

Executive Summary of Barnes & Thornburg Investigation into Pi Kappa Alpha Fraternity (PKA) Event on March 4, 2021

A. Background on Engagement of B&T as Special Counsel

On March 15, 2021, Barnes & Thornburg LLP (“B&T”) was retained by the Ohio Attorney General’s Office on behalf of Bowling Green State University (“BGSU” or the “University”) as Special Counsel to conduct an investigation into the facts surrounding the PKA event held on March 4, 2021 (“Big Little”), including how or if Big Little contributed to the death of new member Stone Foltz. The investigation also included information related to past Big Little events, including traditions surrounding or associated with it. Barnes & Thornburg assigned Attorney David DeVillers to work with the BGSU Office of General Counsel to conduct the investigation and draw factual conclusions surrounding the March 4, 2021, Big Little event, based on the evidence collected, taking into account the quality and reliability of that evidence. The findings are intended to be used by BGSU to determine if the University’s Code of Student Conduct (“Code”) was violated by the Pi Kappa Alpha (“PKA”) fraternity or any of PKA’s members.

B. Investigatory Process

During the course of the investigation, Mr. DeVillers coordinated with BGSU General Counsel and was assisted by Jeremy Zilmer, BGSU Associate Dean of Students, in conducting a total of 32 interviews. The interviewees included the following: seven new members of PKA (those students pledging the fraternity); 16 active members of PKA; one former member of PKA; each of Mr. Foltz’s three roommates; three of Mr. Foltz’s friends who saw him the night of Big Little; and two individuals who acted as designated drivers for new members on the night of Big Little.

In addition to the evidence obtained through the interview process detailed, B&T also received and reviewed documents from BGSU including prior reports and investigations of hazing by PKA in recent years. Many of the aforementioned individuals interviewed in relation to the March 4 event were forthcoming in providing first-hand accounts of previously concealed facts surrounding PKA Big Little events over the last several years, which gave investigators a window into the history of PKA’s Big Little tradition. B&T also received and reviewed documents from

the City of Bowling Green Police Department, the Pi Kappa Alpha national fraternity, the Lucas County Coroner's Office, and the Law Office of Cooper & Elliott, who represent the Foltz family. B&T also received and reviewed an audio of the 911 call made from Mr. Foltz's apartment on the night of March 4, 2021.

C. *Factual Summary*

On February 7, 2021, nine new members of PKA officially affirmed they would pledge the fraternity. These new members included Stone Foltz. The age and class of each "new member" varied. Foltz was a 20-year-old sophomore. As part of the pledge process, the first official New Member Education Meeting took place on Tuesday, February 9, 2021. The PKA pledge material referred to pledges as "new members" and the pledge process as "New Member Education." During the pledge process, New Member Education nights were scheduled for every Tuesday and Thursday evening. The purpose of these evenings was to teach "the history, facts, and traditions of Pi Kappa Alpha, and to instruct the New Members in the workings of the Fraternity." An active member served as the New Member Educator for the Spring 2021 pledge class. There were also two active members who served as New Member Educator assistants. The New Member Educator and his two assistants ran and oversaw the pledge program and were responsible for providing the new member education required by the PKA New Member Handbook. The PKA New Member Handbook lists eight "expectations" for new members. The first expectation is to "[a]ttend all meetings, rituals, and mandatory events." The Big Little night is listed as a mandatory event. The second expectation is to "[b]e adequately prepared for quizzes and Big Little." Big Little is the only event specifically mentioned in the "expectations" section of the New Member Handbook. It is unclear how long PKA has held Big Little night, but Big Little was consistently described as a traditional event where the new member (Little) is introduced to his mentor (Big). The Big is always an active member who is expected to assist his Little through the pledge process. The common elements of past Big Little events included new members being blindfolded with the tie they were wearing, being introduced to their Big, and being provided a "family bottle" of alcohol by the Big.

Despite explicit acknowledgement by each member of the University’s prohibition on hazing¹ and contrary to PKA guidance², witnesses described a tradition within the fraternity for encouraging new members to not just drink, but to finish or attempt to finish the family bottle. Binge drinking involving underage students, whether new or active members, occurred at the prior Big Little events attended by all active members interviewed. A new member class was conducted on Tuesday March 2, 2021, in which new members were told that Big Little would be held two days later, on Thursday, March 4.

In the days leading up to the Big Little, the new members were not specifically told what would happen at the Big Little, but there was a general understanding that there would be heavy drinking. Some new members recalled being told to have an “open mind” about the event. All assumed they would be hungover the next morning. Stone Foltz was apprehensive about the event, and he told non-PKA friends that he felt he had to drink an entire bottle of liquor or he could not join PKA.

On the evening of March 4, 2021, at approximately 8:30 p.m., all nine new members of PKA met outside of 318 North Main Street for the Big Little. A number of current PKA members lived at this off-campus house, which was commonly known as the “Bando.” Outside the house, new members were instructed to use their ties as blindfolds. Once blindfolded, the new members were led into the basement of the Bando house in a single file line. The new members described loud music, being mildly pushed around and lots of yelling as they walked through a tunnel of active members. The basement was separated into two rooms by a wall, but there were no doors. There were a number of trashcans in the basement, and the new members were told to use them to vomit in. Once new members were paired off with their Big, their ties were removed, and they were introduced to their Big. Each Big then handed their Little “the family bottle” of liquor. A family bottle was described as the same type and brand of alcohol received by the Big during Big Little in a prior semester and was understood to have traced back over multiple generations of

¹ BGSU Fraternity and Sorority Prospective Membership Agreement – Policy on Hazing states in part – “[T]he BGSU community is unconditionally opposed to any situation created intentionally to produce mental or physical discomfort, embarrassment, harassment or ridicule...Hazing is a Code of Student Conduct violation and a crime in Ohio...I will not allow anyone to violate or abuse my rights as an individual, the Policy on Hazing, or state laws on hazing.” The Code of Student Conduct specifically lists “forcing an individual to...consume any food, liquid, drug, or other substance” as an incident of hazing.

² The PKA New Member Handbook (Handbook) explains under “Expectations of active members with regards to new members”, that “[u]nder NO circumstances will hazing of any nature be tolerated” by active members. The Handbook specifically lists “encouragement to drink” as an incident of hazing.

prior Bigs. The type and brand of liquor differed depending on the “family,” but the size of the bottle was consistently described as a “fifth” or approximately 8 to 10 inches high. After the Littles received the family bottle that evening, a “celebration” began and the Littles began to drink from the family bottle and to socialize, primarily with their Big. Most of the Bigs provided chasers to their Littles to mix with the family bottle. Some of the Bigs also drank from or poured out the family bottle, so as to “help” their Little. Other active members encouraged and “rooted on” the Littles by saying “chug,” “drink,” “take a pull,” “take a swig” and “pour more in to his cup.” Eight of the nine new members drank alcohol the night of Big Little. All but one was under the age of 21. Nearly all of the members who drank got sick and vomited at least once that evening. The majority of the new members drank all or nearly the entire family bottle, one drank at least half of the family bottle, and one pretended to finish by pouring some out. One new member did not drink at all the night of Big Little. All of the new members stated that the non-drinking new member had an excuse but differed as to what that excuse was.

An active member of PKA provided Stone Foltz the family bottle. The family bottle was a bottle of Evan Williams bourbon. Foltz was witnessed finishing the entire bottle. By one account, Foltz finished the entire bottle in approximately 20 minutes. A number of other witnesses saw Foltz get sick at the Bando. A number of witnesses state that Foltz could not walk on his own and that PKA members helped him out of the house and into a car. Foltz was taken back to his apartment by two active members and one new member. It was stated that all three individuals helped Foltz into his apartment and onto a couch in the living room and stayed with him for a short period of time, before leaving him on the couch.

A short time later, Foltz’s roommate arrived at the apartment to find Foltz alone, passed out on the couch. After growing concerned, Foltz’s roommate called other friends of Foltz’s, three of whom arrived shortly after. The four friends grew concerned about Foltz’s breathing and moved him so that he would be upright. Minutes later, friends call 911. The 911 operator called for an ambulance and CPR was performed until medics arrived.

Foltz was taken to the Wood County Hospital and, eventually, The Toledo Hospital. He was placed on life support and died two days later. The Lucas County Coroner’s Report lists the date of injury as March 5, 2021, and time of death as March 7, 2021, at 7:04 p.m. The opinion as to cause of death is fatal ethanol intoxication. The toxicology report puts Foltz’s blood alcohol content at .35%.

D. Factual Conclusions

PKA leadership instructed new members that attendance at Big Little on March 4, 2021, was mandatory and knew there would be binge drinking involving underage new members.

PKA leadership were in a position of trust and authority over new members. Within that position of trust and authority, PKA leadership held significant sway and influence over the actions and conduct of new members. This included establishing the requirements that a new member would have to complete in order to be initiated as an active member. The PKA New Member Handbook states the following: “Before you can become a brother of Pi Kappa Alpha, you will have to meet some expectations laid forth. These include: Attend all meetings, rituals, and mandatory events. [and] Be adequately prepared for quizzes and Big Little.” As described above, binge drinking, including attempts to finish an entire 750 ml bottle of liquor, was a known aspect of Big Little. Each member of PKA leadership and the active members present at the Big Little on the night of March 4, 2021, were aware of this fact. Accordingly, those in PKA leadership who were present at Big Little on March 4, 2021, or involved in its planning, used their position of trust and authority to create a situation that created a risk to new members. According to interviews, numerous PKA active members in leadership were present at or involved in the planning of Big Little on March 4, 2021.

New members were not told they had to finish the family bottle as a requirement of pledging.

Statements by friends of Stone Foltz make clear that he was under the impression, in the days leading up to the Big Little, that he had to finish the family bottle as part of the PKA pledge process. Despite this impression, no witness interviewed stated that they were told by or heard a PKA member specifically state that finishing the family bottle on the night of Big Little was a requirement of pledging. In addition to the evidence that no such requirement was ever directly communicated, multiple instances of PKA new members either not drinking at all on the night of Big Little or not finishing their bottle were described. Furthermore, PKA documents reviewed do not state that finishing the family bottle is a requirement of pledging PKA. Given this evidence, B&T believes it can be concluded that there was no “formal” requirement that new members had to finish their family bottle on the night of Big Little.

There is a culture and tradition of new members finishing or attempting to finish an entire fifth of alcohol at Big Little.

Notwithstanding the lack of evidence of a “formal” requirement, there appears to be a tradition, spanning at least as far back as 2017, within PKA for new members to finish or attempt to finish the family bottle of liquor provided to the new member on Big Little. This existence of this tradition is supported by the statements of both active and new members, as well as actions taken by active members in preparation for the Big Little event. Multiple active and new PKA members indicated during their interview that they finished their family bottle on Big Little night. This includes the majority of new members who participated in Big Little on the night of March 4, 2021, when Stone Foltz suffered his fatal injuries. Additionally, one of the new members who did not finish their bottle on March 4 admitted to pouring out half of the bottle to make it appear as though he finished it. Furthermore, eight of the active members who previously participated in Big Little admitted during their interview that they themselves finished either half or the entire family bottle provided to them at their Big Little night.

The evidence indicates, both based on perception and actual conduct, that each new member was following the “history, facts and traditions of Pi Kappa Alpha.”³ Further, both new and active members talked about a social pressure or expectation surrounding finishing the family bottle. This pressure was described in different ways, including wanting to seem cool in front of one’s Big or active members encouraging Littles to take a “swig” or “pull” from the bottle. What is clear is that the atmosphere of Big Little promoted a feeling among new members that there was value in finishing one’s family bottle. All of which points to a finding that this history and tradition was passed on from Big to Little and from active member to new member.

PKA members and leadership were well aware of the tradition of finishing the family bottle and made preparations in anticipation of the event on March 4. These preparations included: advising the new members to cancel classes and/or work the morning of March 5 in anticipation of being hungover; arranging for designated drivers and minders to assist with intoxicated new members; arranging for numerous garbage cans to be placed in the basement in anticipation of new members vomiting; and telling new members to bring bread and water to the event to provide a “base” for alcohol and to stay hydrated. The process of identifying minders is especially telling.

³ (New Member Handbook p.3)

It demonstrates that active members were aware and cognizant of the danger posed by the event, and that new members would need to be monitored for safety reasons.

PKA active members provided alcohol to underage new members and encouraged binge drinking.

At least seven PKA active members (Bigs) directly provided alcohol to underage new members at Big Little. New members interviewed also corroborated this. There is also evidence that three active members indirectly provided alcohol to underage new members at Big Little with reports that they purchased or provided alcohol to Bigs that were eventually provided to Littles. Statements clearly supported that it was known that binge drinking would occur on the night of March 4, 2021. Consistent with this reality, most of the new members and some of the active members described how active members encouraged binge drinking by the Littles at the event. This took the form of “rooting on” or telling Littles to “chug.” In some cases, this took a very aggressive form. Some of the witnesses described active members pouring more liquor into the Little’s cup or dissuading the other active members from drinking from the family bottle, thereby making the Littles have to consume more to finish the bottle. This encouragement and pressuring resulted in nearly every new member that drank on March 4 vomiting at least once that evening. When asked which active members were aggressively encouraging binge drinking, the new members were either too drunk to remember or reluctant to give names.

Stone Foltz died of acute ethanol intoxication resulting from the events at the Big Little the night of March 4, 2021.

There is no evidence to suggest that there was an intervening cause or a preexisting medical condition that contributed the death of Stone Foltz. The Lucas County Coroner’s Report lists cause of death as “FATAL ETHANOL INTOXICATION DURING HAZING INCIDENT.”⁴ Nothing in this investigation conflicts with that conclusion.

⁴ (Lucas County Coroner’s Report p.1)