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Tragedy at Penn State and its Consequences

What could they have been thinking, these men of principle?

Timothy Piazza is dead. For absolutely no reason. His parents are left to grieve in the wake of the inexplicable conduct of his would-be "brothers." Their lives too are now changed utterly. The magnificent modern Beta Theta Pi House on the Penn State campus is shuttered, the Chapter closed and permanently banned from the campus.

Tim was excitedly expecting to begin the path to join the brotherhood of Beta Theta Pi. That path should have led to an important enhancement of his college experience and forged bonds of lifelong friendships. But it was not without a certain amount of trepidation that he faced what would come next. He texted his girlfriend "They're going to get me f---ed up."

He was right. As a part of the chapter bid night "celebration," Tim, well under the Pennsylvania Commonwealth's age to legally consume alcohol, was supplied with a wide assortment of alcoholic beverages and expected to drink. He did, to the point that a later medical estimate of his blood alcohol content was .40. Video shows him repeatedly unable to stand. He ultimately fell down a flight of stairs, and was knocked unconscious. Shortly before midnight, one brother texted "Tim Piazza might actually be a problem ... going to need help." But no call for help was made.

Instead, supposedly well-meaning brothers moved him to a couch and put a backpack on him to prevent him from rolling over and potentially suffocating in his own vomit. And there he lay hour after hour after hour, well into the next morning.

Members of the Chapter knew they had a problem. One suggested in a text "Just tell them ... (we) found him behind (a bar) the next morning around 10:00 a.m. and he was freezing cold, but we decided to call 911 instantly because the kid's health was paramount." Finally, a full 11 hours after he fell down the stairs, emergency services were called. He was rushed to a local hospital, then flown to a more specialized hospital where he later succumbed. He died from the multiple injuries, too long gone untreated, including a ruptured spleen, a collapsed lung, multiple wounds to his head, which had bounced off of an iron railing and a concrete floor, and brain damage.

Both Penn State and Beta Theta Pi Headquarters responded immediately to the horrific facts. The Chapter was closed. Penn State said permanently. Penn State and its IFC went on to temporarily shut down all fraternity social events.

Dr. Eric Barron, the President of the University, said later, after the University's initial imposition of corrective action failed to halt alcohol-related misconduct:

> "Many members of the Penn State administration and Board of Trustees are wondering if we are witnessing the beginning of the end of Greek life at Penn State.
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> But surely the closure of a chapter and vacating of a house would be a deterrent for all others, and a "report card" would provide warning signs on when an intervention was needed. The tragic and heart-wrenching death of a student at the Beta Theta Pi fraternity completely changed this view. The Beta fraternity was viewed as a model fraternity and reflected a national perspective on many best practices. The house, privately-owned and situated like all other fraternity houses on private property, was beautiful, the subject of a multi-million dollar renovation. Both the Beta alumni and the national organization provided strict rules of behavior. The brothers had a "no alcohol" policy, which stated that anyone caught drinking would be expelled from the fraternity. There was a live-in oversight as contracted through an external agreement with the national organization. The owner of the house wired it for video surveillance. There were no outward signs of large parties, which are frequently the bane of community members. All indicators suggested a "model" fraternity. Yet, a death occurred because a student was forced to consume dangerous amounts of alcohol in a hazing ritual. The story is even worse. The story is incomprehensible.
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> In the past, Greek life had a powerful positive effect on many of our alumni. The positive is well worth protecting – the value of brother-

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hood and sisterhood and the great service associated with the Greek life. But the stories cited above cannot continue. If they do, I predict that we will see many empty houses and then the end of Greek life at Penn State."

Beta Theta Pi, a proud national fraternity, that takes seriously the enforcement of its policies and the development of its members as Men of Principle, is left to express its deepest sympathy to Tim's family.

Now, the next stage in the lives of those alleged to be the most responsible begins. Eighteen of Tim's would-be brothers now face criminal charges. Some of them must consider the very real possibility that part of the rest of their lives will be spent in prison. Some face merely charges of providing alcohol to minors, but eight individuals and the Chapter itself will stand before a judge and jury in the Common Pleas Court of Centre County, Pennsylvania and answer to a charge of negligent homicide and the possibility of five years of incarceration.

• Timothy M. Burke

Lawsuit and Possible Sale Follows Closing of Beta House

Make no mistake, the death of Tim Piazza is the utmost tragedy of the events of February 2nd and 3rd in the Beta Theta Pi House at Penn State. The consequences too are very real for the eighteen members of that now closed chapter who are facing criminal charges. But there are other unique consequences as well.

On March 10th, Donald G. Abbey filed suit in the Centre County Court of Common Pleas against the Alpha Epsilon Upsilon Chapter of Beta Theta Pi, Inc. Abbey, a wealthy alum, provided millions of dollars for the renovation of the chapter house and certain operations. According to the complaint, over 10 million dollars in total.

Abbey had, according to the complaint, provided approximately $7.7 million dollars to Alpha Upsilon "for the repair reconstruction and improvement of the house," but thereafter it was closed for a period of time. When the fraternity was ready to recolonize, a commitment was made to comply with Beta's Men of Principle Program and Abbey committed millions of additional dollars to prepare the house for recolonization and to assist in funding the recolonization and Men of Principle effort. Abbey and the Alpha Upsilon Chapter entered into a funding agreement with the Alpha Upsilon Chapter of the Fraternity of Beta Theta Pi, Inc. The agreement provided that should Alpha Upsilon not follow the Men of Principle initiative or fail to prevent excessive damage to the house, or ceases to be a chapter of Beta Theta Pi, Alpha Upsilon was obligated within 60 days to repay to Abbey the new money provided to assist in the recolonization and the Men of Principle effort. A separate provision of the agreement dealt with the money originally put up by Abbey for the earlier renovation of the house. With regard to those funds, the agreement specifically provided that if Alpha Upsilon "ceases to be a chapter of the general fraternity and the house is utilized for a purpose other than Alpha Upsilon of Beta Theta Pi, unless agreed to by Abbey," then those original funds had to be repaid as well. If either set of funds were not repaid, a lien would be placed on the house in the amount of those funds. This litigation is in its earliest stage. It may be some time before the court resolves it if the parties cannot reach a settlement. But the obligation to repay an alum donor $10,000,000 or more is not the only unique consequence growing out of the tragedy of Tim Piazza's death.

On October 29, 1928, the Pennsylvania State College deeded to the Alpha Upsilon Chapter of the Fraternity of Beta Theta Pi, the land on which the house was built. That was not an unusual an unusual event. In many cases in that era, colleges welcomed fraternities that would build houses providing residences for its students on what had been university property. But that deed specifically provided that the university has the right to repurchase the property "if for any reason the said building or buildings should cease to be used as a chapter or fraternity house, for the use, benefit and behalf" of the Alpha Upsilon Chapter of the Fraternity of Beta Theta Pi. Under the terms of the deed, if the parties cannot agree on the price to be paid, the price shall be fixed by an arbitrator. The chapter may negotiate with regard to the price, but under the terms of the deed, it has no choice but to sell the property if Penn State wants to purchase the property and is willing to pay the price fixed by arbitration.

It is no idle possibility that Penn State would do just that. In fact, it has done so in the past.

The fraternity house that used to be next door to the now closed Beta Theta Pi House was Phi Delta Theta's house. Phi Delta Theta's local house corporation had acquired the land on which its house was built pursuant to a deed with a similar provision in it. Phi Delta Theta closed its Penn State Chapter because of the Chapter's failure to conform to the fraternity's alcohol-free housing policy. When the chapter was closed, Penn State exercised its right to acquire the property and immediately thereafter tore down the Phi Delta Theta house.

What was a magnificent house, largely as a result of the funds provided by Donald Abbey, is now closed, never again to be a Beta Theta Pi house. Whether the university will purchase the house or not remains to be seen. But the sale of the house, either to Penn State

or to another fraternity, may well be the only hope that the Alpha Upsilon Chapter of the fraternity of Beta Theta Pi, Inc. has of meeting its financial obligation to Mr. Abbey. That is until the next shoe falls and Piazza's estate files its own civil action.

And these are just the consequences so far due to the failure of members of the Alpha Upsilon chapter to fulfill their obligations as Men of Principle or simply as law abiding citizens.

• Timothy M. Burke

Zoning Issues For Closed Greek Houses

Recent events leave the future of the Greek system at Penn State University uncertain at best. Penn State President Dr. Eric Barron recently wrote as follows:

> In the past, Greek life had a powerful positive effect on many of our alumni. The positive is well worth protecting – the value of brotherhood and sisterhood and the great service associated with Greek life. But . . . [if poor behavior continues] . . . I predict that ***we will see many empty houses*** and then the end of Greek life at Penn State.

The legal implications of a public university attempting to banish Greek organizations are addressed elsewhere in this issue of the *Fraternal Law Newsletter*. The purpose of this article is to examine a different question - what might happen to those ***empty houses***?

Like other municipalities, college towns have zoning ordinances. Many of these local ordinances regulate the location and use of fraternity and sorority houses. Today, these local zoning ordinances increasingly condition the lawfulness of use as a fraternity/sorority house upon recognition by the host college or university.

For instance, the zoning ordinance in Hanover, New Hampshire, home of Dartmouth College, permits fraternity chapter houses only when "operated in conjunction with another institutional use" (i.e. Dartmouth College, arguably the only institution in Hanover). Similarly, the City of Bloomington, Indiana allows fraternity houses only where "Indiana University has sanctioned or recognized the students living in the building as being members of a fraternity or sorority through whatever procedures Indiana University uses to render such a sanction or recognition". Under these ordinances, where Dartmouth or Indiana withdraws recognition of a Greek organization, the condition is broken and zoning approval for the chapter house fails.

State College, Pennsylvania has such a conditional ordinance. Under the State College ordinance, fraternity houses are defined with reference to Penn State. The State College ordinance reads in pertinent part as follows:

> Fraternity House. An organized living arrangement within a building having common dining and kitchen facilities and multiple bedrooms where residents are students of the Pennsylvania State University (hereinafter called University) and are members of a University recognized fraternity or sorority. University recognition shall be determined by the University through its procedures as may be established from time to time. . . .

As in Hanover and Bloomington, municipal approval of the chapter house use is conditioned upon recognition from the host institution, in this case Penn State.

Under these types of ordinances, the loss of zoning approval as a chapter house is significant. In that event, the chapter house must be used in compliance with the underlying zoning district designation. Often, that designation is some form of residential zoning meaning the chapter house may be used only as (i) a single family residence or (ii) an apartment building or rooming house. Either way, the value of the property is substantially reduced.

The prospect of these dominoes falling is alarming. It is bad enough to lose a chapter. But the economic loss arising from loss of zoning approval as a chapter house may be overwhelming. But all is not lost. There are several legal arguments that may be successfully arrayed in a given case to avoid the economic loss attendant to loss of recognition.

The legal arguments available in these cases are highly fact specific requiring care in their presentation. For example, a house corporation recently challenged the Hanover zoning ordinance arguing that because its use as a chapter house pre-dated the applicable zoning ordinance by decades that the chapter house use was a lawful non-conforming use. The New Hampshire Supreme Court recently ruled against the house corporation because it presented no evidence that the chapter house ***did not*** operate in conjunction with an institution prior to the enactment of the zoning ordinance. *Dartmouth Corporation of Alpha Delta v. Town of Hanover*, (*unpublished*), (http://www.courts.state.nh.us/supreme/opinions/2017/2017020alphadelta.pdf).

While an unfortunate result, the decision dramatically points out how fact sensitive these cases can be. The New Hampshire Supreme Court required specific proof of arcane facts, failing which it ruled against the house corporation. Given the detailed nature of these

cases, a robust discussion of the possible defenses to a zoning action based on de-recognition is beyond the scope of this article.

What can be said is that given the value of these assets, it may be prudent to review the zoning ordinances applicable to these portfolios to understand what de-recognition may mean. It may be that prophylactic measures could be taken to improve the legal position of the house corporation before adverse university action occurs. At the very least, house corporation and Greek organizations can be prepared for action if de-recognition occurs. We encourage all interested parties to consult their legal counsel to determine the zoning risks attendant to their real estate positions.

- Sean P. Callan

Penn State President Imposes New Rules for Greek Life

Following the tragic death of Tim Piazza, Penn State University President Eric Barron authored an open letter to the campus community on April 10, 2017. In this letter, President Barron announced a series of new rules and regulations for the Penn State Greek Community. The new rules are as follows:

- Formal recruitment of new fraternity and sorority members, also known as rush, will be deferred one semester so that only students who have completed 14 credit hours may participate. No new freshmen at Penn State will be able to rush next fall. In consultation with various constituents within the Penn State Greek-letter community and their national organizations, other requirements and the possibility of deferring rush until a student's sophomore year will be considered for 2018-19. Further discussion about the size of new membership classes within these organizations will be part of an ongoing review.
- New social restrictions will include a strongly enforced prohibition against underage possession or consumption of alcohol in chapter houses and activities. Service of alcohol at social events must follow Pennsylvania law (e.g. limited to those 21 years of age or older), and must be distributed by RAMP trained servers only, though third party, licensed RAMP certified servers are preferred. Only beer and wine may be served, and kegs will not be permitted.
- Attendance at social events will be limited to the legal capacity of the chapter house. No day-long events will be allowed, and no more than 10 socials with alcohol per semester will be permitted for each chapter, a reduction from the current limit of 45, which was established by Penn State's Interfraternity Council.
- Failure by the Greek-letter organizations to effectively prevent underage consumption and excessive drinking in their facilities and activities may lead the University to adopt further restrictions, including the possibility of declaring that the system must be completely dry.
- These social restrictions will be enforced by a new monitoring protocol that will use both third parties and a combination of student leadership and University staff. When discovered, any violations of these expectations will result in appropriate and significant disciplinary action.
- There will be no tolerance for hazing in these organizations, as all hazing is a violation of Pennsylvania law. Hazing that involves alcohol or serious physical abuse will likely lead to loss of University recognition. Increased educational programming focused on preventing hazing will be mandatory for all chapter members.

Barron's letter concludes with his view that if students continue to violate the university's rules that "we will see many empty houses and then the end of Greek life at Penn State."

While some of these newly announced regulations are already relatively standard on campuses across the country, others raised eyebrows. The switch to deferred recruitment, announced by this letter, seems to suggest the entire Greek system and all future are freshman are being punished for the bad acts (in this case horrific acts) of a few groups. The same can be said for Barron's prediction of the end of Greek life at Penn State. Many feel that such a ban at a public university would be unconstitutional. Nonetheless, universities should strive to punish bad actors, and to otherwise allow the students and groups who follow the rules to continue to have all of the rights of other students and student groups.

- 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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