

# “MIDNIGHT WITHIN THE MORAL ORDER”<sup>1</sup>: ORGANIZATIONAL CULTURE, UNETHICAL LEADERS, AND MEMBERS’ DEVIANCE

GREGORY S. PARKS<sup>†</sup>

It is also midnight within the moral order. At midnight, colors lose their distinctiveness and become a sullen shade of grey. Moral principles have lost their distinctiveness. For modern man, absolute right and wrong are a matter of what the majority is doing. Right and wrong are relative to likes and dislikes and the customs of a particular community. We have unconsciously applied Einstein’s theory of relativity, which properly described the physical universe, to the moral and ethical realm.

Midnight is the hour when men desperately seek to obey the eleventh commandment, "Thou shalt not get caught." According to the ethic of midnight, the cardinal sin is to be caught and the cardinal virtue is to get by. It is all right to lie, but one must lie with real finesse. It is all right to steal, if one is so dignified that, if caught, the charge becomes embezzlement, not robbery. The Darwinian concept of survival of the fittest has been substituted by a philosophy of the survival of the slickest.<sup>2</sup>

## INTRODUCTION

In 2009, Herman “Skip” Mason, national president of the oldest intercollegiate fraternity founded by African American men, issued a press release. In it and in light of recent alleged hazing incidents involving Alpha Phi Alpha members, he underscored that the fraternity would not and did

---

<sup>†</sup> Gregory S. Parks, Assistant Professor of Law, Wake Forest University School of Law. The author thanks Joshua Adams, Jordan Dongell, Zachary Dunn, Joyce Kennedy, Michael Klotz, Claire Little, Justin Philbeck, Davis Phillips, and Eboni Robinson for the research assistance. For the sake of disclosure, it should be noted that the author was a whistleblower in the Herman Mason/Alpha Phi Alpha incident. Facts of that case—like facts of the Alpha Kappa Alpha, Zeta Phi Beta, and Phi Beta Sigma financial malfeasance—that are not publicly accessible via court documents and reputable media accounts are not divulged in this article.

1. CLAYBORNE CARSON & PETER HOLLORAN, *A KNOCK AT MIDNIGHT: INSPIRATION FROM THE GREAT SERMONS OF REVEREND MARTIN LUTHER KING, JR.* (Hachette Digital 1998) (2001).

2. *Id.*

not condone hazing.<sup>3</sup> He “assure[d] every ‘good standing’ brother of Alpha, that the leadership [was] moving swiftly to identify, charge and prosecute any person who ha[d] violated [the organization’s] standing orders or [its] Constitution or brought harm to the fraternity or any of our members.”<sup>4</sup> Mason went on to state:

We will take every legal means at our disposal, both civil and criminal, to charge and bring to justice any person who commits a crime and tarnishes our good name in the process. Internally, any chapter or fraternity member that participates in any activity that violates our rules and regulations can expect to face stiff penalties, including suspension and/or expulsion. Further, as a matter of our process for membership intake, any man who suspects, or witnesses any suspicious activity [is] obligated and encouraged to let the fraternity know. We applaud any young man who exposes hazing at any college or university.<sup>5</sup>

In time, Mason would be found to have, arguably, engaged in conduct that would result in his removal as General President.<sup>6</sup> How ironic.

Leaders who have qualities that are admired by others—e.g., charisma, confidence, drive—are sometimes able to produce exceptional results for the organizations they lead; however, under the wrong set of circumstances, leaders can be the cause of their organization’s downfall.<sup>7</sup> Authentic leaders “engage in self-transcending behaviors because they are intrinsically motivated to be consistent with high-end, other-regarding values that are shaped and developed through the leader’s life experiences.”<sup>8</sup> Their behavior and decisions are guided “not by situational imperatives but by reference to an examined template.”<sup>9</sup> A leader’s template may be based on the ideals of religion, philosophy, legislation, rule of law, or organizational values.<sup>10</sup> No matter the basis, the template allows the leader to lead while

---

3. Herman “Skip” Mason, Jr., *Hazing is not condoned by Alpha Phi Alpha Press Release*, ALPHA PHI ALPHA (Dec. 9, 2009), <http://www.alpha-phi-alpha.com/PressNewsDetails.php?newsID=121&newsCat=Press%20Release>.

4. *Id.*

5. *Id.*

6. *Alpha Phi Alpha Names Acting General President: 33rd General President Mason’s Suspension Leaves Vacancy*, THE SPHINX, Winter/Spring 2012, at 14.

7. Stephen Chen, *Bolstering Unethical Leaders: The Role of the Media, Financial Analysts and Shareholders*, 10 J. PUB. AFF. 200, 213 (2010).

8. Carla C. J. M. Millar, Roger Delves, & Phil Harris, *Ethical and Unethical Leadership: Double Vision?*, 10 J. PUB. AFF. 109, 110 (2010).

9. *Id.*

10. *Id.*

staying true to his or her deeply held values, moral compass, and belief in organizational values.<sup>11</sup>

A leader must be able to “convey the importance of the organization’s ethical values to members, thereby influencing expectations and shared perceptions.”<sup>12</sup> He or she can do so via many means—e.g., values-based leadership, setting an example, establishing clear expectations of ethical conduct, providing feedback, coaching and supporting ethical behavior, and recognizing and rewarding behaviors that support organizational values.<sup>13</sup> Consistency, however, is the key to establishing and portraying a leader’s and an organization’s ethical standards.<sup>14</sup>

Unethical leadership presents a serious challenge for a well-functioning organization.<sup>15</sup> An unethical leader may compromise standards based on the situation—e.g., top performers and executives held to different standards.<sup>16</sup> He may use his own interests as the metric for appropriate conduct instead of the interests of the organization.<sup>17</sup> He may be unwilling to address ethical issues unless they are safe or uncomplicated.<sup>18</sup> He may avoid making ethics an issue, ignore ethical issues, or address them covertly.<sup>19</sup> He may avoid taking action on ethical issues for expedience sake or take action only when forced to do so.<sup>20</sup> He may downplay ethics by treating them as something “nice” to do, but not as a required endeavor.<sup>21</sup> He may minimize his personal responsibility for supervision of ethical issues and conduct.<sup>22</sup>

Unethical leaders may be influenced by “the culture of competition, ends-biased [thinking], missionary zeal, legitimizing myth [as defined by image management and ‘just cause’ conviction], and the corporate cocoon

---

11. *Id.*

12. *Id.* at 111.

13. *Id.*

14. *Id.*

15. Jennifer Dunn & Maurice E. Schweitzer, *Why Good Employees Make Unethical Decisions: The Role of Reward Systems, Organizational Culture, and Managerial Oversight*, in *MANAGING ORGANIZATIONAL DEVIANCE* 39, 40 (Roland E. Kidwell, Jr. & Christopher L. Martin eds., Sage Publ’ns 2005).

16. Ronald R. Sims & Johannes Brinkmann, *Leaders as Moral Role Models: The Case of John Gutfrund at Saloman Brothers*, 35 *J. BUS. ETHICS* 327, 337 (2002).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

[which encourages an ‘us against the world’ frame of mind].”<sup>23</sup> Although public knowledge of unethical behavior within organizations focuses on the unethical behavior of top-ranking leaders, unethical conduct often “pervade[s] all levels of organization life.”<sup>24</sup> According to one study, 76% of employees reported observing illegal or unethical conduct at work; 49% of study participants reported observing serious misconduct.<sup>25</sup> Small and large ethical failures “may be more frequent” in organizations and “can easily grow into larger problems.”<sup>26</sup>

Organization leaders can take actions to significantly impact ethical behavior within their organization.<sup>27</sup> By managing not only *what* subordinates produce, but also *how* subordinates achieve their outcomes, leaders can encourage ethical decision-making at all levels.<sup>28</sup> Leaders can encourage ethical behavior by creating a positive organizational culture, utilizing effective reward systems, and addressing the causes of unethical behavior.<sup>29</sup> Organizations depend on leaders to oversee subordinate contributors to the organization. In a sense, without ethical leaders, organizations falter. “Failure by top leaders to identify key organizational values, to convey those values by personal example, and to reinforce them by establishing appropriate organizational policies demonstrates a lack of ethical leadership,” which in turn “fosters an unethical organizational culture.”<sup>30</sup>

Leaders are the face of the organization; “the image of the business leader will affect how others choose to deal with the company and will have long-term effects as managers and employees look to the highest level for their cues as to what is acceptable.”<sup>31</sup> Research suggests that employees will respond to difficult situations unethically if “an organization’s leadership furthers an immature, unclear, or negative ethical climate.”<sup>32</sup> When an organization’s culture does not have clear boundaries for what is acceptable behavior and what is not, the culture “predisposes its members

---

23. Dennis R. Balch & Robert W. Armstrong, *Ethical Marginality: The Icarus Syndrome and Banality of Wrongdoing*, 92 J. BUS. ETHICS 291, 301 (2002).

24. Dunn, *supra* note 15, at 40.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 41.

29. *Id.*

30. Sims, *supra* note 16, at 327.

31. *Id.* at 328.

32. *Id.* at 330.

to behave unethically[.]” even if members are otherwise ethical individuals.<sup>33</sup>

In crafting the organization’s culture, leaders must take steps to guide the ethical behavior within their organization or risk that ethical employees will engage in unethical actions. The way a leader deals with crises is especially powerful in forming employees’ perception of the organization’s values.<sup>34</sup> For example, if a leader attempts to cover-up illegal or unethical behavior in his or her organization, employees may perceive that the leader accepts such behavior and be motivated to commit unethical acts.<sup>35</sup> On the other hand, if a leader rewards those who act ethically and punishes those who act unethically, then the leader reinforces the positive values that support the organization.

This article explores the role of leadership ethics and its possible impact on rank-and-file membership behavior in the non-corporate setting. Specifically, it investigates a type of quasi-secret organization: black fraternal networks. In sum, this article contends that the financial crimes against these organizations by the national presidents of these organizations and the failure of other leaders in the organizations to hold said individuals accountable is parallel in structure to crimes (i.e., hazing) committed largely by collegiate members. Even more, such crimes by these national heads may go so far as to foster a culture within these organizations of unethical and illegal conduct. In section I, the article explores the parallel issues that arise in the context of unethical/criminal conduct both among national leadership and rank-and-file college members of black fraternal networks. In section II, the article describes the nature of black fraternal networks and explores four incidents of embezzlement or fraud committed by these organizations’ national leaders. In section III, the article highlights the problem of hazing as a legal issue vis-à-vis these organizations, and how a sampling of these incidents reflects a broader organizational culture reflected in the conduct of those at the very top of the organizations.

## I.

It is not the contention of this article that corruption among black Greek-letter organization (“BGLO”) leadership is the cause of hazing

---

33. *Id.*

34. *Id.* at 332.

35. *Id.*

within these groups. Rather, the point is that there is a parallel approach and culture in how financial crimes are handled when the national heads of BGLOs commit such acts and how hazing is resolved by hazers within these groups. Specifically, the parallel structure includes the use of intra-organizational secrecy, sanctions against whistleblowers, and lack of opposition to the criminal behavior by those in roughly similar positions of power. Legal scholarship and research in the area of business, especially good organizational governance, on these three issues outside of BGLOs helps shed light on the ways in which these concepts may be brought to bear on the organizational culture of BGLOs.

#### A. Secrecy

A century ago, United States Supreme Court Justice Louis Brandeis noted that “[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”<sup>36</sup> Justice Brandeis’ ideas on the virtues of publicity originated over twenty years prior to his perspicacious statement, when he expressed an interest in writing a companion piece to his article, *The Right to Privacy*. This time, however, he wanted to focus on the duty of publicity. He thought “about the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men.”<sup>37</sup> His proposed prophylactic approach was that, “[i]f the broad light of day could be let in upon men’s actions, it would purify them as the sun disinfects.”<sup>38</sup> Jeremy Bentham, noted legal philosopher, underscored these sentiments:

Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of

---

36. Louis D. Brandeis, *What Publicity Can Do*, HARPER’S WEEKLY, Dec. 20, 1913, at 10 reprinted in LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* 92 (1914).

37. Neil M. Richards, *The Puzzle of Brandeis, Privacy, and Speech*, 63 VAND. L. REV. 1295, 1312 (2010).

38. *Id.*

checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance.<sup>39</sup>

Indeed, contemporary jurists, such as the United States Court of Appeals for the Sixth Circuit’s Judge Damon Keith, have emphatically articulated these concerns—“Democracies die behind closed doors.”<sup>40</sup>

In the area of campaign finance, courts have held that the government has a substantial interest in making political candidates disclose the sources of their campaign contributions. Doing so deters and avoids the appearance of corruption; even more, it informs voters about the interest to which politicians may likely be responsive.<sup>41</sup> “[F]inancial disclosure effectively combats fraud and provides valuable information to the public.”<sup>42</sup> “[I]t discourage[s] those who are subject to them from engaging in improper conduct, and ... [a] public armed with information ... is better able to detect’ wrongdoing.”<sup>43</sup> Indeed, an “informed public opinion is the most potent of all restraints upon misgovernment.”<sup>44</sup>

In *Esperanza Peace and Justice Center v. City of San Antonio*, a non-profit organization brought a section 1983 action alleging that the city of San Antonio’s decision to discontinue funding the organization, inter alia, violated the Texas Open Meetings Act.<sup>45</sup> The federal district court found that the open city council meeting merely ratified the decision of a prior closed deliberation.<sup>46</sup> Accordingly, the council violated that letter of the Act by deliberating and voting on the non-profit organization’s budget not convened in an open and transparent manner in accordance with the Act.<sup>47</sup> The court underscored that “[t]o hold otherwise would ... allow evisceration of the Act’s worthy goals of ensuring the public’s right to know what decisions government officials make and to have those officials articulate fully the basis on which they act.”<sup>48</sup>

---

39. JEREMY BENTHAM, *Rationale of Judicial Evidence*, in *WORKS OF JEREMY BENTHAM* 189, 355 (John Bowring ed., 1827).

40. *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir.2002).

41. *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 224 (1999) (O’Connor, J. and J. Breyer., concurring in part and dissenting in part.).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F.Supp.2d 433, 436 (W.D. TX 2001).

46. *Id.* at 478.

47. *Id.*

48. *Id.*

In *Society of Professional Journalists v. Secretary of Labor*, the United States' Mine Safety and Health Administration (MSHA) planned to conduct closed formal hearings to investigate a Utah mine fire.<sup>49</sup> A number of news organizations sued to enjoin the MSHA from conducting those closed hearings.<sup>50</sup> On the Secretary of Labor's motion for summary judgment, the District Court held that the press and public had a constitutional right to open hearings.<sup>51</sup> The court extolled the virtues of contemporaneous, as opposed to retrospective, transparency:

Although Congress can conduct oversight hearings, they occur too long after the MSHA hearings to accomplish the purposes gained by openness. Congressional oversight hearings can prevent future mistakes, but they can do little to correct past ones. In contrast, openness at the hearings can allow mistakes to be cured at once.<sup>52</sup>

The court noted that governmental officials naturally tend to conduct their meetings in secret so they can avoid criticism and proceed "informally and less carefully."<sup>53</sup> However, it is public awareness and opportunity to criticize that is the foundation of democratic institutions. Indeed, "[s]ecrecy breeds mistrust and abuse."<sup>54</sup>

In the context of Freedom of Information Act requests, courts have echoed and underscored the points about secrecy that other courts have made. First, "secret government activity creates fertile ground for fraud and corruption, especially in the area of public expenditures where, without transparency, the public can be kept unaware of misappropriations and conflicts of interest."<sup>55</sup> Second, "regardless of whether governmental activity conducted in secrecy actually is nefarious or corrupt, the public cannot be expected to possess a high level of trust in that which is hidden from its view."<sup>56</sup>

---

49. *Soc'y of Prof'l Journalists v. Sec'y of Labor*, 616 F.Supp. 569, 570-71 (D. Utah 1985).

50. *Id.*

51. *Id.* at 578.

52. *Id.* at 576.

53. *Id.*

54. *Id.*

55. *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 746 S.E.2d 329, 338 (S.C. 2013).

56. *Id.* at 450-51.

### 1. Whistleblower Sanctions

A whistleblower is often an employee who reports unethical or illegal actions within an organization in the effort to expose and end the wrongdoing.<sup>57</sup> In essence, whistleblowing is the “the disclosure by an organization’s member or former member of illegal or illegitimate practices under the control of their employers to persons or organizations that might be able to effect action.”<sup>58</sup> Such a decision involves significant personal, practical, ethical, and legal ramifications.<sup>59</sup>

Whistleblowing has been rare due to the repercussions suffered by those who choose to speak out against their employer to expose illegal conduct. In fact, in 2011, whistleblower retaliation cases were the single highest type of Equal Employment Opportunity Commission (EEOC) case.<sup>60</sup> Retaliation—“the negative actions taken towards whistle blowers by members of the organization, in response to the reporting of wrong doing”—can be a means for an organization to control whistleblowers.<sup>61</sup> Retaliation comes in many forms. Formal retaliation is characterized as retaliation by way of the official rules of the organization and behavior governed by those rules.<sup>62</sup> This form is usually used by higher officials and is often more expensive and time consuming than informal retaliation due to the paperwork involved.<sup>63</sup> Informal retaliation includes those actions that do not require approval from superiors, and can be implemented without the initiation of paperwork.<sup>64</sup> This form is usually carried out socially by co-workers and varies depending on the values and patterns of that environment.<sup>65</sup> When the whistle is blown, organizations must choose between accommodating and resisting the proposed change. This choice depends on a number of factors, including the power of the whistle blower,

---

57. Peter D. Banick, Note, *The “In-House” Whistleblower: Walking the Line Between “Good Cop, Bad Cop*, 37 WM. MITCHELL L. REV. 1868, 1871, 1873 (2011).

58. Erika Henik, *Mad As Hell Or Scared Stiff? The Effects Of Value Conflict and Emotions On Potential Whistle-Blowers*, 80 J. BUS. ETHICS 111, 112 (2008).

59. Frank J. Cavico, *Private Sector Whistleblowing and the Employment-At-Will Doctrine: A Comparative Legal, Ethical, and Pragmatic Analysis*, 45 S. TEX. L. REV. 543, 545 (2004).

60. Michael T. Rehg, *Retaliation Against Whistle-Blowers: An Integration and Typology*, 11 J. ACAD. BUS. & ECON. 47, 47 (2011).

61. *Id.* at 48.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

the severity of the wrong doing, and the amount of persistence on the part of the whistle blower.<sup>66</sup>

Although most whistleblowers do not suffer retaliation; however, when there is retaliation, the level of severity may vary.<sup>67</sup> Even if the employee is not fired, the whistleblower is often subjected to ongoing harassment in the workplace. However, relatively powerful whistleblowers are less likely to suffer retaliation, because they are less dependent on the organization due to more education and employment alternatives.<sup>68</sup> In the past, as an at will employee, a whistleblower who dared speak out against an employer risked not only losing a job, but forever being blacklisted in their industry.<sup>69</sup> In May 2002, the Senate Judiciary Committee conducted a study, which yielded evidence of “a corporate culture that ultimately discouraged and prevented employees from acting honestly in the workplace. Little sense of urgency to report wrongdoing existed, mainly out of fear of losing one's job or suffering retaliation. The decision to report externally versus internally can also provide the whistle blower with power and protection as the public or an entity unbiased to the organization is now aware of the action.<sup>70</sup> Without accountability or discipline, this culture would continue to prevail.”<sup>71</sup>

### *B. Lack of Opposition*

It has been noted that “power tends to corrupt, and absolute power corrupts absolutely.”<sup>72</sup> Institutions, however, have sought ways to curb such inevitabilities. Indeed, the creation of the United States government—with its three branches and the specified checks and balances that lie therein—is a prime example.<sup>73</sup> The law vis-à-vis organizations, especially corporate entities, have, at least in theory, followed suit. Within the public corporation, for example, there is a separation of ownership (investors)

---

66. *Id.*

67. *Id.* at 49.

68. Janet P. Near & Marcia P. Miceli, *Retaliation Against Whistle Blowers: Predictors and Effects*, 71 J. APPLIED PSYCHOL. 137, 137 (1986).

69. Joel D. Hesch, *Whistleblower Rights and Protections: Critiquing Federal Whistleblower Laws and Recommending Filling In Missing Pieces to Form A Beautiful Patchwork Quilt*, 6 LIBERTY U.L. REV. 51, 51 (2011).

70. Near & Miceli, *supra* note 68, at 138.

71. Hesch, *supra* note 69, at 98.

72. Letter from Lord Acton to Bishop Mandell Creighton (Apr. 5, 1887).

73. See THE FEDERALIST NO. 51 (James Madison).

from control (the board of directors and chief executive officer (CEO)).<sup>74</sup> The responsibility for corporate performance rests with the board of directors.<sup>75</sup> It is the board’s responsibility to monitor and control the CEO and other top-officials’ actions.<sup>76</sup>

There is a natural tension within a corporation’s governance and management relationship.<sup>77</sup> However, some contend that today’s questionable corporate activities result from corporate leadership not acting in the best interest of the corporations’ shareholders.<sup>78</sup> To some extent, what underlies this phenomenon is corporate leadership’s allowance or endorsement of unethical or illegal practices. A typical reason for “corporate scandals and skyrocketing executive compensation has been, *arguendo*, weaknesses in board oversight;”<sup>79</sup> it is a system of corporate checks and balances gone awry.<sup>80</sup> Given that an inordinate amount of power is concentrated in the CEO, many boards may acquiesce to the CEO’s wishes and demands.<sup>81</sup> Moreover, a possible threat to board independence is the dual role of the CEO as chairperson—i.e., the corporation’s top managerial officer also serving as chairperson of the group that must also monitor and evaluate his or her performance.<sup>82</sup> Also, board members may not know the business and market sufficiently to perform their roles. In fact, they may not be given sufficiently accurate and timely information to determine when or if they are being manipulated.<sup>83</sup>

The ultimate intervention that a board can make when a CEO is engaged in unethical and possibly illegal behavior is to fire and replace that CEO. However, many boards may be quite reluctant to do so.<sup>84</sup> A classic example of this issue and its tension with board checks and balances is the Securities Exchange Commission (SEC) case against WorldCom.<sup>85</sup> In that

---

74. Idalene F. Kesner & Dan R. Dalton, *Boards of Directors and the Checks and (Im)Balances of Corporate Governance*, 29 BUS. HORIZONS 17, 17 (1986).

75. *Id.* at 18.

76. *Id.* at 19.

77. Robert E. Kelly, *CEO Power Threatens Board Checks and Balances*, DIRECTORSHIP, Nov. 2002, at 15.

78. Kesner & Dalton, *supra* note 74, at 18.

79. Cary Coglianese, *Legitimacy of Corporate Governance*, 32 DEL. J. CORP. L. 159, 163 (2007).

80. Kesner & Dalton, *supra* note 74, at 18.

81. Kelley, *supra* note 77, at 15.

82. Kesner & Dalton, *supra* note 74, at 19.

83. Kelley, *supra* note 77, at 16.

84. Kesner & Dalton, *supra* note 74, at 21.

85. *S.E.C. v. Worldcom, Inc.*, 2003 WL 22004827 (S.D.N.Y. Aug. 26, 2003).

case, WorldCom personnel committed one of the largest accounting frauds in history. The governance practices during the tenure of WorldCom CEO, Bernard J. Ebbers (Ebbers), consisted of, *inter alia*, the board consistently ceding power over WorldCom's direction to Ebbers.<sup>86</sup>

WorldCom's practices allowed lavish compensation for Ebbers beyond the value added by senior executives, Ebbers included. This included more than \$400,000,000 in "loans" from shareholders to Ebbers, signed-off on by two directors, both Ebbers' longtime associates. As the United States District Court for the Southern District of New York noted, the loans were not only unlikely to be repaid, but also represented actions by a board that "spent much of its time devising ways to enrich Ebbers."<sup>87</sup> Other compensation practices were also seen as an abuse of shareholder interests such as granting Ebbers and other WorldCom leadership massive volumes of stock options, representing hundreds of millions of dollars in value. Ebbers was also allowed to pay \$238,000,000 in "retention" grants to various executives and employees at his discretion. The court noted that "[t]he retention program was in effect a giant compensation slush fund."<sup>88</sup>

Ultimately, the court concluded that while "having the right people in place" is necessary for good corporate governance, something more is required. WorldCom complied with corporate formalities, but no board member would say "no" to Ebbers. In fact, the court underscored that "[o]ne cannot say that the checks and balances against excessive power within the old WorldCom didn't work adequately. Rather, the sad fact is that there were no checks and balances."<sup>89</sup>

## II. LEADING BY EXAMPLE

A confluence of cultural, historical, and institutional factors gave rise to Black Greek-letter organizations.<sup>90</sup> In a span of sixteen years, from 1906

---

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. See FELIX M. ARMFIELD ET AL., DEFINING THE "ALPHA" IDENTITY, IN ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE 23-49 (Gregory S. Parks & Stefan M. Bradley eds., 2011).

to 1922, eight such organizations were founded across four universities.<sup>91</sup> A ninth emerged at the height of the Civil Rights Movement.<sup>92</sup> Each of these organizations went on to found, not only collegiate chapters but alumni chapters as well. These alumni chapters allowed undergraduate initiates to maintain lifelong engagement with their fraternity or sorority and aspiring members to become affiliated post-undergraduate.<sup>93</sup> Only within the past decade have scholars begun to explore the monumental challenge that BGLOs have with hazing.<sup>94</sup> And only within the past couple of years have scholars explored this issue via a legal lens.<sup>95</sup> Just as significant, within the past few years BGLOs have confronted the law on another front—litigation around financial malfeasance of their national leadership.<sup>96</sup> This section explores this latter dynamic.

#### *A. Zeta Phi Beta Sorority, Incorporated*

In 2007, Natasha Stark’s brought a lawsuit against Zeta Phi Beta sorority for breach of contract, negligence, and defamation.<sup>97</sup> Stark was a member of Zeta Phi Beta as an undergraduate at Georgia State University.<sup>98</sup> Remaining involved in her sorority after graduation, she held a number of leadership positions; in 2005, she was inducted into Zeta Phi Beta’s Hall of Fame.<sup>99</sup> She eventually discovered that Zeta Phi Beta’s International Grand Basileus (International President), Barbara Moore, was stealing funds from the sorority, using Zeta Phi Beta’s credit card to purchase items such as pantyhose, wigs, designer clothing, fine jewelry, sportswear, shoes, and

---

91. See ANDRÉ MCKENZIE, IN THE BEGINNING: THE EARLY HISTORY OF THE DIVINE NINE, IN THE LEGACY AND THE VISION, IN AFRICAN AMERICAN FRATERNITIES AND SORORITIES: THE LEGACY AND THE VISION 182-200 (Tamara L. Brown et al. eds., 1st ed. 2005).

92. See *id.* at 200-02.

93. See, e.g., MARCIA D. HERNANDEZ, SISTERHOOD BEYOND THE IVORY TOWER: AN EXPLORATION OF BLACK SORORITY ALUMNAE MEMBERSHIP, IN BLACK GREEK-LETTER ORGANIZATIONS IN THE 21ST CENTURY: OUR FIGHT HAS JUST BEGUN 253 (Gregory S. Parks ed., 2008).

94. See, e.g., RICKY L. JONES, BLACK HAZE: VIOLENCE, SACRIFICE, AND MANHOOD IN BLACK GREEK-LETTER FRATERNITIES 1 (2004).

95. Gregory S. Parks & Rashawn Ray, *Poetry as Evidence*, 3 U. CAL. IRVINE L. REV. 101 (2013); Gregory S. Parks, Shayne E. Jones, & Matthew W. Hughey, *Belief, Truth, and Pro-social Organizational Deviance*, 56 HOWARD L.J. 400, 408 (2013).

96. Gregory S. Parks, *Social Networking and Leadership Accountability in (Quasi) Secret Organizations*, 2 WAKE FOREST L. REV. ONLINE 1, 5 (2012).

97. *Stark v. Zeta Phi Beta Sorority, Inc.*, 587 F. Supp. 2d 170, 173 (D.D.C. 2008).

98. *Id.* at 174.

99. Complaint at ¶ 3, *Stark*, 587 F. Supp. 2d at 170.

men's clothing.<sup>100</sup> The charges totaled more than \$300,000.<sup>101</sup> Stark, unhappy with Zeta Phi Beta's decision to allow Moore to repay the money over a five-year period instead of removing her from office, informed the media and other Zeta Phi Beta sisters about the situation, first using her husband's email account and then her own work email account after Zeta Phi Beta demanded that her husband desist.<sup>102</sup> Stark contacted various media outlets including the South Carolina Black News, ABC, NBC, and CBS.<sup>103</sup> Despite Zeta Phi Beta accusing her of libel and demanding that she desist, Stark appeared on two news broadcasts, disguised to conceal her identity, to discuss Moore's unauthorized spending habits.<sup>104</sup>

Although Stark maintained in her complaint that, in addition to informing the media, she informed an Assistant U.S. Attorney about Moore's embezzlement of Zeta Phi Beta funds, she later admitted in a deposition that she did not in fact inform the U.S. Attorney. However, after learning of Moore's actions, the U.S. Attorney requested records from Zeta Phi Beta and commenced a grand jury investigation.<sup>105</sup> Stark complied with a subpoena to provide documents and testify before the grand jury.<sup>106</sup> In February of 2006, the U.S. Attorney sent a letter requesting that Zeta Phi Beta waive certain privileges to allow the U.S. Attorney's Office and the FBI to investigate whether Zeta Phi Beta had been the victim of a crime given Moore's use of Zeta Phi Beta's credit card from 2002-2005.<sup>107</sup> The letter further informed Zeta Phi Beta that failure to provide the waiver would force the U.S. Attorney to close the investigation.<sup>108</sup> The U.S. Attorney closed the case with no indictment because Zeta Phi Beta never provided the waiver, claiming attorney-client and work product privileges.<sup>109</sup>

In September of 2006, members of Zeta Phi Beta's Epsilon Zeta Chapter complained to Zeta Phi Beta's Georgia State Director that Stark

---

100. *Id.* at 4.

101. *Id.*

102. Defendant's Brief in Support of Motion for Summary Judgment [hereinafter Defendant's Brief], Exhibits 8, 9, 10; *Stark*, 587 F. Supp. 2d at 170.

103. Defendant's Brief, *supra* note 102, Exhibit 3 at 18, Exhibit 10 at 1.

104. Defendant's Brief, *supra* note 102, Exhibits 11, 23, 24.

105. Complaint, *supra* note 99, ¶ 5.

106. *Id.*; *see Stark*, 587 F. Supp. 2d at 170; Plaintiff's Opposition Brief to Defendant's Motion for Summary Judgment [hereinafter Plaintiff's Brief], Exhibit 3.

107. *See* Complaint, *supra* note 99, ¶ 6.

108. *Id.*

109. Plaintiff's Brief, *supra* note 106, Exhibit 4.

was trying to “tear down” as opposed to “build up” Zeta Phi Beta.<sup>110</sup> The Director, after purportedly conducting an investigation of Zeta Phi Beta’s allegations against Stark, suspended Stark and recommended her expulsion from the sorority because she “was perceived to be airing Zeta’s financial dirty laundry.”<sup>111</sup> Stark responded via her lawyer that she wished to contest the charges because the suspension violated Zeta Phi Beta’s policies and procedures and because Stark never had the opportunity to rebut the charges with testimony or documentation as required by Zeta Phi Beta’s own policies and procedures.<sup>112</sup> Moore recused herself in February of 2007 and designated Zeta Phi Beta’s National Executive Board Chair, Sheryl Underwood, to act on the charges against Stark.<sup>113</sup> Underwood sent Stark a letter stating that “Zeta Phi Beta was expelling her from the sorority effective immediately” and informing Stark that an appeals hearing would be held a month later.<sup>114</sup> The next week, a press release published by Edda Pittman stated that Stark was responsible for distributing the documents that served as the source for the news stories.<sup>115</sup>

The day before the appeals hearing, Stark requested and was denied the opportunity to attend the appeals hearing via teleconference, and Stark made another appearance on TV, this time revealing that she was the one who had “outed the story of the Grand Basileus’s spending habits.”<sup>116</sup> After Stark’s expulsion was upheld, she stated on a news program: “The question that members need to ask themselves is who’s next.”<sup>117</sup> About a week later, Sheryl Underwood, the chair of Zeta Phi Beta’s National Executive Board, circulated a letter (“Underwood Letter”) telling Zeta Phi Beta’s side of the story regarding Stark’s expulsion.<sup>118</sup> Underwood sent the letter, which served as the underlying basis for Stark’s defamation claim, to the entire sorority, denying Stark’s allegations and intimating that Stark’s statements ignored the truth.<sup>119</sup>

---

110. Defendant’s Brief, *supra* note 102, Exhibit 14.

111. Defendant’s Brief, *supra* note 102, Exhibit 15; Complaint, *supra* note 3, ¶ 7.

112. Defendant’s Brief, *supra* note 102, Exhibit 17; Complaint, *supra* note 3, ¶ 8.

113. Defendant’s Brief, *supra* note 102, Exhibit 19.

114. Complaint, *supra* note 99, ¶ 9; Defendant’s Brief, *supra* note 102, Exhibit 20.

115. Plaintiff’s Brief, *supra* note 106, Exhibit 6.

116. Defendant’s Brief, *supra* note 102, Exhibit 21.

117. Defendant’s Brief, *supra* note 102, Exhibit 24.

118. Defendant’s Brief, *supra* note 102, Exhibit 5; Stark v. Zeta Phi Beta Sorority, Inc., 587 F. Supp. 2d 170, 173, 175 (D.D.C. 2008).

119. See Defendant’s Brief, *supra* note 102, Exhibit 5.

In Count I, Stark alleged that Zeta Phi Beta's Constitution, policies, and procedures are enforceable contracts between Stark and Zeta Phi Beta.<sup>120</sup> She contended that Zeta Phi Beta breached those contracts by failing to abide by their terms and that as a result; she suffered mental anguish and the loss of enjoyment of Zeta Phi Beta's goods, services, facilities, privileges, advantages, and accommodations.<sup>121</sup> In Count II, Stark claimed defamation, alleging that the knowingly false three statements from the Underwood Letter, as noted *supra*, contained untrue defamatory statements about her and that these statements injured Stark's reputation in the community. In Count III, she alleged that she suffered the same damages due to Zeta Phi Beta's negligent breach of its duty to abide by its Constitution, policies, and procedures.<sup>122</sup> In addition to the same damages from Counts I and III, Stark claimed she "suffered damage to her character, reputation, and standing in her community."<sup>123</sup> Zeta Phi Beta moved for summary judgment, and Judge Robertson dismissed Counts I and III at a status conference after hearing oral arguments on Zeta Phi Beta's motion.<sup>124</sup> The case thus turned on whether or not Stark could prove her allegations regarding the defamatory nature of the Underwood Letter. According to the court, her defamation claim could not survive summary judgment.

Stark alleged that Zeta Phi Beta's Constitution and policies were contracts between herself and Zeta Phi Beta and that Zeta Phi Beta breached those contracts because Stark did have an opportunity to rebut the charges, and that prior to her expulsion, Stark was not aware of the charges and that a formal hearing did not take place.<sup>125</sup> In its brief supporting its motion for summary judgment, Zeta Phi Beta first contended that judicial intervention is inappropriate because the crux of this case is Stark's dissatisfaction with the handling of an internal sorority matter.<sup>126</sup> According to Zeta Phi Beta, proceedings are subject to Robert's Rules of Order, which provides that Zeta Phi Beta can "require that its members refrain from conduct injurious to the organization or its purposes."<sup>127</sup> If a member of Zeta Phi Beta does not abide by this standard, Robert's Rules provide that she is "subject to

---

120. Complaint, *supra* note 99, at ¶ 19.

121. *Id.* at 17-18.

122. *Id.* at 27-29.

123. *Id.* ¶ at 24.

124. *Stark*, 587 F. Supp. 2d at 173.

125. Complaint, *supra* note 99, at ¶¶ 8, 10.

126. Defendant's Brief, *supra* note 102, at 12-13.

127. *Id.* at 13.

disciplinary action, whether the bylaws make mention of it or not.”<sup>128</sup> Zeta Phi Beta contended that Stark was properly suspended and later expelled for misconduct and rules violations because she “took matters into her own hands by attacking Moore and the sorority in the media and disclosing the sorority’s sensitive financial information to individuals outside of the sorority.”<sup>129</sup> Zeta Phi Beta analogized to similar cases involving sororities where courts were reluctant to get involved in the internal affairs of a voluntary association.<sup>130</sup> Zeta Phi Beta contended that Stark’s unhappiness with her expulsion and the outcome of Zeta Phi Beta’s disciplinary investigation does not entitle her to the court’s review of “what amounts to nothing more than a dispute between the sorority and one of its members.”<sup>131</sup>

Second, Zeta Phi Beta contended summary judgment is appropriate because Zeta Phi Beta complied with all internal policies and procedures.<sup>132</sup> In response to Stark’s allegation that she was not given the opportunity to be heard prior to her suspension, Zeta Phi Beta argued that nowhere in Zeta Phi Beta’s Constitution, Handbook, or Bylaws is there a requirement that Stark be given the right to be heard prior to the imposition of her suspension.<sup>133</sup> Zeta Phi Beta pointed out that the Handbook only requires that an investigation of the process be conducted at each step to determine if governing rules, policies, or laws have been violated, and that the final Appellate Hearing is the only opportunity to be heard.<sup>134</sup> In response to Stark’s allegation that she was denied the opportunity to attend the final hearing via teleconference, Zeta Phi Beta contended that would have been inappropriate given the sensitivity of the hearing and because Stark did not make this request until the day before the hearing.<sup>135</sup> Because the Handbook authorized suspension and expulsion, because Zeta Phi Beta followed all procedures, and because Stark refused to participate in the appeals process, Zeta Phi Beta contended that Stark “cannot now claim that her rights to be heard and to defend herself have been violated.”<sup>136</sup>

---

128. *Id.*

129. *Id.* at 14.

130. *Id.* at 14-15.

131. *Id.* at 15.

132. *Id.*

133. *Id.*

134. *Id.* at 16-17; Exhibit 4 at 80-81.

135. *Id.* at 18.

136. *Id.* at 17.

Third, Zeta Phi Beta contended that summary judgment is appropriate even if Stark demonstrates that Zeta Phi Beta did not strictly adhere to its own procedures because the procedures followed were fundamentally fair.<sup>137</sup> This argument closely tracks Zeta Phi Beta's above argument and is not easily distinguishable.<sup>138</sup> Analogizing to three similar cases, Zeta Phi Beta argues that the process leading up to Stark's expulsion was fundamentally fair because: (1) Zeta Phi Beta complied with its the policies and disciplinary procedures at every level; (2) Zeta Phi Beta provided Stark with written notice of her alleged violations and misconduct; (3) Stark gave a written response to the charges with the advice of counsel; and (4) although Stark had the opportunity to appeal, she chose not to participate in the appellate process.<sup>139</sup> Thus, according to Zeta Phi Beta, the process was "not in conflict with designated procedures and free from the taint of fraud, bad faith or arbitrary action."<sup>140</sup>

Stark's memorandum opposing summary judgment did not address the breach of contract claim.<sup>141</sup> The district court apparently agreed with Zeta Phi Beta that there were no genuine disputes as to any material fact regarding breach of contract because it held that Zeta Phi Beta was entitled to judgment as a matter of law on the contract claim after hearing oral arguments at a status conference.<sup>142</sup>

Stark alleged that Zeta Phi Beta was negligent because it breached its duty to abide by its constitution, policies, and procedures. In its motion for summary judgment, Zeta Phi Beta contended that an essential element of a negligence claim is absent because the organization owed no duty to Stark.<sup>143</sup> Zeta Phi Beta argued that Stark did not allege a duty nor cite to authority that establishes a standard of care.<sup>144</sup> In the alternative, Zeta Phi Beta contended that Stark cannot establish a breach of duty because Zeta Phi Beta complied with all policies and procedures and followed a fundamentally fair disciplinary process.<sup>145</sup> Stark's memorandum opposing summary judgment did not address the negligence claim.<sup>146</sup> Apparently, the

---

137. *Id.* at 19-20.

138. *See id.* at 19-24.

139. *Id.* at 24.

140. *Id.*

141. *See* Plaintiff's Brief, *supra* note 106.

142. *Stark v. Zeta Phi Beta Sorority, Inc.*, 587 F. Supp. 2d 170, 174 (D.D.C. 2008).

143. Defendant's Brief, *supra* note 102, at 39.

144. *Id.*

145. *Id.*

146. *See* Plaintiff's Brief, *supra* note 106.

court agreed with Zeta Phi Beta, as it held that Zeta Phi Beta was entitled to judgment as a matter of law on the negligence claim after hearing oral arguments at a status conference.<sup>147</sup>

In her complaint, Stark alleged that the “Underwood Letter” contained untrue defamatory statements about her that Zeta Phi Beta knew to be false.<sup>148</sup> Three statements from the letter, which was distributed to all Zeta Phi Beta members, serve as the substantive basis for Stark’s defamation claim: (1) “the recommendation to expel [] Stark was properly made by members of the Epsilon Zeta Chapter;” (2) Stark “made statements with disregard for the truth;” and (3) Stark “was not a whistle-blower because a whistle blower is a person who provides truthful information to a law enforcement officer in relation to the commission or possible commission of a federal offense.”<sup>149</sup>

To prevail on her defamation claim, Stark had to demonstrate: (1) that the Underwood Letter contained false and defamatory statements concerning Stark; (2) that Zeta Phi Beta published the letter without privilege to a third party; (3) that Zeta Phi Beta’s fault in publishing the letter amounted to at least negligence; and (4) either the statements were actionable as a matter of law irrespective of special harm, or that their publication caused Stark special harm.<sup>150</sup> The statements are defamatory if they tend to injure Stark in her profession or community standing.<sup>151</sup> Moreover, truth is a complete defense to defamation.<sup>152</sup> In its Rule 56 motion, Zeta Phi Beta contended summary judgment is proper because (1) the statements in the Underwood Letter are protected by the “defense” privilege and “common interest” privilege; and (2) Stark cannot show that the statements were false or published by Zeta Phi Beta with actual malice.<sup>153</sup> In its brief, Zeta Phi Beta actually breaks the second argument into two separate arguments; however, its arguments for truthfulness and the absence of malice are largely the same and the court’s analysis treats them as such.<sup>154</sup>

Turning first to truthfulness and actual malice, Zeta Phi Beta contended, and the court ultimately held, that because Stark thrust herself

---

147. *Stark*, 587 F. Supp. 2d at 174.

148. *See* Complaint, *supra* note 99, ¶ 20-21.

149. *Id.*

150. *See* *Beeton v. District of Columbia*, 779 A.2d 918, 923 (D.C. 2001).

151. *See* *Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 594 (D.C. 2000).

152. *Farrington v. Bureau of Nat. Affairs, Inc.*, 596 A.2d 58, 59 (D.C. 1991).

153. Defendant’s Brief, *supra* note 102, at 27, 30, 33.

154. *See* Defendant’s Brief, *supra* note 102.

into the public sphere by appearing undisguised on two broadcasts and by sending the information out in the first place, she is a limited purpose public figure.<sup>155</sup> As a limited purpose public figure, Stark thus had to prove that Zeta Phi Beta published the statements with actual malice, under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), in order to prevail on her defamation claim. The court defined actual malice as “publication with knowledge that a statement was false or with reckless disregard as to whether it was false.”<sup>156</sup> Stark did not dispute Zeta Phi Beta’s contention that she is a public figure, but instead she attempts to demonstrate actual malice by arguing that Zeta Phi Beta published the Underwood Letter with the knowledge that the statements from the Underwood Letter were false.<sup>157</sup> Although Zeta Phi Beta contended that “the correspondence in which the statements at issue arise, when taken as a whole, is substantially true,”<sup>158</sup> Stark actually alleged that each individual statement is false.

First, Stark alleged that Zeta Phi Beta knew the first statement (“the recommendation to expel Stark was properly made by members of Epsilon Zeta Chapter”) to be false because other members of Epsilon Zeta Chapter sent a letter disavowing the recommendation of Stark’s suspension.<sup>159</sup> Stark further alleged that Zeta Phi Beta knew the recommendation was not properly made because the bylaws only allow for Regional and State Directors to request the suspension of members.<sup>160</sup> Zeta Phi Beta responded that the recommendation was properly made because the Handbook permits one member of Zeta Phi Beta to file a grievance against another member;<sup>161</sup> that under Robert’s Rules, one should not remain a member if her conduct is injurious to the sorority; and that members of the Ad Committee of the Epsilon Zeta Chapter filed a formal grievance, in accordance with the Zeta Phi Beta Handbook, against Stark to the Georgia State Director.<sup>162</sup> Zeta Phi Beta thus concluded that because the recommendation was properly made, the statement was not published with actual malice. The court agreed with

---

155. *Stark v. Zeta Phi Beta Sorority, Inc.*, 587 F. Supp. 2d 170, 177 (D.D.C. 2008) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974)); Defendant’s Brief, *supra* note 102, at 33-34.

156. *Stark*, 587 F. Supp. 2d at 177 (citing *Novecon Ltd. v. Bulg.-Am. Enter. Fund*, 190 F.3d 556 (D.C. Cir. 1999)).

157. See Plaintiff’s Brief, *supra* note 106, at 10-14.

158. Defendant’s Brief, *supra* note 102, at 27.

159. Complaint, *supra* note 99 at ¶ 20.

160. *Id.*

161. See Defendant’s Brief, *supra* note 102, Exhibit 4 at 80.

162. Defendant’s Brief, *supra* note 102, at 28.

Zeta Phi Beta because “Stark has made no effort to rebut [Zeta Phi Beta’s citation to the Handbook] or explain why Zeta Phi Beta should not have relied on it.”<sup>163</sup>

Next, Stark claimed that the second allegedly defamatory statement from the Underwood letter (that Stark’s quotes in the press release “disregard the truth”) was motivated by actual malice because the quotes were in fact true. Stark’s quotes from the press release include:

The bottom line here is that folks’ hard earned money has been stolen and the law has been broken. . . . Expelling me from the sorority for fulfilling my fiduciary duty to the members of Zeta . . . will not change the fact that money has been stolen and the law has been broken. . . . If I’ve got to choose between being a member of Zeta Phi Beta Sorority, and doing time in a federal prison for aiding and abetting the commission of a felony, that’s pretty much a no-brainer.<sup>164</sup>

Zeta Phi Beta argues that because no one was indicted for any crime, because Stark did not in fact have a fiduciary duty towards Zeta Phi Beta, and because Stark did not qualify any of her accusations with words to the effect of “it is my belief that,” Stark’s quotes do in fact disregard the truth; thus, the second allegedly defamatory statement was not actuated by malice.<sup>165</sup> “These points [were] well taken” by the court.<sup>166</sup>

Lastly, Stark alleged that Zeta Phi Beta knew that the third allegedly defamatory statement from the Underwood Letter (the “whistleblower” comment) was false because Zeta Phi Beta emailed Stark about the grand jury investigation and asked her to gather information for the grand jury to review.<sup>167</sup> Zeta Phi Beta responded that Stark admitted to making various untrue statements and that under Stark’s own definition of whistleblower—“one who provides law enforcement with truthful information relating to the commission of a federal offense”—Stark cannot be a whistleblower because although she disclosed Moore’s embezzlement of funds to the media and others outside the sorority, she did not contact law enforcement regarding Moore or Zeta Phi Beta.<sup>168</sup> Moreover, Zeta Phi Beta contended

---

163. *Stark v. Zeta Phi Beta Sorority, Inc.*, 587 F. Supp. 2d 170, 177 (D.D.C. 2008).

164. Plaintiff’s Brief, *supra* note 106, Exhibit 7.

165. Defendant’s Reply Brief to Plaintiff’s Opposition Brief [hereinafter Defendant’s Reply] at 7-8; *Stark*, 587 F. Supp. 2d at 178.

166. *Stark*, 587 F. Supp. 2d at 178.

167. Complaint, *supra* note 99, at ¶ 21.

168. Defendant’s Brief, *supra* note 102, at 29.

that when considered in the proper context, the alleged defamatory statements from the Underwood Letter are not actuated by malice because they are merely attempts by Zeta Phi Beta to respond to Stark's attacks upon its reputation.<sup>169</sup>

Turning next to Zeta Phi Beta's assertion of the defense privilege, this privilege applied (assuming the absence of actual malice) if the Underwood Letter was published to protect Zeta Phi Beta's interests, there was a reasonable belief that Stark's statements to the media affected a sufficiently important interest of Zeta Phi Beta, and Stark's knowledge of the defamatory matter would have been useful to protect Zeta Phi Beta's interest.<sup>170</sup> To overcome the defense privilege, Stark must prove actual malice by extrinsic evidence unless the statements in the Underwood Letter were "so excessive, intemperate, unreasonable, and abusive as to forbid any other reasonable conclusion than that the defendant was actuated by express malice."<sup>171</sup> Zeta Phi Beta analogized to situations in which courts applied the defense privilege where a defendant was attacked in letters to Congress and articles in the press.<sup>172</sup> Zeta Phi Beta contended that Stark could not overcome the privilege because the Underwood Letter was written as a direct response to Stark's public allegations against Zeta Phi Beta and her disclosure of damaging material to media outlets.<sup>173</sup> The court agreed, concluding that when Stark said, "folks' hard earned money has been stolen and the law has been broken," Zeta Phi Beta's public denial and response that her "quoted statements disregard the truth" is privileged.<sup>174</sup>

Turning finally to Zeta Phi Beta's assertion of the common interest privilege, this privilege protects the statements from the Underwood Letter, even if they are otherwise defamatory, if they were made: (1) in good faith, (2) on a subject in which Zeta Phi Beta has an interest or a duty to a person having a corresponding interest or duty, and (3) to a person who has such a corresponding interest.<sup>175</sup> Zeta Phi Beta argues that it published the Underwood Letter in order to address and clarify the misrepresentations surrounding the disciplinary action taken against Stark with the good faith belief that the letter was necessary to protect the interests of Zeta Phi Beta

---

169. Defendant's Brief, *supra* note 102, at 37.

170. *Stark*, 587 F. Supp. 2d at 176.

171. *Id.*

172. Defendant's Brief, *supra* note 102, at 31.

173. *Id.* at 32.

174. *Stark*, 587 F. Supp. 2d at 176.

175. *Id.*

from false and damaging attacks on its reputation.<sup>176</sup> Zeta Phi Beta further contended that its primary motive in publishing the letter was to protect the interests of the sorority and that it used the Underwood Letter to fulfill its duty to its members to give a thorough explanation and response to defend against Stark’s allegations.<sup>177</sup> The court agreed while reasoning that Stark presents neither facts nor argument that Zeta Phi Beta’s duty to inform its members was insincere, that there was no shared interest between Zeta Phi Beta members in Stark’s public expulsion, or that Zeta Phi Beta excessively published.<sup>178</sup>

In her opposition to Zeta Phi Beta’s motion for summary judgment, Stark did not address Zeta Phi Beta’s assertion of the defense and common interest privileges.<sup>179</sup> The opposition brief contained little argument, most of which attempts to establish actual malice. In fact, curiously, the opposition brief consisted largely of what appears to be copy and pasted allegations from the complaint.<sup>180</sup>

The two primary factors behind the government’s failure to prosecute the alleged embezzlement appear to be Zeta Phi Beta’s refusal to provide the waiver to the attorney general and the fact that Stark broke the story to the media, but never contacted law enforcement. However, it seems fair to assume that at least one law enforcement agency would learn of Stark’s allegations against Moore and Zeta Phi Beta given that they were broadcast by four news stations and the attorney general was attempting to investigate Zeta Phi Beta. Although Zeta Phi Beta contended that Stark admitted in her deposition that she never contacted the U.S. Attorney’s Office or any other law enforcement official regarding Moore or Zeta Phi Beta, Stark did disclose the alleged embezzlement to the media, and the U.S. Attorney did attempt to investigate the matter.<sup>181</sup>

Moreover, Stark complied with every request from the U.S. Attorney’s Office pertaining to the grand jury investigation. In contrast, Zeta Phi Beta repeatedly refused to provide any information that would assist in the investigation of Moore’s alleged embezzlement of Zeta Phi Beta funds.<sup>182</sup> In their continued attempts to investigate, both the U.S. Attorney’s Office

---

176. Defendant’s Brief, *supra* note 102, at 31-32.

177. *Id.* at 32.

178. *Stark*, 587 F. Supp. 2d at 176.

179. *Id.*; Defendant’s Reply, *supra* note 165, at 2; *see* Defendant’s Brief, *supra* note 102.

180. Defendant’s Reply, *supra* note 165, at 2; *see* Defendant’s Brief, *supra* note 102.

181. Defendant’s Brief, *supra* note 102, Exhibit 3 at 59; Plaintiff’s Brief, *supra* note 106, at 2.

182. *See* Plaintiff’s Brief, *supra* note 106, Exhibit 4.

and the FBI sent Zeta Phi Beta a letter on April 20, 2006, requesting a limited waiver of the attorney-client privilege to allow Zeta Phi Beta's former National Legal Counsel to speak with the U.S. Attorney's Office and the FBI.<sup>183</sup> Waiting more than two months to respond, Zeta Phi Beta wrote back that it could not provide certain documents because of the attorney-client privilege and the work product doctrine.<sup>184</sup> With regard to the government's failure/inability to continue its investigation and ultimately prosecute, the following response from the Assistant U.S. Attorney, expressing his frustration about Zeta Phi Beta's unwillingness to cooperate, is especially telling:

Our office and the FBI frequently investigate cases of this type involving public and tax-exempt organizations. Rarely have we encountered the kind of resistance shown by Zeta Phi Beta to disclosing what has occurred. To the contrary, our investigations usually proceed rapidly because the victim organizations make their files and employees, including attorneys, available to us immediately and without reservation.<sup>185</sup>

From the above quoted language, it seems reasonable to infer that Zeta Phi Beta may have attempted to keep the alleged embezzlement a secret and purposely prevented the government from discovering any documents or witnesses that would lead to a prosecution. Zeta Phi Beta's failure to cooperate with the investigation in any manner begs the question of whether Zeta Phi Beta was merely seeking to protect its former International President (Moore), or whether it was trying to cover up part of a larger, systemic pattern of behavior by Zeta Phi Beta leadership. Not only did Zeta Phi Beta refuse to cooperate with investigators, but Moore and other members of Zeta Phi Beta's National Executive Board withheld from Zeta Phi Beta's general body the details pertaining to the federal investigation, presumably to keep the investigation a secret. For example, the nature of some of the items that Moore purchased with embezzled funds support the inference that she may not have been acting alone and was possibly purchasing some of the items for other people. Purchased items included: "panty hose, wigs, Wilson's Leather, women's designer clothing, fine

---

183. *Id.* at 1.

184. *Id.* at 2.

185. *Id.*

jewelry, sportswear, ladies shoes, daywear, lingerie, and men’s and boy’s clothing.”<sup>186</sup>

Perhaps even more telling of the secrecy of the conduct is the fact that, as of February of 2007, members of the sorority reported that they had not received anything of substance from Zeta Phi Beta’s National Executive Board for three years.<sup>187</sup> According to the members, they could not even obtain “something as simple and basic as a bank balance” at the 2006 National Convention.<sup>188</sup>

In this case, it appears that Zeta Phi Beta sanctioned the whistleblower (Stark) in order to facilitate the secrecy of the conduct. Almost immediately after Stark uncovered Moore’s embezzlement of sorority funds, Zeta Phi Beta attempted to silence her—first by suspending her and ultimately by expelling her from Zeta Phi Beta. Although Moore eventually admitted that she used Zeta Phi Beta funds for her personal gain, Zeta Phi Beta’s National Executive Board declined to remove her from office despite being required to do so under Zeta Phi Beta’s internal fiscal management procedures.<sup>189</sup> It seems fair to infer then, that rather than dealing with Moore’s actions, Zeta Phi Beta preferred to sanction the whistleblower to keep the embezzlement under wraps. Zeta Phi Beta leadership took action to swiftly impose the most severe sanctions on Stark, despite opposition from members of Stark’s Zeta Phi Beta chapter. Thus, it appears that Zeta Phi Beta leaders were the only ones who found Stark’s conduct to have an “injurious effect” on the sorority to warrant her expulsion from Zeta Phi Beta.

In this case, it appears that Zeta Phi Beta leadership never wanted to prosecute or sanction Moore for stealing the money. Zeta Phi Beta leadership’s abuse of power and turning a blind eye to the embezzlement seemed to be kept secret from rank-and-file membership. It is unlikely that Zeta Phi Beta members, who were members at the time Moore was using Zeta Phi Beta’s credit card for personal use, would have been unaware that such a large amount of money was withdrawn from the sorority’s account and used for items that were clearly for someone’s personal use.

Moreover, because Zeta Phi Beta is a 501(c)(7) tax-exempt organization, one would imagine that the International President’s use of tax-exempt funds for personal gain would attract attention from many Zeta

---

186. Complaint, *supra* note 99, at ¶ 4.

187. Defendant’s Brief, *supra* note 102, Exhibit 6 at 2.

188. *Id.*

189. Plaintiff’s Brief, *supra* note 106, Exhibit 6 at 1.

Phi Beta's leaders. However, on second glance, perhaps Zeta Phi Beta's tax exempt status is the very reason they chose to turn a blind eye to the embezzlement in the first place and attempted to deal with the situation in-house after Moore promise to pay the money back. Perhaps the leaders felt that cooperation with government investigators might jeopardize Zeta Phi Beta's tax-exempt status.

The letter from members of Zeta Phi Beta's Epsilon Chapter at Georgia State also sheds light on Zeta Phi Beta leadership's possible abuse of power.<sup>190</sup> These Zeta Phi Beta sisters wrote that they would "neither support nor endorse any disciplinary actions taken against Soror Stark that are not in accordance with the rules and regulations of Zeta Phi Beta Sorority, Incorporated, and that do not afford all parties involved their rights to due process."<sup>191</sup> The fact that Zeta Phi Beta sisters believed that Zeta Phi Beta leadership took inappropriate actions that contradicted Zeta Phi Beta's own procedures raises questions as to whether Zeta Phi Beta leadership abused its power when it sanctioned Stark and concealed information surrounding the Moore investigation from its members.

Stark's email to the South Carolina Black News provides additional support for the inference that Zeta Phi Beta leadership abused their power when they turned a blind eye to the embezzlement. Regarding Moore's embezzlement of funds, Stark wrote that "17 members of the national executive board, under the leadership of comedienne Sheryl Underwood, who serves as chair of the board, are conspiring to assist Barbara Moore with covering up this outrage so that she can remain national president (and avoid going to jail)."<sup>192</sup> Lastly, leadership's desire to avoid any further investigation and deal with the matter in-house may have been motivated by the fact that after Stark told the media of the embezzlement, Zeta Phi Beta learned that some donors had decided "not to make any new financial grants and awards or further cash disbursements on existing grants."<sup>193</sup>

#### *B. Alpha Kappa Alpha Sorority, Incorporated*

Between 2006 and 2013, Alpha Kappa Alpha Sorority was embroiled in a half dozen lawsuits around the financial improprieties of its former Supreme Basileus (national president) Barbara McKinzie.

---

190. See Plaintiff's Brief, *supra* note 106, Exhibit 5.

191. *Id.* at 1.

192. Defendant's Brief, *supra* note 102, Exhibit 10 at 2.

193. Defendant's Brief, *supra* note 102, Exhibit 5 at 4.

### I. McKinzie v. Alpha Kappa Alpha

On March 13, 2006, Barbara McKinzie filed a lawsuit in Illinois state court against Alpha Kappa Alpha Sorority, Inc.<sup>194</sup> Her complaint contended that from March 2, 2006, through March 5, 2006, the Alpha Kappa Alpha Board of Directors met for a regularly scheduled meeting in Detroit, Michigan, and McKinzie participated in the meetings on March 2nd, 3rd, and 4th.<sup>195</sup> On the evening of the 4th, McKinzie was notified of an emergency that required her to leave the meeting and travel to Louisiana.<sup>196</sup> When told that McKinzie would have to leave the meeting early, Linda White, Alpha Kappa Alpha’s Supreme Basileu, informed McKinzie she would be presenting information the next day about a complaint from a vendor alleging financial misconduct during McKinzie’s term as treasurer in 2002.<sup>197</sup>

The complaint came from a travel consultant, David Carpenter, and stemmed from an incident between him and McKinzie.<sup>198</sup> Carpenter alleged that McKinzie told him she needed to audit trips his company had provided in order to ensure that Carpenter did not overcharge travelers.<sup>199</sup> Carpenter alleged she also told him if he did not agree to the audit, she had the authority to not to sign the checks payable to him, and he would no longer be a consultant for Alpha Kappa Alpha’s trips.<sup>200</sup> Carpenter stated he knew McKinzie had no right to ask for commissions and that she used him to extort money from the sorority.<sup>201</sup> Carpenter was ultimately audited by the IRS for refusing to pay taxes on the \$20,114 McKinzie extorted.<sup>202</sup>

When the Board convened on March 5th, 2006, only 16 of the 18 members were present.<sup>203</sup> The President informed the Board about Carpenter’s written complaint, which he reported in December 2005.<sup>204</sup> Prior to the Board meeting, President White conducted an investigation into

---

194. Complaint at 1, McKinzie v. Alpha Kappa Alpha, No. 06 CH 4882 (Ill. Cir. Mar. 13, 2006).

195. *Id.* at 2.

196. *Id.*

197. *Id.*

198. Letter from Julia David Carpenter, Travel Consultant, to Linda White, President of Alpha Kappa Alpha (Dec. 25, 2005).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. Complaint, *supra* note 194, at 3.

204. *Id.*

the complaint by meeting with Carpenter, and arranged for Alpha Kappa Alpha's attorney to examine the company's financial records.<sup>205</sup> McKinzie claims she was never made aware of the complaint, never put on notice that an investigation was being conducted, and never given an opportunity to defend herself.<sup>206</sup> The Board conducted a vote after listening to the allegations, and voted 9-6 in favor of suspending McKinzie's privileges pending the outcome of the investigation.<sup>207</sup>

On March 8, 2006, McKinzie received a letter from the President that indicated her suspension.<sup>208</sup> McKinzie alleged that the organization's Rules of Order and parliamentary authority do not permit the removal of an officer during an investigation.<sup>209</sup> Moreover, she alleged that the requisite number of affirmative votes required to remove her from office were not gathered.<sup>210</sup> According to McKinzie's complaint, Alpha Kappa Alpha's bylaws require 2/3 of the Board's vote to remove someone from office, which means there are at least 10 affirmative votes required and only 9 voted affirmatively for McKinzie's removal.<sup>211</sup> McKinzie argued in her complaint that the withdrawal of her privileges was punitive and negligently denied her due process rights.<sup>212</sup> Nine members contacted the President requesting a special meeting after realizing that an improper vote may have taken place, but no such meeting was called.<sup>213</sup>

McKinzie's complaint asked the court to declare the Board's action for her withdrawal to be null and void, to dismiss the committee appointed to investigate the allegation, to cease and desist all actions taken subsequent to the March 5, 2005 vote, and to seal the record of the proceeding and expunge the minutes relative to the deliberation and vote taken.<sup>214</sup>

After conducting numerous searches in an attempt to determine how this complaint was resolved, I was unable to find any information about the lawsuit at all, except from an outside website.<sup>215</sup> A search of all complaints

---

205. *Id.*

206. *Id.*

207. *Id.* at 2.

208. *Id.* at 4.

209. *Id.*

210. *Id.* at 5.

211. *Id.* at 4.

212. *Id.* at 5.

213. *Id.*

214. *Id.* at 6.

215. See Opinion and Order, *McKinzie v. Alpha Kappa Alpha Sorority, Inc.*, No. 06CH4882 (Ill. Cir. Ct. filed Mar. 13, 2006), <http://www.friendsoftheweepingivy.com/PDF/BAM.pdf>.

filed in Cook County Circuit Court on the court’s official website for the date stamped on the Complaint in this case, 13 March 2006, suggested that no such complaint was filed.<sup>216</sup>

Since Barbara McKinzie was a part of the organization long after 2006, presumably McKinzie was successful in her suit or was voluntarily reinstated by Alpha Kappa Alpha, and the suit was dropped. As the following incident underscores, the past is indeed prologue.<sup>217</sup>

## 2. Redden v. Alpha Kappa Alpha

On March 28, 2009, Pamela Redden filed a complaint and jury demand against Alpha Kappa Alpha, Barbara McKinzie, and various other directors, in U.S. District Court for the Northern District of Ohio.<sup>218</sup> As a life member of Alpha Kappa Alpha, Redden has been part of the organization for over 30 years and is a former local chapter president, former International Committee Chairman, former Regional Director and a candidate for First Vice President in 2006.<sup>219</sup> Redden’s complaint alleges the following:

During her 2006 campaign for First Vice President (known within the sorority as “First Supreme Anti-Basileus”), rumors circulated regarding financial matters, including payouts of Sorority funds and issues of self-dealing and conflicts of interest by McKinzie, who formerly served as Treasurer.<sup>220</sup> Redden was concerned with these unusual financial allegations and responded to these concerns during her campaign for national office.<sup>221</sup> McKinzie and others viewed the discussion of these issues as personal attacks on their integrity.<sup>222</sup>

Around April 20, 2007, Defendant Schylbea Hopkins, Great Lakes Regional Director, initiated an investigation in operational matters

---

216. See Search Results, Lexis Nexis, [https://w3.courtlink.lexisnexis.com/cookcounty/FindDock.asp?NCase=&SearchType=1&Database=3&case\\_no=&Year=2006&div=&caseno=&PLtype=1&sname=&CDate=03%2F13%2F2006](https://w3.courtlink.lexisnexis.com/cookcounty/FindDock.asp?NCase=&SearchType=1&Database=3&case_no=&Year=2006&div=&caseno=&PLtype=1&sname=&CDate=03%2F13%2F2006) (last visited Aug. 8, 2013).

217. An edition of Alpha Kappa Alpha’s history book is entitled “Past is Prologue”. See MARJORIE H. PARKER, PAST IS PROLOGUE: THE HISTORY OF ALPHA KAPPA ALPHA 1908-1999 (Marjorie H. Parker, 1st ed. 1999).

218. Complaint, Redden v. Alpha Kappa Alpha, No. 1:09CV705, (N.D. Ohio filed Mar. 28, 2009).

219. *Id.* at 5.

220. *Id.* at 6.

221. *Id.* at 7.

222. *Id.*

concerning the Alpha Omega Chapter of Alpha Kappa Alpha, of which Redden was a member.<sup>223</sup> According to Hopkins, the Great Lakes Heritage Committee issued a report concluding that Redden committed acts in violation of the Anti-Hazing Handbook.<sup>224</sup> As a result of these violations, her membership privileges were withdrawn, and Hopkins recommended that she be suspended from the sorority.<sup>225</sup>

Redden alleged the charges brought against her by Hopkins were arbitrary, capricious, and without merit.<sup>226</sup> Furthermore, she argued that they were carried out as an act of retribution, which served as evidence to sustain false charges that would lead to a suspension and effectively bar her from running for the highest elected office. At the time of the investigation, Redden was aware that an investigation was taking place, but was never advised that she was a target of the investigation.

Around September 4, 2007, Redden was contacted by the Alpha Omega chapter president to appear for an interview to take place on September 8.<sup>227</sup> However, she had a prior speaking engagement on that date, and notified the chapter president that she could not attend the interview.<sup>228</sup> She was never given an opportunity to reschedule the interview, nor was she made aware of the serious charges against her.<sup>229</sup> On October 14, 2007, she learned about the results of the investigation at a chapter meeting.<sup>230</sup> Hopkins publicly announced at the meeting that Redden's membership privileges were withdrawn pending a recommendation for a one-year suspension based on charges of financial hazing.<sup>231</sup>

Before leaving the October 14th meeting, Redden received a letter stating her privileges were withdrawn "pending the approval from the Directorate."<sup>232</sup> On or about October 25th, 2007, Redden submitted a request for reconsideration and provided documents to refute the allegations.<sup>233</sup> Instead of responding to this request, Hopkins sent Redden a

---

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.* at 8.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 9.

233. *Id.*

letter dated November 5th, which stated the Directorate voted to suspend her for one year and required her to pay \$9,500 to obtain reinstatement.<sup>234</sup> This letter stated nothing about Anti-Hazing Manual violations, but mentioned a first time violation of the “So Now You Want to Run for Office” document.<sup>235</sup>

Around December 5, 2007, Redden again initiated an appeal for reconsideration in accordance with the instructions in Hopkins’ November 5<sup>th</sup> letter.<sup>236</sup> Hopkins declined the appeal in a letter dated December 29, 2007, and, pursuant to Alpha Kappa Alpha’s bylaws, Redden initiated another further appeal.<sup>237</sup> This appeal had to be sent to McKinzie; however, the complaint alleged that there was no evidence that Hopkins sent the complete investigatory file to McKinzie.<sup>238</sup> Having never received a response from McKinzie, Redden’s efforts to further appeal “should have resulted in a hearing [for her at the] next regularly scheduled meeting of the Directorate.”<sup>239</sup> Redden alleged they deprived her of due process by not offering her a hearing or considering her appeal.<sup>240</sup>

Redden’s complaint contains seven separate counts. Count one was for a declaratory judgment requiring a hearing with respect to the charges, as well as the appeal being provided to the Supreme Basileus.<sup>241</sup> Count two was for injunctive relief.<sup>242</sup> Count three was for breach of contract for being suspended in violation of Alpha Kappa Alpha’s own policies, rules, and regulations.<sup>243</sup> Count four was for defamation arising from the public announcement that Redden was suspended.<sup>244</sup> Count five was for breach of fiduciary duty by the officers and directors of Alpha Kappa Alpha.<sup>245</sup> Count six was for negligence because the defendants did not assure Redden’s appeal of her suspension to the Directorate.<sup>246</sup> Lastly, count

---

234. *Id.* at 9-10.

235. *Id.* at 10.

236. *Id.*

237. *Id.*

238. *Id.* at 11.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.* at 15.

243. *Id.* at 16.

244. *Id.* at 17.

245. *Id.* at 18.

246. *Id.* at 20.

seven was for conspiracy, alleging Hopkins and McKinzie acted in concert with others to silence Redden and deprive her of her reputation.<sup>247</sup>

On March 28, 2009, the trial court dismissed all claims in their entirety against all of the individually named defendants, holding that, under Ohio law, the personally named defendants could not be held liable in the action.<sup>248</sup> The court also dismissed the breach of fiduciary duty claim, conspiracy claim, and defamation claim.<sup>249</sup> After these dismissals, Plaintiff filed a motion for preliminary injunction, seeking, *inter alia*, to enjoin enforcement of her suspension from the sorority.<sup>250</sup> The court denied Redden's motion because she failed to articulate facts that clearly and convincingly demonstrate that she would suffer immediate and irreparable injury, loss or damage without the injunction.<sup>251</sup> Ultimately, the parties resolved the conflict on their own. The parties agreed to dismiss the complaint, with prejudice, on June 17, 2011.<sup>252</sup>

### 3. Shackelford v. Alpha Kappa Alpha

On June 24, 2009, Kenitra Shackelford sent, through her attorney Ruth Major, a letter to the Alpha Kappa Alpha Sorority, Inc. Board of Directors detailing her allegations (later laid out nearly verbatim in her complaint) against Barbara McKinzie and Alpha Kappa Alpha.<sup>253</sup> In the letter, Major provided a narrative of Shackelford's history with Alpha Kappa Alpha and the events giving rise to the litigation, and asked that the Board to address Shackelford's damages, ensure that McKinzie's conduct would be investigated by a reliable outside party, and that Alpha Kappa Alpha's assets are thoroughly protected.<sup>254</sup> Shackelford's Verified Complaint at

---

247. *Id.*

248. Opinion and Order at 6, Redden v. Alpha Kappa Alpha Sorority, Inc., No 1:09CV705, (N.D. OH. Mar. 28, 2009).

249. *Id.* at 7-8, 11.

250. *Id.* at 3.

251. *Id.* at 9.

252. Notice of Dismissal with Prejudice, Redden v. Alpha Kappa Alpha Sorority, Inc., No 1-09-cv-00705-CAB, (N.D. OH. June 17, 2011).

253. Letter from Ruth I. Major, to Members of the Alpha Kappa Alpha Board (June 24, 2009).

254. *Id.*

Law was filed on September 3, 2009,<sup>255</sup> and was amended on June 23, 2011.<sup>256</sup>

According to the Verified Second Amended Complaint at Law, Shackelford was employed by Alpha Kappa Alpha as the Director of Meetings/Conferences.<sup>257</sup> She started in December 2008 as a Contractor, and became a permanent employee in March 2008.<sup>258</sup> In her role as the Director of Meetings/Conferences, Shackelford oversaw Alpha Kappa Alpha’s conference expenditures, including hotel, travel, and meal arrangements.<sup>259</sup> It was during this time that she learned of McKinzie’s spending.<sup>260</sup>

The process of arranging for airfare, hotel rooms, and catering for Alpha Kappa Alpha’s meetings lacked modern methods and technology.<sup>261</sup> Alpha Kappa Alpha did not use computer programs to monitor meeting/conference costs and expenses and revenues, which is unusual for organizations with Alpha Kappa Alpha’s size and prominence.<sup>262</sup> Shackelford alleged in her complaint that this lack of technology was not due to poor planning, but rather was an intentional plan to obfuscate costs and expenditures.<sup>263</sup>

Shackelford alleged, *inter alia*, that McKenzie would overcharge the sorority and retain the extra money and benefits. For example, Alpha Kappa Alpha would purchase a block of hotel rooms for a conference/meeting at a set (lower than retail) price.<sup>264</sup> This obliged Alpha Kappa Alpha to pay for the rooms, regardless if they were filled or not.<sup>265</sup> As a result Alpha Kappa Alpha charged members more for the rooms in order to make up for the cost of those rooms going unfilled.<sup>266</sup> Alpha Kappa Alpha’s event planning system did not monitor profits and only recorded the total revenues received, which allowed McKinzie to have “VIP

---

255. Complaint, Shackelford v. Alpha Kappa Alpha, 2009 WL 2966737 (Ill. Cir. Ct. Sept. 3, 2009) (No. 09 L 010473).

256. Second Amended Complaint, Shackelford v. Alpha Kappa Alpha, No. 09 L 010473 (Ill. Cir. Ct. June 23, 2011).

257. *Id.* at 1.

258. *Id.*

259. *Id.* at 3.

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.* at 4.

264. *Id.*

265. *Id.*

266. *Id.*

and “Gratis” lists for the events, meaning that certain individuals (namely McKinzie’s friends) were given numerous benefits, including rooms and suites at no charge.<sup>267</sup>

After noticing such transactions, Shackelford put a program in place to identify expenditures.<sup>268</sup> She noticed many American Express invoices were not linked to legitimate sorority transactions, including \$30,000 on jewelry and various Limousine and restaurant charges that had no connection to Alpha Kappa Alpha meetings/events.<sup>269</sup> The Director of Finance, Eric Salstrand, attempted to have Shackelford categorize these expenditures as meeting/travel expenses so that they would appear as legitimate purchases.<sup>270</sup> On various occasions, Shackelford heard McKinzie tell Salstrand to move charges around and to change accounting methods to hide costs.<sup>271</sup>

According to the complaint, McKinzie also engaged in “shaking down” vendors.<sup>272</sup> Various vendors complained that as treasurer, McKinzie required them to provide personal payments in order to do business with Alpha Kappa Alpha.<sup>273</sup> One travel agent stated McKinzie forced him to pay \$21,000 to do business with Alpha Kappa Alpha.<sup>274</sup> In May 2009, Shackelford received a phone call from a different vendor stating he could no longer participate in an event because of a monetary demand by McKinzie.<sup>275</sup> She told her assistant about this phone call, and the assistant informed her that these types of calls were common.<sup>276</sup>

Shackelford put other Alpha Kappa Alpha directors on notice about McKinzie’s behavior numerous times, but they did nothing.<sup>277</sup> Every time she mentioned the problems with balancing the budget, she was told to ignore the charges and just balance the budget.<sup>278</sup> Shackelford brought forth numerous charges, such as \$60,000 in airfare and \$25,000 from an Alaska trip that could not be explained.<sup>279</sup> Shackelford also discovered that

---

267. *Id.*

268. *Id.*

269. *Id.* at 5.

270. *Id.* at 6.

271. *Id.*

272. *Id.* at 7.

273. *Id.*

274. *Id.*

275. *Id.* at 8.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.* at 9.

McKinzie was diverting all of Alpha Kappa Alpha’s hotel reward points to her personal account.<sup>280</sup>

After bringing forward these unexplained charges and expenses, McKinzie started to treat Shackelford differently, including verbally abusing her for any perceived problems with Alpha Kappa Alpha conference/meeting planning.<sup>281</sup> In one instance, after a high attrition from the 2009 biannual leadership conference in Alaska, McKinzie told Shackelford to relocate some of the attendees and move their credit card deposits to other hotels.<sup>282</sup> Shackelford informed McKinzie that it would be illegal, both to “move conference attendees to other hotels without their notification and consent, [as well as] retain the deposits and shift them to other hotels without” an agreement between the hotel and credit card companies.<sup>283</sup> McKinzie became very angry and told Shackelford to keep the deposits because it was “her money” and she did not need the sorority’s consent since they would do whatever she told them.<sup>284</sup>

Shackelford contacted Alpha Kappa Alpha’s outside counsel about this issue, who emailed McKinzie explaining the correct legal way to handle the issue and deposits.<sup>285</sup> After the email was sent, McKinzie became even more hostile to Shackelford.<sup>286</sup> Tired of being intimidated by McKinzie, Shackelford approached Executive Director Dr. Betty James and told her about the hostilities.<sup>287</sup> Dr. James informed Shackelford that there was nothing she could do about McKinzie. She explained that this is why people in her position were forced to quit or became ill and part of the reason why there had been five people in the position under McKinzie in recent years.<sup>288</sup>

The bullying tactics became even worse in June 2009.<sup>289</sup> During a meeting, McKinzie became very angry because Shackelford did not listen to her about room relocations. McKinzie started to scream, curse, pound the table, and growl through her teeth, and eventually became so unbearable

---

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.* at 9-10.

284. *Id.* at 10.

285. *Id.*

286. *Id.*

287. *Id.* at 10-11.

288. *Id.*

289. *Id.*

that Shackelford left the meeting to prevent further attacks.<sup>290</sup> The day after this incident, Shackelford received written and verbal notice that she was being suspended for a week without pay due to her alleged work abandonment.<sup>291</sup> Shackelford alleged this was a pretext to retaliation.<sup>292</sup>

On June 17, 2009, the day Shackelford received notice of her suspension, she reported her concerns about McKinzie to the Illinois Attorney General.<sup>293</sup> After Shackelford returned from her weeklong suspension, she found her belongings packed up and her desk space was occupied by another person.<sup>294</sup> When she left to retrieve her briefcase, she was stopped by the Human Resource Manager and told she was no longer an employee of Alpha Kappa Alpha and was not allowed back into the building.<sup>295</sup>

During this period, Alpha Kappa Alpha allegedly started a smear campaign against Shackelford; they claimed she was hired based on a falsified employment application and challenged her application for unemployment benefits.<sup>296</sup> She amended her complaint for the first time on February 19, 2010.<sup>297</sup> In her Second Amended Complaint, filed on June 23, 2011, Shackelford alleged she was damaged by the loss of significant wages, humiliation, damage to her reputation, pain and suffering, and lost sleep.<sup>298</sup> The first two counts of her complaint were against Alpha Kappa Alpha: the first for violation of the Whistleblower Act, and the second for common law retaliatory discharge.<sup>299</sup> The third count was against McKinzie for tortious interference with a prospective economic advantage.<sup>300</sup> Finally, the fourth count was against the Human Resource Manager, Michelle Williams, for tortious interference with a prospective economic advantage.<sup>301</sup>

---

290. *Id.* at 12.

291. *Id.*

292. *Id.*

293. *Id.* at 13.

294. *Id.* at 14.

295. *Id.*

296. *Id.*

297. First Amended Complaint, Shackelford v. Alpha Kappa Alpha, No. 09 L 010473 (Ill. Cir. Ct. Feb. 19, 2010).

298. Second Amended Complaint at 15, Shackelford v. Alpha Kappa Alpha, No. 09 L 010473 (Ill. Cir. Ct. filed June 23, 2011).

299. *Id.*

300. *Id.* at 16.

301. *Id.* at 18.

Shackelford’s Verified Complaint at Law was filed on September 3, 2009,<sup>302</sup> and was amended on June 23, 2011.<sup>303</sup> Searches of Westlaw and Bloomberg Law indicate that this case is still ongoing. The latest entry occurred on May 2, 2013 in which the court allowed a corrected docket.

#### 4. Daley et al v. Alpha Kappa Alpha

Joy Daley, Kezilah Vaughters, Carol Ray, Elizabeth Holmes, Catherine Georges, Marie Cameron, Brenda Georges, and Frances Tynes filed suit on July 13, 2009, against Alpha Kappa Alpha Sorority, Inc., twenty four members of the Alpha Kappa Alpha Directorate, and the Alpha Kappa Alpha Education Advancement Foundation alleging claims of breach of fiduciary duties, breach of contract, fraud, unjust enrichment, corporate waste, and *ultra vires*.<sup>304</sup> Their complaint tended to show the following:

The plaintiffs were all members of Alpha Kappa Alpha for a combined total of more than 265 years. They held numerous voluntary leadership positions at both the local and national level.<sup>305</sup> Prior to filing a lawsuit, the women voiced their concerns at chapter meetings and within the organization. They sought to receive answers to their concerns from Alpha Kappa Alpha leadership; when their inquiries were rebuffed, they asked to inspect Alpha Kappa Alpha’s records to alleviate their concerns. After exhausting more amiable options, they initiated a lawsuit against Alpha Kappa Alpha and its officers and directors on June 20, 2009. Thereafter, their membership privileges were suspended for their actions.<sup>306</sup>

The First Amended Complaint pleaded claims of waste, fraud, unjust enrichment, breach of fiduciary duty, and wrongful discipline. The complaint centered on a dispute that followed the decision to compensate defendant, Barbara McKinzie, in her position as Supreme Basilius a historically uncompensated position.<sup>307</sup> In 2006, the Directorate (a body limited to making day-to-day decisions that cannot be handled by Alpha Kappa Alpha’s corporate staff or postponed until the next Boule meeting)

---

302. Complaint at 1, Shackelford v. Alpha Kappa Alpha, 2009 WL 2966737 (Ill. Cir. Ct. 2009) (No. 09 L 010473).

303. Second Amended Complaint, *supra* note 298, at 1.

304. Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723, 726 (D.C. 2011).

305. Brief of Appellant at 11, Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723 (D.C. 2010) (No. 10-CV-000220).

306. *Id.* at 12.

307. *Id.* at 6.

decided to pay McKinzie a lump sum of \$250,000 for past services and approved a recurring \$4,000 per month salary.<sup>308</sup> Plaintiff Daley was suspended from the sorority and warned not to attend the 2008 Boule after speaking concerns about McKinzie's additional compensation, in excess of one million dollars, for her position as Supreme Basilius.<sup>309</sup> At the 2008 Boule meeting, there was no mention of payments to McKinzie in the meeting agenda or financial reports, despite obvious controversy acknowledged by McKinzie herself. Attempts to discuss the issue were denied.<sup>310</sup> In response to the complaint, defendants filed a motion to dismiss.<sup>311</sup> Plaintiffs countered with a motion requesting discovery. Following a motions hearing, the trial court granted defendants' motion to dismiss with prejudice and denied plaintiffs' motion as moot.<sup>312</sup> Plaintiffs appealed. On appeal, the District of Columbia Court of Appeals affirmed in part, reversed in part, and remanded.<sup>313</sup>

Plaintiffs argued in their brief to the Court of Appeals that the Superior Court erred in holding it lacked jurisdiction over the individual defendants and the Foundation.<sup>314</sup> Specifically, they argued that by their appearance and actions at the 2008 Boule, the defendants had "transacted business" within the District such as to bring them within the reach of the District of Columbia long-arm statute.<sup>315</sup> The appellants also argued that the Superior Court erred in finding they lacked proper standing to bring their claims.<sup>316</sup> They argued that the court wrongly concluded that only Daley had standing to assert her claims based on the factual error that she alone was disciplined. This being the case, all plaintiffs had standing, plaintiffs argued, to bring their claims directly rather than derivatively.<sup>317</sup> Finally, the appellants argued that the Superior Court erred in dismissing the corporate waste, *ultra vires*, and breach of contract claims under Rule 12(b)(6).<sup>318</sup> Specifically, they argued that the Superior Court had applied the wrong standard to corporate waste claim by dismissing it as "unlikely" rather than determining

---

308. *Id.* at 8.

309. *Id.* at 9.

310. *Id.* at 10.

311. Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723, 727 (D.C. 2011).

312. *Id.*

313. *Id.* at 731.

314. Brief of Appellant, *supra* note 305, at 15.

315. *Id.* at 17-21.

316. *Id.* at 21.

317. *Id.* at 22.

318. *Id.* at 39.

that the plaintiffs could prove no set of facts to support the claim.<sup>319</sup> Plaintiffs argued that the court erred in dismissing the *ultra vires* claim because these types of claims are not limited to legislative acts, as the trial court ruled, but rather include violations of company bylaws.<sup>320</sup> They argued that the error in dismissing the breach of contract claim was based on the fact that multiple sufficient allegations of defendants violating Alpha Kappa Alpha’s governing documents had been pleaded.<sup>321</sup>

The defendant-appellees, in their brief, argued that the Superior Court correctly found that it did not have jurisdiction over the individual defendants or the Foundation.<sup>322</sup> The defendants argued that even if individual defendants transacting business were enough to bring them under the District of Columbia long-arm statute, the plaintiffs would still need to show a “substantial connection” between the defendants’ contact with the forum and the plaintiffs’ claim for relief, which did not exist.<sup>323</sup> A similar argument was made concerning the Superior Court’s finding that there was a lack of jurisdiction over the Foundation. Defendants argued that the Foundation’s website accessibility to D.C. residents did not establish personal jurisdiction, and even if the website’s accessibility constituted “transacting business,” the plaintiffs’ claims would need to arise from that business for jurisdiction to be proper.<sup>324</sup> Appellees also argued that all claims against the Foundation had been properly dismissed as no claim for relief was actually articulated against the Foundation.<sup>325</sup>

The Court of Appeals found that the plaintiffs lacked standing to bring suit for two reasons. First, plaintiffs’ claims were based on injury to Alpha Kappa Alpha as a corporation, not the plaintiffs. As such, relief could only be sought by its directors, not individual members.<sup>326</sup> Second, plaintiffs (aside from Daley) alleged they were disciplined in retaliation by McKinzie and other unidentified directors; however, personal jurisdiction could not be exercised over the out-of-state defendants.<sup>327</sup>

---

319. *Id.* at 39-40.

320. *Id.* at 40.

321. *Id.* at 42.

322. Brief of Appellees at 9, Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723 (D.C. 2010) (No. 10-CV-000220) (2010 WL 8020340).

323. *Id.* at 11.

324. *Id.* at 17.

325. *Id.* at 21.

326. *Id.* at 24-25.

327. *Id.* at 28.

Appellees argued that the trial court properly dismissed the breach of contract, *ultra vires*, and corporate waste claims. The breach of contract claim, as originally pleaded, showed only derivative claims which Alpha Kappa Alpha could assert. Furthermore, even if the plaintiffs stated individual claims, they had not abided by their own contractual obligations by violating Alpha Kappa Alpha by-laws.<sup>328</sup> The appellees argued the *ultra vires* claim was properly dismissed because there were no allegations that the financial decisions made were outside the powers granted by the Alpha Kappa Alpha charter. Additionally, the appellees noted that there was no statute or by-law that appellees alleged was violated.<sup>329</sup> Finally, appellees argued that all plaintiffs, Daley included, lacked standing for a corporate waste claim because it was a classic derivative claim unrelated to plaintiffs' individual membership status or discipline.<sup>330</sup>

In holding that the trial court erred in dismissing the action for lack of jurisdiction over individual appellees, the Court of Appeals reasoned that, given the circumstances (the named appellees voluntarily participating in the Boule sessions held in D.C. over the course of a full week, during which they dealt with the management of a D.C. corporation), the appellees reasonably expected to defend actions in D.C. Courts without offending traditional notions of fair play and substantial justice.<sup>331</sup> The Court of Appeals held that the trial court correctly ruled that it had no jurisdiction over the Foundation. Furthermore, in a situation where members of a non-profit supply substantial revenue by paying recurring annual dues, individuals have standing to complain when it is alleged that the non-profit and its management acted outside of the requirements of the constitution and by-laws of that organization in spending those funds.<sup>332</sup> The guidelines the court gave for determining if an individual has standing were that a party must show (1) a concrete injury, (2) that the injury is traceable to the defendant's action, (3) that the injury can be redressed.<sup>333</sup>

The Court found that relief from improper discipline, breach of contract, and *ultra vires* claims could all be brought directly.<sup>334</sup> Using the reasoning that it could not be shown that the directorate "irrationally

---

328. *Id.* at 31-32.

329. *Id.* at 41-43.

330. *Id.* at 43.

331. Daley, *supra* note 311, at 728.

332. *Id.* at 728-29.

333. *Id.* at 729.

334. *Id.*

squandered’ corporate assets,” the Court of Appeals found that the trial court properly dismissed the claim for corporate waste. Under their analysis, if a rational person would find that the corporation’s decision made sense, the judicial inquiry ends.<sup>335</sup> However, the Court of Appeals found that the trial court had erred in dismissing the *ultra vires* claim when it determined plaintiffs could not show any “statute or law” had been violated. The Court of Appeals stated the correct standard for *ultra vires* claims as corporate actions “expressly prohibited by statute or by-law.”<sup>336</sup> Finally, the Court of Appeals found that the trial court erred in dismissing the breach of contract claims as the complaint alleged various violations of Alpha Kappa Alpha’s governing documents.<sup>337</sup>

Following this ruling by the D.C. Court of Appeals, the defendants filed a petition in Cook County, Illinois Circuit Court on January 23, 2013, asking it to file a subpoena for Ruth Major for purposes of discovery in the District of Columbia Action.<sup>338</sup> This was in addition to defendants’ first petition on December 14, 2012 to depose corporate representatives for Ragland & Associates, Endow, Inc, and Brooks, Faucet & Robertson, LLP.<sup>339</sup> Searches did not reveal any proceedings in the D.C. Superior Court subsequent to the D.C. Court of Appeals ruling on August 18, 2011. Presumably, the suit has not yet been resolved and is ongoing.

This lawsuit was the only one to receive substantial attention from the media. The first news article related to any of the lawsuits involving Barbara McKinzie and Alpha Kappa Alpha was published in July 2009, and noted that Barbara McKinzie had recently come under fire for a “long list of financial misdeeds.”<sup>340</sup> The story further stated that eight members of the sorority, which was founded at Howard University in 1908 and now boasts 950 chapters and 200,000 members, filed a suit in D.C. Superior Court on June 20, 2009 seeking “to restore their beloved sorority to its former high standards of governance, corporate transparency, and active membership.”<sup>341</sup> The position that McKinzie held, the story reported, was

---

335. *Id.* at 730.

336. *Id.*

337. *Id.* at 731.

338. Pet. to Issue Subpoena, Daley v. Alpha Kappa Alpha Sorority, Inc., 2012L014051, (Ill. Cir. Ct. Jan. 23, 2013).

339. Pet. to Issue Subpoenas, Daley v. Alpha Kappa Alpha Sorority, Inc., 2012L014051, (Ill. Cir. Ct. Dec. 14, 2012).

340. *Members of Alpha Kappa Alpha Want Sorority’s President Fired*, WASH. BUS. J., July 27, 2009, available at 2009 WLNR 14414568.

341. *Id.*

usually an unpaid one, but McKinzie was paid “a \$375,000 lump sum payment,” as well as \$4,000 per month stipend.<sup>342</sup>

Another story covering the lawsuit stated that the complaint alleges that McKinzie “misappropriated funds . . . [in order to] commission[] a \$900,000.00 wax figure of herself.”<sup>343</sup> In addition to outlining the other allegations in detail, the story noted that “the dispute [wa]s being played out on open-access Websites and blogs, [which is] a rarity among the . . . [BGLOs, which tend to] handl[e] internal discord [much] more discreetly.”<sup>344</sup> “In the suit filed in Washington, D.C., the Alpha Kappa Alpha [sorority] members . . . alleged that [while] international president . . . [of the sorority,] McKinzie [also] bought designer clothing, jewelry, . . . lingerie,” gym equipment, and a big screen television, all with Alpha Kappa Alpha money.<sup>345</sup> According to another story, the lawsuit also alleged that McKinzie had invested millions of the sorority’s money in stocks and bonds, which subsequently lost huge amounts.<sup>346</sup> McKinzie characterized the lawsuits as nothing more than “malicious allegations, based on mischaracterizations and fabrications.”<sup>347</sup>

McKinzie explained to a news outlet that only \$45,000 of the \$900,000 actually went to wax figures, and two were bought: one of herself, and a second of another sorority official.<sup>348</sup> The statues were supposed to be displayed in the National Great Blacks in Wax Museum in Baltimore, Maryland.<sup>349</sup> The museum itself acknowledged that it created the statues and that “the sorority paid \$22,500 apiece for . . . [them, which was] a

---

342. *Id.*

343. Cheryl V. Jackson, *Chief's Wax Statue in Black Sorority Suit AKAs Say President Spent \$900,000 on it, Lavished \$400,000 on Herself*, CHICAGO SUN-TIMES, July 29, 2009, at 18, available at 2009 WLNR 15607056.

344. *Id.*

345. *Sorority Leader Accused of Misspending*, CHARLESTON GAZETTE & DAILY MAIL (WV), July 30, 2009, at 4C, available at 2009 WLNR 14753565.

346. Don Babwin, *The Country's Oldest Black Sorority is Involved in Bitter Fight Over Its Finances Wax Statues Melt Into Symbol of Discontent*, HOUSTON CHRONICLE, Aug. 2, 2009, at A7, available at 2009 WLNR 14987294.

347. *Sorority Leader Accused of Misspending*, *supra* note 345.

348. Mark Brown, *Interest Wanes After Considering Whole Ball of Wax- Even 'Bargain' \$14,000 Statue of Yours Truly Could Be Tough Sell*, CHICAGO SUN-TIMES, July 29, 2009, at 6, available at 2009 WLNR 14536751.

349. Don Babwin, *President of Nation's Oldest Black Sorority Sued Over Wax Statue, Spending Practices*, TIMES ARGUS (Montpelier-Barre, VT), July 30, 2009, available at 2009 WLNR 26946330.

discount from the standard cost of \$25,000.”<sup>350</sup> The museum curator, Joanne Martin, stated that the statues were not a ludicrous expense, but that officials from Alpha Kappa Alpha’s Chicago office approached her about commissioning the statues.<sup>351</sup> One statute was of the first president of the sorority, and the other, of McKinzie, was the president at the time the sorority turned 100.<sup>352</sup> McKinzie agreed, and argued that “the expenses were ‘consistent with furthering Alpha Kappa Alpha’s mission,’ and did not violate any of the group’s bylaws.”<sup>353</sup> The lawsuit against McKinzie even drew international attention.<sup>354</sup>

##### 5. Purnell et al. v. Alpha Kappa Alpha

On June 4, 2010, Julia Purnell filed an amended petition for writ of mandamus for examination of books and records against defendant Alpha Kappa Alpha.<sup>355</sup> Purnell’s petition contended that she is “a life member of Alpha Kappa Alpha and . . . [f]ormer Supreme Basileus.”<sup>356</sup> “She played . . . significant role[s] in [securing grants for Alpha Kappa Alpha and in] the effort for civil rights.”<sup>357</sup> As a former Supreme Basileus, she is a voting member of the Boule, Alpha Kappa Alpha’s policy-making body.<sup>358</sup>

McKinzie and Purnell first met in 1985 when McKinzie was the Executive Director of Alpha Kappa Alpha.<sup>359</sup> At the time, Purnell thought McKinzie was financially mismanaging “[Alpha Kappa Alpha] and was not surprised . . . [that] . . . McKinzie was terminated by then Supreme Basileus Janet Ballard.”<sup>360</sup> When McKinzie ran for treasurer of Alpha Kappa Alpha

---

350. Jonathan Pitts, *Museum Finds Itself in Middle of Dispute Wax Statues of Sorority Figures at Heart of Lawsuit*, BALTIMORE SUN, Aug. 1, 2009, at 3A, available at 2009 WLNR 14917506.

351. *See id.*

352. *Id.*

353. *Wax Figure at Center of Sorority Squabble*, CHICAGO TRIB., July 31, 2009, at 10, available at 2009 WLNR 14864756.

354. *See Tom Leonard, Sorority at War Over President’s Spending*, DAILY TELEGRAPH (UK), July 31, 2009, at 13, available at 2009 WLNR 14778089.

355. Amended Petition for Writ of Mandamus for Examination of Books and Records, *Purnell v. Alpha Kappa Alpha Sorority, Inc.*, No. 10-CH-10972 (Ill. Cir. June 4, 2010).

356. *Id.* at 2.

357. *Id.* at 2-3.

358. *Id.* at 3.

359. *Id.* at 6.

360. *Id.*

in 1998 and First Supreme Anti-Basileus in 2002, Purnell did not vote for her because of her concerns for McKinzie as a leader.<sup>361</sup>

In 2006, Purnell was appointed to a committee investigating claims that McKinzie forced vendors to pay her a fee to do business with the sorority.<sup>362</sup> Purnell witnessed firsthand McKinzie's demand that a vendor give \$20,000 "to 'audit' his books."<sup>363</sup> The Committee recommended, "the sorority adopt a 'Conflict of Interest' policy . . . to prevent similar problems from [occurring] in the future."<sup>364</sup> "None of the recommendations . . . were implemented by the Directorate or presented for a vote at the Boule."<sup>365</sup> Various members contacted Purnell to "express[] their concern . . . [about] the current leadership's behavior."<sup>366</sup>

"The position of Supreme Basileus has traditionally been a volunteer position that" is uncompensated, except for reimbursement of expenses.<sup>367</sup> From 2007-2009, when she was Supreme Basileus, "McKinzie received payments of at least \$1,182,827." In addition to these payments, there were various other inappropriate expenditures that solely benefited Alpha Kappa Alpha leadership.<sup>368</sup> In her petition, Purnell cited Shackelford's complaint, which alleged the many improprieties by Alpha Kappa Alpha leadership.<sup>369</sup> "In 2009, [Alpha Kappa Alpha] purchased . . . a wax statute of . . . McKinzie and Nellie Quander, [Alpha Kappa Alpha]'s first Supreme Basileus."<sup>370</sup> The Directorate allocated \$900,000 for this project, and there are rumors "the statues cost substantially less than" this amount.<sup>371</sup>

When Purnell filed her motion to inspect the books and records in 2010, she wanted to have this information before Alpha Kappa Alpha was to vote on new leadership at the Boule.<sup>372</sup> Specific documents Purnell sought to access include "copies of cancelled checks, copies of bank statements, copies of [g]eneral [l]edger detail, . . . copies of invoices

---

361. *Id.* at 6-7.

362. *Id.* at 7.

363. Amended Petition for Writ of Mandamus for Examination of Books and Records, Purnell v. Alpha Kappa Alpha Sorority, Inc., No. 10-CH-10972, (Ill. Cir. June 4, 2010).

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.*

369. *See id.* at 8-9.

370. *Id.* at 9.

371. Amended Petition for Writ of Mandamus for Examination of Books and Records, Purnell v. Alpha Kappa Alpha Sorority Inc., No. 10-CH-10972, (Ill. Cir. June 4, 2010).

372. *Id.* at 10.

received and paid by [Alpha Kappa Alpha], copies of . . . credit card statements and transaction receipts, copies of electronic funds transfers and supporting documents, . . . and copies of tax accountant and audit reports.”<sup>373</sup>

Purnell formally demanded the opportunity to examine certain corporate records.<sup>374</sup> Alpha Kappa Alpha responded to Purnell’s inquiry by stating that her demand is “superfluous to the information already provided” in annual audit reports.<sup>375</sup> The letter from Deborah Dangerfield also described Purnell’s requests as more burdensome than an earlier request made by Purnell to McKinzie on August 21, 2009.<sup>376</sup> In that letter, Purnell expressed her displeasure with Alpha Kappa Alpha leadership to McKinzie, and asked to receive and inspect the Alpha Kappa Alpha and Educational Advancement Foundation books, records, and financial documents.<sup>377</sup> McKinzie responded that she has not been involved in the misappropriation of funds and that she could not make available the books and records.<sup>378</sup> Furthermore, McKinzie accused other members of taking advantage of Purnell, as she is the oldest living Past Supreme Basileus and is a “voting member.”<sup>379</sup>

This complaint has been resolved. On July 1, 2010, the Cooke County Circuit Court entered an order granting Purnell’s motion for a preliminary injunction, holding and enjoining Alpha Kappa Alpha from interfering with plaintiff’s review of the documents she requested.<sup>380</sup> Alpha Kappa Alpha then sought to overturn the injunction by appealing the order to the Appellate Court of Illinois, First Judicial District, First Division.<sup>381</sup> However, this case was resolved without the appellate court ruling on the case. The litigation was concluded on the parties’ agreement to do so; the

---

373. *Id.* at 10-11.

374. Amended Petition for Writ of Mandamus for Examination of Books and Records at letter from Purnell to Dangerfield Ex. H, *Purnell v. Alpha Kappa Alpha Sorority Inc.*, No. 10-CH-10972, (Ill. Cir. June 4, 2010).

375. *Id.*

376. *Id.*

377. Letter from Julia Purnell to Barbara McKinzie, Centennial Int’l President, Alpha Kappa Alpha (Aug. 21, 2009).

378. Letter from Barbara McKinzie, Centennial Int’l President, Alpha Kappa Alpha, to Julia Purnell (Aug. 27, 2009).

379. *Id.*

380. Order at 1, Amended Petition for Writ of Mandamus for Examination of Books and Records, *Purnell v. Alpha Kappa Alpha*, No. 10 CH 10972, (Ill. Cir. Ct. July 1, 2010).

381. Brief of Plaintiff-Appellee, at 1, *Purnell v. Alpha Kappa Alpha Sorority, Inc.*, No. 1-10-1838 (Ill. App. Ct. Aug 16, 2010).

preliminary injunction was dissolved and the Petition for Writ of Mandamus for Examination of Books and Records was dismissed with prejudice.<sup>382</sup>

#### 6. Alpha Kappa Alpha v. McKinzie

On June 21, 2013, Alpha Kappa Alpha filed suit against Barbara McKinzie (“Defendant”), alleging breach of fiduciary duties, conversion, and unjust enrichment.<sup>383</sup> The complaint alleges the following: Defendant caused Alpha Kappa Alpha to pay her in excess of \$1,000,000 by soliciting members of the sorority’s board, known as the Directorate, to pay her.<sup>384</sup> Defendant was knowledgeable in accounting practices, and used this knowledge to create a second set of the sororities accounting records, which in turn circumvented Alpha Kappa Alpha’s internal accounting policies and procedures.<sup>385</sup> “The Directorate . . . approved [Alpha Kappa Alpha] taking out a life insurance policy on Defendant for which it was the beneficiary.”<sup>386</sup> Defendant incurred expenses for which she sought reimbursement from Alpha Kappa Alpha, all while not documenting these expenses.<sup>387</sup> “Defendant was reimbursed approximately \$99,000 pursuant to Alpha Kappa Alpha quarterly reimbursement policy.”<sup>388</sup>

Count one of the complaint was for breach of fiduciary duty.<sup>389</sup> Alpha Kappa Alpha claimed that Defendant was the Supreme Basileus from July 2006 until July 2010, and in that position, she owed Alpha Kappa Alpha a fiduciary duty not to improperly profit from her position. Allegedly, defendant breached her duty by: (1) using her leadership position to “embezzl[e]” Alpha Kappa Alpha money; (2) failing to inform the Directorate about such activity; (3) directing Alpha Kappa Alpha staff to create financial records accessible only by restricted personnel; and (4) failing to inform the Directorate about the correct amount her stipend should have been.<sup>390</sup> As to the conversion count, Alpha Kappa Alpha

---

382. *Id.*

383. Complaint at 1, Alpha Kappa Alpha Sorority, Inc. v. McKinzie, No. 2013-L-007218 (Ill. Cir. Ct. 21 June 2013).

384. *Id.* at 4.

385. *Id.* at 5.

386. *Id.* at 6.

387. *Id.* at 8.

388. *Id.*

389. *Id.* at 9.

390. *Id.* at 9-10.

alleged that it “was at all times the rightful owner of the . . . accounts,” Defendant wrongfully and without authorization usurped monies from Alpha Kappa Alpha, and failed to return the money.<sup>391</sup> Finally, as to the unjust enrichment claim, Alpha Kappa Alpha alleged that but for the misleading and deceptive conduct by Defendant, Alpha Kappa Alpha would not have allowed her to receive excess compensation. “Defendant’s retention of excess compensation is unconscionable, and deprives Alpha Kappa Alpha of the benefit of their money.”<sup>392</sup> The complaint asked that “Alpha Kappa Alpha be awarded restitution of not less than \$1,300,000.”<sup>393</sup>

### 7. Commentary

During the seven years that cases pertaining to Barbara McKinzie’s conduct were before various courts, Alpha Kappa Alpha demonstrated patterns of intra-organizational secrecy, including sanctioning of whistleblowers, and at least tacit support for unethical actions within the organization.

In the Daley case, at the sorority’s 2008 centennial meeting, there was no mention of payments to McKinzie in the meeting agenda or financial reports.<sup>394</sup> In fact, attempts to discuss the issue were denied.<sup>395</sup> The irony of the Purnell case is that not only was Purnell a former national president of Alpha Kappa Alpha, but she was also appointed to a committee charged with investigating claims that McKinzie forced vendors to pay her a fee to do business with the sorority.<sup>396</sup> The Committee recommended the sorority adopt a “Conflict of Interest” policy to prevent similar problems from reoccurring.<sup>397</sup> Not only were none of the recommendations implemented by the Board, none of them were even presented to the national convention for a vote.<sup>398</sup> In fact, the secrecy was so replete that even Purnell—a committee member investigating this issue—had to sue the sorority in an

---

391. *Id.* at 1.

392. *Id.* at 11.

393. *Id.*

394. Brief of Appellant at 10, *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723 (D.C. 2010) (No. 10-CV-000220).

395. *Id.*

396. Amended Petition for Writ of Mandamus for Examination of Books and Records, *Purnell v. Alpha Kappa Alpha Sorority, Inc.*, No. 10-CH-10972 (Ill. Cir. June 4, 2010).

397. *Id.*

398. *Id.*

effort to ascertain the full facts.<sup>399</sup> Rank-and-file sorority members were largely denied the opportunity to know what was transpiring in their sorority by those in power.

Not only were the facts of what transpired hidden from the average member, but also those who spoke out were demonized and sanctioned. In the Redden case, it is no surprise that Redden was punished in 2007.<sup>400</sup> Indeed, BGLO members may often be sanctioned for hazing violations, and this may well have been such a situation.<sup>401</sup> However, it would be consistent with the theory of this article that when BGLO members challenge the unethical conduct of national leadership, repercussions follow. Here, according to Redden, she expressed concern about the allegations of financial misfeasance on the part of McKinzie during her 2006 campaign for First Vice President.<sup>402</sup> As such, McKinzie and others—presumably in national leadership—viewed the discussion of these issues as personal attacks.

In the Shackelford case, when Shackelford brought forward the unexplained charges and expenses, McKinzie verbally abused her for any perceived problems with Alpha Kappa Alpha conference/meeting planning.<sup>403</sup> Even more, McKenzie became increasingly hostile toward Shackelford after she contacted outside legal counsel. As time went on, Shackelford received written and verbal notice that she was being suspended for a week without pay due to her alleged work abandonment.<sup>404</sup> Once Shackelford reported the financial irregularities to the Illinois Attorney General and returned from her weeklong suspension, she found that she was no longer an employee of Alpha Kappa Alpha.<sup>405</sup> During this period, the sorority's leadership allegedly started a smear campaign against Shackelford.<sup>406</sup> In the Daley case, the plaintiff was suspended from the sorority and warned not to attend the sorority's 2008 centennial convention

---

399. *Id.*

400. Complaint at 7, Redden v. Alpha Kappa Alpha, No. 1:09CV705 (N.D. Ohio filed Mar. 28, 2009).

401. *See infra* section III.

402. Complaint at 6, Redden v. Alpha Kappa Alpha, No. 1:09CV705 (N.D. Ohio filed Mar. 28, 2009).

403. Second Amended Complaint at 9, Shackelford v. Alpha Kappa Alpha, No. 09 L 010473 (Ill. Cir. Ct. June 23, 2011).

404. *Id.* at 12.

405. *Id.* at 13.

406. *Id.* at 14.

for speaking out on the financial irregularities vis-à-vis McKinzie in her position as Supreme Basileus.<sup>407</sup>

Moreover, those in power seemed to at least tacitly support or provide cover for McKinzie’s conduct. In McKinzie’s case against Alpha Kappa Alpha, it is no surprise that McKinzie’s privileges were suspended in 2006, because while she was in national leadership, she was not the national president.<sup>408</sup> In the Shackelford case, she put other Alpha Kappa Alpha directors on notice about McKinzie’s behavior numerous times, but they did nothing.<sup>409</sup> Every time she mentioned the problems with balancing the budget, she was told to ignore the charges and just balance the budget—thus showing at least tacit support for McKinzie.<sup>410</sup> In the Purnell case, not only did McKinzie stonewall Purnell’s demanded the opportunity to examine certain corporate records of the sorority.<sup>411</sup> The sorority itself stonewalled Purnell via Deborah Dangerfield, the sorority’s acting Executive Director.<sup>412</sup>

It is important to underscore that Alpha Kappa Alpha finally took action against Barbara McKinzie. However, it occurred some seven years after she became Supreme Basileus, after numerous whistleblowers looking out for the sorority’s best interest were sanctioned, and only after the sorority was audited by the IRS.<sup>413</sup>

### C. *Alpha Phi Alpha Fraternity, Incorporated*

On July 19, 2012, Herman “Skip” Mason (Mason), the recently ousted President of Alpha Phi Alpha, “filed a Petition for Temporary Restraining Order and Preliminary Injunction against Alpha Phi Alpha in a Georgia . . . [superior] court.”<sup>414</sup> Mason filed his action against the fraternity and

---

407. Brief of Appellant at 9, Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723 (D.C. 2010) (No. 10-CV-000220).

408. Complaint, McKinzie v. Alpha Kappa Alpha, No. 06 CH 4882 (Ill. Cir. Mar. 13, 2006).

409. Second Amended Complaint, *supra* note 403, at 9.

410. *Id.* at 8.

411. Amended Petition for Writ of Mandamus for Examination of Books and Records, Purnell v. Alpha Kappa Alpha Sorority, Inc., No. 10-CH-10972 (Ill. Cir. June 4, 2010).

412. *Id.*

413. Brief of Plaintiff-Appellee Julia Brogden Purnell at 5, Purnell v. Alpha Kappa Alpha Sorority, Inc., No. 10-Ch-10972 (Ill. App. Ct. Aug 16, 2010).

414. Gregory S. Parks, *Social Networking and Leadership Accountability in (Quasi) Secret Organizations*, 2 WAKE FOREST L. REV. 39,43 (2012), available at

individual members of the Board of Directors.<sup>415</sup> Mason alleges that each named member collectively and tortuously committed acts against him, and caused him to file this petition.<sup>416</sup>

Mason was first elected General President of the Alpha Phi Alpha at the Fraternity's 102<sup>nd</sup> Annual Convention, which was held July 17-22, 2008, in Kansas City, Missouri.<sup>417</sup> Mason was the 33<sup>rd</sup> General President of Alpha Phi Alpha.<sup>418</sup> For the first two years of Mason's presidency, all Fraternity functions proceeded as usual.<sup>419</sup> Mason regularly attended all Fraternity events and contributed his efforts to raise over one million dollars for the Fraternity during that time period.<sup>420</sup>

After the 2010 fiscal year, an independent audit was conducted of the Fraternity's recording and accounting.<sup>421</sup> The Fraternity had been experiencing some financial short-comings and was seeking to reign in spending, in order to produce a more balance budget.<sup>422</sup> The audit firm produced an Internal Management Letter, which detailed the findings of the audit.<sup>423</sup> According to Mason, someone on the Board of Directors purposefully leaked this letter, which contained numerous alleged errors, to the entire Fraternity membership prior to the correction of those errors.<sup>424</sup> Although the letter indicated the fraternity was in sound fiscal condition, it caused a strong uproar of disapproval for President Mason, because the letter contained a list of "unauthorized" personal purchases that Mason made with Fraternity funds.<sup>425</sup> Amongst the unauthorized purchases were payments for dependent care and school tuition for Mason's children, a purchase of Fraternity books from his wife's publishing company to be used

---

[http://gregoryparks.net/articles/1360601849Parks\\_Article.pdf](http://gregoryparks.net/articles/1360601849Parks_Article.pdf) [hereinafter *Social Networking and Leadership Accountability*].

415. *Id.*

416. *Social Networking and Leadership Accountability*, *supra* note 414, at 43.

417. *Id.* at 4.

418. *Id.*

419. *Id.*

420. *Id.*

421. Amended Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction at 4, Mason, (No. 12CV08809-9), <http://wakeforestlawreview.com/2012/11/social-networking-and-leadership-accountability-in-quasi-secret-organizations/>; *see also Social Networking and Leadership Accountability*, *supra* note 414.

422. Respondents' Brief in Opposition to Petitioner's Emergency Petition for Temporary Restraining Order at 4, Mason (No. 12CV08809-9).

423. *Id.*

424. *Id.*

425. *Id.*

for resale, and evidence of negligent adherence to Fraternity accounting policies.<sup>426</sup> Arguably, Mason’s removal from office was expedited by rank-and-file fraternity members who “employed ‘uncensored’ and ‘unsanctioned’ social media sites’ to disseminate information and organize around and against Mason’s conduct.”<sup>427</sup>

According to Mason, he was allowed, under Fraternity bylaws, to use the Fraternity’s credit card.<sup>428</sup> Mason contended he was provided an allotment of credit each year, and there were no express restrictions and/or limitations in which he could use that allotment.<sup>429</sup> Additionally, the Chief Financial Officer of the Fraternity approved each financial transaction.<sup>430</sup>

During this controversy, however, Fraternity business continued as usual. On April 22, 2012, the Western Regional convention for Alpha Phi Alpha was held in Las Vegas, Nevada.<sup>431</sup> Upon conclusion of the regional convention, the Board of Directors met; Mason assumed his role as Chair and began the meeting as customary.<sup>432</sup> After roll call, numerous members of the Board repeatedly asked Mason to step down as President.<sup>433</sup> Mason continually refused to step down, but Mason did attempt to start a discussion on the matter to defend himself.<sup>434</sup> Despite this attempt, most members present continued to ask Mason to step down, refusing to conduct business until he did so.<sup>435</sup> Frustrated, Mason left the meeting well before it ended.<sup>436</sup>

After Mason left the meeting, an Immediate Past Western Assistant Regional Vice President took over the meeting and continued Fraternity business.<sup>437</sup> Mason contended that although this person was not “legally” allowed to assume control of the meeting, according to Fraternity by-laws, that person did in fact gain control over the meeting.<sup>438</sup> With this

---

426. *Id.*

427. Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction at 4, Mason, (No. 12CV08809-9),

428. Pls.’ Pet., *supra* note 427, at 5.

429. *Id.*

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

437. Brief of Petitioner in Support of Amended Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction at 3, Mason (No. 12CV8809-9).

438. *Id.*

unauthorized person now in control of the meeting, the group initiated a vote to suspend Mason.<sup>439</sup> The motion to suspend was greeted with strong support, and Mason was subsequently suspended.<sup>440</sup> Since a suspended member of the Fraternity cannot hold office, the vote effectively removed Mason from office.<sup>441</sup>

In July 2012, with the controversy continuing to gather steam, the Board of Directors asked Keith A. Bishop, general counsel to the Fraternity, to generate a legal memorandum outlining “whether Brother Herman ‘Skip’ Mason has been lawfully suspended in his individual capacity and rendered disabled from performing his duties as 33<sup>rd</sup> General President of Alpha Phi Alpha Fraternity.”<sup>442</sup> Bishop concluded that the Board of Directors had acted in violation of the Fraternity Constitution and By-laws, as well as in violation of their fiduciary duty as corporate officers.<sup>443</sup> As a result of Bishop’s report, the Fraternity took action to remove him from office and to remove Mason from office.<sup>444</sup> In addition, Mason was prohibited from using any Fraternity funds; he was required to reimburse the Fraternity for \$24,322.79, and to terminate his promotion or association with the Fraternity.<sup>445</sup> As such, Mason filed this petition to enjoin the Fraternity from taking such action.<sup>446</sup>

First, Mason argued that he was likely to succeed on the merits.<sup>447</sup> Mason argued that the report, which led to his ouster, lacked foundation on several grounds.<sup>448</sup> First, Mason claimed the external auditors, which conducted the review, were not familiar with the process and customs of the Fraternity, thereby they lacked general knowledge on how the Fraternity president’s general allotment was typically used.<sup>449</sup> Second, no Fraternity by-laws or regulations stipulated how general allotments were to be used; therefore, its uses could not be considered improper.<sup>450</sup> Additionally, the Chief Financial Officer must approve all of the President’s purchases, and

---

439. *Id.*

440. *Id.*

441. *Id.*

442. Pls.’ Pet., *supra* note 427, at 5-6.

443. *Id.* at 6.

444. *Id.*

445. Fraternity’s Brief, *supra* note 422, at 5.

446. Pls.’ Pet., *supra* note 427, at 6.

447. Pls.’ Pet., *supra* note 427, at 7.

448. *Id.*

449. *Id.*

450. *Id.*

she did, thereby further proving Mason committed no wrong doing.<sup>451</sup> Moreover, the Fraternity has experienced great economic prosperity and success during Mason’s time as President, further making his removal on financial grounds questionable.<sup>452</sup>

Aside from the argument that Mason was allowed to use his general allotment as he did, Mason also argues the actions of the Board of Directors violated Article V § 1, Article IV §§ 3 and 4, and Article II §§ 1 and 2 of the Fraternity’s Constitution.<sup>453</sup> Mason argued:

(1) the Board was not properly constituted at the time of the action and therefore unauthorized to perform any official duties and responsibilities; (2) the suspension of Petitioner was unlawful because the Board of Directors was not properly constituted at the time of the action; (3) a later properly constituted Board could NOT lawfully adopt and ratify the actions previously taken by an unlawfully constituted Board; and (4) the unlawful Board action of installing an ‘Acting General President’ is void.<sup>454</sup>

Mason contended that much like the targeted union member in *Holmes*, he was deprived of his due process rights.<sup>455</sup> According to him, Mason was not served with notice, he was not given the opportunity to defend himself, and no hearing was provided to him.<sup>456</sup>

Second, Mason argued that he would suffer irreparable harm absent the grant of injunctive relief sought.<sup>457</sup> Mason stated he was a respected author, educator, Minister, and historian, and that his financial and professional success was entirely premised upon his public image.<sup>458</sup> Mason claimed that if he were ousted from his position as President of Alpha Phi Alpha, he would suffer irreparable harm in the form of “(1) loss of livelihood from his Ministry (2) financial ruin from the loss of millions of dollars in book sales and (3) loss of membership in and leadership and influence within his beloved Fraternity of which [he] has been a member for

---

451. *Id.*

452. *Id.* at 8.

453. *Id.*

454. *Id.*

455. *See generally Social Networking and Leadership Accountability, supra* note 414, at 43.

456. Pls.’ Brief, *supra* note 437, at 8.

457. Pls.’ Pet., *supra* note 427, at 9.

458. *See id.*

30 years and a leader for many years.”<sup>459</sup> Additionally, no monetary award at trial would be able to make Mason whole if he were to sue for damages.<sup>460</sup> Finally, Mason argued he was removed from his position in violation of the Fraternity’s constitution, much like the plaintiff in *Holmes*. It is upon these grounds that Mason contended he suffers irreparable harm, and Mason argued he deserves injunctive relief against the fraternity, much as the plaintiff in *Holmes* received in his case.

Third, Mason argued that the balance of equities tip in his favor.<sup>461</sup> Mason only has six months remaining in his term, and Mason agreed to reimburse the Fraternity a mutually agreed upon amount of restitution.<sup>462</sup> Thus, the harm to the Fraternity was far less than the harm to Mason if the injunction is denied.<sup>463</sup>

Fourth, and finally, Mason argued that allowing the Fraternity to oust him sets a bad precedent for other corporations and open the floodgates for litigation challenging improper removal from office. Thus, granting the Petition was within the public interest.<sup>464</sup>

It is upon these grounds Mason believed his Petition requesting a temporary restraining order and preliminary injunction should be granted.<sup>465</sup> Mason concluded his petition with a request to grant an immediate and temporary restraining order and/or preliminary injunction that would preclude the Fraternity from removing Mason from his office of President and from removing any other person from their office.<sup>466</sup> Mason also asked that the preliminary injunction and/or temporary restraining order preclude the Fraternity from taking any official action in the interim.<sup>467</sup> Finally, Mason asked for a hearing in which he more soundly argue his case.<sup>468</sup>

The Fraternity’s argument addressed the same criteria outlined by Mason, namely, that in order to obtain a temporary restraining order (TRO), three criteria must be proven: (1) the plaintiff has no adequate remedy at law, (2) the plaintiff can show irreparable harm, and (3) in the balancing of

---

459. *Id.*

460. *Id.* at 10.

461. *Id.*

462. *Id.*

463. *Id.*

464. *Id.*

465. Pls.’ Pet. *supra* note 427, at 10.

466. *Id.* at 10-11.

467. *See Social Networking and Leadership Accountability*, *supra* note 414, at 43.

468. *See id.*

equities, the court finds that equity demands an injunction.<sup>469</sup> If one of these factors was not met, the injunction must be denied.<sup>470</sup>

First, the Fraternity argued that Mason will not suffer irreparable harm, because his term of Presidency was due to expire at the end of the year.<sup>471</sup> Furthermore, the Fraternity argued the doctrine of laches bars the claim.<sup>472</sup> Under Georgia law, those who wait too long before filing their case lose the opportunity to seek injunctive relief.<sup>473</sup> Mason was suspended for almost three months prior to filing his TRO.<sup>474</sup> He accepted his punishment and mounted no fight until that much later filing.<sup>475</sup> Mason chose to bring this claim later because the next National Convention of Alpha Phi Alpha was the weekend after his filing.<sup>476</sup> Mason sought to stop this meeting in an effort to avoid the inevitable appointment of his successor.<sup>477</sup> Mason waited so long to seek this injunctive relief that the doctrine of laches barred his TRO.<sup>478</sup>

The Fraternity next argued that Mason has failed to show that there is not another adequate remedy of law available.<sup>479</sup> However, Mason had six other legal remedies available to him, by the Fraternity’s count, and additional remedies available to him through the Fraternity itself.<sup>480</sup> Furthermore, under Georgia law, members of the Fraternity acting on a volunteer basis are immune to civil suits if their actions were not willful or through wanton misconduct.<sup>481</sup> The Fraternity alleged that Mason failed to prove that any of the Fraternity members acted willfully or wantonly towards him in this situation.<sup>482</sup>

Finally, the Fraternity argued that Mason failed to demonstrate his case is “clear and urgent.”<sup>483</sup> The only injury Mason alleged was injury to his

---

469. See *City of Duluth v. Riverbrooke Props., Inc.*, 233 Ga. App. 46, 55 (1998).

470. *Id.*

471. Brief for Respondent at 8, *Mason v. Alpha Phi Alpha Fraternity, Inc.*, Civil Action No. 12CV08809-9. (Sealed record).

472. *Id.* at 9.

473. GA. CODE ANN. § 23-1-25 (2012).

474. Fraternity’s Br., *supra* note 422, at 9.

475. *Id.*

476. *Id.*

477. *Id.*

478. *Id.*

479. *Id.*

480. *Id.*

481. *Id.* at 10.

482. *Id.*

483. *Id.*

reputation and the possibility of a loss in book sales.<sup>484</sup> Regardless of the validity of these blanket assertions, any negative repercussions Mason faced were the result of his own actions, and Mason must live with his actions.

On July 27, 2012, Judge Matthew Robins denied Mason's request for an emergency TRO.<sup>485</sup> During the proceedings, Judge Robins noted that, "the court should not become involved in a nonprofit's right to determine its own members," because "... it is not for the court to resolve internal strife."<sup>486</sup> Although Judge Robins ruled that the court possessed jurisdiction over the Fraternity, he dismissed "the fourteen individual board members and an officer" of the Fraternity who had been named as co-defendants.<sup>487</sup> Whether Mason continued seeking legal remedies against Alpha Phi Alpha is unclear.<sup>488</sup> Judge Robins' ruling did not prevent the actual merits of the suit from continuing through the courts.<sup>489</sup>

The Mason case highlights two important points. First, while information was transmitted from Board members to rank-and-file fraternity members, it appears to have been done in a surreptitious manner. Arguably, revealing financial improprieties of the fraternity's national head to the membership was not condoned by the fraternity's Board. Accordingly, one or more members felt the need to without the others knowing. Even more, the information was not transmitted liberally to the fraternity's membership. Only after fraternity members took to social media sites, arguably, did the membership more broadly come to know of Mason's conduct.

Second, there may have been high-ranking leaders within the fraternity who provided cover for Herman Mason; however, it is without a doubt that the General Counsel, Keith Bishop, provided cover for Mason, at least concerning his removal from office. This is reflective of Bruce Ackerman's articulation of lawyers' roles in the U.S. Presidents use the Office of Legal Counsel and the White House Counsel to justify whatever the president

---

484. *Id.*

485. Walter C. Jones, *Judge Denies Request to Immediately Reinstate Fraternity President*, ATHENS BANNER-HERALD, July 27, 2012, <http://onlineathens.com/local-news/2012-07-27/judge-denies-request-immediately-reinstate-fraternity-president>.

486. *Id.*

487. Shelia M. Poole, *Judge Denies Temporary Restraining Order in Lawsuit against Alpha Phi Alpha*, ATLANTA JOURNAL-CONSTITUTION, July 27, 2012, <http://www.ajc.com/news/news/local/judge-denies-temporary-restraining-order-in-lawsuit-1/nQXZx/>.

488. *See id.*

489. *Id.*

chooses to do. This is also so within BGLOs, to the extent that the national presidents are allowed to handpick their organization’s General Counsel.

*D. Phi Beta Sigma Fraternity, Incorporated*

The incident that arose with Phi Beta Sigma Fraternity presents a case that is a clear outlier—an incident not involving a BGLO national president, but one where the national officer was immediately outed and ultimately sanctioned. Phi Beta Sigma is a fraternity founded in 1914 at Howard University that has more than 120,000 members.<sup>490</sup> Phi Beta Sigma consists of chapters at various universities in addition to alumni chapters located around the world.<sup>491</sup> Phi Beta Sigma elected Terry Davis as its national treasurer in July of 1999 at the national conclave and reelected him to a second two-year term in 2001.<sup>492</sup> Davis, a member of Phi Beta Sigma since 1985, served in that role until June of 2003.<sup>493</sup> As national treasurer, he was “responsibl[e] for the management of all funds entrusted to” Phi Beta Sigma.<sup>494</sup> Phi Beta Sigma receives “funds from annual dues paid by . . . [its] members.”<sup>495</sup> After receipt at Phi Beta Sigma’s headquarters in Washington, D.C., these funds “are deposited into . . . [Phi Beta Sigma’s] ‘general fund’ bank account,” and the treasurer is entrusted to use them to pay operating expenses.<sup>496</sup>

Phi Beta Sigma had two anti-fraud mechanisms to prevent embezzlement of funds and unauthorized expenditures.<sup>497</sup> “First, all expenses were to be approved by” Phi Beta Sigma’s executive director, national president, and treasurer, with each individually signing a voucher to document and authorize the payment.<sup>498</sup> Second, the president and

---

490. Brief and Addendum of Appellee at 3, *United States v. Davis*, 596 F.3d 852 (D.C. Cir. 2010) (No. 07-3100).

491. *Id.*

492. Superseding Indictment at 2, *United States v. Davis*, 596 F.3d 852 (D.C. Cir. 2010) (No. 06-193 (RBW)).

493. Brief for Appellant Terry Davis at 6, 13, *United States v. Davis*, 596 F.3d 852 (D.C. Cir. 2010) (No. 07-3100).

494. Government’s Opposition to Defendant’s Motion in Limine to Exclude Evidence of Offer to Compromise or Settle under Recently Amended Rule 408 at 1, *United States v. Davis*, 664 F. Supp. 2d 86 (D.C. Cir. 2009) (No. 06-193 (RBW)) [hereinafter Government’s Opposition to Defendant’s Motion in Limine].

495. Brief and Addendum for Appellee at 3, *Davis*, 596 F.3d 842 (No. 07-3100).

496. *Id.*

497. Government’s Opposition to Defendant’s Motion in Limine, *supra* note 494, at 1.

498. *Id.*

treasurer were supposed to co-sign every fraternity check to pay Phi Beta Sigma's debts.<sup>499</sup> Although the executive director is a full-time employee with an office at Phi Beta Sigma headquarters, neither the president, nor the treasurer has an office.<sup>500</sup> Accordingly, compliance with Phi Beta Sigma policy would require every voucher and check be mailed from one officer to the other until all signatures were obtained.<sup>501</sup>

Notwithstanding these policies, Phi Beta Sigma's executive director, Donald Jemison, admitted that there were times when the policies were not followed.<sup>502</sup> "For instance, if an important bill payment was due immediately, such as for insurance, the president would mail out the signed check to the insurance company, and return the voucher to [Phi Beta Sigma] headquarters with a copy of the check he had mailed."<sup>503</sup> At various times throughout his tenure as treasurer, Davis failed to comply with the voucher and check policies.<sup>504</sup> For example, he wrote some checks without obtaining the appropriate approval voucher, and he wrote many checks that contained only his signature.<sup>505</sup> In other cases, Davis signed or stamped the president's name.<sup>506</sup>

According to Peter Adams, president of Phi Beta Sigma from 1997 to July 2001, Davis was cooperative during the beginning of his tenure, but became increasingly obstinate about making himself available and about keeping reports of any kind.<sup>507</sup> By the fall of 2000, Adams informed Davis that he would be required to create monthly reports and to provide information to Adams or the executive director.<sup>508</sup> Moreover, in the fall of 2000, executive director Jemison became concerned about Davis's performance as treasurer.<sup>509</sup> Specifically, Jemison noticed that Phi Beta Sigma's bank account balance "did not add up."<sup>510</sup> As a result, he asked Davis for copies of checks, but Davis refused to provide the checks.<sup>511</sup>

---

499. *Id.*

500. *United States v. Davis*, 596 F.3d 852, 854 (D.C. Cir. 2010).

501. *Id.*

502. Brief and Addendum for Appellee, *supra* note 495, at 5.

503. *Id.*

504. *Id.*

505. *Id.*

506. *Id.*

507. *Id.* at 6.

508. *Id.*

509. *Id.*

510. Brief and Addendum for Appellee, *supra* note 495, at 6.

511. *Id.* at 7.

Jemison addressed his concerns again during the February 2001, February 2002, and September 2002 board meetings. Despite his observation that Davis’s financial reports were incongruous with Phi Beta Sigma’s payroll account, Davis accused Jemison of “showboating” and told the Phi Beta Sigma board of directors that Jemison “didn’t know what he was talking about.”<sup>512</sup>

Thus, the Phi Beta Sigma Board resorted to more drastic measures to exert control over Davis by requiring him to submit monthly statements to Phi Beta Sigma’s executive director and president, which listed the checks written in the previous month, including related vouchers and itemizations of withdrawals or transfers from Phi Beta Sigma accounts.<sup>513</sup> Furthermore, the Board requested that Davis provide all “future bank statements, a check register, and cancelled checks for . . . [Phi Beta Sigma’s] general fund account.”<sup>514</sup> Because Davis did not comply, Phi Beta Sigma’s auditor obtained the requested information.<sup>515</sup> Jemison noticed that some checks were made payable to cash and that some of the president’s purported signatures had been forged.<sup>516</sup> Furthermore, Jemison identified ten checks that formed the basis for ten counts of bank fraud.<sup>517</sup>

In the spring of 2003, Phi Beta Sigma investigated the financial irregularities and discovered that Davis had written checks to cash and deposited Phi Beta Sigma funds into his own account.<sup>518</sup> The evidence also tended to establish that during his tenure as national treasurer, Davis wrote some checks without an approved voucher and wrote other checks containing only his signature.<sup>519</sup> Phi Beta Sigma suspended Davis in light of these violations in June 2003; Jimmy Hammock assumed Davis’s duties as national treasurer in July of 2003.<sup>520</sup>

To explain why he had written Phi Beta Sigma checks payable to cash, Davis told Hammock that he had “transferred the funds to . . . [Phi Beta Sigma’s] payroll account.”<sup>521</sup> Hammock then informed Davis that Phi Beta Sigma found checks totaling \$29,000 written payable to cash that were not

---

512. *Id.*

513. *Id.* at 8.

514. *Id.*

515. *Id.*

516. *Id.* at 8-9.

517. *Id.* at 9.

518. *United States v. Davis*, 596 F.3d 852, 854 (D.C. Cir. 2010).

519. *Id.*

520. *Id.*

521. *Id.*

deposited into Phi Beta Sigma's account.<sup>522</sup> Davis then asked if it was possible to "just split this \$29,000 and make this situation just go away," to which Hammock replied that the total amount made out to cash was much more.<sup>523</sup> After Davis said he did not have that much money, Hammock advised Davis to talk with Phi Beta Sigma's legal counsel or international president if he wanted to negotiate a settlement.<sup>524</sup> This conversation between Davis and Hammock would become the dispositive issue on appeal, with the D.C. Circuit Court vacating Davis's convictions based on the district court's error in admitting this conversation into evidence.

At trial, Davis decided to take the stand because the district court excluded testimony from his wife that could have explained actions Davis took to pay fraternity bills.<sup>525</sup> He testified that when he began serving as Phi Beta Sigma's national treasurer, "he received no training as to how fraternity bills were paid."<sup>526</sup> According to Davis, Phi Beta Sigma board members were entitled to reimbursement for fraternity-related travel, even if those costs exceeded Phi Beta Sigma's budget.<sup>527</sup> Davis stated that he sent checks directly to vendors because the vouchers he received had already been signed by the executive director and president, so he saw no reason to send the checks to the president for a second signature.<sup>528</sup> Furthermore, Davis explained that he had authorization from the Phi Beta Sigma president to sign the president's name for Phi Beta Sigma expenses and that he used Phi Beta Sigma funds to reimburse himself for situations where he used his own funds to cover fraternity expenses.<sup>529</sup> Davis also prepared summaries of the expenses, but conceded "each check did not always reconcile with the exact dollar amount in question."<sup>530</sup>

Moreover, Davis maintained that he had proper authority for each signature that he executed and that his personal bank account was "merely a way station that allowed funds to remit more quickly to vendors and banks" that preferred not to deal directly with Phi Beta Sigma due to Phi Beta Sigma's poor financial history.<sup>531</sup> Davis stated that "he would write a . . .

---

522. *Id.*

523. *Id.*

524. *Id.*

525. See Brief for Appellant Terry Davis, *supra* note 493, at 13.

526. *Id.*

527. *Id.*

528. *Id.* at 13-14.

529. *Id.* at 14-15.

530. *Id.* at 15.

531. *United States v. Davis*, 596 F.3d 852, 855 (D.C. Cir. 2010).

[Phi Beta Sigma] check to cash, deposit the check into his personal account, and . . . [then] write a personal check” or purchase a money order in order to transfer funds more quickly.<sup>532</sup> He then sent “the check or money order to a vendor or separate . . . [Phi Beta Sigma] bank account,” or to a Phi Beta Sigma officer for reimbursement.<sup>533</sup> The jury appeared to not credit Davis’ explanations, as they ultimately convicted him of ten of the twelve charges.<sup>534</sup>

To summarize the evidence established that between January 2001 and June 2003, Davis wrote unauthorized checks to cash using Phi Beta Sigma’s operating account, “which he then deposited into his personal bank account” to spend as if the funds were his own.<sup>535</sup> Davis succeeded in embezzling funds by either forging the required second signature of Phi Beta Sigma’s national president or negotiating checks with only one signature.<sup>536</sup> “In order to disguise the fraud,” Davis often wrote in the memo line of the check that the funds were for a payroll transfer.<sup>537</sup>

After a board meeting in June 2003, “the [Phi Beta Sigma] board voted to suspend . . . [Davis] from his position as . . . treasurer and . . . referred the matter to law enforcement.”<sup>538</sup> The FBI reviewed multiple personal bank accounts held by Davis, including a joint checking account he held with his wife Rhonda Davis.<sup>539</sup> The FBI discovered “that checks made payable to cash from the . . . [Phi Beta Sigma] account” and were deposited into an account held by Davis and his wife and that none of the funds were returned to Phi Beta Sigma accounts.<sup>540</sup> In fact, the FBI’s investigation revealed that Davis and his wife used the funds for personal expenses such as “entertainment, gasoline, . . . [food,] travel, and credit card payments.”<sup>541</sup>

The FBI established that the checks that formed the basis for “the ten bank fraud counts w[ere] deposited” into one of Davis’s personal accounts.<sup>542</sup> As a result of their investigation, the FBI proved that Davis wrote 126 checks, totaling \$242,128.28, to cash from Phi Beta Sigma’s

---

532. *Id.* at 856.

533. *Id.*

534. *See* United States v. Davis, 664 F. Supp. 2d 86, 88 (D.D.C. 2009).

535. Government’s Opposition to Defendant’s Motion in Limine, *supra* note 494.

536. *Id.*

537. *Id.*

538. Brief and Addendum for Appellee, *supra* note 495, at 11.

539. *Id.* at 11.

540. *Id.*

541. *Id.* at 11-12.

542. *Id.* at 12.

general fund account.<sup>543</sup> In fact, Davis admitted that he wrote and signed each of these checks and that some of the proceeds were deposited into his personal bank account.<sup>544</sup> Although not all checks were deposited into Davis's personal bank account, the government demonstrated that "none of the funds from those checks" were deposited back into Phi Beta Sigma accounts.<sup>545</sup> Furthermore, the government's evidence established that Davis had forged signature cards for Phi Beta Sigma's general fund account and that he had signed a signature card at the bank reducing the required number of signatures.<sup>546</sup>

On November 30, 2010, after the case was remanded to the district court, Davis pled guilty. The following excerpt from an article about the disposition of the case published on the FBI's website provides a helpful summary of what Davis admitted as part of his guilty plea:

Davis admitted that between January 2001 and June 2003, while he was the elected, National Treasurer of Phi Beta Sigma, he stole money from the fraternity's bank accounts by writing checks to cash, which he would then negotiate by means of his personal bank account. In order to circumvent the requirement of a second signature of another fraternity officer on the checks, Davis presented checks containing the forged signature of the fraternity's National President or simply negotiated the checks without the required second signature.

As part of the scheme to defraud, Davis admitted that he falsely represented on the memo line of some of the checks and to responsible officials at the fraternity that the checks to cash were written to fund legitimate fraternity activities, whereas, as Davis well knew, the checks were used for his own personal benefit. Davis admitted that he used at least \$50,000 of the proceeds obtained through the scheme for his personal benefit.<sup>547</sup>

The arguments in this case centered on a conversation between Davis and Jimmy Hammock, who replaced Davis as treasurer in June of 2003, and on testimony of Rhonda Davis that she saw her husband make payments for

---

543. *Id.*

544. *Id.* at 15.

545. *Id.* at 12.

546. Brief and Addendum for Appellee, *supra* note 495, at 10.

547. *Former Treasurer of International Fraternity Sentenced in Connection with Bank Fraud*, FEDERAL BUREAU OF INVESTIGATION (March 15, 2011), <http://www.fbi.gov/washingtondc/press-releases/2011/wfo031511.htm>.

Phi Beta Sigma expenses. Davis’s principal defense was that “although he had written checks made payable to cash and deposited those checks into his personal banking account, he had used funds derived from those checks to pay fraternity bills and to reimburse himself for fraternity debts he had paid using personal funds.”<sup>548</sup>

Davis argued that the district court’s exclusion of his wife’s testimony offended his due process right to present a complete defense.<sup>549</sup> According to Davis, the district court effectively excluded the only evidence, other than his own testimony, that would demonstrate that he received Phi Beta Sigma bills and took steps consistent with paying those bills via personal checks and money orders.<sup>550</sup> The government objected to this testimony because Davis’s only personal knowledge of Davis’s fraternity payments originated from hearsay, and moreover that her non-hearsay testimony was that she saw Davis receive bills, write checks, and purchase money orders. According to the government, this limited testimony was properly excluded because it was speculative and prejudicial.

Davis argued that his wife’s testimony was not hearsay because the checks and money orders were not factual assertions offered for the truth of the matter, but were instead an instruction for the bank to pay a payee.<sup>551</sup> Similarly, Davis contended that the fraternity bills were not hearsay because they did not assert the truth of anything but rather instructed Phi Beta Sigma to pay a debt.<sup>552</sup> The government countered that his wife’s proposed testimony would assert the truth of the documents because she would testify that she saw the checks, money orders, and bills, and that she saw Davis pay the bills with personal checks or money orders.<sup>553</sup> The court noted that while perhaps the district court should have allowed testimony about the checks and money orders, excluding this testimony did not prejudice the defense.<sup>554</sup> The court held that the district court properly excluded testimony regarding the fraternity bills because these documents “did contain assertions, in the form of sender and recipient labels” and “unlike written words on money order, the labels asserted facts that can be characterized as true or false.”<sup>555</sup>

---

548. *United States v. Davis*, 596 F.3d 852, 854-55 (D.C. Cir. 2010).

549. Brief for Appellant Terry Davis, *supra* note 493, 13.

550. *Id.* at 17.

551. *Id.* at 27.

552. *Davis*, 596 F.3d at 857.

553. *Id.* at 855.

554. *Id.* at 857.

555. *Id.*

On appeal, the dispositive issue became whether or not the district court properly allowed Hammock to testify about the conversation he had with Davis in which he mentioned settlement negotiations. Over Davis's Rule 408 objection, the district court admitted the following testimony of Hammock, who replaced Davis as national treasurer:

Terry asked— he said “Can we just split this \$29,000 and make this situation just go away?” . . . . I told him that the amount was in excess of a hundred thousand dollars. Terry's statement to me at that point was, “I can't afford to pay that amount,” and then I told him— I said, “Terry, if you want to do some- negotiate some kind of settlement, you need to talk to our legal counsel or our international president”.<sup>556</sup>

Davis argued that his conversation with Hammock was inadmissible pursuant to Rule 408 because this rule prohibits the introduction of offers to compromise or to settle a disputed claim.<sup>557</sup> He contended that because the statements involved him “offering to furnish valuable consideration in compromising or attempting to compromise a claim by asking to split the disputed claim of \$29,000,” admitting this testimony of Hammock contradicted the plain language of Rule 408.<sup>558</sup> The court agreed with Davis, reasoning that he “did not confess to taking [Phi Beta Sigma's] money; he said that he had deposited the case checks into [Phi Beta Sigma's] payroll account; and Hammock rejected Davis's explanation.”<sup>559</sup> Ultimately, the court held that “the government intended to introduce Davis's settlement in order to prove Davis's guilt, or in the words of Rule 408(a), his ‘liability.’”<sup>560</sup>

The government argued that Davis did not offer valuable consideration as required by Rule 408 because Davis actually owed much more than \$14,500.<sup>561</sup> The court rejected this argument because such an interpretation would lead to bizarre results and run contrary to the rule's purpose of fostering settlements.<sup>562</sup> Indeed, under this interpretation, “only a

---

556. *Id.* at 854.

557. *Id.* at 858.

558. *Id.* at 859; FED. R. EVID. 408.

559. *Davis*, 596 F.3d at 859.

560. *Id.*

561. *Id.*

562. *See id.*

settlement . . . exceeding the full amount of the disputed claim . . . [would constitute] valuable consideration.”<sup>563</sup>

Next, the government contended that the testimony was properly admitted into evidence under Rule 408 because it was offered to prove that Davis obstructed a criminal investigation or prosecution and to show that Davis attempted to “buy off” Hammock.<sup>564</sup> The court rejected this argument because “Davis was . . . [never] charged with obstructing a criminal investigation or attempting to do so.”<sup>565</sup> Furthermore, the court noted that Davis’s settlement offer was a proposal to pay the money to Phi Beta Sigma and not an excessive offer intended to bribe Hammock, which is precisely “why Hammock rejected it out of hand.”<sup>566</sup> Perhaps more telling for the court was the fact that at oral argument, counsel for the United States “candidly admitted” that the government’s purpose was not to prove an effort to obstruct a criminal investigation.<sup>567</sup> Therefore, the court held that the district court abused its discretion by allowing Hammock to testify about Davis’s settlement offer.<sup>568</sup> Accordingly, the court vacated Davis’s convictions and remanded the case back to the district court.<sup>569</sup>

Lastly, Davis argued that “[t]he [d]istrict [c]ourt [c]onstructively [a]mended the [i]ndictment in [v]iolation of . . . [the] Fifth Amendment.”<sup>570</sup> In support of this argument, Davis contended that the jury instructions for counts 11 and 12 “expanded the availability of potential victims” to include anyone other than Davis by including the language “obtain property of another.”<sup>571</sup> According to Davis, this language “plainly and erroneously” amended the indictment because the superseding indictment required evidence that Davis obtained the property of Phi Beta Sigma in order to convict him.<sup>572</sup> However, the D.C. Circuit Court did not reach this argument. Although the D.C. Circuit Court vacated and remanded the case back to the district court based on the improper admission of the Hammock-

---

563. *Id.*

564. *Id.* at 859-60.

565. *Davis*, 596 F.3d at 861.

566. *Id.*

567. *Id.*

568. *Id.*

569. *Id.*

570. Brief of Appellant Terry Davis, *supra* note 493, at 30.

571. *Id.* at 32.

572. *Id.* at 32-33.

Davis settlement conversation, Davis ultimately entered into a plea agreement and pled guilty to one count of bank fraud.<sup>573</sup>

In this case, it is not clear how widely Davis's conduct was reported by leadership within Phi Beta Sigma. While other Phi Beta Sigma leaders may be guilty of failing to diligently monitor the actions of their treasurer, their culpability ends there. Indeed, the evidence in this case supports the inference that Phi Beta Sigma leaders acted to rectify the situation right away and that as soon as leaders had sufficient evidence to support their allegations they notified law enforcement officials. There does not appear to be any abuse of power. Further, it does not appear that a whistleblower was involved in this case. Rather, multiple Phi Beta Sigma officers took initiative to investigate the financial irregularities, and thereafter, the fraternity as a whole decided to investigate the circumstances surrounding Davis's conduct. Upon learning that Davis wrote checks for his own personal use, in violation of fraternity policy, Phi Beta Sigma promptly suspended Davis from his role as national treasurer and alerted the authorities.

### III. "WHERE YOU LEAD, I WILL FOLLOW"<sup>574</sup>

Hazing has been a long-standing and persistent issue confronting BGLOs.<sup>575</sup> In the past several decades, the fall-out from these incidents has not only played-out in media, but also in courts.<sup>576</sup> While hitting someone or making them perform calisthenics is not the same as embezzlement, the organizational culture parallels behind the persistence of both acts within BGLOs are striking. What follows is just an example of how secrecy, persecution of whistleblowers, and support from the unethical/illegal conduct flows from others in power.

---

573. See Government's Memorandum in Aid of Sentencing, *United States v. Davis*, No. 06-193-01 (RBW) (Feb. 18, 2011).

574. CAROLE KING, *WHERE YOU LEAD* (Ode Records 1971).

575. Jones, *supra* note 466.

576. Gregory S. Parks, Shayne E. Jones, Rashawn Ray & Matthew W. Hughey, *Complicit in their Own Demise?*, 39 *LAW & SOC. INQUIRY* 938 (2014).

*A. Secrecy*

While all BGLO hazing activity, arguably, takes place in secret, the clearest example of that secrecy is how evidence of the activities is hidden when things go awry. In February 1994, the Southeast Missouri State chapter of Kappa Alpha Psi took on five pledges for initiation, one of whom was Michael Davis.<sup>577</sup> “Between February 7-14, 1994, Keith Allen and other fraternity members subjected the pledges to repeated physical abuse.”<sup>578</sup> Pledges were “slapped on their necks and backs, caned on their buttocks and feet, and beaten with heavy books and cookie sheets.”<sup>579</sup> The active members also kicked, punched, and body-slammed the pledges.<sup>580</sup> Two of the five pledges dropped out after these abuses.<sup>581</sup> The remaining three pledges suffered through a “seven-station circle of physical abuse on February 14.”<sup>582</sup> During this activity, Michael Davis passed out.<sup>583</sup> The fraternity brothers claimed they “thought he was playing a joke, so they decided to carry him to his dorm.”<sup>584</sup> Upon returning to Davis’s dorm room, the fraternity brothers “stripped Davis of his bloodied clothes and left him on his bed.”<sup>585</sup> He never regained consciousness and died the following day.<sup>586</sup> Davis’s “autopsy revealed that he suffered broken ribs, a lacerated kidney, a lacerated liver, and multiple bruises.”<sup>587</sup> “[T]he cause of death was described as a subdural hematoma of the brain.”<sup>588</sup>

---

577. Gregory S. Parks, Shayne E. Jones & Matthew W. Hughey, *Belief, Truth, and Positive Organizational Deviance*, 56 *HOW. L.J.* 399, 412 (2013) [hereinafter *Belief, Truth, and Positive Organizational Deviance*].

578. *Id.*

579. *Id.*

580. *Id.*

581. *Id.*

582. *Id.*

583. Tim Bryant, *Kick Sent Victim Down, Fraternity Brother Says*, *ST. LOUIS POST DISPATCH*, Aug. 26, 1994, at 02C, available at 1994 WLNR 691388; *Belief, Truth, and Positive Organizational Deviance*, *supra* note 557, at 412-13.

584. Gregory S. Parks, Shayne E. Jones & Matthew W. Hughey, *Hazing as Crime: An Empirical Analysis of Criminological Antecedents*, at 15-16 (Wake Forest Univ. Legal Stud. Paper No. 2405079, 2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2405079](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2405079).

585. *Id.* at 16.

586. *State v. Allen*, 905 S.W.2d 874, 875 (Mo. 1995)

587. *Id.*

588. *Id.*

“Keith Allen was charged with five counts” of misdemeanor hazing.<sup>589</sup> Allen was found guilty by a jury on all five counts.<sup>590</sup> He appealed by claiming that the Missouri hazing statute violated the First Amendment right to association and the Fifth and Fourteenth Amendment rights to equal protection and due process.<sup>591</sup> The Missouri Supreme Court held rejected Allen’s claim and affirmed the conviction; the Court found Allen’s appeal to be “little more than a casserole of constitutional catch phrases, unadorned by legal analysis.”<sup>592</sup>

Allen also claimed that the statute was vague, but failed on that claim because the statute adequately defined hazing and provided notice of the acts prohibited in the statute.<sup>593</sup> Allen’s overbreadth argument also failed because the statute did not limit the right of Kappa Alpha Psi members to associate, nor did it attempt to regulate constitutionally protected activities.<sup>594</sup> Furthermore, Allen’s Fourteenth Amendment challenge failed on both fronts because: (1) while Allen alleged an equal protection violation, he offered no elaboration on that argument in his complaint; and (2) his underinclusiveness argument failed because “there is no equal protection requirement that regulation must reach every class to which it might be applied.”<sup>595</sup>

Several others were also arrested after Davis’s death— Eric Keys, Terrence Rodgers, Ronald Johnson, Tyrone D. Davis, Karl E. Jefferson, Larry H. Blue, Eric A. Massey, and Issac Sims, III—but all either plead out or were released.<sup>596</sup> However, five other Kappa Alpha Psi members served jail time; Vincent L. King received 5 years for involuntary manslaughter.<sup>597</sup> Michael Q. Williams reached a deal with prosecutors and agreed to 5 years

---

589. *Id.*

590. *Id.*

591. *Id.*

592. *Allen*, 905 S.W.2d. at 875-76; *Belief, Truth, and Positive Organizational Deviance*, *supra* note 557, at 413.

593. *Id.* at 876-77.

594. *Id.* at 878.

595. *Id.* at 878-79

596. Susan K. Brown, *6 More Arrested in Hazing 13 Now Charged in Ritual at Southeast Missouri State*, ST. LOUIS POST DISPATCH, Feb. 19, 1994, at 01B, available at 1994 WLNR 668054; Tim O’Neil & Marianna Riley, *Student Dies in Hazing University City Man, 25, Beaten during Initiation*, ST. LOUIS POST DISPATCH, Feb. 17, 1994, at 01A, available at 1994 WLNR 658995.

597. *2 Fraternity Members Sentenced in Death*, L.A. TIMES, Oct. 30, 1994, at 18, available at 1994 WLNR 4213549.

of probation and 90 days in jail.<sup>598</sup> Mikel Giles, Cedric Murphy, and Carlos Turner each received 30 days in jail and 5 years probation for their involvement.<sup>599</sup> Kappa Alpha Psi was banned from the University after Davis’s death.<sup>600</sup>

In a second incident, the husband of Kenitha Saafir, 24, filed suit against Alpha Kappa Alpha Sorority after his wife drowned in a hazing incident on September 9, 2002.<sup>601</sup> Sometime after 10 PM that evening, Saafir and other “pledges were blindfolded and driven to . . . [the] beach. . . . [wearing] black sweatsuits, socks, and tennis shoes.”<sup>602</sup> The women were forced to do “exhausting calisthenics, then directed towards the ocean, while still blindfolded and fully dressed.”<sup>603</sup> Saafir’s hands were tied and she protested that she could not swim, but she was still made to walk into the surf.<sup>604</sup> One local resident recalled the weather from that evening and said, “the ocean was ferocious that night . . . . Any reasonable person wouldn’t have gone anywhere near that water.”<sup>605</sup> Witnesses on the beach explained that “a large wave crashed” and pulled Saafir under.<sup>606</sup>

Tragically, Saafir was not the only pledge that drowned that evening—fellow CSLA senior Kristin High, 22, also died in the same incident.<sup>607</sup> High was also “blindfolded and tied by the[] hands . . . [before being] led into the riptide” in jogging clothes and shoes, with waves cresting at six to eight feet and creating a deadly undercurrent.<sup>608</sup> High’s death came while trying to rescue Saafir, whom she knew could not swim.<sup>609</sup> High’s family

598. Associated Press, *Two Fraternity Brothers Plead Guilty in Hazing Death of Pledge*, DENVER ROCKY MTN. NEWS, Aug. 31, 1994, at 26A, available at 1994 WLNR 546961

599. *Id.*

600. *Brutal Hazing Death Shocks Missouri Campus*, 40 CHRONICLE OF HIGHER EDUCATION (D.C.), Mar. 2, 1994, at A37, 1994 WLNR 5231648.

601. Vincent Cinisomo-Lara, *Husband Sues Over Alleged Hazing Death- Courts: 2 Cal State L.A. Women Drowned Last September in Reported Sorority Ritual*, LONG BEACH TELE., June 26, 2003, at A3, available at 2003 WLNR 2329484.

602. *Id.*

603. *Id.*

604. *Id.*

605. Kristal Brent Zook, *Swept Away*, 34 ESSENCE, Sept. 2003, at 180, 185.

606. *Id.* at 182.

607. *Coroner Confirms CSLA Students Drowned*, SAN GABRIEL VALLEY TRIBUNE (West Covina, CA), Sept. 18, 2002, available at <http://iw.newsbank.com/resources/doc/nb/news/0FAEAA6828CAC538?p=AWNB>.

608. Derek Montgomery, *Alleged Hazing Incident at Cal State Leaves Two Dead*, THE BADGER HERALD, (Sept. 25, 2002, 12:00 AM), [http://badgerherald.com/news/2002/09/25/alleged-hazing-incid/#.VHK8TfnF\\_W9](http://badgerherald.com/news/2002/09/25/alleged-hazing-incid/#.VHK8TfnF_W9).

609. Zook, *supra* note 605, at 182.

filed a \$100 million lawsuit against Alpha Kappa Alpha alleging that Alpha Kappa Alpha's hazing policy is a "sham."<sup>610</sup>

Two pledges survived the hazing incident and were tight-lipped and not willing to go into details about what happened.<sup>611</sup> When High's car was discovered, "all Alpha Kappa Alpha paraphernalia and her mandatory pledge journal" were missing.<sup>612</sup> Her family says there was evidence that she was treated as a "slave" with duties such as painting fingernails, buying and cooking food, chauffeuring, running errands, and braiding hair for the big sisters.<sup>613</sup> High's mother said her daughter lost "close to 30 pounds" by the time of her death.<sup>614</sup> No criminal charges were filed in the matter.<sup>615</sup> The LAPD officially closed the case and maintained that High and Saafir drowned accidentally.<sup>616</sup>

In both the Kappa Alpha Psi and Alpha Kappa Alpha incidents, organization members—the hazing perpetrators, specifically—tried to erase any connection between the organization and the victims. While their ultimate goal may have been to keep the incidents a secret from authorities, it was almost certain that their goal was to keep the incidents secret from other members of their respective organizations who could mete-out sanctions as well.

### *B. Whistleblower Sanctions*

While it may be common that hazing victims, who become whistleblowers, are sanctioned by BGLO members after reporting hazing incidents, the clearest example of such an incident occurred when Courtney Howard, a former student at San Jose State University, filed a civil suit alleging that "she was subjected to progressively more violent hazing by Sigma Gamma Rho members" in September 2008.<sup>617</sup> Howard alleged that she was beaten "with wooden paddles, slapped . . . with wooden spoons

---

610. Montgomery, *supra* note 608.

611. Zook, *supra* note 605, at 182.

612. *Id.*

613. *Id.* at 183.

614. *Id.*

615. *Belief, Truth, and Positive Organizational Deviance*, *supra* note 557, at 413.

616. Zook, *supra* note 605, at 241.

617. Tamar Lewin, *Hazing Accusations Against a Sorority*, N.Y. TIMES, Oct. 5, 2010, at A21, [available at](http://www.nytimes.com/2010/10/06/us/06hazing.html?pagewanted=all&_r=0) [http://www.nytimes.com/2010/10/06/us/06hazing.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/10/06/us/06hazing.html?pagewanted=all&_r=0).

[and] shoved . . . against . . . walls.”<sup>618</sup> On September 13, 2006, Howard was injured to the point that she sought medical treatment.<sup>619</sup> On September 18, 2006, “a pledge was knocked unconscious” during the hazing.<sup>620</sup> The paddling, which began on September 19, 2006, lasted for ten days.<sup>621</sup> Pledges were told they would be hit seven times with a wooden paddle each night, once for each of Sigma Gamma Rho’s founders.<sup>622</sup> Howard was also warned not to drop out of the sorority and was allegedly told that she would be “jumped out” with a beating if she tried to quit.<sup>623</sup> Ironically, many of the beatings took place during AURORA Week, which was supposed to reflect “Sigma’s unity of purpose and action, support of programs and projects, and full cooperation in human concern and commitment.”<sup>624</sup> The incident resulted in the suspension of the sorority until 2016 by San Jose State.<sup>625</sup> Four of the members were convicted of misdemeanor hazing and “sentenced to ninety days in jail and two years probation.”<sup>626</sup> The icing on the proverbial cake was the warning that pledges were given; sorority members threatened “Snitches get stitches!”<sup>627</sup> In sum, pledges were warned that whistleblowing would be met with swift retribution. The same phenomenon is observed when unethical national heads of these organizations are challenged.

### C. Support for Actions

The express or tacit support for hazing within BGLOs usually comes from members of the same chapter or group of chapters that have shared in the hazing experience. However, the most egregious examples are often when older members—sometimes alumni advisors—demonstrate outright

---

618. *Id.*

619. *Id.*

620. *Id.*

621. *Id.*

622. *Id.*

623. Lisa M. Krieger, *Former SJ State University Student Sues School and Sorority for Hazing*, SAN JOSE MERCURY NEWS (updated Sept. 3, 2010, 8:06 PM), [http://www.mercurynews.com/breaking-news/ci\\_15988608](http://www.mercurynews.com/breaking-news/ci_15988608).

624. Sommer Brokaw, *Sorority Sued Over Alleged Hazing Incident-Plaintiff: Sigma Gamma Rho Caused Medical Issues*, THE CHARLOTTE POST, Oct. 14, 2010, available at [http://www.thecharlottepost.com/index.php?src=permalinks/Sorority\\_sued\\_over\\_alleged\\_hazing\\_incident](http://www.thecharlottepost.com/index.php?src=permalinks/Sorority_sued_over_alleged_hazing_incident).

625. Lewin, *supra* note 617.

626. Krieger, *supra* note 623.

627. Lewin, *supra* note 617.

support for the hazing. For example, in 1994 five Omega Psi Phi members—ages ranging from 22 to 28 and including the chapter advisor—were charged in connection with hazing a pledge at Indiana University.<sup>628</sup> Curtis A. Whittaker, Ozie Davis III, and Anthony Tidwell were arrested for beating Kevin Nash.<sup>629</sup> Whittaker was the chapter's president, and Davis was its group advisor.<sup>630</sup> Two others, Gary J. Kelly, and an unidentified man, were also charged.<sup>631</sup> Nash was beaten over a two-week period, including an incident where he was repeatedly paddled until the wooden paddle broke on his body.<sup>632</sup> He was also hit on the buttocks with a holding chair and slapped over 100 times, which caused him to lose partial hearing in his left ear.<sup>633</sup>

In another incident, in 1996, University of Georgia football player Roderick Perrymond sought membership in Phi Beta Sigma fraternity.<sup>634</sup> On September 8, 1996, two fraternity members, Zatar Holland Howard and Kevin Welch, and their advisor, Thomas Stevens, paddled Perrymond “more than 50 times at an off-campus apartment.”<sup>635</sup> This abuse produced bruises and broken blood vessels that required treatment at the local hospital.<sup>636</sup> The hazing occurred at an apartment on Highland Park Drive that was rented by two of Perrymond's teammates, Robert Edwards, 21, and Corey Johnson, 22, and former football player Emmitt Mitchell, 21.<sup>637</sup>

Howard, Welch, and Stevens were charged and pled guilty to battery and hazing charges and each received 24 months of probation, a fine of \$1,200.00, 150 hours of community service to be completed in 90 days, 50 hours of which had to be completed with the trash task force.<sup>638</sup> As their first offense, the young men had the opportunity to complete the conditions

---

628. *IU Frat Members Charged in Alleged Hazing Incident*, FORT WAYNE NEWS SENTINEL (IN), Mar. 3, 1994, at 8A, available at 1994 WLNR 1723362.

629. *Id.*

630. *Id.*

631. *Id.*

632. *Id.*

633. *Id.*

634. Duane D. Stanford, *Judge Sets Hearing in Hazing of Athlete*, ATLANTA J. & CONST., Sept. 18, 1996, at E, available at 1996 WLNR 4755896.

635. Rebecca McCarthy, *3 Fraternity Members Plead Guilty to Hazing*, ATLANTA J. & CONST., Nov. 22, 1996, at C, available at 1996 WLNR 4756919 [hereinafter *3 Fraternity Members Plead Guilty to Hazing*].

636. *Id.*

637. Duane Stanford & Doug Cumming, *Police Probe UGA Hazing a Football Player and Fraternity Pledge was Injured, and Students are being Questioned*, ATLANTA J. & CONST., Sept. 12, 1996, at B, available at 1996 WLNR 4746604.

638. *3 Fraternity Members Plead Guilty to Hazing*, *supra* note 635.

of their probation and have the charges removed from their records.<sup>639</sup> In October, 1996, a University of Georgia judiciary panel found that the three men "violated the university's conduct regulations" and suspended them from campus until 1999.<sup>640</sup> On October 27, 1997, UGA President William Prokasy shortened their suspension to the winter of 1998.<sup>641</sup>

The Phi Beta Sigma fraternity was similarly suspended from campus until the spring of 1999. However, the fraternity requested that the university reduce the suspension and claimed that the incident was isolated and the sanctions were too harsh.<sup>642</sup> It is unclear whether these sanctions were reduced.<sup>643</sup> The national fraternity, along with the UGA local chapter, settled a lawsuit brought by Perrymond for an undisclosed sum; however, the suit against the three individuals was not settled.<sup>644</sup> Perrymond said life in Athens, GA, where the university is located, became uncomfortable for him in the wake of the incident, so he transferred to Morris Brown College.<sup>645</sup>

#### IV. CONCLUSION

One of the great challenges that BGLOs face is, *arguendo*, their failure to incorporate law more formally and substantively into their rulemaking and enforcement. "Law does not penetrate organizations solely through the agency of outside enforcers coming in to inspect, compel, and cajole."<sup>646</sup> Simply because the IRS, prosecutors, or plaintiffs' attorneys are not knocking at the door of BGLOs or members' doors, does not mean that these entities and individuals cannot and should not be more embracing of,

---

639. *Id.*

640. Rebecca McCarthy, *UGA Reduces Suspensions in Hazing Case the Three Men Who Paddled a Pledge Also Were Convicted on Criminal Charges*, ATLANTA J. & CONST., Aug. 23, 1997, at E, available at 1997 WLNR 3167674.

641. *Id.*

642. Rebecca McCarthy, *UGA Fraternity Wants Hazing Penalty Eased Officials Say Paddling Was 'Isolated Incident'*, ATLANTA J. & CONST., Jan. 24, 1997, at B, available at 1997 WLNR 5183093.

643. *See id.*

644. *Georgia in Brief UGA Chapter Settles Lawsuit Over Hazing*, ATLANTA J. & CONST., Sept. 28, 1997, at H, available at 1997 WLNR 3337759.

645. *Perrymond Will Leave Georgia for Morris Brown*, ATLANTA J. & CONST., Dec. 20, 1996, at E04, available at 1996 WLNR 4748807.

646. Joseph Sanders, V. Lee Hamilton & Toshiyuki Yuasa, *The Institutionalization of Sanctions for Wrongdoing Inside Organizations: Public Judgments in Japan, Russia, and the United States*, 32 LAW & SOC'Y REV. 871, 879 (1998).

and more forward thinking with regard to, the law. As scholars have noted, law is involved in the formation and maintenance of organizations in a variety of ways. As a normative point, law should influence institutionalization of societal norms, because they are part of societal culture and central to the environment within which organizations operate.<sup>647</sup> Also, organizations should utilize the categories of legal rationality in an effort to construct their own institutionalized rules.<sup>648</sup> Over the past several decades, however, organizations have “increasingly ‘internalized’ important elements of the legal system,” including legal rules, structure, personnel, and activities.<sup>649</sup> Toward this end, law “incorporated into organizations mimic[s] public legal institutions,” but is synthesized with organizational values.<sup>650</sup>

Within BGLOs, the problem may be, on one hand, that the organizations and their members flout the law. At the undergraduate level, members know that hazing is illegal in many states and that there are civil sanctions for doing harm to aspiring members. Among the “upper” echelon of the organizations, leaders know that the United States tax code places certain restraints on how money can be used by 501(c)(7) entities. They also know that, as a general principle, embezzlement/conversion of organizational fund/theft are unlawful and the technical definition of such concepts. Even more, they know what is expected of good organizational governance. Despite this knowledge, members and leaders simply decide to travel a different path, an unethical and unlawful one, and it is a decision that is pervasive throughout the organizations. In essence, the thinking is that it matters little what the law says; what matters most is what leaders and members believe is best for the organization or what has been common practice within the organization.

A counter-narrative, which I think is slightly more accurate, is that the BGLO members and organizations have not taken the time to discern what broader societal rules exist regarding hazing and financial malfeasance nor have they used such knowledge as guiding principles for organizational

---

647. Lauren Edelman & Mark Suchman, *The Legal Environments of Organizations*, 23 ANN. REV. OF SOC. 479, 504 (1997).

648. See CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY 218 (1983).

649. Lauren B. Edelman & Mark C. Suchman, *When the “Haves” Hold Court: Speculations on the Organizational Internalization of Law*, 33 LAW & SOC’Y REV. 941, 942-43 (1999).

650. Shaubin Talesh, *How the “Haves” Come Out Ahead in the Twenty-First Century*, 62 DEPAUL L. REV. 519, 528 (2013); 33 LAW & SOC’Y REV. 941, 943 (1999).

functioning. There is little effort within these organizations to educate membership about anti-hazing law. As such, the organizations’ leaders simply do not know enough about the legal implications of leadership conduct to adjudge whether it is unlawful. In the end, you get arguments about hazing like: “the alleged victim consented,” as if that were to or should always carry the day. You also get arguments about financial malfeasance like: “the national president simply borrowed the money,” “his/her taking of the money was not ‘malicious’,” or “well, other national presidents have done the same things, so why pick on this one.” These arguments are often made in a manner that is unmoored from the relevant legal doctrine.

Accordingly, law is not a prevailing and substantive orienting point for BGLOs. As such, the national presidents have been allowed to engage in behavior that is unethical and illegal with little impunity. It is the same culture that provides a backdrop for understanding, to some extent, why hazing persists among BGLO undergraduates. Too often, the expectation within BGLOs is that teenagers should be held to a higher standard than 40, 50, and 60 year-old men and women. However, in an organization where a lack of ethics and conforming to the rule of law is condoned at the top, it cannot be reasonably expected that rank-and-file members would act substantially different from what they see amongst leadership. As a practical matter, in hazing litigation against one of these BGLOs, it seems plausible that an argument can be made is that BGLOs have a culture of unethical and illegal behavior, so it is no surprise that undergraduates haze.

