

# Race, Class, Gender and College Fraternities

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## What's Wrong With College Greek Life?



Another spate of awful headlines from college fraternities this week. What is going on with 'Greek life'?

The fraternity headlines have been really outrageous lately. White boys on a bus chanting about lynching and the n-word in Oklahoma. Sigma Alpha Epsilon. At Penn State, a secret Facebook page is uncovered. Frat members – and alums – sharing nude, semi-nude, sexual photos of women, some passed out, at the frat house. Kappa Delta Rho. Hazing, again, in Houston. Student and a chapter suspended. Sigma Chi. Wisconsin, hazing. Chapter suspended. Chi Phi. This hour On Point: American fraternity life. What is going on? What should happen?

– Tom Ashbrook

### Guests

[Caitlin Flanagan](#), contributing editor at The Atlantic. Author of “[Girl Land](#)” and “[To Hell With All That](#).” ([@caitlinpacific](#))

[J. Patrick Biddix](#), professor of higher education and coordinator of the College Student Personnel Program at the University of Tennessee — Knoxville. Member of the Association of Fraternity / Sorority Advisers. ([@drbiddix](#))

[Edward Shanahan](#), founding president of Keystone Academy. Former Dean of Students at Wesleyan University and former Dean of College at Dartmouth College.

### From Tom's Reading List

[The Atlantic: The Dark Power of Fraternities](#) (See below) — “Thousands of American men count their fraternal experience—and the friendships made within it—as among the most valuable in their lives. The organizations raise millions of dollars for worthy causes, contribute millions of hours in community service, and seek to steer young men toward lives of service and honorable action. They also have a long, dark history of violence against their own members and visitors to their houses, which makes them in many respects at odds with the core mission of college itself.”

[Philadelphia Inquirer: PSU president says review of fraternity system likely](#) — “Pennsylvania State University is contemplating a comprehensive review of its fraternity system in the wake of allegations that one of its chapters shared nude photos of women on private Facebook pages.”

[Christian Science Monitor: Penn State frat photo scandal shows colleges are cracking down](#) — “The swift responses by university and national fraternity officials – suspensions of Kappa Delta Rho at Penn State and Sigma Chi in Houston and the elimination of Chi Phi at UW-Madison – suggest they feel a growing pressure to crack down. In the wake of the national uproar over a racist chant at a University of Oklahoma fraternity, these cases may add to a domino effect, prompting other students or alumni to come forward with reports of sexual harassment, misconduct, and hazing.”

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*The Atlantic*

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## The Dark Power of Fraternities

A yearlong investigation of Greek houses reveals their endemic, lurid, and sometimes tragic problems—and a sophisticated system for shifting the blame.

By [Caitlin Flanagan](#) March 2014 Source: <http://www.theatlantic.com/features/archive/2014/02/the-dark-power-of-fraternities/357580/>

One warm spring night in 2011, a young man named Travis Hughes stood on the back deck of the Alpha Tau Omega fraternity house at Marshall University, in West Virginia, and was struck by what seemed to him—under the influence of powerful inebriants, not least among them the clear ether of youth itself—to be an excellent idea: he would shove a bottle rocket up his ass and blast it into the sweet night air. And perhaps it was an excellent idea. What was not an excellent idea, however, was to misjudge the relative tightness of a 20-year-old sphincter and the propulsive reliability of a 20-cent bottle rocket. What followed ignition was not the bright report of a successful blastoff, but the muffled thud of fire in the hole.

Also on the deck, and also in the thrall of the night's pleasures, was one Louis Helmburg III, an education major and ace benchwarmer for the Thundering Herd baseball team. His response to the proposed launch was the obvious one: he reportedly whipped out his cellphone to record it on video, which would turn out to be yet another of the night's seemingly excellent but ultimately misguided ideas. When the bottle rocket exploded in Hughes's rectum, Helmburg was seized by the kind of battlefield panic that has claimed brave men from outfits far more illustrious than even the Thundering Herd. Terrified, he staggered away from the human bomb and fell off the deck.

Fortunately for him, and adding to the Chaplinesque aspect of the night's miseries, the deck was no more than four feet off the ground, but such was the urgency of his escape that he managed to get himself wedged between the structure and an air-conditioning unit, sustaining injuries that would require medical attention, cut short his baseball season, and—in the fullness of time—pit him against the mighty forces of the Alpha Tau Omega national organization, which had been waiting for him.

It takes a certain kind of personal-injury lawyer to look at the facts of this glittering night and wrest from them a plausible plaintiff and defendant, unless it were possible for Travis Hughes to be sued by his own anus. But the fraternity lawsuit is a lucrative mini-segment of the personal-injury business, and if ever there was a deck that ought to have had a railing, it was the one that served as a nighttime think tank and party-idea testing ground for the brain trust of the Theta Omicron Chapter of Alpha Tau Omega and its honored guests—including these two knuckleheads, who didn't even belong to the fraternity. Moreover, the building codes of Huntington, West Virginia, are unambiguous on the necessity of railings on elevated decks. Whether Helmburg stumbled in reaction to an exploding party guest or to the Second Coming of Jesus Christ is immaterial; there should have been a railing to catch him.

And so it was that Louis Helmburg III joined forces with Timothy P. Rosinsky, Esq., a slip-and-fall lawyer from Huntington who had experience also with dog-bite, DUI, car-repossession, and drug cases. The events of that night, laid out in Helmburg's complaint, suggested a relatively straightforward lawsuit. But the suit would turn out to have its own repeated failures to launch and unintended collateral damage, and it would include an ever-widening and desperate search for potential defendants willing to foot the modest bill for Helmburg's documented injuries. Sending a lawyer without special expertise in wrangling with fraternities to sue one of them is like sending a Boy Scout to sort out the unpleasantness in Afghanistan. Who knows? The kid could get lucky. But it never hurts—preparedness and all that—to send him off with a body bag.

College fraternities—by which term of art I refer to the formerly all-white, now nominally integrated men's "general" or "social" fraternities, and not the several other types of fraternities on American campuses (religious, ethnic, academic)—are as old, almost, as the republic. In a sense, they are older: they emanated in part from the Freemasons, of which George Washington himself was a member. When arguments are made in their favor, they are arguments in defense of a foundational experience for millions of American young men, and of a system that helped build American higher education as we know it. Fraternities also provide their members with matchless leadership training. While the system has produced its share of poets, aesthetes, and Henry James scholars, it is far more famous for its success in the powerhouse fraternity fields of business, law, and politics. An astonishing number of CEOs of Fortune 500 companies, congressmen and male senators, and American presidents have belonged to fraternities. Many more thousands of American men count their fraternal experience—and the friendships made within it—as among the most valuable in their lives. The organizations raise millions of dollars for worthy causes, contribute millions of hours in community service, and seek to steer young men toward lives of service and honorable action. They also have a long, dark history of violence against their own members and visitors to their houses, which makes them in many respects at odds with the core mission of college itself.

Lawsuits against fraternities are becoming a growing matter of public interest, in part because they record such lurid events, some of them ludicrous, many more of them horrendous. For every butt bomb, there's a complaint of manslaughter, rape, sexual torture, psychological trauma. A recent series of articles on fraternities by Bloomberg News's David Glovin and John Hechinger notes that since 2005, more than 60 people—the majority of them students—have died in incidents linked to fraternities, a sobering number in itself, but one that is dwarfed by the numbers of serious injuries, assaults, and sexual crimes that regularly take place in these houses. Many people believe that violent hazing is the most dangerous event associated with fraternity life, but hazing causes a relatively small percentage of these injuries. Because of a variety of forces, all this harm—and the behaviors that lead to it—has lately been moving out of the shadows of private disciplinary hearings and silent suffering, and into the bright light of civil lawsuits, giving us a clear picture of some of the more forbidding truths about fraternity life. While many of these suits never make it to trial, disappearing into confidential settlements (as did that of Louis Helmburg III, nearly two years after he filed his lawsuit) or melting away once plaintiffs recognize the powerful and monolithic forces they are up against, the narratives they leave behind in their complaints—all of them matters of public record—comprise a rich and potent testimony to the kinds of experiences regularly taking place on college campuses. Tellingly, the material facts of these complaints are rarely in dispute; what is contested, most often, is only liability.

Far from being freakish and unpredictable events, fatal and near-fatal falls from fraternity-house roofs, balconies, windows, and sleeping porches are fairly regular occurrences across the country.

I have spent most of the past year looking deeply into the questions posed by these lawsuits, and more generally into the particular nature of fraternity life on the modern American campus. Much of what I found challenged my beliefs about the system, assumptions that I came to see as grossly outdated, not because the nature of fraternity life has changed so much, but rather because life at the contemporary university has gone through such a profound

transformation in the past quarter century. I found that the ways in which the system exerts its power—and maintains its longevity—in the face of the many potentially antagonistic priorities in contemporary higher education commanded my grudging respect. Fraternity tradition at its most essential is rooted in a set of old, deeply American, morally unassailable convictions, some of which—such as a young man’s right to the freedom of association—emanate from the Constitution itself. In contrast, much of the policy governing college campuses today is rooted in the loose soil of a set of political and social fashions that change with the season, and that tend not to hold up to any kind of penetrating challenge. And this is why—to answer the vexing question “why don’t colleges just get rid of their bad fraternities?”—the system, and its individual frats, have only grown in power and influence. Indeed, in many substantive ways, fraternities are now mightier than the colleges and universities that host them.

The entire multibillion-dollar, 2,000-campus American college system—with its armies of salaried professors, administrators, librarians, bursars, secretaries, admissions officers, alumni liaisons, development-office workers, coaches, groundskeepers, janitors, maintenance workers, psychologists, nurses, trainers, technology-support staffers, residence-life personnel, cafeteria workers, diversity-compliance officers, the whole shebang—depends overwhelmingly for its very existence on one resource: an ever-renewing supply of fee-paying undergraduates. It could never attract hundreds of thousands of them each year—many of them woefully unprepared for the experience, a staggering number (some 40 percent) destined never to get a degree, more than 60 percent of them saddled with student loans that they very well may carry with them to their deathbeds—if the experience were not accurately marketed as a blast. They show up on campus lugging enormous Bed Bath & Beyond bags crammed with “essentials,” and with new laptop computers, on which they will surf Facebook and Tumblr while some coot down at the lectern bangs on about Maslow’s hierarchy and tries to make his PowerPoint slides appear right side up. Many of these consumer goods have been purchased with money from the very student loans that will haunt them for so long, but no matter: it’s college; any cost can be justified. The kids arrive eager to hurl themselves upon the pasta bars and the climbing walls, to splash into the 12-person Jacuzzis and lounge around the outdoor fire pits, all of which have been constructed in a blatant effort to woo them away from competitors. They swipe prepaid cards in dormitory vending machines to acquire whatever tanning wipes or earbuds or condoms or lube or energy drinks the occasion seems to require. And every moment of the experience is sweetened by the general understanding that with each kegger and rager, each lazy afternoon spent snoozing on the quad (a forgotten highlighter slowly drying out on the open pages of Introduction to Economics, a Coke Zero sweating beside it), they are actively engaged in the most significant act of self-improvement available to an American young person: college!

That all of this fun is somehow as essential as the education itself—is somehow part of a benevolent and ultimately edifying process of “growing up”—is one of the main reasons so many parents who are themselves in rocky financial shape will make economically ruinous decisions to support a four-year-residential-college experience for their children. There are many thousands of American undergraduates whose economic futures (and those of their parents) would be far brighter if they knocked off some of their general-education requirements online, or at the local community college—for pennies on the dollar—before entering the Weimar Republic of traditional-college pricing. But college education, like weddings and funerals, tends to prompt irrational financial decision making, and so here we are. Add another pesto flavor to the pasta bar, Dean Roland! We just lost another kid to online ed!

That pursuing a bachelor’s degree might be something other than a deeply ascetic and generally miserable experience was once a preposterous idea. American colleges came into being with the express purpose of training young men for the ministry, a preparation that was marked by a chilly round of early risings, Greek and Latin recitations, religious study, and strict discipline meted out by a dour faculty—along with expectations of both temperance and chastity. Hardly conditions that would augur the current trillion-dollar student-loan balloon that hovers over us like a pre-ignition Hindenburg. But sexual frustration and homiletics would not last forever as the hallmarks of American college life.

In 1825, at Union College, in upstate New York (hardly a garden of earthly delights in the best of circumstances, but surely a gulag experience for those stuck at Union; imagine studying Thessalonians in the ass-cracking cold of a Schenectady February), a small group of young men came up with a creative act of rebellion against the fun-busters who had them down: the formation of a secret club, which they grandly named the Kappa Alpha Society. Word of the group spread, and a new kind of college institution was founded, and with it a brand-new notion: that going to college could include some pleasure. It was the American age of societies, and this new type fit right in. As Nicholas Syrett observes in his excellent history of white men’s college fraternities, *The Company He Keeps*, these early fraternities were in every way a measure of their time. They combined the secret handshakes and passwords of small boys’ clubs; the symbols and rituals of Freemasonry; the new national interest in Greek, as opposed to Roman, culture as a model for an emerging citizenry; and the popularity of literary societies, elements of which—oratory, recitation, and the presentation of essays—the early fraternities included. Fraternities also gave young college men a way of behaving and of thinking about themselves that quickly took on surprisingly modern dimensions. An 1857 letter that a Sigma Phi member named Jenkins Holland sent to one of his fraternity brothers suggests the new system was already hitting full stride: “I did get one of the nicest pieces of ass some day or two ago.”

From the very beginning, fraternities were loathed by the grown-ups running colleges, who tried to banish them. But independence from overbearing faculties—existing on a plane beyond the reach of discipline—was, in large measure, the point of fraternity membership; far from fearing the opprobrium of their knock-kneed overlords, the young men relished and even courted it. When colleges tried to shut them down, fraternities asserted that any threat to men’s membership in the clubs constituted an infringement of their right to freedom of association. It was, at best, a legally delicate argument, but it was a symbolically potent one, and it has withstood through the years. The powerful and well-funded political-action committee that represents fraternities in Washington has fought successfully to ensure that freedom-of-association language is included in all higher-education reauthorization legislation, thus “disallowing public Universities the ability to ban fraternities.”

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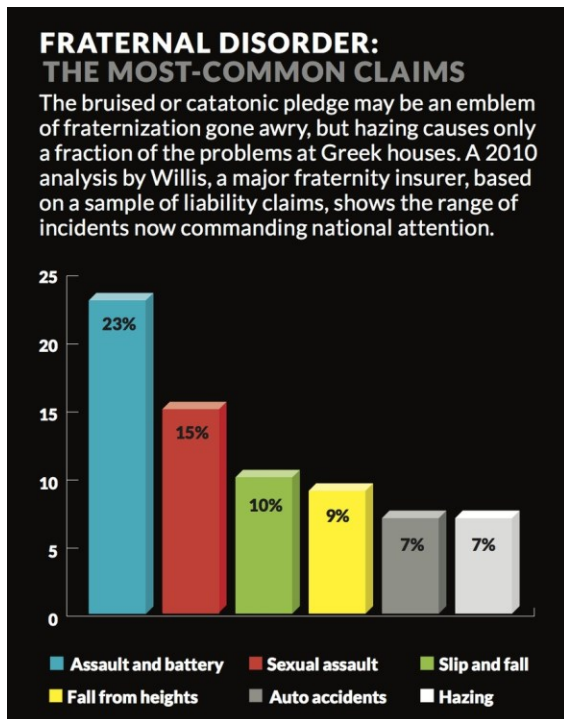
Perhaps the best testament to the deep power of fraternities is how quickly and widely they spread. Soon after Gold Rush money began flowing into the newly established state of California—giving rise to the improbable idea of building a great American university on the shores of the Pacific Ocean—fraternity men staked their own claim: a campus in Berkeley had existed barely a year before the brothers of Phi Delta Theta arrived to initiate new



members. The thing to remember about fraternities is that when Kappa Alpha was founded at Union, in all of the United States there were only 4,600 college students; fraternities exist as deeply in the groundwater of American higher education as religious study—and have retained a far greater presence in the lives of modern students.

In fairly short order, a paradox began to emerge, one that exists to this day. While the fraternities continued to exert their independence from the colleges with which they were affiliated, these same colleges started to develop an increasingly bedeviling kind of interdependence with the accursed societies. To begin with, the fraternities involved themselves very deeply in the business of student housing, which provided tremendous financial savings to their host institutions, and allowed them to expand the number of students they could admit. Today, one in eight American students at four-year colleges lives in a Greek house, and a conservative estimate of the collective value of these houses across the country is \$3 billion. Greek housing constitutes a troubling fact for college administrators (the majority of fraternity-related deaths occur in and around fraternity houses, over which the schools have limited and widely varying levels of operational oversight) and also a great boon to them (saving them untold millions of dollars in the construction and maintenance of campus-owned and -controlled dormitories).

Moreover, fraternities tie alumni to their colleges in a powerful and lucrative way. At least one study has affirmed what had long been assumed: that fraternity men tend to be generous to their alma maters. Furthermore, fraternities provide colleges with unlimited social programming of a kind that is highly attractive to legions of potential students, most of whom are not applying to ivy-covered rejection factories, but rather to vast public institutions and obscure private colleges that are desperate for students. When Mom is trying—against all better judgment—to persuade lackluster Joe Jr. to go to college, she gets a huge assist when she drives him over to State and he gets an eyeful of frat row. Joe Jr. may be slow to grasp even the most elemental concepts of math and English (his first two years of expensive college study will largely be spent in remediation of the subjects he should have learned, for free, in high school), but one look at the Fiji house and he gets the message: kids are getting laid here; kids are having fun. Maybe he ought to snuff out the joint and take a second look at that application Mom keeps pushing across the kitchen table.



Will he be in increased physical jeopardy if he joins one of these clubs? The fraternity industry says no. When confronted with evidence of student injury and death in their houses, fraternities claim they are no worse than any other campus group; that they have become “target defendants,” prey to the avarice of tort lawyers excited by their many assets and extensive liability coverage. It is true that fraternity lawsuits tend to involve at least one, and often more, of the four horsemen of the student-life apocalypse, a set of factors that exist far beyond frat row and that are currently bringing college presidents to their knees. First and foremost of these is the binge-drinking epidemic, which anyone outside the problem has a hard time grasping as serious (everyone drinks in college!) and which anyone with knowledge of the current situation understands as a lurid and complicated disaster. The second is the issue of sexual assault of female undergraduates by their male peers, a subject of urgent importance but one that remains stubbornly difficult even to quantify, let alone rectify, although it absorbs huge amounts of student interest, outrage, institutional funding, and—increasingly—federal attention. The third is the growing pervasiveness of violent hazing on campus, an art form that reaches its apogee at fraternities, but that has lately spread to all sorts of student groups. And the fourth is the fact that Boomers, who in their own days destroyed the doctrine of in loco parentis so that they could party in blissful, unsupervised freedom, have grown up into the helicopter parents of today, holding fiercely to a pair of mutually exclusive desires: on the one hand that their kids get to experience the same unfettered personal freedoms of college that they remember so fondly, and on the other that the colleges work hard to protect the physical and emotional well-being of their precious children.

But it’s impossible to examine particular types of campus calamity and not find that a large number of them cluster at fraternity houses. Surely they have cornered the market in injuries to the buttocks. The number of lawsuits that involve paddling gone wrong, or branding that necessitated skin grafts, or a particular variety of sexual torture reserved for hazing and best not described in the gentle pages of this magazine, is astounding. To say

nothing of the University of Tennessee frat boy who got dropped off, insensate, at the university hospital’s emergency room and was originally assumed to be the victim of a sexual assault, and only later turned out to have damaged his rectum by allegedly pumping wine into it through an enema hose, as had his pals.

Or, to turn away from the buttocks, as surely a good number of fraternity men would be well advised to do, consider another type of fraternity injury: the tendency of brothers and their guests to get liquored up and fall off—or out of—the damn houses is a story in itself.

The campuses of Washington State University and the University of Idaho are located some eight miles apart in the vast agricultural region of the Northwest known as the Palouse. It was at the latter institution that the 19-year-old sophomore and newly minted Delta Delta Delta pledge Amanda Andaverde arrived in August of 2009, although she had scarcely moved into the Tri Delta house and registered for classes before she was at the center of events that would leave her with brain damage and cast her as the plaintiff in a major lawsuit filed on her behalf by her devastated parents.

It would have been an unremarkable Wednesday evening—focused on the kind of partying and hooking up that are frequent pleasures of modern sorority women—save for its hideous end. Andaverde and her sorority sisters began the night at Sigma Chi, where the “sorority ladies” drank alcohol and spent the evening with “dates” they had been assigned during a party game. (The language of Andaverde’s legal complaint often seems couched in a combination of ’50s lingo and polite euphemism, intended perhaps to preclude a conservative Idaho jury from making moralistic judgments about the plaintiff’s behavior.) The charms of Andaverde’s assigned date ran thin, apparently, because close to midnight, she left him and made her way over to the Sigma Alpha Epsilon house, where she quickly ended up on the third-floor sleeping porch.

Many fraternity houses, especially older ones, have sleeping porches—sometimes called “cold airs” or “rack rooms”—typically located on the top floor of the buildings’ gable ends. They are large rooms filled with bunks, some of which are stacked in triple tiers, and their large windows are often left open, even in the coldest months. Many fraternity members have exceedingly fond memories of their time on the porches, which they view—like so many fraternity

traditions—as a simultaneously vexing and bonding experience. Although these group sleeping arrangements were once considered an impediment to a young man's sex life, the hookup culture, in which privacy is no longer a requirement of sexual activity, has changed that, and the sleeping-porch experience is once again coming into favor. For a variety of reasons, sleeping porches feature in a number of lawsuits, pointing to an astonishing fact: despite fraternity houses' position as de facto residence halls for so many American college students, safety features are decidedly spotty; about half of them don't even have fire sprinklers.

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According to the complaint, shortly after arriving at SAE, Andaverde ran into a friend of hers, and he took her up to the sleeping porch, where he introduced her to a pal of his named Joseph Cody Cook. Andaverde and Cook talked, then climbed into Cook's bunk, where the two began kissing. It is at this point that the language of the suit finally frees itself of euphemism and reveals the fearsome power of the unambiguous, declarative sentence: "Amanda rolled onto her shoulder toward the exterior wall, and suddenly, quickly, and unexpectedly dropped off Cook's mattress into the open exterior window, falling from the third-floor 'sleeping porch' to the cement approximately 25 feet below."

The injuries were devastating and included permanent brain injury. Andaverde was airlifted to a trauma center in Seattle, where she remained for many weeks; in the early days of her care, it seemed she might not survive. Eventually, however, she improved enough to leave the hospital and was transferred to a series of rehabilitation centers, where she spent many months learning to regain basic functions. Police, interviewed about the case, defended themselves the way police departments in college towns all over the country reasonably defend themselves when accused of not preventing a fraternity-house disaster: "We just can't send undercover people into private houses or private parties," said David Duke, the Moscow, Idaho, assistant chief of police.

Local news outlets covered Andaverde's plight widely and sympathetically, although the optimism with which her "miraculous" recovery was celebrated was perhaps exaggerated. A television news report dedicated to that miracle revealed a young woman who, while she had escaped death, had clearly been grievously injured. As the reporter interviewed her mother, Andaverde sat in a wheelchair. When her hands were not propped on a black lap tray latched to the chair, she struggled to grasp a crayon and run it across the pages of a children's coloring book, or to place the six large pieces of a simple puzzle—square, triangle, circle—into their spaces. She eventually improved from this desperate state—learning to walk and dress herself—but she was a far cry from the student of veterinary medicine she had once been.

The local inclinations to see a badly injured college student as a figure deserving of community support, and to view even a limited recovery as evidence of the goodness of God, are not unaligned with regional preferences for self-reliance and for taking responsibility for one's own actions, however dire the consequences. The inevitable court case—in which the Andaverde family named not only SAE and Tri Delta as defendants, but also the University of Idaho and the Idaho State Board of Education—was dismissed on summary judgment because there was no dispute that Andaverde fell out of an open window, and because there was no evidence of an inherently dangerous condition in the house: that the window was open was obvious to anyone who walked into the room. The court determined that no other person or institution had a duty to protect Amanda from the actions and decisions—the decision to drink alcohol, as a minor; the decision to climb into a bunk bed; the impulse to roll over—that led to her accident.

Andaverde's case seemed to me to be an isolated tragedy, until I sent away to the Latah County courthouse for a copy of the complaint and discovered within it this sentence: "Amanda's fall was the second fall of a student from an upper-story fraternity house window at the University of Idaho within approximately a two-week period." This struck me as an astonishing coincidence. I looked into the matter and found that, indeed, a 20-year-old man named Shane Meyer had fallen from the third-floor window of the Delta Tau Delta house just 12 days before Andaverde's fall from SAE; not surprisingly, the police reported that "alcohol may have been a factor." He, too, had been airlifted to Seattle, and incredibly, the two fought for their lives in the same critical-care unit at Harborview Medical Center. I became intrigued by this kind of injury and began to do some more checking into the subject. I discovered that two months after Andaverde's fall, a 20-year-old student at Washington State—"quite intoxicated," in the laconic assessment of a local cop—pitched forward and fell from a third-floor window of Alpha Kappa Lambda, escaping serious injury when his fall was broken by an SUV parked below. That these three events were not greeted on either campus by any kind of clamoring sense of urgency—that they were, rather, met with a resigned sort of "here we go again" attitude by campus administrators and with what appeared to be the pro forma appointment of an investigative task force—sparked my interest, and so it was that I entered the bizarre world of falls from fraternity houses, which, far from being freakish and unpredictable events, are in fact fairly regular occurrences across the country.

During the 2012–13 school year on the Palouse—where students from the two campuses often share apartments and attend parties at each other's schools—the falls continued. In September, a student suffered serious injuries after falling off the roof of the Alpha Tau Omega house at the University of Idaho, and two days later a Washington State student fell three stories from a window at Phi Kappa Tau. In November, a 19-year-old suffered critical head injuries when he fell backwards off a second-floor balcony at the Washington State Lambda Chi Alpha house, necessitating the surgical removal of part of his skull. In April, a University of Idaho student named Krysta Huft filed a suit against the Delta Chi fraternity, seeking damages for a broken pelvis resulting from a 2011 fall, which she claims was from the house's third-story sleeping porch onto a basketball court beneath it.

I decided to widen my search, and quickly discovered that this is not a phenomenon particular to the Northwest. Across the country, kids fall—disastrously—from the upper heights of fraternity houses with some regularity. They tumble from the open windows they are trying to urinate out of, slip off roofs, lose their grasp on drainpipes, misjudge the width of fire-escape landings. On February 25, 2012, a student at the University of California at Berkeley attempted to climb down the drainpipe of the Phi Gamma Delta house, fell, and suffered devastating injuries; on April 14 of the same year, a 21-year-old student at Gannon University, in Pennsylvania, died after a fall from the second-floor balcony of the Alpha Phi Delta house the night before; on May 13, a Cornell student was airlifted to a trauma center after falling from the fire escape at Delta Chi; on October 13, a student at James Madison University fell from the roof of the three-story Delta Chi house and was airlifted to the University of Virginia hospital; on December 1, a 19-year-old woman fell eight feet from the Sigma Alpha Mu house at Penn State.

This summer brought little relief. On July 13, a man fell more than 30 feet from a third-story window at the Theta Delta Chi house at the University of Washington and was transported to Harborview Medical Center (which must by now be developing a subspecialty in such injuries); that same day, a Dartmouth College employee, apparently having consumed LSD and marijuana, fell out of a second-story window of the Sigma Nu house and was seriously injured. On August 13, a student at the University of Oklahoma fell face-first off a balcony of the SAE house; the next day, a woman fell from a second-story fire escape at Phi Kappa Tau at Washington State University.

The current school year began, and still the falls continued. In September, a student at Washington State fell down a flight of stairs in the Delta Chi house and was rendered unconscious; a University of Minnesota student was hospitalized after falling off a second-floor balcony of the Phi Kappa Psi house; a Northwestern student was listed in critical condition after falling out of a third-floor window of the Phi Gamma Delta house; and an MIT student injured his head and genitals after falling through a skylight at the Phi Sigma Kappa house and landing some 40 feet below.

These falls, of course, are in addition to the many other kinds of havoc and tragedy associated with fraternities. On the Palouse, such incidents include the January 2013 death of 18-year-old Joseph Wiederrick, a University of Idaho freshman who had made the dean's list his first semester, and who had plans to become an architect. He had attended a party at SAE (of which he was not a member) and then wandered, apparently drunk and lost, for five miles before freezing to death under a bridge. They also include the March 2013 conviction of Jesse M. Vierstra, who, while visiting Sigma Chi over the University of Idaho's homecoming weekend, raped an 18-year-old freshman in the bushes outside the house. (He is appealing the decision.)

The notion that fraternities are target defendants did not hold true in my investigation. College students can (and do) fall out of just about any kind of residence, of course. But during the period of time under consideration, serious falls from fraternity houses on the two Palouse campuses far outnumbered those from other types of student residences, including privately owned apartments occupied by students. I began to view Amanda Andaverde's situation in a new light. Why are so many colleges allowing students to live and party in such unsafe locations? And why do the lawsuits against fraternities for this kind of serious injury and death—so predictable and so preventable—have such a hard time getting traction? The answers lie in the recent history of fraternities and the colleges and universities that host them.

What all of these lawsuits ultimately concern is a crucially important question in higher education, one that legal scholars have been grappling with for the past half century. This question is perhaps most elegantly expressed in the subtitle of Robert D. Bickel and Peter F. Lake's authoritative 1999 book on the subject, *The Rights and Responsibilities of the Modern University: Who Assumes the Risks of College Life?*

The answer to this question has been steadily evolving ever since the 1960s, when dramatic changes took place on American campuses, changes that affected both a university's ability to control student behavior and the status of fraternities in the undergraduate firmament. During this period of student unrest, the fraternities—long the unquestioned leaders in the area of sabotaging or ignoring the patriarchal control of school administrators—became the exact opposite: representatives of the very status quo the new activists sought to overthrow. Suddenly their beer bashes and sorority mixers, their panty raids and obsession with the big game, seemed impossibly reactionary when compared with the mind-altering drugs being sampled in off-campus apartments where sexual liberation was being born and the Little Red Book proved, if nothing else, a fantastic coaster for a leaky bong.

American students sought to wrest themselves entirely from the disciplinary control of their colleges and universities, institutions that had historically operated in loco parentis, carefully monitoring the private behavior of undergraduates. The students of the new era wanted nothing to do with that infantilizing way of existence, and fought to rid themselves of the various curfews, dorm mothers, demerit systems, and other modes of institutional oppression. If they were old enough to die in Vietnam, powerful enough to overthrow a president, groovy enough to expand their minds with LSD and free love, then they certainly didn't need their own colleges—the very places where they were forming their radical, nation-changing ideas—to treat them like teenyboppers in need of a sock hop and a chaperone. It was a turning point: American colleges began to regard their students not as dependents whose private lives they must shape and monitor, but as adult consumers whose contract was solely for an education, not an upbringing. The doctrine of in loco parentis was abolished at school after school. Through it all, fraternities—for so long the repositories of the most outrageous behavior—moldered, all but forgotten. Membership fell sharply, fraternity houses slid into increasing states of disrepair, and hundreds of chapters closed.

Animal House, released in 1978, at once predicted and to no small extent occasioned the roaring return of fraternity life that began in the early '80s and that gave birth to today's vital Greek scene. The casting of John Belushi was essential to the movie's influence: no one had greater credibility in the post-'60s youth culture. If something as fundamentally reactionary as fraternity membership was going to replace something as fundamentally radical as student unrest, it would need to align itself with someone whose bona fides among young, white, middle-class males were unassailable. In this newly forming culture, the drugs and personal liberation of the '60s would be paired with the self-serving materialism of the '80s, all of which made partying for its own sake—and not as a philosophical adjunct to solving some complicated problem in Southeast Asia—a righteous activity for the pampered young collegian. Fraternity life was reborn with a vengeance.

It was an entirely new kind of student who arrived at the doors of those great and crumbling mansions: at once deeply attracted to the ceremony and formality of fraternity life and yet utterly transformed by the social revolutions of the past decades. These new members and their countless guests brought with them hard drugs, new and ever-developing sexual attitudes, and a stunningly high tolerance for squalor (never had middle- and upper-middle-class American young people lived in such filth as did '60s and '70s college kids who were intent on rejecting their parents' bourgeois ways). Furthermore, in 1984 Congress passed the National Minimum Drinking Age Act, with the ultimate result of raising the legal drinking age to 21 in all 50 states. This change moved college partying away from bars and college-sponsored events and toward private houses—an ideal situation for fraternities. When these advances were combined with the evergreen fraternity traditions of violent hazing and brawling among rival frats, the scene quickly became wildly dangerous.

Adult supervision was nowhere to be found. Colleges had little authority to intervene in what took place in the personal lives of its students visiting private property. Fraternities, eager to provide their members with the independence that is at the heart of the system—and responsive to members' wish for the same level of freedom that non-Greek students enjoyed—had largely gotten rid of the live-in resident advisers who had once provided some sort of check on the brothers. With these conditions in place, lawsuits began to pour in.

No sooner has a national fraternity rolled out a new “Men of Principle” or “True Gentlemen” campaign than reports of a lurid disaster in



## some prominent or far-flung chapter undermine the whole thing.

The mid-1980s were a treacherous time to be the defendant in a tort lawsuit. Personal-injury cases had undergone a long shift to the plaintiff's advantage; the theory of comparative negligence—by which an individual can acknowledge his or her own partial responsibility for an injury yet still recover damages from a defendant—had become the standard; the era of huge jury verdicts was at hand. Americans in vast numbers—motivated perhaps in part by the possibility of financial recompense, and in part by a new national impetus to move personal suffering from the sphere of private sorrow to that of public confession and complaint—began to sue those who had damaged them. Many fraternity lawsuits listed the relevant college or university among the defendants, a practice still common among less experienced plaintiff's attorneys. These institutions possess deep reservoirs of liability coverage, but students rarely recover significant funds from their schools. As Amanda Andaverde's attorneys discovered the hard way, a great deal of time and money can be spent seeking damages from institutions of higher learning, which can be protected by everything from sovereign immunity and damage caps (in the case of public universities), to their limited ability to monitor the private behavior of their students. But for the fraternities themselves, it was a far different story.

So recently and robustly brought back to life, the fraternities now faced the most serious threat to their existence they had ever experienced. A single lawsuit had the potential to devastate a fraternity. In 1985, a young man grievously injured in a Kappa Alpha-related accident reached a settlement with the fraternity that, over the course of his lifetime, could amount to some \$21 million—a sum that caught the attention of everyone in the Greek world. Liability insurance became both ruinously expensive and increasingly difficult to obtain. The insurance industry ranked American fraternities as the sixth-worst insurance risk in the country—just ahead of toxic-waste-removal companies. “You guys are nuts,” an insurance representative told a fraternity CEO in 1989, just before canceling the organization's coverage; “you can't operate like this much longer.”

For fraternities to survive, they needed to do four separate but related things: take the task of acquiring insurance out of the hands of the local chapters and place it in the hands of the vast national organizations; develop procedures and policies that would transfer as much of their liability as possible to outside parties; find new and creative means of protecting their massive assets from juries; and—perhaps most important of all—find a way of indemnifying the national and local organizations from the dangerous and illegal behavior of some of their undergraduate members. The way fraternities accomplished all of this is the underlying story in the lawsuits they face, and it is something that few members—and, I would wager, even fewer parents of members—grasp completely, comprising a set of realities you should absolutely understand in detail if your son ever decides to join a fraternity.

Self-insurance was an obvious means for combating prohibitive insurance pricing and the widening reluctance to insure fraternities. In 1992, four fraternities created what was first called the Fraternity Risk Management Trust, a vast sum of money used for reinsurance. Today, 32 fraternities belong to this trust. In 2006, a group of seven other fraternities bought their own insurance broker, James R. Favor, which now insures many others. More important than self-insurance, however, was the development of a risk-management policy that would become—across these huge national outfits and their hundreds of individual chapters—the industry standard. This was accomplished by the creation of something called the Fraternal Information and Programming Group (FIPG), which in the mid-1980s developed a comprehensive risk-management policy for fraternities that is regularly updated. Currently 32 fraternities are members of the FIPG and adhere to this policy, or to their own even more rigorous versions. One fraternity expert told me that even non-FIPG frats have similar policies, many based in large measure on FIPG's, which is seen as something of a blueprint. In a certain sense, you may think you belong to Tau Kappa Epsilon or Sigma Nu or Delta Tau Delta—but if you find yourself a part of life-changing litigation involving one of those outfits, what you really belong to is FIPG, because its risk-management policy (and your adherence to or violation of it) will determine your fate far more than the vows you made during your initiation ritual—vows composed by long-dead men who had never even heard of the concept of fraternity insurance.

FIPG regularly produces a risk-management manual—the current version is 50 pages—that lays out a wide range of (optional) best practices. If the manual were Anna Karenina, alcohol policy would be its farming reform: the buzz-killing subplot that quickly reveals itself to be an authorial obsession. For good reason: the majority of all fraternity insurance claims involve booze—I have read hundreds of fraternity incident reports, not one of which describes an event where massive amounts of alcohol weren't part of the problem—and the need to manage or transfer risk presented by alcohol is perhaps the most important factor in protecting the system's longevity. Any plaintiff's attorney worth his salt knows how to use relevant social-host and dramshop laws against a fraternity; to avoid this kind of liability, the fraternity needs to establish that the young men being charged were not acting within the scope of their status as fraternity members. Once they violated their frat's alcohol policy, they parted company with the frat. It's a neat piece of logic: the very fact that a young man finds himself in need of insurance coverage is often grounds for denying it to him.

So: alcohol and the fraternity man. Despite everything you may think you know about life on frat row, there are actually only two FIPG-approved means of serving drinks at a frat party. The first is to hire a third-party vendor who will sell drinks and to whom some liability—most significant, that of checking whether drinkers are of legal age—will be transferred. The second and far more common is to have a BYO event, in which the liability for each bottle of alcohol resides solely in the person who brought it. If you think this is in any way a casual system, then you have never read either the FIPG risk-management manual or its sister publication, an essay written in the surrealist vein titled “Making Bring Your Own Beverage Events Happen.”

The official byo system is like something dreamed up by a committee of Soviet bureaucrats and Irish nuns. It begins with the composition—no fewer than 24 hours before the party—of a comprehensive guest list. This guest list does not serve the happy function of ensuring a perfect mix of types and temperaments at the festivity; rather, it limits attendance—and ensures that the frat is in possession of “a witness list in the event something does occur which may end up in court two or more years later.” Provided a fraternity member—let's call him Larry—is older than 21 (which the great majority of members, like the great majority of all college students, are not), he is allowed to bring six (and no more) beers or four (and no more) wine coolers to the party. (FIPG's admiration for the wine-cooler four-pack suggests that at least some aspects of the foundational document—including its recommendation for throwing a M\*A\*S\*H-themed party as recently as 2007—have not received much of an overhaul since its first edition, published in the mid-'80s.) Okay, so Larry brings a six-pack. The first stop, depending on which fraternity he belongs to: a “sober check point,” at which he is subjected to an examination. Does he appear to have already consumed any alcohol? Is he in any way “known” to have done so? If he passes, he hands over his ID for inspection. Next he must do business with a “sober monitor.” This person relieves him of the six-pack, hands him a ticket indicating the precise type of beer he brought, and ideally affixes a “non breakable except by cutting” wristband to his person; only then can Larry retrieve his beers, one at a time, for his own personal consumption. If any are left over at the end of the party, his fraternity will secure them until the next day, when Larry can be reunited with his unconsumed beers, unless his frat decided to “eliminate” them overnight. Weaknesses in the system include the fact that all of these people coming between Larry and his beer—the sober monitors and ID checkers and militarized barkeepers—are Larry's fraternity brothers, who are among his closest

buddies and who have pledged him lifelong fealty during candlelit ceremonies rife with Masonic mumbo jumbo and the fluttering language of 19th-century romantic friendship. Note also that these policies make it possible for fraternities to be the one industry in the country in which every aspect of serving alcohol can be monitored and managed by people who are legally too young to drink it.

## During a crisis, the questionnaires and honest accounts that fraternity members submit gratefully to their national organization may return to haunt many of the brothers.

Clearly, a great number of fraternity members will, at some point in their undergraduate career, violate their frat's alcohol policy regarding the six beers—and just as clearly, the great majority will never face any legal consequences for doing so. But when the inevitable catastrophes do happen, that policy can come to seem more like a cynical hoax than a real-world solution to a serious problem. When something terrible takes place—a young man plummets from a roof, a young woman is assaulted, a fraternity brother is subjected to the kind of sexual sadism that appears all too often in fraternity lawsuits—a tiny small violation of policy can leave fraternity members twisting in the wind. Consider the following scenario: Larry makes a small, human-size mistake one night. Instead of waiting for the slow drip of six warm beers, he brings a bottle of Maker's Mark to the party, and—in the spirit of not being a weirdo or a dick—he shares it, at one point pouring a couple of ounces into the passing Solo cup of a kid who's running on empty and asks him for a shot. Larry never sees the kid again that night—not many people do; he ends up drinking himself to death in an upstairs bedroom. In the sad fullness of time, the night's horror is turned into a lawsuit, in which Larry becomes a named defendant. Thanks in part to the guest/witness list, Larry can be cut loose, both from the expensive insurance he was required to help pay for (by dint of his dues) as a precondition of membership, and from any legal defense paid for by the organization. What will happen to Larry now?

Gentle reader, if you happen to have a son currently in a college fraternity, I would ask that you take several carbon dioxide-rich deep breaths from a paper bag before reading the next paragraph. I'll assume you are sitting down. Ready?

"I've recovered millions and millions of dollars from homeowners' policies," a top fraternal plaintiff's attorney told me. For that is how many of the claims against boys who violate the strict policies are paid: from their parents' homeowners' insurance. As for the exorbitant cost of providing the young man with a legal defense for the civil case (in which, of course, there are no public defenders), that is money he and his parents are going to have to scramble to come up with, perhaps transforming the family home into an ATM to do it. The financial consequences of fraternity membership can be devastating, and they devolve not on the 18-year-old "man" but on his planning-for-retirement parents.

Like the six-beer policy, the Fraternal Information and Programming Group's chillingly comprehensive crisis-management plan was included in its manual for many years. But in 2013, the plan suddenly disappeared from its pages. When asked why this was so, Dave Westol, a longtime FIPG board member, said, "Member organizations prefer to establish their own procedures, and therefore the section has been eliminated." However, many fraternities continue to rely on the group's advice for in-house risk management, and it is well worth examining if you want to know what takes place in the hours following many fraternity disasters. As it is described in the two most recent editions that I was able to obtain (2003 and 2007), the plan serves a dual purpose, at once benevolent and mercenary. The benevolent part is accomplished by the clear directive that injured parties are to receive immediate medical attention, and that all fraternity brothers who come into contact with the relevant emergency workers are to be completely forthright about what has taken place. And the rest? The plans I obtained recommend six important steps:

1. In the midst of the horror, the chapter president takes immediate, commanding, and inspiring control of the situation: "In times of stress, leaders step forward."
2. A call is made to the fraternity's crisis hotline or the national headquarters, no matter the hour: "Someone will be available. They would much rather hear about a situation from you at 3:27 a.m. than receive an 8:01 a.m. telephone call from a reporter asking for a comment about 'The situation involving your chapter at \_\_\_\_.'"
3. The president closes the fraternity house to outsiders and summons all members back to the house: "Unorthodox situations call for unorthodox responses from leaders. Most situations occur at night. Therefore, be prepared to call a meeting of all members and all pledged members as soon as possible, even if that is at 3 a.m."
4. One member—who has already received extensive media training—is put in charge of all relations with the press, an entity fraternities view as biased and often unscrupulous. The appointed member should be prepared to present a concise, factual, and minimally alarming account of what took place. For example: "A new member was injured at a social event."
5. In the case of the death of a guest or a member, fraternity brothers do not attempt direct contact with the deceased's parents. This hideous task is to be left to the impersonal forces of the relevant professionals. (I know of one family who did not know their son was in any kind of trouble until—many hours after his death, and probably long after his fraternity brothers had initiated the crisis-management protocol—their home phone rang and the caller ID came up with the area code of their boy's college and a single word: coroner). If the dead person was a fraternity member who lived in the house, his brothers should return any borrowed items to his room and temporarily relocate his roommate, if he had one. Members may offer to pack up his belongings, but "it is more likely the family will want to do this themselves." Several empty boxes might thoughtfully be left outside the room for this purpose.
6. Members sit tight until consultants from the national organization show up to take control of the situation and to walk them through the next steps, which often include the completion of questionnaires explaining exactly what happened and one-on-one interviews with the fraternity representatives. The anxious brothers are reminded to be completely honest and forthcoming in these accounts, and to tell the folks from national absolutely everything they know so that the situation can be resolved in the best possible manner.

As you should by now be able to see very clearly, the interests of the national organization and the individual members cleave sharply as this crisis-management plan is followed. Those questionnaires and honest accounts—submitted gratefully to the grown-ups who have arrived, the brothers believe, to help them—may return to haunt many of the brothers, providing possible cause for separating them from the fraternity, dropping them from the fraternity's insurance, laying the blame on them as individuals and not on the fraternity as the sponsoring organization. Indeed, the young men who



typically rush so gratefully into the open arms of the representatives from their beloved national—an outfit to which they have pledged eternal allegiance—would be far better served by not talking to them at all, by walking away from the chapter house as quickly as possible and calling a lawyer.

## The financial consequences of fraternity membership can be devastating, and they devolve not on the 18-year-old “man” but on his planning-for-retirement parents.

So here is the essential question: In the matter of these disasters, are fraternities acting in an ethical manner, requiring good behavior from their members and punishing them soundly for bad or even horrific decisions? Or are they keeping a cool distance from the mayhem, knowing full well that misbehavior occurs with regularity (“most events take place at night”) and doing nothing about it until the inevitable tragedy occurs, at which point they cajole members into incriminating themselves via a crisis-management plan presented as being in their favor?

The opposing positions on this matter are held most forcefully and expressed most articulately by two men: Douglas Fierberg, the best plaintiff’s attorney in the country when it comes to fraternity-related litigation, and Peter Smithhisler, the CEO of the North-American Interfraternity Conference, a trade organization representing 75 fraternities, among them all 32 members of the Fraternal Information and Programming Group. In a parallel universe, the two men would be not adversaries but powerful allies, for they have much in common: both are robust midwesterners in the flush of vital middle age and at the zenith of their professional powers; both possess more dark knowledge of college-student life and collegiate binge drinking than many, if not most, of the experts hired to study and quantify the phenomenon; both have built careers devoted to the lives and betterment of young people. But two roads diverged in the yellow wood, and here we are. One man is an avenger, a gun for hire, a person constitutionally ill-prepared to lose a fight; the other is a conciliator, a patient explainer, a man ever willing to lift the flap of his giant tent and welcome you inside. I have had long and wide-ranging conversations with both men, in which each put forth his perspective on the situation.

Fierberg is a man of obvious and deep intelligence, comfortable—in the way of alpha-male litigators—with sharply correcting a fuzzy thought; with using obscenities; with speaking derisively, even contemptuously, of opponents. He is also the man I would run to as though my hair were on fire if I ever found myself in a legal battle with a fraternity, and so should you. In a year of reporting this story, I have not spoken with anyone outside of the fraternity system who possesses a deeper understanding of its inner workings; its closely guarded procedures and money trails; and the legal theories it has developed over the past three decades to protect itself, often very successfully, from lawsuits. Fierberg speaks frequently and openly with the press, and because of this—and because of the reticence of senior members of the fraternity system to speak at length with meddlesome journalists—the media often reflect his attitude.

For all these reasons, Fierberg is generally loathed by people at the top of the fraternity world, who see him as a money-hungry lawyer who has chosen to chase their particular ambulance, and whose professed zeal for reforming the industry is a sham: what he wants is his share of huge damages, not systemic changes that would cut off the money flow. But in my experience of him, this is simply not the case. Sure, he has built a lucrative practice. But he is clearly passionate about his cause and the plight of the kids—some of them horribly injured, others dead—who comprise his caseload, along with their shattered parents.

“Until proven otherwise,” Fierberg told me in April of fraternities, “they all are very risky organizations for young people to be involved in.” He maintains that fraternities “are part of an industry that has tremendous risk and a tremendous history of rape, serious injury, and death, and the vast majority share common risk-management policies that are fundamentally flawed. Most of them are awash in alcohol. And most if not all of them are bereft of any meaningful adult supervision.” As for the risk-management policies themselves: “They are primarily designed to take the nationals’ fingerprints off the injury and deaths, and I don’t believe that they offer any meaningful provisions.” The fraternity system, he argues, is “the largest industry in this country directly involved in the provision of alcohol to underage people.” The crisis-management plans reveal that in “the foreseeable future” there may be “the death or serious injury” of a healthy young person at a fraternity function.

## Are fraternities acting in an ethical manner, requiring good behavior and punishing poor decisions? Or are they keeping a cool distance from the mayhem, knowing full well that it occurs with regularity?

And then there is Peter Smithhisler, who is the senior fraternity man ne plus ultra: unfailingly, sometimes elaborately courteous; careful in his choice of words; unflappable; and as unlikely to interrupt or drop the f-bomb on a respectful female journalist as he would be to join the Communist Party. He is the kind of man you would want on your side in a tough spot, the kind of man you would want mentoring your son through the challenging passage from late adolescence to young manhood. He believes that the fraternity experience at its best constitutes an appeal to a young man’s better angels: through service, leadership training, and accountability for mistakes, a brother can learn the valuable lessons he will need to become “a better dad, a better teacher, a better engineer, a better pilot, a better ‘insert career here.’” Spend some time talking with Pete Smithhisler, and you can go from refusing to allow your son to join a fraternity to demanding he do so. Indeed, the day after I talked with him, I happened to be at a social gathering where I met two women whose sons had just graduated from college. “The fraternity was what saved him,” one mother said with great feeling. Her son had waited until sophomore year to rush, and freshman year he had been so lonely and unsure of himself that she had become deeply worried about him. But everything changed after he pledged. He had friends; he was happy. When he’d had to have some surgery while at school, his brothers had visited him almost around the clock, bringing him food, keeping up his spirits, checking in with his doctors and charming his nurses. “If only I could have gotten my son to join one,” the other mom said,

wistfully. “I kept trying, but he wouldn’t do it.” Why had she wished he’d pledged a fraternity? “He would have been so much more connected to the college,” she said. “He would have had so many other opportunities.”

Smithhisler was honest about the fact that he is at the helm of an outfit that supports organizations in which young people can come to terrible fates. “I wrestle with it,” he said, with evident feeling. His belief is that what’s tarnishing the reputation of the fraternities is the bad behavior of a very few members, who ignore all the risk-management training that is requisite for membership, who flout policies that could not be any more clear, and who are shocked when the response from the home office is not to help them cover their asses but to ensure that—perhaps for the first time in their lives—they are held 100 percent accountable for their actions. And neither the fraternities nor the insurance company are hiding their warnings that a member could lose his coverage if he does anything outside of the policy. It’s front and center in any discussion of a frat’s alcohol policies; if you don’t follow the policy or if you do anything illegal, you could lose your insurance.

One way you become a man, Smithhisler suggests, is by taking responsibility for your own mistakes, no matter how small or how large they might be. If a young man wants to join a fraternity to gain extensive drinking experience, he’s making a very bad choice. “A policy is a policy is a policy,” he said of the six-beer rule: either follow it, get out of the fraternity, or prepare to face the consequences if you get caught. Unspoken but inherent in this larger philosophy is the idea that it is in a young man’s nature to court danger and to behave in a foolhardy manner; the fraternity experience is intended to help tame the baser passions, to channel protean energies into productive endeavors such as service, sport, and career preparation.

In a sense, Fierberg, Smithhisler, and the powerful forces they each represent operate as a check and balance on the system. Personal-injury lawsuits bring the hated media attention and potential financial losses that motivate fraternities to improve. It would be a neat, almost a perfect, system, if the people wandering into it were not young, healthy college students with everything to lose.

If you want an object lesson in how all of this actually works—how fraternities exert their power over colleges, how college and university presidents can be reluctant to move unilaterally against dangerous fraternities, and how students can meet terrible fates as a result—there can be no better example than the \$10 million Title IX lawsuit filed against Wesleyan University and the Beta Theta Pi fraternity. The plaintiff was a young woman who had been assaulted in the house, and who—in one of the bizarre twists so common to fraternity litigation—ended up being blamed by the university for her own assault.

Wesleyan University, in Middletown, Connecticut, is undergoing the kind of institutional transformation that our relentless fixation on U.S. News & World Report rankings has wrought for a number of colleges and universities in the past three decades. As great as its faculty may be—and it has included, over the years, some of the most renowned scholars in the world—it is the undergraduate population itself that constitutes its most impressive resource. Wesleyan is one of those places that has by now become so hard to get into that the mere fact of attendance is testament, in most cases, to a level of high-school preparation—combined with sheer academic ability—that exists among students at only a handful of top colleges in this country and that is almost without historical precedent. Wesleyan is a school with a large number of aspiring artists—many of whom took, and aced, AP Calculus as 11th-graders.

Still, what the university is perhaps most broadly famous for is its progressive politics, manifest in any number of actions, from the hiring of five Muslim chaplains in the years since 9/11; to the use of the gender-neutral pronouns ze and hir in the campus newspaper; to the creation of a Diversity Education Facilitation Program. The Princeton Review, among other publications, has named Wesleyan America’s most politically active campus, an encomium that appears on the university’s Web site.

During Halloween weekend, Jane Doe got dressed up and went out with some of her friends. “I didn’t have any alcohol to drink all night,” she later told a police investigator.

Given these sensibilities, Wesleyan might not seem the type of institution likely to have a typical fraternity scene, but as we have observed, fraternities are older than political correctness. There are three all-male residential frats at Wesleyan, all founded in the 19th century and occupying a row of large houses on High Street; over the years, they have counted some of the university’s most accomplished and loyal alumni among their members. If you raise the topic of fraternity alumni with a college president in a private moment, he or she will emit the weary sigh of the ancients. The group includes some of the most financially generous and institutionally helpful former students a school may have. But try to do some small thing to bring the contemporary fraternity scene in line with current campus priorities, and you will hear from them—loudly—before you even hit send on the e-mail.

By 2005, Wesleyan had taken such an action: it had pressured all three fraternities to offer residence, although not membership, to female students, if they wanted to be part of university-approved Program Housing. Wesleyan has a rare requirement. All undergraduates, barring those few who receive special allowances, must live either in dorms or in Program Housing. Integrating affinity group housing had lately been on the mind of the administration; recent lack of student interest in living in the Malcolm X House, for example, had ultimately led to that residence’s becoming racially integrated, a charged and in many respects unpopular administration decision. But there was no shortage of fraternity brothers wishing to live in their houses—nor were the houses owned by the university or located on university property, as the Malcolm X House was. Predictably, and perhaps not irrationally, many in the Greek community viewed this new edict as antagonistic toward their way of life.

Two of the fraternities nonetheless agreed to the new directive, retaining access to the buffet of advantages offered to frats that maintain an official relationship with their host universities. Alone among the group, Beta Theta Pi hewed to the oldest of fraternity values: independence. It refused to admit women residents, and thus forfeited its official recognition by the university. Strangely, however, Beta was able to have its cake and eat it too: its members continued to live and party in the house much as they previously had, renting dorm rooms on campus but living at the fraternity, with the full knowledge of the university. This put Wesleyan in a difficult spot; the house remained a popular location for undergraduate revelry, yet the school’s private security force, Public Safety (or PSafe), had lost its authority to monitor behavior there. Meanwhile, fraternity alumni registered their disapproval of the new housing policy in time-honored fashion: “I will reluctantly shift my Wesleyan contributions to the Beta house, to do my part to provide students with the opportunities I was afforded during my time at Wesleyan,” wrote a Beta alum from the class of 1964 to the university’s then-president, Douglas Bennet.

(Due to the potential for the appearance of a conflict of interest, James Bennet, Douglas Bennet's son and the editor in chief of *The Atlantic*, was recused from involvement with this piece.)

What followed was a long, strained period in which Beta brothers—among them a large percentage of the school's lacrosse team—ran an increasingly wild house. In turn, the administration became increasingly concerned about what was happening there, and through back channels began pressuring the fraternity to rejoin Program Housing. But the brothers didn't budge, and reports of dangerous activity—including assaults, burglaries, extreme drinking, and at least two car accidents linked to the house—mounted. Wesleyan had a powerful weapon at its disposal: at any time, it could have ordered the brothers to live in the dorm rooms they had paid for, consistent with the university's housing policy. But for whatever reason, it was loath to do so.

Why wouldn't the university act unilaterally to solve this problem? The answer may involve the deep power that fraternities exert over their host universities and the complex mix of institutional priorities in which fraternities are important stakeholders. Chief among them, typically, is fund-raising. Shortly after the university tightened the housing policy for its fraternities, a new president, Michael Roth, was inaugurated. He came to Wesleyan—his own alma mater, where he had served as the president of his fraternity, Alpha Delta Phi—with an audacious goal: doubling the university's endowment. A man of prodigious personal, intellectual, and administrative talents, with a powerful love of Wesleyan, he was uniquely suited to this grand vision. But no sooner had he taken office than the world economy crashed, dragging down the Wesleyan endowment with it. The endowment was slowly recouping its losses when the university's odd and secretive chief investment officer and vice president of investments was abruptly fired and then sued for allegedly profiting from his position—the kind of scandal that can make potential donors think twice before committing money to an institution. (He denied the charges; the case settled for an undisclosed amount in April 2012.) In this challenging fund-raising environment, taking decisive and punitive action against a fraternity would almost certainly come at a financial cost.

In February of 2010, the university tried a new tack: Wesleyan suddenly dropped the requirement for fraternities to house women. And yet still Beta refused to rejoin the fold and enter Program Housing. By March, the university at last took a decisive action. It sent a strongly worded e-mail to the entire Wesleyan community, including the parents of all undergraduates, warning students to stay away from the Beta house. The e-mail described “reports of illegal and unsafe behavior on the premises,” although it specified only one such behavior, a relatively minor one: the overconsumption of alcohol, leading to hospital visits. This one example hardly matched the tone and language of the rest of the e-mail, which was alarming: “We advise all Wesleyan students to avoid the residence”; “our concern for the safety and well-being of Wesleyan students living at the residence or visiting the house has intensified”; “we remain deeply concerned about the safety of those students who choose to affiliate with the house or attend events there against our advice.”

The university was entirely in the right to send this e-mail; it was an accurate report of a dangerous location. But many parents of Beta brothers were incensed—they felt that their sons had been unfairly maligned to a wide group of people by their own university. Thirty-seven Beta parents signed a letter of protest and sent it to Michael Roth. In it, the parents asked the university to “issue a clarification which retracts the unsupported statements.” No such e-mail was sent—nor, in my view, should it have been. But that angry letter, sent by those outraged parents, was surely noted in the offices of the administration. The Beta brothers, meanwhile, had announced a plan to hire an off-duty Middletown cop to oversee their events, while continuing to deny PSafe access to their house. Roth was unsatisfied, saying, “The notion that Public Safety would have to get permission to enter a place where Wesleyan students, as Wesleyan students, are congregating is unacceptable.”

The school year rolled on. Final exams came, and graduation, and then the students dispersed to their homes and internships and first jobs. Summer ripened into fall, and Wesleyan's newest students bid goodbye to their high-school selves, packed up their bags and crates, and—with excitement and anxiety—traveled to Middletown. Surely these youngest, least experienced, and most vulnerable of Wesleyan's students would be sent the important e-mail that the older ones and their parents had received about the dangerous and unaffiliated fraternity?

They were not. Yes, there undoubtedly would have been a cost to resending the e-mail: more angry Beta parents, fraternity discontent, pressure from Beta alumni and the national organization. But just as clearly, great good could have come from sending it; student safety was at risk. University trepidation and fraternity intransigence were about to produce a tort case. Its plaintiff: a young woman known to us as Jane Doe—18 years old, freshly arrived at Wesleyan from her home in Maryland, as eager as any other new student to experience the excitement of college life.

During Halloween weekend, Jane Doe got dressed up and went out with some of her friends to sample the student parties on and around campus. “I didn't have any alcohol to drink all night,” she later told a police investigator in a sworn statement. “I usually don't drink, and I hang out with people who don't drink either.” At the Beta house, she was “immediately spotted by this guy” who did not introduce himself but started dancing with her. “I was happy that someone was dancing with me,” she told the policeman, “because I got all dressed up.” The man she was dancing with would turn out not to be a Beta member or even a Wesleyan student at all. His name was John O'Neill, and he was the ne'er-do-well high-school-lacrosse teammate of one of the Beta brothers. O'Neill lived in his mother's basement and, according to a Yorktown, New York, police detective, had been arrested for selling pot out of an ice-cream truck earlier that year. That wild fraternity houses are often attractive party locations for unsavory characters is a grim reality. After O'Neill had danced with Jane Doe for about 30 minutes, half a dozen of his pals came over (dressed, as he was, in Halloween costumes consisting of old soccer uniforms) and asked him whether he wanted to smoke some pot upstairs. Jane agreed to go along, although she had no plans to smoke. The group arranged itself in a small bedroom, with Jane sitting next to O'Neill on a couch. He put his arm around her, which was fine with her, and she slipped off her shoes because her feet hurt.

The group then moved to a second room, where the men continued smoking. When the other men had finished smoking, they got up to leave, and Jane, too, stood up and began putting on her shoes, preparing to follow them out, but O'Neill closed the bedroom door and locked it. “What's up?” she asked. He began kissing her, which she at first submitted to, but then pulled away. “He probably thought that I wanted to hook up with him, but I didn't,” she reported. She started for the door again, but he grabbed her by the shoulders and pushed her down onto the couch. “What are you doing?” she cried. “Stop it.”

According to the victim's sworn statement, here's what happened next. O'Neill got on top of Jane, straddling her chest and shoulders so she couldn't move; pulled down his shorts; and shoved his penis into her mouth. She struggled, and bit his penis. He slapped her and called her a bitch. Then he pulled up her dress, yanked off her tights, and forced his penis into her vagina. “The more you try, the faster you are going to get out of here,” he said, and covered her mouth with his hand so she couldn't scream for help. Some 10 minutes later, it was over. Jane pulled on her tights and ran downstairs and out of the fraternity house. On the street, hysterical, she ran into a male friend and asked him to walk her back to her dorm. Inside, she found a girlfriend who comforted her, staying nearby while she showered, giving her cookies, reading to her until she fell asleep. Following some spectacular bungling on Wesleyan's part (for instance, no one was at Health Services to help her, because it was a weekend), Jane went to the health center on Monday, then to two deans and eventually, after her parents and brother strongly encouraged her to do so, to the police. The criminal-justice system began its swift, efficient



process, resulting in O'Neill's conviction. (He was initially charged with first-degree sexual assault and first-degree imprisonment, but eventually pleaded no contest to lesser charges of third-degree assault and first-degree imprisonment. He was sentenced to 15 months in prison.)

John O'Neill was not a member of Beta Theta Pi, but fraternities are no strangers to acts of violence committed in their houses by nonmembers. The fraternity followed the standard playbook, expressing sympathy for all victims of sexual assault and reasserting its zero-tolerance policy for such crimes. The brothers cooperated fully with the police and other authorities, which led to the capture of the criminal; and the actions of the individual assailant were forcefully asserted to have been in no way conducted under the auspices of the fraternity.

But back on campus, this level of coolheaded professionalism was nowhere to be seen. A second e-mail regarding Beta was sent out, this one attesting to reports (plural) of sexual assaults at the fraternity house "during recent parties"; noting that these reports "renewed our concern" expressed in the e-mail sent before Jane Doe's enrollment; and strongly encouraging students to stay away from the house. Next, Michael Roth issued an edict that he would come to regret: no Wesleyan student could so much as visit any private society lacking recognition by the university. His declaration was obviously intended to shut down Beta or bring it into the fold—but it did so in the same roundabout manner in which the university had been dealing with Beta all along. Its implications were unintentionally far-reaching, and Wesleyan students immediately protested it, holding "Free Beta" rallies; in one instance, a car full of young men shouted the slogan as Jane Doe walked miserably back to campus after visiting the police station. That student sympathies would array themselves so strongly on the side of a fraternity in whose chapter house a sexual assault had occurred, and so negligibly on the side of the young victim of that assault, was the kind of eccentric Wesleyan reaction that no one could have predicted.

Meanwhile, a nonprofit organization called FIRE, the Foundation for Individual Rights in Education, got involved, sending an open letter to President Roth informing him that his action posed a grave threat to Wesleyan students' right to the freedom of association, violated the university's own "Joint Statement on the Rights and Freedoms of Students," and might have consequences extending even to the local Elks Lodge and the Middletown Italian Society—hardly hives of Wesleyan undergraduate activity, but the organization had made its point.

The embattled president retrenched: he published a statement titled "Housing Policy and Threats to Student Freedom," in which he deemed his previous policy "just too broad," retracted most of it, and—in what has become a hallmark of his tenure—lavishly praised the student activism that it had engendered. "I want to thank the vocal Wesleyan undergraduates for reminding their president to be more careful in his use of language, and to be more attentive to student culture. Of course, I should have known this already, but hey, I try to keep learning."

Strictly speaking, the newest policy should not have ended the Free Beta protests, nor should it have assuaged activists' concern about threats to student freedom—because Roth also asserted in his statement that nothing had changed in regards to Beta: if the fraternity did not join Program Housing by the start of the next semester, the fraternity would be "off limits" to all students. Anyone who violated this rule would face "significant disciplinary action." It was high-handed treatment, it trampled on students' freedom of association, and it was entirely within Roth's rights. Wesleyan is a private university, and as such can establish requirements about students' private behavior essentially at the whim of the administration—the "Joint Statement on the Rights and Freedoms of Students" be damned. And it worked. The Free Beta protests ended, the fraternity agreed to rejoin Program Housing, student activism moved on to its next pressing target of opportunity, and the Beta brothers enjoyed a defrosting of their relationship with the university.

It turned out that in the heel of the hunt, with the situation at the Beta house becoming so out of control that the Middletown police department was aggressively investigating the alleged violent rape of a Wesleyan student, the university finally decided to act unilaterally against Beta, imposing a potentially unpopular decision that would surely go a long way toward improving student safety. Why hadn't it done so earlier? Why had it spent so many years in protracted, back-channel negotiations with the fraternity, in a pointless campaign to cajole it into voluntarily rejoining Program Housing, when it could have pulled the trigger on this effective solution at any time? And—most pressing of all—why had it taken the assault of a freshman to get the university to finally take decisive action?

All of these questions were perhaps most pressing to Jane Doe, who had not gone back home to Maryland to nurse her wounds in private. Justly outraged by what had happened to her, as well as by what she saw as her own university's complicity in it, she had joined forces with Douglas Fierberg, and together they built a case of formidable moral rightness.

Jane Doe filed a \$10 million lawsuit in federal court against, in the main, Wesleyan and Beta Theta Pi, asserting that the events leading up to, including, and following Halloween weekend 2010 constituted a violation of the rights guaranteed her through Title IX legislation. It's hard to see how she wasn't right about this. She ended up withdrawing from a top university because that institution refused to take actions that could have prevented the assault, or, at the very least, to provide her with information she could have used to protect herself from it.

Wesleyan's affirmative defense—part of its answers to the lawsuit's complaint—was of a mien familiar to anyone with knowledge of how the civil litigation of rape cases unfolds. It was expedient, a shrewd legal strategy designed to protect the university from a guilty verdict and a huge settlement. It was also morally repugnant. Wesleyan's president has said the university is engaged in a "battle against sexual assault"; has averred—as recently as last April—that "survivors of assault must be supported in every way possible"; and has committed himself to ending the "epidemic" of sexual violence at Wesleyan. But here's how the university supported this particular survivor of sexual violence, who dared to stand up against the mighty force of Wesleyan with her claim of mistreatment: it blamed her for getting raped.

According to Wesleyan—courageous combatant in the "battle against sexual assault"—Jane Doe was responsible for her own rape because she was "not alert to situations that could be misinterpreted"; "did not remain in a public place [but rather went to a private room] with a person with whom she was unfamiliar"; "failed to make reasonable and proper use of her faculties and senses"; and failed "to exercise reasonable care for her own safety." I disagree. Jane Doe's sworn statement describes a series of sound actions taken toward the care of her own safety—including making the decision not to drink or use drugs, attempting to exit a room when she was about to be left alone in it with an unfamiliar man who had used drugs, and attempting to fight him off when he began attacking her. But she was physically restrained by a powerfully built man intent on assaulting her.

Surely there are many collegiate sexual encounters that fall into legally ambiguous territory; a number of Americans, among them reasonable people of good will, believe that "regretted sex" on the part of jilted coeds is as responsible for college "rape culture" as is male aggression. This is not one of those cases. This was a violent assault that occasioned a police investigation, an arrest, criminal charges, a conviction, and a jail sentence. To suggest—let alone to assert in federal court—that this event was the result of Jane Doe's negligence would be ugly if it were part of a rape case involving, say, the U.S. military. For it to be asserted on behalf of an American university against one of its own young students is even more astonishing. What it reveals is less Wesleyan's true attitude toward assault and its victims (surely there was distaste within the Wesleyan inner sanctum for the line of attack waged in the university's name against its former student) than the marshy ground of the progressive politics that underpins so much of the university's rhetoric. It's fine to announce a war against sexual violence—but, once the chips are down, it's quite another thing to write a \$10 million check. Wesleyan's sexual-assault victims could be

forgiven for assuming that, no matter what, their institution would never blame them for their attack. (Michael Roth and Wesleyan repeatedly declined to discuss the case, or anything related to this article, on the grounds that they did not want to comment on confidential matters pertaining to a lawsuit. Later, when The Atlantic sent President Roth an advance copy of the article a few days before publication, the university provided [an official response](#). Douglas Fierberg, Jane Doe's attorney, also declined to talk about her case or anything relating to it, citing similar reasons.)

This January, after publishing a withering series of reports on fraternity malfeasance, the editors of Bloomberg.com published an editorial with a surprising headline: "Abolish Fraternities." It compared colleges and universities to companies, and fraternities to units that "don't fit into their business model, fail to yield an adequate return or cause reputational harm." The comparison was inexact, because colleges aren't businesses, and fraternities do not operate as divisions of a corporate structure helmed by institutions of higher learning. They are private societies, old and powerful, as deeply woven into the history of American higher education as nonreligious study. A college or university can choose, as Wesleyan did, to end its formal relationship with a troublesome fraternity, but—if that fiasco proves anything—keeping a fraternity at arm's length can be more devastating to a university and its students than keeping it in the fold.

Clearly, the contemporary fraternity world is beset by a series of deep problems, which its leadership is scrambling to address, often with mixed results. No sooner has a new "Men of Principle" or "True Gentlemen" campaign been rolled out—with attendant workshops, measurable goals, initiatives, and mission statements—than reports of a lurid disaster in some prominent or far-flung chapter undermine the whole thing. Clearly, too, there is a Grand Canyon-size chasm between the official risk-management policies of the fraternities and the way life is actually lived in countless dangerous chapters.

Articles like this one are a source of profound frustration to the fraternity industry, which believes itself deeply maligned by a malevolent press intent on describing the bad conduct of the few instead of the acceptable—sometimes exemplary—conduct of the many. But when healthy young college students are gravely injured or killed, it's newsworthy. When there is a common denominator among hundreds of such injuries and deaths, one that exists across all kinds of campuses, from private to public, prestigious to obscure, then it is more than newsworthy: it begins to approach a national scandal.

Universities often operate from a position of weakness when it comes to fraternities—for far too long, this is what happened with Wesleyan and Beta Theta Pi. The one force that may exert pressure on the fraternities to exact real change is the lawsuit. Plaintiffs have stories to tell that are so alarming, fraternities may, perhaps, be forced to do business differently because of them.

Perhaps.

Last spring, Wesleyan sent yet another e-mail about Beta Theta Pi to the student body. It reported that in the early-morning hours of April 7, a Wesleyan student contacted PSafe to report that she had been attacked at the Beta house. Interviewed by Wesleyan campus police, she reported that while she was at the house, an unknown male had knocked her to the floor, kicked and hit her, and then attempted to sexually assault her. During the assault, the suspect was distracted by a loud noise, and the young woman escaped. She was later treated at the Middletown hospital for several minor injuries.

In August, quietly and while students were away, Wesleyan and Beta Theta Pi settled with Jane Doe, who now attends college in another state.

From our archives

#### The Hazards of Duke

"With a social scene dominated by fraternities and sororities (a way of life consisting of ardent partying and hooking up, offset by spurts of busywork composing angry letters to campus newspapers and taking online alcohol-education classes), ... [Duke] is a university whose thoughtful students are overshadowed by its voraciously self-centered ones."

[Read the full story](#) by Caitlin Flanagan in the Jan/Feb 2011 issue.