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Two New Bills Address Sexual Assault Issues

In July, two bills – the Safe Campus Act and the Fair Campus Act – were introduced in the United States House of Representatives. Both bills have the support of the National Panhellenic Conference (NPC) and the North American Interfraternity Conference (NIC). The bills join the national effort to address sexual assault issues on American campuses. While focusing on protecting victims of sexual assault with an emphasis on education and training that will reduce the incidences of sexual assault and provide assistance to victims, the bills also seek to ensure that Institutions of Higher Education (IHE) must provide a fair process for both victims and the accused.

The principal difference between these two bills is that the Safe Campus Act specifically provides that if an institution of higher education receives written consent from the victim, the institution must report and refer the allegation "to the law enforcement agency of the unit of local government with jurisdiction" for investigation. Under those circumstances, the university may not conduct its own investigation or impose final discipline while the criminal investigation is being conducted. (Under certain circumstances, a university police department may fill the role of the local government police.) The university may, while the law enforcement agency is investigating, take interim measures if they are a "reasonable measure to promote campus safety and well-being." These include temporary suspensions, no contact orders, adjustment of class schedules, or changing housing assignments.

Under the Safe Campus Act, if an alleged victim of sexual violence provides a written notification, including knowledge of the consequences of doing so, to the IHE that the individual does not want the allegation to be investigated by law enforcement, the university may not undertake disciplinary action against the alleged perpetrator or impose any interim measures.

These limits on an IHE's ability to investigate and discipline are the most controversial, these provisions are not in the Fair Campus Act.

Both bills apply to any IHE receiving federal financial assistance. If adopted, the bills would apply to almost all colleges and universities in the country since the overwhelming majority, both public and private, receive federal assistance, which includes assistance provided to students.

Both bills provide specific due process guarantees to the involved students and student organizations. Those guarantees require notice to all parties at least two weeks prior to the start of any formal hearing or proceeding. The notice must detail the rights and responsibilities to be provided in the proceedings, a statement of all relevant details of the allegation and a specific statement of the sanctions which may be imposed. All parties involved – victim and accused – must have access to all material evidence a week in advance, including complainant statements, third party witness statements, and specifically "electronically stored information ... and social media posts." Parties involved may, at their expense, retain the assistance of an attorney "or other advocate" who may ask questions in the proceedings, file papers, examine evidence, and examine witnesses.

The bills mandate that it shall be "presumptively improper for any person to make any inquiry about the sexual history of the individual reporting the incident, other than with regard to the relationship between the alleged victim and the accused." The bills make it clear that IHEs must provide a process which avoids conflicts of interest and may not comingle administrative or adjudicative roles. Under the process required in the bill, an individual member of the IHE administration may not serve in duplicative roles. For example, a college employee could not serve both as a victim counselor and an investigator, or any other role in the process. Critically, a university employee could not be both prosecutor and adjudicator, or adjudicator and decide an appeal of his or her own decision.

IHEs, under these bills, would be free to determine for themselves what standard of proof to use. That provision responds to the controversy created by the Department of Education when it required all universities to use a "preponderance of the evidence" standard, as opposed to either "clear and convincing evidence" or "beyond a reasonable doubt." IHE disciplinary decisions would be subject to judicial review in United States District Court.

Both the Safe Campus Act and the Fair Campus Act re-emphasize the importance of the Title IX exemption under which fraternities and sororities are free to remain single sex organizations. Both state that the exemption "that allows single-sex organizations to continue to flourish at institutions of higher education is

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still essential to developing a wide range of enrichment opportunities for students to learn and grow."

Both acts go on to provide:

> "While Title IX has done much to provide opportunities for women and men alike, the single sex exemption is a part of that tapestry of opportunities, and institutions of higher education may not take actions that undermine this single-sex exemption."

This provision, if adopted, would appear to prohibit even private institutions which receive federal support from mandating fraternities and sororities become co-ed.

Each bill also provides that IHEs may not mandate that a volunteer advisor to a student organization or an employee of the student organization must serve as a campus security authority under the Clery Act (unless such individual is also an employee of the institution), and that IHEs may not deny recognition to a student organization because an advisor or organizational employee refuses to register or serve as a campus security authority.

Earlier this year, as reported in the March issue of *Fraternal Law*, a bi-partisan group of 12 United States Senators introduced the Campus Safety and Accountability Act, which is also designed to address the issue of sexual assault on campus. While that bill addresses some critical elements of the problem, it does not address others such as due process, Title IX, or the role of chapter advisors. The Senate Education Committee conducted a hearing on that bill in July and this month the House Education Committee heard testimony on the campus sexual assault issues. With the media attention that continues to be focused on sexual assault, it may well be that some marriage of these three bills will occur as the legislative process goes forward.

• Timothy M. Burke

Lack of Due Process a Problem in Addressing Sexual Misconduct

The Safe Campus and Fair Campus bills, while supported by both the National Panhellenic Conference and the North American Intrafraternity Conference, have drawn mixed reviews. The National Association of Scholars and the National District Attorneys Association have both endorsed the Safe Campus Act. Other elements of the higher education community and some women's advocate groups have stated opposition. But developing case law strongly suggests that the bills' due process provisions would help address the frequent problems with the myriad of different disciplinary processes that exist on American campuses. All too frequently, the due process rights guaranteed by the Constitution are not provided. Here are two recent examples.

On July 10, 2015, the Superior Court of California for the County of San Diego issued an order in the case of *Doe v. Regents of the University of California San Diego*,[1] which overturned the University's decision to suspend an individual accused of sexual assault. The court began its analysis indicating that while "it respects the University's determination to address sexual abuse and violence on its campus, after reviewing the administrative record, it finds that in this particular case, the hearing against petitioner was unfair."

The court criticized several aspects of the process. First, the petitioner was required to submit written questions for cross-examination to the hearing panel chair, but the chair asked only nine of the 32 questions submitted. The court stated "the limiting of the questions in this case curtailed the right of confrontation crucial to any definition of a fair hearing." The court also criticized the reliance of the panel on a report by the University's Office for the Prevention of Harassment and Discrimination (OPHD) when no one from that office was present to testify or subject to cross-examination. An additional problem with the OPHD Report was that it relied on interviews of some 14 witnesses whose statements were not even provided to the petitioner. The university hearing panel accepted the conclusion of the OPHD Report that "based upon the totality of the circumstances and the evidence presented, I find it more likely than not that Mr. Doe ignored Ms. Roe's objections to sexual activity in violation of the student sex offense policy." In criticizing the deference to an investigator who was not even present at the hearing, the court borrowed language from *Ciechon v. City of Chicago*, (7th Cir. 1982), 686 F.2d 511, 517, noting that "due process requires that a hearing ... be a real one, not a sham or a pretense."

The court also found the penalty imposed by the University to have been unfair. Initially, the penalty was limited to a suspension for one quarter. But when petitioner appealed the decision, a university dean, without explanation, increased the suspension time to one year. When petitioner appealed to the final appellate body, his suspension was extended to a year and a quarter, again without any reasoning for the increased sanctions. The court concludes that "it appears the increased sanctions are punitive towards petitioner for appealing the decision of the panel."

In another recent case, *Mock v. University of*

Tennessee at Chattanooga[2], ("UTC"), the Chancery Court of Davidson County, Tennessee, reversed a UTC decision which resulted in Mock's expulsion for sexual assault. Much of the dispute in that case related to the question of consent and whether or not the parties could consent when they both had consumed a large amount of alcohol. On campus, an administrative law judge conducted a hearing and initially issued a decision making 49 specific findings of fact concluding that the University had not met its burden of proof, by a preponderance of the evidence, that the complaining party was incapable of having consented to having sex. The administrative law judge dismissed the charges against Mr. Mock.

The complaining party then personally met with the UTC Chancellor. The University sought reconsideration from the law judge, who then, without changing any of her findings of fact, reversed her conclusions and held that the University had proved by a preponderance of the evidence that the complainant never consented to sexual activity and ordered Mr. Mock be dismissed from UTC.

Mock sought to have the Chancellor recuse himself from considering his campus appeal because of the *ex parte* communication the Chancellor had had with the complainant. The Chancellor refused and ordered Mock's expulsion.

The litigation then commenced. Mock initially obtained an injunction which allowed him to complete his exams for the 2014 Fall Semester and he was subsequently allowed to enroll for the next semester. He was denied access to his scholarship or his varsity wrestling activities.

In reviewing the record, the court was particularly critical of the fact that the University shifted the burden of proof to the accused who must then prove that consent had been given. The court stated that "this procedure is flawed and untenable if due process is to be afforded the accused."

The court noted that:

> "In that initial order, the ALJ stated that charges of sexual assault are taken very seriously and that the case was very troubling because a result based solely on the facts presented at the hearing may or may not reflect what truly happened. She also stated that while such cases can be brutal for a victim to endure, the rights of the accused must also be ensured and that it was imperative to UTC to meet its burden of proof in such cases."

The court ultimately concluded that the University's decision to expel Mock was arbitrary and capricious, and ordered the re-instatement of the first order of the ALJ dismissing the charges against Mock.

There will be controversy over the Safe Campus and Fair Campus Acts, particularly with regard to the provisions in the Safe Campus Act that limit a university's ability to investigate a complaint if the complainant wants the matter referred to the police and prohibits disciplinary action if the complainant does not want the matter referred to police. But, as one of the bills' harshest critics has noted:

> "There are, indeed, serious due process and transparency issues with the way some schools handle adjudication of sexual assault and a handful of male students (and many more female students) have been treated horrifically. There is no question that adjudication processes should be more transparent, consistent and fair...."[3]

• Timothy M. Burke

1 Doe v. Regents of the University of California San Diego, Case No. 37-2015-00010549-CU-WM-CTL, decided July 10, 2015.

2 Mock v. University of Tennessee at Chattanooga, Chancer Report of Davidson County, Tennessee, 20th Judicial District, Part II, Case No. 14-1687-II, decided August 4, 2015.

3 Making it harder to punish campus rapists wont' stop campus rape by Jill Fillpovic, August 10, 2015, https://www.washingtonpost.con/posteverything/wp/2015/08/10.

Oregon Court Upholds Summary Judgment for National, but Overturns for the Chapter

On September 2, 2015, the Court of Appeals for the State of Oregon decided *Scheffel v. Oregon Beta Chapter of Phi Kappa Psi Fraternity*, upholding a Summary Judgment granted to the national fraternity, but reversing a similar determination for the chapter, sending the case against the chapter back to the trial court.

Cassandra Scheffel sought damages from the national fraternity and its chapter as a result of being raped by Gregory Sako, a chapter member, during a Halloween party at the chapter's fraternity house. Sako was a 20-year old sophomore when the party took place. He was subsequently convicted of rape and sentenced to 8 years and 4 months in prison with no possibility of early release.

There was no dispute in the record over the fact that Sako had never previously been involved in any conduct which would have suggested that he might commit rape. The trial court had previously granted summary judgment dismissing the claims against both the chapter

and the fraternity. But the Appellate Court found that in spite of Sako's non-violent history, the record created at least factual questions as to whether Plaintiff's sexual assault "in the circumstances of the Halloween party" was reasonably foreseeable by the chapter.

The Appellate Court also found that the chapter's conduct "fell below the applicable standard of care" and may have constituted negligence *per se*. That finding came easily from a unanimous court based on the undisputed evidence in the record that while the local chapter had a general policy that underage members could not drink or possess alcohol, the policy was not enforced. Underage members frequently kept alcohol in their rooms and drank it in their rooms and in common areas of the house. In essence, the standard of care set by the Chapter in its "General Policy," as well as by the laws of Oregon relating to the consumption of alcohol, was not met.

Neither the Trial Court nor the Court of Appeals was willing to accept Plaintiff's argument that the National Fraternity had voluntarily assumed a duty to enforce rules at a house party.

One of the three judges dissented in part, and would have only sent the case against the chapter back to the Trial Court on the issue of negligence *per se* due to the violation of the standard of care, but not on the general negligence claim based on foreseeability.

The majority's 38-page opinion discussed the question of foreseeability at length. It quoted the fraternity's risk management policies dealing with alcohol and sexual assault. Among other things, this policy provided that underage members should "never be allowed to possess or consume alcohol." As the court put it:

> "The section on sexual assault notes that alcohol 'decreases inhibitions' and that, on college campuses, acquaintance rape may be 'as high as 85%' of rapes, that 'alcohol plays a prevalent role in sexual assaults,' and that 97% of sexual abuse cases brought against fraternities involved alcohol."

The court also noted that the Chapter President was "aware of policies that prohibited all access to private rooms during social events" at other chapters on campus, but that the Phi Kappa Psi chapter had no such rule, in spite of the fact that the University's Greek Life Office recommended private rooms be closed during social events that include alcohol.

The record was clear that the chapter had significant risk management measures in place during the Halloween party, including two security guards and four sober monitors. The only alcohol at the party was that brought by guests who were over the age of 21 and could legally consume it. However, Sako, while underage and apparently not drinking in the common area during the party, was known to have alcohol in his room. While the Fraternity's party was scheduled to last until midnight, the Chapter President shut it down at 10:45 because of problems outside the house when individuals not on the guest list attempted to enter. It was about that same time that Sako took Ms. Scheffel to his room and sexually assaulted her.

Based on a general negligence theory, the Plaintiff argued that since she was a licensee on the property, the chapter was required to exercise reasonable care to protect her. The chapter argued that it owed a duty of reasonable care to the Plaintiff only if it knew of an unreasonable risk of harm and the Plaintiff did not have reason to know of that harm. While even the Plaintiff agreed that there was no evidence that the chapter knew of Sako's propensity for violence, she argued that the chapter knew generally of the "epidemic of alcohol-related sexual assaults" and that the chapter created an unreasonable risk of sexual assault by permitting underage members to consume alcohol and allowing members and their guests access to private rooms during parties where alcohol was available. The court clearly agreed with Plaintiff's arguments specifically finding:

> "there is evidence in the Summary Judgment Record that would support a finding that the chapter knew that alcohol-related sexual assaults were a foreseeable risk of hosting social events where alcohol is available and that permissive alcohol use by underage members and access to private rooms during social events increases the risk of sexual misconduct."

The majority went on to say:

> "Thus, the Summary Judgment record provides a basis for a reasonable fact finder to conclude that Beta Chapter knew that alcohol-related sexual assaults in college fraternities were a serious problem on college campuses nationwide and that precautions were necessary to minimize that risk."

The court repeated that finding, noting that Plaintiff provided evidence that the chapter knew that alcohol-related sexual assaults were a risk. The Court specifically pointed repeatedly to the fact that the chapter permitted underage members to possess and consume alcohol in private rooms and failed to prohibit access to those rooms during a social event where alcohol was served, noting:

> "That there was evidence that would support the

> conclusion that the chapter knew of the risk of alcohol-related sexual assault at an event like the Halloween party, Plaintiff established a question of fact as to whether the chapter was on notice that its conduct would create a risk of the kind of harm that befell her."

Returning the case to the Trial Court does not necessarily mean that Plaintiff wins her lawsuit against the chapter. She must still convince a jury that the chapter ignored the known risks and that as a result she was injured. Alternatively, she could also prove that the chapter was negligent in failing to enforce its alcohol policy regarding minors and that she was assaulted as a result of that failure.

The dissenting judge argued the rape was not foreseeable because the chapter had no notice of Sako's propensity for violence and the chapter had no history of sexual assault in the chapter house. There was apparently no evidence of sexual assaults at other fraternities and sororities at the University. Those arguments could yet be successful in front of the jury.

A more difficult argument for the chapter to overcome may be its failure to enforce its own policies regarding possession and consumption of alcohol by minors. In failing to enforce its own policies and ignoring violations of Oregon law regarding minors possessing and consuming alcohol, there is a serious issue over the standard of care and negligence *per se*.

As to the national fraternity, the Plaintiff argued that Phi Kappa Psi was vicariously liable under an agency theory. In part, Plaintiff argued that the national fraternity had the ability to discipline the chapter for violation of its policies. However, the court noted that the national fraternity did not have day to day control over the chapter and that its ability to discipline was remedial in nature, after the fact.

Neither the Trial Court nor the Court of Appeals was willing to accept Plaintiff's argument that the National Fraternity had voluntarily assumed a duty to enforce rules at a house party.

For national fraternities this case is in line with the vast majority of decisions addressing similar questions, although the Maine Supreme Court's decision earlier this summer went in the opposite direction. Oregon's decision calls into serious question the wisdom of allowing guests in members' rooms during parties where alcohol is served, particularly when the risk management procedures for the use of alcohol are enforced in the common areas of the house during the party, but ignored in the private rooms of minor members.

- Timothy M. Burke

... there are still plenty of misuses and abuses of tax exempt law to kick around

So begins a recent story in *Forbes*.[1] The story is an unflattering look at how Princeton eating clubs spend charitable (i.e., tax deductible) dollars. While eating clubs are not Greek organizations, the eating clubs fall under the same tax rules as 501(c)(7) organizations. Indeed, the article eventually specifically mentions Greek organizations, emphasizing their status as non-charities. So – there is no doubt that the article and the perceptions it creates will stick to fraternities and sororities.

The issue identified by Forbes is that the Princeton eating clubs have allegedly spent charitable dollars granted by foundations for physical improvements to eating club facilities. Importantly, according to the article, these improvements were not to areas that one would normally identify as "educational areas." Finally, the dollars involved are huge as reported by Forbes:

> the "vast majority" of $20 million in tax deductible contributions funneled since 2008 from 501 (c)(3) foundations to the clubs was used for impermissible purposes—for example, building a $5 million addition at the Cap & Gown Club that even includes a tap room. (Assuming almost all the $20 million was donated by prosperous alums taxed at the top federal tax rate, the taxpayer subsidy amounted to around $7 million.)

Any Greek organization that has ever sought counsel from Fraternal Law Partners or the other firms servicing the Greek community has gotten the same sound, clear, unequivocal and unwavering advice – foundation and other charitable funds may only be spent on improvements to educational areas of a chapter house. Providing fraternity housing is not, in and of itself, a charitable or educational activity. Accordingly, foundations may not fund improvements to the living areas of a chapter house.

The notion that the events reported by *Forbes* could occur at Princeton is astounding. We have no factual knowledge of what occurred at Princeton other than what is described in the article. If the article is correct, however, there would appear to have been a significant spend of charitable dollars on non-charitable activities.

In the course of structuring grants from foundations to house corporations, we have heard many justifications for designating a space as educational where the space is obviously non-educational. One of the most

common is that the non-educational areas are necessary to support the educational areas and the activities conducted in the educational areas.

When asked why it was permissible for charitable dollars to be used to improve living areas, one eating club officer responded as follows:

> "the mission of . . .[the foundation] . . . from day one, has been overwhelmingly to be the tax-exempt vehicle for receiving donations." The clubs . . . have libraries where "a lot of studying" goes on, and "You have to eat, so if you order improvements to the kitchen, that is considered educational."

In the most basic terms, this is simply incorrect. If audited, we believe it highly unlikely that the IRS would sustain this position.

We understand and fully agree that this area of the law is arcane, having little foothold in reality. But the law as we understand it today would not allow funding of a kitchen simply because educational activities occur elsewhere within the same house. The facts as reported by *Forbes* describe a charitable spend to fund construction of improvements that are not "exclusively used" for charitable or educational activity. If true, these expenditures of charitable dollars were not proper.

We have always stressed the importance of engaging tax counsel when using charitable donations to fund construction projects. The reason for this advice is twofold, at least. First, a mistake in granting charitable funds jeopardizes a foundation's exemption as a 501(c)(3). If an impermissible grant is substantial, revocation of tax-exempt status is a real possibility.

Moreover, this kind of improper grant is bad for the community as a whole. If the media, public, and importantly, the IRS believes that abuses are occurring, every housing grant will face higher scrutiny. For the sake of everyone in the business of educating and housing young people on our campuses, we urge Greek leaders to be diligent, thoughtful and careful in analyzing these grants.

Let's be careful out there.

• Sean P. Callan

1 *Exclusive Princeton Eating Clubs Dined On Millions In Tax Subsidies*, Forbes, May 5, 2015, Janet Novack.

Sorority Ends Recognition of Chapter House Following a Dispute With the House Corporation

Alpha Omicron Pi recently announced that it would no longer recognize the chapter house at the University of California at Berkeley. The sorority said it would remove letters from the house, discontinue insurance for the facility, and prohibit chapter business from occurring on the property.

According to an article from Inside Higher Ed,[1] this withdrawal of recognition stems from "an ongoing dispute between the chapter corporation's board and the international organization over who should control the property." The national sorority voted a decade ago to amend its bylaws and transfer all property management responsibilities to the international organization. Of its 135 house corporations, the corporation at UC-Berkeley is the only one that is still refusing to comply with this policy.

This is the not the first major dispute to result from the policy change. In the January 2014 edition of *Fraternal Law*, we reported on litigation between Alpha Omicron Pi and its House Corporation at the University of Minnesota, Tau, Inc., which arose under similar facts.[2] That litigation was settled in June.

Alpha Omicron Pi offered the Berkeley House Corporation a similar deal to its ultimate settlement with the House Corporation in Minnesota. The proposal included the following: the local house corporation could keep title to the house, local alumni could retain a minority number of seats on the board, and nonlocal representatives (presumably those affiliated with the national sorority) would be given a majority number of the seats on the board.

The local members of the house corporation board rejected this proposal with the justification that nonlocal representatives should not be making decisions about repairs to the property and whether or not the property should be mortgaged. That led to Alpha Omicron Pi's decision to withdraw recognition of the house.

Both with Minnesota and with UC-Berkeley, Alpha Omicron Pi has demonstrated a willingness to defend its policy that the national organization should have all property management responsibilities. As policies like this continue to be a growing trend among fraternities and sororities, examples like this will continue to be important to follow.

• Micah E. Kamrass

1 "Alpha Omicron Pi Drops Recognition of House Over Property Dispute." Aug. 5, 2015. https://www.insidehighered.com/quicktakes/2015/08/05/alpha-omicron-pi-drops-recognition-house-over-property-dispute.

2 Harvey, James C. "Who Owns the Sorority House?" *Fraternal Law*, January 2014.

University Panel Finds Fraternity Not Responsible for a Video of a Member Chanting "Rape"

On August 14, 2015, the University of Central Florida suspended the Sigma Nu Fraternity chapter on its campus. The suspension resulted from a complaint with the Student Conduct Office. The complaint references a video where "there's a brother yelling obscenities, like 'Let's rape some [expletives], rape some sluts' and then yelling, 'Rape' over and over again."[1]

According to the Orlando Sentinel, the video was recorded in an off campus apartment where several members of Sigma Nu live. The report said four members of the fraternity were present at the time the video was recorded.[2] The video was recorded by a woman who was not a UCF student. She sent the videos to a UCF student who had previously filed a police report alleging that she had been sexually assaulted at the Sigma Nu fraternity house. The UCF student filed the report with the university, saying that the non-student who filmed the video "sent me the videos because she felt that they may be able to help me in my open police case..."[3] As a result of the more recent complaint including the video, the university launched a Title IX investigation and placed the chapter on an interim suspension pending a university panel hearing.

The panel found that the video shows an individual who was "inebriated and venting" and that members of the fraternity were attempting to calm him down. The panel "found insufficient information to suggest that Sigma Nu as a fraternity is responsible for the remarks made by this individual."[4] The panel's decision must be adopted or rejected by the University before it can become final. Until then, the fraternity's interim suspension remains in place.

This is an important development, and a positive one for fraternal organizations. When an organization violates university rules, it should be punished. When an individual violates a university rule, s/he should be punished. But organizations should not be punished because of the wrongful acts of an individual member who is acting outside the scope of the organization.

• Micah E. Kamrass

1 Russon, Gabrielle. The Orlando Sentinel. http://www.orlandosentinel.com/news/breaking-news/os-ucf-sigma-nu-frat-rape-chant-video-20150814-story.html

2 Id.

3 Id.

4 Panel Says Fraternity is Not Responsible. The Chronicle for Higher Education. http://chronicle.com/blogs/ticker/panel-at-u-of-central-florida-says-fraternity-is-not-responsible-for-members-chants-of-rape/103453?cid=at&utm_source=at&utm_medium=en

Trinity College Abandons Co-Ed Mandate

On September 4, 2015, Joanne Berger-Sweeney, the President of Trinity College, announced that the college was abandoning its requirement that all fraternities and sororities on campus must be co-ed by the Fall Semester of the 2016/2017 Academic Year. According to the President, "gender equity is, and remains, an ongoing priority for Trinity College." In her letter[1] to the Trinity College community, the President reviewed her efforts to meet with a wide variety of Trinity College community members, including alumni, students and faculty. In the end, she acknowledged that some "students who support the goal of insuring gender equity, also want the option of joining single-sex Greek organizations. I support this."

An article of the same date,[2] published online by *The Chronicle of Higher Education*, reported on an interview with the President following the release of her letter. The article summed up the President's position:

> "She said that as she researched other institutions that had considered co-ed policies for fraternities and sororities – she would not name specific colleges – she did not find a successful example."
>
> "I couldn't even find a strong rationale for why it would work, she said."

Nearby Wesleyan University, also in Connecticut has so far, maintained its position, announced a year ago, that by 2017 all of its residential fraternities must be fully co-educational. That position has been challenged in court by Delta Kappa Epsilon.[3] The lawsuit remains pending.

• Timothy M. Burke

1 http://www.trincoll.edu/abouttrinity/offices/president/communityletters/pages/studentlifeannouncement.aspx.

2 "Connecticut's Trinity College Abandons Plan to Make Greek Life Co-Ed," by Sarah Brown, September 4, 2015, *The Chronicle of Higher Education*. Reprinted in the September 8, 2015 Internet edition of *The Chronicle of Higher Education*.

3 See *Fraternal Law*, March 2015, "DKE Sues Wesleyan."

Sigma Phi Epsilon Becomes First Men's Fraternity to Adopt Clear Transgender Policy

Sigma Phi Epsilon appears to be the first traditional men's fraternity to adopt a clear transgender policy. The policy adopted this summer states:

> "Sigma Phi Epsilon is a national Fraternity built on the brotherhood and fellowship of men. Any individual who identifies as a man is welcome to seek membership in the Fraternity. This policy is intended to uphold the mission of Sigma Phi Epsilon as a fellowship of men and should not be interpreted as changing the all-male character of the Fraternity or as a waiver of the Fraternity's exempt status under Title IX."

One writer described the adoption of that policy this way:

> "Transgender acceptance and inclusivity, probably *the* predominant hot-button topic of 2015, has officially made its way into one of the most tradition-centric and exclusive networks of men in our country. American fraternities, widely perceived as an outdated good ol' boy club stuck in its ways, made history recently."[1]

Actually, several National Panhellenic Conference women's organizations have already adopted specific policies making it clear that they welcome those who identify as women to be considered for membership. Delta Gamma announced in 2014 that its "membership is open to women and transgendered persons who identify themselves as women."[2] More recently, Sigma Sigma Sigma adopted an "inclusivity" policy providing that "a potential new member who self-identifies as a woman shall be treated as a woman regardless of any other circumstances."

Sig Ep's decision is further evidence that the acceptance of transgender individuals continues to grow, not just on ESPN.

- Timothy M. Burke

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1 Dillon Cheverers, http://totalfratmoves.com/sigep-make-history-by-opening-membership-to-transgenders/

2 *Fraternal Law*, September 2014, Delta Gamma States Transgender Policy.

2015 Fraternal Law Conference

The 2015 Fraternal Law Conference, scheduled for Thursday, November 12th and Friday, November 13th, is already shaping up to be among the best. Speakers already committed include: Justice Gary R. Wade of the Tennessee Supreme Court, a long-time national activist with Phi Delta Theta; Dr. Javaunne Adams-Gaston, Vice President for Student Life at The Ohio State University; Greg Lukianoff, the President and CEO of FIRE, the Foundation for Individual Rights in Education, which has frequently litigated Freedom of Speech rights on college campuses; a trifecta of speakers on Title IX and sexual assault disciplinary issues, which includes Joshua Engel, a former prosecutor who now represents students accused in campus disciplinary proceedings, and Kate Lawson, an attorney and the Title IX Coordinator at Xavier University, and Dr. Jeffrey Sun from the University of Louisville; and a panel from the University Risk Management and Insurance Association will include speakers with risk management experience at Penn State, the University of Chicago, Southern Methodist and the University of Cincinnati. Of course members of Fraternal Law Partners of Manley Burke will be addressing numerous other issues related to fraternity foundations and taxes, governance, and liability.

You can register for the Fraternal Law Conference by clicking on http://fraternallaw.com/library-annex/fraternal-law-conference/, or for more information, email Kathie.Thomas@ManleyBurke.com.

This is the 16th National Fraternal Law Conference and each year it has drawn lawyers, national fraternity leaders, and others involved with Greek organizations from around the country. We hope you will join us for what will be a valuable discussion on legal issues facing fraternities and sororities.

- Micah E. Kamrass

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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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