

IN THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

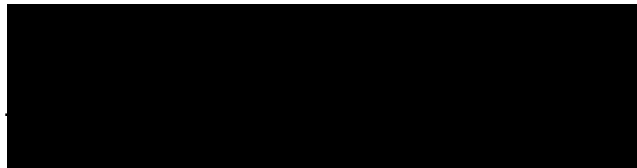
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IN RE: APPLICATION OF STACY PARKS :  
MILLER, DISTRICT ATTORNEY OF : No. CP-14-MD-  
CENTRE COUNTY REQUESTING AN :  
ORDER DIRECTING THAT AN :  
INVESTIGATING GRAND JURY BE : Notice Number 11  
SUMMONED :

TO THE HONORABLE THOMAS K. KISTLER, SUPERVISING JUDGE:

REPORT NO. 11

We, the First Centre County Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, having obtained knowledge of such matters from witnesses sworn by the Court and testifying before us. We make the following findings of fact upon proof by a preponderance of the evidence and issue these recommendations for legislative, executive, or administrative action in the public interest. So finding with no fewer than twelve concurring, we do hereby make this Report to the Court.



First Centre County  
Investigating Grand Jury

Dated: 10/19/17

IN THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

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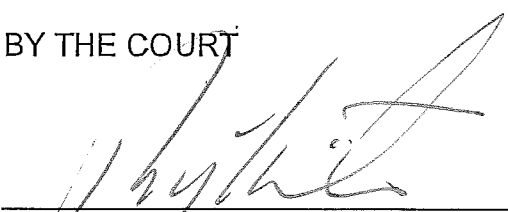
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FINDINGS AND ORDER

AND NOW, this 20<sup>TH</sup> day of OCTOBER, 2017:

IT IS HEREBY ORDERED that **Report Number 11** is accepted and shall be filed as a public record with Centre County Court Administration pursuant to 42 Pa.C.S. §4552. The Report may be inspected by any person. After a review of the record, the Court makes a finding that the Report is based upon facts received in the course of the various investigations authorized by this Court and is supported by a preponderance of the evidence. The Centre County Court Administration is directed to distribute a copy of the Report along with this Order to each of the individuals listed below.

BY THE COURT

  
THOMAS KING KISTLER, P.J.  
Supervising Judge of the Centre County  
Investigating Grand Jury

Dated: 10.20.17

DISTRIBUTION:

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Main, University Park, PA 16802  
The Pennsylvania State University Board of Trustees, 205 Old Main, University Park,  
PA 16802

D.A.

THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF STACY PARKS  
MILLER, DISTRICT ATTORNEY OF  
CENTRE COUNTY REQUESTING AN  
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SUMMONED

No. CP-14-MD-

Notice Number 11

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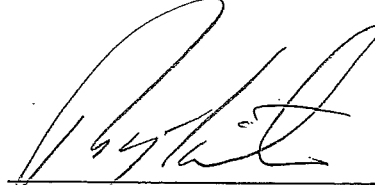
ORDER

AND NOW, this 13 day of December, 2017.

IT IS HEREBY ORDERED that, the Commonwealth having withdrawn any and all objections to, and requested the release of, the Response submitted by the Pennsylvania State University, the Court consents to the Commonwealth to publicly release and distribute Grand Jury **Report Number 11**, previously tentatively approved by the Court by its Order dated October 20, 2017, together with the Pennsylvania State University's written Response (and supporting documentation). This Order is effective immediately.

It is FURTHER ORDERED that the University's Response must be concurrently appended to, and provided together with, the Report to any recipient of a hard copy. At the Request of the Commonwealth, the supporting documentation authorized for publication, together with the Report and Response, may be made separately publicly available on the website of the Office of the District Attorney, provided that the University's Report is made part of the same electronic file with the Report for download.

BY THE COURT



THOMAS KING KISTLER, J.  
Supervising Judge of the Centre County  
Investigating Grand Jury

Dated: 12-13-17

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## **INTRODUCTION**

**COPY**

We, the members of the First Centre County Investigating Grand Jury, having received evidence pertaining to matters occurring in Centre County, Pennsylvania, pursuant to Notice of Submission of Investigation Number 11, do hereby make the following findings of fact, conclusions, and recommendations.

### **I. FINDINGS OF FACT**

#### **The Alpha Upsilon Chapter of Beta Theta Pi**

On the evening of February 2, 2017, the Pennsylvania State University chapter of Beta Theta Pi fraternity hosted its traditional bid acceptance night<sup>1</sup> event at their fraternity house located at 220 N. Burrowes Street in State College, PA. The fourteen individuals commencing their pledge process for admission into the Beta Theta Pi brotherhood all received text messages earlier that evening from Daniel Casey, their "pledgemaster,"<sup>2</sup> directing all of them to "Be outside the kitchen doors behind the house at 9:07. Dress code is shirt, tie, and jacket."

Among the hopeful pledges anxiously gathered in the back parking lot behind the Beta house in the biting February cold that evening stood 19 year old sophomore Timothy Piazza. Once directed to do so, Timothy, along with his fellow pledges, filed into the Beta Theta Pi house behind a Beta brother, each trusting their safety to those

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<sup>1</sup> A "bid" is an invitation to a person to become a member of the fraternity. Upon accepting a "bid" the prospective member becomes a junior member of the fraternity called a "pledge." After serving a period of time as a "pledge," he becomes a full member of the fraternity called a "brother."

<sup>2</sup> The "pledgemaster" is a colloquialism for the fraternity brother tasked with recruiting and shepherding new members through the pledging program.

whose brotherly friendship they sought to earn. Tragically, Timothy would never knowingly set foot outside the fraternity's doors ever again. When he next emerged, he lay unresponsive on a paramedic's stretcher fighting a losing battle to live.

This Grand Jury initially investigated what occurred inside the walls of the Beta Theta Pi house that evening. Hours of testimony and scores of witnesses revealed what Timothy Piazza and his fellow pledges endured at the hands of their future "brothers." Their treatment was not unique to this pledge class within the organization, nor exclusive to the Beta Theta Pi fraternity. Indeed, "hazing" proved routine at Beta Theta Pi and had been for years. The Grand Jury determined it would be failing its duty to the Commonwealth as a whole if it did not report to the public both what it learned and the certain dangers it foresees if students, university administrations, and the General Assembly resist adopting profound changes on college campuses and communities in Pennsylvania.

### **A History of Hazing**

According to testimony provided to the Grand Jury over multiple days, the history of hazing by this fraternity *at a minimum* extends back multiple semesters. Jonah Neuman admitted to the Grand Jury that he "ran the gauntlet"<sup>3</sup> when he pledged Beta his freshman year in the fall of 2015, four semesters prior to Tim Piazza's death.

The next semester, a year before Tim's death, in the spring of 2016, Adam Mengden testified that his gauntlet began on the 3<sup>rd</sup> floor of the Beta house when his

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<sup>3</sup> "Running the gauntlet" is a type of hazing where pledges are required, on Bid Acceptance Night, to run throughout the fraternity house, stopping at various intervals to speed drink copious amounts of alcoholic beverages, including beer, wine, and vodka.



pledge master handed him a 1.75 liter bottle<sup>4</sup> of Crown Russe vodka to drink. Then, further down the hallway, another brother pressed an already punctured beer can in Adam's hand to suck down in a manner known as "shot gunning." He then raced to the second floor where Adam guzzled from a whiffle ball bat filled with beer, after brothers directed him to use it to spin around a certain number of times. The last station consisted of a "beer ping pong" set up where brothers required Mengden to drink the cup of beer if he could not shoot a ping pong ball into the beer cup. Mengden testified that before his ball could bounce into the cup, a brother swatted the ball away, essentially ensuring that Mengden would consume the entire cup of beer.

Text messages extracted from the cellular telephones of Brendan Young and Daniel Casey (pledge master and assistant pledge master, respectively) during the spring of 2016 expose the brothers planning a wide array of hazing activities for that coming semester's pledge class. In April 2016, Young texted to Casey "[The pledges] arrive at 10 and do all the tasks I told them to do, then they go back to their dorms to get a bag for the week. When they come back, they do a case race and then a lineup.<sup>5</sup> I'll tell you the week long plan when you get here tonight." One day later, Young informed Casey "I took it easy on them this morning because last night was a massacre." Casey responded, "Was there pledge fitness and did you play any music? Yeah, last night was shitty."

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<sup>4</sup> Also referred to as a "handle" by the various pledges and brothers

<sup>5</sup> Based on testimony provided by other witnesses such as James Vivenzio, the Grand Jury understands a "line up" to occur when fraternity brothers require pledges to physically stand in a line and perform various acts of hazing, typically passing some kind of alcohol up and down.

Young also acknowledges in text messages with others that he would be administering "Beta brew" to the pledges in April 2016. Beta brew, according to State College Police Detective Scicchitano's interviews, consisted of a variety of old food and condiments blended together for the pledges to drink. Brothers forced to drink it admitted to the detective they became ill and vomited. The same day Young planned the Beta brew, he answered Casey's question regarding the previous night's activities as "not great. It took them a while to drink it, so I lined them up halfway through and then gave them the chance to drink the rest or go through a lineup." Young confirmed the pledges eventually "did it," but followed up by calling them "pussies." In other messages by Young to various friends or even family, he confesses to "smacking" the pledges; obtaining goldfish from Petco; arranging with Casey to make "blood and piss;"<sup>6</sup> and enjoying "positive feedback from the brothers" after initiating the pledges through "hell week."<sup>7</sup>

20 year old Beta brother Gregory Rizzo informed police that during his rush<sup>8</sup> week in the fall semester of 2016,<sup>9</sup> he was the oldest of 29 total pledges. In the fall of 2016, Daniel Casey (the "pledge master" in the spring of 2017) filled the role of assistant pledge master while Brendan Young (President during Tim Piazza's death) lorded over new recruits as the "pledge master." Rizzo described his bid acceptance night as very similar to what the Grand Jury learned Timothy Piazza endured leading to his death. After a ritual, he and the other 28 pledges ran an obstacle course of drinking games that

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<sup>6</sup> Referring to concoctions made to appear like blood and urine (i.e. yellow Gatorade substituting for urine).

<sup>7</sup> From the testimony of various witnesses, the Grand Jury understands "hell week" to generally occur in the final week of pledging in which hazing becomes considerably more severe and frequent.

<sup>8</sup> Rush week, according to testimony heard by the Grand Jury, precedes the pledging process, and occurs when students visit various different fraternities to determine whether they want to seek a formal "bid," or invitation to pledge, from the fraternity.

<sup>9</sup> The semester immediately prior to Timothy Piazza's death.

required him to imbibe from a large bottle of vodka, shotgun a beer, and spin around a whiffle ball bat before "chugging" more beer. Following this obstacle course, Beta hosted a social where they openly furnished additional alcohol to the pledges as well as invited guests whether these people were 21 years old or not.

Rizzo explained that during his pledge Hell Week, Casey and Young required pledges to engage in another "crate race" (a drinking competition described more fully below) during which several pledges vomited; perform physical calisthenics such as squats, push ups, and planks; and participate in a "mind game" ceremony. During this ceremony, Beta brothers individually escorted pledges into a room with a pillow case covering their heads before asking if they were willing to walk over glass for their brothers and leading them over a path of potato chips. They asked whether the pledges would drink their brothers' blood before handing them a glass of tomato juice and Tabasco sauce. They asked if the pledges would be willing to drink their brothers' urine before making them consume Gatorade. Finally, the brothers asked the pledges if they would be willing to "take a hit" for their brothers before brothers sharply struck each pledge with a flat, wooden paddle.

Part of his rush activities that he disclosed included a "crate race," which consisted of the brothers dividing pledges into teams tasked with jointly finishing the contents of a "crate" provided to them. Each "crate" contained a 1.75 liter bottle of vodka, a 30-can pack of beer, and a box of several liters of wine. The brothers crowned the first team to successfully consume all the alcohol as the winner. Rizzo testified that the pledges became very drunk to the point of illness as a result.

Text messages police retrieved from Brendan Young's cell phone made clear to the Grand Jury that alcohol figured prominently into Young's planning of Bid Acceptance Night in the fall of 2016. Young specifically instructed Michael Angelo Schiavone that "we need booze for bid acceptance tomorrow night." When asked how much by Schiavone, Young succinctly answered "A lot." In a later text message, Young specifically ordered "a pallet and a bunch of handles."<sup>10</sup> In a message Young sent to another individual the day of fall 2016's Bid Acceptance Night, Young explained, "I have the obstacle course set up. I just need guys to read and to be involved in the drinking tonight." In text messages on Young's phone, brothers anticipate at least two pledges will pass out and/or vomit, a behavioral response described in a text to Young as "par for the course."

In the fall of 2016, hell week texts show Young messaging about "Beta brew tonight for the pledges" and "paddling tonight! I've got pledges to paddle." In December, Young laments in a text to his girlfriend that he is "burnt out from hazing." Among these texts included a conversation on December 1, 2016 between Young and his girlfriend in which his girlfriend writes "take it out on the pledges." Young responds "Whip the dick out?" His girlfriend replies "If there was ever a time for an elephant walk, it would be tonight" to which Young retorts, "my least favorite part of pledging." The Grand Jury learned through another witness, James Vivenzio (whose horrific pledging experience at the hands of a different fraternity is detailed later in this report), that an "elephant walk," consists of fraternity brothers forcing pledges to walk in a circle with their finger inserted

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<sup>10</sup> A "handle" is a larger sized bottle of whiskey or other spirit shaped to include a handle. The Grand Jury saw these bottles on video used by brothers throughout the gauntlet.

in the anus of the pledge in front of them while holding the scrotum of the pledge behind them.



Casey's cell phone texts in the fall of 2016 exposed a conversation between him and fellow Beta brother Joseph Ems in which Ems asks "do we have any hazing events going on tonight?" Casey answers that a "lineup" is, indeed, slated. Subsequent messages between Casey and his girlfriend described the lineup as "messy." Other texts between the two reveal Casey's plans for "paddling" and "fake branding." Texts between Casey and another Beta brother show that at least one round of paddling meted out results severe enough to break a pledge's skin with the paddle.

***The Last Night of Timothy Piazza's Life: February 2, 2017***

By now, the Grand Jury expects the horribly tragic details of what transpired behind the doors of Beta Theta Pi in the winter of 2017 have been discussed, dissected, and debated on the national stage. This Grand Jury spent several days reviewing surveillance video and witness testimony before conclusively finding probable cause exists to warrant recommending that Centre County District Attorney Stacy Parks Miller file hundreds of criminal charges ranging from Aggravated Assault to Tampering with Evidence for the Beta's Spring 2017 Bid Acceptance Night. Our Supervising Judge, Thomas King Kistler accepted the Presentment, and the District Attorney followed the recommendation of the Grand Jury and filed charges.

At the direction of various members of Beta Theta Pi, Timothy Piazza and his fellow thirteen pledges ran "the gauntlet"—requiring him to excessively drink alcohol to please his new soon-to-be brothers. This spiked Tim's blood alcohol content from a zero

to as high as a .36, according to information provided by Dr. Harry Kamerow, meant to “celebrate” the pledge’s Bid Acceptance. On this evening, Tim was only 19 years of age. In fact, twelve of the fourteen pledges were under the legal drinking age of 21 years old, but that detail didn’t stop fraternity brothers from furnishing alcohol on either this occasion or at other rush events prior to this night. According to receipts reviewed by the Grand Jury, Beta brothers purchased a vast quantity of alcohol in anticipation of the gauntlet and other Spring 2017 rush<sup>11</sup> events. Brothers gathered cases of vodka, Four Lokos,<sup>12</sup> beer, and boxes of wine from various different alcohol distributors and stores, totaling over \$1,000—in just a one week period.<sup>13</sup> Evidence revealed Beta Theta Pi held three previous rush events in the weeks leading up to Tim’s death, all of which involved plying pledges with alcohol.

The pledges lined up and finished an entire handle of vodka, struggling with the emotional manipulation knowing that the brothers expected the pledge at the end of the line would face responsibility for draining the bottle. When the bottle arrived to the last pledge, still at least half full, pledge-master Daniel Casey instructed that the pledges continue to pass it up and down the line until the last drop had been consumed. This chugging event was merely a prelude to the first drinking station.

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<sup>11</sup> Evan Rooney, one of Tim Piazza’s fellow pledges, described that a “rush” occurs when students visit each fraternity, meeting the individual brothers, to determine whether they would be a good “fit” there. Mr. Rooney testified that during his rush in the Spring of 2017 in the months preceding Tim Piazza’s death, the fraternity infused each event with alcohol such as beer and Four Lokos.

<sup>12</sup> The Grand Jury received testimony describing Four Lokos as a potent mixed alcoholic drink.

<sup>13</sup> Receipts collected reflect dates from January 25, 2017 to February 2, 2017, the night of Tim’s death.

The brothers then led the pledges upstairs to run the gauntlet. The Grand Jury received surveillance video of the first station<sup>14</sup> as a line of pledges waited behind a closed door to be called one at a time. One by one, Daniel Casey delivered a knock to the door, and one by one, Joseph Sala directed each pledge to begin the gauntlet. The Grand Jury watched as Daniel Casey handed each pledge a handle of vodka, often with a smile on his face. At times, the cameras captured Fraternity President Brendan Young surveying the station and laughing as pledges chugged from the handle, before sprinting to the second stop down the hallway.

At the second station, three different Beta brothers handed out cans of Natural Light beer for each pledge to shotgun while a captive audience of other Beta brothers swigged their own beers, jeering and cheering them on. Nicholas Kubera, Michael Bonatucci, and Jonah Neuman each distributed at least one beer to the fourteen pledges—in some cases supervising; in others, actively appearing to encourage the pledges, such as Tim in particular, to chug faster.

After shotgunning a beer, the pledges dashed to the top of the stairs leading to the basement, down which Tim would later fall, sustaining his ultimately fatal injuries. Before proceeding down, each pledge “slapped” the wine bag<sup>15</sup> held aloft by Gary Dibilio, gulping at least a mouthful of red wine. When the pledges accidentally ran up the stairs, other Beta brothers who spectated the gauntlet from the second floor directed them to return downstairs to continue along the gauntlet’s proper track.

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<sup>14</sup> The Grand Jury learned that the gauntlet drinking obstacle course involved multiple different stations where brothers forced the pledges to stop and consume different types of alcohol in various ways.

<sup>15</sup> From the video and testimony of witnesses, Grand Jurors observed “slapping a wine bag” to involve one brother holding a bag of wine up high while the pledge slap it with an open hand and drink directly from the dispensing nozzle.

Finally, downstairs in the basement, Luke Visser manned the beer pong station during which each pledge chugged a cup of beer if he failed to toss a ping pong ball inside the cup. The brothers then organized another pledge class beer shotgun before melding into the fraternity's social, where beer and wine continued to flow freely throughout the night.

During the evening, surveillance recorded the extreme inebriation of Tim Piazza, documenting his staggering path through the first floor of the Beta house while the party raged on in the background. Other pledges on the video appeared to be severely intoxicated as well—one pledge actually fell down a much shorter set of three stairs descending into the Great Room around the same time as Tim Piazza suffered his own gruesome, ultimately fatal fall.

Although clearly lurching on his feet as he traversed one end of the foyer to the other, Tim appeared on video to still be conscious—a circumstance that would quickly change once he fell down the stairs. Within minutes after plummeting, multiple Beta brothers emerge on the video carrying a now clearly unconscious Tim, whose shirt is gaping open and on whose torso is blooming an identifiable tennis-ball sized bruise that Dr. Kamerow later determined as the external appearance of a profound laceration to Tim's spleen inside his unconscious body.<sup>16</sup>

Later in the evening, after he's left alone, the cameras digitally record Tim's final hours of life, as he awakens and stumbles around the first floor, sometimes rocking on his knees in what appears to be excruciating pain; sometimes plunging head-first into

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<sup>16</sup> The Grand Jury was able to see the bruise from a ceiling-height mounted camera.



solid objects, such as doors, metal bannisters, and heavy side tables. Finally, Tim staggers off camera, presumably down the basement stairs again before another group of Beta brothers carry him into view again, this time much later the following morning. And this time, Tim's condition had markedly deteriorated—his pallor gray; his body rigid—with Grand Jurors seeing an obviously now-unconscious young man. The Grand Jury finds that, at this point, one might mistake Tim for deceased in appearance. In fact, President Brendan Young would later describe Tim in a text message as appearing “fucking dead.”

Despite Tim's grave appearance, no one immediately called 911. Instead, brothers gather around him, covering Tim with blankets, evaluating his condition, trying to manipulate his body to dress him, and searching online for the remedy to head injuries. No one called 911 or spoke to emergency services for over forty minutes. By the time someone does, Tim has passed beyond the point of saving. He was pronounced dead a day later at Hershey Medical Center, suffering from non-survivable brain injuries and an on its own life threatening splenic laceration draining 80% of Tim's blood into his abdomen. Grand Jurors were horrified to observe the unsupervised and irresponsible conduct of Tim's so-called “brothers.”

### **The Pattern of Hazing and Excessive Alcohol Consumption in Greek Life**

#### **The Alpha Upsilon Chapter of Beta Theta Pi: Ten Years Before Tim**

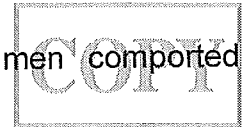
The Alpha Upsilon chapter of Beta Theta Pi was touted by Penn State officials, even in the wake of Tim Piazza's death, as a “model fraternity” by all outward appearances, held out as the golden standard of sobriety among fraternities and

sororities. Witnesses offered unequivocal testimony regarding the chapter's previous struggles with the demons of excessive drinking as recently as 2008, which ultimately led to the temporary closure of the fraternity. Shockingly, the Grand Jury learned that the alcohol abuse in the Alpha Upsilon chapter resulted in closure of the fraternity not because of Penn State University's concern or action, but based on the alarm and initiative of Beta's national fraternity. Penn State, it seems, either did not know as it should have, or it turned a blind eye to the excessive drinking going on routinely at Beta Theta Pi. The Grand Jury can only imagine how the men of Beta Theta Pi must have laughed at the University as it claimed Beta was somehow a "model" to look up to when University officials were on direct notice of the depraved lifestyle in the Beta Theta Pi house.

Ken Rawley testified that he attended Penn State University as a member of Beta Theta Pi from 1974-1977. During that time, Mr. Rawley came to know and become friends with Donald Abbey, a successful alumnus of both the fraternity and the university. In 2007, Mr. Abbey employed Mr. Rawley to establish a 501(c)(3) nonprofit foundation that would serve as an endowment to maintain the physical structure of the Beta Theta Pi fraternity house at 220 North Burrowes Street.

Mr. Rawley began by establishing the foundation and raising money remotely from Albany, NY. Before long, however, Mr. Rawley moved to State College to directly oversee the building's renovation in 2007. His duties included fundraising efforts for the endowment, as well as keeping watch over the house for Mr. Abbey. As the renovations took place, Mr. Rawley approximated that 50 brothers resided in the Beta Theta Pi

house. As Mr. Rawley testified, he quickly learned that these men comported themselves “very poorly.”



This poor comportment, according to testimony, included frequent drinking of massive quantities of alcohol and drunken vandalism of the property. Mr. Rawley testified that he considered that problem as alarming: it seemingly went on nonstop, was seriously excessive, and well-established. “Well, it was clear to me that I didn’t arrive there and they started drinking heavily. They had been doing it for quite a while, I believe.” Mr. Rawley recalled one instance in particular for the Grand Jury when, before a football game in 2008, brothers stacked approximately 100 cases of beer into a pyramid in the house’s backyard, towering several feet high. While excessive drinking occurred “all of the time,” he indicated that particular occurrence stood out especially due to the sheer scale of the alcohol displayed and consumed. He also recalled observing kegs and witnessing brothers run a beer funnel,<sup>17</sup> pouring beer from the second floor stairwell down to the mouths of the brothers’ standing in the lobby below.

In his view, he informed the Grand Jury that the house functioned more as a nightclub than a fraternity. The mansion was constantly littered with “hundreds” of beer cans and alcohol, strewn throughout the house and overflowing the property’s trash barrels. “They were emptying trash out the windows. They were throwing used condoms out on the front—one time they threw a used condom out on the front entryway about 20 minutes before then-University President Graham Spanier arrived with the president of Hershey Medical Center. They routinely would take furniture, television sets, clothing,

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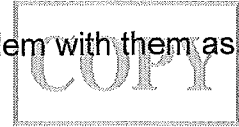
<sup>17</sup> A beer funnel constituted a plastic hose with a funnel at one end in which brothers poured beer, allowing it to travel down the length of tube to a waiting brother’s mouth below.

beer cans, trash, and throw it out the third-floor window to enjoy the spectacle of it exploding down the pavement in the back of the house.” To Mr. Rawley, such blatant disregard of societal norms was positively routine behavior at Beta Theta Pi.

Mr. Rawley assessed that the property destruction always seemed to be fueled by massive alcohol intoxication. He considered this conduct a serious problem and an obvious impediment to the renovation efforts made by Mr. Abbey. Mr. Rawley testified that he visited the house every day during his tenure in 2007-2008, and estimated that he witnessed indicia of excessive drinking and resulting vandalism at least four nights a week. The situation eventually reached a critical point that required Mr. Rawley to hire professional cleaners to come in and clean the house on every football weekend—Friday morning, Saturday morning, and Sunday morning. He described the partying, drinking, and vandalism as so out of hand that without a professional cleaning crew, the whole house would be “a lost cause.”

Further, the testimony provided by Mr. Rawley indicates that excessive alcohol abuse extended beyond the doors of Beta Theta Pi during this time frame. “I mean, it just wasn’t at the Beta chapter. It was throughout the whole fraternity system.” He also explained that, although he did not serve as an actual “advisor” for Beta Theta Pi, based on how closely he became involved with the brothers then residing in the house, he joined an organization called the Lion Fraternities Alumni Association, a collection of other Penn State chapter fraternity advisors. In the 2007-2008 time period, Mr. Rawley recalled that several of the advisors for other Penn State fraternities shared his concern regarding an excessive and permissive alcohol culture throughout Penn State’s fraternity system. “They would share with me that they were fully aware of the problem

at Penn State. We talked about it very frequently...I know it was a problem with them as well.”



The brothers rejected the reforms that Mr. Abbey, Mr. Rawley, and even the Beta alumni board initially tried to implement to curb the out of control behavior. Testimony suggested that an attempt to establish an honor code, detailing proper deportment by the brothers, failed when the brothers flatly ignored it. Mr. Rawley explained, “[t]hey just simply violated them, so it was pretty clear they didn’t fully agree with them. They wanted to continue to party and do what they wanted and do it in excess, and that was it.”

Mr. Rawley testified that he passed this information on to the then-president of the Beta Theta Pi Alpha Upsilon Chapter alumni board, Dan Wilhelm. While President Wilhelm shared Mr. Rawley’s concerns and made an effort to rein in the brothers, specifically by interacting with the student president of the chapter, many of the alumni board did not agree with a need for reform, and did not find the massive alcohol consumption to be problematic. Other alumni board members aggressively opposed Mr. Rawley’s endeavors to “convert the chapter,” the most glaring of which he described as an email attack against him that led him to file a lawsuit against its author.

The University was aware of the conditions at Beta Theta Pi house. After a particular incident involving brothers hurling racial slurs at a passerby, Mr. Rawley recalled speaking to officials from Penn State about the destructive behavior by the brothers. The Grand Jury credits the testimony of Mr. Rawley that Roy Baker, then Director of Penn State’s Office of Fraternity and Sorority Life, generally realized that a

huge drinking problem existed, not only at Beta Theta Pi, but also at the University in general. Specifically, Mr. Rawley asserted the University was made aware of several instances of particularly bad behavior, including an incident where a guest at the fraternity was beaten unconscious at a party and another instance where a guest at the fraternity was attacked with a beer bottle. Mr. Rawley took pictures of the renovations at the house and incidentally captured those remnants of the partying, including beer bottles and property damage, in photographs.<sup>18</sup> He forwarded many of the photographs onto the national fraternity and Penn State officials. Mr. Rawley testified, however, that in his opinion, Penn State consistently claims that it could not regulate or govern fraternities because it lacked any authority over them, except to revoke recognition.

Mr. Rawley also testified that he communicated his concerns fairly aggressively to Damon Sims.<sup>19</sup> He recounted for the Grand Jury one occasion when he met with Mr. Sims at Zola's, a local restaurant, shortly after both he and Mr. Sims acquired their respective positions. During that meeting, Mr. Rawley testified that Mr. Sims "indicated his concern that Penn State's marketing was primarily focused on having fun versus any academic endeavors or anything above that sort of thing, which I heartily agreed with and felt it was a major problem." Mr. Rawley went on to observe "I was at that time, if I recall...surprised with Damon that that's the way they marketed the university. And, of course, the way you market any institution tells you what kind of people are going to buy from you." The Grand Jury finds it appalling that the University's marketing would emphasize a fun, party atmosphere ahead of academics, though the Grand Jury believes the testimony of Mr. Rawley.

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<sup>18</sup> See Exhibit 1

<sup>19</sup> Mr. Sims serves as the Vice President for Student Affairs, a leadership position in the Penn State administration.

While trying to establish academics as the priority at the fraternity, Mr. Rawley explained that he felt “a significant lack of focus on addressing the overall drinking problem.” So much so that he “became more active in communicating concerns directly to Damon by e-mail, in person, when I saw him.” In the wake of Joe Dado’s<sup>20</sup> untimely death, Mr. Rawley recalled attending a State College borough meeting addressing the drinking culture at Penn State in which a Penn State administrator’s response to the concern was “we’re thinking about it.” He recalled leaving that meeting with a colleague who agreed that, based on the presentation, Penn State seemed unwilling or unlikely to do anything to address the problem.

The brothers’ behavior continued to spiral out of control until the alumni board evicted approximately ten brothers from the house in the 2008-2009 school year. When that extreme action failed to incentivize the remaining brothers to curb their conduct, Mr. Rawley detailed how the national fraternity shut down the chapter in January 2009. When the end drew near for the 2008-2009 Beta chapter, Mr. Rawley and Mr. Abbey reached out to high level Penn State administrators, seeking University assistance in temporarily disbanding the local Penn State chapter. The Grand Jury finds it reckless that Penn State officials refused to help, compelling the fraternity to act alone by shutting down the local chapter. Instead of helping, the University used the beautifully renovated, and now vacant Beta house as a venue for honors college speaker events, purportedly to attract a new pool of pledges for Beta Theta Pi from among honors college students.

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<sup>20</sup> Mr. Dado was a freshman Penn State student whose death is discussed later in this Report. He tragically fell and died trying to navigate his way back to his dorm after drinking alcohol at different Penn State fraternities.

Albert A. Drobka corroborated much of Mr. Rawley's recollections when he testified. Mr. Drobka earns his living as an architect in State College, Centre County. He testified that he supervised a multi-year long project concerning the Beta Theta Pi fraternity house located on North Burrowes Street in State College. Mr. Drobka met with Donald Abbey to discuss renovating the fraternity house in 2005. Mr. Abbey reported that the fraternity house was in a poor physical condition despite having enjoyed renovation in 1996 and 1998. Mr. Drobka indicated that Mr. Abbey invested approximately 5½ to 6 million dollars on renovations.

Aside from some immediate repairs for water intrusion and the steam heat system, Mr. Drobka indicated that workers began at the top of the fraternity house, restoring the roof, and worked their way down, renovating each floor. Mr. Drobka recalled enlisting someone to repair the windows on each floor of the fraternity house. Additionally, workers installed new floors, doors, door trim, bathrooms, and the electrical system within the fraternity house. According to Mr. Drobka, they essentially had to rebuild the entire house.

Mr. Drobka recalled the renovation project on the fraternity house lasted from 2005 to 2010. During that time, the house was occupied by fraternity members. Several complications arose during the renovation due to the fraternity brothers residing within the house. The brothers continually broke items that the workers had just built or just repaired. For example, the fraternity brothers shattered stained-glass windows. On other occasions, the workers had to install reinforcing plywood behind the drywall to prevent further damage. All of the vandalism lowered the morale of the workers to see their hard work destroyed by the fraternity members.



The damage to the house caused by the fraternity brothers became so extensive that Mr. Drobka felt compelled to put together a vandalism report about four years into the project, sometime in 2009. According to Mr. Drobka, there were several incidents of vandalism, malicious mischief, property damage, and deliberate messes created by the fraternity brothers that negatively impacted the renovation. On numerous occasions, the workmen would finish one item only to find it damaged a short time later.

Mr. Drobka also recalled a pervasive cleanliness concern both inside and outside the fraternity house. Often times during the renovation project, workers had to navigate puddles of vomit left on the floor by the fraternity brothers. The house often smelled of vomit, urine, and spilled beer. In fact, the workers would walk around the outside of the house gathering all the beer cans, trash, and paper in order to make the house look presentable. Broken bottles littered the area outside the house, forcing renovators to guard each step to avoid broken glass.

The trash problem also existed on a terrace area where the fraternity brothers sat, leaving behind their beer cans and trash and smashing fiberglass tables out on the patio area. Additionally, the fraternity members dropped items such as a television, furniture, clothing, trash, beer bottles, beer cans, plastic containers/storage bins, bedding, and water bottles from the third-floor fire escape down to the ground below. Fraternity members pitched garbage from the windows of the house, including the windows facing the street. The workers would constantly find liquor bottles, beer cans, Q-tips, paper, and food left below, also visible to the public. It also appeared that the fraternity members tossed liquor bottles, beer bottles, and beer cans out of the windows and onto the new skylight roof installed by the workers.

Mr. Drobka noted that throughout the house, unemptied trash cans spilled out onto the floor with a cascade of pizza boxes, empty beer cans, and paper. He also discovered party debris, such as beer cans, red Solo drinking cups, pizza boxes, and paper towels in places outside the basement, which was the only "authorized party location."<sup>21</sup>

Mr. Drobka particularly recalled at one point during the renovation—after the party room had been completed in the basement—the fraternity decided to host a party in the living room and stacked all of the furniture in the so-called trophy room. After the party, the fraternity brothers left the area in an unkempt condition; he recalled paper cups and beer cans strewn throughout the entire room, and so much spilled beer on the floor that it made the workers feet stick to the floor.

Workers would frequently encounter beer cans in the toilets or urinals within the house, sometimes causing the toilets to overflow. At one point, the urinal in the second-floor bathroom experienced water problems; workers attempting to use a plumbing snake to clear the obstruction discovered sakrete (which is a powder the user mixes with water to form concrete) had been poured in the urinal and flushed.

Mr. Drobka provided the Grand Jury with several pictures depicting beer kegs, trash cans filled with beer cartons, trash bags filled with beer cans, and rooms lined with beer cans and cartons. He stated that whenever the fraternity held an event—which he

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<sup>21</sup> When asked about authorized party locations, Mr. Drobka testified that "as part of the wish lists, the brothers wanted to have...their own party room." He described that extensive renovations were completed on a room in the basement to adapt it for the brothers' parties—including moving pipes around to lower the ceiling, mounting ceramic tiles and wainscoting with a marble rail top, adding air conditioning, and installing circular benches, a pool table, ping pong table, and poker tables.

estimated occurred at least once a week, every week during the renovation project while the brothers lived there—they would find the house in a similar state.

Additionally, the fraternity members prompted code violations within the house. For example, the fraternity house had a no-smoking policy. Despite this policy, the fraternity brothers continually disabled the smoke detectors in some of the bedrooms so that they could smoke, which workers had to take time to repair. Furthermore, the fraternity brothers discharged the fire extinguishers, resulting in another violation since the code required the house to feature a full fire extinguisher at all times.

At times, workers would be forced to report to the project two hours early to clean every floor before an inspection took place. According to Mr. Drobka, the only times he recounted the Beta house being clean coincided with the times when pledges were present.

Due to the actions of the fraternity brothers, several changes had to be made to the fraternity house. The patio doors to the living room had to be completely replaced because the fraternity brothers kicked in the doors if they forgot their keys. The workers ultimately gated around those doors, and measures had to be taken to ensure only the house manager had a key to the gate. Eventually the workers had to install a swipe card system with a key fob lock on it.

Changes were also made to the basement area within the fraternity house. The workers lowered the whole floor of the basement so that there would be adequate ceiling height and retiled the entire floor and the walls. They also installed a bar and a giant walk-in cooler-freezer behind the bar. After the workers cleaned up everything

and the area was code inspected, the fraternity brothers created a mess, left vomit on the floor, did not flush the toilets, and left paper towels on the floor by the toilets.

A new kitchen also had to be added to the fraternity house. Originally, there was only one kitchen within the house. This kitchen was intended for use by a chef that came to the house to cook meals for the fraternity members. However, a second kitchen was added specifically for the brothers' use after they began to force their way into the kitchen, hold food fights, and leave behind large messes. Mr. Drobka related that this condition of the fraternity house persisted until Mr. Abbey eventually closed the house to residency by the brothers.

The Grand Jury received testimony from Donald Abbey, age 69, a notable Penn State alumnus. Mr. Abbey attended Penn State University from 1966 to 1970. During his time on campus, he was a member of both the Penn State football team and the Beta Theta Pi fraternity. After graduating, Mr. Abbey became a significant donor to both the football team and the fraternity. In 2005, the then-president of the house solicited a donation from Mr. Abbey to make repairs to the 1920s era Beta Theta Pi house at 220 North Burrowes Street in State College.

Mr. Abbey testified that what began as a \$50,000 project to correct water damage became an \$8.5 million dollar project to completely renovate the house. A successful real estate entrepreneur, Mr. Abbey enthusiastically spent millions of his own dollars to restore the house to its former architectural glory. Funded entirely by Mr. Abbey, the project entailed replacing electric and plumbing fixtures; building a new kitchen; installing air conditioning; lowering the granite basement floor to create a larger

room; and furnishing the home with an eye toward the original 1928 design of the home. Mr. Abbey explained to the Grand Jury that his desire to return the home to its traditional roots meant not only renovating the building, but also changing the culture from one of partying to one of principle.

Along the way, however, Mr. Abbey's efforts were thwarted by the destructive drinking culture and an overall resistance to change from leaders at the Beta Theta Pi fraternity as well as the university. As the renovations were underway, the brothers in the house would party and destroy his progressive improvements. On one occasion, Mr. Abbey recalled discovering expensive furniture he had purchased destroyed – the upholstery on the lavish couches sliced by razor blades. An inquiry into the source of the destruction was met by the Beta brothers with silence – Mr. Abbey described a “protect your buddy” mentality with no brothers willing to divulge what happened.

Mr. Abbey labeled the brothers living at the house during the time period of his renovations as “bums.” Throughout the construction process, so much underage and excessive drinking transpired that Mr. Abbey became concerned that his investment would be wasted. Not only did Mr. Abbey want to protect the house he had funneled his own money into, he also became troubled that the men of Beta were not living up to the “men of principle” standard he envisioned. Mr. Abbey recounted speaking with an engineering student who denied any interest in joining Beta because he knew it wouldn't allow him to focus on his studying. The coat-and-tie dinner, studious culture of Mr. Abbey's time at Beta had been replaced by a broken-windows, alcohol fueled, destructive culture that looked down on honors students and looked up to students of vice and debauchery. Mr. Abbey testified that he wanted the fraternity to attract scholars

like the diligent engineering student who chose education over entertainment, rather than the overdrinking, disrespectful, destructive brothers who populated the house. To attract those types of ambitious and smart students, Mr. Abbey knew he needed to change the culture entirely.

In response to the constant destruction and the eroded culture at Beta, workers installed cameras in the house. Eventually, however, Mr. Abbey and his employee hired to monitor the renovations, Ken Rawley, agreed that they needed to clean house by evicting the destructive fraternity brothers. The active brothers and their families became hostile to Mr. Abbey and began complaining to the University and the national fraternity, demanding that they not be restricted by Mr. Abbey's desire for an honorable fraternity. A number of alcohol related incidents during this period led to the fraternity revoking Beta Theta Pi's Penn State charter.

In response to the shut-down, Mr. Abbey detailed that Beta's national leaders approached him, pleading with him to help re-open the house with the "men of principle" standard in mind. To do so, they agreed to maintain the house as dry (alcohol free). They also agreed to end any and all hazing activities.

During this time, Mr. Abbey met with Penn State leaders Damon Sims, then-University President Graham Spanier, and then-Dean of Student Affairs, Vicki Triponey.<sup>22</sup> At these meetings, Mr. Abbey indicated to the Grand Jury that he advocated for maintaining a dry fraternity free of the booze-fueled parties that ravaged the house in years past. Mr. Abbey explained that he also tried to persuade Sims, Spanier, and

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<sup>22</sup> Mr. Abbey testified that Mr. Sims later took over Ms. Triponey's position when she left.

Triponey that all drinking on campus needed to cease. In contrast, Mr. Sims, who also offered testimony before the Grand Jury, testified that he recalled Mr. Abbey's focus centered "overwhelmingly" on concern for the house itself and its treatment by the brothers.

Mr. Abbey testified that while the Penn State leaders expressed support verbally, encouraging Mr. Abbey in his quest to curb excessive drinking, they offered no practical assistance. According to Mr. Abbey, he found Penn State leadership's resistance to change motivated in part by a group of powerful Philadelphia Beta alums who were significant donors to the university. Those individuals, per his testimony, were more concerned with having a fun place to party on football weekends than with maintaining a fraternity for ambitious, intelligent "men of principle" as Mr. Abbey envisioned. They resisted a fraternity "full of honors students" and instead favored a party environment conducive to drinking and destruction. In failing to heed his concerns about the drinking problem at Beta, the Grand Jury finds the Penn State leaders tacitly condoned the culture of excessive drinking at Beta and Penn State at large.

At every turn, Mr. Abbey described that his efforts to make the house a dry house were met with extreme resistance. By 2011-2012, he testified that Beta alums were actually threatening Mr. Abbey for his "dry house" policy—among them a powerful Penn State and Beta alum as well as a Penn State trustee who strongly attempted to persuade Mr. Abbey to drop the "dry house" policy. These individuals even threatened Mr. Abbey that his standing among the other alums was dropping and questioned his legacy as he maintained the dry policy at the house.

As personal business concerns drew Mr. Abbey's attention away from the fraternity business, the Beta house devolved to its former ways as a den of partying, alcohol, and destruction. Bottles littered the house once again and Mr. Abbey testified that he discovered his efforts to clean both the house and the culture at Beta thwarted.

Mr. Abbey attributed this in large part to the inaction taken by Penn State leadership. He alleged that none of the leaders he met with, including Sims, Spanier, and Timponney, were ever interested in actually doing anything to curb the excessive drinking on campus. Instead of truly working to support Mr. Abbey's vision, he avers that the leaders offered platitudes and little else. Mr. Abbey testified that Penn State administrators adopted the views of the alums like the Philadelphia Betas, and some of the sympathetic members of the university's Board of Trustees.

In sum, the total picture painted by Mr. Abbey's testimony illustrated a Penn State leadership that was uninterested in a fraternity composed of "men of principle." The Grand Jury concludes that Mr. Abbey's testimony clearly indicates that he believed Penn State leadership was more concerned with maintaining the university's status as a "party school" to encourage new student applications, and less concerned, if at all, with the problem of excessive drinking.

### **James Vivenzio**

James Vivenzio attended Penn State in 2012 and 2013, as well as the fall semester of 2014. While in his first semester of freshman year at Penn State, then 18 year old Vivenzio pledged the fraternity Kappa Delta Rho (hereinafter "KDR").



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In order to rush a fraternity, he claims the University requires a student to register with the IFC. Mr. Vivenzio testified that process compelled him to register using his Penn State Student ID and create a portfolio, which included his name, his picture, his birthdate, and his age. He decided to pledge a fraternity when his girlfriend at the time also elected to rush a sorority, explaining that non-Greek males often cannot access the same fraternity parties unless they join the Greek community. Since he wanted to maintain his relationship with his girlfriend, he decided to pledge a fraternity.

Decision made, Mr. Vivenzio reported that he attended a mandatory informational meeting regarding the pledging process, meant to educate students about both fraternities and Penn State's very strict, anti-hazing policy. He recalled Roy Baker, then Director of Fraternity and Sorority Life, as well as some of the fraternity presidents, conducting the meeting. These speakers assured the potential rushes/pledges that if any hazing occurred, it would be promptly stopped upon complaint. The IFC also claimed that it would take swift and decisive action to end any hazing behavior reported.

According to Mr. Vivenzio, one of the fraternity presidents presiding over the meeting was a member of a fraternity that was well-known for the worst hazing on campus; yet, he was next to Mr. Baker while he was talking about the zero-tolerance policy for hazing. Mr. Vivenzio claimed that at least half of the fraternities on campus engage in hazing activity, although some are reputed to be worse than others. He recalled one organization had a reputation for being sadistic, testifying that it was well-known that if a person pledged that particular fraternity, they would "come out with no soul." Mr. Vivenzio recounted a story during this particular fraternity's pledging about a student being hit in the face with a mop full of broken glass.

Mr. Vivenzio participated in the rushing events for KDR prior to accepting a bid and pledging the fraternity. The rush period lasted from approximately September 7, 2012 through September 22, 2012. Mr. Vivenzio explained that many college students, mainly freshmen, rushed the different fraternities to educate themselves about the organizations. According to Mr. Vivenzio, many of the fraternities provided alcohol at their rush events.

The rush period lasted for approximately two weeks. During the first week, the rushees would visit all of the fraternity houses to learn about the organizations. However, to rush during the second week required an invitation back to a house by the fraternity, usually received by text from a fraternity brother. According to Mr. Vivenzio, KDR hosted a party every night during the second week of the rush period and, in order to ultimately receive a bid to pledge, a rushee had to attend each of these social events.

Mr. Vivenzio recalled these social events always included free alcohol, often accompanied by various drinking games, including flip cup and beer pong. The fraternity also offered an open bar with several handles of liquor. Brothers would force people to drink by approaching individuals with Dixie cups or red Solo cups filled with vodka and instruct them to finish it in 10 minutes.

Each social event had a different theme meant to impress potential pledges. One night in particular, Mr. Vivenzio remembered the fraternity hosted a "strip club night" in which three strippers performed in the basement area of the house during a huge party with hundreds of people. On this night, he recalls alcohol was flowing and abundant. Another theme night involved a crate race, which Mr. Vivenzio described as a

milk crate filled with multiple liquor bottle handles. Each rushee paired with a partner, and the first person to finish the crate won. Mr. Vivenzio indicated that this second rush week included many similar forced alcohol consumption games, similar to the crate race, throughout the week. If a rushee refused to participate in the drinking event, he would have been told to leave immediately and would not receive a bid.

All of the partying that week culminated with Bid Acceptance Night on Friday. The rushees received their bids on Thursday, accepted them the next night, followed by a huge party hosted by the fraternity in celebration.

According to Mr. Vivenzio, on Bid Acceptance Night at KDR the pledges found themselves inundated with alcohol playing various drinking games.<sup>23</sup> The fraternity brothers seized the pledges' cell phones and directed them to the basement where a trash can awaited them in the center of the room beside approximately fifty to seventy cases of beer. According to Mr. Vivenzio, the pledges drank all of the beer until it was gone, resulting in each pledge consuming around fifteen beers within an hour. Mr. Vivenzio estimated that they were drinking about one beer each minute in order to finish it.

Afterward, the pledges traipsed upstairs before brothers lined them up against the wall. The brothers instructed the 19 pledges to pass around a bottle of liquor, ordering them to finish the entire bottle before it returned to the first person in line. Once they accepted their bids, the pledges attended a party for the rest of the night with a house full of several hundred people. During the party that night, Mr. Vivenzio recalls

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<sup>23</sup> According to his testimony, no pledges were ever carded to determine whether they were of legal drinking age. In fact, everyone in Mr. Vivenzio's pledge class was under 21-years-old.

the brothers directing the pledges to play a drinking game called "Edward Fortyhands" in which the brothers duct-taped two forty ounce bottles of beer to the pledges' hands. The brothers would not remove the taped bottles until the pledges finished drinking both containers. Mr. Vivenzio recalls the brother's characterizing this night as the pledge's one last night of fun before the hell begins, noting that Bid Acceptance Night was the only night of pledging that didn't include physical hazing.

The pledging period lasted from approximately September 22, 2012 through the second week of December 2012. During that time, Mr. Vivenzio testified to various acts of hazing, many alcohol related. Mr. Vivenzio indicated that brothers forced five pledges at a time to stand around a trash can with a bottle of liquor. Each pledge had to drink from the bottle until he vomited before passing the bottle to the next person. In another alcohol-related hazing event, brothers could force a pledge to shotgun a beer at any point during the day, on demand. Brothers instructed pledges to shotgun a beer by biting the beer can to puncture it, punch a hole with their thumbs, and then chug the beer. According to his testimony, drinking such vast quantities of alcohol caused many brothers to vomit during pledging. Mr. Vivenzio recalled occasions during which he became coated in so much vomit that the smell would cause him to continue to throw up. He asserts that the KDR fraternity brothers never took care of sick pledges.

The hazing grew more severe after the first week of pledging when it turned physical. The fraternity members had required the pledges engage in an activity called a "lineup" where they stood against a brick wall in the dark basement for ten to fifteen minutes, while a song blasted loudly on repeat. These lineups would always occur between the hours of 12:00 a.m. and 4:00 a.m, many times when the fraternity brothers

were drunk after a party. He also recalls the brothers directing the pledges to sit against the wall and pass around a 45 pound weight until their muscles failed. The brothers would then pass liquor-filled water bottles around to the pledges. After that, the fraternity brothers ordered the pledges to engage in calisthenics anywhere from thirty minutes to an hour until they reached the point of exhaustion. Throughout the entire line up, the fraternity brothers threw cigarettes at the pledges and smashed glass bottles at their feet.

During one particular lineup, Mr. Vivenzio recollected an incident where a brother spread bleach on the floor while the pledges executed push-ups. One pledge had an allergic reaction to the bleach, requiring him to use an EpiPen. However, the fraternity brothers failed to transport him to the hospital for follow up treatment out of fear the fraternity would be punished.

Mr. Vivenzio described that the lineups became even worse when the fraternity brothers filled a large spaghetti pot with a concoction of things such as hot sauce, catnip, cat food, urine, semen, shampoo, conditioner, alcohol, and bread chunks, warmed it up, and forced the pledges to drink from it. They dubbed this portion of the lineup "the pot." The pledges would have to pass the pot from one to another, finishing by the time it reached the last pledge. He explained that many pledges would actually vomit into the pot as they passed it because of how disgusting it became. Mr. Vivenzio stated that, by the end, vomit covered the basement floor in which the pledges then performed calisthenics, push-ups, sit-ups, and wall-sits at the brothers' demand.

In some instances, Mr. Vivenzio recalled that due to a lactose intolerance, he would escape having to drink from the pot if it included dairy products in the concoction, but the brothers made him trade drinking from the pot with chugging a bottle of hot sauce instead.

Repercussions for opting out of the hazing acts were severe. Because the brothers hazed the participating pledges so much harder when a fellow pledge missed a line up, resentment quickly developed among the pledges. Mr. Vivenzio described an occasion where, after he fell asleep and missed a scheduled line up, a fellow pledge ripped Mr. Vivenzio's shirt over his head, punching him so brutally that one of his moles actually ripped away from his skin.

These lineups would occur anywhere from one to three times a week during the pledging process, escalating in severity and lasting longer as time wore on until the last week of pledging known as "Hell Week" when a lineup occurred every single night. The final lineup lasted four hours.

The hazing grew so severe that, around the middle of pledging, Mr. Vivenzio reached out through the anonymous online hotline to report his experiences. Mr. Vivenzio recounted that he decided to seek help after a night of passing a bottle of liquor around until the pledges threw up as the brothers yelled at them to drink. In the online report he submitted, he disclosed that pledges were suffering significant alcohol hazing at KDR. Within five hours of sending the email to Penn State, he received a text from KDR's president in a group chat demanding to know who reported the fraternity. This frightened Mr. Vivenzio, and the hazing became worse after he reported the

hazing. In fact, the pledges endured lineups that became interrogations to ferret out who told Penn State about the hazing.



After Mr. Vivenzio sent the email, the fraternity also became more secretive by texting in the GroupMe application,<sup>24</sup> and the fraternity actually began tracking the pledges' movements through the location services within their iPhones. The fraternity members also obtained a copy of each pledge's class schedule and required them to be at the house between the hours of 8:00 a.m. to 10:00 p.m. if not in class.

While at the fraternity house, each pledge tackled certain duties, such as driving a brother to or from class; cleaning the house and the brothers' individual rooms; doing their laundry; or even doing their homework for them. Sometimes the brothers forced pledges to attend class for brothers too hung over to attend themselves. The pledges also maintained responsibility for setting up the fraternity's parties and events. Mr. Vivenzio stated that on his second day of pledging, brothers demanded that he unclog a toilet with his bare hands during a party.

Mr. Vivenzio described the president of KDR during his pledging process, Matt Fortunado, as very particular about having his room cleaned by the pledges. The President even referred to the pledges as "slaves." At 8:00 a.m. every morning, KDR's president demanded a pledge to clean his room, maintaining everything in perfect order. Mr. Vivenzio recalled one incident when the president insisted a pair of his scissors had gone missing; all the pledges suffered another lineup as the resulting punishment. In

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<sup>24</sup> The Grand Jury heard testimony regarding a cellular phone application called "GroupMe" which allows users to create digital message threads among groups of people by their telephone number, much like text messaging. Beta Theta Pi also used various GroupMes to allow communication within the executive committee, among the pledges, and between the entire fraternity membership. The Grand Jury also learned from the Beta investigation that when the creator of a group deletes a GroupMe thread, the messages are lost forever and cannot be recovered.

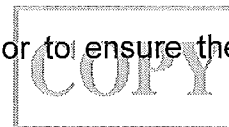
one text Mr. Vivenzio provided to the Grand Jury, the KDR President writes the pledges on November 12, 2012: "You are all fucked. I literally can't wait till my exams are over this week so I can dedicate my free time to destroying your lives, dignities, and removing your fucking souls out of your bodies. You do whatever you want whenever you want. Who the fuck are you to question brothers or say no? The only words that should come out of your mouth are yes, sir. You are all too comfortable. You're fucking slaves. Do you think slaves have say in what their masters say?"

In a follow up text, the KDR president threatened: "You're all dead. I'd pray if I were you that I don't call Hart down there to correct that sense of entitlement." Mr. Vivenzio testified that "Hart" was a particular alumnus who would occasionally return to visit the fraternity, typically assist in hazing the pledges. Mr. Vivenzio described "Hart" as a large male, with a body builder physique and with a penchant for singling out a pledge who failed to comply with brothers' demands. On one occasion, Mr. Vivenzio recounted that "Hart" called an African American pledge the N-word, choked him, punched him, and threw him to the ground.

During the parties, the pledges acted as bartenders and also served as look-outs for the Interfraternity Council (IFC) social checkers, warning fraternity members when the IFC approached. The pledges' IFC-watching duties included knocking cups out of party-goers' hands to appear in compliance with an IFC rule against "double cupping," which prohibited a person from holding two cups in his or her hands. The pledges also stalled the IFC social checkers at the fraternity's front door while the president made sure the house would pass inspection. KDR's president would then walk the IFC social



checkers from the side door down a 30 foot hallway to the front door to ensure the checkers did not venture into other areas of the house.



Mr. Vivenzio indicated that if someone quit pledging and left the fraternity, the hazing became worse for those who remained behind. In fact, the fraternity brothers used it as a weapon to manipulate pledges to stay. By December of 2012, Mr. Vivenzio testified that he wanted to abandon the pledging process and leave the fraternity. However, a brother advised him to suck it up and keep quiet because they would be done soon. Mr. Vivenzio testified that all of the fraternities acted to hide the events behind closed doors and prevented pledges from speaking out about pledging. The secrecy permeated through all of the fraternities, not just KDR.

At some point, another person sent an anonymous email addressing hazing among multiple organizations, and KDR cracked down even harder on the pledges to keep things a secret. The pledges could not talk with their girlfriends or their roommates about the house. According to his testimony, it became obvious to him that pledges in other organizations also faced assaultive behavior at the hands of their soon-to-be fraternity brothers when they returned to the dorms covered in bruises. Additionally, Mr. Vivenzio reported that he knew hazing transpired in other organizations because a brother from another fraternity accidentally left his phone at the KDR house. KDR brothers accessed the phone and shared photos on it depicting various hazing activities. Among the pictures, Mr. Vivenzio claimed to see bloody underwear from too many "wedgies," as well as naked photos of pledges forced to endure the humiliating act of the "elephant walk" which occurs when the pledges insert a finger in the rectum of the person in front of him while grasping onto the genitals of the pledge behind him as

they walk in a circle. The phone also displayed pictures of pledges being paddled and repugnant food cocktails that the other pledges ate.



During his testimony, Mr. Vivenzio alleged that the hazing did not stop after he sent the anonymous email to Penn State. He also indicated that no one from the University ever reached out to him at that time to discuss the matter as a result of his online submission. Mr. Vivenzio successfully completed the pledging process and ultimately became a KDR brother, but he left Penn State in May of 2013 due to issues stemming from his hazing as detailed below.

As a result of pledging KDR, he failed all of his classes during pledging. Mr. Vivenzio claimed that he began smoking as a result of the hazing since one of his duties included carrying a pack of cigarettes on him at all times in case a brother wanted one. He also developed a drinking problem due to the mass consumption of alcohol he was forced to endure by KDR. In fact, Mr. Vivenzio was later diagnosed with Post-Traumatic Stress Disorder as a result of the hazing, and he even contemplated suicide. He testified, "I was seeing girls on the floor absolutely wasted beyond their belief, eyes rolling to the back of their heads, you know, crawling on the floor and then being taken back into a guy's room...I've seen a lot of just really terrible things happen."

In April of 2014, Mr. Vivenzio reached out to Penn State hoping to bring about change in the Greek system. First, he spoke with Danny Shaha, the head of the Office of Fraternity and Sorority Life, who traveled to Mr. Vivenzio's home in northern Virginia. Mr. Vivenzio informed the Grand Jury that he shared "everything" with Mr. Shaha—including photographs and GroupMe texts messages, although with redacted names.

Mr. Vivenzio testified that he still wanted his disclosures to remain anonymous from the fraternity at that point, fearing "repercussions" from his "brothers." According to Mr. Vivenzio, the two went through each text and picture one-by-one, with Mr. Shaha taking very detailed notes. Mr. Vivenzio testified that Mr. Shaha never asked to take copies of the documents shared that day.

Mr. Vivenzio testified he discussed in detail everything that happened to him at KDR. Yet even though Mr. Shaha acknowledged an awareness of the behavior, he claimed he could not do much about it. Mr. Vivenzio also indicated that he provided additional information about sexual misconduct occurring in the house through a Facebook page in which the brothers shared nude photos of unconscious women. The Facebook page operated as a members-only private group where the brothers would post messages about needing things like alcohol and drugs, in addition to posting photos of unconscious young women in various stages of undress. Mr. Vivenzio claimed that he showed Mr. Shaha a photo of a young woman engaged in an activity called "rush boobs" where a young woman scrawls "KDR" across her chest and poses for a picture. He testified to Mr. Shaha's response: "We see this all the time, I recall him saying, like this is nothing new. We're aware that this is happening and we're trying to stop it..."

The Grand Jury also notes testimony by Lieutenant Robb who explained that, when asked, Mr. Shaha similarly recalled traveling to Virginia to meet with the Vivenzios regarding hazing allegations. Lieutenant Robb testified that Mr. Shaha denied that the family shared documents with him because they were concerned with people getting in trouble, although he described seeing papers on a table. He also agreed that Mr.

Vivenzio refused to provide him with the names of individuals involved. Mr. Shaha also indicated that Mr. Vivenzio denied any sexual hazing by KDR.



At some point after their meeting, Mr. Vivenzio believes that Mr. Shaha shared with Roy Baker<sup>25</sup> all of the information Mr. Vivenzio had given him. Mr. Vivenzio testified that he later received a text message from Mr. Shaha indicating that Penn State did not need his help any longer, and that the University would reach out to him in the future with any questions.

Mr. Vivenzio also submitted to interviews with other individuals at Penn State about what he experienced at KDR, including: an employee in the Women's Studies Department; a person in the Department of Undergraduate Studies; members of the Penn State Board of Trustees; and individuals at the Office of Student Conduct. Mr. Vivenzio stated that he specifically warned Penn State officials that a "death is imminent," and something tragic was bound to happen. Additionally, he confided to the head of the Penn State Alcoholics Anonymous program about the hazing conducted at KDR. Penn State, he testified, ultimately returned his first semester's tuition for a "trauma drop" due to the hazing he endured at the hands of KDR.

Mr. Vivenzio eventually tried to resume his education at Penn State in September of 2014. To his dismay, he discovered that nothing had changed with the fraternities after his meetings with Penn State's administration. Mr. Vivenzio returned to KDR within the first week, and observed that the pledges' hazing continued just as it had with

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<sup>25</sup> The Grand Jury learned that Mr. Baker was previously the Director of Fraternity and Sorority Life until late 2015 when Mr. Shaha took over that position upon Mr. Baker leaving.

him. He indicates that he then took pictures, documented information, and never went to another party.



After his return to Penn State, Mr. Vivenzio did continue to access the fraternity's private Facebook page he disclosed earlier to Mr. Shaha. He discovered several pictures of naked women who were clearly passed out with no idea they were being photographed; all 146 members of the Facebook group had access to those photos. Mr. Vivenzio took this information to the State College Police Department.<sup>26</sup> After that, he noted some brothers criticizing him on the Facebook page, and the fraternity then removed him from the group so he could no longer access the page.

### **The Interfraternity Council: Students Regulating Students**

The Grand Jury received testimony explaining that the method by which the Penn State Greek system self-monitors both underage and excessive alcohol consumption occurs through the Interfraternity Council's, (or "IFC"), contract with Pittsburgh-based security firm, St. Moritz.

Dean Vetere, the IFC President, testified that he took office in February 2017, although he previously served as the Executive Vice President and the head of risk management. He explained that, as a branch under Penn State's Office of Student

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<sup>26</sup> State College Police Department investigated the allegations regarding KDR's Facebook page. None of the identified victims wished to cooperate in a public prosecution which would expose their photos in Court. Their wishes were respected.

Affairs,<sup>27</sup> the IFC is the student-run governing body for 49 individual Penn State fraternity<sup>28</sup> chapters, endowed with the authority to enforce a wide span of both University and IFC rules. Fraternity membership in the IFC is optional; however Vetere explained that certain benefits transfer with IFC membership. Alex Myers, the Administrative Vice President responsible for the IFC's finances, testified that each fraternity pays the IFC \$25 per member each semester—amounting to roughly \$150,000 per semester—for membership dues. These dues then pay St. Moritz's monthly fees.

Mr. Vetere described a complicated marriage between Penn State and the IFC in which the IFC enjoys purported autonomy and self-regulation of the fraternities under its purview, but Penn State reserves the power to exert control in certain circumstances. Part of the membership dues that a fraternity pays to the IFC, according to Mr. Vetere, goes to Penn State to pay the salaries of faculty within the Office of Fraternity and Sorority Life. Vetere noted that Penn State furnishes the services of multiple University employees from several departments to support the IFC, including an Assistant Director of the Office of Fraternity and Sorority Life and a dedicated graduate assistant from the Office of Fraternity and Sorority Life. Kathleen Shupenko, the Associate Director for the Office of Student Conduct, provided corroborating testimony that the Director for the

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<sup>27</sup> Vetere's testimony revealed that the full hierarchy begins with the overarching Office of Student Affairs, which in turn oversees the Office of Fraternity and Sorority Life, under which the IFC falls as the largest of 3 governing bodies for Penn State-recognized fraternity and sorority chapters.

<sup>28</sup> Vetere noted the absence of sororities from the ranks of IFC since they are governed by their own separate council.

Office of Fraternity and Sorority Life appointed her to serve as an advisor for the IFC's management of the fraternities' misconducts.<sup>29</sup>



According to Mr. Vetere, Penn State seems to supervise some functioning of fraternity life—for instance, during every semester's rush, Penn State administrators require University review and approval of each fraternity's written day by day plan for their intended pledging process. Moreover, Mr. Vetere's testimony illustrates a division of labor in which Penn State utilizes its resources and personnel to investigate any allegations of misconduct by a fraternity, then transfers the results of the investigation to the IFC who holds the power to sit as both judge and jury—deciding guilt well as punishment. Both Mr. Vetere and Ms. Shupenko detailed that Penn State's one and only punitive power over a fraternity is revoking the University's recognition of the chapter, a significant impact of which is that no unrecognized fraternity may operate a fraternity house.<sup>30</sup> On the other hand, per Mr. Vetere's testimony, where the long arm of Penn State's enforcement falls short against a fraternity, the IFC retains authority to issue an array of punishments that include probation, suspension of various social or general events, and fines calculated based on the number of fraternity members. Ensuring that each fraternity actually complies with imposed suspensions or payments is also the function of the IFC. According to Mr. Vetere, such self-policing includes monitoring those fraternities barred from hosting social events. Mr. Myers, the

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<sup>29</sup> Ms. Shupenko's testimony also makes clear that while the IFC adjudicates misconducts for the overall organization (the fraternity chapters as a whole), the Office of Student Conduct still assumes responsibility for enforcing violations of the Student Code of Conduct against individual students/fraternity brothers.

<sup>30</sup> Mr. Vetere's testimony indicates that the State College Borough demands Penn State recognize a fraternity before it will permit a house to operate as a "fraternity house" within the limits of the borough. As a testament to the power this recognition represents, Mr. Vetere observed that most IFC fraternities prefer to maintain fraternity houses for their respective brothers.

Administrative Vice President, testified that it is his job to collect any fines imposed by the IFC against a fraternity.



Particularly significant to the Grand Jury is Mr. Vetere's explanation regarding the IFC's risk management policies—namely, how fraternities conduct any social events at their respective houses. Mr. Vetere outlined that the IFC's system to prevent excessive and/or underage drinking includes a series of prohibitions barring hard liquor not in mixed form; mass consumption devices (such as beer funnels<sup>31</sup>); and the use of glass bottles of alcohol. Blake Friedman, the Executive Vice President responsible for all risk management and a six semester member of the IFC, explained that the policy further requires six total brothers remain sober and stationed at three separate locations—the front entrance of the fraternity; the back door; and those serving as bartenders. He indicated that each sober brother wears a red wristband to allow for quick identification as a designated sober individual. Both Mr. Vetere and Mr. Friedman further testified to mandatory signs that must be posted in the house with emergency contact telephone numbers; taxi service telephone numbers; and advertising the availability of alternative beverages and food.

The Grand Jury finds that in order to preserve at least the appearance that the IFC enforces these risk management policies, Mr. Vetere and Mr. Friedman testified that the IFC contracts with a private security firm named St. Moritz to monitor the fraternities' compliance. Both IFC executive officers authenticated a copy of a patrol

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<sup>31</sup> The Grand Jury is instructed by the previously detailed testimony of Mr. Rawley who explained that beer funnels involve a long tube in which a person pours beer into a funnel at one end to be consumed at the other end by another person.



checklist<sup>32</sup> they direct St. Moritz representatives to complete as they tour each fraternity social. Requiring a simple mark in either the “yes” or “no” column, these checklists ask St. Moritz security to record whether: there are an appropriate number of sober members at the entrance; whether those sober members are wearing the required wristband; whether a single entrance and guest list is being utilized; if they observe any kegs of beers; if they observe any mass consumption of alcohol devices; if they observe individual sized glass containers; if they observe any fire hazards such as covered smoke detectors; if guests can move around freely without having to push; if the noise level is consistent with a normal social event; if alcohol is “being used responsibly and in accordance with the law”; if the designated sober members at the entrance are alcohol free; whether there are sober members wearing wristbands at the bar; whether proper signs are posted around the bar; whether snack foods are visible from the bar; whether the liquor consumed is mixed rather than in shot form; whether there is at least one sober members at the exit wearing required wristbands; and finally whether there are proper signs posted around the exit. The Grand Jury was stunned to learn that St. Moritz was **not** tasked with assessing visibly intoxicated guests, identifying minors and pledges, or preventing underage drinking. The Grand Jury finds that none of these checklist items are designed to effectively curb underage drinking or dangerously excessive consumption.

According to Mr. Friedman and Mr. Vetere, every Tuesday, St. Moritz deposits the only existing copies of the previous weeks’ worth of checklists regarding every fraternity in a locked drop box outside the IFC office at the Hetzel Union Building.

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<sup>32</sup> See Exhibit 2

Friedman's testimony further explains that members of the IFC<sup>33</sup> then sort through the checklists—discarding those without any violations while preserving checklists that record a violation. While many of the checklists with violations proceed to a conduct review with Ms. Shupenko's involvement, Mr. Friedman's testimony at times indicated that the IFC maintained discretion to not forward certain minor infractions on in the disciplinary process:

Q: "Would [Kathleen Shupenko] see them even if it was minor, then?"

A: "No, she wouldn't see them if there was no conduct review."

Q: "Okay. So let's just be clear. You had the discretion to decide if she would see them. If you thought that it was minor, she would not see them?"

A: "Yes."

Q: "So if there was an infraction, you would decide if it was big enough for Kathleen to see?"

A: "Yes."

Q: "All of the infractions that have ever been in that box, or do they [the IFC] exercise discretion and not pass everything on?"

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<sup>33</sup> Ms. Shupenko's testimony corroborates that the IFC Executive Vice President passes the checklists to the IFC Vice President of Standards, who then reviews them. Ms. Shupenko testified that she does not have the ability to review the checklists unless the IFC brings them to her attention.



A: "Yeah, not everything is passed on."

Q: "Okay, so it's up to their discretion?"

A: "Yes."

Q: "Some things that come in on these checklists the IFC does not report on to the school?"

A: "Yes."

Q: "In their discretion?"

A: "Yes."

Both Mr. Vetere and Mr. Friedman testified that if a checklist with a violation advances to the next level, the IFC notifies the chapter President of the infraction and a standards review or conduct hearing occurs. The IFC Vice Presidents for Standards along with Ms. Shupenko preside over the conduct hearing in which the violation is discussed before a sanction imposed. According to the IFC officers' testimony, the fraternity may accept the finding or appeal it to the board.

Although Mr. Friedman at one point began to testify that St. Moritz did a "good job" with their safety checks, though "obviously no one is perfect," the Grand Jury concludes that the general consensus among St. Moritz employees—and even from the IFC President himself—resoundingly confirm St. Moritz's spot checks are laughably ineffective at preventing excessive and underage drinking among fraternities. St. Moritz employees Devon Mitchell, Shane Montgomery and Jacob Vigil testified that constraints

placed upon them by their employer—in this case, the IFC itself—reduces St. Moritz guards, in Devon Mitchell's words, to "glorified babysitters."

Devon Mitchell, the operations manager for the State College branch of St. Moritz security, explained that although he has previously patrolled the fraternities himself, typically he assigns anywhere from three to nine guards to monitor the houses from Tuesday to Saturday night. He explained that the guards break down into two or three teams and divide the audits of all 40 fraternities amongst themselves. Mitchell testified that most of the individual officers who patrol the fraternities are young, and criminal justice students themselves at South Hills School of Business and Technology. According to Mitchell, the only training the guards receive comes from the IFC directly. All three employees testified that on a given weekend night, there are only approximately 12 officers who, in groups of two or three, must patrol approximately 40 fraternity houses between 10:00 p.m. and 2:00 a.m.

Mr. Mitchell, Mr. Montgomery, and Mr. Vigil all explained that when they arrive on scene for a social check, standard procedure requires St. Moritz employees to impotently wait at each fraternity's front door until a member of the fraternity executive board is located inside and can escort them through the house. However, Mitchell, Montgomery, Vetere, Friedman, and Myers all concede that this delay simply serves as a ruse to allow the contraband inside to be hidden or re-directed to unsearched areas of the house. To compound the issue, routine fraternity patrollers Mr. Montgomery and Mr. Vigil both described that the fraternity escort carves a direct path through the common area to the bar area of the party—the IFC does not permit St. Moritz employees to view inside any bedroom or private space. All witnesses—including the IFC members who

testified—similarly agreed that such off-limits area easily facilitate the obfuscation of checklist violations.

Devon Mitchell described the system in his testimony as follows: "...we normally knock on the door. Someone opens the door. They tell us to wait. They get their risk manager or president. We have to wait outside till they get their risk manager or president. The risk manager or president comes and then walks us around the house." He elaborates in his testimony:

Q: "And they take you only to where they want you to go?"

A: "Yes, ma'am..."

Q: "So literally they just show you what they want to show you?"

A: "Yeah, I guess, if you want to say that."

Q: "And they keep you waiting outside until they find a person that you are supposed to meet with, so they could be walking away with their hands into rooms that you will not enter and all that kind of stuff?"

A: "That's correct."

Q: "In the time period that you guys come and they keep you outside, they could clean up their infractions?"

A: "Absolutely."

Q: "It is easy to beat the system?"

A: "Absolutely."

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Under examination, Mr. Vetere as the president of the IFC also admitted to the Grand Jury that on a scale of one to 10, it's "probably a 10, easy" to beat the rules—namely, that brothers can have kegs or hard liquor stashed in any of their rooms. He further conceded that the act of warning people in the party to hide checklist violations "definitely does happen." Ultimately, Mr. Vetere agreed with the statement that "the fraternity brothers can have all the hard liquor they want in their rooms, all the kegs they want, drinking stations, and this security firm would have no idea." Despite testifying that he knew lives were at stake, he agreed that "they've orchestrated a system that they can completely hide what they're doing."

Administrative IFC Vice President Myers testified similarly, agreeing that St. Moritz cannot observe most of the problems in the fraternity parties. Regarding the requirement that St. Moritz wait while fraternities locate an escort, when asked "when that happens, people get rid of their double cups, people hide the bottles, and the kegs are in the rooms, in the bedrooms, and everybody fixes violations, usually, that can be seen, and despite that people still get caught and nothing happens, right?" Mr. Myers simply responded, "Right."

The testimony of multiple witnesses bears out that Mr. Myers is not alone in his assessment that even observed violations fail to yield significant consequences. Jacob Vigil, who serves as crew supervisor for the fraternity patrol, described "Well, a lot of these kids are just—they feel entitled, that nothing can stop them. So whether they went to pick a fight with someone—they feel that they are able to. I've seen—I mean, let's

see. We had a case last year where one of the officers, Shane, the last person that was in here, saw a guy doing cocaine, and they said that they kicked him out. We come back probably two months later and there he is, as an executive member.” Mr. Vigil further explained that the he has witnessed former IFC vice presidents and presidents drunk at these parties. Devon Mitchell’s testimony echoed Vigil’s in observing “...there are certain houses that, I mean, in the past was every single week would give us problems and we would report the infractions...people walking around with double cups or just any kind of infraction that could be on the checklist, and that same house would have infractions every single week and they would never fix it, and then...they’re still having socials and parties and registered parties, and it seemed to me like nothing was ever being done.” Mr. Mitchell also testified, “sometimes it was ridiculous that...we would report infractions, and that same house was allowed to have a social or a party the same—you know, the next week and the following week and continue.” Although the IFC occasionally levies fines as a sanction for rule breaking, Mr. Myers (the IFC finance officer) testified that the money forfeited by the fraternities typically stems from internal membership dues rather than an out of pocket expense. As a result, Mr. Myers agreed with the characterization that the fines are essentially relegated to “a late cover charge to the party” or “party insurance.” In one semester, Mr. Myers estimated the IFC collected approximately \$35,000 in fines.

Testimony from all the St. Moritz employees who routinely tour fraternity parties describe the openness with which the members display their behavior and their perceived fearlessness for any punishment. Jacob Vigil admitted that every weekend since he accepted his position with St. Moritz in 2015, he and his officers have

witnessed fraternity members smoking “weed” and “joints” in front of them; that he sees people vomiting from alcohol “all the time.” He also testified that he has seen intoxicated individuals passed out on furniture, stumbling, and falling over. Despite documenting all of this behavior, Vigil conveyed that six months into his position, he realized that the IFC officers “definitely don’t” penalize the violations he and his officers report. Mr. Montgomery, who also began his tenure as a St. Moritz social checker for the IFC in 2015, testified that he sees “drunk people there all the time” and has “written infractions every night.” He identified at least three other fraternities who are “always” observed with “floating handles” or with contraband bottles. Mr. Mitchell likewise summarized to the Grand Jury, “We see kids drinking out of liquor bottles. We see kegs. We can smell marijuana in the houses.” To illustrate the extent of the issue, the Grand Jury heard Mr. Mitchell testify to occasions in which St. Moritz encountered these fraternity houses filled with 500 to 1,000 people inside and “most of the kids are drinking.”

All three security firm witnesses testified, however, that the IFC limits their overall function. Mr. Mitchell further explained that his security firm is defenseless to determine underage drinking given that the officers are not permitted by IFC rules to identify partygoers, which provides no method for them to determine whether any member at the party is in fact underage. As Vigil described it, “I was always taught that we are there to deter and report...That we do not enforce anything.” The collective testimony from St. Moritz employees established that even when they encountered checklist infractions or highly intoxicated individuals, the IFC’s direction required them to record and report it rather than enforce any violations independently.



As previously discussed above, when the IFC receives St. Moritz checklists denoting fraternity violations, Mr. Friedman's testimony at times indicated that the self-regulating IFC retained discretion over which violations were serious enough to forward on in the disciplinary process. Mr. Friedman admitted that the IFC itself was the first point of disclosure for the checklists. The IFC itself is the single point of entry for all the violations observed by St. Moritz. If the IFC does not forward notice of the infraction to the Penn State administration, Ms. Shupenko—the University's representative—would never become aware of it. Ms. Shupenko herself testified that she lacked any "ability" to demand initial access to the checklists;<sup>34</sup> rather "they bring the social checker sheets to me if there's something that I need to know about." Ms. Shupenko denied holding any oversight powers in her position with the IFC, although her testimony seems to indicate that the Director of the Office of Fraternity and Sorority Life, Danny Shaha, and his assistant director are responsible for advising the IFC on behalf of Penn State University. Moreover, Ms. Shupenko made clear that her position only allows her to make suggestions to the IFC executive board and hope the members adopt her advice.

The Grand Jury further weighed testimony provided by both Mr. Montgomery and Mr. Vigil describing an encounter with IFC President Vetere at the beginning of the 2017 semester. According to both Mr. Vigil and Mr. Montgomery, during that in-person meeting, Mr. Vetere directed St. Moritz to apply leniency to the fraternities as they monitored the parties and applied their checklists. Mr. Vigil recalled that Mr. Vetere

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<sup>34</sup> Curiously, Ms. Shupenko also explained that after Timothy Piazza's death, Penn State did in fact establish its own list of expectations and rules for the Greek community, instituted separate and apart from the IFC, including implementing its own independent patrol group for the fraternities, comprised of volunteers from the ranks of Penn State employees rather than a private security firm. It is unknown to the Grand Jury why Penn State did not intervene with such regulations earlier if it does, in fact, hold oversight authority over the fraternities' social events.

explained the fraternity brothers were “just now getting back, so we have to let them settle in,” instructing Mr. Vigil to “just be pretty lenient.” Mr. Montgomery recollects a similar conversation with Mr. Vetere, testifying that “this year IFC specifically told us to be more lenient with them.” According to Mr. Montgomery, Mr. Vetere ordered St. Moritz that “first time through, be lenient with them. Tell them what they are doing wrong, and it was kind of just like the beginning of the year, since the parties were coming back in. He said be lenient with them.” Mr. Vetere himself mostly substantiated the content of this directive, explaining his intent was to “help fraternities with their risk management and tell them what to do right to avoid...problems” when he “told him that the sanctions that were placed on them for the first week would be lighter than normal.”

On the evening of February 2, 2017, the night a highly intoxicated Timothy Piazza fell down the stairs and sustained the injuries that ultimately led to his death after the Beta brothers hazed him, Shane Montgomery and Jacob Vigil testified that they had visited the Beta Theta Pi house per their contract with the IFC. Mr. Montgomery informed the Grand Jury that he believes he recalls seeing a bottle of vodka “floating around” the party. Although he didn’t notice it on the particular date of February 2, 2017, Mr. Montgomery also testified that during his past safety checks, he has previously seen members of the Beta house hold up a bag of wine, slap it with an open hand, and drink from it. Mr. Vigil testified that, though he cannot recall with certainty, he believes that he wrote Beta an infraction for allowing the bartender to consume alcohol that evening and believes he also saw a “floating handle” of alcohol. Although the Grand Jury issued a subpoena for the February 2, 2017 Beta Theta Pi checklist from the IFC, President Vetere claimed that the IFC discovered that particular checklist is now missing and he

could not produce it. Mr. Vetere insists, however, that contrary to St. Moritz's testimony, the checklist did not document any violation against Beta Theta Pi that evening, which explains why it would have been discarded per standard practice.<sup>35</sup> IFC Executive Vice President Blake Friedman, however, offered the Grand Jury very different testimony. Friedman testified that he believes the checklist contained a reported violation against Beta Theta Pi that evening, but the IFC discarded it as moot because the pending investigation due to Tim Piazza's death suspended the IFC's disciplinary authority over the fraternity. Friedman specifically testified, however, that he recalled the checklist documenting a violation:

Q: "And are you aware that one had a violation on it?"

A: "Beta Theta Pi? Yeah, it was."

Q: "And what was it? Do you recall?"

A: "I believe that there were no—no members at the bar—and that's the only specifics that I remember from it."

Overall, Jacob Vigil bluntly informed this Grand Jury that, in his two years of experience, the parties he has witnessed were "absolutely not" safe; that the level of intoxication he observed every time he walked through them was "extreme;" and agrees that these parties reflect the lifestyle that has permeated the whole Greek culture at Penn State. The Grand Jury credits this testimony, and finds appalling the lax

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<sup>35</sup> Mr. Vetere claims in his testimony that he spoke with Jacob Vigil who denied any violations were noted on the checklist that evening.

supervision Penn State permitted over these parties which almost nightly placed young men and women in danger of death or severe bodily injury.



### **Penn State's Role**

The Grand Jury finds that Penn State administrators were aware of Beta Theta Pi's problematic condition circa 2009, and of the dangers of university's Greek life in general. Regarding Beta's prior debauchery leading to the fraternity closing this local chapter's doors, a document *in the possession of Penn State*, received by the Grand Jury during its inquiry, catalogued a litany of offenses from 2007 through early 2009.<sup>36</sup> Notable among the itemized list entitled "Alpha Upsilon<sup>37</sup> Conduct File"<sup>38</sup> include the following quoted bullet points.<sup>39</sup>

#### **2007**

- February 1, 2007—A risk management education report was submitted by the chapter risk manager containing admission of pledges consuming alcohol and being intoxicated at Beta events.
- March 2, 2007—Anonymous report of hazing within the pledge program and indicating that the 5 of 12 pledges that quit did so due to hazing. Specific hazing allegations included personal servitude, driving members around town and sleep deprivation.


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<sup>36</sup> Although the author of this "Conduct File" was never identified, the accuracy of many of its notations was confirmed by Ken Rawley, who professed to have daily interaction at the Beta chapter house during this time period.

<sup>37</sup> The Penn State chapter of Beta Theta Pi is the "Alpha Upsilon" chapter of the national fraternity. Such designations are how the national fraternity differentiates between individual chapters of Beta Theta Pi.

<sup>38</sup> See Exhibit 3

<sup>39</sup> The Grand Jury lists these "bullet points" exactly how it received them from the document in the possession of Penn State.

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- March 22, 2007—Police report of underage possession, consumption and transportation on the fraternity premises at 1:54 a.m.
  - May 1, 2007—Report of hazing within the pledge program from a parent, including accounts of active members harassing dropped pledges by phone as late as 4:00 a.m.<sup>40</sup>
  - July 14, 2007—Police report of underage possession, consumption and transportation on the fraternity premises at 11:54 a.m.
  - September 5, 2007—A male student was apprehended urinating in public after being observed leaving the chapter house by police. He indicated he had consumed 8 shots of Vladimir vodka underage at the Beta house. Another male student was apprehended urinating in public after being observed leaving the chapter house by police. He indicated he had been served six or seven cans of Natural Light beer at the house. He was underage and indicated no attempt to check his ID was made. The police log indicated “University Police officers assisted the State College Police Department in shutting down a large party at Beta Theta Pi fraternity.” A conference call with officers confirmed the chapter pooled funds, no guest list and distribution of alcohol to minors.

## **2008**


- April 17, 2008—Police apprehended an underage male student on Beta property at 1:00 a.m. with an open container of Natural Light beer. He

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<sup>40</sup> Even back in 2007, the Grand Jury observes that Penn State had in its possession documents demonstrating that two acts of hazing were alleged against Beta Theta Pi in just one pledging period.

indicated getting the alcohol at Beta Theta Pi at a party. The male had a BAC of 0.189. Several cans of Natural Light were on the lawn, floor and people's hands and no other functions were witnessed by police. The individual indicated no ID was needed to acquire alcohol. A conference call with chapter officers confirmed that alcohol was purchased by the chapter and distributed freely, including to underage guests.

- April 26, 2008—Police report of furnishing alcohol to minors at 11:08 p.m.
- July 1, 2008—Police report of a student seen leaving the chapter house at 1:26 a.m. with alcohol in a red cup. He was found urinating in the parking lot. He was underage and had a .20 BAC.
- July 1, 2008—Police report of a student leaving the chapter house at 12:23 a.m. and found urinating in the alley behind the house. He was underage and had a .114 BAC.
- September 6, 2008—Police reported furnishing alcohol to minors at a tailgate with 100 people taking Natural Light beer cans freely from a plastic trash can. No ID was required to obtain alcohol. The incident was covered in The Daily Collegian on 10/30/08.
- September 24, 2008—Incident submitted where a thrown glass beer bottle hits a girl in the face during a date party. A conference call with chapter officers did not identify the individual(s) responsible, but revealed members and guests were engaging in a "case race" drinking game and the alcohol was provided through the chapter social budget.

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- October 29, 2008—Members reportedly vandalized the pledge dorm by breaking an air conditioner and smashing furniture against the wall.
  - Fall 2008—A parent reports that pledges are kept at the chapter house until 2 am and are forced to drive members around as late as 3 am and are suffering from sleep deprivation.
  - Fall 2008—Reports of hazing witnessed or conveyed to chapter alumni
    1. Pledge delivering food/drink to member rooms, loading luggage in cars, driving brothers to class and tending bars at parties
    2. Pledges clean the house by themselves, kept up through night on occasion
    3. Third floor hallway and entry patio surveillance cameras covered during pledge event.
  - Fall 2008—Several incidents of members discarding used condoms onto the property; notably three times out a window near the front door of the chapter house. Photographic evidence provided.

## **2009**

- January 2009—A keg was reportedly found on chapter premises in a trash can in the party room.
- January 2009—Evidence of continued drinking games (beer pong) found
- February 7, 2009—Social functions held on Friday and Saturday evening in violation of probation restrictions of one social function per week. Evidence of beer cups on floor, ledges and tables along with empty liquor bottles and cans of beer both nights.

## Other Allegations



- The chapter maintains a separate social account of funds used to purchase alcohol.
- Repeated use of kegs, including in bedrooms. Photographic evidence provided.
- Use of beer funnels from the second floor stairwell to the lobby.
- Severe disrespect and destruction of property, with photographic records provided.

In addition to the above memorandum outlining hazing and alcohol concerns at Beta Theta Pi, Penn State surrendered to the Grand Jury email correspondence that reinforces proof of the University's knowledge. In particular, an email sent to Damon Sims in September of 2008 shows that Don Abbey and Mr. Sims discussed these concerns together, and that the message was clear. Mr. Abbey thanks Mr. Sims for meeting the previous week, adding "I also thought it quite refreshing to hear a [sic] honest, non-political answer to the rushing and keg issues. I am sure that the Greek system goes through at least enough metal to make a tank every week in cans. We need to work together to change the direction of fraternity life to more about brotherhood and less about night club."

The Grand Jury also noted an email from Mr. Sims to then-President Graham Spanier on January 20, 2009 in which Mr. Sims outlines, "Don Abbey and the three other Betas met last Friday with...members of my staff and me to discuss the next steps towards Don's vision for the Beta chapter. Their effort to remove the offending parties



among the undergraduate actives living in the house has failed because they lack authority to do more than take their rooms away. The men continue to be active members of the chapter. For that reason Don and company plan to clean house with the help of national. They've asked us to assist. I in turn insisted that whatever standard we held the Beta Chapter to would have to be the standard we could and would apply equally to all other chapters. Don bristled a bit at my reluctance to lead the charge against the current membership. He had suggested that the university go to the national and tell them to shut down the PSU chapter..." The Grand Jury finds this email corroborates Donald Abbey's testimony that he attempted to secure Penn State's backing to reform the fraternity culture at Beta Theta Pi.

In February of 2009, Ken Rawley also emailed<sup>41</sup> Damon Sims and Roy Baker, then Director of Fraternity and Sorority Life, attaching a Centre Daily Times news article<sup>42</sup> entitled "PSU student drinking leads to more hospital visits." In the body of his email, Ken Rawley notes that "[o]bviously this problem played a role in the closure of the Beta House," followed by an entreaty to the Penn State administrators to scale back the number of IFC sanctioned parties each week. Mr. Rawley expresses that permitting so many parties each week reinforces "the drinking culture" and "the general belief that there is simply too much drinking at PSU." Mr. Rawley also draws the administrators' attention to the final two lines of the attached article, which notably quotes an interviewed Penn State junior as saying " 'Yeah, this is an excuse to drink,' Kimble said. 'We're the number three party school, so we have to find an excuse somewhere.'"

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<sup>41</sup> Although the email featured no reply by Mr. Sims or Dr. Baker, it appears to have been printed at some point by "Damon R. Sims" per the email's heading.

<sup>42</sup> According to the email, it appears the Centre Daily Times published the article written by Anne Danahy on February 26, 2009.

Moreover, in what appears to be a typed memorandum entitled "Beta Theta Pi (PC on 3/16/09)"<sup>43</sup> also obtained by the Grand Jury via subpoena from Penn State, the unidentified author summarizes the circumstances surrounding Beta's 2009 path to closure by its own national fraternity. Regardless of his or her specific identity, the context of the document demonstrates that the author unmistakably served as someone at least affiliated with high level administrators at Penn State if not a Penn State employee.<sup>44</sup> The memorandum—again adopting the form of bulleted notes—begins by observing that Beta is "no worse and perhaps generally better than most of our fraternities."<sup>45</sup> The bullets discuss Don Abbey's involvement, acknowledging:


- "Meanwhile, Don [Abbey] & his man on the ground were feeding 'evidence' to the Beta Theta Pi National, trying to show that the remaining men were also a problem in terms of alcohol and damages
- The National put the group on probation about six weeks ago, saying that alcohol use was not permitted

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<sup>43</sup> See Exhibit 4

<sup>44</sup> The Grand Jury draws support for this conclusion from the language and diction employed by the author. S/he opens the memorandum by identifying Beta Theta Pi with the inclusive pronoun "our," referring to it as "*our* fraternities." After describing that wealthy alum Don Abbey entirely funded a renovation of the chapter house, s/he also indicates that "*Graham* introduced me to Don shortly after I arrived, and I have had various conversations with him and others about ways the university could encourage the development of a model fraternity experience at the Beta chapter." The Grand Jury finds that "Graham" refers to Dr. Graham Spanier, the previous President of Penn State University in office in 2009. S/he also mentions Graham later, writing "I've been trying to let the dust settle a bit, but the Alumni Board is meeting here the first week of June, Don will be back then, if not before, and I believe Graham and I will be meeting with him to discuss the future." Furthermore, at the end of the document, the writer opines, "Minimally, during the 2-3 years the house is not likely to be a fraternity, I think *we* should partner with the Alumni Board to use it for visiting scholars, retreats, leadership development programs, and the like." (emphasis added).

<sup>45</sup> Based on the testimony the Grand Jury heard, it cannot fathom *any* fraternity that could possibly be *worse* than Beta Theta Pi in terms of its destructive use of alcohol and its abuse of its pledges. The fraternity's role and that of the Beta brothers leading to the death of Timothy Piazza, the Grand Jury finds, certainly cements Beta as among the worst of the worst.

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- More ‘evidence’ came to the National from Don & Co., and the National decided to suspend the charter and to tell the members that they would be deactivated and would be given alumni status
  - The National sought my endorsement of the action, asking that we issue a joint release on the topic, but I declined saying simply that the group was not, to my knowledge, in violation of any university regulation—had not been disciplined, nor was subject to discipline that would otherwise lead us to unilaterally seek their closure—we respected their ability to take the action, but would not endorse it.”

Indeed, the above strategy seems consistent with Penn State’s handling of Beta Theta Pi’s transgressions and the behavior that ultimately led to its closure in that time period. Despite Dan Wilhelm, the President of the Alpha Upsilon chapter of Beta Theta Pi’s alumni board characterizing the decision to close the chapter as “well documented...risk management issues”<sup>46</sup> obtained after “months of investigation” in an email in Penn State’s possession, the Grand Jury finds that Penn State refused to take its own action. Emails obtained from Penn State via subpoena reveal that although Penn State administrators understood alcohol abuse existed in the Beta house, the University considered itself only “an interested third party,” adopting a policy of detachment.

For instance, in discussing the 2009 situation that erupted when Beta’s alumni board evicted the brothers residing in the house shortly before national Beta Theta Pi

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<sup>46</sup> Throughout the extensive testimony received in the course of this investigation, the Grand Jury understands “risk management issues” to refer to pledge programming as well as alcohol consumption concerns.

elected to close the local chapter, Damon Sims acknowledged in a February 22, 2009 email to Graham Spanier and another individual that concerns regarding alcohol were fueling the national Beta Theta Pi fraternity's alarm with Penn State's local chapter. He explained, "The national seems determined to get out of the picture in the short-term, fearing liability risks resulting from the ***continuing violation of its alcohol policies***. It seems entirely possible that the national will suspend the charter, formally removing itself from the picture, while the men—or some of them—remain, fighting an eviction proceeding brought by their landlord, the Alumni Board." (emphasis added).

However, rather than expressing any concern over the potential danger posed by these "continuing violations of alcohol policies," University officials appeared to focus on a desire not to wade into the fray of the alumni board fighting to evict the brothers. Mr. Sims opened his email by assuring Dr. Spanier "So far, none of the many Beta parents or alums with whom I've spoken has directly connected PSU to this action. I've gently reminded them that the matter involves private parties, private contractual relationships, and private associations. Our role as an interested third party is clear, but we're keeping appropriate distance, I think." Dr. Spanier's response to Mr. Sims' email confirmed, "I agree that we should keep our distance for now. You are handling this just as you should." As the abuse of alcohol can have deadly consequences, the Grand Jury finds the position of Penn State's administration to be unreasonably dismissive of a well known danger to their students.

Mr. Sims testified before the Grand Jury that to his knowledge, no one in Penn State administration took action to investigate what the Beta Theta Pi students were doing. He explained that despite receiving information about the role of alcohol behind

the doors at Beta, the University “didn’t think about” investigating because the national fraternity was “cleaning up their organization” and the University “did not have specific information about any individuals.” He indicated that Penn State believed the problem was being “addressed” through the national fraternity closing the local chapter. However, Mr. Sims did admit that investigating a future situation from an individual student conduct perspective “is fair game for our very deep consideration. I think that everything that we have learned through this experience suggests we need to make significant change.” The Grand Jury believes that, in the wake of similar allegations in the future, Penn State must shift to timely investigations of individual conduct violations if they have any hope of dealing with alcohol abuse and hazing issues in Greek life head on.

Additionally, the Grand Jury received an email written by Roy Baker to Damon Sims on January 28, 2009 in which Mr. Baker details a meeting he had with the Beta brothers to discuss Don Abbey’s concerns. Mr. Baker conveys that, in light of the substantial amount of capital Mr. Abbey was investing in the house, he “explained that they had an opportunity to do what no fraternity could do at Penn State and that was to be a model for others to follow. All in all, they do not want to be a model for others because they are convinced that doing so will be the end of the chapter because of the ‘social nature’ of the Penn State Greek system.” Mr. Baker writes, “[The fraternity brothers] believe they must be a social fraternity to be successful at Penn State.” The Grand Jury finds such a statement—from the mouths of fraternity brothers themselves to Penn State administrators—to be exceptionally telling about how ingrained the

culture of alcohol truly is among fraternities, and how such a reality was clearly known by University officials.



Danelle Del Corso testified that she has been employed by Penn State University since November 30, 2016 as an Assistant Director of Fraternity and Sorority Life, which is its own department within Penn State University under Student Affairs, located in the HUB student center on the University Park campus.<sup>47</sup> Ms. Del Corso identified her chain of command as first interim director Danny Shaha as her immediate supervisor; then Damon Sims, the Vice President of Student Affairs; and finally, President Eric Barron. Ms. Del Corso testified that, in addition to herself, Evan Ditty also serves as an assistant director. Ms. Del Corso testified that she and all of her superiors are employed by and paid by Penn State University.

Ms. Del Corso and Mr. Ditty split the same responsibilities of advising the various fraternities, both non-members and members of the Interfraternity Council,<sup>48</sup> which consists of 43 fraternities that each elect a group of IFC executive officers every November. Ms. Del Corso testified that the IFC serves as a leadership group that develops the policies and procedures of the fraternities on campus at Penn State.<sup>49</sup>

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<sup>47</sup> Prior to her acceptance of the position, Penn State was utilizing a 24-year-old graduate student to advise the IFC on how to discipline a fraternity.

<sup>48</sup> Ms. Del Corso testified that during the Spring of 2017, she attended three different discussions regarding violations. She testified that these did not have to be with St. Moritz but could be with regard to a member who did something that would look bad for the IFC so they might ask for advice about what to do and how to respond. She testified that although it has been a positive experience, their thinking is immature.

<sup>49</sup> She also testified that each individual fraternity has its own internal policies and procedures to honor as dictated by its national fraternity organizations.

The IFC governs the member fraternities, provides leadership to them, issues statements on their behalf, and generally creates an identity for them at Penn State.<sup>50</sup>


Ms. Del Corso testified that the staff of the Office of Fraternity and Sorority Life ("OFSL") aids in steering the IFC's operation. Ms. Del Corso and her counterparts attend the weekly IFC executive council meetings and, if necessary, interject when the students weigh possible decisions. However, Ms. Del Corso testified that she does not make any decisions for the fraternities and sororities; and while she may offer opinions, the ultimate determinations reside with the students. Additionally, although their titles brand them "advisors," the OFSL staff are not privy to all of the information received by the IFC, which maintains enough autonomy to withhold information.

Within the University, Ms. Del Corso testified that there is a difference between organizational discipline (the fraternity) and individual discipline (the students of the fraternity). When misconduct occurs at a fraternity, it can trigger both organizational and individual discipline.

Ms. Del Corso testified that an individual student can be disciplined for misconduct. If this occurs, Penn State handles it through the Office of Student Conduct and the punishment is imposed directly on the student. If a fraternity receives an infraction, the IFC adjudicates the violation over the group. Per Ms. Del Corso, Ms. Shupenko from the Office of Student Conduct assisted the IFC with misconduct

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<sup>50</sup> Similar to the IFC, Ms. Del Corso also testified that the national fraternity organizations have a guiding body known as the National Interfraternity Conference; however, the National Interfraternity Conference does not set any kind of policies for their member groups to follow. They merely provide guidance, programming, and education.

proceedings against fraternities in a limited manner. At times, Ms. Shupenko helped to guide questioning during meetings and weigh in on possible outcomes. 

Ms. Del Corso testified that there are times where she will assist the IFC in advising on the organizational discipline process. The Grand Jury finds that the standards regarding when Penn State interfered with the IFC decision-making process and when Penn State received information from the IFC is generally unclear.<sup>51</sup>

Ms. Del Corso testified that Penn State has minimum standards that fraternities must meet in order to remain in good standing with the University. For instance, she described that a fraternity must maintain a minimum collective GPA; provide mandatory education to its members on the subject of alcohol, hazing, and sexual assault; engage in civic engagement such as the Dance Marathon (THON); and forge community relationships. Ms. Del Corso testified that Penn State University has the ability to suspend these fraternities for even basic violations, such as failing to maintain these standards, however, she was unable to explain why Penn State will not revoke a fraternity's recognition when hazing allegations are made.

Ms. Del Corso admitted that the IFC is subject to the same policies and procedures as all student organizations. Fraternities are also considered student organizations, which means that both the IFC and individual fraternities are bound by the same University policies and procedures. Therefore, if there is a violation of the

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<sup>51</sup> For instance, the Grand Jury notes testimony indicating that after Tim Piazza died, Penn State stepped in to revoke Beta Theta Pi's recognition as a fraternity before the IFC made its own disciplinary decision. Additionally, after Tim Piazza's death, the University eliminated the IFC's use of St. Moritz checkers, opting to form its own social checkers instead.



rules, Penn State has the ability to withdraw the recognition of the organization, including the recognition of the IFC.



Despite this, Ms. Del Corso testified that no other department at Penn State actually imposes organizational discipline over a fraternity other than the IFC.<sup>52</sup> Ms. Del Corso testified that if she receives a report of a hazing violation, she would report that to her supervisor, Danny Shaha. Rather than having their recognition revoked, Ms. Del Corso agreed that fraternities receive second, third, and fourth chances when they violate the University's hazing policy.

Ms. Del Corso further testified that student organizations, including fraternities, can request University funds for programming and guest speakers. Fraternities also have the ability to create a website at the Penn State website address, coordinate at involvement fairs, place information in individual students' residence hall mailboxes to recruit new members, and the University will assist in providing marketing materials to promote the fraternity.

Ms. Del Corso addressed St. Moritz's contract with the IFC, testifying that Penn State did not require her to look at the checklists documenting fraternity compliance at each social event. She explained that services for St. Moritz were paid for out of the IFC's ASA account, or "a student organization account." The IFC collected dues from all of the fraternities each semester, and the money placed into an ASA account held by Penn State University. If the IFC requests money from the account, Ms. Del Corso is

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<sup>52</sup> When a fraternity is accused of a violation, there will be written notification sent to the specific organization. The fraternity can either agree or disagree with the violation. If the fraternity does not agree or wants to appeal, then a separate conduct review board will review the information and meet to discuss the appeal.

the individual that would authorize the withdrawal. A withdrawal of funds from the IFC account cannot occur without Penn State's approval. The Grand Jury finds that Penn State controlled the IFC's money and, in fact, retained two dollars for each fraternity member whose dues were paid into the ASA account.

Additionally, Ms. Del Corso testified that since Tim Piazza's death, the University started engaging in its own patrols, and she in fact participated in those patrols along with university volunteers and employees. Her testimony closely matched Danny Shaha's written notes documenting the fraternities' violations during Parents Weekend 2017 when fraternities disregarded "all of the university measures that we asked for," such as a ban and/or restriction on alcohol.

With the exception of the one fraternity that essentially violated every single regulation established during Parents Weekend after Mr. Piazza's death, the University failed to take action against each fraternity that violated the University's rules during Parents Weekend. Furthermore, the University has taken no action for violations occurring after Tim's death on days other than over Parents Weekend. The University learned that one of the executive officers of the IFC informed his own fraternity members on how to circumvent some of the regulations imposed after Tim Piazza's death.

The Grand Jury summoned Damon Sims, Vice President of Student Affairs to appear and provide testimony regarding Penn State University's supervision of its students and the fraternities that operate with Penn State recognition. Mr. Sims testified that since August of 2008, he has served as the Vice President of Student Affairs, a

position that answers directly to the Pennsylvania State University President. Mr. Sims described his position as one of the "senior leadership positions at the University," affording him a seat on the President's Council. Under the umbrella of the Department of Student Affairs falls thirty four separate units charged with a myriad of programs that "support the student experience outside the classroom," though the two of central relevance to this Grand Jury are the Office of Fraternity and Sorority Life and the Office of Student Conduct.

Mr. Sims explained that in 2008, Roy Baker, a Penn State employee, directed the Office of Fraternity and Sorority Life ("OFSL"), which "advises" the Interfraternity Council and the other Greek organizations. Staff in the OFSL, per Mr. Sims' testimony, "provide advice and support to the Greek system at Penn State." However, the IFC itself shoulders the responsibility for monitoring and enforcing the behavior of the chapters through organizational disciplinary processes.

Mr. Sims repeatedly referred to the IFC as "an independent, free association" formed "decades ago" that is "not part of the university." He testified that the reason the University abdicated discipline of the fraternities to the IFC "was...because they had the rules and regulations for their member organizations within those governing councils." Mr. Sims claimed that the "rules and regulations were the Interfraternity Council's rules and regulations...it would self-govern its member organizations...and Roy [Baker] advised that process." Mr. Sims further explained this relationship between fraternities and the University extends to all student organizations "We have 1,200 student organizations and we have advisors for each of these." However, the advisor's role did

not allow them to “tell students what to do,” since Penn State found value in requiring the students to “solve their own problems.”



Despite acknowledging that Penn State leaders were well aware that problems associated with the Greek system lead to other real problems, such as “hazing, sexual misconduct...issues that we are aware of in terms of the size of parties and the out-of-control nature of all that,” Mr. Sims explained that other than the Greek student-run Interfraternity Council, no other agency or department at Penn State adjudicated any kind of organizational discipline against fraternities, with the exception of Penn State’s ultimate ability to revoke recognition of a fraternity. A step that, as Mr. Sims informed this Grand Jury, Penn State would only take for “an extraordinarily egregious” reason.

Although he emphasized multiple times that the University had to allow these “private organizations” that existed “independent of the university” to enforce its “own rules and regulations,” Mr. Sims also explained that Tim Piazza’s death changed everything. Currently, Penn State has “taken those responsibilities, that activity, away from” the IFC, replacing it with a new office within the Department of Fraternity and Sorority Life entitled “Fraternity and Sorority Compliance.” The University created 9 new personnel positions—eight compliance coordinators and one support staff—to monitor fraternity compliance with the University’s new rules and regulations and to enforce violations.

### **Barriers to Change**

The Grand Jury would be remiss if it did not address the various factors that contributed, in varying degrees, to an inertia that has forestalled necessary change in

the Greek culture. Mr. Sims testified that the changes the University proposed even after Tim died were met with “pushback from alums.” He explained that “there’s something uniquely peculiar” about what he described as a “commitment to hazing that is found within the Greek community.” Mr. Sims related his conclusion after being approached in private by various advisors of Greek chapters trying to justify the hazing experience. Mr. Sims expressly rejected the idea that hazing is anything short of harmful. He further went on to testify that the “pushback” stemmed from alums, students, and parents of students. “We’re getting heavy pushback from alums. We’re getting heavy pushback from the Interfraternity Council itself and individual members.” Although Mr. Sims testified that the Board of Trustees has now endorsed changes to Greek life, it took Tim Piazza’s tragedy to “...get them there.”

Donald Abbey expanded on the power Greek alumni donors maintain over the financial health of an institution and its resistance to change, testifying that a substantial percentage of alumni donations come from Greeks. “So you have got everybody who is giving money as part of this culture, boy, is that hard to change...” In light of the substantial monetary contributions made by Greek alumni, the Grand Jury would be remiss for not recognizing the influence this factor has on any decision an institution makes about what these donors value. While it may be impossible to quantify, it is not impossible to recognize.

Finally, the Grand Jury finds that, whatever values Greek life previously held dear, the Greek life the Grand Jury saw focuses mainly on excessive drinking and social debauchery. When Mr. Abbey invested millions of dollars of his money to restore the Beta Theta Pi house in 2008, emails reviewed by the Grand Jury revealed that brothers

and *even their parents* were more concerned about their freedom to “party” than embracing the original principles of the fraternity to which they pledged their loyalty. Ironically, in one email, a Beta parent complains to the University that “treating our children as prison inmates by installing 26 surveillance cameras running 24/7 watched by alumni will not help rehabilitate and change their behavior.”<sup>53</sup> The parent goes on to complain how Mr. Abbey spent his own money on restoring the house rather than “other activities or recreation” instead. The Grand Jury finds that the apples do not fall far from the tree—in Mr. Baker’s January 28, 2009 email to Mr. Sims, he quotes Beta brothers complaining that Mr. Abbey’s renovations restricted their social lives. Mr. Baker noted the brothers as criticizing that “money was wasted in this house”; “this is not the fraternity I joined”<sup>54</sup>; and “we never asked for these renovations.”

In light of these shifting attitudes and deteriorating priorities, the Grand Jury seriously questions the value and purpose of modern day fraternities if focus cannot be redirected back to its roots of academic excellence, community service, and respectful brotherhood.

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<sup>53</sup> While the cameras proved immensely helpful to the investigation of Tim Piazza’s death, the Grand Jury agrees with this particular parent that the installation of 26 cameras did not help “rehabilitate” the out-of-control culture at the Beta brotherhood.

<sup>54</sup> The fraternity “he joined” was characterized by unrestricted, unmonitored, excessive social drinking without regard for the property, the law or the safety of others.

## The Dangers of Greek Life



### At University Park

Penn State University acknowledges that Greek Life correlates with a heightened risk for excessive alcohol consumption and sexual assault. In the months following Tim Piazza's death, University President Eric Barron conceded in open letters to the public that fraternity and sorority members report rates of excessive alcohol consumption much higher than non-Greek students. He also admits that 17% of Penn State students are members of Greek organizations. Based on the population of the entire undergraduate body, by Penn State's own estimation, thousands of its students are at risk of suffering the same fate as Tim Piazza.

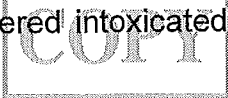
Lieutenant Keith Robb, a 23 year veteran of the State College Police Department, testified about a mere sliver of alcohol-related criminal cases within the Greek community handled by State College law enforcement in the months surrounding Timothy Piazza's death. In just that short time period, State College investigated 7 alcohol-related sexual assaults; 6 drug and alcohol overdoses; and several physical assaults. Lieutenant Robb also testified to include:

- September 18, 2014—a 20 year old young woman was sexually assaulted at a fraternity
- December 4, 2014—an 18 year old young woman reported a sexual assault by 4 fraternity brothers after the fraternity furnished her alcohol
- August 24, 2015—a woman notified police that her underage sorority sister became intoxicated and unconscious after drinking in a fraternity

house and the brothers refused to call an ambulance. Lt. Robb made forced entry to the home, located the victim, and obtained medical assistance. Her blood alcohol level measured .285. (The legal limit for persons to drive in Pennsylvania, for example, is .08% for persons 21 or older and .02% for those under 21 years old. Thus, in this case, the underage woman was more than 14 times the legal limit to drive with alcohol in her system.)

- August 29, 2015—an 18 year old female was sexually assaulted at a fraternity house while she was intoxicated and unconscious; her blood alcohol content measured .296
- Fall of 2015—police found a 17 year old female intoxicated and unconscious in a fraternity bathroom
- December 14, 2015—a 20 year old fraternity brother overdosed on heroin for the second time
- January 2016—an intoxicated 19 year old male fell down the stairs at another fraternity besides Beta Theta Pi, however those fraternity brothers summoned an ambulance immediately and he recovered from a concussion
- February 2016—a 20 year old man was assaulted outside of a fraternity and transported by helicopter for medical treatment due to the severity of his injuries
- February 26, 2016—a 19 year old victim was sexually assaulted at a fraternity



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- February 27, 2016—a 20 year old female was discovered intoxicated and unconscious inside a fraternity
  - March 18, 2016—a 19 year old young woman was sexually assaulted after being furnished with drugs and alcohol at a fraternity
  - March 19, 2016—an intoxicated 19 year old man fell from an elevated stage inside a fraternity and was flown by helicopter for medical treatment due to the severity of his injuries
  - April 2016—a 19 year old pledge was assaulted with a champagne bottle at a fraternity
  - September 24, 2016—police discovered a 19 year old visitor to the State College area from a different University intoxicated, unconscious, and not breathing. After surviving on a ventilator, he was eventually released from the hospital. His blood alcohol level was .490. This number would be almost 25 times the legal limit to drive a motor vehicle.
  - January 15, 2017—an 18 year old young woman was sexually assaulted at a fraternity after being supplied with alcohol
  - January 21, 2017—a 20 year old victim reported a sexual assault at the Beta Theta Pi fraternity house
  - January 2017—a 22 year old fraternity brother overdosed on fentanyl

Lt. Robb also detailed that in 2014, State College Police investigated 46 reported sexual assaults. In 2015, the number nearly doubled to 83, and in 2016, law enforcement handled 75 complaints of sexual assault. As of the end of March 2017—

just three short months into the calendar year—detectives investigated 23 sexual assault reports. Lt. Robb drew upon his considerable experience with the agency to estimate that 60-70% of those sexual assaults investigated by State College Police were both fraternity and alcohol related.

The Grand Jury received documents from Penn State indicating it received an anonymous report from a fraternity brother disclosing that he witnessed a sexual assault of strippers at his fraternity's Strip Club themed event. He saw the brothers feeding the females excessive alcohol until they blacked out before watching the brothers insert their fingers, and in some cases attempting to fit their entire hands, inside the unconscious women's vaginas. The anonymous reporter claimed the sexual assault occurred in the open in front of both Greek and non-Greek guests in addition to being captured by photograph and shared via the group's message application.

One of the aspects of Greek life that exacerbates the various dangers associated with identifying, investigating, and preventing hazing and these alcohol related incidents revolves around the secrecy of fraternity life. Lt. Robb testified: "it is not uncommon for a victim who initially reports a sexual assault to then, several days later, change her mind and say 'I don't want to go forward.' And what we found is, in interviewing them, that their sorority sisters are...encouraging them not to go forward because they don't want to lose that relationship with that fraternity. They do not want to lose...that party connection."

**Joe Dado**

COPY

Even before Timothy Piazza's death, however, University Park was no stranger to Greek life related tragedy. Lt. Robb testified that he became involved in the 2009 investigation into the death of 18 year-old Penn State freshman student. Joseph Dado had just begun his education at Penn State University in the fall of 2009. On the night of his death, Dado had gone out with several friends to visit a few of the fraternities. During the evening, he consumed alcohol at several different fraternity houses. When he failed to return home to his dorm room, the police initially launched a missing person investigation.

His body was discovered two days later at the bottom of a building on campus. Police later learned that Dado had died from blunt force trauma to the head as a result of an 18 foot fall. Autopsy results revealed that he had a blood concentration level of .169 at the time of his death.

The investigation revealed that Dado and his friends consumed vodka supplied by another minor before going out to the fraternities. Dado first stopped at the Alpha Tau Omega fraternity where he and his friends were served several cans of beer. He also played beer pong. At the next stop, Phi Gamma Delta, a fraternity brother supplied Dado and his friends with beer, whiskey, and marijuana. Dado was last seen that evening leaving Phi Gamma Delta.

Police ultimately charged several individuals who supplied Dado with alcohol the night of his death with Furnishing Alcohol to Minors, along with the two fraternities he had been seen consuming alcohol at: Alpha Tau Omega and Phi Gamma Delta.

COPY

Lt. Robb explained that, back then, many considered Dado's death to also herald the death of Greek Life at Penn State. A task force was initiated with a 30-point plan to come up with ways to address all of the issues with fraternities, such as requiring guest lists at fraternities, and limiting the amount and types of alcohol permitted at parties. However, Lt. Robb indicated that nothing substantively changed for the better after Dado's death and the ensuing task force it launched. In fact, Lt. Robb sadly recounted that several other alcohol related deaths or injuries at fraternities persisted.

2009 would not be the last time that a Penn State related Greek Life Task Force failed to produce significant change. Just as Joe Dado's tragic death sparked a Greek Life Task Force, James Vivenzio's shocking revelations about KDR's Facebook page also spawned a task force in 2015. The Grand Jury received testimony from Thomas King, former State College Police Department Chief of Police, and an active member of a 2015 task force launched by Penn State University.

Thomas King testified that he was previously employed by the State College Police Department for 35 years, the last 23 years as the Chief of Police. He described his duties as Chief of Police as administrative, focusing on planning, budgeting, staffing, policy development and working closely with community groups and community relations, including Penn State University. Mr. King explained that the collaborative relationship between Penn State and the State College Police Department (hereinafter "SCPD") focused on programs designed to improve the quality of life in the community, such as NEAT (Neighborhood Enforcement and Alcohol Team), a joint team policing model formed because of ongoing problems in neighborhoods in which a large percentage of the population was comprised of students, including Highlands and

Holmes-Foster neighborhoods. Chief King said this cooperative relationship over the last decade maximized resources and increased a police presence in the community.

As Chief of Police, Mr. King testified that he served on various task forces that focused on alcohol abuse and dangerous drinking, with one such task force entitled University Park Campus-Community Partnership. With 70% of the population between the ages of 18 and 24, the goal of this task force focused on reducing the risk of dangerous drinking in the community.

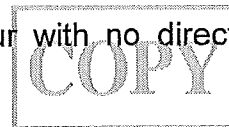
Mr. King testified that throughout the State College jurisdiction, more than half of the crimes in the 18-24 age group population involved drinking. He further estimated that 70% of crime in State College neighborhoods during overnight hours is alcohol-related.<sup>55</sup>

Mr. King testified extensively about his involvement on the Fraternity and Sorority Life Task Force formed by President Barron in the fall of 2015 to study issues concerning Greek life at Penn State. Mr. King testified that the task force was formed in large part due to an investigation of KDR fraternity by State College Police Department in January 2015 due to brothers posting nude or other inappropriate photos of passed out/inebriated female guests of their fraternity on a password protected page on Facebook. The task force consisted of a "Town and Gown membership" which included some members that were not associated with SCPD or Penn State. This task force featured approximately thirty members, all but four of whom were associated with Greek

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<sup>55</sup> Although generally straightforward when assessing alcohol-related crimes for individuals, Mr. King explained it becomes far more difficult to determine an exact number of alcohol-related crimes when it occurs in a neighborhood.

life in some capacity. Mr. King stated he comprised one of the four with no direct connection to Greek life.<sup>56</sup>



Mr. King testified the task force convened a total of five or six times during Fall Semester 2015<sup>57</sup> and then five or six times in the Spring Semester 2016.<sup>58</sup> The last meeting occurred during the first week of May 2016. The task force ended by simple failure to meet again, never pressed past the “draft” proposal stage, and did not result in any changes.

Mr. King testified that the task force had various subcommittees that organized and scheduled their own meetings and reported back to the full task force. These subcommittees included: 1) accreditation of fraternities and sororities by the national organization – examining the standards of the accreditation; 2) new member education program; 3) ongoing education programs throughout their time as an active fraternity or sorority member; 4) policy and enforcement and 5) drugs, alcohol, and sexual misconduct. Mr. King served on two subcommittees: #4 and #5.

Mr. King testified each subcommittee submitted recommendations and reported orally to the entire task force at the meeting, which were recorded in the meeting minutes. He recalled that Damon Sims (or an administrative assistant) took notes during meetings.

Mr. King testified as to a document entitled “Oversight Policies and Enforcement Subcommittee,” which described the issues on which the subcommittee should

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<sup>56</sup> The other minority members included Tom Fontaine, State College Borough manager, and two neighborhood residents of the Highlands neighborhood, where the majority of fraternity houses are located.

<sup>57</sup> The first meeting occurred on October 2, 2015.

<sup>58</sup> The first meeting of that semester occurred on January 14, 2016.

concentrate. He also produced drafts of recommendations from the taskforce committees. Due to the diversity of the members of the subcommittee, a unanimous agreement was not feasible. Mr. King recollected that, as a subcommittee, it decided to submit two sets of recommendations, thus giving Penn State the final decision-making ability on which recommendations to implement.

Mr. King testified to the Enforcement and Policy subcommittee draft recommendations. These recommendations included: increasing the Fraternity and Sorority Life and the Student Conduct Staffing; limiting the number of Greek life organizations attending one social function; limiting the days of a week, hours of day and frequency of social functions during the semester; reviewing conduct processes for all councils (fraternity, sorority, Panhellenic, and multicultural Greek organizations); and exploring new options for membership recruitment, including delaying or deferring the joining of new members.

Mr. King testified President Barron only attended the initial meeting in October 2015. Mr. Damon Sims or Mr. Danny Shaha were the Penn State representatives at the full task force meetings and received the recommendations in writing from the subcommittees. Mr. King testified Mr. Sims expressly said at the last meeting that he would review all of the recommendations and then meet with President Barron and his administrative team to determine which recommendations should be implemented.

Mr. King testified regarding the taskforce subcommittee on drug, alcohol and sexual misconduct. The subcommittee's focus was on alcohol and sexual misconduct, with minimal amount of time on drugs. As a result of this investigation, Penn State

examined data that showed either being a victim of a sexual assault as a female in a sorority or a perpetrator of a sexual assault as a fraternity member was at a higher rate within the Greek life system than it was within the general population of Penn State. Mr. King spoke of the connection between fraternity life, excessive drinking, and sexual assaults.

Despite all the work of the task force in 2015 and 2016, no change was ever achieved. Based on his vast experience as Chief of Police of State College Police Department and his personal experience with these issues, Mr. King testified that significant, sustainable changes must be made with the alcohol and hazing problems occurring in Greek life at Penn State.

#### **At Commonwealth Campuses**

Lt. Keith Robb testified regarding information provided by Sean Kelly, Director of Student Affairs for Penn State's Altoona campus. Mr. Kelly indicated that currently, only three Commonwealth Penn State campuses (apart from Main Campus in State College) have resident fraternities or sororities—Harrisburg, Altoona, and Erie. These campuses, he cautioned, are distinctive from the Greek life concerns at University Park because they function primarily as only two year programs before students funnel up to main campus to finish their four year degree. As a result, most of the 3,500 to 4,000 students on Altoona's campus are freshman and sophomores; which also means that most of the student population of these campuses falls under the legal drinking age.

Mr. Kelly also noted to Lt. Robb that the Commonwealth campuses do not recognize official fraternity houses, as its University Park counterpart does in State



College. However, Mr. Kelly has learned that the fraternities unofficially designate off-campus apartments where several of the brothers live together as the location for fraternity business, including hazing. He also admitted that, in his experience, most hazing issues that he's aware of from his campus involve alcohol.

Lt. Robb further explained to the Grand Jury that Mr. Kelly described the existence of a similar system for organizational discipline on the Altoona campus as the IFC provides at University Park. At Altoona, a "Greek Council"—comprised of Altoona campus Penn State students—meet weekly with a senior Penn State administrator acting as advisor. When a fraternity violates a regulation, the Greek Council adjudicates discipline, including fines, suspensions, or revoking the fraternity's recognition within the Council. He also noted that Penn State (Altoona campus) recognizes fraternities in the same way that Penn State (University Park campus) does, and can similarly revoke such recognition from a fraternity when warranted.

### **Marquise Braham**

The Grand Jury called Richard Braham to testify about the fraternity experiences of his son, Marquise Braham, who studied Biomechanical Engineering at Penn State Altoona. Tragically, Marquise Braham's college and fraternity experience would end with his untimely suicide during his freshman year.

Mr. Braham, who currently serves as a managing editor for ABC News, recalled the family's pride when Marquise decided to attend Penn State in the fall of 2013. He testified that, as a close family, when Marquise left their New York home, college bound for another state, Mr. Braham wrung a promise from Marquise to call both his mom and

his dad on a regular basis to keep in touch. When 18 year old Marquise first mentioned to his father that he intended to pledge a fraternity in his freshman fall semester, Mr. Braham did not initially respond with particular concern for his son's safety. Any misgivings that Mr. Braham harbored merely revolved around whether Marquise was spreading himself too thin, between his class load and his ambition to also become a Resident Assistant.<sup>59</sup> But Mr. Braham described Marquise's assurance: "Dad, this is the only opportunity for me to have any fun" and he consequently relented. According to Mr. Braham, during his son's first semester at Penn State Altoona, brothers at Phi Sigma Kappa sought out Marquise to pledge the fraternity by sending out what they referred to as "honeys"—or pretty college girls—to entice students. Mr. Braham knew that by Spring of 2014, Marquise had become a Phi Sigma Kappa brother, and was elected into an executive position as secretary.

Marquise committed suicide at the age of 18, while still a freshman at Penn State. Prior to the day of his death, Marquise had spent several days with his family at home for spring break week. The following day, Marquise was supposed to leave his family once more and depart for Penn State, resuming his newly elected position as secretary of the fraternity he pledged and successfully joined only the semester before. But Marquise would never return to Penn State Altoona. Instead, he went to one last lunch with his mother before making his way to the rooftop of a Marriott hotel and plummeting to his death. Mr. Braham testified to this Grand Jury that, knowing the person his son was, he believed Marquise, who couldn't bear the guilt of returning to

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<sup>59</sup> A student who receives training to help guide and advise other students.

Penn State and meting out the hazing that so tortured him just months before, leapt to his death instead.<sup>60</sup>



His parents later discovered that this was not his only suicide attempt that week. Days earlier, Marquise revisited his old high school, made several odd statements to his former teachers, and wrote two suicide notes before consuming a lethal amount of alcohol working up the courage to jump off the roof. Mr. Braham told the Grand Jury that, before he jumped to his death, Marquise confessed to his aunt, "Auntie, I have sins. I have sins."

In the aftermath of their son's tragic death, the Braham family began to piece together the preceding months of Marquise's life. In searching Marquise's dorm room, the Brahams made several alarming discoveries—two empty liquor bottles tattooed with Sharpie-inscribed signatures and numbers, as well as a notebook recording shorthand of what appeared to be the Phi Sigma Kappa hazing schedule.<sup>61</sup> Concerned with the potential implications, the Brahams turned the evidence over to Penn State University's Altoona campus police; thankfully, pictures were captured of the items first. Later, when the Brahams attempted to recover the empty alcohol bottles, Penn State informed them via a letter provided to the Grand Jury that "[t]he empty alcohol bottles were previously discarded."

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<sup>60</sup> This Grand Jury does not have the power to make a finding of fact as to whether the death of Marquise Braham was a direct result of his experiences pledging Phi Sigma Kappa at Penn State Altoona Campus, or whether hazing or furnishing occurred, nor did it endeavor to do so as it lacks jurisdiction to investigate this matter as a criminal incident. This matter was investigated by a Statewide Grand Jury. While the Statewide Grand Jury did not return a presentment recommending any charges, this Grand Jury is unaware of the evidence it had available to it at the time.

<sup>61</sup> See Exhibit 5

When Mr. Braham accessed Marquise's cell phone, he began to connect the seemingly irrelevant dots. The alcohol bottles appeared to be remnants of Marquise's hazing at the hands of Phi Sigma Kappa fraternity. Text messages harvested from Marquise's phone show Marquise asking a friend: "Quick question. Have you ever had Yukon before?...Whiskey. I have to finish a bottle tonight...100 proof shit. It's my last pass down. There's the Jim bean, mescal, Yukon and Heineken family. Heineken needs to finish a mini keg by themselves haha." His friend replies, "...you'll be okay. You'll just puke a lot. And it'll burn." Mr. Braham ultimately learned that the numbers associated with names on the Yukon bottle corresponded to pledge rank. In another text message, Marquise explained Hell Week for his Resident Assistant. At week's end, he alleges that fraternity brothers "lit a candle and let the wax fall on our back until we finished drinking 2 bottles of fireball." In a later text, Marquise noted to a friend, "I have some scars from that one." The Grand Jury notes that the photographs of the two empty bottles covered in signatures and numbers unearthed from Marquise's room consist of Fireball cinnamon whiskey and Yukon Jack 100 proof liquor.

Another series of texts to his RA detailed a fight club that the brothers forced pledges to participate in. Marquise sent her a message saying "...we were allowed to fall asleep last night but I was too scared. I think I have a concussion and I didn't want to fall into a coma." When his RA asked "what happened last night," she immediately answered her own question by texting right after, "Oh...You guys had to fight. Oh no I don't wanna see you today then. =( my mom side will come out and I will punch whatever brother you are with. That's horrible." Marquise responded: "We had to

fight...The brothers didn't touch us...We had to fight each other." His RA retorts, "I know. I don't care. They made you do it. That's what pisses me off."



Later, Marquise texted the RA that he couldn't meet her on campus as he initially promised, explaining "I have to drop one of us off at the hospital." When she asked him which pledge, he answered "It's Nate. I'm not sure if you know him but he's bad. They took him in but they sending me back to campus now." Mr. Braham provided the Grand Jury with screen shots of a Group text message that appears to be Marquise's pledge brothers in which someone programmed as "Nate" in Marquise's phone sent a message saying "Yo it's Connor my phone died and am using nates but nate got blood drawn he definitely has a concussion but there's no bleeding internally or externally he's extremely light headed and can barely walk to the doctors sugeaa [sic]." Later in the same message thread, Connor sent the pledges a photograph of two young men, one laying in what could be a hospital bed wearing a neck brace. A pledge brother responded to that picture with the text "Love you Nate."

Marquise confided his experiences quite a bit in his RA according to other text messages Mr. Braham provided to the Grand Jury. In one conversation, Marquise wrote to her "...I owe you so much for the other night. You saved me from some vinegar..." When his RA probed what he meant about vinegar, Marquise clarified, "The loser had to chug some vinegar but please don't tell anyone. Some other pledges got dropped for talking." Penn State's RA assured him "I wouldn't tell anyone haha I wouldn't do that to you haha." Marquise then confessed to her that the pledges would "do the milk challenge this upcoming week." His RA advises him "Your gonna throw up. Its better to just chug and get it over with then go the whole hour feeling yucky." Marquise

commented "I feel like I've done so much that it can't get any worse but it always does." His RA cautions him, "...yes it will get worse. I'm sorry to say hahaha but it will." In the responding text, Marquise reflected, "When I first started to pledge I didn't think I would be doing the stuff that I'm doing right now."

Additional text messages to other people document the hazing Marquise suffered along with his fellow pledges. One particular photograph depicted another brother holding a gun to a blindfolded pledge's head, with the accompanying text, "Pledge down."<sup>62</sup> Another photograph featured a clearly identifiable male pledge in a Penn State sweatshirt holding a dead squirrel in one hand, and the animal's skinned hide and tail in the other. An investigation by Penn State and then local police agencies determined that one of the hazing activities required pledges to trap and skin squirrels. One text from Marquise's phone circulated among the entire pledge class read, "Daddy needs someone to gut a squirrel at bar in the next 5 mins."

Through the notebooks discovered in Marquise's dorm room, Penn State investigators deciphered the detailed hazing schedule executed by the fraternity. The schedule further detailed how the fraternity instructed the pledges to bring their belongings to the off campus apartment that functioned as the fraternity house to reside there for a period of the pledging process; confiscate the pledges' phones and watches; and teach them proper chugging and vomiting techniques. One event in particular, dubbed "locked-in," involved brothers forcing pledges into a small closet with a large garbage bucket. To be allowed out of the closet, pledges had to consume enough alcohol to fill the garbage can with vomit. The fraternity further controlled the closet

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<sup>62</sup> See Exhibit 5

door by allowing only executive board members to open it for the pledges. Another event on the schedule, called a "Phi Back," required each pledge to consume 4-5 beers within thirty minutes to an hour. The schedule ordered multiple Phi Backs over the course of one evening, with notes that the total drinks for the night should tally 20-25 per pledge. Brothers also planned for a "GB" or gravity bong challenge which required the pledges to take a certain number of hits from a marijuana bong in order to win.

Mr. Braham also testified that he believed the fraternity ordered pledges, including Marquise, to enter a convenience store wearing a ski mask and steal a small item—chips, gum, a drink—from the store. In order to maintain control over the pledge, brothers would record the act through photographs to later use as blackmail if necessary.

The Grand Jury found one text message provided by Mr. Braham to be eerily breathtaking and particularly relevant to the death of Timothy Piazza. In a text conversation discovered on Marquise's phone, he writes, "And trust me, I don't judge. I've been too messed up to judge anyone else." When he receives the response, "What does that mean?????" Marquise confesses, "If you haven't fell down a flight of stairs blacked out you're not on my level yet lol."

Mr. Braham related that Penn State suspended Marquise's fraternity, Phi Sigma Kappa, for six years following Marquise's death.

As a part of the Grand Jury investigation, Mr. Braham discussed a report that was authored by Penn State. Of particular importance within the report, Mr. Braham explained that one week prior to Marquise's death, his son's Resident Assistant sent

Marquise a text message conveying her extreme worry for him. The Resident Assistant then passed her own concern up the chain of command at Penn State to let them know she harbored concerns about Marquise's psychological and emotional well-being due to hazing that was going on within his fraternity. Mr. Braham further noted that Marquise signed a release when he first enrolled at Penn State, agreeing that the University had his permission to discuss any concerns that arose regarding him with his parents. Despite the concern voiced by Marquise's Resident Assistant and passed up through the University's ranks, his parents were never contacted about Marquise's mental health or hazing experiences.

Further, Mr. Braham testified that fraternities sanctioned by the University are permitted by Penn State to recruit on campus, which mistakenly lulled him into a false impression that Penn State approval also meant Penn State protection for his son. "...for a university like Penn State, for example, that is allowing them to recruit your children, my children, like cattle to slaughter, because in many instances that's what happens, there should be greater responsibility on that...we trusted them. This was our first child, our baby, going away to college, and we believed them, you know. When we went to orientation, there was mention of Greek life, but it's only in glowing terms. Oh, we've got lots of Greek life that you can attend and parties. You can make lifelong friends. And it was all just the good stuff, none of the bad stuff, and Penn State, like every university in this country, is aware of the bad stuff. They should be compelled to tell you that. So I would say, if you're doing something during orientation, you can't just give the blue-sky view of Greek life, because you know about the date rapes or you know about the drug arrests of members. You know about the unfortunate deaths,



whether due to alcohol overdose or just from hazing and some sort of like game, if you will, that they think it is, their activities lead to death. They're aware of these things and...if you as a parent and then a prospective pledge and student hears that, I think then you'd think twice about it. This is something you can have a conversation about, but when you have the university itself, Penn State, to this day despite the death of Marquise Braham, despite the death of Tim Piazza, still has on their website under frequently asked questions that, oh, you have been told that...your views of Greek life may be like Animal House. Nothing could be further from the truth. That's a myth. They still have that on their site today."<sup>63</sup>

Similarly, Mr. Braham later testified:

Q: I'm sure you've seen the media statements where [Penn State] says we can't do anything, they're independent organizations, but...sitting in your experience as a parent, do you feel like you thought Penn State was in some ways backing these fraternities or giving their stamp of approval because they were allowing these fraternities to operate with Penn State behind them, recruit on campus, recruit students?

A: Absolutely. You can't...allow people to be recruited on campus if you're not supporting those folks and what they do. You're giving your stamp of approval saying you guys have our backing to go after any student here you see fit who would be a good member of your organization.

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<sup>63</sup> The Grand Jury notes that Mr. Braham testified on September 7, 2017. It is unaware of whether Penn State's website has made any changes by the time of the writing of this report.

Mr. Braham told the Grand Jurors he favors a disciplinary process in which the University holds individuals accountable for their actions. He concluded, "I'm not saying [Penn State's] a bad school. I think Penn State is a great school. We were so proud that Marquise was accepted to Penn State. I could be so proud—he would have graduated by now—to have my son be a Nittany Lion. He's gone. I celebrate his birthdays, Christmas, Easter, when he was born, at the cemetery. That's where we go. Our happiest days, we're at the cemetery. No one should be there...We need to stop this...You have got to hold people accountable...It can't be slaps on the wrist. That's why it keeps happening. It has got to be tough. It has got to have teeth." The Grand Jury understood Mr. Braham to be recommending stern enforcement of anti-hazing and anti-alcohol policies at Penn State.

When Lt. Robb spoke to Mr. Kelly, he learned that Marquise had been enrolled in a class that prepared him to become a Resident Assistant ("RA"). During an exercise in that class, Marquise disclosed his struggle between reconciling his fraternity experience with his future RA obligations—namely, that he would need to assist hazing victims who sought help from him as an RA, but knowing that he had both suffered and doled out hazing behavior as a fraternity pledge and brother.

According to Mr. Kelly, after the RA Marquise confided in finally took the information to a supervisor, in a conversation that happened just as the students were about to return home from Spring Break, Marquise confirmed and disclosed to a Director of Residence Life (who supervised the RAs), that he experienced hazing in Phi Sigma Kappa, which included excessive alcohol inebriation and vomiting and being in a fight. Mr. Kelly further admitted to the University learning that texts between Marquise

and his RA in this time period included Marquise telling her "Hazing season started, it's hard to watch."



The Director of Residence Life relayed her conversation with Marquise and concern about Marquise's mental health to her supervisor, the Director of Student Life. The Director of Student Life then conveyed the information to Mr. Kelly, who occupied the position one rung higher on the supervisory ladder. Mr. Kelly recalled to Lt. Robb that the Residence Life Director, the Student Life Director, and himself all participated in a conference call in which they discussed their next steps. He admits that, although he recalls being informed about Marquise's hazing, that issue became secondary to concern for Marquise's mental distress. He explained that while he doesn't believe the University ignored the hazing concern, it also did not focus on the hazing as a red flag at that time due to the more immediate alarm about Marquise's mental health. By the end of that phone call, the University administrators ultimately plotted a course of action to arrange a meeting with Marquise immediately upon his return from Spring Break. He indicated that Marquise never disclosed anything to the Residence Life Director that made her believe his safety was in jeopardy, and that promises secured from Marquise to begin counseling afforded them the belief that he would be safe until they could meet with him upon his return from the break. Mr. Kelly acknowledged that the University did not reach out to Marquise's parents nor did it immediately notify law enforcement that a crime, specifically hazing, had been reported.

When Marquise committed suicide over Spring Break, Mr. Kelly indicated that Altoona's administration met with counterparts at University Park for assistance in how to proceed. Penn State decided to initiate an internal investigation into the hazing

allegations. To that end, the investigator attempted to arrange interviews with the fraternity members, but Mr. Kelly admitted that most were uncooperative and refused to discuss anything about the fraternity. Information came to the University through informants—past pledges who never became brothers and who wished to remain anonymous. After the University wrapped up their investigation, it turned over the results to law enforcement for investigation.

Mr. Kelly expressed that he was unaware of the importance of early law enforcement intervention in any criminal matter. Mr. Kelly was seemingly oblivious that evidence can be compromised or permanently lost and certain investigative techniques foreclosed forever once another agency gives notice to potential suspects that an investigation is underway. He indicated that administrators fail to receive any training in this area and that, had he known, he would not have opposed immediately reporting the allegations to law enforcement so that the investigations could have occurred in tandem and been cooperative.

### **In the United States**

#### **LSU**

At the time of the writing of this report, the Grand Jury became aware of the death of another college student from the Louisiana State University. While the Grand Jury obviously is unaware of the details being uncovered in that investigation, the Grand Jurors are troubled by media references to the freshman victim having attended a pledge event the same evening he died. The Grand Jury notes media reports indicate the victim suffered an extremely elevated blood alcohol level combined with marijuana.

**Wheaton College**

COPY


Details of an alleged hazing case actually charged in the criminal justice system at the time of the writing of this report also came to the Grand Jury's attention. In Illinois-based Wheaton College, five football players currently face felony level criminal charges for assaultive behavior and allegations of attempting to sexually assault the victim with a foreign object in a hazing abduction episode. The victim survived his injuries, but according to news reports, underwent surgery for muscular tears in both of his shoulders.

**II. CONCLUSIONS**

**Hazing**

The Grand Jury finds hazing within the Greek community at the Pennsylvania State University is rampant and pervasive. In fact, Mr. Sims himself informed the Grand Jury that a number of IFC and Panhellenic advisors have approached him in the wake of Tim Piazza's death to defend the practice as "an important fundamental element of how we bond." Preventive measures have consistently failed to curb the hazing or ameliorate its dangers. Self-regulation through the IFC has failed abysmally to prevent hazing during the pledging process.

Besides the litany of evidence the Grand Jury examined that clearly confirms the hazing acts employed by the fraternity brothers at Beta Theta Pi, Grand Jurors learned that hazing activity extends far beyond the walls of 220 North Burrowes Street. Even embedded within the texts of the Beta brothers, the Grand Jury noted references to other fraternity hazing rituals. For example, the Grand Jury heard testimony that when

Daniel Casey and Brendan Young plotted the pledges' fate for Spring 2016 Hell Week in March 2016, Casey garnered inspiration from other hazing techniques, enthusing to Young: "My roommate told me that pike does this. During a lineup they introduce everyone from the pledge class the semester before and they run the line-up and that's when that pledge class can start hazing. Thought for next semester since a lot of my pledge class is already involved." "Pike," Grand Jurors learned, refers to another fraternity on campus.

Testimony given by James Vivenzio also illustrated the depth of the depravity not just within his own fraternity, but in other fraternities that Mr. Vivenzio learned about from friends who pledged elsewhere across campus, and even from a cellular telephone left behind after a party at his own fraternity house. Watching his freshman dormitory neighbors—who he knew were pledging other fraternities—return home sporting fresh bruises was neither surprising nor mysterious according to Mr. Vivenzio. He explained that the common knowledge among them all provided the source of the injuries—hazing. In fact, Mr. Vivenzio testified that by reputation, some fraternities boast harsher hazing practices than others. Obviously, from Mr. Vivenzio's experiences in 2012, to Marquise Braham's in 2013, to Timothy Piazza's in 2017, Penn State fraternity hazing is not simply a single-borne illness infecting only one fraternity but a cancer that has spread across the Greek alphabet.

Just as internal enforcement measures, such as the IFC and University disciplinary processes, have clearly failed to inspire adequate deterrence for the dangerous activity of hazing, current criminal law has likewise proven to be wholly

deficient. The Grand Jury reviewed Pennsylvania's current "Antihazing law," codified under Title 23 (Education), Section 5353, which simply reads,



"Any person who causes or participates in hazing commits a misdemeanor of the third degree." Hazing is statutorily defined under Section 5352 of the same title to include, "Any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a person or which willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization. The term shall include, but not be limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug, or other substance, or any other forced physical activity which could adversely affect the physical health and safety of the individual, and shall include any activity which would subject the individual to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual, or any willful destruction or removal of public or private property. For purposes of this definition, any activity as described in this definition upon which the initiation or admission into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be "forced" activity, the willingness of an individual to participate in such activity notwithstanding."

By criminalizing hazing as a mere blanket third degree misdemeanor carrying a maximum possible punishment of 1 year incarceration (which, assuming a defendant lacks any prior criminal conviction, will practically only result in probation) and a \$2,500 fine, it leaves no particularized ability for a prosecutor to pursue any semblance of justice for the victims of egregious cases, such as the one currently before the Grand Jury, that result in significant injury or even death. Prosecutors must look to other more

general statutes and try to fit the facts of serious injury or death from hazing into statutes not designed to cover such behavior.



The law is currently written for one-size-fits-all justice. Timothy Piazza's death reveals the absolute deficit in using this logic. There is no justice in a fine and *maybe* probation for the death of a 19 year old who will never graduate from college; never marry; never serve as his brother's best man; never introduce his parents to their grandchildren. When young men recklessly leverage someone's desire for friendship against him and direct him to guzzle enough alcohol to endanger his life so he can aspire to be "one of them," and it results in his death or seriously bodily injury, the crime they face in court should reflect the seriousness of the offense, and not the lowest grade misdemeanor Pennsylvania has in its crimes code.

The Grand Jury acknowledges that a strong sense of victim-blaming still pervades any discussion of hazing, which has been highlighted by Timothy Piazza's case in particular. We applaud the General Assembly's foresight on this particular issue, and its legal elimination of it, by specifically codifying that a victim's "willingness" to participate in defined hazing activity is irrelevant to the statute's application. The Grand Jury believes, however, that stronger language must be added to the law protecting people from hazing.

The case involving the death of Timothy Piazza illustrates that when hazing allegations surface, entirely too much focus improperly shifts to why and whether the victim contributed to his own victimization by consenting to his own hazing. Much like a rape victim who finds him/herself facing accusations that s/he invited his/her own rape



by dressing too provocatively or flirting too much, hazing victims—or the family they leave behind—should not be forced to legally defend why they failed to fight harder or say “no” louder. Likewise, the offender should not be afforded the relief of shifting the scrutiny away from his own criminal actions.

Mr. Vivenzio provided the Grand Jury with his personal insight regarding why pledges continue to suffer through hazing practices, even as the sadistic tasks demanded of them surge to unfathomably peaks of depravity. “A lot of the kids just really wanted to be a part of something, is what I saw...they saw it as like a bonding...” Based on the culmination of all the testimony this Grand Jury reviewed during its investigation in this case, we find heartbreaking and inescapable truth to this particular explanation. The students who seek admission into these fraternities may be driven by a kaleidoscope of reasons, but at least one of those common motivations that recur in nearly all of them appears to be a distinct desire to create a certain caliber of friendship—to be part of a brotherhood that purports to last beyond these four collegiate years and to find acceptance among a “tribe.” The craving for a clan, especially when one is plunged into the new and foreign environment of college, is both understandable and human. That fraternity brothers wield this longing against the pledges as a weapon makes their activities that much more despicable. This is bullying in its most organized form. Reduced to its core, hazing is simply a group of individuals preying on the vulnerabilities of someone who simply wants to be their friend. Hazing succeeds and persists because the offenders recognize that the initiate’s desire for brotherhood can be traded as currency to unleash cruelty for the offenders’ own amusement.

## **Excessive and Illegal Alcohol Consumption**

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While common sense may also seem to support such a conclusion, the Grand Jury can ascertain that as far back as 2007, at least with regard to Beta Theta Pi, Penn State University became aware of excessive, dangerous alcohol abuse by fraternity brothers. Not only does the testimony of Mr. Rawley, Mr. Drobka, and Mr. Abbey document Beta's excessive drinking culture, but the emails between Penn State administrators reference alcohol as well. However, University officials were remarkably undisturbed by the complaints regarding alcohol consumption, casually dismissing them to focus more on the ire of the evicted brothers and their parents.

The Grand Jury understands that an acute rift erupted between the active 2009 Beta brothers (joined by their parents) who resided in the chapter house and Mr. Abbey and the alumni board regarding excessive alcohol consumption and damages occurring inside the Beta house during renovations. Such alarm extended to the National fraternity who, when confronted with sufficient evidence of the allegations, took its own initiative to close the local chapter, thereby threatening to evict the active members only two months into the spring 2009 semester.

The Grand Jury further recognizes and respects that Penn State maintained a position of "neutrality"<sup>64</sup> between the warring Beta Theta Pi factions over the eviction proceedings. However, the Grand Jury finds that Penn State University had clear line of sight to the primary concern at issue both then and now, nearly a decade later. Penn State officials were aware of the excessive and dangerous alcohol abuse indulged by

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<sup>64</sup> In emails exchanged between each other on May 28, 2009, Mr. Sims and Dr. Baker discuss Beta's closing by its national organization and agree with each other that "neutrality in this matter is best."

fraternities, such that it was only a matter of time before a death would occur during a hazing event. Not unlike a revolver with one cylinder loaded in a treacherous game of Russian roulette, eventually the fraternities' luck was bound to run out. While the University had no responsibility to mediate lease disputes between the Beta alumni board and the active Beta brothers, the Grand Jury finds that it did have both the power and the obligation to **at least investigate** the alarming allegations brought to it by the national chapter and Penn State alumni such as Donald Abbey and Kenneth Rawley. The Grand Jury finds that Penn State administrators received complaints regarding alcohol abuse by Beta brothers and, while only accusations, this Grand Jury finds that Penn State administrators displayed a shocking apathy to the potential danger associated with doing nothing.<sup>65</sup>

The Grand Jury concludes that Penn State was content to allow Beta's national fraternity to manage the issue of excessive alcohol abuse at the chapter. Despite acknowledging that a national fraternity swooping in on its own to close its chapter at a University signals a significant step, Penn State completely abdicated its moral responsibility of care and failed to control the dangers created by its students at the Beta house.

While the IFC's policing process through its contract with St. Moritz presented a veneer of control over fraternities and sororities, testimony from St. Moritz employees, fraternity brothers, and the IFC President himself laid bare that the system the IFC had

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<sup>65</sup> At the time Penn State possessed at minimum, a memorandum entitled "Alpha Upsilon Conduct File," a February 22, 2009 email between Damon Sims and Dr. Spanier acknowledging, "...continuing violation of [Beta's] alcohol policies...". The Grand Jury also credits Don Abbey and Ken Rawley's testimony as to the efforts they made to notify the University regarding the excessive drinking behavior at the fraternity. Al Drobka's report was provided to the University and it contained detailed damages done to the fraternity, including pictures documenting severe destruction and evidence of excessive alcohol consumption, among other things.

in place is a joke designed to allow easy circumvention by fraternity brothers. Mere window dressing to make it appear that some safeguards were in place when, in fact, the IFC engaged in no meaningful oversight of fraternities whatsoever, causing countless young men to suffer the indignities and depravities ungoverned fraternity bullies could conjure semester after semester.

The extensive testimony revealed to the Grand Jury that fraternity brothers know exactly how to evade the system by demanding the security checkers impotently wait on the front stoop while warnings are passed; by secreting the hard liquor and kegs behind closed bedroom doors where the St. Moritz guards cannot explore; by controlling the areas of the fraternity house that the guards tour; and by temporarily suspending their binge drinking until the safety monitor leaves again. And that's when the fraternities even bother to conceal their violations. The St. Moritz testimony collectively paints the picture of a brazen Greek community who freely flout both IFC regulations and criminal laws without any fear of reprisal.

When the IFC did receive reports of violations, it controlled whether the information in the report was passed on to Penn State officials or not. Its discretion allows the IFC to determine which reports merit disciplinary action and which will be discarded, without the University ever the wiser about the existence of violations observed by the hired security firm. Moreover, when documented violations do advance to a standards hearing, Penn State claims no authority to impose a sanction on the fraternity as an organization. Rather, the Office of Student Conduct liaison may only suggest resolutions, and pray that rationality prevails and some sanction is imposed by the IFC. However, as testimony from St. Moritz made evident, whatever sanctions the

IFC claims to mete out generally fail to affect any change in fraternity behavior. St. Moritz officers encountered the same individuals, the same fraternities, engaging in the same disturbing and dangerous behavior week after week.

Even the IFC admitted that the fines it imposes generally fails to deter dangerous behavior because the fraternities plan for the possibility that fines will be imposed, and pay them out of previously collected fees—essentially part of the cost of doing business. When the fines lack clout and any probation periods lack enforcement, there is no true consequence. There is no fear and, consequently, no reason to curtail the partying.

Lt. Robb testified that shortly after Timothy Piazza's death, when Penn State imposed an immediate ban on alcohol and social functions at every recognized fraternity, the annual State Patty's Day drinking holiday drastically altered. Lt. Robb, who worked patrol that particular day in February, testified that the fraternity zone of State College "was completely quiet...we didn't have the urination. We didn't have the reports of people who are residents of that neighborhood having their fences kicked in or having someone found on their back porch, passed out." Lt. Robb conceded that while "sure they were drinking" inside their houses, "they didn't have the large blowout parties that would normally be there on a special event weekend. So, yes, as a police officer and I'm sure as a neighbor in that neighborhood, they do see a difference when there are restrictions placed on those houses."

The Grand Jury heard considerable testimony demonstrating that the IFC-supervised fraternities engage in a pattern of excessive drinking that not only endangers the safety of those individuals attending the social events—be it sorority sister, guest, or

fellow fraternity brother—but it also impacts the local State College community. Clearly, when moratoriums are issued by authorities higher than the student-controlled IFC, where real consequences—rather than just imagined ones—hang in the balance, the results are undeniable: the bad behavior is curtailed.

### **The Invisible Wall Between Penn State University and the Penn State Interfraternity Council**

Ever since the details of Tim Piazza's death developed on a national stage, Penn State University has very carefully cultivated the perception of a distance between the University and the IFC. Penn State has repeatedly insisted that the IFC exists as a separate, private, self-governing entity, completely untouchable by the University's authority. Similarly, Penn State has endeavored to erect a wall between itself and its own fraternities, distinguishing them as also private organizations equally outside of the University's reach.

In his testimony before this Grand Jury, Damon Sims referred to the IFC and its member fraternities as "private" organizations or associations at least ten times. While we certainly understand that, technically and theoretically, the IFC may constitute an "entity," the practical reality is far less well defined in the opinion of this Grand Jury. The IFC maintains its office on the University Park campus in a University-owned building. It draws the entirety of its membership from a pool of only Penn State students. In fact, according to testimony from Penn State employees, it exists as a Penn State student organization established under the Office of Student Affairs pursuant to the Policies and Rules for Student Organizations, subject to the same rules, regulations, and expectations as any other student organization approved by Penn State.

Penn State allows the IFC and individual fraternities to consume Penn State resources, such as marketing materials and printing services. Penn State assists the IFC and fraternities in their recruitment efforts, giving these organizations direct access to its student body by allowing it to set up information booths in centrally located campus buildings, advertise through Penn State's website, and even disseminate invitations to solicit potential pledges through all residence hall mailboxes. The IFC and fraternities can also petition for use of University funds for marketing materials to drive membership and for speakers and other benefits.

Penn State further hires employees that it pays salaries to serve as advisors to the IFC. Danelle Del Corso testified that her position—paid for by Penn State University, supervised by another University employee, Danny Shaha as the Director of the Office of Fraternity and Sorority Life—requires her to advise the IFC, guide and monitor them, shepherding them toward good decisions. Penn State also tasked its employee Kathleen Shupenko with counseling and advising the IFC through its organizational disciplinary process. Although Penn State identifies the IFC as a completely independent organization, the Grand Jury finds that is not the case. The Grand Jury finds real, substantive ties clearly bind the IFC to the University. The IFC does not operate in a vacuum sealed bubble impenetrable by the University.

Perhaps most telling about the intersection between fraternities and the University involves their financial entanglements. The Grand Jury learned that the IFC collects both regular dues from all of its fraternity members as well as fines when it imposes sanctions on fraternities through the organizational disciplinary process. The IFC deposits this money with the University, in a Student Organization Account. Penn

State holds that money and disburses it. The University charges two dollars per Greek person for their involvement. The IFC can only access their money after request and upon approval from a Penn State employee, specifically Danelle Del Corso. Ms. Del Corso further indicated that she did not rubber stamp her approval of the IFC's requests, and will, in fact, question the reason the IFC requested their money. Not only does the University control the IFC's money, it also acts as a collection agency for fraternities according to both Mr. Mengden (who served as Beta Theta Pi's Treasurer at the time of Tim Piazza's death) and Mr. Vivenzio. When a brother joins a fraternity, he becomes responsible for paying certain dues to them. Upon failing to pay his fraternity, the fraternity refers the matter to the University, who then collects the outstanding dues. Mr. Vivenzio explained to the Grand Jury that should a student insist on withholding the fraternity's dues, the University can and will freeze the student's account, preventing him from registering for classes. Mr. Mengden, Beta's Treasurer, further testified "the thought associated with having the bursar instead of them just paying me or the general fraternity, is that [the brothers] are incentivized to pay the bursar because it's essentially like paying your school tuition...let's say someone refused pay, the bursar can then hinder them from scheduling classes whereas, you know, it wouldn't have the same effect if the members of the fraternity were hounding someone for the money. So that's kind of why Penn State put that in place." Interestingly, in the case of Mr. Vivenzio's fraternity, he claimed that his fraternity dues also included social dues, *from which his fraternity's alcohol was purchased*. The University, consequently, acts as the fraternities' financial enforcer, further closing the distance in the degrees of separation Penn State has taken pains to publicly create.



Penn State approves the IFC as a student organization, registers it as one, permits the IFC to use the University's name, allows it to conduct business on University property recruiting Penn State students, and controls its money. The notion that the University is somehow powerless to regulate its fraternity and IFC behavior the Grand Jury finds patently absurd. The Grand Jury further finds just as illogical the proposition that Penn State maintains no control over any of the fraternities that bear its name. Despite attempts by the senior leadership, such as Mr. Sims, to portray the IFC and its fraternities as "private, independent" associations, Ms. Del Corso's testimony reveals that both the IFC and the individual fraternities are really "student organizations," bound by the policies and rules **of the University** who recognizes them. Logically, this conclusion makes complete sense: the Grand Jury hardly believes that these so-called "private organizations" simply set up camp on Penn State University's property, in its buildings, using its name and its resources, while Penn State must sit idly by. Such a contention by the University is illogical given these facts and the Grand Jury chooses not to credit this self-serving assertion.

When Mr. Sims repeatedly described the Greek landscape as "private organizations that structure themselves like private organizations," and ultimately "were responsible for the oversight of their own...member organizations" through the IFC, he implies that Penn State University had absolutely no control over the IFC. Such rhetoric, also echoed by President Barron in some of his media statements,<sup>66</sup> suggests that Penn State lay helpless against a foreign interloper when we unmistakably know it was not. Penn State **proved** it was not powerless against the IFC when it assumed control over

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<sup>66</sup> See "An Open Letter to Penn State's Greek Community," by Dr. Eric Barron, April 10, 2017, [www.diggingdeeper.psu.edu](http://www.diggingdeeper.psu.edu)

monitoring fraternities and removed that responsibility from the IFC—but only after Tim Piazza's death.



In characterizing Penn State's philosophy on allowing student organizations to self-govern, Mr. Sims described that "part of the learning that occurs in a university occurs in these organizations," where the University expects students to "solve their own problems." When questioned about whether the University-employed advisors of these groups provide a protective stopgap measure in case students fail to resolve dangers appropriately, Mr. Sims explained "...I have advised student organizations myself, and I quite often have pointed out that there is a cliff over here and you're about to go off the cliff and you need to understand what the consequences for that can be, but in the end, quite often the judgment for many of these things is left to the students and the student leaders when it comes to organizational issues." Based on the history of Beta Theta Pi nearly a decade ago, as well as the horrific experiences shared by Mr. Vivenzio and Mr. Braham, and the tragic death of Mr. Dado, the Grand Jury finds it impossible to believe that no one in Penn State's administration saw this "cliff" approaching. The Grand Jury believes it was only a matter of time before a student suffered serious injury, or death, by either hazing, or by the out of control parties with the excessive alcohol consumption. Furthermore, the Grand Jury concludes that the University knew or should have known of these dangers.

Penn State has lamented its restriction in disciplining its fraternities as limited to "only" revoking an organization's University recognition. To that, the Grand Jury responds: do it. If the University continues to cower at the prospect that these "private organizations" conduct their business on "private property," which robs Penn State with

any true power to act, then Penn State should exercise the one recourse it alleges is available to it, and terminate fraternity recognition when serious violations occur. The Grand Jury sees young men dying. Penn State has at the very least a moral obligation to protect its students from **known** dangers such as excessive alcohol use and hazing. Mr Sims remarked that "we are not the custodians of private associations on private property." However, the Grand Jury took particular notice of how he described his duty as Vice President of Student Affairs when he first introduced himself in the courtroom: "I have primary responsibility for advocating for...the welfare of students at Penn State." While the Grand Jury agrees that Penn State may not serve as the custodian of fraternity houses, the Grand Jury demands it embrace its role as the protector of student welfare and safety, regardless of whether they live at a fraternity house or a Penn State dormitory.

The Grand Jury concludes that it is unreasonable for Penn State University to disavow all accountability for its abject failure in reforming the Greek system to curtail excessive consumption of alcohol and the hazing of fraternity pledges. Since the University has maintained control over employees directly responsible for overseeing the participation of students in fraternity life, the University bears the ultimate responsibility for the failure to supervise the safety of its students involved in the fraternity system. The Grand Jury finds the University's contention that the IFC is "on its own" and independent from Penn State to be unreasonable and untrue. Had Penn State so desired, it could have taken steps to aggressively reform Greek life to curb excessive drinking and put a stop to fraternity hazing long before Tim Piazza died as it was clearly on notice of these ongoing, serious dangers years before his untimely and unnecessary

death. While the Grand Jury recognizes that criminal acts directly caused Tim's death at the hands of named individuals and the fraternity as a whole, Penn State's inaction set the table to allow those criminal acts to occur.

### **Penn State's Response to Hazing Since the Grand Jury's Presentment**

Since the Grand Jury issued its Presentment recommending criminal charges in the death of Timothy Piazza on May 5, 2017, the Pennsylvania State University Board of Trustees has decided that the danger posed by the fraternity culture has spiked to untenable heights and finally merits University action. Their response involved adopting a 15 point plan meant to address hazing misconduct as well as the illegal and excessive consumption of alcohol. While the Grand Jury approves the intention behind such remedial efforts, it harbors grave concerns that, unless Penn State recognizes and takes full responsibility for its own shortcomings and acts decisively, the deadly history will only repeat itself. Such risk is especially probable in light of Penn State's previous recalcitrance to become too closely associated with the conduct of its students, particularly its Greek community.

For example, the Grand Jury heard testimony from both past State College Police Chief Thomas King and Lieutenant Keith Robb that Penn State previously created task forces in 2009 and 2014 targeting the exact concerns that ultimately played a central role in Timothy Piazza's death. Despite the most recent task force meeting on multiple occasions over the course of approximately one year and even evolving into comprehensive subcommittees, it ultimately disbanded without ever issuing a single public recommendation or implementing a single change. Momentum dissipated and the

task force dissolved—perhaps when public scrutiny subsided, perhaps when priorities re-aligned, or perhaps when other matters demanded more administrative attention and diverted resources. Whatever the reason or excuse, the problems were well-defined and long known by the University to exist, and yet, Penn State did nothing substantive to address those problems.

Whatever the reason for failing to act previously, however, the Grand Jury is mindful and troubled that there is no means of preventing another tragedy like the death of Timothy Piazza. The University has touted elements of its plan to establish a “Greek-life Response Team” composed of various individuals from the community. While the Grand Jury believes such a committee is essential to anti-hazing success, it will achieve very little if, like its predecessor, it is defunct and discarded in short order, or its power and authority so limited that it cannot perform the function for which it is intended.

Moreover, the Board of Trustees has proposed implementing a University-staffed monitoring system through a “spot-check team” to patrol fraternities for safety violations and refer observations of misconduct to Penn State’s internal adjudication process. However, the Grand Jury discerns little difference between this newly adopted system of random spot checks and the one installed by the IFC through St. Moritz at the time of Timothy Piazza’s death. The Grand Jury heard lengthy and unequivocal testimony—not only from the St. Moritz guards, but from the executive officers the IFC itself—concerning how easily and how often fraternities hid violations. However, the University astonishingly has failed to admit any awareness of or any sensitivity to how easily fraternity brothers were defeating the spot check system.

Penn State has failed to articulate what specific steps it plans to establish that would actively prevent this newly proposed and highly self-celebrated procedure from simply becoming the same mockery of safety that existed under the IFC's employment of St. Moritz. How will the University prevent its staff from being delayed on the other side of the fraternity front door while brothers inside quickly conceal alcohol from plain view? How will it ensure spot checkers achieve access to all areas of the fraternity house that were inaccessible to the St. Moritz guards to confirm that impermissible items, such as kegs and beer bongs, are not simply squirreled away in bedrooms? How will it identify those fraternity brothers, pledges, and guests who are under the legal age to drink alcohol? How will it train its staff to recognize and treat signs of alcohol poisoning in those individuals it encounters?

### **A Practice Run at Failure: Parents Weekend 2017 and Beyond**

In fact, the University's new spot checking system has **proven** equally ineffectual at dispelling impermissible alcohol consumption as St. Moritz's. Penn State implemented new, stricter guidelines against fraternities after Tim Piazza's death, taking advantage of "Parents Weekend" in April 2017 to test-run these procedures. Bisecting the following weekend after Parents Weekend, the University banned Saturday alcohol completely from any fraternity or sorority event; on Sunday, it permitted only beer and wine subject to numerous conditions, including third party, RAMP<sup>67</sup> trained servers; closed events that only fraternity brothers could attend; registering functions with the University; random University-staffed spot checks; and no hard liquor. The results of these experiments, the Grand Jury heard, proved less than promising.

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<sup>67</sup> Referring to the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program

Spot checking notes recorded by Danny Shaha, and obtained by the Grand Jury, describe the utter disrespect that both Greek members and their parents displayed for the rules the University intended to curb excessive alcohol abuse. Mere months from Tim's death—when the shock and shame should have been still fresh and raw—fraternities still refused to allow spot checkers upstairs in the frat houses; joked about hiding or cleaning up violations; allowed parties to become so out of control that law enforcement intervened; lined tables with liquor bottles; and flagrantly flaunted alcohol moratoriums set by Penn State.

At one fraternity, Mr. Shaha expressed his immediate concern as he arrived at the house on Saturday, April 1<sup>st</sup> at 12:15 a.m. A significant number of people—both students and parents—freely entered and exited the home without any control. Clearly, the fraternity, who had not registered its intent to hold an event with either the IFC or the University, appeared to be hosting a party. He observed individuals “staggering” under the influence of alcohol with liquor bottles and beer cups readily visible. Inside the house, the fraternity's Parents Weekend party boasted “tables upon tables filled with liquor bottles half full of liquor with unfettered access by the party attendees” in addition to “a few cases of beer” located in the basement. The fraternity furnished the beer, according to its president, in case “any of the dads wanted to play beer pong and needed to do so.” Although some RAMP trained students<sup>68</sup> had been tapped to “monitor the alcohol,” the fraternity president conceded that those individuals left at midnight while the party raged on. Inside the party, Mr. Shaha observed three football players

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<sup>68</sup> Even having only RAMP trained students would have been considered a violation of the University's regulations at the time, which actually required fraternities to hire third party vendors to serve alcohol as opposed to just trained students.

who he recognized and could attest were neither fraternity brothers nor family members of the fraternity brothers. He also witnessed "a large number" of men and women drinking in individual rooms. When asked by University staff to close the party, the chapter failed to comply, requiring State College Police Department intervention.

At another fraternity on April 1, 2017, spot checkers observed a male walk in toting a handle of vodka. On the second floor, "we saw a woman holding a bottle of liquor while two other women drank from bottles over a trash can."

The Nittany Lion Inn General Manager also provided Penn State administrators with typed notes of the fraternity and sorority events that utilized Penn State facilities, such as the Penn Stater Hotel and Conference Center and the Nittany Lion Inn, for its Parents Weekend events. At one Parents Dinner on March 25, 2017, both Greek members and their parents ignored signs prohibiting alcohol from being brought in. Staff seized a water bottle full of gin; empty alcohol containers; and noted beer cans and flasks in pockets. The Manager noted "Parents were definitely contributing to the challenge by disregarding our liquor laws and making disgruntled comments."

At a sorority's Parents Dinner on April 1, 2017, the Manager noted concerns such as "[w]e soon had issues with beer in a water glass, which we switched out from a fresh water and the same guest was later seen drinking her boyfriend/brother's beer so the beer was confiscated and he was cut off, which he did not receive well. We had a father give his wristband [signifying the wearer was of drinking age] to his daughter," who later admitted she was under the age of 21. "When asked about giving his daughter the wristband, he denied it repeatedly and then pretended he didn't have it. The on-duty



University Police Officer was able to get him to produce the wristband at which they were asked to leave the property. There were several other instances where people were passing drinks and pouring wine into water glasses so we kept taking them and switching them out for fresh water." The staff observed several visibly intoxicated people, including one girl whose father became angry when staff asked that he remove her from the event and who complained that he was "entitled" to an open bar.

At another event on April 1, 2017, the General Manager secured an armed University Police Officer to man the door of the event to prevent individuals under the age of 21 from entering the on-site Pub in response to issues from other Greek life events elsewhere at the Penn Stater that evening, including "handing off alcohol to minors and confiscating alcohol."

The Nittany Lion Inn also served as the venue for a fraternity event on April 1, 2017 which the General Manager described as "absolutely insane." Despite being warned of the alcohol policies, the staff "had to confiscate a large number of alcohol beverages from the same people a number of times," requiring the oversight of two event supervisors. Inn staff documented that the fraternity and its guests were "rude and absolutely uncontrollable. I don't know how they all got THAT drunk but they were definitely DRUNK...I don't think we can expect these people to act any different if they come back for another event."

The following weekend, the University employed another round of spot-checking at the University Park fraternity houses. On Saturday, April 8, 2017, Penn State banned alcohol entirely from any fraternity events. Of the nine fraternities that University staff

randomly spot checked, all but one of them recorded brazen violations. The Grand Jury learned the following from Mr. Shaha's typed spot checking notes:



Fraternity 1: At least one individual held a beer can on the front porch, though through the windows, at least thirty to forty parents and students stood and sat around tables among several 6 and 12 packs of beer. Many people migrated upstairs to the third floor, where loud music blasted and a party was plainly in progress, however, the fraternity president refused to allow spot checkers to go upstairs to determine the fraternity's compliance with the rules. The president conceded that his fraternity also hosted an unsanctioned party the previous weekend as well. When asked, the president confessed that "it's hard to say no to parents and asked if [University spot checkers] could help him in notifying the parents that alcohol was not allowed."

Fraternity 2: A brother and female student both walked past spot checkers holding a beer in violation of the no alcohol condition. The fraternity president refused to allow checkers upstairs.

Fraternity 3: Even from outside of the fraternity house, spot checkers could establish that the fraternity hosted a party on the upper floor based on the loud music and well-populated attendance. Inside, checkers observed twenty to thirty women entering the house and proceeding directly up the stairs, toward the music. The fraternity refused to allow the University checkers upstairs. Checkers did, however, discern solo beer cups and dixie shot cups in the garbage. The fraternity president apologized and assured the checkers that "things would be shut down."

Fraternity 4: Although the chapter president initially resisted allowing spot checkers upstairs, he relented. On the upper floor, they witnessed both brothers and parents with beers in hand. Brothers even went into the bathroom carrying beers.

Fraternity 5: Checkers watched women disappear upstairs and one male emerge down the stairs clutching a solo cup while the fraternity members kept them contained to the first floor. Although the fraternity president and risk manager claimed the chapter voted against allowing spot checkers access to the upstairs of the house, "at one point, the risk manager received a text and upon reading it, said 'Oh, now you can go upstairs.' The social checkers and the risk manager laughed because it was obvious that something had been cleaned upstairs and so now we were allowed to go up." Checkers further "expressed concerns over capacity issues as the facility was extremely crowded." The brothers explained that when another fraternity disbanded its party after checkers had left, their party's guests moved on to this fraternity.

Fraternity 6: Upon arrival, the fraternity was permitting entrance to "large numbers" of individuals. At least one brother and another female could be seen drinking beer on the first floor, but the fraternity denied the University checkers access to the upper floors. The checkers subsequently left the house, but returned approximately 45 minutes later at State College Police Department's request to assist in disbanding an "out of control party." "Police indicated that hordes of people were entering the events, they had just broken up a fight on the lawn, and a man was vomiting outside...It appeared that many women and men were entering the facility without any sort of control." When confronted about how the situation had deteriorated, the president claimed that "as parties were being shut down elsewhere, people came there."

Fraternity 7: Checkers witnessed members confiscating alcohol from guests coming down the stairs to where the spot checkers stood. Although the fraternity permitted the checkers upstairs and insisted that the fraternity had provided no alcohol, the president of another, unrelated fraternity who encountered the checkers claimed that he was happy the University could see his own fraternity wasn't the only one to violate the rules. That president described "chaos" preceded the checker's arrival, disclosing that "there was so much alcohol present in the hallways." As if on cue, while checkers spoke in the upstairs hallway, one of Fraternity 7's brothers opened his bedroom door, glanced around searchingly, then asked "Who moved the bar? I need a chaser."

Fraternity 8: Several brothers traipsed through the house carrying Natural Ice beer cans. The second floor exhibited clear, recent signs of cleaning, including a dirty mop as well as the smell and appearance of recent mop job). The president was also swaying, slurring his words, and noticeably intoxicated.

In subsequent emails, Mr. Sims observed to Mr. Shaha that "This was intended as a practice run for the limitations to be imposed next year, and even in this limited context, with parents present, these groups are falling short." It appears however, that Penn State continues to impose punishments for violations against the fraternity as a group, rather than particular individuals. In an April 5, 2017 email, Mr. Sims expresses that "we need to hold the specific **groups** violating our expectations accountable for their violations." (emphasis added). Mr. Shaha echoes the sentiment by emailing a copy of the typed notes to Kathleen Shupenko and Danelle Del Corso, among others, on April 12, 2017, directing that "It makes sense that the **IFC and Panhellenic conduct**

**processes** take it from here. Many of these may just result in a conversation, but the conversations are worthwhile nonetheless.” (emphasis added).



While the Grand Jury certainly supports any of Penn State’s efforts to hold fraternities accountable for violations through the organizational disciplinary process, the Grand Jurors feel strongly that **Penn State must begin holding individual students accountable for their actions as well.** Hiding behind the protection of a group has obviously failed to dissuade fraternity brothers from altering their course of parties and drinking. That their fraternity as a whole must forfeit a fine, or must attend various educational programs, or must suffer through, as in the email above, “a conversation” with the University, does not call upon the individuals participating in the violation to answer for their own behavior. It does not inscribe on them any kind of personal responsibility for the rules desecrated and the trust broken by both the individuals and by the fraternity. It does not, simply put, effectively stop the misconduct of a single person to only punish the organization. These brothers are first and foremost Penn State students. By breaching Penn State University rules and regulations, the violating students should be the first entity from whom Penn State exacts a penalty.

Additionally, when spot checkers observe infractions of University policy, the new 15 point action plan adopted by Penn State also calls for the University to now directly address those “serious violations” rather than the IFC.<sup>69</sup> The Grand Jury strongly advocates that establishing direct University control over disciplinary action is absolutely critical to accomplishing any progress. Testimony from at least one IFC officer indicated

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<sup>69</sup> See “President responds to Penn State community’s messages on Greek life,” June 16, 2017, <http://diggingdeeper.psu.edu>

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that the IFC students had been empowered to review and vet all violations reported by St. Moritz guards before deciding which constituted an offense serious enough to involve the University's Office of Student Conduct. Clearly, the University's delegation of responsibility to students policing students failed to effectively manage the dangers associated with Greek life. Not only was it unclear to the Grand Jury exactly what punishments were actually meted out by the IFC to rule-breaking members, but documents subpoenaed by the Grand Jury recording violations were reportedly lost, discarded upon receipt by the IFC, or generally incomplete.

However, the Grand Jury is disturbed by the qualification of the University's use of the phrase "serious violation." Such a procedure is disturbingly similar to that already described by IFC Executive Vice President Blake Friedman, who indicated that the IFC tagged only certain offenses for submission to the Office of Student Conduct via Kathleen Shupenko, while withholding "minor" ones. Under the University's new protocol, who then will adjudicate "minor" offenses if the University only plans to exercise direct control over "serious" violations and, equally important, who will decide which label applies to a given violation? Absent clarity around these issues, the Greek system is vulnerable to falling into the same patterns of behavior that have proven woefully ineffective in the past.

In fact, the Grand Jury reviewed with interest an August 24, 2017 news article written by Penn State junior Elissa Hill and published on the student-run news site, "Onward State," entitled "Why 'Aggressive' Reform Won't Change Anything for Penn State Greek Life." In her article, Ms. Hill dissects, rule by rule, the University's new and improved Greek life regulations, predicting how fraternities will handily circumvent each

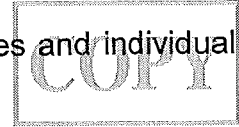
one. In some cases, she precisely describes the exact failure that played out during the 2017 Parents Weekend dry run. She rebuffs the prohibition against University spot checking by pointing out the likelihood of upstairs parties and the places immune to both St. Moritz and University workers—bedrooms. She dismisses changes in the pledging process by pointing out that fraternities will “unofficially” rush their pledges without registering them and that forcing a fraternity to submit a written plan that the University approves does not translate to a fraternity adhering to such a plan.<sup>70</sup> In assessing the alcohol restrictions, she bluntly writes “Bear with me here because there are plenty of ways to skirt these,” before rattling off a list of multiple end-arounds that fraternities already used habitually during the St. Moritz era or during the Parents Weekend dry run of new procedures. The ultimate point is that the University cannot rely solely on these regulations since, clearly, the fraternities will find ways to evade them. The evasion is so simple and obvious that fellow students see it happening all the time—so much so, as to make the evasions routine.

In this report, while we wholly support the University assuming direct responsibility for governing **all** conduct violations alleged against fraternities and its individual members, the Grand Jury cautions that the effectiveness of any disciplinary action is only as good as its enforcement. If Penn State continues to respond to violations with continued excuses that it harbors “no real tool” for punishment power except revoking a fraternity’s recognition, then certainly the disciplinary process will lack the necessary teeth in deterring misconduct. When violations arise, Penn State must

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<sup>70</sup> Incidentally, according to testimony, Penn State had already required fraternities, including Beta Theta Pi, to submit new member pledge programs for approval each semester at the time of Timothy Piazza’s death. Not surprisingly, although Beta failed to include the gauntlet in its pledge plan, it still managed to execute the gauntlet that killed Timothy Piazza.

deliver immediate, certain, and strict consequences—to both fraternities and individual brothers/students.



Since February 2, 2017, the Grand Jury has seen Penn State's rallying cry be that it could not have saved Timothy Piazza and should not bear responsibility for his death. It has instead assigned the failures leading to Tim's death to other alleged independent, private organizations. The University then further insisted that it was powerless to interfere with the IFC; that it lacked any authority to govern the misconduct of students inside "privately owned homes," situated on "private property." Tim's death didn't in any way substantively change the relationship between the IFC and Penn State. And yet, citing the only difference as Timothy Piazza's death, Penn State suddenly announced that it had found the will and made the way to deter excessive drinking and pledge hazing. Either the University lacked the ability before Tim's death or it always had the ability and just didn't have the will...until someone died, and the world started watching.

The Grand Jury suggests that Penn State must end the excuses or be doomed to continually relive the mistakes of its past. Penn State cannot hold itself at arms-length distance from its students and organizations, but still claim it can effectively deter misconduct. Penn State cannot claim it lacks any power over its students but then successfully punish the same students it claimed it could not punish. Penn State must recognize where critical failure has occurred in the past so that it can come to an actual understanding of what actions (or, inactions) will likely lead to failure again in the future, and develop strategies that might actually succeed.



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The Grand Jury notes the closing lyrics of Penn State's alma mater, "May no act of ours bring shame/To one heart that loves thy name." Semester after semester, year after year, fraternity members have flouted this sentiment; their actions reflecting immense shame upon themselves, their organizations, both locally and nationally, and as the University should take particular note, on The Pennsylvania State University itself. The Grand Jury calls upon the students, the alumni, and the administrators of this great institution to live up to the promise pledged every time this song resonates through Beaver Stadium, the Bryce Jordan Center, the HUB, or across Old Main's lawn. Let these be empty words no more.

### III. RECOMMENDATIONS

Based on the above findings of fact and conclusions, the First Centre County Investigating Grand Jury makes the following recommendations for legislative, executive, or administrative action in the public interest:

#### 1. Cure the Currently Deficient Hazing Law

- The Grand Jury calls upon the General Assembly, and especially the distinguished state senator and Majority Leader from Centre County, to enact legislation, designated "**Tim's Law**" in recognition of Tim Piazza's senseless death, amending the criminal offense of Hazing in order to more effectively deter participation in this crime, as well as to provide justice that is more severe in circumstances such as these, where a victim has forfeited his/her life.
- The Grand Jury recommends that the offense of hazing be a **multi-tiered** system in which the grading of any given offense is contingent on the harm possible or

actually inflicted by the behavior, mirroring the manner in which the Commonwealth has codified Simple and Aggravated assaults.



- The Grand Jury specifically proposes a hazing statute in which conduct generally defaults to a Misdemeanor of the 2<sup>nd</sup> degree,<sup>71</sup> but imposes a heightened misdemeanor (such as a misdemeanor in the 1<sup>st</sup> degree) for any hazing<sup>72</sup> conduct that **causes or risks causing bodily injury**<sup>73</sup>; a felony of the 2<sup>nd</sup> degree for hazing conduct that **causes or risks causing serious bodily injury**<sup>74</sup>; and a felony of the 1<sup>st</sup> degree for hazing conduct that results in the **death** of the victim.
- While the Grand Jury agrees with the current provision in the statute, it recommends that the General Assembly adopt stronger and more direct language in an effort to underscore the law's rejection of victim blaming efforts.<sup>75</sup> The Grand Jury recommends that the General Assembly retain the sentence at the end of the hazing definition, but also craft a separate enumerated subsection within the crime itself entitled "**Defenses**," which reads, "It shall not be a defense to an offense under this section that the victim consented or voluntarily participated in any activity that meets the above definition of hazing."

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<sup>71</sup> Note that this is a change from the current Hazing law, which only applies a Misdemeanor of the 3<sup>rd</sup> degree. The Grand Jury finds that a Misdemeanor of the 3<sup>rd</sup> degree does not reflect the gravity of any hazing activity, even hazing that fails to produce injury or death.

<sup>72</sup> The Grand Jury approves of the hazing definition as adopted by 23 P.S. 5352 and recommends that the current definition be maintained in any proposed legislation.

<sup>73</sup> The Grand Jury proposes incorporating the definition of bodily injury already adopted under Title 18, Section 2301 as "Impairment of physical condition or substantial pain."

<sup>74</sup> Serious bodily injury being defined under 18 Pa.C.S. 2301 as "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

<sup>75</sup> The relevant portion currently reads: "For purposes of this definition, any activity as described in this definition upon which the initiation or admission into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be **"forced" activity, the willingness of an individual to participate in such activity notwithstanding.**" (emphasis added).

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- The Grand Jury also recommends that when the Commonwealth can demonstrate **an ongoing course of hazing conduct**,<sup>76</sup> the legislature expose such recurring behavior to stronger sanctions under a felony of the 3<sup>rd</sup> degree grading.
  - In addition to the multi-tiered statute, the Grand Jury proposes the application of a **sentencing enhancement** for the crime of Hazing if a deadly or offensive weapon is utilized in the commission of the crime, such as a bat or paddle.
  - Finally, the Grand Jury urges the General Assembly to codify the law under Title 18, the Crimes Code, rather than leaving it under the Education Act, which removes it from other criminal offenses, both rendering it more difficult for law enforcement to locate when considering charging decisions as well allowing the appearance that hazing is a lesser regarded crime in the Commonwealth.

## **2. Strengthen Laws for Furnishing Alcohol to Minors**

- The Grand Jury calls on the General Assembly and again specifically the distinguished state senator and Majority Leader from Centre County to recognize that one blanket crime graded as a misdemeanor of the 3<sup>rd</sup> degree is insufficient to address or deter this type of conduct and to enact legislation amending the criminal offense of Furnishing Alcohol to Minors to more accurately reflect the various degrees of severity that may result from Furnishing.
- The Grand Jury recommends that the offense of Furnishing Alcohol to Minors be a **multi-tiered** system in which the grading of any given offense is contingent on

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<sup>76</sup> Much like the crime of Endangering the Welfare of a Child enjoys stronger criminal sanctions under a third degree felony when an ongoing course of conduct is proven.

the harm possible or actually inflicted by the behavior, mirroring the manner in which the Commonwealth has codified Simple and Aggravated assaults.

- The Grand Jury specifically proposes that while the Furnishing Alcohol to Minors statute generally defaults to a Misdemeanor of the 3<sup>rd</sup> degree as it currently stands, the General Assembly impose a felony offense (such as a felony in the 3<sup>rd</sup> degree) for any Furnishing to Minors that **occurs during a hazing event**; a felony of the 2<sup>nd</sup> degree for Furnishing to Minors that **causes serious bodily injury**<sup>77</sup>; and a felony of the 1<sup>st</sup> degree for Furnishing to Minors that results in the **death** of the victim.

Given the overwhelming evidence received by the Grand Jury demonstrating that Furnishing Alcohol to Minors persistently and repeatedly occurs on multiple occasions at multiple fraternities, the Grand Jury also recommends that the General Assembly legislate increased penalties for second, third, and fourth or more additional convictions for Furnishing Alcohol to Minors. Specifically, the Grand Jury finds that upon a second conviction for Furnishing Alcohol to a Minor, the defendant should be subject to a misdemeanor of the 2<sup>nd</sup> degree; for a third conviction, the grading should rise to a felony of the 3<sup>rd</sup> degree, and if convicted of four or more offenses, that habitual offender should face a felony of the 2<sup>nd</sup> degree.

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<sup>77</sup> Serious bodily injury being defined under 18 Pa.C.S. 2301 as "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

### **3. Create a Pledge's Bill of Rights**

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- The Grand Jury recommends that Penn State establish a Pledge's Bill of Rights that should be published in every student handbook. Each pledge must sign a copy of the Bill of Rights before beginning to oath any fraternity, and all current fraternity brothers and sorority sisters must sign the pledge in acknowledgment of the change to Penn State's hazing policy in order to remain in good standing.
- This Bill of Rights will outline both acceptable and unacceptable behavior. It will further detail pledging or rushing activities of the University's Greek organizations and other similar student organizations. In developing the Bill of Rights, Penn State shall review the existing pledge and anti-hazing policies and procedures of public and independent institutions of higher education within the United States and shall, as appropriate, incorporate those policies into the Bill of Rights.
- Penn State shall make the Pledge's Bill of Rights available to each Commonwealth Campus for conformity.
- The Bill of Rights shall include information on the criminal penalties for hazing; the University's standards; and the types of behaviors that will not be tolerated. The Bill of Rights shall provide exact details regarding what is expected of both students and faculty. For the purpose of this Pledge's Bill of Rights, a pledge is defined as any student of the University attempting to become a member of a fraternity or sorority or other similar campus organization.

For example, the Grand Jury recommends the following language:<sup>78</sup>




“Actions and activities that are explicitly prohibited *include, but are not limited to*, the following:

- Forcing, requiring or endorsing new members/associate members to drink alcohol or any other substance and/or providing such alcohol or other substance;
- The unauthorized or illegal use of alcohol in any form or quantity during any new member activity;
- Calisthenics (sit-ups, push-ups, and runs);
- Branding and tattooing;
- Pushing, shoving, punching, whipping, beating, tackling or any other physical abuse;
- Unauthorized line-ups of any nature;
- Throwing anything (garbage, water, paint, etc.) at an individual;
- Any form of paddling, physical abuse, psychological abuse, deception or shocks;
- Requiring individuals to walk or march in formation of any kind;
- Publicly wearing apparel which is conspicuous and not normally in good taste (uniforms, head apparel, boots/shoes, etc.);
- Not permitting individuals to speak for extended periods of time and/or forced exclusion from social contact;
- Preventing any person from practicing personal hygiene;
- Any activity which interferes with an individual's scholastic pursuits (class attendance, preparation, study time, etc.)
- Forced consumption of food or other substances;
- Theft, defacement, or destruction of private or public property
- Conducting unauthorized scavenger hunts, treasure hunts, quests, road trips, paddle hunts, big brother/little brother hunts, big sister/little sister hunts;
- Engaging in public stunts and buffoonery, public displays, or greetings;
- Servitude of any nature (food runs, personal errands, academic work, etc.);
- Permitting less than six consecutive hours of sleep each night;
- Conducting a new member related activity between the hours of 12:00 midnight and 7:00am, or awakening individuals during these hours;
- Nudity or exposure to the elements at any time;
- Yelling, screaming or calling individuals demeaning names;
- Engaging in unauthorized activities which involve compelling an individual or group of individuals to remain at a certain location or transporting anyone anywhere, within or outside the city of State College (road trips, kidnaps, sneaks, drops, etc.);
- Assigning or endorsing “pranks” (stealing composites, trophies, mascots, etc.)
- Conducting activities which do not allow adequate time for study during pre-initiation or initiation periods;
- Conducting activities designed to deceive or convince new members that he/she will not be initiated or will be hurt;

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<sup>78</sup> Courtesy Rutgers Hazing Policy

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- Carrying of any items (paddles, bricks, rocks, pocket change, dog collars, signature books, etc.)
  - Forcing, requiring or endorsing new members/associate members to violate any University regulation, national/international policy or any local, state, or federal law.”

- Additionally, the Grand Jury recommends that Penn State require fraternity and sorority officers to annually sign a pledge to abide by the University’s hazing policy. The pledge will also be provided to new members who, by signing the statement, will promise to report hazing violations against either themselves or fellow pledges and acknowledge that the failure to do so could result in University discipline.
- This statement on prohibited hazing activities, the Pledge’s Bill of Rights, and the oaths by officers and pledges should also be provided to the new members’ parents/guardians, who should be urged by the University to report any violations.
- This Grand Jury forwards this report to the General Assembly and Attorney General Josh Shapiro and suggests that legislation be introduced by the General Assembly requiring all state institutions of higher learning to provide the same uniform policies on hazing to prospective pledges and parents in an effort to prevent another unnecessary tragedy.
- The Grand Jury calls upon the General Assembly to pass legislation tasking the Attorney General with developing a Pledge’s Bill of Rights which outlines acceptable and unacceptable behavior in regard to the pledge or rushing activities of college and university fraternities and sororities and other similar campus organizations. In developing the Bill of Rights, the Attorney General shall

review the existing pledge and anti-hazing policies and procedures of public and independent institutions of higher education within the State and shall, as appropriate, incorporate those policies into the bill of rights. The Attorney General shall make the Pledge's Bill of Rights available to each institution of higher education within the State.

- The Pledge's Bill of Rights developed by the Attorney General shall include information on the criminal penalties for hazing and furnishing alcohol to minors.

#### **4. Establish a Hazing Hotline**

- Hazing is evidently endemic enough to Penn State's collective fraternities, and the secrecy dominating the brothers and pledges so strong, that Penn State must seek creative, non-traditional ways to allow victims or witnesses to report the crime. The victims of hazing may only report the crime if assured they can do so anonymously, easily, and quickly.
- The University should establish a 24 hour hotline that anyone can use to anonymously report hazing, access immediate crisis intervention, and be directed to services for an array of possible hazing related damages, including counseling for Post-Traumatic Stress Syndrome, depression, sexual assault, alcoholism, and drug addiction. This hotline must be published, easily accessible and particularly known to pledges. The University must promptly follow up and protect confidentiality if promised.



## 5. Discipline Individual Students Who Violate the Hazing Laws With Actual Zero



### Tolerance

- The students who flock to the lawn of Old Main at The Pennsylvania State University do so for one driving reason: to obtain a college degree. Indeed, these students who elect to make University Park their home for four or five years seek not just **any** college degree, but specifically one bearing the seal of The Pennsylvania State University. The one shared purpose that gathers all of these students to University Park, bringing them together in the first place, is to receive an exemplary education and matriculate with a degree from a world-renowned, industry-recognized institution. Penn State has either long underestimated or long ignored the power it holds to deter misconduct by its own students: take away that which they value most by removing them from the University. A student who doesn't merely suspect, but unquestionably **knows**, that all of his financial and academic investment will vanish if caught hazing would be dissuaded from hazing activities far more than a student who believes he only faces a fine and court costs.
- The Grand Jury finds that hazing represents an alarmingly acute danger to the safety of students that could, as in the cases of Timothy Piazza and Marquise Braham, result in death; Universities should therefore treat it as the threat it actually is. Hazing should not be a second or third strike misconduct offense for which the University affords adjudicated students marginal punishments for first offenses.

- If found to have participated in, planned, or facilitated hazing of any kind after being afforded full due process rights, Penn State University's punishment should be mandatory and unequivocal: expulsion. Anything less will fail to operate as a truly effective deterrent.


## **6. Strengthen Penn State's Hazing Policy**

- Additionally, Penn State's hazing policy needs to adopt the following significant changes to ensure a thorough investigation is permitted by all stakeholders and to guarantee safety of all students and pledges:
  - Any allegations that a chapter has engaged in hazing activities will result in an immediate investigation of the matter by the Office of Fraternity and Sorority Life and the Office of Student Conduct. **All new member/associate member activities will be suspended pending the outcome of the investigation.**
  - In all cases of alleged violations of this policy, alumni and national/international headquarters of the organization will be ***immediately notified.***
  - Individuals involved in alleged acts of hazing ***and/or individual officers who knew of or should have known of these activities*** may also face charges pursuant to the University Code of Student Conduct. No person shall recklessly participate in the hazing of another.
  - No student or advisor or employee shall knowingly permit the hazing of another.
  - No student, advisor, or University employee **shall fail to report hazing.** If a student is aware of hazing and fails to report it to the University, this could serve as a basis of discipline within the University. If an advisor or employee is aware of hazing and fails to report it to the University, ramifications could involve disciplinary action and/or termination.

- The negligence or consent of the student/participant or any assumption of risk by the student/participant **is not a defense to any action brought pursuant to this policy.**
- If any advisor, employee, or member of the Penn State faculty is aware of hazing, or allegations of hazing, and reports the same to Penn State, Penn State is mandated to report such allegations to the local police having appropriate jurisdiction over the matter within 24 hours. Penn State will cooperate with the police as permitted by law.

**7. Implement and Enforce Severe Restrictions in Alcohol Use Because Incremental Changes Have Proven Useless and Are Disproportionate to the Problem**

- The Grand Jury understands that hazing reform may crop up as a topical issue when a tragedy such as Tim Piazza's death unfolds, but quickly fades from the headlines. When the world stops paying attention, many times so do the officials responsible for effecting permanent change. The Grand Jury finds that meaningful reform must be aggressive and lasting.
- If Penn State elects to not commit to aggressive and sustained resolutions against hazing and furnishing, then for the safety of every student, all alcohol should be permanently banned at fraternity and sorority events as a prerequisite to the University's continued recognition of each Greek chapter. No party is worth the loss of a life.
- The Grand Jury acknowledges that no aggressive or sustained measures have ever been attempted under complete University control and oversight. However, the Grand Jurors believe that sincere commitment to such a model could prove successful.

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- If the University intends to allow fraternities to continue consuming alcohol at social events, it should ensure and enforce that all alcohol at any social event hosted by a fraternity or sorority be served **only** by bartenders certified through the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program ("RAMP"); deem fraternity brothers ineligible to act as servers, even if RAMP certified; demand that those RAMP servers require guests to produce valid identification confirming they are of legal drinking age before service; at a minimum, limit alcohol to beer and wine rather than hard liquor; and restrict the number of social events each semester.<sup>79</sup>
  - The Grand Jury agrees with and recommends implementation of delayed recruitment, shortened recruitment periods, a Greek chapter scorecard, relaunching of Neighborhood Enforcement Alcohol Team (NEAT), additional training, further parent and member education,<sup>80</sup> semester surveys for new members to identify hazing, and education on Pennsylvania's Medical Amnesty Act.
  - Fraternities/Sororities must earn "Good Standing"- In addition, the Grand Jury recommends that Penn State direct each fraternity and sorority to first successfully complete an entire semester of hosting social events with a Penn State-employed spot checker present for the **entire** scheduled length of the event in order to monitor the conduct of the brothers/pledges and guests. The event chaperones will be employees of Penn State, chosen by the Office of

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<sup>79</sup> Since the Grand Jury began this investigation, the University has publicly announced its intention to institute these particular requirements. We approve of the University's implementation of these changes.

<sup>80</sup> The Grand Jury also recognizes that this particular recommendation was also suggested and endorsed by Richard Braham during his testimony.

Fraternity Compliance and will be paid for by the fraternity/sorority. Successfully enjoying events with **responsible, legal** alcohol consumption will demonstrate the fraternity/sorority's commitment to following IFC rules, Penn State's regulations, Pennsylvania's laws and commitment to responsible alcohol consumption. Only after a semester proving themselves through this method will the fraternity/sorority be in "good standing" and advance to a decreased level of monitoring via random spot checking by Penn State's new Office of Fraternity Compliance. Upon any allegations of violation related to illegal or excessive alcohol consumption or hazing, the organization will be immediately and temporarily suspended from all social activity and alcohol consumption during the investigation. Upon any finding of violation, the Greek organization will be banned from further social activity and alcohol consumption for the balance of the semester, after which the fraternity/sorority would immediately return to supervised social events for a full semester. After another semester of violation-free events, the fraternity could resume spot checking status.

- As discussed more thoroughly throughout the report, the recommendations above will prove worthless without actual enforcement of violations. In light of that, the Grand Jury recognizes that the listed alcohol rules are little more than empty comfort without supporting guarantees.
- Consequently, Penn State University should continue and expand a policy of randomly spot-checking fraternities—on any, and every, night of the week every semester for fraternities in "good standing." Rather than the IFC/St. Mortiz policy of only spot-checking those fraternities with registered events, Penn State should

employ its own social checkers to appear on the doorstep of any fraternity house, on any night of the week, at any time of the evening. In other words, the monitoring should be truly random. While many fraternities utterly spurned the Parents Weekend restrictions imposed by the University, at least one truth became both self-evident and consistent: the checked fraternities were not especially successful at hiding their violations. Even when fraternity officers refused checkers access to other floors, the steady stream of guests to the upper floors; the loud music; the rowdy voices offered clear circumstantial evidence of illicit partying. Overflowing trash cans of freshly empty shot and solo cups and scattered beer cans easily corroborated checkers' suspicions. When University spot checkers encounter these obvious circumstantial signs of violations, there must be action—both against the fraternity in the organizational disciplinary process as well as against any individuals also observed to be violating the Code of Conduct.

- Moreover, sanctions for violations of the alcohol policy must be severe, progressive, and nonnegotiable. No longer should Penn State allow multiple slaps on the proverbial wrist for alcohol violations. Any fraternity who dismisses the gravity of alcohol management among its members the first time receives an alcohol and social moratorium for the rest of the semester (as explained above). A second alcohol violation in the same academic year expands the alcohol and social moratorium from a semester to the entire year. A third violation nets the loss of Penn State recognition. A “three strikes” policy puts each of these

fraternities on notice: you have a limited number of chances to self-regulate within your own brotherhood before the University takes its own action.

- The message should be unequivocal and should be categorically received: fraternities that gamble with the safety and lives of Penn State students will immediately, and perhaps permanently, lose that which it values above all else—the opportunity to host any alcohol related events in the fraternity house. The Grand Jury is heartened by Mr. Sims testimony in which he supported permanent revocation to “weed out” any fraternity that continues to gamble the safety of Penn State students by failing to comply with the University’s regulations regarding alcohol abuse and hazing. He testified, “We’re not going to be tolerant of this. We can’t afford to be tolerant of this anymore...” The Grand Jury urges Penn State administration to support Mr. Sims’ commitment to student safety, and to enforce a true zero tolerance policy.

**8. Penn State Must Enforce Those Policies that Protect Penn State Students**

- As the current model of self-regulation and self-enforcement by the fraternity members themselves via the Interfraternity Council has clearly failed to prevent the prevailing habit of both excessive alcohol consumption as well as underage drinking, the Grand Jury recommends that the University assume sole responsibility for enforcement and regulation of alcohol consumption during all Greek life events.
- The Grand Jury finds that, rather than abdicating responsibility for the safety of its students to other students who may lack the ability, the knowledge, or the

fortitude to apply discipline that prevents irresponsible drinking and its potentially lethal consequences, Penn State must take ownership of all those who pursue an education at the University.

- To that end, the Grand Jury recommends that the University at a minimum adopt the following curative behavior: Immediately remove the organizational disciplinary process from the IFC's control. Penn State University should directly regulate and adjudicate all violations committed by any University sanctioned student organization, including fraternities operating under Penn State's recognition. Invert the current system in which Penn State employees allegedly merely observed the IFC's decisions from a distance to one in which the IFC students partner with Penn State employees, observing how administrators with far more life experience and hopefully far more appreciation for the long term impact of such crucial adjudications manage these grave concerns. It is time for Penn State to assume control of not only Penn State students, but also student organizations that bear the Penn State name.

**9. Penn State Should Direct Resources to the Expansion of its Office of Fraternity and Sorority Life and Office of Student Conduct**

- To accomplish the above recommendations, Penn State will require additional staff to spot check and monitor fraternities' compliance, to investigate allegations of misconduct, and to adjudicate substantiated violations through an appropriate disciplinary process. The staff and office resources currently devoted to the Office of Fraternity and Sorority Life will never support the execution of the above recommendations, especially when 17% of Penn State's student body belongs to



a Greek organization. The IFC's membership alone numbers forty three fraternities, not counting the Panhellenic Council, the National Panhellenic Council, and the MultiCultural Greek Council. One advisor alone will not be able to effectively manage and supervise forty three fraternities.

- If Penn State intends to maintain Greek life, it must prioritize resources to funding those departments charged with monitoring and protecting such a large percentage of its students who are at demonstrably higher risk of dangerous intoxication, injury, and sexual assault. Specifically, the University must hire enough staff such that every organization and every individual believed to be in violation of hazing and alcohol regulations can be fully investigated and adjudicated.

#### **10. Penn State Should Adequately Fund and Staff the Offices Responsible for Greek Life**

- Prioritizing the objective of these departments also requires the University to ensure that it maintains a full staff. For instance, since November of 2016 until at least the summer of 2017 when he was interviewed, Danny Shaha simultaneously shouldered the responsibility for at least three substantial positions at Penn State's direction—Director of the Office of Student Conduct; Director of the Office of Fraternity and Sorority Life; and Title IX Coordinator. The University cannot possibly expect its administrators to perform effectively when spread so thin.
- The University must endeavor to hire qualified, competent candidates as soon as possible when a vacancy occurs, rather than redistributing responsibilities to

employees who already oversee essential assignments that demand their undivided focus.



**11. Universities Should Train All Employees—including Students—to Recognize the Gravity of Hazing and to Report It Immediately**

- As the Grand Jury learned in Marquise Braham's case, fellow student RAs may often become the first point of disclosure for pledges experiencing hazing and, consequently, could serve as the first line of defense against it.
- Universities must impress upon these RA students that reports of hazing cannot be dismissed, overlooked, or fodder for joking camaraderie. Hazing is not a normal, everyday activity that an RA takes in stride when a fellow student brings it to the RA's attention. An RA should have a duty to report such information, and not encourage a student to "gut it out" or "that it will soon be over." Hazing must be repugnant to all, and not accepted as normal and ordinary. If students and universities continue to treat hazing with a "boys will be boys" indifference, then it will remain alive and well behind doors bearing Greek letters. It's an epidemic on these campuses and it needs to be treated as such.
- Universities must conduct and reinforce training with all employees to educate them on the serious safety risk hazing activity poses to students. Universities should direct employees that reports of such risk by any student should be treated as the real threat to life and limb they represent and passed on to high level administration officials immediately. In turn, high level administration

authorities should be required to immediately report this to the police. (See Recommendation Number 12).




- The Grand Jury tasks Penn State University with setting a per capita fee to defray the costs of these safety recommendations. This cost shall be assessed to all Greek life members at the beginning of each semester. The Grand Jury believes that Greek life will only be true stakeholders in this reform to protect the lives of all students if they directly contribute to the costs of implementing the measures.

**12. The General Assembly Should Enact Compulsory Reporting Processes For Any Elementary, Secondary, or Higher Education Institution, Including Identifying Mandatory Reporters**

- The Grand Jury approves of Universities supporting internal investigations into violations of the Codes of Student Conduct. As the Grand Jury has explained in earlier recommendations, it believes a thorough, prompt investigation of all accusations as serious as hazing and excessive alcohol consumption is crucial to the safety of all students. We also understand that violations of Student Conduct Codes and the criminal law sometimes can—and should—overlap.
- When they do, however, the University should defer to law enforcement's investigation. In order to assure this occurs, every institution of education throughout the Commonwealth should be legally required to report allegations of the crime of hazing to the appropriate law enforcement agency.

- As the Grand Jury has well learned during this investigation, the bonds of secrecy inherent in fraternities create reluctant witnesses. Law enforcement needs every legal tool at its disposal in order to ferret out the truth. These tools include Grand Juries, search warrants, and wiretaps among a variety of others. These tools—not to mention good, old fashioned police work such as canvassing all parties—demand immediate action because delays often mean destruction of the evidence. Unfortunately, as illustrated in the case of Marquise Braham, critical evidence of hazing can be lost or discarded when an administrative investigation precedes a criminal one, with trained investigators who have access to compelling information from others that civilians lack. The Grand Jury received testimony that State College Police Department seized and extracted, either by warrant or consent, the data from at least 20 cell phones from Beta Theta Pi pledges and brothers. The data stored on those phones, as the earlier Presentment made clear, became vital evidence—evidence that may have been deleted and unrecoverable if law enforcement had been unaware of the crime and thus unable to react quickly. Over 30 witnesses testified before the Grand Jury, and State College Police detectives interviewed far more. The Grand Jurors reviewed hours of surveillance video and pages of text messages. This investigation alone required a staggering amount of resources, time, and effort; other similar investigations will demand the same. If these cases fail to be reported to and investigated by law enforcement **immediately**, the truth may never be revealed, justice may never be served, and the danger may never abate.

- 
- Much as the mandatory reporting requirements already exist for suspicions of child abuse, the Grand Jury calls upon the General Assembly to be guided by that structure and create a similar reporting process and procedure that identifies individuals with legally recognized responsibility to report the crime of hazing.
  - For the same reason, Universities should ensure that all of its staff, and administrators receive training on why the need for immediate law enforcement involvement is significant. Administrators such as Mr. Kelly and Mr. Shaha informed the Grand Jury that they would be completely willing to prioritize early police involvement, and that any failure to do so in the past stemmed from sheer unfamiliarity with the avenues required for successful investigation and prosecution.

COPY

The First Centre County Investigating Grand Jury directs the District Attorney of Centre County, immediately upon acceptance from the Supervising Judge, transmit the Grand Jury's Report to the General Assembly of Pennsylvania with appropriate cover letter asking the General Assembly to consider the Report and its recommendations at the earliest time consistent with the business of the General Assembly. The Investigating Grand Jury further directs the District Attorney, again after acceptance by the Supervising Judge, make public this Report in its entirety, and ensure that the administration of The Pennsylvania State University is served with a copy. The District Attorney is to also be certain that the governor and such other members of the executive branch of the government of the Commonwealth, as in the District Attorney's discretion the DA considers warranted, shall also receive copies.

Approved: 

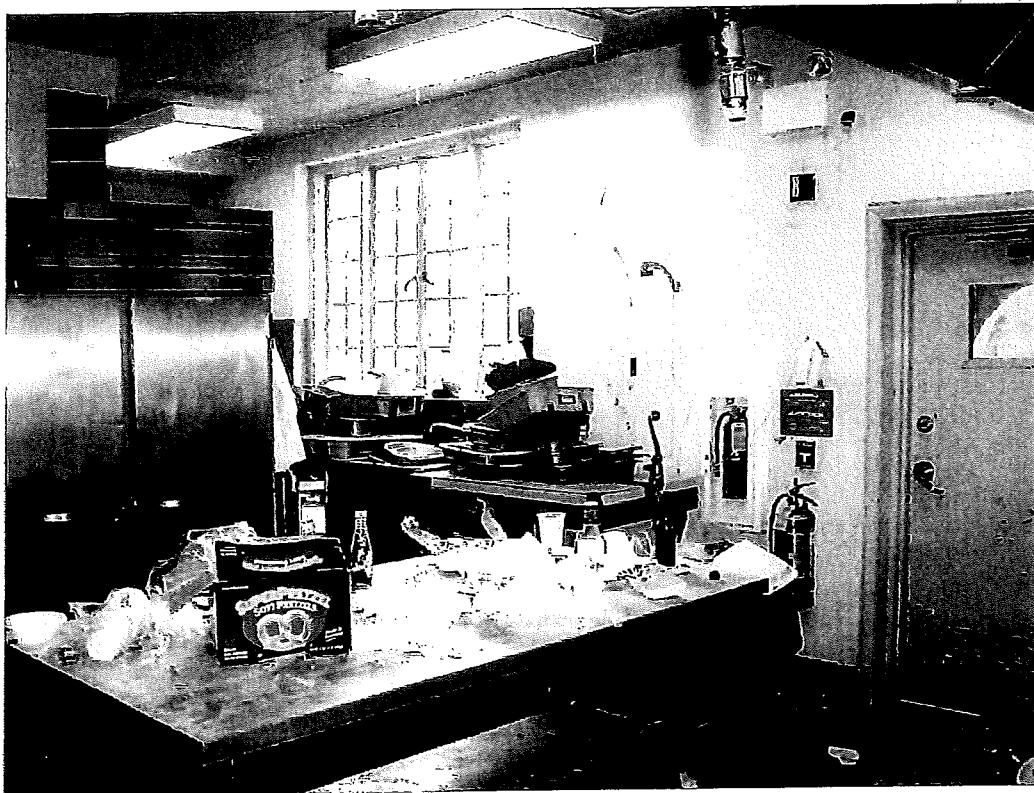
Date: 10/19/17

Foreman, 1<sup>st</sup> Investigating Grand Jury

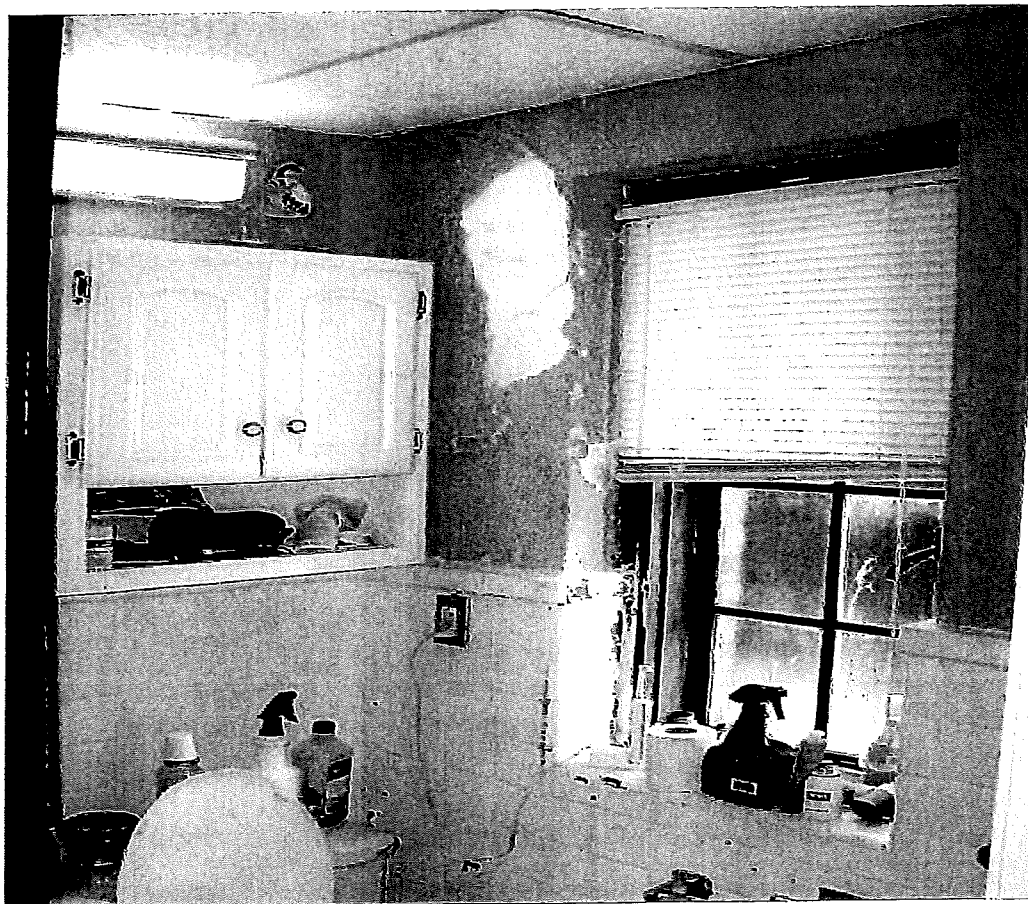
Centre County, PA

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# EXHIBITS



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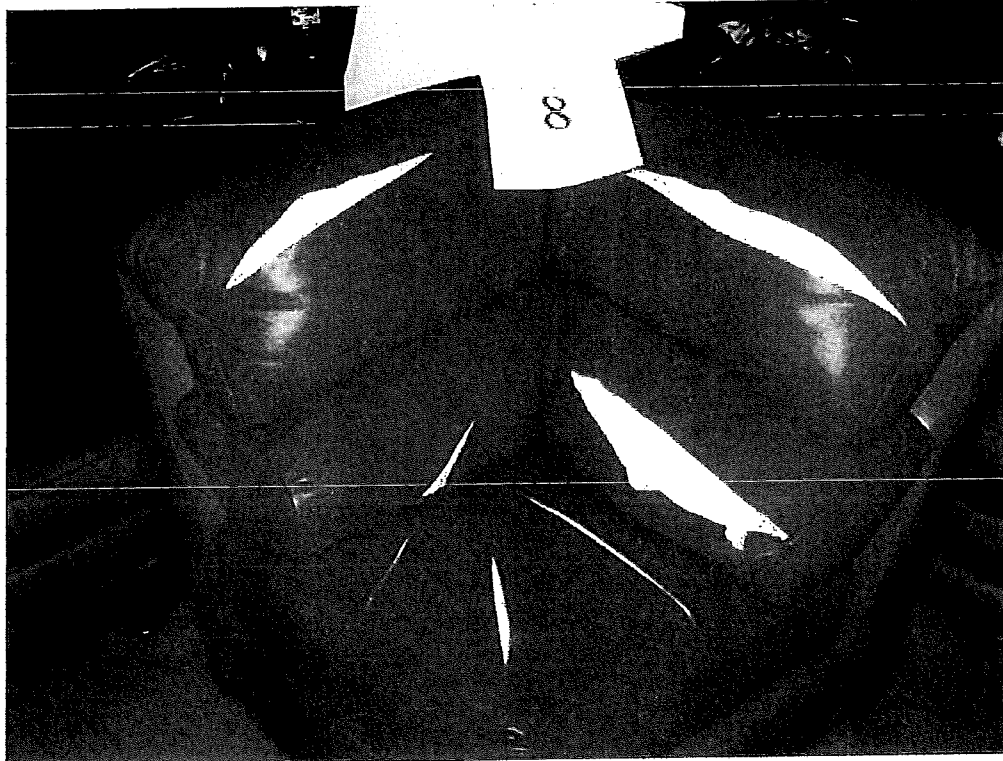
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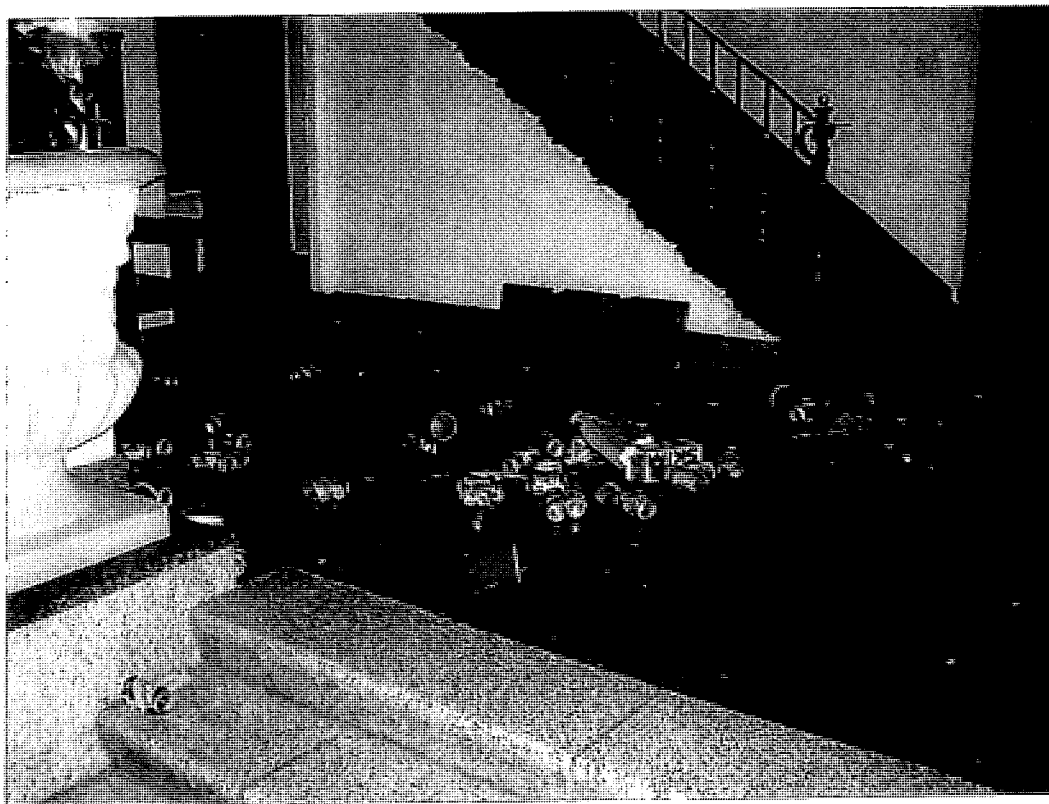
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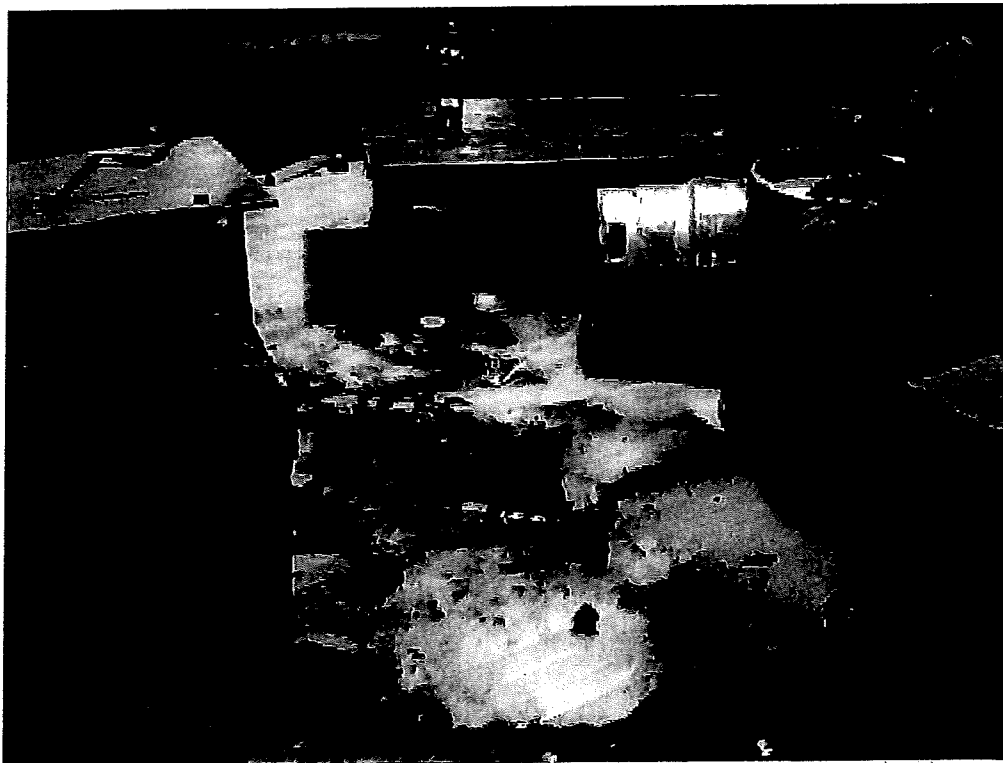


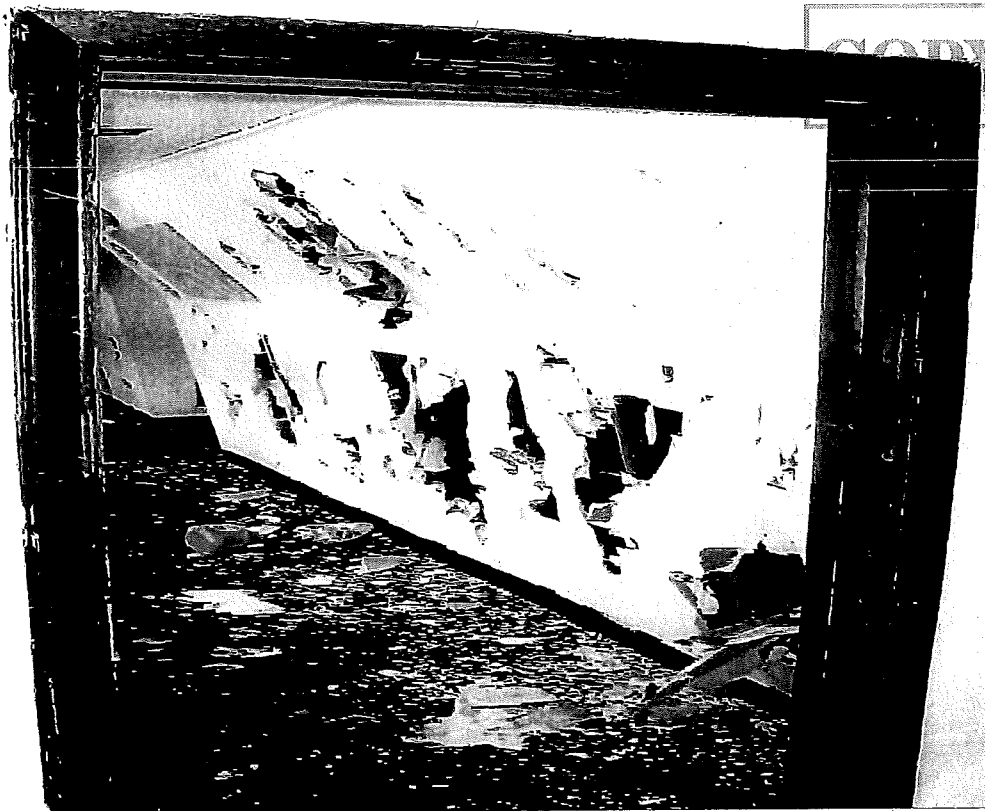
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# Penn State IFC Social Event Monitor Patrol Checklist

Date: \_\_\_\_\_

Checked by: \_\_\_\_\_

\_\_\_\_\_ Fraternity  
☐ Social    ☐ Party    ☐ Unregistered/Other

**COPY**

1st Visit Check Time: \_\_\_\_\_

2nd Visit Check Time: \_\_\_\_\_

**Part 1: The following information should be reread and thoroughly understood prior to entrance of each Fraternity house.**  
*In case of any issues, contact Dean Vetere, or Alex Fredrick in the event that he cannot be reached. If anyone is in danger, call 911.*

## **Contact:**

Dean Vetere (Executive Vice President) Cell: 917-344-9953  
 Alex Fredrick (President) Cell: 941-889-8266

Email: [evp@pennstateifc.org](mailto:evp@pennstateifc.org)  
 Email: [president@pennstateifc.org](mailto:president@pennstateifc.org)

**Part 2: For each item hereafter mark either "Yes" or "No". If you mark "No" and the fraternity is unable to correct the infraction before your departure from the house please note so in the comments section below.**

## Entrance

Are there at least 1(for social)/3(for party) sober member(s) at the entrance?  
 Do any sober members at the door have wristbands?  
 (Party Only) Is a guest list, or identification system (e.g. wristbands), in use at entrance?  
 (Party Only) Is the fraternity using a single entrance (no letting guests in back/side doors)?

Y	N

## Walkthrough

Is the event free of kegs and party balls?  
 Is the event free of mass consumption devices (e.g. beer bong)?  
 Is the event free of individual sized glass containers (e.g. glass beer bottles)?  
 Is the event free of fire hazards (covered smoke detectors, blocked exits, etc.)?  
 Can guests move freely around the event without having to push?  
 Is the level of noise consistent with a normal fraternity social event (Noise Violations)?  
 Is alcohol being used responsibly and in accordance with the law?  
 Are all designated members (e.g. members at entrance) alcohol free?

Y	N

## Bar Area

Is there at least 1sober member around the bar area?  
 (Party Only) Are there at least 2 sober members around the bar area?  
 Do all sober members at the bar have wristbands?  
 Are the proper signs posted around the bar area?  
 Are snack foods visible from the bar area?  
 Are non-alcoholic beverages (including water) visible from the bar area?  
 (Social Only) Is liquor being consumed only in mixed form (not straight/shot form)?  
 (Party Only) Is the event free of liquor?

Y	N

## Exit

Is there at least one sober member at the exit?  
 Did sober member(s) at exit have wristbands?  
 Are the proper signs posted around the exit?

Y	N

**EXHIBIT**

2

tables

Part 3: It is the duty of the Social Event Monitor to collect the Penn State University ID Cards of each individual member designated as sober representatives. You are to fill the position each of these members holds, print their name, and fill out their 9-digit ID #, which can be found at the bottom of the ID card (begins with 9). The last step is to require the individual to sign their name, certifying they are indeed the sober member.

COPY

### Fraternity Representative

Position Held	
Name (Print)	
9 Digit PSU I.D.	
Signature	

### Sorority Representatives

Name (Print)	
9 Digit PSU I.D.	
Signature	

Name (Print)	
9 Digit PSU I.D.	
Signature	

Name (Print)	
9 Digit PSU I.D.	
Signature	

Name (Print)	
9 Digit PSU I.D.	
Signature	

Name (Print)	
9 Digit PSU I.D.	
Signature	

Name (Print)	
9 Digit PSU I.D.	
Signature	

# Alpha Upsilon Conduct File

COPY

## 2007

- 2/1/07 – A risk management education report was submitted by the chapter risk manager containing admission of pledges consuming alcohol and being intoxicated at Beta events
- 2/24/07 – Police report of "assault-simple, non-aggravated" at 3:17 a.m.
- 3/2/07 – anonymous report of hazing within the pledge program and indicating that the 5 of 12 pledges that quit did so due to hazing. Specific hazing allegations included personal servitude, driving members around town and sleep deprivation.
- 3/22/07 – Police report of underage possession, consumption and transportation on the fraternity premises at 1:54 a.m.
- 4/15/07 – An incident suggesting that members of the chapter yelled racial slurs from a second floor-window at an African-American individual who was trespassing on the property.
- 5/1/2007 – Report of hazing within the pledge program from a parent, including accounts of active members harassing dropped pledges by phone as late as 4:00am
- 7/14/07 – Police report of underage possession, consumption and transportation on the fraternity premises at 11:54 a.m.
- 9/5/07 – A male student was apprehended urinating in public after being observed leaving the chapter house by police. He indicated he had consumed 8 shots of Vladimir vodka underage at the Beta house.

Another male student was apprehended urinating in public after being observed leaving the chapter house by police. He indicated he had been served six or seven cans of Natural Light beer at the house. He was underage and indicated no attempt to check his ID was made.

The police log indicated "University Police officers assisted the State College Police Department in shutting down a large party at Beta Theta Pi fraternity." A conference call with officers confirmed the chapter pooled funds, no guest list and distribution of alcohol to minors

- 9/13/07 – Police report of disorderly conduct involving excessive music at 12:33 a.m.

## 2008

- 4/17/08 – Police apprehended an underage male student on Beta property at 1:00 a.m. with an open container of Natural Light beer. He indicated getting the alcohol at Beta Theta Pi at a party. The male had a BAC of 0.189. Several cans of Natural light were on the lawn, floor and people's hands and no other functions were witnessed by police. The individual indicated no ID was needed to acquire alcohol.

EXHIBIT

3

A conference call with chapter officers confirmed that alcohol was purchased by the chapter and distributed freely, including to underage guests.



- 4/26/08 – Police report of furnishing alcohol to minors at 11:08 p.m.
- Spring 2008 – Two members caught by campus police urinating on campus grounds including one near Old Main.
- 7/1/08 – Police report of a student seen leaving the chapter house at 1:26 a.m. with alcohol in a red cup. He was found urinating in the parking lot. He was underage and had a .20 BAC.
- 7/1/08 – Police report of a student leaving the chapter house at 12:23 a.m. and found urinating in the alley behind the house. He was underage and had a .114 BAC.
- 9/6/08 – Police reported furnishing alcohol to minors at a tailgate with 100 people taking Natural Light beer cans freely from a plastic trash can. No ID was required to obtain alcohol. The incident was covered in The Daily Collegian on 10/30/08.
- 9/11/08 – The police investigated a guest allegedly beaten unconscious by a member. There was not enough evidence to prosecute.
- 9/24/08 – Incident submitted where a thrown glass beer bottle hits a girl in the face during a date party. A conference call with chapter officers did not identify the individual(s) responsible, but revealed members and guests were engaging in a "case race" drinking game and the alcohol was provided through the chapter social budget.
- 9/25/08 – Police reports of disorderly conduct involving excessive music at 1:30 a.m. and simple, non-aggravated assault at 1:40 a.m. at the chapter house.
- 10/29/08 – Members reportedly vandalized the pledge dorm by breaking an air conditioner and smashing furniture against the wall.
- Fall 2008 – A parent reports that pledges are kept at the chapter house until 2am and are forced to drive members around as late as 3am and are suffering from sleep deprivation.
- Fall 2008 – Reports of hazing witnessed or conveyed to chapter alumni
  1. Pledges delivering food/drink to members rooms, loading luggage in cars, driving brothers to class and tending bars at parties
  2. Pledges clean the house by themselves; kept up through night on occasion
  3. Third floor hallway and entry patio surveillance cameras covered during pledge event
- 2008 – A marijuana "bong" was allegedly found in a bedroom; officers may have used the device
- Fall 2008 – Several incidents of members discarding used condoms onto the property; notably three times out a window near the front door of the chapter house. Photographic evidence provided.



## 2009

- 1/12/09 – A member allegedly charged \$323 in groceries on the chapter account for personal use with no expressed intent to repay prior to or after making purchase. Discovered by accountant.
- January 2009 – A keg was reportedly found on chapter premises in a trash can in the party room
- January 2009 – Evidence of continued drinking games (beer pong) found
- 2/7/09 – Social functions held on Friday and Saturday evening in violation of probation restrictions of one social function per week. Evidence of beer cups on floor, ledges and tables along with empty liquor bottles and cans of beer both nights.

## Other Allegations

- The chapter maintains a separate social account of funds used to purchase alcohol.
- Repeated use of kegs, including in bedrooms. Photographic evidence provided.
- Use of beer funnels from the second floor stairwell to the lobby.
- Severe disrespect and destruction of property, with photographic records provided.

COPY


Beta Theta Pi (PC on 3/16/09)

COPY

- No worse and perhaps generally better than most of our fraternities
- Among its distinctions are its location on N. Burrowes and the \$6-\$7M remodeling project completed in the past six months or so and funded entirely by Don Abbey—wealthy alum
- Graham introduced me to Don shortly after I arrived, and I have had various conversations with him and others about ways the university could encourage the development of a model fraternity experience at the Beta chapter
  1. How to purposefully encourage greater connections between the members and the intellectual, cultural, and leadership opportunities already available on campus
  2. But also how to use the facility and Don's resources (Abbey Leadership Fund) to attract speakers and related opportunities that other groups could also take advantage of
- Late last semester, Don and a full-time advisor/overseer he funds to manage the house starting talking about damage done by the residents, as well as visitors — this discussion quickly focused on the need to get rid of the bad eggs
- Don and his friends control the Alumni Board and housing contracts are individual between the Board and the undergraduate members, which is not typical — semester contracts
- At the end of last semester, Don sequestered each member for questioning about their commitment to the chapter and its principles, as well as certain principles expressly articulated by Don and the Board — 10 men were told not to return this spring — they moved out, but remained members in good standing
- Meanwhile, Don & his man on the ground were feeding 'evidence' to the Beta Theta Pi National, trying to show that the remaining men were also a problem in terms of alcohol and damages

COPY

- The National put the group on probation about six weeks ago, saying that alcohol use was not permitted
- More "evidence" came to the National from Don & Co., and the National decided to suspend the charter and to tell the members that they would be deactivated and would be given alumni status
- The National sought my endorsement of the action, asking that we issue a joint release on the topic, but I declined, saying simply that the group was not, to my knowledge, in violation of any university regulation – had not been disciplined, nor was subject to discipline, that would otherwise lead us to unilaterally seek their closure – we respected their ability to take the action, but would not endorse it
- We did raise questions about the timing (wait until the end of the semester?), the legality (Pennsylvania eviction law), and the appearance (a National taking action against a fraternity and vacating the fraternity that is next door to Phi Delta Theta)
- Parents of the students affected mobilized in response; their attorneys went to work; the National remained committed to its action, but the Alumni Board backed off on its insistence that the men move out by the beginning of spring break (Friday, March 6)
- So we have a stalemate through the remainder of the semester, though some have moved out and moved on – the National's suspension will remain in effect, though it clearly wants to re-colonize here – Don and the Alumni Board still hope the re-colonization can occur next fall, but that seems nearly impossible
- I've been trying to let the dust settle a bit, but the Alumni Board is meeting here the first week of June, Don will be back then, if not before, and I believe Graham and I will be meeting with him to discuss the future

- 
- One key member of the Alumni Board, during a luncheon meeting attended by Don and others, as well as Chris Brady and members of my staff, said that he didn't care if the building remained a fraternity, as long as it could be put to good use advancing the leadership development ambitions they have
  - Minimally, during the 2-3 years the house is not likely to be a fraternity, I think we should partner with the Alumni Board to use it for visiting scholars, retreats, leadership development programs, and the like
  - But my limited experience with Don suggests that there are always many strings attached – he expects to control the outcome – and we should not be comfortable with things he has done in this instance or had done on his behalf

COPY

that's a good idea too

I think I'll just do that  
haha. What are u up to?



Pledge down

what the

And I'm doing homework

EXHIBIT

5

tabbles

## Night 2 - Tentative Schedule

7:30pm - pledges go home

9:30pm - DD Challenge (Billy chooses successor)

- Sean's

11:15pm - DD returns

11:30pm - First Phi Back

12:00pm - Second Phi Back

12:30am - Lemonade Challenge (Ryan and Steven choose successor)

1:00am - Beer Olympics

2:00am - Final Phi Back

- Digs distribute rush shirt to little to complete U

2:30am - Keg's and Eggs

- both asleep

3:00am - Stump the Phil Challenge (anytime Connor chooses successor)

Reminder: only E-Board should be opening home

Reminder: 3 Strike Rule: 1- ask to be quiet 2- lookout upstairs 3- leave



## Tentative Schedule - U

COPY

6:00pm: Ritual of Association

7:00pm: Pledges leave Bar House and return to their apt/dorms one last time to retrieve bags and report to Oak House for Ramsey to walk over to Woomer with them together

7:30pm: Shuttle drivers start, absolutely no cars allowed at Woomer, including alumni

8:00pm: Pledges arrive at Woomer, bags and belongings are placed in living room nearby

- Pledges go downstairs after dropping bags and belongings

- Phones/watches/jewelry/etc are taken downstairs first thing

- Introduction by Sentinel and President to U

- Info learned: virginity lost, shoe size, siblings/parents, everything to know, etc

- Pledges go home

- Initially home for 3-4 hours, air outs required every 45min MAX, only eboard can open doors

11:45am: First event, Spin of Brothers

- Spin in group of 3, then group of 4, brother info to each pledge (big/little)

12:15am: Dead, teach proper chugging/cup position

12:30am: First Phi Back (lybac): teach how to puke

- Demonstration by 4 brothers

- No screaming unless encouraging to puke

- 4-8 rounds of beer per Phi Back

1am: Second Phi Back

- Alumni time

2am: GB Challenge (Will picks successor), 14 GBs wins the challenge

- Challenge will be done at Bar House, Will explains passdown

2:00am: Third Phi Back, if pledges aren't drunk yet, beer. Chug water

- Test brother info, alphabet, eboard positions and officers

2:15am: Super Sonic Passdown (Connor picks successor)

- Done inside house, location picked by Connor

2:20am: Snort Challenge (Steven picks successor)

- Egg whites and spit, no snort!!

2:45am: Fourth and Final Phi Back

- Sentinel's discretion of basement activities

- Total drinks for the night should be 20-25 beers per pledge

3:00am: First night conclusions

**IN RE: INVESTIGATING  
GRAND JURY**

**CENTRE COUNTY  
CRIMINAL DIVISION**

**NO. CP-14-MD-1367-2015**

**NOTICE 11**

TO THE HONORABLE THOMAS KING KISTLER:

The Pennsylvania State University (“the University” or “Penn State”), by and through its undersigned counsel, Duane Morris LLP, hereby submits this Response to the portions of the Grand Jury Report (the “Report”) received by the University on Friday, October 27, 2017,<sup>1</sup> “to be attached to the report as part of the report before the report is made part of the public record,” pursuant to 42 Pa.C.S. §

<sup>1</sup> Undersigned counsel received a copy of 93 pages of the Report on October 27, 2017. The Court provided ten (10) business days to provide a response to be appended to the Report, pursuant to 42 Pa.C.S. § 4552(e). Notwithstanding the Commonwealth's intent to release publicly the Report, the University's ability to disclose the contents of the Report in preparing its Response have been constrained by Court Order. Despite those limitations, we appreciate the opportunity to provide this Response to address where possible those broad criticisms, and to identify where a number of specific factual allegations and conclusions in the Report are incomplete, inaccurate, and ignore evidence available to the Grand Jury.



4552(e), and consistent with the Court's orders of May 24, 2017, and October 20, 2017.

## **INTRODUCTION**

We thank the Grand Jury for its sincere efforts, as well as its honesty in concluding that, after months of investigation, “the Grand Jury is mindful and troubled that there is no means of preventing another tragedy like the death of Timothy Piazza.”<sup>2</sup> We cannot take any comfort in that conclusion, no matter how realistic it may be.<sup>3</sup> The tragic loss of that fine young man to his family—and the Penn State Community—is irreparable. Our Response to the Report does nothing to diminish our recognition of the loss suffered by the Piazza family.

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<sup>2</sup> Report at 81 (Although the portions of the Report received by the University do not have page numbers, we have identified them herein by the sequential order in which those portions were provided to the University).

<sup>3</sup> We do not know the scope of the investigation under Notice 11, authorizing the Commonwealth to use the investigating grand jury. We assume that, because the Court has tentatively authorized the Report's release, the Commonwealth submitted to the Court a notice broad enough to encompass the scope of the 93 pages of the Grand Jury's investigation and Report that are critical of the University. *See* 42 Pa.C.S. § 4550. It does seem likely that it was the Commonwealth's intention to level criticism at the University from the earliest stages of its investigation. At the time of the Presentment, even before having heard or received much of the testimony and evidence from the University relevant to the Grand jury's investigation, the Grand Jury stated its conclusion and requested that the District Attorney's office draft a report for the Grand Jury's consideration “outlining the evidence upon which the Grand Jury has reached the conclusion that the university, and/or a sub-unit of the university fostered a permissive atmosphere which contributed to the death of Timothy Piazza.” Grand Jury Presentment at 63. The Commonwealth appears to have drafted such a report.

Information available to the Grand Jury and this Response should make clear that the University—in particular through its Vice President for Student Affairs, Damon Sims—has made extraordinary efforts, and shown an unwavering commitment to promoting safety and accountability and aligning the values and behaviors of the “Greek” system organizations with the expectations of the University. Progress here and elsewhere across the country has been limited by the legal and practical limitations faced by all universities. Those limitations include the unwillingness of the national fraternities, their associations, undergraduate members, and fraternity alumni to challenge behavior that has been accepted for years across the nation, and to accept the need for major reform.

Despite the University’s aggressive actions to address these issues repeatedly over time,<sup>4</sup> the Report ignores totally, or criticizes and dismisses these *major* Penn State efforts without analysis or constructive recommendation. The Report’s curious reliance on a student blog about the ways that fraternities and their members try to subvert attempts to “control” drinking –and why reforms will not work – highlights the scope of the challenge faced by the University and the role that others must play in meeting it.<sup>5</sup> The fact that the fraternity members

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<sup>4</sup> See Section I.A., *infra*.

<sup>5</sup> Report at 91.

believe that they can find a way around any rule is a compelling testament as to the difficulty the University faces in enforcing those rules. Activities during “Parents’ Weekend” events show that even *parents* encourage and facilitate the students’ efforts to violate the University’s rules and the laws of the Commonwealth. Parents passed wristbands to underage students, and brought unauthorized alcohol to fraternity house events with underage students.<sup>6</sup> The National Beta Organization and its alumni were unable to control behavior in a house they owned, managed, and to which they had total access.<sup>7</sup> National fraternities refuse to revoke recognition of their fraternities’ charters despite the loss of University recognition, thereby allowing and encouraging these organizations to exist without University oversight—and despite clear evidence of hazing and alcohol abuse.<sup>8</sup> Policing of these private organizations on private property is the responsibility of

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<sup>6</sup> Report at 85; but *see* PSU0000087-PSU0000106 (Documents identified by bates numbers in this Response were produced previously to the Grand Jury. For purposes of this Response, they have been redacted, where appropriate, to remove identifying information. Those redacted documents, together with other documents relied upon herein, have been included in the accompanying Appendix).

<sup>7</sup> Report at 35 n.7.

<sup>8</sup> PSU0000533 (Email from Damon Sims to Sigma Alpha Mu Fraternity Announcing Withdrawal of University Recognition of Chapter); [http://www.psu.edu/ur/2014/KDR\\_Response\\_May-26-2015.pdf](http://www.psu.edu/ur/2014/KDR_Response_May-26-2015.pdf) (Letter from Damon Sims to Inter-Fraternity Council Announcing Withdrawal of University Recognition of Kappa Delta Rho Fraternity).

the Commonwealth. With relatively weak hazing and underage drinking laws, perhaps law enforcement is incapable of meaningfully addressing these activities.

Notwithstanding all of this, the Report suggests that the University and its officials—with the weakest “control” over these organizations (that of University recognition)—should be expected to solve this problem alone. That makes no sense. Experts in this field all agree there is an obvious need for partnership and cooperative action at all levels, if we are to make progress.

We, nevertheless, believe further progress can be made. That there is a long and pervasive national history of excessive college drinking and hazing, however, is a fact.<sup>9</sup> From the early history of colleges and universities in our country and up through today’s headlines, alcohol abuse by university students and its tragic consequences are well known.<sup>10</sup> It remains a national problem—a problem that

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<sup>9</sup> See John Marr, A Brief History of the Brutal and the Bizarre World of Fraternity Hazing, GIZMODO (Sept. 30, 2015), <https://gizmodo.com/a-brief-history-of-the-brutal-and-bizarre-world-of-frat-1733672835>.

<sup>10</sup> See John Hechinger, “True Gentlemen: The Broken Pledge of America’s Fraternities” (Public Affairs, 2017); *see also* Hazing is Nothing New – Fraternities Have Been Beating and Force-Feeding Pledges Since Colonial Times, BUSINESS INSIDER (Sept. 30, 2017); <http://www.businessinsider.com/fraternities-hazing-pledges-history-2017-9>

often begins in high school or earlier. Widespread problems of binge-drinking and hazing at colleges and universities echo across the country.<sup>11</sup>

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<sup>11</sup> See, e.g., Ryan Van Velzer, Pompano Beach fraternity pledge found dead after FSU off-campus party, *SUN-SENTINEL* (Nov. 4, 2017) (Andrew Coffey, 20, Pi Kappa Phi, Florida State University); Eli Rosenberg, A fraternity pledge died of alcohol poisoning. Now 10 are charged with hazing in connection with his death, *THE WASHINGTON POST* (Oct. 11, 2017) (Maxwell Gruver, 18, Phi Delta Theta, Louisiana State University); Michelle Broder Van Dyke, An 18-Year-Old Student Died After Being Rushed To The Hospital From A Campus Fraternity House, *BUZZFEED NEWS* (Sept. 17, 2017) (discussing the deaths of Maxwell Gruver and Praneet Karki, 22, Beta Kappa Gamma, LSU, in 2015, as well as the hospitalizations of 2 pledges of the Lambda Chi Alpha fraternity in spring 2017 following hazing abuses); Jay Caspian Kang, What a Fraternity Hazing Death Revealed About the Painful Search for an Asian-American Identity, *THE NEW YORK TIMES MAGAZINE*, (Aug. 9, 2017) (Chun Hsien “Michael” Deng, Pi Delta Psi, Baruch College); Nikie Mayo, Clemson University to pay Tucker Hipps’ family \$250,000 as part of lawsuit settlement, *ANDERSON INDEPENDENT MAIL* (Aug. 17, 2017) (Tucker Hipps, 19, Sigma Phi Epsilon, Clemson University); Sarah Litz, Parents file lawsuit against Sigma Nu at UNR for son’s death, *RENO GAZETTE-JOURNAL* (June 13, 2017) (Ryan Abele, 18, Sigma Nu, University of Nevada-Reno); Courtney Rozen, Six students charged with hazing in freshman’s death at Ferrum, *USATODAY* (June 17, 2016) (Michael Walker, 20, Sigma Alpha Kappa, Ferrum College); Lawsuit: Parents seek \$1 million in Texas Tech student’s death, *KENS-TV* (Aug. 5, 2016) (Dalton Debrick, 18, Alpha Sigma Phi, Texas Tech University); J.P. Lawrence, Lindsay Ellis and Bethany Bump, Two charged with hazing in alcohol-related death of UAlbany student, *TIMES UNION* (Oct. 22, 2015) (Trevor Duffy, 19, Zeta Beta Tau (unofficial), University of Albany); ‘Big brother’ arrested for hazing in connection with WVU frat death, *THE ASSOCIATED PRESS*, (Feb. 11, 2015) (Nolan Birch, 18, See (Kappa Sigma, West Virginia University); Mark Bowes, Four men convicted of manslaughter, hazing in VSU drowning deaths, *RICHMOND TIMES-DISPATCH* (Feb. 12, 2015) (Marvell Edmondson, 19, and Jauwan Holmes, 19, the “Men of Honor” fraternity, Virginia State University); Jacy Marmaduke and Natasha Rausch, Police documents tell the story of events leading to Clayton Real’s death, *THE DAILY NEBRASKAN* (Oct. 27, 2014) (Clayton Real, 18, FarmHouse Fraternity, University of Nebraska-Lincoln); Robert Rodriguez, Pair get jail time in Fresno State fraternity hazing death, *THE FRESNO BEE* (Sept. 16, 2014) (Philip

Approximately 200 students have died in hazing incidents in colleges in the United States since the first recorded death of this kind in 1838.<sup>12</sup> In the past three years alone, twelve college students at twelve different institutions have lost their lives as a result of hazing involving alcohol.<sup>13</sup> Even in the relatively few months since Timothy Piazza's tragic and highly publicized death these terrible losses continue. Indeed, in only the last eight weeks, students have died due to alcohol and hazing at both Louisiana State University and Florida State University, in circumstances sadly reminiscent of experiences at Penn State.<sup>14</sup> Yet we still must

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Dhanens, 18, Theta Chi, California State University, Fresno); Caitlin Owners and Ruben Vives, CSUN fraternity shuts down after pledge's death during hazing, LOS ANGELES TIMES (Sept. 5, 2014) (Armando Villa, California State University, Northridge); Nina Golgowski, N.C. fraternity pledge died in violent hazing ritual led by school president's son: lawsuit, THE DAILY NEWS (Mar. 24, 2014) (Robert Eugene Tipton Jr., 22, Delta Sigma Phi, High Point University).

<sup>12</sup> See "*Hazing deaths on American college campuses remain far too common*," THE ECONOMIST (Oct. 13, 2017), <https://www.economist.com/blogs/graphicdetail/2017/10/daily-chart-8>

<sup>13</sup> See note 11, *supra*.

<sup>14</sup> See, e.g., Matthew Haag, Florida State Halts Fraternity Activities After Student's Death, N.Y. TIMES (Nov. 7, 2017), [https://www.nytimes.com/2017/11/07/us/florida-state-fraternity-sorority-suspension.html?\\_r=0](https://www.nytimes.com/2017/11/07/us/florida-state-fraternity-sorority-suspension.html?_r=0); Michael Hectman, Florida State fraternity pledge found dead after party, N.Y. POST (Nov. 4, 2017), <http://nypost.com/2017/11/04/florida-state-fraternity-pledge-found-dead-after-party/>; Ten people charged for Louisiana State University hazing death, BBC NEWS (Oct. 11, 2017), <http://www.bbc.com/news/world-us-canada-41588051>; Stephanie Saul, 10 Arrested in Death of L.S.U. Student After Fraternity Drinking Ritual, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/us/lsu-hazing-arrests.html>.

continue the longstanding earnest attempt within our own University community to secure and sustain a safe and productive experience for all our students.

We take note of the Report's struggle to provide even *a single* specific recommendation to the University that would help in the ongoing effort here and across the country to combat issues related to dangerous drinking and hazing among college students. The express statutory purpose of any grand jury report in Pennsylvania is, in pertinent part, to "propos[e] recommendations for legislative, executive, or administrative action in the public interest based upon stated findings." 42 Pa.C.S. § 4542. Yet this Report, at least to the extent it addresses the University's actions and responsibilities, provides no new insight or suggestion that could be put to constructive use by the University or others.<sup>15</sup> Despite the apparent absence of any specific recommendation—and the absence of adequate support for the findings and conclusions contained therein—it would be contrary to the mission of the University to contest the issuance of the Grand Jury's Report.<sup>16</sup>

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<sup>15</sup> Because the Commonwealth has sought the issuance of this Report, we assume, for purposes of this Response, that that the portions of the Report not disclosed to the University make such statutorily-authorized recommendations and that the findings about the University serve a lawfully-authorized purpose of supporting such recommendations.

<sup>16</sup> See 42 Pa.C.S. § 4552(b) (reports authorized for filing "only if the report is based upon facts received in the course of an investigation authorized by this subchapter and is supported by the preponderance of the evidence").

It is the intent of this response to encourage, rather than stifle, dialogue. As noted elsewhere in this Report, dealing with alcohol abuse is a problem faced by every college campus in the country.

We are sympathetic to the Grand Jury's challenge, because it is a challenge we have shared over the years. The difficulty faced by colleges and universities, including ours, to help combat with seemingly intractable issues related to alcohol and hazing is certainly not due to lack of attention or effort. To the contrary, harm and even death to college students resulting from these issues continue despite enormous attention and effort over the course of *many* years (if not many decades) both at Penn State and across all of American higher education.

To even suggest that alcohol abuse at Penn State fraternities is somehow different from every other college campus is a false assertion that the University cannot accept. The University does not cause students to drink to excess. Moreover, to suggest that the University has not acted to address alcohol abuse in recent months or the past decade is simply untrue. Ascribing fault to this University and the purported failings of its officials, as the Report does, demonstrates a complete misunderstanding of the complex national context in which these issues exist.



It cannot be fairly stated that the cause of Timothy Piazza's death was unique to Penn State's "culture".<sup>17</sup> There is neither a factual nor a legal basis for the critiques and allegations in the Report that the University is somehow responsible for this tragic loss. The Commonwealth's attorney would seem to agree. According to the Report "the Grand Jury recognizes that criminal acts directly caused Tim's death at the hands of named individuals and the fraternity as a whole...."<sup>18</sup> In arguing that the charged individuals acted with recklessness, the Commonwealth went further at the Preliminary Hearing. The Commonwealth argued that the circumstances surrounding the death of Timothy Piazza were unique—a "distinct and shocking aberration," that it was "an untrue characterization that this is an ordinary thing."<sup>19</sup>

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<sup>17</sup> The Report makes broad conclusions of responsibility—and its assertion that the University has abdicated that responsibility—for all conduct of all fraternity members. *See, e.g.*, Report at 79-80. These types of conclusions are legally unsound, damaging and unproductive. *See Wood v. Hughes*, 9 N.Y.2d 144, 154, 173 N.E. 2d 21, 21-22 (1961) ("A report ... based as it is upon the grand jury's own criteria of public or private morality, charges the violation of subjective and unexpressed standards of morality and is the first and last step of the judicial process. It is at once an accusation and a final condemnation and, emanating from a judicial body occupying a position of respect and importance in the community, its potential for harm is incalculable.")

<sup>18</sup> Report at 80.

<sup>19</sup> *See* Transcript of Preliminary Hearing dated Aug. 30, 2017 at 60:13-61:23 ("We do see furnishing cases. They look absolutely nothing like what has occurred in this unbelievable case...This is a distinct and shocking apparition [*sic*] of, you

The University has not “abdicated”<sup>20</sup> its role or responsibility. The University does not have the luxury of laying blame and moving on.<sup>21</sup> As the University’s Response makes clear, after more than a decade of stepped-up efforts by Student Affairs and University leadership, through the introduction of education and prevention programs, like medical amnesty, substance free housing and mandatory alcohol education, and tougher enforcement, the University and its leadership have said “enough is enough.” Following the tragic death of Timothy Piazza, Penn State has taken additional and unprecedented steps to help curb a national epidemic of binge-drinking, especially within “Greek system.”

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know, human behavior. This is outrageous, this case. So that is an untrue characterization that this is an ordinary thing.”).

<sup>20</sup> Report at 71-72 (“completely abdicated its moral responsibility”).

<sup>21</sup> District Attorney Parks Miller is quoted as suggesting that the intention of the Report prepared by the Commonwealth is to assist with exposing the University to civil liability, so that other institutions might make unspecified changes. See <https://thetab.com/us/2017/10/05/da-in-penn-state-72559>

“I think across the nation, now Penn State is on the chopping block, other colleges are watching, even if it’s for self-protection.’ But in terms of concrete changes that she expects the university to make, Parks-Miller believes that the only way to get their attention is for the Piazza family to file a civil suit and hit them in the wallet. ‘Their first goal is justice for their son, but they need to make more of this than just burying him. ‘Because the university hasn’t been shown to be directly culpable, even if they morally failed, a civil suit is the only way they can force them to make changes so Tim’s death wasn’t in vain.’”

We are not aware of another major university that has taken over monitoring of a broken self-governance model of the “Greek system.”<sup>22</sup> For example, the University has asserted control of the “Greek system” organizational disciplinary process for chapter misconduct, and introduced a Greek chapter scorecard. But further progress is contingent on others’ willingness to address these problems. It requires an honest assessment of the challenges, limitations, and problems— as well as an acknowledgment that many within the national “Greek system” have fallen short.

The University appreciates the spirit with which the Report was undertaken, but were surprised and disappointed that the Report offered no ideas or solutions that Penn State and others could use to address the problem. We take exception to some key omissions and unsupported allegations that misrepresent Penn State’s tangible commitment to improve safety.

Nevertheless, the University remains focused on an aggressive fourteen-point safety agenda that builds on preexisting Penn State programs.<sup>23</sup> It is encouraging that others in the Commonwealth and nationally— from State and

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<sup>22</sup> See Section I.A-B, *infra*.

<sup>23</sup> See Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Safety Initiatives for Greek-Letter Organizations* (June 2, 2017), <http://pennstateupdate.psu.edu/new-safety-initiatives-infographic>.

national elected officials to university presidents— are joining Penn State to toughen laws and develop new solutions to the serious problems of drinking and hazing. While the University will continue to face challenges, it requires the assistance of all concerned. There must be a partnership with students, parents, alumni, national fraternities and law enforcement in order to create meaningful change.<sup>24</sup>

### **DISCUSSION**

The purpose of this response to address the allegations in the Report<sup>25</sup> is two-fold:

(I) to address the positive actions that the University has and continues to take to address the danger of excessive drinking and hazing, while noting the limits of the University’s “control,” and its efforts to exert that authority—over private organizations on private property— and cooperate with law enforcement; and

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<sup>24</sup> Even with a diverse array of participants, we respectfully suggest that, in the absence of a partnership and an honest assessment by all, consensus might be difficult to reach. *See* Report at 55-59 (describing the testimony of Thomas King about his involvement with the University’s Greek Life Task Force); Report at 80-81 (criticizing Task Force); *see* Fraternity and Sorority Life Task Force Roster, PSU0000862.

<sup>25</sup> *See* 42 Pa.C.S. § 4552(e) (where a report “is critical” the subject of that criticism may “submit a response to the allegations contained in the report”).

(II) to correct clear errors contained in the Grand Jury's assignment of causation where there is a mistaken notion and blame that no past action has been taken following a lengthy period of fraternity deactivation.

**I. Penn State's Enforcement, Reforms and the Limits of Its Authority**

Although the Grand Jury criticizes the University's efforts to address these *matters of national concern* as insufficient, it offers no clear guidance. Such criticism, without advice, is not helpful.<sup>26</sup> Nevertheless, the facts are that the University has done much, and it will continue to do more to educate students on the dangers of alcohol abuse, and to investigate and discipline students and student organizations for alcohol related misconduct. The Report inaccurately and unfairly criticizes the University's efforts by: (A) inaccurately concluding that the University has ignored excessive drinking concerns for the past decade and dismissing as ineffective the University's most recent efforts, despite evidence available to the Grand Jury to the contrary; (B) ignoring the legal and practical realities of the limits of the University's authority; and (C) inaccurately describing the University's individual disciplinary process and cooperation with law enforcement.

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<sup>26</sup> See Report at 81-82; Report at 82.

**A. The University Has Continuously Attempted to Address Excessive Drinking, and Continues to Do So.**

The Report's allegations that Penn State and its leaders have done nothing to try to address alcohol abuse, abdicated all responsibility, were "never interested in doing anything to curb excessive drinking," or "tacitly condoned a culture of excessive drinking," are unfair and wrong.<sup>27</sup> The University has not ignored these issues before Mr. Piazza's death, and does not ignore them now.

The University continues its many existing initiatives aimed squarely at responding to the issues that alcohol presents for its students. The University launched many of these initiatives in 2009—the same time-period that the Report alleges that the University was turning a blind eye.<sup>28</sup> The University's Student Affairs operations, spearheaded by Vice President for Student Affairs Damon Sims since August 1, 2008, led many of these initiatives. For example, in 2010, Mr. Sims presented a report to the full Board of Trustees in public session, which, contained a set of 41 separate University initiatives to address alcohol education, enforcement, the campus and community environment, intervention and counseling, and outreach.<sup>29</sup>

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<sup>27</sup> Report at 14-15.

<sup>28</sup> Report at 1.

<sup>29</sup> See Minutes of the Meeting of the Board of Trustees, dated Sept. 17, 2010, <https://trustees.psu.edu/pdf/september2010minutesbot.pdf>; see also Presentation from Vice President Sims to the Penn State University Board of

Then, as now, it is clear that “there is no magic formula for success with this issue.”<sup>30</sup> The scope of the challenge presented to the Board of Trustees by Mr. Sims was (and remains) daunting: in 2010 alone, 1,764 University Park students were charged with violations of law or University policy and 683 students were seen at Mt. Nittany Medical Center’s Emergency Department for alcohol-related issues.<sup>31</sup> These are numbers that, unfortunately, are replicated all across the country. The 2009 and 2010 initiatives described by Mr. Sims were designed to “speak to the University’s concern about the impact the alcohol issue has on permanent residents in State College, even as they acknowledge the autonomy of the fraternities imbedded in that community and the need for our fraternity leaders themselves, both undergraduates and alumni, to lead on this issue.”<sup>32</sup> In presenting these initiatives, Mr. Sims noted that alcohol issues require “constructive parental involvement” and “increasing personal responsibility for this issue among our

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Trustees, dated September 17, 2010 (the “2010 Presentation”) and the Report from Damon Sims to the Board of Trustees regarding Initiatives, dated Sept. 17, 2010 (the “Initiatives”). The Initiatives included a “universally required online course for all incoming Penn State students designed to educate about alcohol use” that had been instituted and eliminating “Senior Week” as to minimize participation in “bar tours.”

<sup>30</sup> Initiatives at 1.

<sup>31</sup> 2010 Presentation at 1.

<sup>32</sup> *Id.* at 2.

students.”<sup>33</sup> The University has implemented the following practices and procedures and many other measures outlined in Mr. Sims’ initiatives:<sup>34</sup>

- 2008: Required all incoming students to complete a mandatory alcohol education program,<sup>35</sup>
- 2008: Included alcohol among the issues addressed at orientation, with both students and parents,<sup>36</sup>
- 2009: Made its residence halls alcohol free,<sup>37</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> See also Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Safety Initiatives for Greek-Letter Organizations* (June 2, 2017), <http://pennstateupdate.psu.edu/new-safety-initiatives-infographic>.

<sup>35</sup> The University requires all incoming first-year students who are 21 and under to complete Penn State SAFE - Student Alcohol Feedback and Education. Penn State SAFE is a confidential, online alcohol education program. The program uses science-based research to educate students about alcohol and its effects. The program seeks to help students make informed decisions about alcohol and drinking behavior. <http://edge.psu.edu/firstyear/>

<sup>36</sup> See “Penn State Parents & Families Guide” at 34-36 (addressing “High Risk Drinking” and the Alcohol and Drug laws): <http://parents.psu.edu/pdf/parentsandfamiliesguide.pdf>.

<sup>37</sup> See <http://studentaffairs.psu.edu/conduct/policies/alcohol.shtml> (University Alcohol Policy) (“The possession or use of alcoholic beverages is prohibited in all Penn State on-campus undergraduate residence hall buildings, including Nittany Apartments and Eastview Terrace, regardless of the age of the individual.” ).



- 2010: Established the Responsible Action Protocol, which, in an appropriate and effective way, encourages students to seek help for peers who are at risk because of the misuse of alcohol,<sup>38</sup>
- 2009: Required *all* students cited for alcohol violations (whether on campus or off) or treated at Mt. Nittany Medical Center Emergency Department for alcohol-related emergencies, to complete BASICS—Brief Alcohol Screening and Intervention for College Students,<sup>39</sup>

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<sup>38</sup> The University established a “Responsible Action Protocol” in response to “the University Park Undergraduate Association’s campaign for a medical amnesty policy, whereby students who seek medical assistance for peers suffering from alcohol poisoning or related problems would not be charged through the campus student conduct system for their own alcohol violations. Under the protocol, students who act responsibly by notifying the appropriate authorities (e.g., calling 911, alerting a resident assistant, contacting police) typically will not face University disciplinary action for their own alcohol violations, unless they are responsible for other violations (e.g., vandalism, assault) as well. However, these students will be required to attend BASICS; the fee will be waived.” See <http://studentaffairs.psu.edu/conduct/policies/alcohol.shtml> (University Alcohol Policy).

<sup>39</sup> The University’s Mandatory Alcohol Education Program requires that “All students found responsible for behavior on or off campus involving Prohibited Underage Possession or Use of Alcoholic Beverages, Excessive Consumption of Alcohol, or Driving Under the Influence will be required to complete a University alcohol education/intervention program. At University Park, the Brief Alcohol Screening and Intervention for College Students (BASICS) program is administered by University Health Services and constitutes the mandatory sanction for first-time alcohol violations in these categories. Students transported to Mount Nittany Medical Center because of alcohol consumption, whether or not they face a conduct process, must complete BASICS. BASICS is a non-adversarial intervention that focuses on harm-reduction. Students mandated to BASICS are responsible for the \$250 fee for the program.” See <http://studentaffairs.psu.edu/health/basics/>

- 2010: Increased foot patrols of its auxiliary police officers in the downtown area, and expanded police presence at tailgating hotspots,<sup>40</sup>
- 2010: Began notifying all parents of students found responsible for alcohol violations,<sup>41</sup>
- 2011: Created a Collegiate Recovery Community for students who were recovering from alcohol addiction,<sup>42</sup>
- 2011: Engaged faculty by presenting annual reports on the alcohol issue to the University's Faculty Senate, and partnered with a 15 member faculty committee to explore the potential role of the classroom in addressing high risk alcohol consumption among students,
- 2011: Established the Student Alcohol Advisory Committee at Penn State.<sup>43</sup>

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<sup>40</sup> See <http://studentaffairs.psu.edu/conduct/policies/alcohol.shtml> (University Alcohol Policy).

<sup>41</sup> *Id.* (Parental notification occurs when the student accepts responsibility, or is found responsible, for any offenses in the Alcohol/Drugs category of the Student Code of Conduct).

<sup>42</sup> In 2011, the Penn State Collegiate Recovery Community (CRC) was founded to help students in recovery from alcohol and other addictions. The Penn State CRC now has 26 active members. Students in the program remain completely free of alcohol and other drugs and all students are expected to work a recovery program in addition to their involvement in the CRC. See "Penn State Collegiate Recovery Community helped Organize National Summit," Penn State News (February 20, 2017). See also <http://studentaffairs.psu.edu/studentcare/crc/> and <http://sites.psu.edu/pscrc/>

<sup>43</sup> See "More Penn State Initiatives Aim to Curb Dangerous Drinking," Penn State News ((April 21, 2011) <http://news.psu.edu/story/158547/2011/04/21/more-penn-state-initiatives-aim-curb-dangerous-drinking>

- 2012: Eliminated “Senior Week” (the week falling between finals and Commencement), which had previously led to binge-drinking related problems.<sup>44</sup>

The University, of course, already prohibits underage drinking and hazing (on or off-campus).<sup>45</sup> Enforcement of this is nothing new. The University has included as violations of its Code of Conduct *all off-campus* underage possession or alcohol consumption violations since 2009.<sup>46</sup>

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<sup>44</sup> Speaking at a University Trustees meeting, then Penn State University President Graham Spanier said that ending “Senior Week” will “eliminate students being on campus for one week with absolutely nothing to do except go to the bars, which has been problematic.” See “Farewell, Senior Week: Penn State to Reschedule Spring Commencement Events.” See <http://www.statecollege.com/news/local-news/farewell-senior-week-penn-state-to-reschedule-spring-commencement-events,467701/>

<sup>45</sup> *Code of Conduct and Student Conduct Procedures* at 6-7; see also policies AD-18, AD-33 and the University’s Student Guide to University Policies and Rules.

<sup>46</sup> See <http://studentaffairs.psu.edu/conduct/policies/alcohol.shtml> (University Alcohol Policy). The Penn State Off-Campus Misconduct Policy provides that “Use, possession, service, or consumption of alcoholic beverages off the premises of the University campus may all be considered violations of the Student Code of Conduct. Additionally, the following behaviors constitute Code violations:

1. **Excessive consumption of alcohol:** When a student is unconscious, experiences a loss of control, has a high Blood Alcohol Concentration, and/or needs medical attention, a charge of Excessive Consumption of Alcohol may be assigned. This may be true even in cases where students were not charged with public drunkenness or disorderly conduct.

During this same time-period during which the Grand Jury accuses the University of indifference to, or tacit encouragement of alcohol abuse, the University's discipline system adjudicated more alcohol misconduct cases than any other student discipline system in the Big Ten.<sup>47</sup> This is not a result of some "cultural" defect unique to Penn State among its peer institutions. It is due to the University's more aggressive enforcement—flowing from the decision, nearly a decade ago, to expand the reach of its discipline process to address a broader range of off-campus misbehavior involving alcohol than its peers.<sup>48</sup>

Contrary to the Report's labeling of the University as showing "apathy" or "condoning" excessive drinking, Penn State and Mr. Sims have aggressively enforced Penn State's Code of Conduct. That enforcement encompasses students both on and off campus and has included aggressive enforcement of University

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2. **Furnishing alcohol to minors:** A Code of Conduct violation occurs when a student serves alcohol to or purchases alcohol for those under the age of 21.

3. **Driving under the influence:** A Code of Conduct violation occurs when a student is found to be operating a motor vehicle while legally intoxicated.

Previously, the campus discipline system addressed only those alcohol misconduct cases off-campus that involved students charged with excessive alcohol consumption or driving while impaired.

<sup>47</sup> See University Fraternity and Sorority Conduct Cases, 2007-2016.

<sup>48</sup> See University Alcohol Policy, *supra* note 37.

rules with members of the “Greek-letter community” and their organizations. The average number of individual Penn State fraternity and sorority members found responsible for disciplinary misconduct each year in the past decade was 765.<sup>49</sup> In the past two years alone, thirteen fraternity and sorority chapters have lost University recognition, which is equal to one of every six chapters at Penn State.<sup>50</sup>

The Report is silent on these significant historical efforts. The Report’s narrative that the University as an institution has done nothing historically to address these concerns, and is only now engaged in “self-celebrated” reforms, is unsupportable. The Report dismisses and criticizes the University’s most recent efforts to address these national concerns with no analysis.<sup>51</sup> Instead of a more thoughtful attempt to understand the problems and the efforts to address them, the

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<sup>49</sup> See University Fraternity and Sorority Conduct Cases, 2007-2016.

<sup>50</sup> Since 2015, the University has suspended and/or revoked recognition for the following fraternities and sororities: Alpha Chi Rho (1 year, enacted July 17, 2017); Alpha Sigma Phi (pending sanction review decision); Beta Theta Pi (permanent, enacted Mar. 30, 2017); Delta Tau Delta (1.5 years, enacted Nov. 3, 2017); Delta Upsilon (1 year, enacted Oct. 27, 2017); Kappa Delta Rho (3 years, enacted May 27, 2015); Phi Kappa Tau (3 years, enacted May 1, 2015); Phi Mu Delta (1 year, enacted July 10, 2017); Pi Kappa Phi (3 years, enacted Apr. 2, 2015); Pi Lambda Phi (2 years), enacted October 27, 2017); Sigma Alpha Mu (2 years, enacted Apr. 20, 2017); Sigma Lambda Gamma (5 years, enacted Apr. 6, 2015); and Alpha Phi Alpha (3 years, Apr. 26, 2016).

<sup>51</sup> Report at 80-82.

Report relies on a student article as to why reforms may not work.<sup>52</sup> The Report ignores the professional, informed, and thoughtful testimony of the University's Vice President for Student Affairs, Damon Sims.

Mr. Sims testified to the Grand Jury about the University's continued good faith efforts to address excessive drinking and hazing at its fraternities. The Report does not include Mr. Sims' testimony about recent changes that, most respectfully, are far more informed and instructive than one student's opinion. The omission of any reference to Mr. Sims' testimony, let alone the failure to address why or how the University's efforts demonstrate a purported abdication of responsibility, undermines the basis for the Report's dismissive criticism of Penn State's efforts:

- Mr. Sims explained that, although there may have been a problem in the past, there has been a sea change about how behavioral issues are monitored – explaining that “Greek life” monitors will now report directly to the University. He explained there would be real consequences if there are rules violations and that he would not be bashful about withdrawing recognition of an organization— knowing that these organizations might challenge the lawfulness of the University's actions.
- Mr. Sims testified at length about the rules put in place in the Spring of this year; the violation of these rules – particularly during Parents' Weekend – and the follow up actions taken by the University to sanction the Sigma Alpha Mu fraternity for two years and to further expand the new rules of conduct.
- Although reporting at length its criticism of the University for deferring to the National Beta Theta Pi organization in 2009, the

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<sup>52</sup> Report at 91.

Grand Jury Report is silent in not reporting Mr. Sims' testimony about the sanctioning and withdrawal of recognition of the Kappa Delta Rho fraternity, and his testimony about the more recent withdrawal of Sigma Alpha Mu's recognition.<sup>53</sup>

- Mr. Sims testified about the timing of changes being made at the University – and the evaluation of the impact of the changes. He explained that the University is trying to change a deeply imbedded culture (one not unique to Penn State). The changes are being made now with the goal that the changes will have visible results by the Spring of 2018. The results are anticipated to be evaluated by surveys, focus groups, a review of police reports, and the monitoring by the new staff.
- As to disciplining an individual (versus sanctioning a group), Mr. Sims testified about the challenges of identifying specific individuals engaged in misconduct. Mr. Sims testified in detail that individual misconduct is sanctioned by the University by way of the Office of Student Conduct, part of the University's Student Affairs operations. He explained the additional advancements made by Danny Shaha – a former FBI agent - as to investigating and sanctioning individual misconduct.
- In response to a grand juror's question, Mr. Sims explained in detail his hope that the cultural issue of excessive drinking can be chipped at over time so that meaningful change will happen. Mr. Sims spoke about changes to smoking laws that have resulted in real change in people's behavior and stated that the same can happen as to alcohol use at universities.

Among the most significant of the recent specific changes, the University has now taken from the IFC the primary role in monitoring and disciplining

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<sup>53</sup> See, e.g., PSU0000533 (Email from Damon Sims to Sigma Alpha Mu Fraternity Announcing Withdrawal of University Recognition of Chapter); [http://www.psu.edu/ur/2014/KDR\\_Response\\_May-26-2015.pdf](http://www.psu.edu/ur/2014/KDR_Response_May-26-2015.pdf) (Letter from Damon Sims to Inter-Fraternity Council Announcing Withdrawal of University Recognition of Kappa Delta Rho Fraternity).

individual Greek-letter organizations with respect to alcohol related violations, hazing, sexual assault and disruptive social gatherings.<sup>54</sup> In order to maintain the University's continued recognition, Greek organizations *must* now allow University-trained and employed staff monitors from the new Office of Fraternity and Sorority Compliance (also part of the University's Student Affairs operations) to conduct random checks of common areas at any time.<sup>55</sup> All organizational conduct cases involving alcohol related violations, hazing, sexual assault and disruptive social gatherings are now referred directly to the University's Office of Student Conduct—not the IFC.<sup>56</sup> The Office of Fraternity and Sorority Compliance will also monitor student behavior and coordinate with the Office for Student Conduct for possible discipline.<sup>57</sup> If the University finds that a chapter jeopardized

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<sup>54</sup> See <http://pennstateupdate.psu.edu/new-safety-initiatives-infographic> (Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Safety Initiatives for Greek-Letter Organizations* (June 2, 2017)); <http://pennstateupdate.psu.edu/august-21-graphic-of-new-measures/> (Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Measures Fall 2017* (Aug. 21, 2017)); <http://pennstateupdate.psu.edu/updates/> (update of safety measures).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> We also note that the rules and regulations for fraternity parties are not coextensive with the University's Code of Conduct. Not all violations of the increasingly strict rules for fraternity gatherings give rise to a violation of the Code of Conduct (or the law).



a student's physical or mental health by hazing, the University will immediately and permanently revoke its recognition.<sup>58</sup>

In addition to these efforts, and its recent reforms of the IFC's governance and oversight of fraternities, the University did the following:

- Immediately following the death of Timothy Piazza, the University imposed a moratorium on alcohol at Greek-letter organization social events through October 2017, until all chapters complete educational and risk management programs. This moratorium has been extended with respect to all chapters that have not met the University's requirements.<sup>59</sup>
- The University greatly curtailed the number of permitted Greek social events, and imposed additional conditions to recognition, including limiting attendance and reducing the number of events with alcohol per semester, limiting alcohol to beer and wine, and requiring that alcohol be distributed by RAMP trained servers only.<sup>60</sup>
- The University announced 14 new positions as part of the University's Student Affairs operations, eight of which will be dedicated "Greek life" monitors.<sup>61</sup> The University is seeking monitors with diverse backgrounds, including candidates with law enforcement backgrounds and some who may be more experienced. The monitors will receive

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<sup>58</sup> *Id.*

<sup>59</sup> See PSU0000087-PSU0000106

<sup>60</sup> See PSU0000547 ("[F]ollowing a student death, the University immediately called a moratorium on alcohol in IFC chapter social events for the remainder of the semester"; see also <http://pennstateupdate.psu.edu/august-21-graphic-of-new-measures/> (Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Measures Fall 2017* (Aug. 21, 2017)); <http://pennstateupdate.psu.edu/updates/>).

<sup>61</sup> *Id.*

training in the University's revised rules and fraternity counter-measures.

- The University imposed a fee for every student participating in Greek-letter organizations to support extra services, spot-checkers/monitors, and educational activities.<sup>62</sup>
- The University reinstated the Neighborhood Enforcement Alcohol Team (NEAT). NEAT is a collaborative program between officers from the State College and University police departments. The officers work in pairs with officers from the Pennsylvania State Police Bureau of Liquor Control Enforcement to conduct additional patrols around Greek-letter organizations and conduct pre-party checks.<sup>63</sup>
- The University announced and implemented revamped educational initiatives, including parent and member education sessions.<sup>64</sup>
- The University developed and implemented a program for Greek presidents and risk managers to work with community partners to develop risk management plans and procedures.<sup>65</sup>
- The University required that Greek letter organizations defer formal recruitment of new fraternity and sorority members until a student's sophomore year, raising the average age of students participating in Greek life.<sup>66</sup>
- With the input of all relevant stakeholders, the University developed a relationship statement to be signed by all members of Greek-letter

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> After the events of the "Parents' Weekend" trial run on lifting the moratorium on alcohol at fraternity events, involving parents in the process to the extent possible is essential.

<sup>65</sup> Penn State Student Affairs, OFSL, *Penn State Update: Graphic of New Measures Fall 2017* (Aug. 21, 2017), publicly available at <http://pennstateupdate.psu.edu/august-21-graphic-of-new-measures/>.

<sup>66</sup> *Id.*

organizations, clarifying the respective rights and responsibilities of the University, the chapters and their members.<sup>67</sup>

- The University demanded a shorter recruitment period and responses to a survey seeking information on new member processes that will provide an opportunity to report misconduct anonymously.<sup>68</sup>
- The University created a scorecard designed to display information (to parents, students and the community) about each chapter. That scorecard has been made publicly available with information about risks, signs of troublesome behavior and incident reporting information.<sup>69</sup>
- The University appointed a Greek-life Response Team to direct and oversee the implementation of the University's new initiatives, provide regular progress reports directly to the President of the University on progress and coordinate with a partner group that encompasses key stakeholders, including student representation from various campuses, members of sororities and fraternities, members of the Board of Trustees, various faculty and staff leaders, and alumni.<sup>70</sup>

The University is also evaluating other measures, including:<sup>71</sup>

- A review of the growing size of sororities at the University;
- Coordinating a national conference hosted by the Big Ten in Chicago to examine problems shared by other institutions with Greek-letter organizations and explore solutions;
- Supporting legislative initiatives, such as a congressional proposal to expand Clery Act reporting to include hazing violations, increased

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

statewide educational initiatives regarding the dangers of hazing and dangerous drinking, increased penalties for hazing and expanding the current law on Medical Amnesty for Underage Drinking to apply to the individual who requires medical assistance.

The University's decisive efforts—as spearheaded by Mr. Sims— are specific and well-documented. They reflect the University's long-standing effort to address the very issues that the Report does not. They reflect ongoing reviews of efforts undertaken by other universities and prevention educators across the country, and the review and selection of evidence-based programs. The Report questions, without basis, the intention and effort in the University and its leaders. The Commonwealth should not dismiss or ignore these efforts, all in the service of unsupported broad criticisms.

The clear and specific efforts by the University and Vice President Sims to address these issues and challenges over the years makes the unfairness of the criticism that much more irresponsible and damaging. Over the past decade, Vice President Sims has consistently, repeatedly and publicly advocated the need to act on the issue of alcohol abuse among students. As demonstrated by the meaningful initiatives proposed by Mr. Sims –and acted upon since 2008 by the University there can be no question that they have aggressively sought and will continue to seek new answers to the endless challenge of alcohol abuse. These efforts belie any suggestion that either the University or Mr. Sims have abdicated their responsibility for the welfare of students.

## **B. Limits on “Control” of Greek Organizations by the University**

Some realities of fraternity life—and the limits of authority over fraternities—are clearly known to the Commonwealth, but seem to have been discounted in the Report. The Report makes clear that neither Donald Abbey,<sup>72</sup> nor his agents, nor the Beta Housing Corporation, nor the National Beta Theta Pi organization could manage conduct in the Beta house over which they had total control. Former State College Borough Chief of Police Thomas King testified that law-enforcement has difficulty determining alcohol-related crime levels off-campus.<sup>73</sup> These realities must be recognized to provide meaningful, accurate or fair recommendations, responses or criticisms of the University’s efforts.

We are sympathetic to the Grand Jury’s frustration with the notion that there are boundaries to the authority of the University in regulating private conduct on

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<sup>72</sup> Report at 1 (Mr. Abbey is “a successful alumnus of both the fraternity and the university. In 2007, Mr. Abbey employed [Ken] Rawley to establish a 501(c)(3) nonprofit foundation that would serve as an endowment to maintain the physical structure of the Beta Theta Pi fraternity house at 220 North Burrowes Street”). For purposes of clarity, the active members of the Beta Theta Pi Alpha Upsilon Chapter are referred to herein as “Beta”, the entity that owns and operates the house on 220 North Burrowes Street is referred to as the “Beta Housing Corporation” and the national Beta Theta Pi organization is referred to as the “National Beta Organization.” These are three distinct entities.

<sup>73</sup> Report at 56 n.36 (Former State College Borough Chief of Police Thomas King “explained it becomes far more difficult to determine an exact number of alcohol related crimes when it involves a neighborhood,” *i.e.*, not on campus).

private premises. These limits are, however, very real.<sup>74</sup> Respectfully, the Report over-simplifies the University's legal and practical ability to demand access to, and control, private organizations on private property.<sup>75</sup> Failing to recognize these essential limitations illustrates the significant deficiencies of the Report and impedes progress and change at Penn State and nationally.

### **1. Greek Organizations**

There is a reason why fraternities choose to operate in privately-owned houses off-campus. National fraternities, their alumni, and their members deliberately take shelter outside the limits of any university's authority.<sup>76</sup> Fraternities are governed by their national and alumni organizations. Their only nexus to the University—outside of the student conduct process for discipline—is recognition by the University through its Office of Fraternity and Sorority Life (“OFSL”). The *only* mechanism available to the University to “control” private

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<sup>74</sup> As discussed above, the University has always maintained responsibility for individual student discipline—including for certain conduct that occurs off campus. See Office of Student Conduct, *Code of Conduct and Student Conduct Procedures* at 5 (Nov. 3, 2016), publicly available at <http://studentaffairs.psu.edu/conduct>. It does not, however, have the ability to ferret out all misconduct that occurs on private property.

<sup>75</sup> See Report at 79.

<sup>76</sup> The Commonwealth's authority is not so limited. The Commonwealth has the ability to investigate and identify illegal conduct occurring within its jurisdiction—conduct like that identified in the “Alpha Upsilon Conduct File.”

entities on private property is through recognition by the University. This is not an excuse. It is reality.

The University's relationship with fraternities and their houses is, for example, far different than the University's relationship with its on-campus residents and the University's residence halls. The University owns, operates, and maintains its residence halls. Fraternities, however, own their houses. They are private homes, independently operated and maintained, and located on private property. We understand that the public—and perhaps the Grand Jury—may not recognize that distinction clearly. In fact, the Report includes in its criticisms of the University's limited ability authority over private conduct on private property, the inaccurate assertion that fraternities operate out of University buildings.<sup>77</sup>

What the Grand Jury misapprehends is that the restrictions and conditions for recognition that the University places on these private organizations can only be imposed to the extent that the organizations choose to accept those restrictions and conditions.<sup>78</sup> The University's "recognition" does not carry with it priceless value. The University's "recognition" provides its fraternities with, among other

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<sup>77</sup> See Report at 77-78.

<sup>78</sup> This includes securing agreement from these private organizations located on private property to subject themselves to organizational discipline by the University, rather than the IFC.

things of potential “value” to fraternities:<sup>79</sup> (1) the ability to participate in THON; (2) the ability to participate in Homecoming activities; and (3) the ability to operate as a fraternity house within the existing State College Borough Code.<sup>80</sup> The Report ignores entirely that the national fraternities’ (not the University’s) recognition of their own charters holds far greater value to these organizations.

Even now, two fraternities that have been stripped of University recognition are forging ahead with the continued support and recognition of their national organizations. The University has revoked recognition of two fraternities—Sigma Alpha Mu and Alpha Chi Rho—both of which egregiously violated clear expectations about behavioral concerns.<sup>81</sup> Yet, their national organizations have chosen to sustain their charters, allowing each chapter to continue to function as a fraternity *despite having absolutely no University recognition*. These fraternities

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<sup>79</sup> Recognized Student Organizations are also permitted to use the PSU name, provided free web space, permitted to use University facilities, provided space at the Involvement Fair, and given access to student activity funds.

<sup>80</sup> See State College Codification of Ordinances, Ch. XIX § 201 (defining “fraternity house” as requiring University recognition); *see also* Report at 22 n.11.

<sup>81</sup> See “University Suspends Sigma Alpha Mu Fraternity Recognition for Two Years,” Penn State News (April 20, 2017): <http://news.psu.edu/story/463881/2017/04/20/campus-life/university-suspends-sigma-alpha-mu-fraternity-recognition-two>; Office of Fraternity and Sorority Life, Spring 2017 IFC Community Scorecard, <http://studentaffairs.psu.edu/hub/greeks/reportcard.shtml> (Alpha Chi Rho suspended for one year).



now answer only to their national organizations. Alpha Chi Rho is currently challenging the Borough Code provisions that would prevent it from operating as a fraternity without University recognition.<sup>82</sup> Should this fraternity's litigation be successful in challenging the Borough Code, the only cost for these organizations of total freedom from any University rules will be the cost of foregoing participation in a fundraising dance and the Homecoming parade.

The limits of control by even fraternities' national organizations must be recognized as bounded by their own reality. As Mr. Abbey and the National Beta Organization found to their dismay as they attempted to impose new restrictions (on *their* members, living in *their* house, over which they had *total* access and control),<sup>83</sup> their admonitions were ignored. It is well recognized that there are practical limits to what oversight a fraternity will accept in order to receive

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<sup>82</sup> See *329 Prospect Ave. Corp. v. Centre Region Council of Governments and the Borough of State College*, No. 2017-3088 (C.C.P., Centre Cty, PA, filed Aug. 24, 2017).

<sup>83</sup> Despite years of monitoring *daily* the Beta house and compiling a dossier of "conduct" known almost exclusively to them, Mr. Abbey and the National Beta Organization were unable to control their members' conduct. Mr. Abbey and the National Beta Organization—those with daily access and control over a private residence—were unable to accomplish what the Grand Jury suggests that the University can. See Report at 4 ("the brothers rejected the reforms"); Report at 44-45 (members rejected reforms of Mr. Abbey). Even the Commonwealth, which must have known of a number of incidents involving Beta that the University did not, were presumably unable to address what it now calls a known danger to the University.

recognition (whether from their national fraternity, or from the University).<sup>84</sup> Mr. Abbey and Beta's national leadership learned that lesson first-hand in 2009, when the chapter chose to abandon the fraternity rather than become the "men of principle" so admired by Mr. Abbey. The attempt to exert too tight a rein was met with total rejection by the young men living in the house at that time.

Any legitimate criticism, conclusion or recommendation must also recognize that a tension exists between exerting as much "authority" over these private organizations as possible, and the rejection of University recognition and the loss of any influence. The dangers that result from a total lack of engagement with "unrecognized" or "underground" fraternities are well known.<sup>85</sup> The University welcomes constructive recommendations as to how to balance these interests.

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<sup>84</sup> The University respectfully suggests that an email describing that rejection by Beta members to Mr. Abbey's rules cannot legitimately sustain a finding that the University endorsed the members' attitude. *See* Report at 44-45.

<sup>85</sup> *See, e.g.,* <http://www.ubspectrum.com/article/2014/05/animal-heights> (Investigative report addressing "underground fraternities" at the University of Buffalo). *See also* [https://www.washingtonpost.com/news/grade-point/wp/2017/08/28/18-students-dismissed-from-american-university-for-code-of-conduct-violations/?utm\\_term=.2e797b3fccd718](https://www.washingtonpost.com/news/grade-point/wp/2017/08/28/18-students-dismissed-from-american-university-for-code-of-conduct-violations/?utm_term=.2e797b3fccd718) (Students Dismissed from American University for Code of Conduct Violations, WASHINGTON POST (Aug. 28, 2017) (American University recently expelled eighteen students who were members of an "underground" group not officially "recognized" by the University, but known as "Epsilon Iota." The dismissed students engaged in physical violence, hazing and underage drinking)).

While there is always room to improve, the criticisms in the Report that the University has abdicated a moral or legal responsibility are simply wrong.

## **2. The IFC and St. Moritz**

The Report criticizes the University's relationship with the Inter-Fraternity Council ("IFC"). The University understands the Grand Jury's consternation that the University's position is that the IFC is a distinct organization,<sup>86</sup> and the limits of authority created by that relationship.<sup>87</sup> The IFC *is* a private, independent, self-governing organization.<sup>88</sup> The University's description of, and relationship to, the

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<sup>86</sup> See Report at 73-75, 79-80.

<sup>87</sup> See Report at Report at 25-26, 32, 45-49; *see also* Report at 78 (addressing the limited role of an advisor to a student organization).

<sup>88</sup> Like other recognized student organizations ("RSO"), the IFC is recognized by the University's Office of Student Activities and subject to the University's Policies and Procedures for Student Organizations (the "Policies and Procedures"). The Policies and Procedures provide that "[r]ecognition of student organizations shall not be construed as agreement, support, or approval by the University, but only as acknowledgement of the rights of the organization to exist at the University, subject to the conditions enumerated herein." See Policies and Procedures at §B. As an RSO, the University may derecognize the IFC for failure to abide by these procedures for maintaining recognition." *Id.* at §(F)(1)(e). Additionally, the IFC has rights and responsibilities that are available to all other RSOs, including the right to apply for funding to host an event, as well as being eligible to apply for general liability insurance coverage through the University's captive insurance group. See "Overview of Liability Insurance Coverage for Recognized Student Organizations of the Pennsylvania State University, Commencing July 1, 2016 and Ending July 1, 2017." Contrary to Mr. Vetere's testimony, the IFC does not "fall" under the Office of Fraternity and Sorority Life. Report at 21 n.8. Nor does the use of University accounts for IFC funds or the

IFC is not self-serving or artificial. It is not an effort to hide behind an “invisible wall.”<sup>89</sup>

The University agrees with the Grand Jury that the IFC’s and St. Moritz’ efforts at monitoring “Greek” social events have been ineffective<sup>90</sup> There is, however, absolutely no evidence in the Report that the University had any knowledge about St. Moritz’ alleged studied avoidance of observing and reporting illegality.

In fact, the Report itself finds that deceit was engaged in “without the University ever the wiser about the existence of violations observed by the hired security firm.”<sup>91</sup> After detailing the withholding of information by St. Moritz and student IFC officers, the Report, nevertheless, reaches the illogical finding that it is “appalling the lax supervision Penn State permitted over these parties.”<sup>92</sup>

Respectfully, the Report’s conclusion simply does not follow from the details of

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provision of advisors to the IFC render the IFC’s independence a fiction. *See* Report at 75-76.

<sup>89</sup> *See* Report at 74.

<sup>90</sup> Report at 25-26, 32, 72-73. The University is extremely disappointed that IFC officers use their independence to withhold information selectively from the University.

<sup>91</sup> Report at 73.

<sup>92</sup> Report at 34-35.

the relationship between the IFC and St. Moritz— and information that these entities deliberately withheld from the University.

The Report inexplicably— and inaccurately— criticizes the University for “astonishingly fail[ing] to admit any awareness of or any sensitivity to how easily fraternity brothers were defeating the spot check system.”<sup>93</sup> There is no evidence before the Grand Jury that the University was—as the Report itself makes clear— aware of St. Moritz’ failures.<sup>94</sup> Based upon this alleged unwillingness to admit to the challenges faced by checkers (and on problems occurring during the April 2017 Parents’ Weekend), however, the Report inaccurately, and without any evidentiary basis, concludes that there is “little difference between this newly adopted system of spot checks and the one installed by St. Moritz at the time of Timothy Piazza’s death.”<sup>95</sup>

There is no support for that conclusion. With regard to the incidents occurring on Parents’ Weekend in April 2017, the new Penn State monitors had not yet been hired and the new procedures had not yet been developed and implemented. To the extent the Report criticizes the University for not

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<sup>93</sup> Report at 82.

<sup>94</sup> Report at 73.

<sup>95</sup> Report at 81.

acknowledging the inherent difficulties of monitoring these private entities on private premises, it is contrary to the evidence available to the Grand Jury.

Although omitted entirely from the Report, Vice President Sims testified at length about the University's knowledge of "counter-measures" sometimes used by students from time-to-time to avoid spot-checkers, and the difficulties that the University may encounter in conducting its own spot-checks. In fact, Mr. Sims gave details of his work as a spot-checker 35 years ago at Indiana University - Bloomington as part of his explanation that he knew to expect "counter-measures."

To the contrary, the Grand Jury heard the testimony of Mr. Sims about how the University intends to combat these issues:

- Mr. Sims testified at length about the intended qualifications and training for these new University-employed checkers are to be more experienced, and preferably with a law-enforcement background (*i.e.*, retired police officers).
- The checkers will be trained to identify "counter-measures" (such as the smell of disinfectant), and when to call the police for further investigation.
- The checkers will be hired by the University and will directly report to staff responsible for compliance and monitoring as part of the University's Student Affairs operations.
- The monitoring will be random – and will occur at any time of the day and any day of the week.
- There will be a knock on the door, and there must be immediate access to common areas. If a checker thinks there is a reasonable basis to believe there is a problem in a private area – then the checker

can ask for access and, if necessary, call law enforcement who, *with probable cause*, can take additional action.

- The University rejected the IFC's request to have the new monitors assigned to a specific house, so that each house could get comfortable in "knowing its monitor." Mr. Sims rejected this IFC recommendation because he does not want that kind of comfort among the monitors and the houses they will monitor.

In light of the evidence available to the Grand Jury about the changes that the University has made to its relationship with the IFC, we are disappointed that the Report levels inaccurate criticisms in lieu of meaningful recommendations.

Neither do we believe it to be a fair exercise of the Grand Jury's authority to criticize the University for taking additional actions it has not taken previously.<sup>96</sup> The University has always retained the ability to revoke recognition regardless of whatever sanction the IFC might impose. There is, however, no evidence that the University would have been able to secure the fraternities' agreement to direct University organizational conduct control previously—even with the threat of revocation of the University's recognition.<sup>97</sup>

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<sup>96</sup> Report at 32, n.15 (the Report expresses "curious[ity]" about why the University did not make these changes sooner); Report at 47, n.32 (referencing the University's revocation of Beta Theta Pi's recognition before IFC undertook its process and the elimination of St. Moritz checkers to use University personnel).

<sup>97</sup> See Section F(1)(e) of the Policies and Procedures: "the Office of Student Activities shall have the authority to suspend the recognition of any student organization due to the organization's failure to abide by these procedures for maintaining recognition."

The Report does not recognize that the University is forced to obtain agreement from these private organizations and their constituents (parents, national organizations, members, alumni) to accomplish such changes. It is unfortunate that, only when confronted by tragedy, might these organizations agree—and even then, agreement is often short-lived. When confronted with tragedy, these private organizations *still* resist and reject limits to their autonomy. Each for its own possible reasons: freedom of action, nostalgia, tradition, or just plain defiance. In 2004, for example, after a fraternity death, fraternities at the University of Colorado – Boulder refused to agree to relatively modest reforms (to sign an agreement to delay rush until spring, and to have live-in supervisors).<sup>98</sup> The fraternities chose, instead, to form an off-campus IFC and forego University recognition and any benefits it carried.<sup>99</sup> That University lost any semblance of influence over those organizations. Efforts to bring those fraternities to the table have been largely unsuccessful over the intervening years. One advocate of the non-recognized fraternities rejected the value of university recognition in a way that provides insight to the problem: “The carrot’s dangling out there, but what’s

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<sup>98</sup> See <http://www.denverpost.com/2017/07/13/university-colorado-boulder-fraternities/>; [http://www.dailycamera.com/top-stories/ci\\_31134800/cu-re-establishes-ties-fraternities-2-new-chapters](http://www.dailycamera.com/top-stories/ci_31134800/cu-re-establishes-ties-fraternities-2-new-chapters).

<sup>99</sup> *Id.*



the stick? ... What do I have to agree to? What are the obligations? What authority that undergraduates currently have total control over would they be ceding to a new council or university administration?"<sup>100</sup>

Here, as noted earlier, *even after the tragic death of Timothy Piazza*, fraternities that have lost their University recognition at Penn State continue to operate with only the recognition of their national organizations.<sup>101</sup> At "Parents' Weekend" events in April 2017—*a mere two months after the death of Timothy Piazza*—parents of fraternity members openly flouted, and facilitated and encouraged violations of, the University's rules.<sup>102</sup> Moreover, fraternity alumni who have shared with University leadership their strong concerns about the behavior of undergraduate members of their chapters and the damage done to *their* houses, split hairs with the University over the limits of the University's ability to access, monitor, and address fraternity members' behaviors.

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<sup>100</sup> *Id.*

<sup>101</sup> See Section I.B.1, *supra*; see also "University Suspends Sigma Alpha Mu Fraternity Recognition for Two Years," Penn State News (April 20, 2017): <http://news.psu.edu/story/463881/2017/04/20/campus-life/university-suspends-sigma-alpha-mu-fraternity-recognition-two>; Office of Fraternity and Sorority Life, Spring 2017 IFC Community Scorecard, <http://studentaffairs.psu.edu/hub/greeks/reportcard.shtml> (Alpha Chi Rho suspended for one year).

<sup>102</sup> See PSU0000087-PSU0000106

### **C. Individual Conduct and Relationships with Law Enforcement**

The Report correctly identifies throughout that the University has always maintained responsibility for individual student discipline, whether or not those individuals are part of an organization, and whether or not the conduct occurs off campus.<sup>103</sup> The Report, nevertheless, at times appears to conflate its criticisms of the organizational discipline imposed previously by the IFC with the individual conduct determinations made by the University. Contrary to the criticisms in the report,<sup>104</sup> the University has routinely held — and continues to hold— individual students accountable. Moreover, the University has now asserted control over organizational conduct of fraternities as well.<sup>105</sup>

As it relates to Beta, the Report omits mention of the evidence the individual conduct proceedings related to Beta brothers between 2006 and 2009.<sup>106</sup> The Report further omits any mention of the disciplinary proceedings relating to the

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<sup>103</sup> See Report at 22 n.10, 46; see also Office of Student Conduct, *Code of Conduct and Student Conduct Procedures* at 5 (Nov. 3, 2016), publicly available at <http://studentaffairs.psu.edu/conduct>.

<sup>104</sup> See Report at 89.

<sup>105</sup> See Report at 90

<sup>106</sup> See PSU0002007-PSU0002018 (Chart of individual conduct discipline involving Beta members between 2006 and 2009). Only two of these incidents, described above, appear to have any connection to Beta. The remainder have no apparent nexus to the fraternity.

death of Timothy Piazza. Although not announced publicly until after the issuance of the Report, the Grand Jury was provided with evidence that 32 Beta members were involved in the University's individual disciplinary process in connection with violations arising out of the investigation related to the death of Timothy Piazza.<sup>107</sup>

The Report also alternately criticizes the University for pursuing disciplinary action without deferring first to law enforcement on the one hand; while at the same time criticizing Penn State for promptly pursuing disciplinary proceedings.<sup>108</sup> This critique is unsupported by facts available to the Grand Jury.<sup>109</sup>

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<sup>107</sup> See PSU0000826; Penn State, Student Conduct Office completes 32 investigations related to Beta Theta Pi, PENN STATE NEWS (Nov. 7, 2017), [http://news.psu.edu/story/492848/2017/11/07/administration/student-conduct-office-completes-32-investigations-related?utm\\_source=newswire&utm\\_medium=email&utm\\_term=492957\\_HTML&utm\\_content=11-07-2017-22-50&utm\\_campaign=Penn%20State%20Today](http://news.psu.edu/story/492848/2017/11/07/administration/student-conduct-office-completes-32-investigations-related?utm_source=newswire&utm_medium=email&utm_term=492957_HTML&utm_content=11-07-2017-22-50&utm_campaign=Penn%20State%20Today); Abbey Drey, Penn State hands down punishments related to frat pledge death, PHILLY.COM (Nov. 7, 2017), <http://www.philly.com/philly/education/penn-state-punishments-piazza-frat-pledge-death-20171107.html>.

<sup>108</sup> See, e.g., Report at 68.

<sup>109</sup> For example, the Report appears to suggest that the University delayed taking action in connection with, or mishandled, Mr. Vivenzio's allegations. Report at 16-20. This matter is the subject of civil litigation between the University and Mr. Vivenzio, and this Response is not the appropriate forum to litigate that action. We must note, however, that the University disputes Mr. Vivenzio's version of events. University staff offered Mr. Vivenzio extraordinary assistance on numerous occasions, and went to great lengths to do so over the course of nearly nine months— even sending the director of the Office of Student Conduct to his home to interview them. See Report at 19. Based upon the facts known to the

The University has coordinated and cooperated whenever possible with law enforcement.<sup>110</sup> Evidence available to the Grand Jury also shows, however, that

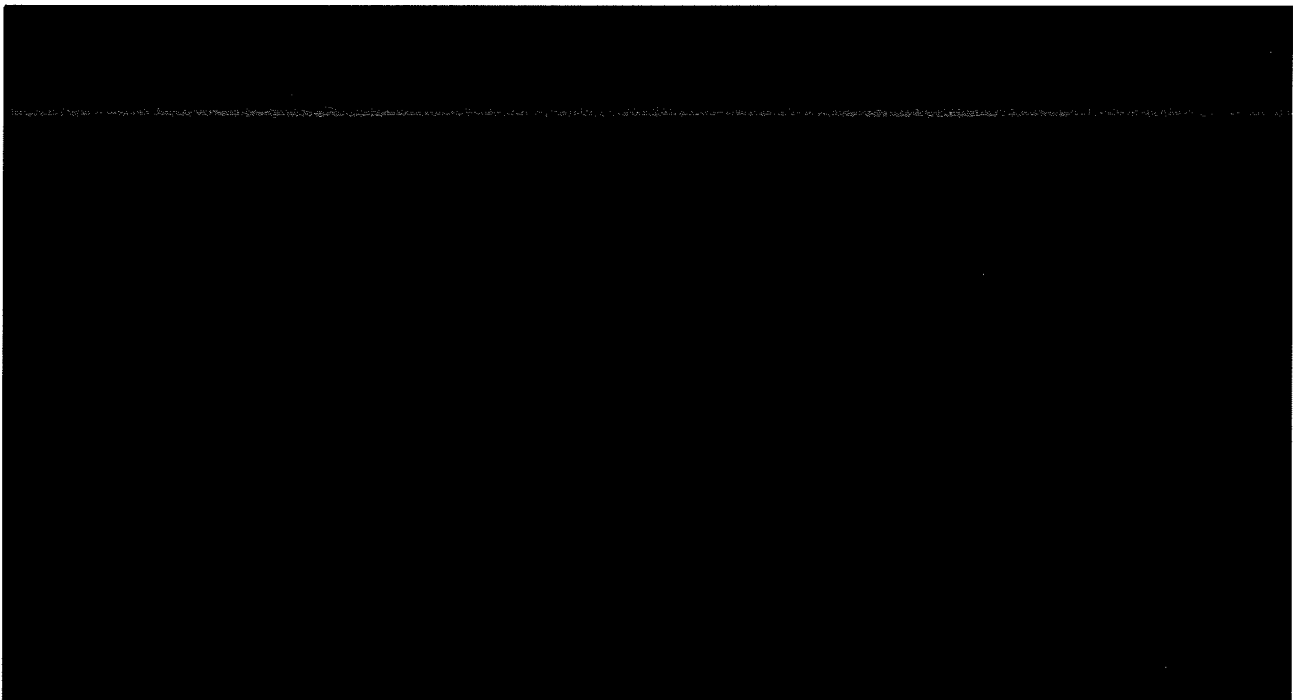
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University, neither he nor his family were willing to file a formal complaint, provide documentation to the Office of Student Conduct, speak with State College Police or participate in pursuing the formal disciplinary process available to them, despite repeated encouragement from University staff. Mr. Vivenzio also did not inform Penn State staff members of a private Facebook group. University officials became aware of its existence when informed by State College Police in February 2015. Moreover, contrary to the Report, the University denies that Mr. Vivenzio told any University official that “death is imminent,” Report at 19-20, and we cannot speak to what Mr. Vivenzio might have told to the “head of Penn State’s Alcoholics *Anonymous* program.” *Id.* (emphasis added).

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law enforcement may not have communicated as freely as it might have with the University. For example, of the numerous incidents described in the National Beta Organization's 2009 "conduct file," the University's conduct records from that time-period available to the Grand Jury reveal indicia of only two of those incidents described.<sup>111</sup> Those records further reveal that the University cooperated with law enforcement in connection with both of them.<sup>112</sup> In contrast, there is no evidence that the Commonwealth provided information to the University about the



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<sup>111</sup> PSU0002007 – PSU0002018.

<sup>112</sup> See PSU0002083-PSU0002084; PSU0002177-PSU0002188; PSU0002207-PSU0002208; PSU0002248-PSU0002250.

lengthy list of other matters reflecting law enforcement involvement.<sup>113</sup> We recognize that the Commonwealth’s ability to share with the University investigative information may be constrained to some extent by law.<sup>114</sup> We also note that the University’s Office of Student Conduct’s ability to share information with law enforcement may be constrained to some extent by federal law.<sup>115</sup> The University is open to recommendations and suggestions as to how to navigate these issues and better work with law enforcement (including, but not limited to, State College Borough Police—the agency with primary jurisdiction over all fraternities in State College, Pennsylvania), while respecting legal rights and responsibilities that may impede the coordination and flow of information in both directions.

## **II. Background of Beta Theta Pi & The Alleged Historical Role and Knowledge of the University**

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Although the circumstances surrounding the disbandment of Beta *in 2009* are not reasonably relevant to Mr. Piazza’s death *in 2017*, some of the most biting

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<sup>113</sup> The Report also omits in its discussion of the anonymous complaint involving Phi Lambda Phi, that law enforcement was involved in the investigation. *See* Report at 54 (referring to anonymous hotline complaint); but *see*, Investigation Notes of Spencer Peters, PSU0001253, at 1 (noting that he received information from the “Penn State Police Department.”). The University lacked sufficient information after investigation to take any action. We are unaware of whether the Commonwealth undertook any investigation or effort to address the complaint.

<sup>114</sup> *See, e.g.*, 18 Pa.C.S. § 9101, *et seq.*

<sup>115</sup> *See e.g.*, 20 U.S.C. § 1232g; 34 CFR § 99.1 *et seq.*

criticisms of the University focuses on findings of the University's role in the disbandment of Beta nearly a decade ago.<sup>116</sup> For that reason, we are compelled to address them. Those criticisms are simply unfounded. There is simply no nexus whatsoever to the conduct at Beta in 2007-2009 described in the Report and conduct at Beta nearly ten-years later after the chapter had been disbanded and recolonized. There is simply no legitimate basis to suggest that any action taken by the University related to the activities of those disbanded fraternity members in 2007 to 2009 might have prevented the death of Timothy Piazza *almost ten years later*.

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<sup>116</sup> See, e.g., Report at 1 ("Penn State, it seems, either did not know as it should have, or it turned a blind eye to the excessive drinking going on routinely at Beta Theta Pi.... University officials were on direct notice of the depraved lifestyle in the Beta Theta Pi House"); Report at 35 (elying upon the "conduct file," the "Grand Jury finds that Penn State administrators were aware of Beta Theta Pi's problematic condition circa 2009, and of the dangers of university's Greek life in general"); Report at 70 ("the Grand Jury can ascertain that as far back as 2007, at least with regard to Beta Theta Pi, Penn State University became aware of excessive dangerous alcohol abuse by fraternity brothers."); Report at 71 ("the Grand Jury finds that Penn State University had a clear line of sight to the primary concern at issue both then and now, nearly a decade later."); *id.* ("Penn State was content to allow Beta's national fraternity to manage the issue of excessive alcohol abuse at the chapter"); Report at 78 ("Based on the history of Beta Theta Pi nearly a decade ago, as well as the horrific experiences shared by Mr. Vivenzio and Mr. Braham, and the tragic death of Mr. Dado, the Grand Jury finds it impossible to believe that no one in Penn State's administration saw this "cliff" approaching"); Report at 79-80 (alleging that the University "bears the ultimate responsibility for the failure to supervise the safety of its students involved in the fraternity system," and that the University "set the table" for Mr. Piazza's death because it "clearly was on notice of these dangers").

To the extent that the University's alleged knowledge of that past history could possibly matter or relate to the death of Timothy Piazza nearly a decade later, the Report's *factual* assumptions are not true. The Report erroneously finds that University officials were contemporaneously aware of an uninterrupted litany of misconduct by Beta *prior* to its disbandment in February 2009, and did nothing about it.<sup>117</sup> In reaching its conclusions, the Report relies upon the recollections of Mr. Abbey and those in his employ relating to matters almost a decade ago.<sup>118</sup> The Report omits or discredits without justification any contrary testimony. The Grand Jury appears to have made a fundamental error in its assumptions about what it identifies as the "Alpha Upsilon Conduct File." Based upon that error, the Grand Jury appears to rely largely upon Mr. Abbey's memory—to the exclusion of information that was or could have been made available to it.

The documentary evidence and testimony available to the Grand Jury, however, suggest that the file and its contents were not shared with anyone at the

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<sup>117</sup> Report at 35-39 (detailing the incidents set forth in the National Beta Organization's "conduct file"); Report at 36 n.21 (without any support alleging that, "[e]ven back in 2007, the Grand Jury observes that Penn State had in its possession documents demonstrating that two acts of hazing were alleged against Beta Theta Pi in just one pledging period").

<sup>118</sup> See Report at 71 n.44 (expressly crediting the testimony of Mr. Abbey and Mr. Rawley based expressly on the assertion that the University had knowledge of the information in the "conduct file.").



University (and the file perhaps not created) until *after* the decision was made to disband the fraternity in February 2009. The Report therefore builds upon what appears to be an inaccurate assumption about that document to reach its harshest criticism of the University. It is through that faulty lens that the Report mischaracterizes entirely communications between Mr. Abbey, his cohorts, and the University during the 2008-2009 time-period.<sup>119</sup>

**A. The National Beta Organization Compiled the Information in the “Alpha Upsilon Conduct File” and Did Not Share it with the University Until After the National Beta Organization Decided to Disband the Chapter.**

Mr. Sims testified that there was *no knowledge or notice* to Penn State of hazing at Beta during the period in question (2007 to 2009). Mr. Sims’ testimony was accurate and supported by the testimony and documents available to the Grand Jury.

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<sup>119</sup> See Report at 39 (misinterpreting a September 2008 email exchange between Mr. Abbey and Mr. Sims as “reinforce[ing] proof of the University’s knowledge”). The referenced email simply cannot be read to reinforce proof of the University’s knowledge of the contents of a document created by the National Fraternity in February 2009 (or of the conduct described within). See PSU0000396- PSU0000397 (9/2/08-10/10/08 Email Exchange Between Damon Sims & Don Abbey (Abbey: “It was a pleasure meeting you last week at PSU, and I hope you enjoyed the BETA tour. I also thought it quite refreshing to hear a honest, nonpolitical answer to the rushing and keg issues. I am sure that the Greek system goes through at least enough metal to make a tank every weekend in cans.” Sims: “The obstacles that prevent our fraternities from realizing their ideals are more complicated than I’d like to think, but I also know they’re not impenetrable”)).

The documents produced to the Grand Jury show clearly that the “conduct file” is, in fact, part of a single larger document that includes the report and photographs of an architect hired by Mr. Abbey.<sup>120</sup> The Grand Jury appears to have treated the “conduct file” portion of that document as a separate document, and in doing so reached a series of inaccurate conclusions.

Mr. Drobka (an architect hired by Mr. Abbey)<sup>121</sup> testified to the Grand Jury that he provided his report and photographs to some unidentified person at the University sometime in 2009 after *years* of information gathering. Mr. Drobka specifically testified that he compiled and provided a report and pictures of damage to the house in 2009 to the University *after four years* of collecting information.<sup>122</sup> Mr. Rawley similarly testified that he “forwarded many of the photographs to the national fraternity and Penn State officials.”<sup>123</sup> Those photographs and Mr.

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<sup>120</sup> See Scan of Electronic Alpha Upsilon Conduct File, PSU0001878-PSU0001888. The document was produced in two forms to the Grand Jury: as a scan of a hard copy document located in the University’s archived documents related to the disbandment of Beta, (PSU0000253- PSU0000263); and as an image of an electronic document ( PSU0001878- PSU0001888).

<sup>121</sup> See Report at 7.

<sup>122</sup> See Report at 6; Report at 8-10; *see also* Report at 5 (Mr. Rawley stating he “forwarded many of the photographs to the national fraternity and Penn State officials”).

<sup>123</sup> Report at 5.

Drobka's report are part of the same document as the "conduct file."<sup>124</sup> A review of the document in its entirety, together with Mr. Rawley's and Mr. Drobka's testimony, would have assisted the Grand Jury in answering its questions about the source of the document.<sup>125</sup> Contrary to the assumptions and findings of the Grand Jury, testimony and documentary evidence show that Beta alumni and National Beta Organization officials gathered information themselves for *years*, but did not share it with the University until *after* the frustration of the National Beta Organization resulted in their determination to disband the fraternity.<sup>126</sup>

Information contained in the metadata of the electronic version of the document containing the portions identified as the "Alpha Upsilon Conduct File" appears to corroborate this. That metadata indicates that the document was created by the National Beta Organization on February 12, 2009—*after* the decision to

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<sup>124</sup> See Scan of Electronic Alpha Upsilon Conduct File, PSU0001878-PSU0001888.

<sup>125</sup> See Report at 35 n.17 ("Although the author of this "Conduct File" was never identified, the accuracy of many of its notations was confirmed by Ken Rawley, who professed to have daily interaction at the Beta chapter house at this time").

<sup>126</sup> The Report's lauding of the National Beta Organization for taking action "only two months into the Spring 2009 Semester," based on purported alarm about evidence described in the "conduct file," Report at 70, appears misplaced. The National Beta Organization seems to have gathered this information for *years*, failed to share it with the University, and did not act on it with the urgency with which the Report credits them.

disband the fraternity had already been made by the National Beta Organization earlier in February 2009.<sup>127</sup> There is no indication as to when and how this document was eventually provided to the University. One thing is clear: The Alpha Upsilon file *could not* have been presented to Penn State *before* it was compiled.

What the “conduct file” portion of the document produced to the Grand Jury *actually* reveals is that the National Beta Organization and its associates—not the University—were aware of the misbehavior described in the “conduct file” *as it occurred*. The testimony and documents available to the Grand Jury make clear that the events set forth in the file would have only been shared with Penn State personnel after all attempts by Mr. Abbey and the National Beta Organization to curb Beta behavior failed. In fact, Mr. Rawley detailed to the Grand Jury how the National Beta Organization shut down the chapter in January 2009, and that “[w]hen the end drew near for the ... chapter, Mr. Rawley and Mr. Abbey reached out to high level Penn State administrators.”<sup>128</sup>

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<sup>127</sup> The metadata on the electronic document appears to show that it was created by an individual named MacGregor Hill, a National Beta Organization employee, on February 12, 2009. *See* Metadata Associated with Electronic Alpha Upsilon Conduct File.

<sup>128</sup> Report at 6.

Thus, the actual situation is much different from what appears in the Report. Documents available to the Grand Jury appear to show that the University *only* had contemporaneous knowledge of *only two* of the incidents described in the “conduct file.”<sup>129</sup> In *both* instances, the University coordinated and fully cooperated with police investigations.<sup>130</sup> In both matters, criminal charges were either not pursued or withdrawn by the Commonwealth. In both cases, the University deferred to the Commonwealth’s and Court’s decisions in its conduct proceedings.<sup>131</sup>

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<sup>129</sup> Report at 5 (Mr. Rawley identifies three specific incidents at the Beta house that the University knew about: (1) an incident involving a racial slur; (2) an incident involving a man beaten unconscious; and (3) an incident involving a beer bottle attack). The University’s records of Beta member conduct matters from that time-period, however, reference only two incidents identified in the “conduct file” and only one of the incidents described by Mr. Rawley. *See* PSU0002083 (reflecting student conduct action against individual student relating to physical altercation in Beta house, an incident noted in the conduct and apparently identified by Mr. Rawley); *see also* PSU0002177- PSU0002178; PSU0002207- PSU0002208; PSU0002248-PSU0002250 (separate conduct actions related to a single incident in which Beta was alleged to have provided alcohol to minors, which was identified in the “conduct file”). The “conduct file” also identifies a number of matters involving criminal proceedings. *See* PSU0001878-88. There is no evidence that the University was notified by the Commonwealth of those incidents.

<sup>130</sup> *See* PSU0002083; PSU0002177-PSU0002178; PSU0002207-PSU0002208; PSU0002248-PSU0002250.

<sup>131</sup> PSU0002083 (withdrawing student conduct action after student found not guilty in criminal trial); PSU0002177- PSU0002178; PSU0002207- PSU0002208; PSU0002248- PSU0002250 (each conduct action withdrawn after Commonwealth withdrew charges against individuals, and filed criminal charges against the organization).

The Beta fraternity house is on private property over which the Beta Housing Corporation and Mr. Abbey had *total* control.<sup>132</sup> Mr. Rawley and Mr. Abbey had daily access to the house.<sup>133</sup> Mr. Abbey and the National Beta Organization began their discussion of issues and goals for their fraternity twelve years ago in 2005.<sup>134</sup> The evidence does not support any conclusion that this information was shared with the University until after Mr. Abbey and the National Beta Organization set in motion their changes. The documents available to the Grand Jury show that the University tried to assist Mr. Abbey and the National Beta Organization with those goals and concerns actually shared with the University.<sup>135</sup>

**B. The University did not Ignore Concerns or Thwart Efforts to Reform.**

The University did not ignore those goals or thwart any efforts to reform Beta in 2007 to 2009. The Report's misperception of the context of the "conduct

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<sup>132</sup> In fact, Mr. Abbey has sought legal recourse against Beta for the significant funds he invested in the Beta house's renovations. *See Donald G. Abbey v. Alpha Upsilon Chapter of the Fraternity of Beta Theta Pi, Inc.*, No. 2017-838 (C.C.P. Centre Cty, PA).

<sup>133</sup> *See* Report at 35 n.17 (Ken Rawley had daily interaction at the Beta house).

<sup>134</sup> Report at 7.

<sup>135</sup> *See* note 28, *supra*.

file” and the timing of the University’s awareness of its contents appear to have led to false accusations against University officials. Mr. Abbey’s email to Mr. Sims in September 2008, for example, cannot be reasonably interpreted as evidence of knowledge by Mr. Sims and the University of the contents of the “conduct file” that does not appear to have been shared (or compiled) until February 2009. To the contrary the email refers only to rushing and keg issues with no mention of hazing.<sup>136</sup> The “concerns” that Mr. Rawley and Mr. Abbey communicated prior to the disbandment were generalized and spoke of their disappointment with their attempts at gaining acceptance of a “men of principle” model for the fraternity.<sup>137</sup> The evidence available to the Grand Jury makes clear that these concerns and goals were (consistent with Mr. Sims’ testimony) overwhelmingly focused on the

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<sup>136</sup> See Report at 39 (misinterpreting a September 2008 email exchange between Mr. Abbey and Mr. Sims as “reinforce[ing] proof of the University’s knowledge”). The referenced email simply cannot reasonably be read to reinforce proof of the University’s knowledge of the contents of a document created by the National Beta Organization in February 2009 (or of the conduct described within). See 9/2/08-10/10/08 Email Exchange Between Damon Sims & Don Abbey (PSU0000396-PSU0000397)

<sup>137</sup> See PSU0000398-PSU0000399 (noting Mr. Abbey’s desire to discuss partnerships and play golf); PSU0000396-PSU0000397 (email exchange about brotherhood, greek life and golf); PSU0000370-PSU0000371 (email in which Don Abbey and the University discuss general collaboration to address general issues); PSU0000360-PSU0000367 (email in which Mr. Rawley provides a document entitled “Leadership Development Program at Alpha Upsilon”); PSU0000350-PSU0000359 (email from Ken Rawley attaching a document entitled “The Abbey Leadership Foundation Vision”)

intentional destruction of the renovation of the Beta fraternity house by the young men who lived there at the time.<sup>138</sup>

The Report's criticism that the University "thwarted" or refused to assist Mr. Abbey in his efforts to address serious concerns is inaccurate and unfair. The

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<sup>138</sup> Mr. Abbey and Rawley's overwhelming focus on the condition of the property is evident in the testimony described in the Report. *See* Report at 1 ("In 2007, Mr. Abbey employed Mr. Rawley to establish a 501(c)(3) nonprofit foundation that would serve as an endowment to maintain the physical structure of the ... house"); Report at 2 ("Mr. Rawley moved to State College to directly oversee the building's renovation in 2007. His duties included ... keeping watch over the house for Mr. Abbey." The members are described as engaging in "drunken vandalism"); Report at 3 (discussing trash and property destruction requiring professional cleaners to address the "vandalism" and avoid the house's condition from becoming a "lost cause"); Report at 7-13 (Mr. Drobka's observations of renovations, vandalism, cleanliness, property destruction, trash, stacking furniture, overflowing toilets, concrete in plumbing, interference with workers, code violations involving smoke detectors and smoking, broken doors and windows, and messy kitchens); Report at 12 (Mr. Abbey describing the 8.5 million dollar project to renovate the house, and that the brothers would "destroy his progressive improvements," including destruction of expensive furniture, and his "concern[] that his investment would be wasted"); Report at 13 (describing broken windows and the installation of cameras and hiring of Ken Rawley to "monitor the renovations"). Mr. Drobka also details the massive expenditure of a high-end "party room" built for the members in an effort to contain their revelry to a section of the house—not to stop it. *See* Report at 9 n.5 (an "authorized party location" was built in the basement at great expense); Report at 11 (detailing changes made to the basement for the "party room"); PSU000355 ("The Abbey Leadership Foundation Vision" sets forth as the first phase of its three phase plan, "The physical restoration of the chapter house"); PSU0000158, PSU0000267-PSU0000268 (reflecting then-contemporaneous reports from fraternity members that Mr. Abbey stated to the members of the fraternity: "yes, I care much more about the house I paid for than the Beta brothers living in it," and reference to cleanliness).



Report reaches a number of inflammatory conclusions about the University's interactions with Mr. Abbey that are simply unsupportable from the facts available to the Grand Jury. The Report concludes that it was "reckless in the extreme that Penn State officials refused to help"; that Mr. Abbey's efforts "met with extreme resistance"; and that a January 20, 2009 email between University officials "corroborates Donald Abbey's testimony that he attempted to secure Penn State's backing to reform the fraternity culture at Beta Theta Pi".<sup>139</sup> To the contrary, the email described by the Grand Jury shows that the University was actively working with Mr. Abbey to the extent it could to assist in his efforts and his requests.<sup>140</sup>

Mr. Sims' email to the then-University President in January 2009 recounting a meeting among Mr. Abbey, three National Beta Organization representatives, members of Mr. Sims' staff, and Mr. Sims has been interpreted in the Report

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<sup>139</sup> Report at 6-7 ("reckless in the extreme that Penn State officials refused to help"); Report at 7 ("met with extreme resistance"); Report at 39-40 (finding that a January 20, 2009 email between University officials "corroborates Donald Abbey's testimony that he attempted to secure Penn State's backing to reform the fraternity culture at Beta Theta Pi").

<sup>140</sup> See PSU0000515 (email from Ken Rawley in January 2009 requesting that the University assist in collaborating in preparing a "leadership program" for the fraternity); PSU0000270 (email discussing the University "drawing up a plan to help"); PSU000247 (February 2009 email discussing university resources for a leadership development program).

without regard for the clear meaning of its contents.<sup>141</sup> Mr. Sims reported that Abbey “bristled” because the University would not “lead the charge” in telling the National Beta Organization “to shut down the Penn State chapter.” Mr. Sims suggestion, however, that a well-regarded and wealthy alumnus who had given nearly 9 million dollars to his own fraternity might “lead the charge” with his own organization—instead of the University leading the charge—in no way means that the University did not care about the result.

The Report similarly mischaracterizes the discussions of University officials to act as an “interested third party” with respect to the abuses detailed in the “conduct file” and “continuing violation of [the university’s] alcohol policies.”<sup>142</sup>

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<sup>141</sup> PSU0000270 (“Don Abbey and three other Betas met last Friday with Chris Brady, [former dean of the University’s Schreyer Honors College] three members of my staff, and me to discuss next steps toward Don’s vision for the Beta chapter. Their effort to remove the offending parties among the undergraduate actives living in the house has failed simply because they lack authority to do more than take their rooms away...For that reason, Don & Co. plan to clean house with the help of the national, and they’ve asked us to assist. I, in turn, insisted that whatever standard we would hold the Beta chapter to would have to be a standard we could and would apply equally to all other chapters. Don bristled a bit at my reluctance to lead the charge against the current membership (he had suggested that the University go to the national to tell them to shut down the PSU Chapter), but eventually seemed to agree to a modified, but still collaborative approach.”).

<sup>142</sup> See Report at 42-43 (“Emails obtained from Penn State via subpoena reveal that although Penn State administrators understood alcohol abuse existed in the Beta house, the University considered itself only an interested third party, adopting a policy of detachment rather than expressing any concern over the potential danger posed by these ‘continuing violations of alcohol policies,

Though the Report acknowledges (as it must) that the “Grand Jury ... recognizes and respects that Penn State maintained a position of ‘neutrality’ between the warring Beta Theta Pi factions over the eviction proceedings,”<sup>143</sup> the Report nevertheless draws unsupportable conclusions about the extent and the nature of the University’s “neutrality.” It draws those unsupportable conclusions from the inaccurate assumptions about the University’s knowledge of the activities at Beta, and an alleged apathy about misconduct by its members.<sup>144</sup> Nothing could be further from the truth. Documents and testimony available to the Grand Jury and the Commonwealth make that clear. Emails available to the Grand Jury show unambiguously that discussions of “neutrality” had nothing to do with neutrality about misconduct at Beta, they occurred only *after the disbandment of the fraternity*, and address *solely* the role of the University in brewing disputes (primarily about housing issues) between the National Beta Organization, the

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University officials appeared to focus on a desire not to wade into the fray of the alumni board fighting to evict the brothers”).

<sup>143</sup> Report at 71.

<sup>144</sup> See Report at 70 (“University officials were remarkably undisturbed by the complaints regarding alcohol consumption, casually dismissing them to focus more on the ire of the evicted brothers and their parents.”).

Housing Corporation, and recently disbanded fraternity members and their parents.<sup>145</sup>

Mr. Sims explained this to the Grand Jury in detail. Mr. Sims testified about the reasons why the University stayed neutral in what the Report correctly described as the “warring Beta factions.” Mr. Sims explained the complications and drama from the 2008 dispute between Mr. Abbey, students, parents and others was about drinking and vandalism at Beta. Although recognizing that there were “warring factions” and that the University’s “neutrality” should be “respected,” the Grand Jury Report nevertheless (wrongly) equates this “neutrality” with a

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<sup>145</sup> See PSU0000228- PSU0000229 (2/22/09 Email from Damon Sims to Rodney Kirsch and Graham Spanier) (“So far, none of the many Beta parents or alums with whom I’ve spoken has directly connected PSU to this action. I’ve gently reminded them that the matter involves private parties, private contractual relationships, and private associations. Our role as an interested third party is clear, but we’re keeping appropriate distance, I think.”); PSU0000225- PSU0000226 (2/22/09 Email complaining about alumni conduct in disbanding fraternity and response thereto ( “Although the University is not a party to the private relationships governing this dispute, we’re certainly an interested observer...Although we are not well-positioned to determine the ultimate outcome, we remain committed to both the welfare of our students and the ideal of a thriving and successful fraternity system.”); PSU0000201 (2/23/09 Email from Lisa Powers (Director, Department of Public Information Penn State) to Damon Sims, Roy Baker, Gail Hurley and Stan Latta re: housing for displaced Beta brothers) (“We have offered alternative housing to the members of Beta Theta Pi—who are being kicked out by their landlord.”); PSU0000197- PSU0000198 From: (2/25/09 Email about the possibility of eviction of Beta members from house and response thereto) (“Several students are meeting with Dr. Damon Sims, V.P. for Student Affairs on Friday 2/27 and our Attorney will be taking a tour of the house and meeting with a very small group of brothers on this Monday 3/2.”).

“shocking apathy.” Simply put, there is no evidence cited that either the University or Mr. Sims was “neutral” or “apathetic” on the issue of Beta’s misconduct.

The Report’s reliance on Mr. Abbey’s recollection that he received only verbal support from the University to conclude that the University leaders “tacitly condoned the culture of excessive drinking at Beta and Penn State at large,”<sup>146</sup> is also entirely inaccurate and without support. Mr. Rawley’s testimony of his recollection of a conversation at dinner nearly a decade ago cannot legitimately support the harsh criticisms and conclusions in the Report that the University marketed itself as a “party school.”<sup>147</sup> Mr. Rawley’s recollection and that conclusion are wrong. In a contemporaneous 2009 email to Mr. Sims, Mr. Rawley describes their dinner conversation very differently (relating to alumni involvement).<sup>148</sup> That inaccurate recollection might have been readily and easily

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<sup>146</sup> Report at 14.

<sup>147</sup> Report at 5-6 (Mr. Rawley describes meeting Mr. Sims at a restaurant where Mr. Rawley purports to recall Mr. Sims stating that the University markets itself as a party school. Based upon this the “Grand Jury finds it appalling that the University’s marketing would emphasize a fun, party atmosphere ahead of academics, though the Grand Jury believes the testimony of Mr. Rawley”); *see also* Report at 15 (asserts that “Penn State’s leadership was more concerned with maintaining the university’s status as a ‘party school’ to encourage new student applications, and less concerned, if at all, with the problem of excessive drinking”).

<sup>148</sup> *See also* PSU0000175 (April 23, 2009 email from Ken Rawley to Damon Sims) (contemporaneously describing the discussion at Zola’s as being about

refuted from information that could have been made available to the Grand Jury, had *any* inquiry been made to support that damning accusation: Mr. Rawley's recollection is wholly unsupported by the University's marketing materials.<sup>149</sup> The Report, instead, builds on these inaccuracies in its finding that alumni donors' pressure contributed to this alleged tacit endorsement marketing of a "party school."<sup>150</sup> There is simply no evidence to support that finding. In crediting Mr.

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alumni involvement, without any reference to the University's marketing of itself as a party school. The document describes the "convo you and I had at Zola re: getting alumni groups together to work on fixing things").

<sup>149</sup> See e.g., Enrollment 2008 (<https://www.youtube.com/watch?v=YsYGcaToo6Q>); Enrollment 2010 (<https://www.youtube.com/watch?v=IsmcSwuyn5A&list=PL02A15C1ACE51D71A&index=5>); Enrollment 2011 (<https://www.youtube.com/watch?v=HNIg4Jk8AGI>); Enrollment 2012 (<https://www.youtube.com/watch?v=MnycTGB8BQk>); Enrollment 2013 ([https://www.youtube.com/watch?v=YZWsFpE4e\\_A](https://www.youtube.com/watch?v=YZWsFpE4e_A)); Regional 2013 (<https://www.youtube.com/watch?v=MXlu-LyvQy0>); Enrollment 2014 (<https://www.youtube.com/watch?v=TMln5N41Q3A>); Enrollment 2015 Behrend: (<https://www.youtube.com/watch?v=kVJnEs8aKcw>); Enrollment 2016-2017 (<https://www.youtube.com/watch?v=nl32eounCME>); Kodo Drums 2010 (<https://www.youtube.com/watch?v=do97wLTatA8>); Penn State Lives Here 2014 (<https://www.youtube.com/watch?v=8gNozFQQUqM>); Connected for Life 2014 (<https://www.youtube.com/watch?v=lGOmm7XAB4>); We Are Penn State 2016-2017 (60 second) (<https://www.youtube.com/watch?v=nl32eounCME>); We Are Penn State 2016-2017 (30 second) (<https://www.youtube.com/watch?v=cLl0HhfqIrg>).

<sup>150</sup> Report at 52 ("In light of the substantial monetary contributions made by Greek alumni, the Grand jury would be remiss for not recognizing the influence this factor has on any decision an institution makes about what these donors value").

Abbey's "opinion" on this matter, the Report ignores the testimony of Mr. Sims and that he had never encountered any such pressure. The *only* alumni donor whose involvement is evidenced in this matter is Mr. Abbey.<sup>151</sup> *We cannot help but note the irony that the University's alleged failure to follow Mr. Abbey's directives is the source of criticism that the University kowtows to such alumni donors at any cost—even the safety of its students.* Penn State has *never* held itself out as a "party school," as described in the Report. Indeed, from its founding as one of the Nation's first two land-grant universities, Penn State has been committed to the education of purposeful and contributing members of the community.

Whatever legitimate criticism might be offered that the University could have independently investigated historical violations learned of *after the disbandment in 2009*,<sup>152</sup> the Report's attempt to draw a through-line from 2007 to the death of Timothy Piazza is without support. The University and its officials

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<sup>151</sup> See PSU0000399 (8/29/08 email exchange between Mr. Sims and Graham Spanier ("I really appreciate this. Don has told me he intends to be Penn State's largest donor ever, so this kind of interaction helps. I'll copy Rod Kirsch for his development reports").

<sup>152</sup> Report at 44 ("the Grand Jury believes that, in the wake of similar allegations in the future, Penn State must shift to timely investigations of individual conduct violations if they have any hope of dealing with alcohol abuse and hazing issues in Greek life head on").

should not be criticized for not doing more during this time period. The National Beta Organization was doing everything the University might have possibly done to clean up the issues at the fraternity. When that intervention, disbandment, and recolonization occurred, nothing the University could have done would have had more impact.

The National Beta Organization was trying to create a new model fraternity. The University's actions might have been different if the local chapter had not been closed by the National Beta Organization— but it *was* closed. The National Beta Organization and Mr. Abbey installed new members according to a new set of strict standards.<sup>153</sup> University Officials joined with the National Beta Organization and Mr. Abbey in supporting the purportedly alcohol-free “Men of

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<sup>153</sup> On this point, there exists no basis for criticism that the University's contemplated use of the Beta house for honors student events before Mr. Abbey installed a new group of members. Report at 7 (“reckless in the extreme that Penn State officials refused to help, compelling the fraternity to act alone by shutting down the local chapter. Instead of helping, the University used the beautifully renovated, and now vacant Beta house as a venue for honors college speaker events, purportedly to attract a new pool of pledges for Beta Theta Pi from among honors college students”). The discussion of using the facility for honors events occurred after the disbandment. Moreover, to the extent that Mr. Abbey sought assistance from the University in identifying and attracting members that fit his vision, attracting honors students would appear to be a positive. In fact, the Report expressly states that Mr. Abbey “envisioned” but the University “resisted a fraternity ‘full of honors students’ and instead favored a party environment conducive to drinking and destruction.” Report at 14. This finding of “recklessness” is without merit entirely.



Principle.” There is no evidence whatsoever that the University was aware or should have been aware that any conduct of the type described in the “conduct file” continued uninterrupted with the reconstituted fraternity.<sup>154</sup>

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<sup>154</sup> See PSU0000558-PSU0000564 (showing two IFC matters involving Beta, between 2015 and 2017, relating to apparently minor violations of IFC alcohol rules); <https://thetab.com/us/2017/09/29/inside-penn-states-beta-theta-pi-the-fraternity-that-killed-tim-piazza-71975> (quoting an anonymous member of the Beta member describing the image of the Beta fraternity as “different” to even its recruits, and that *recent* changes to the fraternity, included a desire to increase the fraternity’s social status on a website called “GreekRank” in the fall of 2016).

## CONCLUSION

Alcohol abuse and hazing, the governance of private fraternities, and the relationship between law enforcement and the internal disciplinary process confront academic institutions across the country. They are deep rooted and pervasive in our society. There are no easy answers.<sup>155</sup> We welcome thoughtful advice and constructive suggestions.<sup>156</sup> The University is prepared to be a leader, but not a scapegoat.<sup>157</sup>

Despite this, the University will continue to do whatever it can to help address these problems confronting academic institutions nationwide. As parents, we each acknowledge the unimaginable heartbreak of losing a child. University leaders commit to the family of Timothy Piazza to honor his life by never forgetting the tragedy of his death. The University pledges to continue to educate,

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<sup>155</sup> Simply asserting that the University has ultimate authority does not make it so. *See* Report at 79-80. The University can improve, but it has not abjectly failed (morally or otherwise). Nor can it be held to have a legal responsibility for all fraternity members' activities.

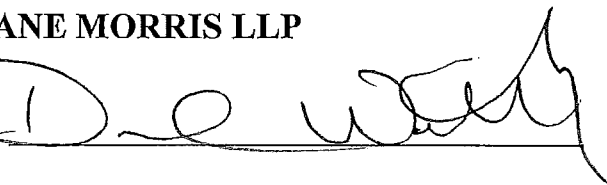
<sup>156</sup> Report at 69-70 ("just as internal enforcement measures, such as the IFC and the University disciplinary processes, have clearly failed to inspire adequate deterrence for the dangerous activity of hazing, current criminal law has likewise proven to be wholly deficient").

<sup>157</sup> "The search for a scapegoat is the easiest of all hunting expeditions," Dwight D. Eisenhower.

investigate, and vigorously discipline its students to do our best to prevent another tragic loss caused by the scourge of alcohol abuse.

Respectfully submitted,

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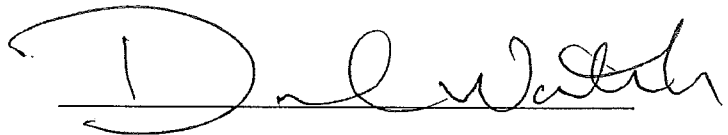
*Attorneys for The Pennsylvania State  
University*

Dated: November 10, 2017

**CERTIFICATE OF SERVICE**

I, Daniel R. Walworth, certify that today, November 17, 2017, I caused a true and correct copy of the foregoing Pennsylvania State University's Response, Pursuant to 42 Pa.C.S. § 4552(e), to the Grand Jury Report, to be served upon the following counsel by electronic and overnight delivery:

Stacy Parks Miller  
District Attorney  
Commonwealth of Pennsylvania  
Office of the District Attorney  
102 S. Allegheny St.  
Courthouse, Room 404  
Bellefonte, PA 16823

A handwritten signature in dark ink, appearing to read "Daniel Walworth", written over a horizontal line.

Daniel R. Walworth (PA 204968)