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Is Shutting Down Greek Systems the Answer?

The recent *Rolling Stone* article "A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA" begins with a detailed description of an ugly gang rape in the upper floor of a fraternity house at the University of Virginia.[1] It has generated massive media attention and comment all across the country. The University, with the apparent concurrence of the Interfraternity Council at UVA, has shut down all Greek activities on campus until at least next semester.

Gordon Gee, the President of the University of West Virginia, who has a long history of being supportive of the fraternal movement, in response to the alcohol-related November death of Nolan Michael Burch in a fraternity house at West Virginia, penned a letter on November 21, 2014 to the West Virginia University community calling for a cultural change. That letter is reprinted in full here with President Gee's permission.

A Challenge to Change the Culture

Dear Mountaineer Family:

Nolan Burch was an 18-year-old freshman full of energy and enthusiasm. Those who knew him well spoke of his love for life, his positive attitude and his passion for West Virginia University. His parents shared with me the excitement they all felt as he unpacked his belongings at Summit Hall this past August. That excitement turned to grief last week, when on Friday, Nov. 14, Nolan Burch passed away.

It is never easy to lose one of our own.

In many ways, I feel the loss of Nolan as if he were my own son. As president of this University, I am deeply passionate about my responsibility for all 33,000 of our students. Nolan should be going to class today and eating pizza with his friends. But sometimes, bad decisions are made. We all have had those moments. And it is when we look back on those moments, that we pause, reflect and perhaps gain a new perspective.

When I spoke to Nolan's father, I learned that three people are alive today due to Nolan. His organs were donated through Ruby Memorial Hospital to patients in need. This tragic loss brought our Mountaineer family both sorrow and hope.

And hope is what I continue to have for the future of West Virginia University. I am an optimist. And despite the series of events surrounding our students that we have experienced this fall, I am optimistic that this institution — and our students — will rise to the call and address the issues at hand.

Two of those issues needing to be addressed are alcohol and the irresponsible and reckless behaviors that often follow. It is a culture we must change at West Virginia University. Indeed, it is a culture that needs to be changed at nearly every institution of higher education across this country.

So, how do we go about changing a culture in which the participation of a small percentage affects the whole? Robert Kennedy once said, "Few will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in the total, of all those acts will be written the history of this generation."

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I believe this generation has the power and the ability to change the trajectory of this nation. I believe that if we invite our students to the table, they will work with us to create solutions and outcomes that truly matter to them. And I believe that if you treat students as the young adults they are, they will inspire us — and sometimes even surprise us — with their ingenuity.

But this is not just a student issue for us to solve. It is not just a University issue. It is an issue that will take the support of our entire Mountaineer community — parents, families, faculty, staff, alumni and community leaders. We are bringing in national facilitators to assist our students in thoughtful solutions. We are partnering with alumni who bring ideas. We are reaching out to the community to ask the necessary, hard questions that may not always have easy answers.

However, together with our students, we will implement solutions that allow us to soar, not suppress. That connect people not divide them. That in the end, demonstrate that a culture is not dictated by your past but can be positively transformed by your present. And that is what our University is all about: translating ideas into actions that make a difference in our lives.

And it is in those actions that West Virginia University will rise to a better calling — a higher calling.

E. Gordon Gee
President, West Virginia University

Even as big of a supporter of the Greek movement that President Gee has been throughout his academic career, he determined to close the West Virginia Greek system immediately until he could put in place steps that would help create that cultural change.

It is certainly understandable that when wrongdoers engage in criminal conduct, leading to a tragedy and a crisis on campus, that the University would want to take a time out. But there is a serious question as to whether or not shutting down an entire Greek system because of the illegal conduct of a very small number of wrongdoers is an appropriate reaction, either from a legal or educational standpoint.

All colleges, state or private, have a contractual relationship with each member of their student body. Those colleges that are state instrumentalities also have a duty to honor the constitutional rights of their students. When the university publishes a student handbook or similar document that contains within it information about the clubs on campus, including fraternities and sororities, and describes in detail, as they typically do, what the disciplinary process is for students and student groups accused of wrongdoing, students are entitled to rely upon those promises as part of their contract with the university. If the university has published disciplinary procedures to be followed when a chapter is accused of violating either the civil law or university regulations, students are entitled to rely on those commitments and expect that chapters that have no involvement in the wrongdoing would not be punished or lose their rights because of the wrongdoing of others. Even those accused of wrongdoing are entitled to their contractual and due process rights before being determined guilty.

No doubt, **cultural change is necessary** and critical. There is no tolerance left for alcohol-fueled deaths. Fraternity houses are not sanctuaries free from the enforcement of state law on alcohol, nor are they refuges for those who would treat rape or sexual assault as something other than the criminal conduct that it is.

Attempts to make light of sexual misconduct have no place in Greek chapters claiming to emphasize gentlemanly conduct. The San Diego Union-Tribune[2] recently reported that on Friday night, November 21st, a "take back the night" march was "interrupted by fraternity members yelling obscenities, waving sex toys and hurling eggs at marchers." The next night, two sexual assaults were reported on campus. In response, the student government and the leaders of the Interfraternity Council, the Panhellenic Council, the United Sorority and Fraternity Council, and the National Pan-Hellenic Council, announced the indefinite suspension of all "socializing at campus fraternities." According to the article, "[i] instead of partying, members of the fraternities and sororities will undergo sexual assault prevention training." It is hard to argue with that kind of response, especially if truly voluntarily done by the student organizations themselves.

It is quite another matter when the university mandates an end to all social activities by Greek groups, even those not having had any involvement in the wrongdoing. The extension of such a ban to other activities such as regular chapter meetings, programming sponsored by Greek organizations and community service and philanthropic activities is particularly egregious. Such overbroad reaction is neither necessary nor constitutionally justified at a state college

campus, nor is it contractually appropriate on a private college campus. In either case, any such punitive measures should only be imposed after the process provided in whatever passes as a particular institution's conduct code and promulgated disciplinary process has been provided.

Universities typically have established standards of conduct frequently published in their student handbook or similar document. Those provisions also provide for possible sanctions for their violation and for some form of process by which an individual or student organization is determined to have been responsible for the prohibited conduct or not. Sometimes those regulations will allow for a university to move very quickly against an individual or organization that may be deemed to be a danger, but is that justification to assume that an entire system frequently involving dozens of chapters should be shut down when only one chapter is responsible for the conduct which led to the tragedy touching off the university's reactions?

How Should Fraternal Groups Avoid and Respond to System-Wide Shut-Downs.

First, accept President Gee's challenge. Where necessary, work to **change the culture**. Take seriously and act to prevent the dangerous conduct to begin with, conduct which virtually every national organization already prohibits. Pay attention and investigate promptly particularly reports of hazing and alcohol abuse, the two most frequent violations that lead to tragedies. Deal with them. Get the wrongdoers out of chapters utilizing your own procedures and rules.

If it is the chapter culture that has led to repeated violations, deal with the chapter. Demonstrate to the university that you will act to deal with wrongdoers.

Make it clear to the university that you recognize that your members are their students. As you have a right to discipline your members, the university has a right to discipline its students. More importantly, the university has a right to protect its students and fraternal groups must recognize that and let the university know that they do.

A short time out that shuts down social activities with alcohol or opportunities for hazing is one thing. But a system-wide ban of all fraternal activities goes beyond what is appropriate under almost any circumstance. That is particularly true where a university goes as far as prohibiting chapter meetings. Such meetings are critical to conducting the business of the chapter and particularly important at large chapters with houses. When the university ban extends even to philanthropic or community service activities, it flies in the face of the First Amendment expressive rights of the organization.

When such bans are announced unilaterally, the university should be promptly advised by national organizations of the desire to partner with the university in addressing and responding forcefully to the conduct which led to the university's actions. But the university must be reminded that the university itself has obligations to respect the rights of its students and student organizations, particularly those against whom there is no basis for disciplinary action at all. The fact that a shut-down may be short does not make it any less correct. As the U.S. Supreme Court has said "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."[3] Whether or not to bring legal action into the fact of a short shut-down will need to be evaluated on a case-by-case basis. But action could be brought under the Federal Civil Rights Act, 42 USC 1983.

But a lengthy shut down of an entire Greek system when it is clear that the overwhelming majority of that system's members have conducted themselves in accordance with both university regulations and the rules and policies of their own fraternities is the kind of unconstitutional action by state institutions or contractual violations by a private institution that may well deserve to be challenged in court. Too many universities are now imposing system-wide shut-downs. This trend will ultimately have to be responded to with litigation if universities cannot be convinced of the impropriety of punishing the innocent and in doing so, violating both the constitutional and contractual obligations.

There is no doubt that as Gordon Gee stated in his letter to the West Virginia University community, that a cultural change is necessary to deal with issue such as hazing and alcohol abuse. Just as when in larger society, we have to deal with criminal conduct or racism. It must be done in a manner that respects the rights, even of the wrongdoers, and particularly of those who have done nothing wrong. While we all regret and want to respond when misconduct leads to tragedy, it remains true that the overwhelming majority of active members of fraternal organizations are leading the way and promoting safe conduct and developing the next generation of our leaders.

- Timothy M. Burke

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1 Rolling Stone, "A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA," by Sabrina Rubin Erdely, November 25, 2014.

2 San Diego Tribune, "SDSU Frats Suspend Social Activities," by Karen Kucher and Peter Rowe, November 26, 2014.

3 *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

NOTE: On a related topic, The Chronicle of Higher Education, today, 12/1/14, released its 27-page special report "Alcohol's Hold on Campus."

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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.

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