawl if we wanted to. I was ready to quit right there,
85 but Sarah turned to me and smiled and said, "Remember when we were kids and used to walk
86 for miles on the rails of the railroad tracks? We even did it at night. Don't sweat it, this is going
87 to be a snap."

88 Well, for the next hour we went through 8 different rooms with hoods on and were forced
89 to experience rather gross and disgusting (but ultimately harmless) stuff. However, all I could
90 think about was the summit. Finally, we were led up some stairs and told that we must now
91 crawl out the window, get onto the summit, and go over to the next cupola. I could hear Sarah
92 going first. After only about 20 seconds, I remember hearing a sound like someone pushing a
93 wooden chair across the floor, and then hearing this really weird snap. After that everything
94 became quiet. The silence was eerie. Then I heard loud voices saying that Sarah was only
95 faking. I'm pretty sure that it was Ryan Sparks who said that. I knew that something horrible
96 had happened. Before I could even get my hood off, someone grabbed me and took me back
97 down the stairs into another room.

98 I heard later that the pledges weren't forced to walk on the summit, but a fake roof had
99 been set up in the main dining room. I also heard that Sarah had slipped and had fallen in some

100 type of freak accident and had cracked her skull, causing massive internal head injuries
101 resulting in death. I don't believe it was an accident. Back in high school, I can't remember how
102 many times I saw Sarah running on one of the rails of the railroad tracks behind our high
103 school, laughing every time I fell off the other rail. There is no way Sarah slid on an 8-inch
104 wide board.

105 I have not been the same since Sarah died. I have been deeply depressed, and I have been
106 barely able to attend classes. I really don't know if I'm going to make it through the year. I've
107 called my parents and told them I'm seriously considering dropping out. I can't believe that the
108 University is trying to deny any responsibility for killing Sarah.

STATEMENT OF CHAZ AUSTIN

1 My name is Chaz Austin. I am currently a senior at Eureka. I am majoring in
2 architectural design, and am currently in a 5-year program at the University in which I will
3 become a licensed architect after one year of graduate work.

4 I have also been a rather serious athlete for the past 4 years, spending a substantial
5 amount of time in the Eureka pool. Eureka has a great swim team, and we normally finish in the
6 top 3 of our conference championships every year. This last winter, I qualified for nationals
7 (Division I) and ended up 14th in the 400-meter freestyle. Although that's not quite Olympic
8 caliber, I was pretty darn happy to achieve that type of national recognition and ranking. You
9 have to remember, all of the best swimmers are only a few tenths of a second apart.

10 I was particularly pleased to be asked to join the Comstock because of the design of the
11 building, "the Fortress." I've never seen anything quite like it. It's sort of a weird combination of
12 Victorian and medieval gothic. On each of the 4 corners stands a cupola, but their structure and
13 appearance almost make the house look like a fort. In other words, if you looked at the house
14 from an airplane, it would be in the shape of a rectangle with 4 square cupolas on each corner.
15 The ridge of the roof runs between each of these cupolas, with a flat center section depressed
16 approximately 4 to 5 feet below the ridge line. The bottom of this steeply slanted roof is
17 approximately 35 feet from the ground. However, the real beauty of this design is that SSO
18 members can sunbathe in the middle of the roof without being seen by any passersby. I would
19 also be remiss if I didn't point out that it is a pretty neat place to watch the stars late at night,
20 especially with a date.

21 Although I am a member in good standing of the Comstock Club, I really don't get into
22 this pledging stuff too much. I went through it myself, and considered the whole thing rather
23 stupid. However, I was a good sport and did my duty and got into the SSO. My opinion is not
24 shared by others, and many of the seniors really get into devising scary and weird "stations" with

the sole purpose of freaking out the new pledges to the utter pleasure of the existing members.

Although I usually try to be absent when all this stuff takes place, I was advised this year by Pledge Master Sparks that some of the stations were somewhat technical, and s/he wanted my architectural expertise. As you're probably aware, each station has a different activity in a different room that is intended to create good fun, at least for the existing members. For example, one station this year had a long row of troughs containing slimy mud. The pledges would be led barefoot through the troughs and told that they were walking through the guts of the pigs that they had roasted earlier that evening. Another station was rigged up by a couple of our high-tech engineering students with vibrating rubber strips on the floor. The strips were then covered with over-cooked macaroni. The pledges would be told that they were walking barefoot over piles of maggots feeding on 2-week-old fish entrails. The pledge master had even planned to go down to the local fish market and get a smelly bucket of fish to create the proper odor in the room.

Pledge Master Sparks wanted my input most of all on a fake roof s/he was planning to build in our massive dining room. Sparks told me that s/he wanted to recreate "the summit" in such a way that a pledge would actually think s/he was 3 stories up on top of the roof trying to get across from one cupola to the next. I told him/her that I thought the idea was too terrifying for a pledge activity, but I was promptly yelled and booed down by the other seniors in the club. I have to confess that I then helped design the summit by creating triangular shaped braces, 4 feet on each side, structured lengthwise down the dining room. The braces on the bottom were left open, and the sides were covered by 4x8 sheets of plywood. On the top of this long triangular structure, we bolted on three 2x8's, and then sanded it smooth so that no one would get any splinters. Lastly, at the near end of our contraption, we built a fake wall with a window so that a pledge would have to climb out the window and onto the ledge as if it were really happening.

I was in the dining room the entire night of the accident. I was a little apprehensive when the first pledge climbed through the window and got onto the ledge, because I could tell from the

50 sound of the breathing that this pledge was actually terrified. However, the pledge crawled
51 successfully all the way across the ledge. We grabbed him at the other end and congratulated
52 him. The next nine pledges did the same thing. The tenth pledge slipped off the ledge and ended
53 hanging on the top with her hands. Although she didn't realize that there were two mattresses 5
54 inches below her feet, we quickly grabbed her and took off the hood. We all had a pretty good
55 laugh.

56 The fifteenth pledge was this girl named Sarah. Sarah climbed through the window with
57 the hood on, and then started walking confidently down the summit. We were in total shock.
58 She was as cocky as I was on my Entry Night. As Sarah got toward the middle of our
59 contraption, I saw Sparks run down to the far end of our fake roof, and then turn around to look
60 at Sarah. Although the lights were pretty dim, I was surprised at the look of anger on Sparks'
61 face. It seemed as if Sparks was going into a rage that some pledge was flouting him/her by
62 strolling casually across the roof of the building.

63 What happened next happened quickly. I will swear that I saw the contraption move, or at
64 least shake. The only one with any ability to do this would have been Sparks, who was down at
65 the far end with one hand on the plywood. Everybody else was on the sides of the roof
66 "spotting" in case a pledge might slip and fall. At the same time that I saw the roof move, Sarah
67 took a really weird step and both legs seemed to go up into the air. She then came straight down,
68 and I heard a loud crack as I saw the hooded head hit the top of our contraption. We turned the
69 lights on and took her hood off. Sarah seemed lifeless, and I saw blood coming from her nose,
70 mouth and ears. It was too horrible to describe.

71 I didn't sleep for two days or nights after Sarah's death. I then decided to quit the
72 Comstock, which I did. I'm now finishing out my college career in an apartment on the other
73 side of campus. I will have on my conscience forever the fact that I helped design and build this
74 thing.

I know the club members are angry at me and say that I am blaming Sparks and the University for the accident simply to get rid of my own guilt because I helped design and build the summit. This isn't true. Although the lights were turned way down low, there was enough light for me to see the anger on Sparks' face as well as see the contraption move. Why else would Sarah suddenly fall when she had previously been doing so great? The last thing I wanted was for one of our pledges to get hurt.

STATEMENT OF RYAN SPARKS

1 My name is Ryan Sparks. I'm a fifth-year senior at Eureka University. For the past two
2 years (both of my "Senior" years), I've been the pledge master for a student social organization,
3 or "SSO," on campus called the Comstock Club. Our charter requires that all members of the
4 Comstock be involved in varsity athletics or other campus leadership roles, and be in good
5 standing with the University. My current grade point average of 3.15 is well above the
6 University's minimum for SSO participation of 2.75.

7 The Comstock Club is one of 5 SSOs that accepts both male and female members. The
8 Comstock Club is a service organization, and has a long history of helping the University. For
9 example, when scholarship recruits make weekend visits, we act as guides showing them
10 everything Eureka has to offer. I like to think that sometimes we make the difference in getting
11 some of these recruits to attend Eureka. We also make a tremendous difference in the
12 community. Each member volunteers at least 200 hours of our time each year to a community
13 service project of our choice.

14 The Comstock have a real special relationship with the University. The organization is
15 super selective. Candidates don't "rush" us, we ask worthy candidates to apply. Only campus
16 leaders, star athletes, and the University elite are invited to join. I was asked to be a part of this
17 organization as a Freshman – one of only a very few ever to be so honored. I am a "legacy" –
18 both my mother and my father were members of the Comstock as students at Eureka. Mother
19 was President of the Student Senate as a Senior. Father, now a successful trial attorney, was a
20 finalist for National Player of the Year honors in lacrosse during his final year at Eureka.

21 As pledge master, I'm responsible for planning all the activities on "Entry Night,"
22 which marks the end of the pledge season. I do take responsibility for what happened that night,
23 and deeply regret the terrible accident that occurred that night.

24 Since I have been involved with the Comstock, I can't remember anyone ever getting

25 seriously hurt on an Entry Night, or in any of the Comstock Club's activities. Dean Wendover
26 keeps us on a pretty tight leash. I think Wendover was sort of embarrassed at some of the
27 pranks in the past, being an alumnus and a former member of the Comstock Club. People tell
28 me Wendover was some athlete in the good old days, and we respect the Dean's opinions and
29 advice. All of our pledge activities are conducted in accordance with the college regulations
30 that Dean hands out every year.

31 The Comstock does not engage in any type of "hazing" whatsoever. All of our initiation
32 activities are willingly entered into by our prospective members. They are all done in good fun
33 as a way of welcoming initiates into our organization. We are well aware of the University's
34 policies and design our activities accordingly.

35 I'm not responsible for what happened to Sarah. The accident was a total fluke, and we
36 had taken every precaution to make sure that no one could be injured. After all, it's not like we
37 were having pledges walk across the actual summit- we were using a model so nobody would get
38 hurt. It was all innocent fun that night. Think about it-if you treat pledges in a way that they will
39 later resent, they're not going to be good members of the SSO.

40 We traditionally conduct Entry Night at the Comstock Club House. The house is part of
41 what the University calls SSO Row. Most of the student social organizations are on these two
42 blocks. Everyone knows that if your SSO violates school policy for any reason, you could lose
43 your house and be thrown off campus. For this reason, when the existing members sat down
44 this year and decided to make up "stations," I made it quite clear that nothing should be done
45 that would be contrary to the Guidelines published by the University. Everyone told me that
46 they agreed. Besides, many of the pledges were playing a sport. The last thing we wanted was
47 to have some coach on our case about how we had injured one of his or her athletes. I'm not
48 sure that running through the woods constitutes a "sport" but I still would not intentionally do
49 harm to any candidate. I do believe that our standards for admission into the Comstock are

slipping, however. When trail runners and mock trial nerds are asked to join, you know that something is wrong.

Doing “the summit” as one of the stations was an idea that I had come up with last summer, while working at an architectural firm. I figured that it would be relatively easy to build a triangular shaped structure the length of our massive dining room out of 2x4's and 4x8 sheets of plywood. If we ran the 4x8 sheets of plywood lengthwise, or 24 feet, we could then cap the top with three 2x8's and it would pretty well duplicate both the pitch and slope of the roof of our building. Blindfolded pledges would never be able to figure out that they weren't actually on the peak of the roof of our building. Even if a pledge crawled the summit and put one foot down one side or the other, he or she would still feel as if he or she were on the roof. However, a slip and fall would only result in the pledge landing on a 14-inch thick pile of mattresses running the whole length of the contraption. Everyone in the house thought it was a great idea.

On the night of the accident, I stayed in the dining hall the entire time. Fourteen pledges did the summit before Sarah's turn. Thirteen had successfully crawled across the roof, and only one had slipped down the side and landed on the mattresses. Even before she slid down the plywood, we had grabbed her and took her hood off. Everybody got a great laugh out of it, including the pledge.

When Sarah's turn came, she simply stepped out onto the roof and started walking. She was doing great. However, it caught me by surprise in that I was out of place and not down on the far end where I should have been. When I got down to the other end, Sarah was almost two-thirds of the way across.

What happened next happened so fast, I can't really say. I just remember seeing Sarah's feet go up in this really weird way and for a split second, she seemed to be lying horizontally in the air like in one of those levitation-type magic acts. Then I remember seeing Sarah come down and watching in horror as the back of her head hit the 2x8 with a loud crack. She then flopped

75 down onto the mat in a crumpled heap. Someone turned the lights all the way up, and we ran
76 over to see what we could do. I removed the hood covering Sarah's head and saw that blood was
77 starting to come out of her nose and ears. I told someone to call 911 and Campus Security and to
78 get all the pledges out of there.

79 There are a lot of stories going around campus that I want to put to rest. There is no
80 question about me running my mouth about members of the cross-country team not being good
81 enough for the Comstock, but I was only kidding. Actually, Sarah had a lot of spunk, and I
82 figured that she would probably be a welcome addition to our SSO. Lastly, I want to say that at
83 no time did I ever try to deliberately move the summit that we had built in the dining room.
84 That's total garbage. At most, I may have bumped it trying to get back into place before Sarah
85 got to the other end. It's possible I may have even shaken the boards a little bit running to get to
86 the right spot. She was doing great - I just wanted to make sure I was where I was supposed to
87 be, so she didn't casually walk off at the far end of my contraption. You have to remember, all of
88 the pledges before Sarah crawled the thing and it took them forever to get to the far end.

89 There is another thing I need to tell you. On the night this all happened, a Campus
90 Security Officer came around to interview us all. I told that officer that there was no alcohol at
91 the Comstock. That statement was not the reality of the situation. I know that some of the
92 members may have had a few drinks before Entry Night began. I had a couple of beers with the
93 BBQ dinner that the new initiates prepared for us. My lawyers tell me I'd better clear the air on
94 this. Let's just say I didn't tell the officer the whole truth. Just because I didn't tell Officer
95 Henderson the whole truth about this one thing, however, doesn't mean I'm lying about the rest
96 of all this. I'm not.

97 I want to go on record when I say I know a lot of Greek clubs at other colleges, and what
98 they do makes us look like the local PTA. I'm really sorry about Sarah Ormsby, but it was
99 Sarah's choice to be there that night. I'm not a lawyer, but I feel I'm being unfairly targeted for

100 what I know goes on elsewhere. It's ridiculous to blame me or the University for what happened
101 to Sarah. Neither I nor the Comstock Club violated any controlling legal precedent or school
102 regulations against hazing. We did everything possible to make sure that the physical safety of
103 our new members would not be put in jeopardy. What happened that night was a total fluke that
104 no one could have predicted.

STATEMENT OF DEAN WENDOVER

1 My name is D. Whitney Wendover. I am the Dean of Student Life at Eureka
2 University. My responsibilities include student disciplinary matters, academic infractions,
3 dormitory and living arrangements, as well as supervision of and contact with the various
4 Student Social Organizations (SSOs) both on and off campus. With an undergraduate student
5 body approaching 4,000 students, I am a very busy individual. I believe that I have accomplished
6 quite a lot in the five years that I have been here and am hopeful that the University will grant me
7 tenure within the near future.

8 A brief history of my background would be as follows: I attended Eureka University and
9 received my Bachelor of Arts degree in 1999. I was a fairly successful athlete while in college. I
10 was also editor of the University newspaper, the Lode Runner. One of the highlights of my
11 college years was election into the Comstock Club at Eureka. I am proud to be an alum of this
12 great University and, as a Comstock member, a role model for the community. After my
13 graduation in 1999, I worked for seven years in the newspaper business. I started out with a
14 small local paper, the Territorial Enterprise in Virginia City, Nevada, and worked my way to
15 covering International affairs for the Sacramento Union, traveling throughout Europe and the
16 Pacific Islands. I returned to Eureka University to receive my Masters in Education
17 Administration in 2006. The next year, I was hired by Tabard University in an administrative
18 capacity. Although living in the Midwest was enjoyable, I longed to return to the Great Basin
19 where I grew up. Approximately five years ago, I heard through the grapevine that the Dean of
20 Student Life at Eureka University would be retiring, and I quickly flew back and applied for the
21 position. Out of 132 candidates, I was selected and began working full time during the Fall of
22 2018.

23 I am personally familiar with Ryan Sparks, as well as the pledge masters of all the SSOs
24 both on and off campus. I believe that the University has established a good working relationship

with the SSOs, and they in turn have made an honest attempt to comply with the University's directives as well as applicable Nevada law.

Twice a year, at the start of each semester, students who are interested in joining an SSO are required to attend an assembly given by me at the Student Union Building. In addition, all SSO presidents and pledge masters are required to be there. A brochure is given out entitled "Orientation Session Guidelines" which clearly sets forth the University's rules and regulations as they relate to pledging activities. The pertinent portion of the brochure absolutely prohibits the following activities:

(1) Activities that cause either mental or physical discomfort, embarrassment, harassment, or ridicule; (2) Activities that endanger the physical well-being of a prospective pledge; and (3) Any type of contact sport, and/or any activity that is designed to place a pledge in a state of physical exhaustion.

My records reflect that Sarah Ormsby signed the sign-in sheet and was in attendance at the assembly during January of 2021. Accordingly, she would have received the brochure.

The last paragraph of the brochure states in full:

"It is the desire of Eureka University to promote the physical, emotional, and academic potential of each and every student. It is for this reason that SSOs are permitted to exist and flourish both on and off campus, with both the University and the SSOs mindful and respectful of each other's requirements and objectives. Each SSO must certify one week prior to Entry Night that their planned activities are in compliance with the University's pledging rules and regulations as set forth in the "Orientation Session Guidelines." However, you, as a prospective pledge, also share a responsibility in these activities. If at any time during the pledging process or on Entry Night you, the prospective pledge, consider one of the

50 *proposed activities in violation of any provision set forth in this brochure, you are*
51 *entitled to stop the activity and report the same directly to Dean Wendover. The*
52 *matter will be investigated and appropriate sanctions will be placed upon any*
53 *SSO found in violation of this policy."*
54

55 While there have been rare instances in the University's past where an SSO has crossed
56 the line and been seriously rebuked and punished for its activities, the Comstock Club has an
57 unblemished record – not even a reprimand. No other SSO on campus can claim such a record.

58 Let me repeat – the Comstock Club has a long and storied tradition at Eureka. It admits
59 only the best and brightest and serves as a beacon of leadership, not only for the rest of the
60 University, but for the community, and dare I say, the nation at large. Because of its importance
61 to the students, the University has provided the group with some special privileges, such as
62 premium housing, regular campus security patrols, extended curfew hours during exams,
63 preferred seating at athletic and cultural events, and other perks. The President of the Comstock
64 is one of only two student representatives, along with the President of the Student Senate, who
65 are non-voting members on the University Board of Trustees. I can't stress enough the integral
66 role that this organization plays in our University life and community standing. As an alum of
67 the University and a member of the Comstock, I have a great interest in making sure that the
68 integrity of the group is maintained. The screening process for prospective members remains
69 rigorous. Only the best are invited to join and only the dedicated survive the initiation process.

70 All elected SSO officials are required to provide a written report on their activities on a
71 quarterly basis. In addition, I demand that all SSO Pledge Masters keep me apprised of all
72 initiation and "Entry Night" activities. I have met with Ryan Sparks many times as an official
73 representative of the Comstock. The last 6 reports submitted by this organization have been
74 signed by Ryan Sparks as Pledge Master and SSO Secretary.

75 On March 1, 2021, I received the certification from pledge master Ryan Sparks that
76 s/he had personally examined all of the proposed “stations” created for Entry Night, and that
77 none of them violated any provision of the “Orientation Session Guidelines.”

78 On Entry Night, I typically travel from SSO to SSO in order to spot-check their
79 activities. There are approximately 21 SSOs both on and off campus, and I must admit that I
80 did not feel the need to visit the Comstock. I had actually gone home for the evening when I
81 received a call from the campus police telling me that there had been an accident at the Fortress
82 and requesting that I come back immediately. I did so.

83 Upon entering the Comstock House, I was told that Campus Security were already
84 present and conducting some type of investigation. Accordingly, I waited in another room.
85 When the investigating officer was done, I talked with him/her briefly as s/he left. Although I
86 can't recall the conversation precisely, the officer informed me "that it appeared to be an
87 accident" but that the investigation "was continuing." I then entered the dining room, and Ryan
88 Sparks explained to me that one of the pledges had apparently slipped in a freak accident and
89 hit her head falling off the recreated ledge. I had no reason to disbelieve Ryan. I have known
90 Ryan for two years and consider him/her to be a credible individual. In addition, no one told me
91 anything to the contrary.

92 Approximately one week after the accident, I was requested by the Board of Trustees to
93 render an opinion as to whether the Comstock had violated University policy with regard to
94 pledging activities. I rendered my opinion approximately two weeks later before the entire
95 board. I informed them that, in my opinion, the Comstock had not violated any University
96 Policy and that what had occurred was a freak accident. One of the members told me that I'd
97 better change my opinion because the University was receiving a lot of negative publicity, and
98 that we'd better punish the Comstock in some way. When I stood my ground, another trustee
99 became incensed and accused me of trying to cover up, pointing out that I had been a member

100 of the Comstock while a student at Eureka. Of course, at least half of the trustees were in the
101 Comstock as well. I told them that I thought the stunt was quite clever and paled in comparison
102 to what I had been forced to go through in my initiation into the SSO. The President of the
103 University pointed out that we all needed to consider the University's potential exposure to civil
104 liability.

105 I am confident that Ryan did not do anything wrong and that the University was not in
106 any way responsible for this tragic and unfortunate accident. I am appalled that Sarah's parents
107 are seeking to destroy this fine institution through their lawsuit. All they are trying to do is profit
108 from their child's death.

STATEMENT OF ROBIN DAYTON

1 My name is Robin Dayton, and I'm a graduate student at Eureka University. I'd like to
2 become a professional physical therapist and trainer-I'm hoping for a job with the National
3 Football League, but those are tough to get without an "in"-and Eureka is one of the few
4 universities offering a Master's Degree in Physical Therapy and Training. False modesty aside,
5 I've had pretty extensive experience, by now, in athletic injuries as well as their prevention. So,
6 in other words, while I'm no expert on the subject, I've had over five years of working with
7 athletes, their injuries, and their rehabilitation. As a basketball player myself at Eureka, I had my
8 share of injuries. I've always been a gym rat - hanging out, watching other athletes train and
9 perform. That's where I'd seen Sarah Ormsby first. I don't ... didn't know Sarah personally, but I'd
10 seen the track and cross-country teams around. Ormsby seemed in fairly good health. And a
11 pretty decent person.

12 I know Ryan Sparks much better, of course, and I guess that's why Ryan thought of me.
13 We first met when Ryan joined the Comstock Club; I was Ryan's pledge master. More recently,
14 we both served on the Student Athletic Council at Eureka; that's the student organization-at least
15 in that area-which serves as a liaison to the Trustees. If student athletes have concerns that
16 aren't being addressed, they can tell us, and we pass the information on to the Board. Saves a lot
17 of trouble: no "misunderstandings," and things don't get blown out of proportion in the press.

18 Well, in early March, Ryan asked me if I'd come to the Comstock Club on "Entry Night"
19 to help out. Ryan wanted me as a "spotter"- like we have for weightlifters and such-and I was
20 surprised, but said I'd do it. Ryan explained the members had constructed a special surprise for
21 their event, and they needed my talents. Ryan explained how the Comstock was taking every
22 precaution to make sure the thing was safe-it was only supposed to seem dangerous to the
23 pledges. When I heard about it, I thought Eureka was really missing the boat; if the University
24 could harness Ryan's level of creativity for academic work.... Well, to be candid, Eureka would

25 be ranked with the Ivies, and I probably couldn't have gotten in!

26 The Comstock Club's deal was a fake roof-I don't know where they'd built it-and they
27 were all ready to set it up secretly in their dining room, the afternoon of Entry Night. My job was
28 to oversee the Comstock members whom Ryan had recruited to man that "station"- as Ryan
29 called it - to be extra careful. Several members are gymnasts, so they should've known what to
30 do already-this thing really wasn't that different from a balance beam-but Ryan wanted me there,
31 too, as a "finishing touch." And as an "old timer," I guess, I was less susceptible to getting
32 "carried away" by the moment. Not to say they were drunk; don't misunderstand me-it wasn't
33 like in the old days. Some of the Comstock had been drinking (I think they'd made the pledges
34 serve them something before I got there, and I pieced together how some of the "servers" helped
35 themselves as well: Liquid courage for Entry Night.), but none of them were really drunk, from
36 what I can tell. I can't speak for all of the pledges, but they mostly looked okay. There was one,
37 maybe the tenth to come across, who slipped off the "roof," then proceeded to laugh her head off
38 when they pulled away the hood; I wasn't too sure about her. Sarah Ormsby looked steady,
39 starting upright across the summit, and I didn't smell booze on her afterwards. Vic Walker was
40 fairly wobbly, but that was after Sarah fell, so it could've been just shock, not liquor. The house
41 smelled faintly of stale beer, as most SSO houses seem to, but I didn't notice an acute alcohol
42 smell. But then, the odor from the goop-or whatever it was-at some of the earlier stations was too
43 rancid for me to smell much of anything else distinctly. I'm sure Ryan Sparks was sober; Ryan
44 was so concerned with monitoring everything. As pledge master, Entry Night was Ryan's big
45 night, and the summit was Ryan's special baby.

46 The pledges would be walking or crawling across the fake roof, and if any of them
47 looked like they were falling or sliding, my crew was to grab `em right away. I was to keep the
48 crew "on task" even though it would be dark-well, dim-and it could get noisy. As it turned out,
49 everybody was so intent (and the pledges were so nervous) it wasn't noisy at all.

50 Last March 15th, I showed up at the Comstock Club. I didn't get a chance to look over
51 the rest of what they were doing; it was late, and I went right to the dining room. When I got
52 there, I was amazed-the place looked great! But that's another story; I was concerned with the
53 contraption erected down the middle of the room. It was triangular, and pretty well braced for an
54 amateur job. It creaked a bit more than a commercial balance beam, but then, it was all made of
55 wood. I could see how someone who believed they were way up in the air would be scared-I
56 know it's different doing a ropes course, for example, than just walking along the length of a
57 telephone pole flat on the ground-but it didn't seem that dangerous. Of course, a lot of athletic
58 equipment is padded, but the Comstock Club couldn't do that. As somebody told me, the pledges
59 would be coming up to the station barefoot, so they'd feel it if something wasn't right (although
60 nobody seemed to notice the echo in the dining room didn't sound-to me-at all like being outside,
61 on top of a building). Still the Comstock must've had every mattress in the place lining the floor
62 beside the device, and I positioned my people all along it.

63 There was a false window-what was supposed to be one of the cupolas-and I counted the
64 pledges inching their way through it, "onto the roof." I'm not an active member, and they were
65 wearing hoods, so I didn't know who was who. The first nine or so did well enough: trembling,
66 they took advantage of the members' allowing them to crawl across. With plywood along the
67 sides of the contraption, they never knew they weren't on the roof until they were through their
68 ordeal. The tenth pledge, as I mentioned, didn't do so well. The student tottered, and I motioned
69 for the spotters to move in; it was dim and we weren't taking chances. The pledge slipped and
70 (even through the hood) let out the most blood-curdling scream you ever heard. Looking back, I
71 worked out how the side of the device the student fell towards what was supposed to be the
72 "outside": three floors down and splat on the patio! In reality, of course, the pledge's feet were
73 only inches above the mattresses, and we'd stepped in even before the hapless student was fully
74 off Ryan's contraption. One of the members snatched the hood away, while the rest of them on

75 that side grabbed the pledge's body. By the time her head was bare, the student was consumed
76 with laughter. As I said, that one may have been a little tipsy.

77 The fifteenth pledge (whom I recognized as Sarah when her hood came off, later) was
78 amazing: climbing deliberately through the window and walking upright along the "roof line"
79 without faltering. I knew the Comstock attracts gymnasts, but even so, I was surprised. So were
80 the members lining the dining room. I was up at the starting end, by the dimmer switch, and
81 Sparks was positioned down at the other end of the room, taking pledges off the structure when
82 they reached where the second cupola should've been. In the half-light, I saw Sparks hurrying
83 from where s/he had been watching, off to one side, to his/her assigned spot. This pledge was
84 moving so much more quickly than the others had, you see. Still, I want to point out the rest of
85 my crew was in place, where they belonged. We had it covered.

86 Except.... Well, the student-now I know it was Ormsby-moved past me and the initial
87 spotters without pausing, and was only about eight or nine feet from the end, going great, when I
88 heard a noise. The contraption had been settling, as wooden things do, under the weight of the
89 heavier students, but this was new: like a chair being scraped over a bare floor. I remember
90 thinking somebody was going to give the game away, moving one of the dining room chairs
91 when this was all supposed to be outdoors, but I'd forgotten that they removed all the dining
92 room furniture to make room.

93 The interruption must've broken the pledge's concentration or something, because
94 suddenly she was up in the air-like one of those guys slipping on a banana peel in silent movies-
95 and I saw she was going to come down hard. I'd gotten a little complacent, I have to admit,
96 because that one was doing so well, but I quickly shouted "Spot!" to alert the crew. I looked at
97 the spotter closest to Ormsby (right underneath, in fact, the way Sarah's body had twisted); the
98 spotter had turned away to look towards the dismounting spot, and hadn't seen what was going
99 on just above her/him. I grabbed at the dimmer (but missed) and started to run towards the falling

student. Too late.

The hood hit the edge of the frame with the sickening sound of a cleaver halving watermelon, one instant before her shoulders thudded onto the plyboard skirt of the device. The frame echoed hollowly in the huge dining room, then there was a dry sound of Sarah's limp body sliding onto the mattress. Then all hell broke loose.

I turned back to the light switch, and when I looked around again, Ryan Sparks was already pushing his/her way through the huddled spotters. As I got to the edge of the crowd, the hood was off, and I saw that the pledge was Sarah Ormsby. There was blood leaking into her hair-maybe from an ear or nostril-and streaked across her face by the hood being removed. There was no respiration, and the skin color was already alarming. Having had some training, I checked for a pulse, and couldn't find one for sure with all the chaos. While I tried again, cautioning those closest to me not to move the body, I shouted for someone to call 911. They already had.

The paramedics hadn't been there long when campus security showed up. To me, Campus Officer Henderson was awfully anxious to get somebody to confess; Henderson seemed to see it as a matter of symmetry: somebody got hurt, so somebody's to blame; let's finger them and get on to the next case. I see the whole thing as a terrible accident. I think the noise startled Sarah, and.... well, that's the end of it. Some of the people had been drinking at the Pig Roast, I'd heard - I wasn't there-but I was totally sober and my spotter crew was doing its job well. Up until we lost one. That spotter just below Ormsby - the one who missed her-messed up, but s/he was the slack one, and that's hardly our fault. The spotter's name is Chaz Austin, and this isn't the first time s/he fouled up an initiation. Not that I carry a grudge, of course, but Chaz really threw a monkey-wrench into his/her own "Entry Night" - back when I was running things. You see, part of the fun of Entry Night is scaring pledges - well, Chaz wouldn't play by the rules. S/he kept peeking from under his/her hood and arrogantly demystifying many of the "frightening" stations to all within earshot. S/he quit the Comstock Club two days after this unfortunate accident. Good

125 riddance, I say; I'd quit too if I'd let some girl fall to her death, right in front of everyone.

LEGAL AUTHORITIES

NRS 1.030 Application of common law in courts. The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State.

NRS 41.130 Liability for personal injury. Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for the conduct of the person causing the injury, that other person or corporation so responsible is liable to the person injured for damages.

NRS 41.100 Cause of action not lost by reason of death; damages; recovery for loss arising out of unfair practice regarding policy of life insurance; subrogation.

1. Except as otherwise provided in this section, no cause of action is lost by reason of the death of any person, but may be maintained by or against the person's executor or administrator.

NRS 41.141 When comparative negligence not bar to recovery; jury instructions; liability of multiple defendants.

1. In any action to recover damages for death or injury to persons or for injury to property in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the parties to the action against whom recovery is sought.

2. In those cases, the judge shall instruct the jury that:

(a) The plaintiff may not recover if the plaintiff's comparative negligence or that of the plaintiff's decedent is greater than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return:

(1) By general verdict the total amount of damages the plaintiff would be entitled to recover without regard to the plaintiff's comparative negligence; and

(2) A special verdict indicating the percentage of negligence attributable to each party remaining in the action.

NRS 41.085 Heirs and personal representatives may maintain action.

1. As used in this section, "heir" means a person who, under the laws of this State, would be entitled to succeed to the separate property of the decedent if the decedent had died intestate. The term does not include a person who is deemed to be a killer of the decedent pursuant to chapter 41B of NRS, and such a person shall be deemed to have predeceased the decedent as set forth in NRS 41B.330.

2. When the death of any person, whether or not a minor, is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent may each maintain an action for damages against the person who caused the death, or if the wrongdoer is dead, against the wrongdoer's personal representatives, whether the wrongdoer died before or after the death of the person injured by the wrongdoer. If any other person is responsible for the wrongful act or neglect, or if the wrongdoer is employed by another person who is responsible for the wrongdoer's conduct, the action may be maintained against that other person, or if the other person is dead, against the other person's personal representatives.

3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause of action of that decedent brought or maintained by the decedent's personal representatives which arose out of the same wrongful act or neglect may be joined.

4. The heirs may prove their respective damages in the action brought pursuant to subsection 2 and the court or jury may award each person pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are not liable for any debt of the decedent.

5. The damages recoverable by the personal representatives of a decedent on behalf of the decedent's estate include:

(a) Any special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses; and

(b) Any penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if the decedent had lived,

Ê but do not include damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are liable for the debts of the decedent unless exempted by law.

Restatement (Second) of Torts § 21 (1965):

(1) An actor is subject to liability to another for assault if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) the other is thereby put in such imminent apprehension.

(2) An action which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

Restatement (Second) of Torts § 13(1965):

An actor is subject to liability to another for battery if

(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

(b) a harmful contact with the person of the other directly or indirectly results.

Restatement (Second) of Torts § 46 (1965):

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

***Maduiké v. Agency Rent-A-Car*, 953 P.2d 24, 26 (1998):**

Conduct is "extreme and outrageous" if it is "outside all possible bounds of decency and is regarded as utterly intolerable in a civilized society." *Maduiké v. Agency Rent-A-Car*, 953 P.2d 24, 26 (1998).

Nevada Civil Jury Instructions

*Below are some potentially relevant jury instructions.
For the purposes of this mock trial, only those listed here may be used.*

GENERAL

NEVADA JURY INSTRUCTION 2.1:

BURDEN OF PROOF

Plaintiffs are seeking damages based upon claims of negligence, assault, battery, and intentional infliction of emotion distress. For each of Plaintiffs' claims, Plaintiffs have the burden of proving by a preponderance of the evidence all of the facts necessary to establish every element of the claim, as set forth in these jury instructions.

To succeed on its affirmative defense, the defendant has the burden of proving by a preponderance of the evidence all of the facts necessary to establish its affirmative defense of comparative negligence, as set forth in these jury instructions.

A "preponderance of the evidence" means such evidence as, when considered and weighed against that opposed to it, has more convincing force and produces in your mind a belief that what is sought to be proved is more probably true than not true.

In determining whether a party has met this burden, you will consider all the evidence, whether introduced by the plaintiff or defendant.

NEGLIGENCE

NEVADA JURY INSTRUCTION 4.2:

ELEMENTS OF NEGLIGENCE CLAIM

To prevail on a negligence claim, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.

NEVADA JURY INSTRUCTION 4.3:

DUTY AND ORDINARY CARE: DEFINITIONS

Generally, everyone has a duty to exercise reasonable care when their conduct creates a risk of physical harm to others. Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances. Ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or to others.

NEVADA JURY INSTRUCTION 4.5:

NEGLIGENCE: LEGAL CAUSE: DEFINITION

A legal cause of injury, damage, loss, or harm is a cause that is a substantial factor in bringing about the injury, damage, loss, or harm.

NEVADA JURY INSTRUCTION 4.9:

COMPARATIVE NEGLIGENCE: WRONGFUL DEATH

The defendant claims that the negligence of plaintiff's decedent contributed to his/her death. To succeed on this claim, defendant must prove both of the following:

That plaintiff decedent was negligent; and

That the negligence of plaintiff's decedent was a substantial factor in causing his/her death.

A plaintiff may not recover damages if the negligence of plaintiff's decedent contributed more to his/her death than the negligence of the defendant. However, if plaintiff's decedent was negligent, the plaintiff may still recover a reduced sum so long as the comparative negligence of plaintiff's decedent was not greater than the negligence of the defendant.

NEVADA JURY INSTRUCTION 8.1:

PREMISES LIABILITY: ESSENTIAL FACTUAL ELEMENTS

Plaintiffs claim that plaintiff's decedent was harmed because of the way the defendant managed its property. To establish this claim, Plaintiffs must prove all of the following:

1. That defendant owned the Comstock Club property;
2. That defendant was negligent in the inspection, use or maintenance of the property;
3. That plaintiff's decedent was harmed; and
4. That defendant's negligence was a substantial factor in causing Plaintiff's decedent harm.

NEVADA JURY INSTRUCTION 8.4:

LANDOWNER LIABILITY: DUTY

An owner or occupant of land must exercise ordinary care and prudence to render the premises reasonably safe for the visit of a person invited on their premises for business purposes. An owner or occupant of land who knows, or in the exercise of reasonable care should know, of their dangerous and unsafe condition, and who invites others to enter upon the property, owes to such invitees a duty to warn them of the danger, where the peril is hidden, latent, or concealed, or the invitees are without knowledge thereof.

NEVADA JURY INSTRUCTION 6.6:

INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS: ELEMENTS

To prove a claim of intentional infliction of emotional distress plaintiff must prove each of the following elements by a preponderance of the evidence:

1. The defendant or defendants engaged in extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress;
2. The plaintiff suffered severe or extreme emotional distress;
3. The emotional distress was proximately caused by defendant's conduct; and
4. Plaintiff suffered damages.

CIVIL ASSAULT AND BATTERY

NEVADA JURY INSTRUCTION 6.1:

ASSAULT: DEFINITION

“Assault” means: (1) Unlawfully attempting to use physical force against another person; or (2) intentionally placing another person in reasonable apprehension of immediate bodily harm.

NEVADA JURY INSTRUCTION 6.2:

BATTERY

A “battery” is any willful and unlawful use of force or violence upon the person of another.

**EUREKA UNIVERSITY
OFFICE OF CAMPUS SECURITY
INCIDENT REPORT**

DATE OF REPORT: 03/16/21

Year: 2021
Case #: 211578

EVENT: Incident Type: Accidental Death
Location: "The Fortress" - Comstock Club
Date: 3/15/2021
Time: 2345

VICTIM: Name: Ormsby, Sarah
Sex: Female
Age: 20
Affiliation: Student

OFFENDER: Name: Sparks, Ryan
DOB: 4/01/1999
SSN: 444-33-2222
Affiliation: Student

WITNESS: Name: Austin, Chaz
Address: 1 SSO Row
Name: Dayton, Robin
Address: 1286 Faro Court

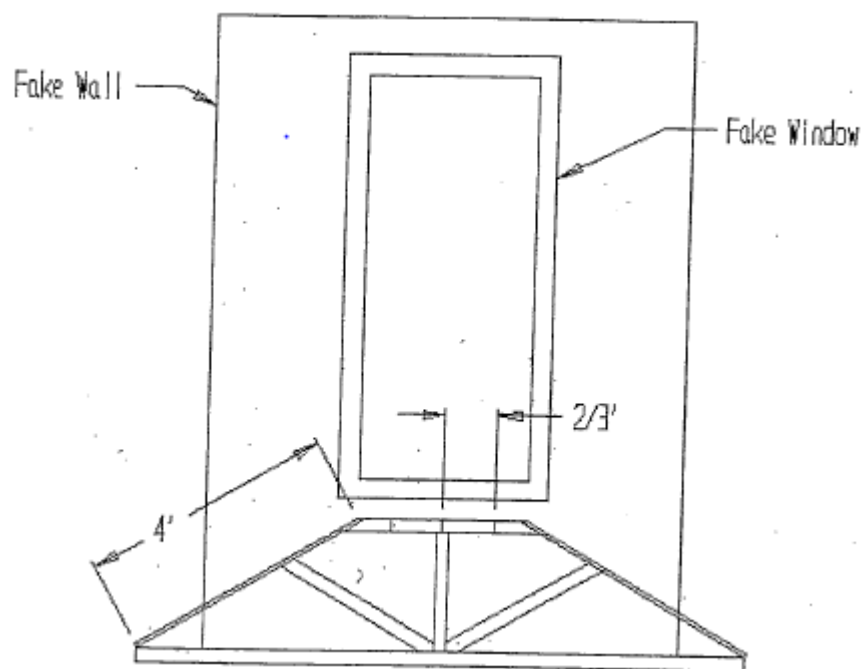
PROPERTY: Clothing: Hood, dark colored

SUBSTANCES INVOLVED? Yes No Unknown

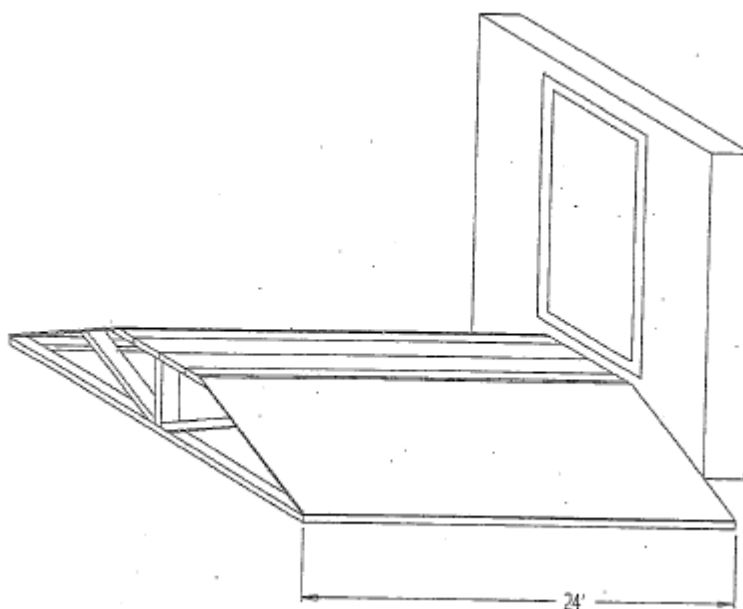
Awaiting Toxicology Report

NARRATIVE: See REPORT OF CAMPUS SECURITY OFFICER RAI HENDERSON

INVESTIGATING OFFICER: Henderson, Rai
SUPERVISING OFFICER: Clemens, Samuel



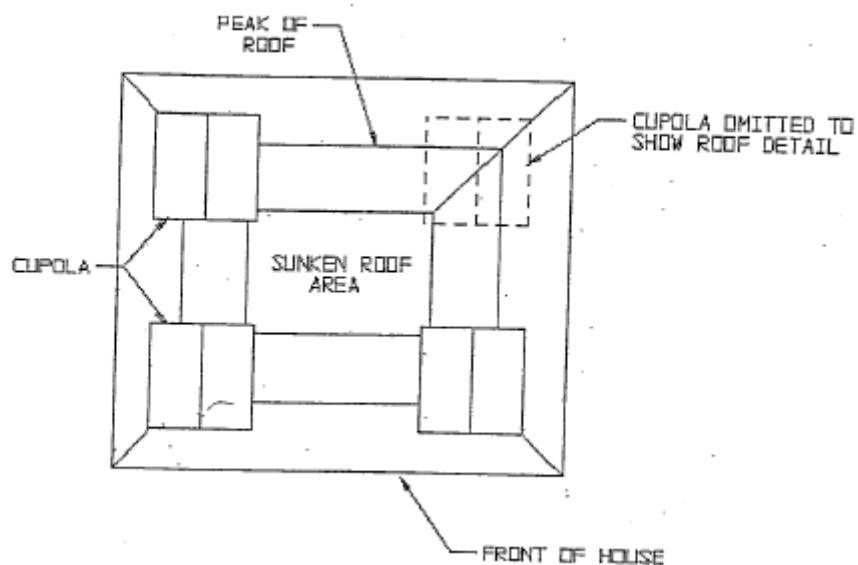
View of contraption toward the end where a pledge would begin the walk across
(opposite the fake wall side)



Contraption in 3-dimensional view. This is a view shortened in length and not drawn to scale.



View of the front of "The Fortress" – Comstock Club



View of the roof above "the Fortress" – Comstock Club

**EUREKA UNIVERSITY OFFICE OF STUDENT LIFE
SSO ORIENTATION SESSION
SPRING SEMESTER 2001**

Sign-in Sheet

<i>Henry Blasdel</i>	<i>Laura May Tilden</i>
<i>Ryan Sparks</i>	<i>Frank Bell</i>
<i>Lewis Bradley</i>	<i>Roswell Colcord</i>
<i>Hannah Clapp</i>	<i>Missy Rathburn</i>
<i>John Kinkead</i>	<i>John E. Jones</i>
<i>Miriam Shearing</i>	<i>Bertha Raffetto</i>
<i>Jewett Adams</i>	<i>Rex Bell</i>
<i>Charles Stevenson</i>	<i>Sarah Ormsby</i>
<i>G. Louise Smith</i>	<i>Vic Walker</i>
<i>Sarah W. Hopkins</i>	<i>Barbara Vucanovich</i>

BEWARE:
YOU WILL NOT SURVIVE ENTRY NIGHT!

PLAY TRAILS OR TRIALS FOR SPORT?
YOU'LL NEVER BE ADMITTED TO THE FORT!

IF IT'S TRAILS YOU LIKE TO RUN
YOU WON'T BE VERY MUCH FUN
AND IF YOU DRESS UP FOR A TRIAL TO MOCK
YOU'RE NOT CUT OUT FOR THE COMSTOCK

Run Away as fast as you can
You'll never defeat the plan
As you trip through the wood
You'll remember the hood
And always know that you're banned.

Somebody's Headed for a Fall!

ORIENTATION SESSION GUIDELINES EUREKA UNIVERSITY HAZING POLICY

Hazing. Any intentional, negligent, or reckless action, activity, or situation which causes another pain, embarrassment, ridicule, or harassment, regardless of the willingness of the participant.

Such actions and situations include, but are not limited to the following:

1. Forcing/requiring the drinking of alcohol or any other substance;
2. Forcing/requiring the eating of food or anything an individual refuses to eat;
3. Calisthenics (i.e. push-ups, sit-ups, jogging, runs, etc.)
4. "Treeings" (tying someone up and throwing food/other substances at them);
5. Paddle swats;
6. Line-ups (yelling at or harassing people in any formation);
7. Forcing/requiring the theft of any property;
8. Road trips (dropping someone off to find their own way back);
9. Scavenger hunts;
10. Permitting less than six (6) continuous, uninterrupted hours of sleep per night;
11. Conducting activities which do not allow adequate time for study (not allowing individuals to go to class, missing group projects, etc.);
12. Nudity at any time;
13. Running personal errands of the members (driving to class, cleaning their individual rooms, serving meals, picking up dry cleaning, etc.); and
14. Requiring the violation of University, Federal, State, or local law.

It is the desire of Eureka University to promote the physical, emotional and academic potential of each and every student. It is for this reason that SSOs are permitted to exist and flourish both on and off campus, with both the university and the SSOs mindful and respectful of each other's requirements and objectives. Each SSO must verify one week prior to Entry Night that their planned activities are in compliance with the University's pledging rules and regulations as set forth in the "Orientation Session Guidelines." However, you, as a prospective pledge, also share a responsibility in these activities. If at any time during the pledging process or on Entry Night, you, the prospective pledge, consider one of the proposed activities to be in violation of any provision set forth in this brochure, you are entitled to stop the activity and report the same directly to Dean Wendover. The matter will be investigated, and appropriate sanctions will be placed upon any SSO found to be in violation of this policy.

EUREKA UNIVERSITY
Department of Student Activities and Student Life