



FRATERNAL LAW

A fraternity law periodical
published by ManleyBurke
A Legal Professional Association

January 2010

Number 111

ALPHA PHI ALPHA INVOKES NATIONAL MEMBERSHIP MORATORIUM

Alpha Phi Alpha, the fraternity of Martin Luther King, Jr., Thurgood Marshall, W.E.B. Dubois and numerous other prominent African-Americans, took the dramatic step of halting all new membership intakes for all of its undergraduate chapters effective January 1, 2010. Alpha Phi Alpha General President Herman "Skip" Mason, Jr., notified the fraternity's membership by email and a press release available on alpha-phi-alpha.com to start the new year.

According to published reports, the moratorium followed a hazing incident at Fort Valley State University in which a new member was seriously injured and hospitalized for more than a week. Bryson Trumaine Arney, a 21-year-old member of the chapter, has been charged with felony-aggravated battery in the incident. Mr. Arney faces potential prison time, fines, and of course, the possibility of a civil lawsuit.

The incident at its chapter at Fort Valley State University is only the latest in a string of hazing incidents involving Alpha Phi Alpha at chapters across the country the past couple of decades. Rather than sit back and let similar incidents continue to occur across the country, Alpha Phi Alpha made the very difficult decision to shut its entire new membership intake procedure down and start over.

Because of the importance of the message, and the general applicability of the issue, it is worth quoting Mr. Mason's statement at length here. Mr. Mason stated, in part, "Following my review of 2009, it became clear to me that one area that needs our immediate focus is the conduct of brothers involved in the intake process. Our current process was designed with the assumption that our members would conduct themselves honorably and with care. Regretfully, in several instances, that has not occurred. The failure of some of our members to behave honorably and with care has exposed the fraternity again to unprecedented risks of loss.

"Our organization should not, and will not, await the occurrence of a catastrophic loss before it acts to rein in those who engage in risky behavior, behavior that at times they illegally associate with our intake process and the fraternity in general.

"I believe Alpha Phi Alpha, Inc. must not conduct a new cycle of membership intake until it can correct and eliminate the problem of some brothers violating our strict rules against hazing.

"This means that **ALL MEMBERSHIP INTAKE ACTIVITIES SHALL BE AND ARE HEREBY SUSPENDED UNTIL FURTHER NOTICE.** (Emphasis in original).

"Any member chapter or officer found in violation of this membership-intake suspension order will be disciplined up to and including expulsion from the fraternity.

"We must ensure the safe and orderly membership-intake process of the fraternity. I encourage each of you to support this moratorium, and to take the next several weeks to consider ways to help us make the process safer, more efficient and more rewarding to both the aspirants and the brothers.

"Every applicant for membership must have the assurance that we are doing all we can to enable their safe entry into Alpha Phi Alpha Fraternity, Inc. Every brother must be committed to follow the rules and policies that govern this organization..."

This should serve as an important reminder to all Greek organizations that the national organizations must lead the way to ensure that individual chapters and individual members are not hazing. Even if your organization has the best hazing policy and new member program on paper, you must diligently ensure that such policies are followed. The failure to enforce your policies opens the door for potential liability should a member be injured or worse because of hazing.

Alpha Phi Alpha should be commended for taking the step that it did in suspending new member intakes across the country. Hopefully the moratorium will serve as an immediate wake-up call for their members, and for all Greeks, that hazing cannot continue to occur.

• Daniel J. McCarthy

Editor's Note

In the article "Verdict in Phi Delta Case at Missouri" in November, 2009 issue, the article incorrectly stated that Phi Delta Theta was dismissed as a witness. The article should have stated that Phi Delta Theta was dismissed as a defendant. We apologize for the error.

DEATH AT PENN STATE LEADS TO CHARGES AGAINST ATO AND FIJI CHAPTERS AND 2 STUDENTS

Joseph Dado, an 18-year-old freshman at Penn State, was found dead on September 21, 2009 on campus. He was missing for almost 40 hours before he was found at the bottom of a stairwell. He died of head trauma and the Centre County coroner ruled his death an accident. It is believed that he fell about 15 feet from a ledge that connects two campus buildings.

Mr. Dado's death was featured extensively in the NPR show "This American Life." A recurring theme was how unremarkable Mr. Dado's evening was to many students. Mr. Dado had a few drinks in his dorm room, he then headed to his sister's off campus apartment for a few more drinks. He then went to the Alpha Tau Omega chapter house for a few more drinks. He eventually ended up at the Phi Gamma Delta house, where he had a few more drinks. Mr. Dado left FIJI in the early morning hours to walk back to his dorm. He was not seen alive again. His blood alcohol content was .169, or more than twice the legal driving limit in Pennsylvania.

The State College Borough Police and the Penn State Police then conducted a five-week, joint investigation into the source of Mr. Dado's alcohol. On October 29th, criminal charges were filed against the ATO and FIJI chapters for selling or furnishing liquor or malt or brewed beverages to minors, in violation of Pennsylvania Crimes Code, Title 18, Section 6310.1, and for unlawful acts relative to liquor, malt and brewed beverage and licensees for furnishing alcohol to Mr. Dado, in violation of the Pennsylvania Liquor Code, Title 47, Section 4-493. FIJI was also charged with one other count of furnishing alcohol to a minor one week prior to Mr. Dado's death. That incident was uncovered in the investigation into Mr. Dado's death.

Additionally, Jack Townsend, a member of FIJI, and Jennifer Clifford, a roommate of Mr. Dado's sister, were charged with furnishing alcohol to a minor.

• Daniel J. McCarthy

HAZING HOTLINE CONTINUES TO DETER HAZING

While the efforts of national fraternities and sororities to stamp out hazing continue unabated, there are still incidences of serious hazing combined with the abuse of alcohol occurring across the country.

At the University of Arkansas, the Phi Delta Theta Chapter has been closed because of a hazing and alcohol incident that led to the hospitalization of one student. The *Arkansas Democrat Gazette* warned the Chapter members in an editorial on December 19, 2009:

"These young men are mighty lucky that their 18-year-old guest, Nicholas Brown, is still alive. He had to be hospitalized for alcohol poisoning. Young Brown's blood had roughly eight times the legal limit of alcohol allowed in this state."

Similarly, recent stories in the *Columbus Dispatch* and other newspapers reported that at Ohio University two pledges of Delta Tau Delta Fraternity were hospitalized because of the excess consumption of alcohol and alleged physical abuse. The fraternity was charged with hazing, a fourth degree misdemeanor under Ohio law.

In both instances, the International Fraternities responded promptly. Phi Delta Theta closed its chapter at Arkansas in spite of the fact that recently more than 4.5 million dollars had been spent to totally renovate the Arkansas chapter house. The fraternity is considering re-colonization, but will do so only with members clearly committed to complying with their standards and policies.

Delta Tau Delta suspended chapter operations at Ohio

University and in a press release issued by the International quoted its Executive Vice President Jim Russell as saying "The International Fraternity takes these allegations seriously. We are working closely with University officials to investigate the incident. Once the facts are established, the International Fraternity will work cooperatively with the Administration of Ohio University and the Chapter's alumni leadership to determine an appropriate course of action."

Delta Tau Delta also noted its role as a founding member of the National Anti-Hazing Hotline.

The National Anti-Hazing Hotline, which has been in existence since 2007, continues to receive wide attention and use. The Hotline -- 1-888-NOT-HAZE (1-888-668-4293) -- accepts telephone messages 24 hours a day from individuals who have concerns about hazing or suspected hazing activities. Those audio reports are transmitted by email to the fraternities or sororities about whose chapters complaints are made. This is true whether or not the reports are about sponsors of the Hazing Hotline or organizations that are not sponsors. In some instances, reports involve organizations and activities other than fraternities and sororities, such as athletic teams, bands or other clubs. When those kinds of calls are received, the school where the organization is located is contacted. Fraternities and sororities also receive a copy of the hazing law of the state involved. Forty-six (46) states now have specific laws making hazing a crime.

During the 2009 Fall Semester, the Hotline received 52 calls containing allegations of hazing. Thirty-five (35) of those calls were regarding chapters of the Hotline sponsors, undoubtedly because the sponsors are broadly advertising the

Hotline number and encouraging its members, new members and pledges to use it. While historically men’s groups had been more broadly known for hazing, the calls this past semester were roughly evenly divided between men’s and women’s groups. In the case of fraternities and sororities, the investigations are expected to be conducted by the headquarters offices of the chapters involved.

There is no question that the national fraternities and sororities that sponsor the Hotline take these allegations very seriously and uniformly are acting to attempt to stamp out hazing. Unfortunately, members of some chapters are still not listening, as the *Democrat Gazette* concluded in it’s editorial:

“Meanwhile, every Greek organization on every college campus should draw the right lesson from the Phi Delt’s sad experience. The grown-ups aren’t kidding when they tell you to stop with the alcohol and hazing. Both are dangerous. Not just because a fraternity house might be closed but because lives could be endangered. Just ask Nicholas Brown. And his buddies.

“Surely not one of those Phi Delt’s, or any of the alums, will contend that one night of partying was

worth the consequences. You men – in this case, boys – should beware of partying like there’s no tomorrow. Because in this instance there won’t be.”

The Hotline sponsors are:

- | | |
|-------------------|---------------------|
| Alpha Chi Omega | Kappa Alpha Theta |
| Alpha Delta Pi | Kappa Kappa Gamma |
| Alpha Epsilon Phi | Lambda Chi Alpha |
| Alpha Gamma Delta | Phi Gamma Delta |
| Alpha Phi | Phi Kappa Psi |
| Alpha Sigma Phi | Phi Kappa Sigma |
| Alpha Sigma Tau | Phi Kappa Tau |
| Chi Omega | Pi Beta Phi |
| Delta Chi | Pi Kappa Phi |
| Delta Sigma Phi | Sigma Alpha Epsilon |
| Delta Tau Delta | Sigma Pi |
| Delta Upsilon | Sigma Sigma Sigma |
| Gamma Phi Beta | Tau Kappa Epsilon |
| Kappa Alpha Order | Theta Xi |

- Timothy M. Burke

NOT IN MY NEIGHBORHOOD! Zoning Issues Continue to Impact Greek Chapter Houses

Kicked over garbage cans. Public urination. Stolen street signs. Those are just three of the many problems residents in State College, Pennsylvania complained about in a recent edition of the National Public Radio show “This American Life.” During the December 18, 2009 episode (which can be streamed at thisamericanlife.org) Ira Glass and other journalists spent time visiting students at Penn State and Borough of State College residents to discuss the school’s recent “win” as the #1 party school in the country by the Princeton Review.

The show offered an enlightening look into the party culture present on campuses today and revealed the mind-set of many students. The death of student Joseph Dado was featured during several segments (see accompanying article on page 2).

The show also highlighted the tension often present between college town residents and college students. This is a problem that has existed for decades, if not centuries. Residents and some governments are now seeking to enforce or change existing zoning laws to restrict where fraternities and sororities can have chapter houses. Several such zoning disputes are highlighted below.

BERKELEY NUSIANCE COMPLAINT

As reported in the November 2009 issue of *Fraternal Law*, several residents in Berkeley, California, through an attorney,

requested the City “abate the continuing public nuisance created and maintained by the inhabitants” of the fraternity houses on campus at the University of California-Berkeley. Instead of treating each individual chapter house as a unique entity, the neighbors created one form letter that listed the exact same general complaints about each chapter.

The City declined to take any action upon the written request because the City did not deem the chapters to constitute a nuisance under the Berkeley Municipal Code. Once the City declined to take action against the fraternities, under the Code, the neighbors could pursue a private cause of action. They have now done so.

On January 19, 2010, a group calling itself the “South of Campus Neighborhood Association” and one individual, Paul Ghysels, filed suit against the “InterFraternity Council,” 36 fraternities, numerous house corporations and several individuals. The complaint is captioned as a “Complaint for preliminary... and permanent injunction... to abate public nuisance...; private nuisance...; halt unfair business practices...; intentional tort; negligence...; and for damages....”

The case was filed in the Superior Court of Alameda County. A hearing was held on Tuesday, January 19th on the plaintiffs’ request for a temporary restraining order. Specifically, the plaintiffs sought an order prohibiting the defendants from 1) providing alcohol to minors, 2) committing assault, 3) throwing objects, and 4) littering and making excessive noise.

However, Judge Frank Roesch denied the temporary restraining order, stating that, "The status quo is the status quo and we're going to maintain it."

This case is obviously in its very early stages as of press time for this issue. However, it appears to be a most unusual case. In fact, this appears to be the only case of its kind ever filed in the nation. The plaintiffs are seeking class action status and have named every single fraternity on campus. There appears to be little evidence that each chapter has committed the list of evils alleged in the complaint, such as "shooting projectiles, which have hit neighbors and could cause great bodily injury." The plaintiffs allege that each defendant has committed a long list of legal violations, including "regular, frequent and continuing disturbances of the peace," "public drunkenness," and "public urination and the creation of unsanitary conditions," among numerous other complaints.

The plaintiffs' complaint contains the following causes of action: private nuisance, public nuisance under the Berkeley Code, public nuisance under the California Water Code (because the defendants have allegedly "permitted, caused or threatens to cause the contamination of public waters of this state through discharge of unauthorized and illegal waste in the public waters"), public nuisance under the California Integrated Waste Management Act, unfair competition, general nuisance, violations of business and professions code, violations of the penal code, intentional tort, and for injunctive relief.

Now that the judge has denied the plaintiffs' temporary restraining order, the case will proceed. The defendants will get to answer the complaint and likely file a motion to dismiss. Short of money for damages and the close of each fraternity chapter at the university, it is not clear what the plaintiffs are seeking at this point.

Look for updates on this case in the next issue of *Fraternal Law*.

STATE COLLEGE ADOPTS NEW DEFINITION OF "FRATERNITY"

Meanwhile, back in State College, Pennsylvania, the Borough Planning Commission recently adopted a new definition of "fraternity" for its zoning ordinance. The decision is related to the former Phi Delta Theta chapter house on Penn State's campus.

As reported in previous editions of *Fraternal Law*, Phi Delta Theta suspended the Pennsylvania Theta Chapter's charter after a string of violations of the General Fraternity's Alcohol-Free Housing Policy. After many of the members were subsequently expelled from Phi Delta Theta for continuing to operate as Phi Delta Theta after the charter suspension, several members sued the General Fraternity, seeking to reverse both the member expulsions and the Chapter charter suspension, and to overturn the alcohol-free policy. The General Fraternity won on all counts.

The former chapter members, however, continued to occupy the former Phi Delta Theta chapter house. The Bor-

ough of State College Zoning Hearing Board declared that the former chapter house had become a "rooming house" for zoning purposes. While fraternities are permitted under the Borough's zoning code, a "rooming house" is not.

In an effort to allegedly avoid controversy in the future when a fraternity chapter loses its charter, the Borough's Planning Commission recently changed its definition of a fraternity to require that each group be recognized by a governing student organization and also by Penn State's Division of Student Affairs in order to qualify as a "fraternity" for zoning purposes. The Borough's Council must adopt the definition before it becomes final.

This issue is still progressing through both the political process as well as the legal process from the administrative appeal filed related to the zoning decision.

PROBLEMS AT EASTERN KENTUCKY AND NORTH TEXAS

Recent articles about problems involving fraternities at Eastern Kentucky University (EKU) in Richmond, Kentucky and at the University of North Texas (UNT) in Corinth, Texas also illustrate the complaints that neighbors assert about chapter houses.

At EKU, according to an article in the December 26, 2009 Richmond Register, residents of historic Richmond, Kentucky have complained repeatedly about a house used as a chapter house. The neighbors have complained about excessive noise, traffic and parking congestion, and trash overflows. The City is currently reviewing its comprehensive plan to determine what steps, if any, can be taken.

Similarly, at UNT, neighbors have complained repeatedly about a house into which six fraternity members moved about eight miles off campus. The City is currently reviewing what it can do to prevent such problems in the future, such as whether it can pass an ordinance that limits the number of unrelated residents in a single-family home to.

CONCLUSION

Disputes between chapter houses and neighbors will continue to occur as long as the chapters are located in residential neighborhoods. Like a certain insurance company motto, chapters should strive to be good neighbors. While fraternity chapters have a right to exist under the zoning codes in most college towns, they do not have a right to become a nuisance to their communities. The case at Berkeley will be an important case to watch. As this is the first case of its kind, if the plaintiffs are successful, it could become a model for neighbors in other college towns. However, the plaintiffs' chances of success are far from certain, given the unusual nature of the case and the fact that they allege that every chapter on campus is guilty of the exact same behavior.

- Daniel J. McCarthy

FSPAC HELPS GREEKS IN WASHINGTON

The effort to convince the United States Congress to adopt the Stephanie Tubbs Jones Collegiate Housing and Infrastructure Act (CHIA) continues with strong support from the Fraternity and Sorority Political Action Committee (FSPAC). That bill, if adopted by Congress and signed by the President, would make donations for Collegiate Housing and Infrastructure, including fraternity houses, tax deductible. The adoption of the bill would make it substantially more attractive for supporters of fraternities and sororities to donate for the construction or reconstruction of fraternity houses. In essence, a supporter who made a donation for that purpose to a local fraternity or sorority house corporation would receive the same benefit of a tax deductible contribution that now could be received if from a donation to a college or a university for the construction of a dormitory. Both donations would now be tax deductible.

The FSPAC was formed in 2005 with the purpose of assisting fraternity and sorority members and supporters who seek political office. The FSPAC provides financial aid to candidates of both major political parties for federal office, including the House of Representatives, the Senate and President, who support the objectives of fraternity life. In its December 2009 newsletter, the FSPAC reported having raised, as of November 2009, over \$800,000. According to the FSPAC, it is the largest political action committee focused solely on higher education issues.

According to information on its webpage, located at www.fratpac.org, the FSPAC has "made contributions to a bipartisan slate of more than 100 candidates in our first four years of operations and more than 90% of those candidates have won their elections. We are especially proud that in 2006 we helped support the election of three sorority women in their first runs for the House of Representative and the Senate."

The FSPAC considers many specific policy issues to evaluate candidates to support, including the following:

- Support of changes to the federal tax code such as contained in the CHIA.

- Support of freedom of association rights for students to continue to join fraternities and sororities.
- Support of efforts to improve student housing and safety on campuses.
- Support of anti-hazing initiatives.
- Support of initiatives to improve student financial aid option.

Larry Wiese from the Kappa Alpha Order, President of the FSPAC, wrote in the December newsletter that there are currently 173 House sponsors and 24 Senate sponsors of CHIA and expressed optimism that as the Health Care Reform issue is resolved, Congress will turn its attention to comprehensive tax reform issues. He adds that CHIA is "well positioned to be added to major tax legislation" in 2010.

The FSPAC continued to build momentum during 2009 with fund-raising events held in Atlanta and Dallas and a third event held over the summer for interns working on Capitol Hill. All told, the FSPAC reports having almost 700 contributors in 2009 from more than 50 Greek organizations.

The FSPAC's recent newsletter quotes Congressman Steny Hoyer (D-MD-Sigma Chi), the House Majority Leader, underscoring the value of the fraternal experience, saying, "Fraternities and sororities teach us about leadership, the value of the community and the hard work it takes to keep a community strong. That is one of the reasons why the efforts of the Fraternity and Sorority FSPAC – an organization dedicated to making sure that the values of Greek life have a lasting impact – are so important."

The FSPAC is now focused on preparations for its Annual Dinner, which will be held in Washington, D.C. on April 20, 2010. Tickets are \$500 per person. More information can be obtained from Kevin O'Neill, AXA, the Executive Director of the FSPAC. He can be reached at (757) 207-6002.

• Timothy M. Burke

SIGMA ALPHA MU CHAPTER FINED \$50,000

The Sigma Alpha Mu Chapter at the University of Delaware was recently fined \$50,000 by a judge for hazing. The Chapter was charged with hazing, a misdemeanor, following the 2008 death of Brett Griffin from alcohol poisoning. After the Delaware Attorney General's office charged the chapter with hazing, the Chapter failed to respond or appear at the arraignment.

Following their investigation, the police arrested 6 members of the chapter for providing alcohol to a minor, possession of alcohol by a minor, and possession of drug paraphernalia, among other charges. Mr. Griffin's family has also filed a civil suit, which is still pending.

In a prepared release, Sigma Alpha Mu stated, in part:

"Sigma Alpha Mu has clear policies prohibiting hazing and underage drinking, and it is the obligation of each chapter and its members to abide by these policies, the rules of the university and the law. Upon learning of the November tragedy, Sigma Alpha Mu immediately suspended the operation of the local chapter. The local chapter remains under suspension pending the completion of the investigation undertaken by the police and the filing of criminal charges. Any violations of Sigma Alpha Mu's policies by the local chapter or its members may lead to disciplinary action, including permanent suspension of the local chapter and expulsion of its members."

• Daniel J. McCarthy

**FRATERNAL LAW CONFERENCE
NOVEMBER 5-6, 2010**

Please return this form to Bonnie Hill, Fraternal Law, 225 West Court Street, Cincinnati, Ohio. The full day session will begin at 9:00 on Friday and the half-day session on Saturday ends at Noon. To request this form electronically, email Bonnie Hill at bsh@manleyburke.com.

Who should attend?

Fraternity officers, council members, administrators, students, school officials, attorneys and anyone involved with Greek organizations. We offer a substantial discount to students.

CLE credit is available from the State of Ohio and many other states. We are happy to cooperate in providing you or your state CLE Board with conference information.

The **general registration** fee is \$375.00 per participant; the **student fee** is \$275.00. Included in the conference fee is a continental breakfast on Friday and Saturday, lunch on Friday and a reception to be held Friday evening. Parking is not included but is available at the Westin for \$15 per day for self parking, and also available at several garages nearby.

A block of rooms has been reserved at the Westin Hotel. Hotel reservations may be made by calling the Westin Hotel toll free at (800) 937-8461. Ask for the Fraternal Law Conference rates when making your reservation. For further information contact Bonnie Hill at (513) 721-5525.

Name: _____ **Title:** _____

I am a/an: **Attorney** **Fraternity/Sorority Leader** **Student/University Official**

CLE credit requested? **YES** **NO** **If yes, what state** _____

E-mail address: _____

Affiliation: _____

Address: _____

City/State/Zip: _____

Phone: _____ **Amount Enclosed:** _____

Please send a separate form for each person attending the conference.

May we have your permission to publish this information in our handout materials? Your signature on the line below indicates your approval.

Signature

Refund Policy: Full refund for cancellations received on or before October 22, 2010. Refund minus \$50 for cancellation received between October 23 and October 29. No refunds after October 29.

©2010 Manley Burke
A Legal Professional Association

The Goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

Fraternal Law is published four times yearly as a non-profit service of ManleyBurke, A Legal Professional Association, 225 West Court Street, Cincinnati, Ohio 45202 U.S.A. (513) 721-5525. Please address all editorial inquiries and all subscription correspondence to this address. Individual subscriptions by first class mail are available at \$12.00 per year. Bulk subscriptions are available upon request at reduced rates. Second class postage paid at Cincinnati, Ohio.