



FRATERNAL LAW™

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Special Edition

Max Gruver died In September, 2017, as a result of hazing on the LSU campus. In the nearly two years since Max's death, *Fraternal Law* has closely monitored the civil and criminal cases that have arisen in connection to what happened that night at LSU. In the last few weeks, we have seen two major decision in each of those cases as well as changes to Louisiana's Max Gruver Anti-Hazing Law.

Details on all these new developments follow in this special edition of *Fraternal Law*.

Jury convicts Matthew Naquin of negligent homicide in the death of Max Gruver

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On Wednesday, July 17, 2019, at the end of a six-day trial, a jury convicted Matthew Naquin of negligent homicide in the death of Max Gruver. Gruver died 2 years ago of alcohol poisoning after an alleged hazing incident at the Phi Delta Theta house at LSU.

For the six days of the trial both the parents of Max Gruver and the parents of Matthew Naquin sat in the courtroom listening to the arguments of the counsel and watching the parade of witnesses each day. The testimony of more than two dozen pledges and, some current active members of the Chapter, described the "Bible Study" where pledges were lined up against the wall, asked questions and drank alcohol when they couldn't answer correctly. The parties disputed whether that drinking was voluntary. The Baton Rouge Advocate reported that Gruver's alcohol level was more than 6 times the legal limit to drive in Louisiana. That figure was consistent with the testimony of the toxicologist who testified at the trial.

Among the other witnesses at the trial were LSU administrators, police officers, the local coroner, and from the FBI, 2 special agents and a digital forensic examiner. The FBI witnesses dealt with the examination of Matthew Naquin's cell phone, which Naquin had attempted to swipe clean of potentially incriminating evidence. Naquin faces of charges related to that alleged obstruction of justice charge which will be dealt with in a separate proceeding before a different Judge. All told more than 40 witnesses testified.

The defense, on behalf of Naquin, presented only 2 of the witnesses, those were Naquin's roommate and very briefly one University Administrator.

The jury which heard that case was selected the day before the trial actually started from a pool of over 100 all of whom were in the courtroom. In the end, it was a racially diverse group of 4 men and 2 women who, after hearing all the evidence, unanimously found Naquin guilty.

Naquin will be sentenced on October 16, 2019. He faces up to five years in jail but could also end up simply with probation. Following his conviction, Naquin was led out of the courtroom to the jail only to be released later that afternoon after a \$10,000 bond was posted.

The Baton Rouge Advocate, in its post-conviction article reported that: "Gruver's parents, Steven and Rae Ann – said the verdict meant justice for their son and for Matthew Naquin, the young man found criminally negligent in their son's death."

CNN reported that Naquin's lawyer, John McLindon, continued to argue Naquin's innocence and quoted him saying "To pin this all on one guy was just really unfair."

Three other members of the Chapter have been charged with misdemeanor hazing related to Gruver's death. Two of those individuals pled no contest on July 26, 2019 were sentenced to 30 days in jail and fined \$500 – the maximum penalty the law provided for at the time of Gruver's death. The charge against the third is yet to be resolved. All three testified in the Naquin trial.

Twenty years prior to Gruver's death Phi Delta Theta adopted a national alcohol-free housing policy, which was in place at the time of Gruver's death.

Virtually, immediately after learning of Gruver's death, Phi Delta Theta shuddered its Chapter at LSU based on the Chapter's violation of that policy. The university has announced that it will not consider allowing Phi Delta Theta to return to campus until at least until 2033.

LSU loses Motion to Dismiss over the Gruver Estate's Title IX claims

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On July 19, 2019, Chief Judge Shelly Dick of the United States District Court for the Middle District of Louisiana issued a decision that could have sweeping implications for fraternities and sororities.

As part of the civil case related to the tragic hazing death of Maxwell Gruver, a former student at Louisiana State University, Mr. Gruver's parents brought a Title IX claim against the University¹. Title IX prohibits discrimination on the basis of sex at universities that receive federal funding. While the most recent decade has seen an explosion of Title IX cases arising from allegations of sexual assault, the Gruvers' case is the first to assert a university's responsibility for a hazing death on the basis of sex discrimination.

In the complaint of their civil suit, the Gruvers stated that LSU strictly enforces its anti-hazing policies against women's sororities, but that it provides far laxer enforcement for its men's fraternities. As support of this argument, the Gruvers claimed that there were 20 findings of policy violations among the 27 men's fraternities on campus during the last five years, yet the University remained deliberately indifferent to enforcement. This is contrasted with the Gruvers' assertion that "when LSU has received reports of hazing at its sororities, the sanctions LSU has imposed on the sororities have been significantly greater in length and degree than sanctions LSU generally imposes on fraternities for comparable misconduct."

Summarizing the Plaintiff's argument, Judge Dick wrote "as a result of LSU's policy and practice responding differently to the hazing of male students than the hazing of female students, the hazing of female Greek students is 'virtually nonexistent,' while the hazing of male Greek students is rampant."

LSU brought a motion to dismiss the Title IX claim on the grounds that this type of Title IX claim was not actionable. Since motions to dismiss occur prior to discovery, the Court is forced to decide to the motion construing the facts most favorably to the non-moving party, which in this instance is the Gruvers.

The Court found that the Gruvers "clearly alleged that LSU misinformed potential male students about the risk of hazing in fraternities, had actual notice of numerous hazing violations, and failed to address or correct the hazing issue for Greek males while aggressively and appropriately addressing and correcting hazing issues in sororities, thereby providing protection to female Greek students that was not equally provided to Greek male students." For this reason, the Judge denied LSU's motion to dismiss, allowing the Title IX claim to proceed to discovery.

Even though this is just a preliminary ruling on a motion and not a decision on the merits of the case, and even though this decision is likely to be appealed by the University, the decision could still have widespread implications in the fraternal world. Universities are now on notice that they must have equally enforce their policies and procedures for both men's and women's groups. Failure to do so could result in claims from harmed individuals, and also from fraternal groups who feel they have been punished disproportionately to groups of the opposite sex. *Fraternal Law* will continue to monitor this case and to provide updates.

1. Case No. 3:18-cv-00772-SDD-EWD

Louisiana Legislature Amends Hazing Law to Impose stricter requirements.

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After the death of Max Gruver in 2017, the Louisiana legislature adopted one of the toughest hazing laws in the country. Now the legislature has imposed even greater requirements when it comes to reporting suspected incidents of hazing.¹

Under the new law, which became effective on August 1, 2019, the failure of any representative of either a chapter or national organization to report suspected hazing “as soon as practicable under the circumstances” may subject the organization to (a) payment of a fine of up to \$10,000, (b) forfeiture of any public funds received by the organization, and (c) “forfeiture of all rights and privileges of being an organization that is organized and operating at the educational institution for a specific period of time determined by the court. If the hazing results in serious bodily injury or death of the victim, or results in the victim having a blood alcohol concentration of at least 0.30 percent..., the period of time shall be for not less than four years.”

The earlier version of the law gave a national organization that received a report of hazing fourteen (14) days to complete an investigation to determine the veracity of the allegations prior to making a report to law enforcement. Now, organizational representatives who receive a report of hazing must report it to law enforcement virtually immediately, and the report must “include all details received by the organization relative to the alleged incident with no information being redacted, including the name of all individuals alleged to have committed the act or acts of hazing.” The assistance of nothing being redacted may well have resulted from a series of incidents in which some involved in hazing incidents attempted to destroy or hide evidence, as was most recently the case in the death of Max Gruver when Matthew Naquin tried to destroy evidence on his phone. (See the Naquin conviction article, which is a part of this issue.)

Educational institutions receiving a report that alleged that hazing has occurred have these same obligations imposed on them. Moreover, any educational institutional that fails to so report may be subject to a fine of up to \$10,000.

The challenge for representatives of a national fraternal organization or a local chapter in Louisiana will be to determine what constitutes knowing that “one or more of the organization’s members were hazing another person.” Is hearsay speculation sufficient to trigger an obligation to report? Is an anonymous report on the fraternal law hotline passed onto an organization sufficient to obligate the organization to report? What constitutes “as soon as practicable”? May the organization involved consult with its attorney to determine whether or not the obligation exists, before reporting? Much of the obligation is not clear. What is clear, however, is how seriously the State of Louisiana is taking hazing.

Fraternal organizations and their members must also take hazing seriously, both in Louisiana and wherever their chapters may exist.

1. 2019 La. Sess. Law Serv. Act 382 (H.B. 443) (West).

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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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