Deaths, Assaults, and Injuries Lead to Campus-Wide Bans on Greek Life

In just the last few months, a number of universities have experienced terrible tragedies on their campuses. Many of these schools, both public and private, have responded by indefinitely banning some or all Greek Life activities. The response to these tragedies raises questions of fairness. Is it fair to punish all fraternities and sororities and their members for the irresponsible actions of one bad chapter or actor? These bans also raise questions of legality. Do such campus-wide bans (particularly on public campuses) violate the students’ and groups’ First Amendment Right to the Freedom of Association?

Clemson University

Tucker Hipps, a 19-year-old student at Clemson University in South Carolina, was found dead in Lake Hartwell on a Monday morning in September. The coroner reported that Mr. Hipps died after falling from a bridge into shallow water. He was a pledge of Sigma Phi Epsilon. He was involved in what appeared to be an early-morning group activity. When other members returned home, Mr. Hipps did not return. The fraternity then began searching for him.

In a prepared statement issued on September 23rd, Sigma Phi Epsilon CEO Brian Warren stated, "We've lost the life of a young man, a life that was taken way too soon. There are a lot of people who are hurting right now, and that's our number one priority at the moment. But if foul play was involved in any way, Tucker’s fraternity will do everything it can to see that those responsible are brought to justice.”

Oconee County Sheriff Mike Crenshaw stated that this department was investigating the incident. The Sheriff was quoted in an article on wxff.com, “We just don’t know how he fell off that bridge, whether it was voluntary, intentional, an accident. We just don’t know at this point.” The Sheriff added, “There has been speculation and innuendo, especially on social media, regarding whether hazing played a part in the death of Tucker Hipps. So far, there has been no indication in the Oconee County Sheriff’s Office investigation that hazing played a part in the death of Tucker Hipps.”

Clemson University responded swiftly, harshly, and similarly to the campus-wide Greek bans at the University of Central Florida and Chico State. The University issued a release entitled “Strategies to Address Recent Behavior Within the Fraternity Community at Clemson University.” The release noted a number of serious infractions from the period of August 20-Sepembter 22, 2014 within the Greek community.

To address the number of infractions, the University noted that the campus IFC decided to suspend all new member activities. While the decision came from the IFC, the University supported the action. It required initiation of all new members by 9:00 p.m. on Friday, September 26, 2014.

The University also placed a moratorium on all social events for all IFC organizations “until further notice.” The release noted that the following activities were considered “social events”:

- Off-campus events hosted at a third-party vendor
- Off-campus events hosted at a facility associated with the fraternity or members of the fraternity
- Mixers of any type
- Events out of the immediate area like Mountain Weekend, Beach Weekend, formals, etc.
- Organization-sponsored tailgates hosted on campus or off campus at either third party vendors or facilities associated with the fraternity or members of the fraternity
- Anything that could be perceived as an organized event sponsored/cosponsored by members of the fraternity
- Philanthropy events, unless approved in advance by the Director of Fraternity and Sorority Life.

On October 2, 2014, the University issued an Interim Social Policy for IFC Organizations. The release provided “a path for the return of social privileges while reinforcing effective risk management policies.” That path differentiated between chapters in good standing and chapters not in good standing.

Chapters in good standing were defined as those not subject to any type of suspension, disciplinary violation or other sanction. Chapters in good standing, in order to have all privileges reinstated, had to agree to
follow the FIPG Risk Management Policy and the NIC BYOB Guidelines for Hosting Social Events. In addition, the IFC must monitor all social events where alcohol is used or there is a third party vendor providing services. Each chapter must also host a State of the Chapter meeting with the University staff.

Chapters not in good standing must agree to abide by the FIPG Risk Management Policy and to use a third party vendor for all social events. They must also register all social events at least two weeks in advance and comply with all other expectations or restrictions previously imposed by the University.

Cal State University Northridge

On October 24, 2014, William Watkins, the Vice President for Student Affairs and Dean of Students at Cal State University Northridge (CSUN) issued a statement that effectively shut down all pledging activities at that campus. The statement came after the University received a report of a hazing incident at the Pi Kappa Alpha Chapter. The chapter has been placed on suspension by both the University and the chapter's National Headquarters.

While CSUN declined to reveal the details of the hazing charge that triggered the University's most recent action, the University did confirm that no one was injured in that incident. However, it is clear that since this summer when Armando Villa, a CSUN student, died while on a fraternity-sponsored hike in the Angeles National Forest, CSUN has taken strong steps in an attempt to enforce its zero-tolerance policy against hazing.

Vice President Watkins’ statement was very clear. “CSUN takes hazing allegations extremely seriously and we are deeply committed to protecting the health and safety of all students.”

He went on to say “it is shocking and disappointing that this conduct persists after all of the efforts undertaken by so many this fall to ensure a recruitment-and-intake process that conforms to the University's zero-tolerance policy on hazing. This most recent incident cuts to the core of the University’s ability to have confidence that all recognized fraternities and sororities will conduct appropriate new member recruitment and intake procedures that ensure the safety and well-being of CSUN students.”

The CSUN position allows chapters to induct their current pledges, but they must not subject those pledges or new members to any additional pledging activity. The suspension of new member pledge activities is expected to last until at least the spring.

CSUN has a large Greek community of 25 men's groups, 28 women's groups and one co-ed Greek group.

The Los Angeles Times reported that the Los Angeles County Sheriff’s Department was “expected soon to conclude a criminal investigation into the death” of Armanda Villa, who was 19.

West Virginia University

On November 13, 2014 West Virginia University announced a moratorium on all fraternity and sorority activity “for an undetermined period of time until a plan of action is implemented...” In addition to banning all social functions as well as pledge activities, the moratorium goes further. It also says “planned initiations must cease immediately. Chapter meetings and philanthropic activities may only be conducted if approval is obtained from the Office of Student Activities at least 48 hours prior to the proposed event.”

The moratorium was issued after two terrible events. First, 19 pledges of Sigma Chi were arrested or cited for underage possession and consumption of alcohol. The chapter was immediately suspended. Second, an officer responded to an emergency call at the Kappa Sigma Fraternity House. Upon arrival, the first responder found an 18-year-old student, Nolan Michael Burch on the floor without any pulse or respiration, receiving CPR. He was transferred to a local hospital. Mr. Burch tragically passed away shortly after the University announced the moratorium on fraternity and sorority activities.

West Virginia University's Greek Life Website notes that the campus is home to 28 chapters and over 1,500 student fraternity and sorority members.

MIT, Johns Hopkins University, and Emory University

Private schools are also a part of this recent trend to ban some or all fraternal activities on campus. Earlier this school year, MIT banned all fraternity events of 50 people or larger after a woman fell from a fraternity house window. Then, Johns Hopkins announced a semester long ban on all fraternity parties after a 16-year-old was raped by two men at a Sigma Alpha Epsilon party. Neither the victim nor the perpetrators are believed to be associated with the fraternity. Additionally, Emory University’s Interfraternity Council (IFC) suspended all fraternity social events after a reported assault occurred at a fraternity.

Since private schools are generally not considered to be state actors, many believe that they have greater leeway in issuing punishments or sanctions to student organizations.

Conclusion

This rapidly expanding pattern is troublesome. Without a doubt, schools have a legitimate and legal right to discipline and regulate Greek chapters. But disciplining chapters that did not violate laws or regulations creates legal issues. At public schools, such actions likely violate the contractual terms set forth in the student manuals and policies. They also likely violate the First Amendment Right to Freedom of Association of the indi-
individual members and the chapters. The same constitutional protections do not necessarily apply at private schools. But other remedies and legal claims, including contractual claims, may be available.

Innocent chapters and organizations that are punished for the acts of others should swiftly and strongly note their objections. At the current rate, this issue will be litigated in the near future.

- Daniel J. McCarthy
- Micah Kamrass

The Beginning of a New Era for the Fraternity Membership

In January of this year, the Supreme Council of Sigma Alpha Epsilon met in Tucson, Arizona, for one of its quarterly face-to-face meetings. During that meeting, the members of the Council discussed ways of dealing with the significant liability issues that the fraternity was facing. SAE has been plagued with an increase in hazing incidents over the past decade that have led to a number of deaths of some of its members, including pledges. Some in the media have labeled SAE as the nation's deadliest fraternity. Our insurance premiums have risen over the last several years and SAE of lately has been paying some of the highest insurance rates in the Greek Letter Community.

As a result of these problems, the Supreme Council decided to implement the True Gentlemen Experience, which is a program whereby pledging has been eliminated from the fraternity. SAE was founded by eight young men who deeply believed in service and honor. Our first new member was a student who was initiated in the fraternity immediately after he was given a bid. Pledges and pledge programs were not part of the fraternity world until sometime after World War I and were not part of the laws of SAE until the 1940s.

SAE could not stand another major hazing incident leading to another death. The Supreme Council decided that we needed to enact a program to change the culture of SAE and do what we could to reduce hazing as much as possible.

SAE has never had significant problems with recruiting members. However, due to hazing, we have had some difficulty in retaining some our potentially great members. We also have lost quality men during the recruitment process who did not want to join because they did not want to undergo a pledge process that might include hazing.

The Supreme Council decided to implement the True Gentlemen Experience, which is a program whereby pledging has been eliminated from the fraternity.

The True Gentlemen Experience is a program where new members are initiated into the fraternity within 96 hours after accepting a bid. Recruitment will remain the same, except that chapters are encouraged to recruit year round given the fact that the True Gentlemen Experience allows chapters to initiate new members at any given point.

Once a bid is extended, new members participate in an online certification program and complete a Scope of Association Agreement. Within 96 hours of accepting a bid, the new member is initiated into SAE and becomes a full-fledged member with all the rights and responsibilities of any other member.

SAE has received an overwhelmingly positive response to the True Gentlemen Experience.

After initiation, the new members are required to participate in educational programming that will take place over the course of their entire collegiate career. These new members will be required to learn about the history of the fraternity and other aspects of fraternity life similar to what might be taught in a traditional pledge program.

SAE has received an overwhelming positive response to the True Gentlemen Experience. There has been extensive positive media coverage and many college and university administrators have applauded SAE for the steps that we have taken to reduce a second class of membership within our chapters. The Supreme Council realizes that the True Gentlemen Experience is not a “silver bullet” and will not solve all of our problems. However, we are confident that this is a giant step in the right direction to protect the health and safety of our members and to bring a greater level of respect for all members regardless of their seniority within a chapter. We are also extremely hopeful that the True Gentlemen Experience will allow SAE’s future liability exposure and related risk management costs to be significantly reduced over time.

Interestingly, after the announcement of the True Gentlemen Experience, there have been a number of colleges and universities that have announced the elimination of pledging for their Greek Letter organizations. We are confident that the decision to eliminate pledging is the wave of the future for Greek Letter men and women of this country.

- Thomas J. Dement II

Mr. Dement is a member of the Supreme Council of Sigma Alpha Epsilon (SAE’s National Board of Directors) and an attorney and partner in the Nashville, Tennessee, offices of Lettner, Williams, Dooley & Napoli-tan, PLLC, a regional law firm with offices in Tennessee and Georgia.
Oregon Committee Recommends Suspending Expansion

A task force at the University of Oregon formed to review campus sexual assault policies issued a report urging the administration to "immediately suspend plans to expand fraternity and sorority life." The Twenty Students Per Week committee, named for the amount of attempted sexual assaults at the university, issued its report on October 22, 2014. The committee also recommended further researching the impact of fraternity and sorority life on sexual assault and forming a fraternity and sorority life sexual assault task force. The Interim University President announced that he is reviewing the recommendations and will wait at least one month to decide how to proceed.

The committee report cited "numerous high-profile sexual assault cases... [that] have brought national attention to the relationship between Greek life and sexual violence." The report also cited scholarship from J.D. Foubert, who concluded that "fraternity men are more likely to commit rape than other college men," and also statistics from the University of Oregon detailing that sorority women were more likely to be victims of sexual assault than their non-Greek classmates.

A recommendation of this nature raises some interesting issues. Are fraternities and sororities critical to curbing sexual assaults on university campuses? Absolutely. Is it wise for a university to single fraternities and sororities out? Probably not. The recent stories about cultures of hazing and sexual assault in university fraternities and athletic teams demonstrate that that this epidemic runs far deeper than Greek life. There are also First Amendment freedom of association issues involved when a public university examines this issue. Fraternal Law will continue to follow this situation as it unfolds at the University of Oregon.

- Micah E. Kamrass

Gallup Survey Notes Positive of Greek Membership

Earlier this year, a Gallup study of more than 30,000 college graduates across the United States found "that those who were members of fraternities or sororities are more likely to be 'thriving' in their well-being and engaged in work than college graduates who did not go Greek."

The Gallup Blog of May 27, 2014, noted that:

"Individual Greek members and chapters have unfortunately been associated with issues involving hazing, binge drinking and sexual assaults, and Greek organizations should certainly continue their efforts to prevent these negative events from happening. But it appears that, on the whole, the Greek experience have notable long-term benefits."

The Gallup study, supported by the National Panhellenic Conference and the North-American Intrafraternity Conference, was a part of a larger Gallup-Purdue Index Survey. That work has now been followed up by a National Panhellenic Conference study conducted by J. Patrick Biddix, Ph.D. from the University of Tennessee, Knoxville. The Biddix study looked at women students from 18 randomly selected four-year institutions comparing women who were in National Panhellenic Conference organizations with those who were not; it found that Greek women were three times higher to be retained at their schools from freshman to sophomore year, 2.5 times more likely to graduate within six years and two times more likely to graduate within four years than were non-members.

The two studies combined to show strong empirical support for the value of involvement in Greek Life as an important part of the college experience and in life beyond campus.

- Timothy M. Burke

Nebraska Freshman Dies at Fraternity Chapter House

The morning of September 5th was unlike any other at the Farmhouse Fraternity residence at the University of Nebraska. Clayton Reel, an 18-year old freshman, was found dead in his room. Press reports indicate that he had attended a fraternity "frosh party" the previous night and passed out from intoxication. He was brought back to his room at the fraternity house by fraternity members and left to "sleep it off."

The autopsy report indicates that Reel died of acute alcohol intoxication, having a blood level more than four times the legal limit.

Four members of Farmhouse Fraternity face felony charges for having provided alcohol to a minor, resulting in injury or death. Section 53-180.05 of the Nebraska Code, adopted in 2011, makes that a Class IIIA Felony carrying with it a maximum imprisonment of five years if convicted. Three other members of the Fraternity were charged with lesser crimes, including maintaining a disorderly house and procuring alcohol to a minor.

The University has suspended the fraternity chapter and students were required to move out of the Farmhouse residence.

- Timothy M. Burke
Implementing a Transgender Membership Policy

Awareness of the transgender identity is rapidly growing, and just as quickly, colleges and universities, among other institutions, are enacting transgender protections. Fraternal organizations, too, may be considering creating a policy to address the issue of transgender membership.

Legal Foundations

Associational and expressive rights under the First Amendment lay the legal foundation for fraternal organizations, including the right to exclude members on the basis of sex. Title IX of the Education Amendments of 1972 expressly preserves these First Amendment rights. As a result, fraternal organizations are empowered to and should continue to determine who and who does not become a member—including transgender individuals.

Risks of Trans Inclusion

Adoption of a trans-inclusive policy may alienate those in your membership who object to the inclusion of trans members. However, your organization will not be alone. Many others have taken the steps to include trans people and protect them from discrimination, including 738 colleges and universities, 18 states, numerous municipalities, the NCAA, and other fraternal organizations such as Sigma Phi Beta, Gamma Alpha Omega, and most recently, Delta Gamma.

Also, the law is still developing in this area, meaning that not every institution uses the same standards to determine an individual's sex and gender. These differing standards make it difficult to craft an inclusive policy. Note, however, that despite the differences in legal requirements applicable to trans people, the scientific and medical opinion is well established and recognizes transgender people and the distinct challenges they face in living a healthy, stable life.

Risks of Trans Exclusion

As discussed above, many colleges and universities are quickly adopting nondiscrimination policies that explicitly prohibit discrimination based on gender identity or expression. If your organization enacts a trans-exclusive policy, a university or college may interpret your policy as a conflict with such nondiscrimination policies. In the wake of Christian Legal Society v. Martinez, mounting a successful challenge to the enforcement of a university nondiscrimination policy would be arguably difficult. Further, you may face negative reactions from members, universities, media, and national organizations that advocate for transgender rights.

Risks of Doing Nothing

If your organization takes no stance at all, most importantly, you risk diluting the strength of your governing documents and First Amendment rights by creating numerous interpretations of your policies. Chapter members may make membership decisions on your behalf—decisions with which you may disagree. Organizational representatives may make "official" statements and take positions that are uninformed and potentially inflammatory. Successive inter/national staff and board members may also inconsistently interpret your governing documents without proper guidance. In addition, you will likely face mounting pressure from your chapters and from colleges and universities, seeking guidance for an interested transgender potential new member.

A Note on the Concept of Gender Expression

A number of organizations have expressed concern about a transgender individual seeking membership who has a gender expression that, at first glance, contradicts that of the organization's—for example, a trans woman with a "masculine" gender expression seeking membership in a sorority. First, this is a remote possibility. In light of the challenges and serious risks of living openly as a transgender person, the majority of transgender individuals seeking membership in your organization will have a gender expression that aligns with their gender identity. Second, your organization is already encountering potential new members with a diverse array of gender expressions that may or may not fit within your organization's gendered expectations—for example, a more femininely expressive man seeking membership in a fraternity. Gender expression is an issue that affects all members—not just transgender indi-

The article by Stevie Tran and Nathan Arrowsmith offers a valuable perspective on the transgender issue. While it accurately reflects the fact that this is a rapidly developing area of the law, there remains substantial room for different views on how to best comply with the varied rules being implemented by colleges and universities and the legal requirements of federal, state and local law.

While acknowledging that there is little (actually none) case law guidance, it is this writers opinion that admitting as members transgendered individuals who identify as the gender of the organization does not jeopardize the single sex status of the organization.

- Timothy M. Burke
individuals—and is not a reason to avoid taking a stance on the issue of transgender membership.

How Should You Proceed?

1) Determine how your policy will be enacted. Will it be an action of your inter/national board? Or will it be passed through your convention? If your governing documents require policy changes to go through your convention, for example, you may consider involving collegiate members in the process.

2) Educate stakeholders on transgender issues. Making a decision on transgender membership requires an understanding of the relevant issues and terminology. An effective policy reflects languages used by the transgender community, making explicitly clear who may and may not become a member. Therefore, education on transgender issues is critical prior to any policy drafting.

3) Determine whether your organization will or will not admit transgender members and at what stages. An effective policy should expressly state, in accordance with your organization’s history and values, how transgender individuals will be treated at each stage of membership: potential new member, collegiate member, and alumnus/alumna.

4) Begin and continue educating your membership and your inter/national office after a policy has been implemented. Once enacted, your policy must be communicated to your membership. Members should be able to explain your policy to potential new members and campus professionals. If your members do not understand your policy or trans issues, your policy will not be effective. Identify educators to train your membership on the reasons for the policy change and the appropriate terminology.

Model Language

Below is language that could be used in crafting a trans-inclusive policy:

1) Potential new member: fe/male: Any individual who self-identifies as fe/male, regardless of her/his assigned sex at birth or her/his expression or the perceived expression of her/his gender.

2) Collegiate and alumnus/alumna: Our organization strives to uphold its gender identity but first and foremost values sister/brotherhood. Therefore, no member can lose her/his membership rights due to a change in gender, gender identity, or gender expression.

Conclusion

At the end of the day, your organization should remember that transgender people can most benefit from participation in a gendered environment as they seek affirmation and support as their true selves. As a result, fraternal organizations—single-sex spaces founded on the values of friendship and sister/brotherhood—may resonate deeply with young trans adults and are uniquely positioned to provide them with that affirmation and support.

Please note: this article is not intended to serve as legal advice. However, as organizations begin the conversation on transgender membership, the authors recognize a pressing need for guidance. If your organization has questions about the legal implications of enacting a trans-inclusive or trans-exclusive membership policy, you should consult legal counsel.

- Nathan T. Arrowsmith

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2 For a more thorough discussion of Title IX’s relationship with fraternal organizations, see Stevie V. Tran, Note, Embracing Our Values: Title IX, The “Single-Sex Exemption,” and Fraternities’ Inclusion of Transgender Members, 41 Hofstra L. Rev. 503, 523-27 (2012). See also Stevie Tran, Transgender Membership and Title IX, FRATERNAL LAW (Manley Burke, Cincinnati, Ohio), Nov. 2013, at 4.
4 130 S. Ct. 2971 (2010).