

White Boys Drink, Black Girls Yell . . . :
A Racialized and Gendered Analysis of
Violent Hazing and the Law

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If you can fill the unforgiving minute
 With sixty seconds' worth of distance run,
 Yours is the Earth and everything that's in it,
 And—which is more—you'll be a Man, my son!

“If” – Rudyard Kipling

I. INTRODUCTION:

In March 2014, two things occurred that rocked the world of collegiate fraternities. First, *The Atlantic* magazine published a cover story titled *The Dark Power of Fraternities*, a yearlong study, and ultimately critique, of these organizations.¹ The article sparked a broader dialogue about the state of college fraternities—e.g., in popular culture,² and with regard to their tensions with host institutions.³ This dialogue reverberated across a host of media, including television,⁴ radio,⁵ and print.⁶ Second, Sigma Alpha Epsilon (“SAE”), one of the nation’s largest and most storied college fraternities, eliminated the practice of pledging, given a Bloomberg report that found it to be the deadliest fraternity to join in recent years.⁷ What undergirded these critiques is the age-old phenomenon of hazing within these groups.

Hazing as a human sociological phenomenon is witnessed throughout

¹ Caitlin Flanagan, *The Dark Power of Fraternities*, THE ATLANTIC (Mar. 2014), <http://www.theatlantic.com/features/archive/2014/02/the-dark-power-of-fraternities/357580/>.

² Ashley Feters, *Pop Culture's War on Fraternities*, THE ATLANTIC (Feb. 28, 2014, 8:05 AM), <http://www.theatlantic.com/entertainment/archive/2014/02/pop-cultures-war-on-fraternities/284126/>.

³ Julia Ryan, *How Colleges Could Get Rid of Fraternities*, THE ATLANTIC (Mar. 3, 2014, 4:31 PM), <http://www.theatlantic.com/education/archive/2014/03/how-colleges-could-get-rid-of-fraternities/284176/>.

⁴ *CBS This Morning: Inside the World of Fraternities: Journalist Discusses Greek System's Influence on Campus* (CBS television broadcast Mar. 8, 2014), available at <http://www.cbsnews.com/videos/inside-the-world-of-fraternities-journalist-discusses-greek-systems-influence-on-campus/>.

⁵ *The Business Of Frats: Shifting Liability For Trauma And Injury*, NPR (Feb. 25, 2014, 3:32 AM), <http://www.npr.org/2014/02/25/281994720/the-business-of-frats-shifting-liability-for-trauma-and-injury>.

⁶ Mark Berman, *The 21 Times Someone Falls Off Something in The Atlantic's Fraternities Story*, WASH. POST (Feb. 21, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/02/21/the-21-times-someone-falls-off-something-in-the-atlantics-fraternities-story/>.

⁷ Paresh Dave, *Sigma Alpha Epsilon Ends Pledging Process, Citing Hazing Deaths*, BALTIMORE SUN (Mar. 9, 2014, 9:15 PM), <http://www.baltimoresun.com/news/maryland/education/bs-md-frat-ends-pledging-20140309,0,7957455.story#ixzz2veYiy0Gk>.

history and various social groups. Incidences of hazing have been documented in such varying organizations as Native American tribes, military groups, university sports, and fraternities and sororities.⁸ While hazing undoubtedly occurs across the spectrum of human culture, its current manifestation in the United States can be uniquely violent and dangerous.⁹ Many scholars and legislatures have struggled to comprehensively define hazing.¹⁰ Due to its amorphous nature and the vastness of activities it encompasses, hazing "has become so broad and indefinite that it includes behavior that consists of assault and battery and a host of other criminal offenses."¹¹ Even courts have observed the variety of behavior that constitutes hazing; ranging anywhere from "the wearing of a 'beanie cap' to the permanent disfigurement of the body."¹²

In the past several decades, legal scholars have directed a modest amount of time and energy toward the issue of hazing.¹³ However, only within the past couple of years has there been any concerted effort to investigate the intersection of African American fraternities and sororities—also known as Black Greek-Letter Organizations ("BGLOs")—and the law, particularly including hazing issues.¹⁴ The recent emergence of this scholarship is in striking contrast to the long and storied history of these organizations. Despite their longevity and accomplishments, information about BGLOs has largely been confined to their

⁸ Nicole Somers, Note, *College and University Liability for the Dangerous Yet Time-Honored Tradition of Hazing in Fraternities and Student Athletics*, 33 J.C. & U.L. 653, 653 (2007).

⁹ *Id.* at 654.

¹⁰ Gregory L. Acquaviva, *Protecting Students from the Wrongs of Hazing Rites: A Proposal for Strengthening New Jersey's Anti-Hazing Act*, 26 QUINNIPIAC L. REV. 305, 308–10 (2008).

¹¹ Dara Aquila Govan, Note, "Hazing Out" the Membership Intake Process in Sororities and Fraternities: Preserving the Integrity of the Pledge Process Versus Addressing Hazing Liability, 53 RUTGERS L. REV. 679, 680 (2001).

¹² *People v. Lenti (I)*, 253 N.Y.S.2d 9, 13 (Nassau Cnty. Ct. 1964).

¹³ See, e.g., Gregory S. Parks & Tiffany F. Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQ. L. REV. 1 (2013); Acquaviva, *supra* note 10; Somers, *supra* note 8.

¹⁴ See, e.g., Richard J. Reddick et al., *The Harms and Hazards of Hazing: Medical, Sociocultural, and Legal Perspectives*, in ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE 279 (Gregory S. Parks & Stefan M. Bradley eds., 2012); Aquila Govan, *supra* note 11; Gregory S. Parks, *Social Networking and Leadership Accountability in (Quasi) Secret Organizations*, 2 WAKE FOREST L. REV. COMMON L. 39 (2012), available at http://www.gregoryparks.net/articles/1360601849Parks_Article.pdf; Gregory S. Parks et al., *Belief, Truth, and Positive Organizational Deviance*, 56 HOW. L.J. 399 (2013) [hereinafter Parks et al., *Organizational Deviance*]; Gregory S. Parks, *Belford Vance Lawson, Jr.: The Life of a Civil Rights Litigator*, 12 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 320 (2012); Gregory S. Parks & Rashawn Ray, *Poetry as Evidence*, 3 U.C. IRVINE L. REV. 217 (2013); Gregory S. Parks et al., *Victimology, Personality, and Hazing: A Study of Black Greek-Letter Organizations*, 36 N.C. CENT. L. REV. 16 (2013) [hereinafter Parks, *Victimology*]; Gregory S. Parks, "Midnight in the Moral Order," 40(1) T. MARSHALL L. REV. (forthcoming) [hereinafter Gregory S. Parks, "Midnight in the Moral Order,"]; Gregory S. Parks et al., *Complicit in Their Own Demise?* 39 LAW & SOC. INQUIRY 938 (2014).

own internal texts.¹⁵ It was not until the mid-1990s that scholars generally began to investigate these organizations.¹⁶ It took almost another decade for public works on these groups to appear.¹⁷ Shortly thereafter, a proliferation of BGLO scholarship appeared.¹⁸ In this article, the authors theorize that legally consequential behavior is influenced by race and sex. Specifically, this article contends that hazing, as a form of legally consequential behavior, manifests itself quite differently within BGLOs than within their white counterpart organizations. Specifically, this article finds that hazing in Black fraternities is more physically violent.¹⁹ The authors contend that prevailing and yet provincial notions of Black masculinity in the United States underscore the violent nature

¹⁵ Each continuous, intercollegiate BGLO has an internal history book. See OLA ADAMS, ZETA PHI BETA SORORITY: 1920–1965 (1965); WILLIAM L. CRUMP, THE STORY OF KAPPA ALPHA PSI: A HISTORY OF THE BEGINNING AND DEVELOPMENT OF A COLLEGE GREEK LETTER ORGANIZATION, 1911–1991 (1991); HERMAN DREER, THE HISTORY OF THE OMEGA PSI PHI FRATERNITY: A BROTHERHOOD OF NEGRO COLLEGE MEN, 1911 TO 1939 (1940); MARJORIE H. PARKER, ALPHA KAPPA ALPHA: IN THE EYE OF THE BEHOLDER (1979); W. SHERMAN SAVAGE & L. D. REDDICK, OUR CAUSE SPEEDS ON: AN INFORMAL HISTORY OF THE PHI BETA SIGMA FRATERNITY (1957); JOHN D. SLADE, IOTA PHI THETA: THE FOUNDING AND ASCENDANCY (2010); MARY ELIZABETH VROMAN, SHAPED TO ITS PURPOSE: DELTA SIGMA THETA—THE FIRST FIFTY YEARS (1965); CHARLES H. WESLEY, THE HISTORY OF ALPHA PHI ALPHA: A DEVELOPMENT IN COLLEGE LIFE (limited ed. 2010); PEARL SCHWARTZ WHITE, BEHIND THESE DOORS—A LEGACY: THE HISTORY OF SIGMA GAMMA RHO SORORITY (Lillie Wilkes ed., 1974); LULLELIA W. HARRISON, TORCHBEARERS OF A LEGACY: A HISTORY OF ZETA PHI BETA SORORITY, INC. 1920–1997 (1998). But see PAULA GIDDINGS, IN SEARCH OF SISTERHOOD: DELTA SIGMA THETA AND THE CHALLENGE OF THE BLACK SORORITY MOVEMENT (1988) (discussing Delta Sigma Theta's public history).

¹⁶ See Walter M. Kimbrough, *The Membership Intake Movement of Historically Black Greek-Letter Organizations*, 34 NASPA J. 229 (1997); Walter M. Kimbrough, *Self-Assessment, Participation, and Value of Leadership Skills, Activities, and Experiences for Black Students Relative to Their Membership in Historically Black Fraternities and Sororities*, 64 J. NEGRO EDUC. 63 (1995).

¹⁷ See, e.g., LAWRENCE C. ROSS, JR., THE DIVINE NINE: THE HISTORY OF AFRICAN AMERICAN FRATERNITIES AND SORORITIES (2000). Given that the respective BGLO histories, see *supra* note 15, have been treated as quasi-secret documents, non-members have had limited access to those works. Ross's book became the first publicly accessible book on these organizations.

¹⁸ See, e.g., ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE (Gregory S. Parks & Stefan M. Bradley eds., 2012); BLACK GREEK-LETTER ORGANIZATIONS IN THE 21ST CENTURY: OUR FIGHT HAS JUST BEGUN (Gregory S. Parks ed., 2008) [hereinafter BLACK GREEK-LETTER ORGANIZATIONS IN THE 21ST CENTURY]; BLACK GREEK-LETTER ORGANIZATIONS 2.0: NEW DIRECTIONS IN THE STUDY OF AFRICAN AMERICAN FRATERNITIES AND SORORITIES (Matthew W. Hughey & Gregory S. Parks eds., 2011) [hereinafter BLACK GREEK-LETTER ORGANIZATIONS 2.0]; ELIZABETH C. FINE, SOULSTEPPING: AFRICAN AMERICAN STEP SHOWS (2003); RICKY L. JONES, BLACK HAZE: VIOLENCE, SACRIFICE, AND MANHOOD IN BLACK GREEK-LETTER FRATERNITIES (2004); WALTER M. KIMBROUGH, BLACK GREEK 101: THE CULTURE, CUSTOMS, AND CHALLENGES OF BLACK FRATERNITIES AND SORORITIES (2003); DEBORAH ELIZABETH WHALEY, DISCIPLINING WOMEN: ALPHA KAPPA ALPHA, BLACK COUNTERPUBLICS, AND THE CULTURAL POLITICS OF BLACK SORORITIES (2010). While the growing number of peer-reviewed journal articles would be too numerous to mention, it is of note that two such journals, the *Journal of African American Studies* and *Ethnic and Racial Studies*, published special issues in 2012 on black and ethnic fraternal orders. Matthew W. Hughey & Gregory S. Parks, *Thematic Issue on Black Fraternal Organizations*, 16 J. AFR. AM. STUD. 595 (2012).

¹⁹ See, e.g., Deposition of Ricky Lee Jones at 22, *Ellison v. Delta Sigma Theta Sorority, Inc.*, No. 10-CI-00311 (Ky. Cir. Ct., Campbell Cnty. May 23, 2011); HANK NUWER, WRONGS OF PASSAGE: FRATERNITIES, SORORITIES, HAZING, AND BINGE DRINKING 176–93 (1999).

of Black fraternity hazing.

Section I provides an anthropological history of rites of passage, as well as the evolution of collegiate fraternity and sorority hazing. Next, Section II analyzes the legal implications of hazing in both the criminal and civil realms. Section III reviews the study of hazing in White fraternities and sororities, as well as Black fraternities and sororities. The article concludes in Section IV with an empirical analysis, via an archival study and a large national survey, of how race and gender intersect to predict different forms of hazing among fraternity and sorority members, and why race and gender intersect to create a unique variant of hazing within Black fraternities.

A. The Cultural Roots of Hazing

Hazing in higher education has evolved over many centuries, drawing its roots from rites of passage processes found within cultures dating back to antiquity.²⁰ As such, this section explores hazing's roots over the past several centuries.

1. Rites of Passage and the Anthropological Foundations of Hazing

Rituals seep into the nooks and crannies of life and remain alive and well in transitions as rites of passage.²¹ Societies have used rites of passage to mark physiological transitions such as birth, puberty, conception, and death.²² But the participants are not simply passing from one state to another, but between two social groups.²³ Thus the child does not simply become an adult, but by performance of a ritual, passes from the group of children to the group of adults.²⁴ Importantly, these transitions are not entirely marked by biology or other external signs, but by the performance of a socially determined ritual.²⁵ Rites of passage in this way reflect the social structures by which society is organized, and into which participants must fit.²⁶

Rites of passage exist in a three-part structure, composed of separation, margin, and aggregation.²⁷ During separation, the participant leaves behind the prior social group in order to prepare for joining the new group.²⁸ These two groups are oppositional—one cannot join a new group without leaving behind

²⁰ See generally ARNOLD VAN GENNEP, *THE RITES OF PASSAGE* (Monika B. Vizedom & Gabriel L. Caffee trans., Univ. of Chi. Press 1960).

²¹ *Id.* at 66.

²² *Id.*

²³ See VICTOR TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 94, 97 (1969).

²⁴ *Id.*

²⁵ VAN GENNEP, *supra* note 20, at 65.

²⁶ *Id.*

²⁷ TURNER, *supra* note 23, at 94.

²⁸ *Id.*

something old—much like the concept of high does not exist without the competing concept of low.²⁹ Severing ties with a social group may involve physical distance, abandoning possessions, or the renunciation of ties with that group.³⁰ Severance from the old group is the first step toward admission into the new group.³¹

The second part of the three-part rite of passage is the margin or *limen*, which is Latin for threshold.³² Having been separated from the old group, a participant in the rite of passage exists, for a time, without participation or membership in either group—new or old.³³ In this state, he or she symbolically and ritually has nothing; no “status, property . . . or . . . position.”³⁴ Without the cover of either social group, he or she has no place to belong in society.

The final part of the three-part rite of passage is aggregation.³⁵ Here participants are released from the margin and invited to join the new group.³⁶ New members may be full participants, but that does not preclude the existence of an internal hierarchy, which they enter at the lowest rung.³⁷ This process sets the definition for the new group—one is not an adult until one has performed the rites of passage associated with adulthood.³⁸ The social requirement for adulthood can be surprising and unrelated to a physical requirement such as puberty.³⁹ At its core, a rite of passage defines concepts like man, woman, or adult in a way that feels “nonarbitrary and grounded in reality.”⁴⁰

Taken together, the entire rite of passage ritual accomplishes several important purposes from a social structure perspective. The first important purpose is to fit individuals into the predetermined social groups that comprise society.⁴¹ Emile Durkheim, cited in Catherine Bell’s work, noted the solidarity formed in these social groups springs from the contrast between in and out

²⁹ *Id.* at 97.

³⁰ *Id.* at 94–96.

³¹ *See id.*

³² *Id.*

³³ TURNER, *supra* note 23, at 94–95.

³⁴ *Id.* at 95.

³⁵ *See id.* at 94.

³⁶ *Id.* at 95.

³⁷ *See id.*

³⁸ VAN GENNEP, *supra* note 20, at 65–66.

³⁹ *See id.*

⁴⁰ CATHERINE BELL, RITUAL: PERSPECTIVES AND DIMENSIONS 135 (2009) [hereinafter BELL, RITUAL PERSPECTIVES].

⁴¹ CATHERINE BELL, RITUAL THEORY, RITUAL PRACTICE 20, 169–73 (1992) [hereinafter BELL, RITUAL THEORY].

groups.⁴² Individuals are given a place in a group, and these groups are placed in contrast with one another to form a functioning society.⁴³ Not only does the ritual help provide structure to society, it also impresses a worldview upon the participants of the rite of passage participants—i.e., it reinforces in their minds a hierarchy and structure supported by the new group.⁴⁴ For example, the Pledge of Allegiance, a ritual designed for immigrant children in the early 1900s, bestows common principals upon new members of the United States.⁴⁵ In this way ritual impacts both the structure of society in general and the individual's perception in particular.

However, rites of passage are not only rituals to ease the transition between existing social groups. These rites also create and justify power relationships between participants in the ritual.⁴⁶ According to Pierre Bourdieu, the rite of passage is a mechanism for normalizing a particular power structure by setting the framework of reality, or "habitus."⁴⁷ This framework becomes the unquestioned basis of acceptable behavior.⁴⁸ The rite of passage is therefore a mechanism that validates and excuses the excessive power wielded by one party.⁴⁹ In this way, ritual is not just the mask that hides a social force, but an actual type of power itself.⁵⁰

Such rites of passage are also observed within the collegiate fraternity and sorority context. When pledges seek membership in the fraternity or sorority, they must undergo a rite of passage, beginning with the separation phase. This phase severs the participant from a previous community, thus, destroying the authority and power of that social group. The critical inquiry here is to discover what types of power relationships and social structures are being discarded in favor of the new fraternal organization. During the margin phase, participants, without allegiance are hazed to reinforce their powerlessness. A ritual of forced powerlessness justifies an immense and often inappropriate amount of power within the officiants. Finally the aggregation phase of a rite of passage brings the new participants into the fraternity or sorority. By elevating the participant from powerlessness to inclusion in the organization, the rite of passage validates to the participant the power and authority of the fraternity or sorority. The cycle then repeats, as the process of hazing a new participant, and the power that comes from that experience, affirms the whole process to a new officiant.

⁴² *Id.* at 172–73.

⁴³ *Id.* at 180.

⁴⁴ *Id.* at 172–73.

⁴⁵ BELL, RITUAL PERSPECTIVES, *supra* note 40, at 149.

⁴⁶ *Id.* at 164.

⁴⁷ *Id.* at 78.

⁴⁸ *See id.*

⁴⁹ *Id.*

⁵⁰ BELL, RITUAL THEORY, *supra* note 41, at 196.

The phases of separation, margin, and aggregation also have unintended consequences that can encourage corruption and lawless behavior in a fraternity or sorority. Specifically, the separation phase can remove the participant from systems of moral authority (e.g., religion, governmental legal structures) and undermine those valuable relationships. This is especially so in cases where the organization is set in opposition to those moral authorities, participants are encouraged to replace that moral authority with the hierarchy of the fraternity or sorority. The rites of passage rituals vest authority and power in the fraternity and create a structure which makes the power easy to abuse.

2. The History and Evolution of Hazing in Higher Education

Hazing as part of a rite of passage process dates back to the beginning of mankind when the very first human societies were in their infancy.⁵¹ The archetype of a youth attempting difficult, unpleasant tasks or rituals permeates human history and culture.⁵² However, the first documented instances of organized hazing come from ancient Greece, where prospective soldiers were made to demonstrate their loyalty to their military by enduring various painful and uncomfortable experiences.⁵³ However, hazing was not unique to Greece, as hazing incidents were also reported in the ancient learning centers of Berytus and Carthage.⁵⁴

Other early forms of hazing were manifested as “practical jokes played by unruly young men that injured the hazed and citizens who got in the way.”⁵⁵ One of the first groups documented to employ organized hazing was the “[E]versores,” translated as the “Overturners,” who originated in fourth century Carthage.⁵⁶ Subsequently, during the sixth century, the Byzantine emperor, Justinian, became so outraged by the hazing actions of first-year law students that he issued a decree outlawing hazing.⁵⁷ Despite these sporadic, recorded instances of hazing, it was not until the twelfth century that hazing became a commonly recorded phenomenon.⁵⁸

Hazing ultimately spread to European universities in the Middle Ages,

⁵¹ See Charles S. Finch III, *Modern Fraternities, Ancient Origins*, in BLACK GREEK LETTER ORGANIZATIONS IN THE 21ST CENTURY, *supra* note 18, at 365–84.

⁵² See NUWER, *supra* note 19, at 92–115.

⁵³ See Jamie Ball, *This Will Go Down on Your Permanent Record (But We'll Never Tell): How the Federal Educational Rights and Privacy Act May Help Colleges and Universities Keep Hazing a Secret*, 33 SW. U. L. REV. 477, 480 (2004); see also Hank Nuwer, *A Chronology of Hazing Events*, in THE HAZING READER, xxv, xxv–xxvii (Hank Nuwer ed., 2004) (listing notable hazing events from 387 BCE to 2003).

⁵⁴ NUWER, *supra* note 19, at 92.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 93.

⁵⁸ *Id.*

where "new students . . . toiled as servants for upperclassmen."⁵⁹ The University of Bologna, founded in the year 1000 CE, is an example of one of the first true European universities, and one of the birthplaces of modern hazing.⁶⁰ The first European universities were run by guilds of students desiring to practice or learn a specific trade.⁶¹ These early organizations of students, in some respects, "were like early examples of fraternities."⁶² According to Hank Nuwer, author of *Wrongs of Passage*, these guilds began competing against one another for prestige and influence in the university, and over time, their methods of competition became ritualized into a form recognizable as hazing by modern standards.⁶³ Boys seeking to attend these early European universities accepted that they "would have to submit to brutal hazing by older students, just as they had to pay for university fees and to buy books."⁶⁴ Over the thirteenth and fourteenth centuries, these "ritualized" practices ossified into accepted cultural norms in European institutions of higher learning.⁶⁵

Notably, students were not the only people hazed in the thirteenth and fourteenth centuries.⁶⁶ Aspiring teachers at medieval universities were subjected to harsh hazing practices as well.⁶⁷ In order to prevent imposters, charlatans, and people generally unqualified to teach, "universities imitated some guild practices, demanding evidence of scholarship from a prospective teacher before deeming him qualified to teach."⁶⁸ Prospective teachers had to pass a series of trials before they were inducted as professors.⁶⁹ These trials included demonstrating a proficiency in Latin, memorizing lengthy book passages, and passing a variety of examinations.⁷⁰ Typically, the aspiring teachers faced such challenges over a period of several years.⁷¹ However, over the course of history such practices and rituals shifted until they were faced almost exclusively by students.⁷²

The purported objective of medieval hazing was "to teach newcomers

⁵⁹ Acquaviva, *supra* note 10, at 311.

⁶⁰ See KIMBROUGH, *supra* note 18, at 38.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See NUWER, *supra* note 19, at 92–96.

⁶⁴ *Id.* at 94.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ NUWER, *supra* note 19, at 94.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

precedence.”⁷³ Among the variety of ways older students taught freshmen “precedence” was the practice of paddling.⁷⁴ The origins of paddling hail back to the university in Avignon where first-year students were beaten with wooden objects.⁷⁵ “Newcomers at the University of Aix were paddled with a book or frying pan up to three times each”⁷⁶ The paddlers believed that the newcomers should be forced to show their seniors “animal-like” submission.⁷⁷ According to medievalist Hank Nuwer, “[i]nitiating newcomers satisfied three desires in older students. ‘It gratified alike the bullying instinct, the social instinct, and the desire to find at once the excuse and the means for a carouse[.]’”⁷⁸

Eventually, participation in these rituals and traditions began to define the status of newcomers to the universities.⁷⁹ Between the 1400s and the 1700s, hazing evolved once more, and the process of “pennalism” emerged.⁸⁰ This process was founded on the idea that freshman, not having been exposed to the principles and experiences of higher education, were “untutored” and “uncivilized.”⁸¹ During the process of pennalism, “freshmen were subject to having to don weird articles of clothing, physical abuse, coarse jokes, and extortion of money or dinners.”⁸² Fortunately, for early European freshmen, “[p]ennalism was more of a one-time event that lasted only a short period.”⁸³

In Great Britain around the year 1770, the practice of pennalism grew into what was called “fagging.”⁸⁴ Personal servitude, and “drudgery” comprised this iteration of hazing and distinguished fagging from pennalism.⁸⁵ Fagging provided each upperclassman with a personal “fag” subject to his commands.⁸⁶ Like pennalism, fagging was presumed to teach humility and appropriate behavior to “uncivilized” freshmen.⁸⁷ Perhaps well into the nineteenth century,

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ NUWER, *supra* note 19, at 94.

⁷⁶ *Id.* at 94–95.

⁷⁷ *Id.* at 94.

⁷⁸ *Id.* at 95.

⁷⁹ See KIMBROUGH, *supra* note 18, at 38.

⁸⁰ *Id.* at 38–39.

⁸¹ *Id.* at 39.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ KIMBROUGH, *supra* note 18, at 39.

⁸⁶ *Id.*

⁸⁷ *Id.*

incoming students endured fagging for the duration of their freshmen year.⁸⁸ Pennalism and its younger, British cousin, fagging, are predecessors to organized hazing in American universities.⁸⁹

Physical violence has never been hazing's only form. Hazers often employ psychological tactics against their victims, including making them wear certain unique items of clothing.⁹⁰ The occurrences of psychological hazing, in this form, date back to 1481 at the university in Heidelberg.⁹¹ At Heidelberg, upperclassmen forced their juniors to wear absurd looking hats with yellow bills.⁹² This developed into a common theme throughout Europe, and first-years became to be known as *bejauni* or "yellow bills."⁹³

In addition to being subjected to physical violence and forced to don ridiculous articles of clothing, first-year students in medieval times were often financially extorted by senior students.⁹⁴ The older students used the extorted money to buy fancy, expensive clothing, among other things.⁹⁵ A particularly expensive event for the hazed was the "mock trial," where before being welcomed into the academy as an actual student, the hazed was forced to pay for the food and drink of everyone present during the event.⁹⁶ If the hazed came from wealth, the amount demanded of him would have been significantly larger than someone of more ordinary means.⁹⁷

Almost from the time hazing was recognized as an institutional problem in medieval universities, school administrations have tried to combat it.⁹⁸ Several such institutions had official prohibitions against "ritualized mistreatment."⁹⁹ For example, the University of Paris came down strongly on hazing.¹⁰⁰ In 1340 CE, "they enacted an ordinance that prohibited [hazing] under possible pain of expulsion."¹⁰¹ However, most measures taken against hazing were largely ineffective, and hazing continued in plain view.¹⁰² Eventually administrators

⁸⁸ *Id.*

⁸⁹ *See id.*

⁹⁰ NUWER, *supra* note 19, at 95.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 97.

⁹⁵ *See id.*

⁹⁶ NUWER, *supra* note 19, at 97.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² NUWER, *supra* note 19, at 97.

realized the ineffectiveness of their attempts to eradicate hazing.¹⁰³ “The fact that hazing persisted even in the face of potentially dire consequences for those who participated in it is indicative of its appeal.”¹⁰⁴ Futile steps taken by early universities against hazing included: stripping hazers of honors they had received from the institution, urging the hazed to report hazing instances aloud at church meetings, obligating land lords to report hazing violations, enumerating specific acts as hazing, and expelling or suspending hazers.¹⁰⁵ Ultimately, many institutions finally accepted hazing’s resilience and, instead of trying to banish its practice from their campuses, attempted to regulate it.¹⁰⁶

a. Hazing in New World Universities

Early hazing practices that developed over centuries in Europe persisted as social norms for early Americans, emigrating with them across the Atlantic Ocean.¹⁰⁷ Hazing quickly became entrenched in the United States military, evolving into forms more violent than its European predecessors.¹⁰⁸ By 1874, hazing in American military units had become so counterproductive that Congress abolished all military hazing “harmful or not.”¹⁰⁹

Historians postulate that the earliest Harvard students, who were from abroad, brought traditional European hazing to New World universities.¹¹⁰ Hazing incidents at Harvard, involving personal servitude, similar to fagging in Europe, are reported as early as 1657 CE.¹¹¹ A Harvard historian noted that “[b]ecause seventeenth-century Harvard authorities only occasionally recorded accounts of misbehavior by students, sadistic pranks and fagging ‘may have been matters of frequent occurrence[.]’”¹¹² In 1684 CE, Joseph Webb became the first Harvard student to be punished for hazing.¹¹³ The president of the university expelled Webb for physically assaulting first-year students and forcing them “to perform acts of servitude.”¹¹⁴ However, after repenting for what he had done, Webb was allowed to return to the university and graduate with his class.¹¹⁵ During Harvard’s early years, typically “[a] public confession

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 97, 99.

¹⁰⁶ *Id.*

¹⁰⁷ Acquaviva, *supra* note 10, at 311.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ NUWER, *supra* note 19, at 100.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

in front of the student body and a formal petition to return" to the university were enough to absolve a hazing conviction.¹¹⁶ Harvard was not the only institution with documented instances of hazing during this period, as it occurred at the University of Virginia, Amherst College, and Miami of Ohio with frequency.¹¹⁷

Hazing in American institutions of higher education first gained notoriety in the middle of the nineteenth century.¹¹⁸ During this era, hazing emphasized coercing underclassmen to perform "crude pranks rather than the personal servitude."¹¹⁹ These crude pranks occasionally included underclassmen "being tarred and feathered in the town square and forcing underclassman to combat sophomores in "freshman-sophomore rushes, or class battle royals."¹²⁰ These violent, compulsory events caused deaths at several universities.¹²¹

b. Hazing in American Fraternities and Sororities

Fraternity and sorority historians offer several theories as to how hazing became interwoven into the Greek system; however, the true answer is probably that it is a mixture of these theories. Further, the entrance of hazing into the Greek system happened gradually, so there is no exact date to cite as the commencement of this relationship.¹²² There are three prominent theories of how Greek organizations adopted the practice of hazing.¹²³ The first theory is that hazing entered fraternities at Ivy League institutions, where classes and societies routinely engaged in hazing.¹²⁴ In short, the class and society practices bled over into fraternities.¹²⁵ The second theory is that "dropouts from West Point and other service academies brought" military hazing to the civilian colleges they subsequently attended and, thus, into Greek organizations.¹²⁶ Finally, some historians believe that hazing occurs spontaneously and organically whenever people form an exclusive club that enforces standards of admittance.¹²⁷ In any case, over the years hazing has transitioned from being a university-wide practice to a practice concentrated in some Greek organizations, athletic teams, and various other exclusive organizations.

¹¹⁶ NUWER, *supra* note 19, at 100.

¹¹⁷ *Id.* at 102.

¹¹⁸ KIMBROUGH, *supra* note 18, at 39.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 44.

¹²³ NUWER, *supra* note 19, at 103.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

Fraternities and sororities are a direct offshoot of the American university system; as such organizations were created to serve the needs of students.¹²⁸ In the 1920s, when freshman students began to successfully rebel against upperclassmen hazing, there was no equivalent drive to eliminate pledging in fraternities and sororities.¹²⁹ The effects and styles of hazing were strikingly similar between White universities and historically Black colleges and universities ("HBCUs").¹³⁰ However, lynchings and other racially motivated crimes in the South against African Americans served as a catalyst to the process of eradicating freshman hazing.¹³¹ Students at HBCUs were able to significantly curb freshman hazing by the 1930s and largely eliminate it by the 1970s.¹³²

The 1920s marked the turning point where the practice of upperclassman hazing of freshman began to whither.¹³³ Images designed to create mystery around Black fraternities and sororities and to instill fear and curiosity in prospective members, began to be published in Howard University's yearbook and other publications.¹³⁴ "At Howard, freshman hazing was specifically 'tabooed' by 1924. At the same time, the idea of pledging had emerged."¹³⁵ Within ten years of the end of freshman hazing and the inception of pledging at Black Greek-letter organizations, hazing had become a predominant aspect of the pledge process.¹³⁶

In 1925, the Howard University newspaper began reporting on "Hell Week," a particularly trying period for a pledge.¹³⁷ One of the public displays at Howard involved pledges marching around campus while singing and wearing odd attire.¹³⁸ The question arose whether hazing was the best vehicle "to indoctrinate and socialize [students] and to find ways, preferably dramatic, to symbolize their transition to full membership status."¹³⁹ "Due to sheer exhaustion, [pledges] often fell asleep in class[.]"¹⁴⁰ and as such it is likely that their academic performance suffered.

¹²⁸ *See id.*

¹²⁹ KIMBROUGH, *supra* note 18, at 40.

¹³⁰ *See id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 41.

¹³⁵ KIMBROUGH, *supra* note 18, at 41.

¹³⁶ *Id.* at 44.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ CLYDE S. JOHNSON, FRATERNITIES IN OUR COLLEGES 276-77 (1972).

¹⁴⁰ KIMBROUGH, *supra* note 18, at 45.

Towards the end of the 1940s the pledge process began to develop a sophistication that had not been seen before.¹⁴¹ Pledges, particularly at HBCUs began dressing in elaborate costumes and matching formal wear.¹⁴² Fraternities also create symbols for pledges to carry with them to indicate their status as an aspiring member.¹⁴³ These symbols include objects varying from paddles to lamps, often bearing the symbols of the fraternity or sorority to which the pledge was attempting to join.¹⁴⁴ Essentially, pledging had grown into its modern form. The transition from freshman hazing originating from Europe during the Middle Ages to a staple of the fraternity pledge process was complete by the 1940s.

After the lull in the growth of Greek organizations caused by the Great Depression and World Wars I and II, "the 'fraternity movement' swept the nation's colleges and universities."¹⁴⁵ During this period, pledging popularity reached fad status, which caused a dramatic increase in hazing, both in terms of physical violence and psychological torture.¹⁴⁶ The influx of World War II veterans into United States colleges and universities brought with them a "boot camp mentality"—e.g., "sleep deprivation and strenuous physical activity."¹⁴⁷

Hazing by Greek-letter organizations has sparked interest in fraternity outsiders for as long as they have existed. "Hell Week" has garnered particularly significant amounts of attention from people in the communities surrounding fraternity houses, and even the general public.¹⁴⁸ Attention drawing hazing activities such as "[m]arching around the college in odd attire while singing the praises of their respective groups," increased hazing's visibility at HBCUs and caused it to be a subject of popular debate.¹⁴⁹ At Lincoln, fraternity hazing was particularly violent and brutal.¹⁵⁰ After seeing pledges "beaten until portions of their bodies were as raw as fresh beefsteak," a fraternity member pushed to eradicate violent, physical hazing from his fraternity.¹⁵¹

¹⁴¹ See *id.* at 46.

¹⁴² See *id.* at 50 (providing photographs of fraternity and sorority pledges at Howard wearing matching clothing).

¹⁴³ *Id.* at 115–16.

¹⁴⁴ *Id.*

¹⁴⁵ Aquila Govan, *supra* note 11, at 685.

¹⁴⁶ *Id.* at 685–86.

¹⁴⁷ *Id.* at 686 (quoting Sharon Christensen & Michelle Devera, *Hazing Problem Down*, DAILY FORTY-NINER (SEPT. 8, 1999) <http://www.csulb.edu/~d49er/Fall99/v7n6/hazing.html>. (quoting Kim Padulo, California State Long Beach Director of Student life)).

¹⁴⁸ André McKenzie, *Fraters: Black Greek-Letter Fraternities at Four Historically Black Colleges, 1920–1960*, 19–20 (May 12, 1986) (unpublished Ph.D. dissertation, Columbia University) (on file with ProQuest Dissertations and Theses).

¹⁴⁹ *Id.* at 20.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

c. Hazing Opposition

After 1970, hazing deaths and injuries spiked so dramatically, that anti-hazing groups across the nation began mobilizing like never before.¹⁵² However, for decades, there had already been growing consternation about and opposition to hazing, especially at HBCUs.¹⁵³ For example, administrators at Fisk far surpassed their colleagues at Lincoln in the harshness of their hazing sanctions.¹⁵⁴ In 1948, Fisk's Executive Committee of the Faculty enacted a moratorium for hazing and other "initiation" related activities.¹⁵⁵ The committee convened in response to the "rampant brutality and insensitivity inflicted upon pledges, [and] the group also expressed concern over the physical and mental fatigue of students that continued after the [hazing] period had ended."¹⁵⁶ The committee ultimately "recommended that [fraternities] justify their existence [through] worthwhile contributions to the student body and the university."¹⁵⁷

At Howard, a group of former pledges formed an anti-hazing fraternity in 1934.¹⁵⁸ The founders created the fraternity as a response to brutal hell week practices that they had refused to participate in at their former fraternities.¹⁵⁹ They named the organization Gamma Tau Fraternity.¹⁶⁰ The leaders of Gamma Tau Fraternity eliminated hell week altogether and replaced it with a week of lectures, informal discussions, and information sessions.¹⁶¹ During the 1940s, three national fraternities forbade "all forms of brutality" towards pledges.¹⁶² These fraternities included Omega Psi Phi, Alpha Phi Alpha, and Kappa Alpha Psi.¹⁶³ These fraternity anti-hazing policies enacted on a national scale did not accomplish their goal, as hazing violations continued.¹⁶⁴ Three of Lincoln's four fraternities were fined and put on probation for hazing, which a university faculty member described as "'barbaristic [sic], sadistic, and masochistic.'"¹⁶⁵ The 1950s saw even greater efforts by fraternities' national officers attempting

¹⁵² See D. Jason DeSousa et al., *Pledging and Hazing in African-American Fraternities and Sororities*, in *THE HAZING READER* 106 (Hank Nuwer ed., 2004).

¹⁵³ McKenzie, *supra* note 148, at 92–103.

¹⁵⁴ See *id.* at 23.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 21–22.

¹⁵⁹ McKenzie, *supra* note 148, at 22.

¹⁶⁰ *Id.* at 21.

¹⁶¹ *Id.* at 22.

¹⁶² *Id.* at 24.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ McKenzie, *supra* note 148, at 24.

to ameliorate hazing.¹⁶⁶ Instead of “hell week,” several fraternities instituted “‘Help Week[,]” which centered on providing constructive advice to the pledges regarding their scholastic careers and performing community service.¹⁶⁷

This hazing opposition was not uniform, however, as hazing has always had proponents. After hazing was eliminated at Lincoln University, one student claimed that the absence of hazing caused “the demise of school spirit among the men” at the institution.¹⁶⁸ The Lincoln freshman, however, responded with applause for the administrator’s hardline decision to eradicate all forms of hazing rather than allowing upperclassmen to haze with moderation.¹⁶⁹ It is within this climate that hazing was relegated from university wide existence at HBCUs to its more limited manifestation as a Greek-letter organization practice.¹⁷⁰

Proponents of fraternity hazing at HBCUs had justifications for the hazing process.¹⁷¹ Fraternity members believed hazing instilled “brotherhood and love” for the fraternity.¹⁷² They also believed that the harder pledges were hazed the more they would appreciate the fraternity.¹⁷³ However, this view was not universally adopted by fraternity members as “[m]any questioned the rationale touted by the organizations and refuted the logic of beating ‘brotherhood’ into a man.”¹⁷⁴ Protests against hazing activities would occur nearly every semester at HBCUs and fraternities would occasionally respond by passing resolutions making initiations less severe.¹⁷⁵ Despite all the efforts of national fraternal organizations, hazing still exists today, with severe criminal and civil implications.

II. HAZING AND THE LAW

The law intersects with hazing in both the criminal and civil domains. Individual hazers may be arrested, criminally indicted, and convicted for his or her conduct. A host of individuals and entities—including fraternity and sorority national organizations, individual chapters, host institutions, and potentially university presidents—may be civilly sanctioned for hazing.

¹⁶⁶ *Id.* at 25.

¹⁶⁷ *Id.* at 25–26.

¹⁶⁸ *Id.* at 19.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ McKenzie, *supra* note 148, at 20.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 20–21.

¹⁷⁵ *Id.* at 21.

A. Criminal Sanctions

Hazing, as a crime, is regulated by state statute.¹⁷⁶ To date, forty-four states have anti-hazing statutes that criminalize hazing, making hazing punishable as a misdemeanor, and in some instances a felony when a specific *mens rea* is associated with the act.¹⁷⁷ In order to address concerns about the potential lack of reporting due to pledge loyalty to the pledged organization, some states criminalize the failure to report hazing incidents.¹⁷⁸ Anti-hazing statutes with criminal penalties, arguably, serve to deter future incidents of hazing.¹⁷⁹ In addition, such statutes apply in situations beyond criminal prosecution. For example, multiple states have recognized that violations of criminal hazing statutes, which are designed to protect human life, are *prima facie* evidence of negligence.¹⁸⁰

Anti-hazing statutes aside, prosecutors also have other alternatives under which hazing may be prosecuted.¹⁸¹ For example, states have charged hazing participants with involuntary manslaughter,¹⁸² assault and battery,¹⁸³ criminal

¹⁷⁶ Shashi Marlon Gayadeen, *Ritualizing Social Problems: Claimsmakers in the Institutionalization of Anti-Hazing Legislation 6* (Oct. 26, 2011) (unpublished Ph.D. dissertation, University at Buffalo, State University of New York) (on file with author).

¹⁷⁷ Parks et al., *Organizational Deviance*, *supra* note 14, at 409; See ALA. CODE § 16-1-23 (2000); ARK. CODE ANN. § 6-5-201 (1999); CAL. EDUC. CODE § 32051 (West 2000); COLO. REV. STAT. § 18-9-124 (2000); CONN. GEN. STAT. § 53-23A (2001); DEL. CODE ANN. tit. 14, § 9301 (1999); FLA. STAT. § 240.262 (2000); GA. CODE ANN. § 16-5-61 (2000); IDAHO CODE ANN. § 18-917 (2000); 720 ILL. COMP. STAT. 120/5 (2000); IND. CODE § 34-30-2-150 (2000); IOWA CODE § 708.10 (2000); KAN. STAT. ANN. § 21-3434 (2000); KY. REV. STAT. ANN. § 164.375 (West 2000); LA. REV. STAT. ANN. § 17:1801 (2000); ME. REV. STAT. ANN. tit. 20-A, § 10004 (2000); MD. CODE ANN. § 27-268H (2000); MASS. GEN. LAWS ch. 269, § 17 (2000); MINN. STAT. § 121A.69 (2000); MISS. CODE ANN. § 97-3-105 (2000); MO. ANN. STAT. § 578.360 (West 2000); NEB. REV. STAT. § 28-311.06 (2000); NEV. REV. STAT. § 200.605 (2000); N.H. REV. STAT. ANN. § 631:7 (2000); N.J. STAT. ANN. § 2C:40-3 (West 2000); N.Y. PENAL LAW § 120.16 (McKinney 2000); N.C. GEN. STAT. § 14-35 (2000); N.D. CENT. CODE § 12.1-17-10 (2000); OHIO REV. CODE ANN. § 2903.31 (West 2000); OKLA. STAT. tit. 21, § 1190 (2001); OR. REV. STAT. § 163.197 (2000); 24 PA. CONS. STAT. § 5353 (2000); R.I. GEN. LAWS § 11-21-1 (2000); S.C. CODE ANN. § 16-3-510 (2000); TENN. CODE ANN. § 49-7-123 (2000); TEX. EDUC. CODE ANN. § 37.152 (West 2000); UTAH CODE ANN. § 76-5-107.5 (West 2000); VT. STAT. ANN. tit. 16, § 140B (2000); VA. CODE ANN. § 18.2-56 (2000); WASH. REV. CODE § 28B.10.901 (2000); W. VA. CODE R. § 18-16-3 (2000); WIS. STAT. § 948.51 (2000).

¹⁷⁸ Brandon W. Chamberlin, "Am I My Brother's Keeper?": *Reforming Criminal Hazing Laws Based on Assumption of Care*, 63 EMORY L.J. 925, 938 n.75 (2014).

¹⁷⁹ See Acquaviva, *supra* note 10, at 331 (discussing the intended effects of strengthening anti-hazing statutes).

¹⁸⁰ See *Nisbet v. Bucher*, 949 S.W.2d 111, 117 (Mo. Ct. App. 1997); see also *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987).

¹⁸¹ See *infra* notes 192–95 and accompanying text.

¹⁸² See Stephen Hudak & Denise-Marie Ordway, *Manslaughter Charges Filed in Band Death*, ORLANDO SENTINEL, Mar. 5, 2013, at A1.

¹⁸³ Aquila Govan, *supra* note 11, at 680 n.7.

sexual assault,¹⁸⁴ and unlawful restraint.¹⁸⁵ While these charges can be effective means of prosecuting and punishing perpetrators, some hazing activities can fall through the cracks.¹⁸⁶

With that said, in recent years, there have been a number of Black Greek-Letter Organization (BGLO) hazing incidents that resulted in criminal implications for members.¹⁸⁷ In 2011, four members of a group claiming to be affiliated with Kappa Alpha Psi assaulted and shot four Cal State Bakersfield students with a BB gun.¹⁸⁸ The assaults included beatings with paddles, canes, and horsewhips over the course of a month in hazing rituals.¹⁸⁹ The four suspects, including three CSB students, were arrested and released.¹⁹⁰

Similarly, thirteen Alpha Phi Alpha members were indicted for a hazing incident at Jacksonville State University in 2011.¹⁹¹ The suspects hazed the victim, striking him with fists and paddles, pelting him with eggs, and forcing him to drink large quantities of alcohol.¹⁹² He went to the hospital the following morning with internal bleeding, an enlarged liver, and damaged kidneys, requiring twenty-four days of hospitalization.¹⁹³ The individuals responsible eventually plead guilty to reckless endangerment.¹⁹⁴ As a result of this incident,

¹⁸⁴ Pamela Jones, *Five Plano High Students Charged Over Possible Hazing Incidents*, CBS CHI. (Aug. 28, 2013, 2:12 PM), <http://chicago.cbslocal.com/2013/08/28/five-plano-high-students-charged-over-possible-hazing-incidents/>.

¹⁸⁵ *Id.*

¹⁸⁶ For example, an Illinois case resulting in the death of a lacrosse team member, only resulted in a guilty charge for providing alcohol to a minor and a sentence of community service. See Gayadeen, *supra* note 176, at 12.

¹⁸⁷ See *infra* notes 198–217 and accompanying text.

¹⁸⁸ Carla Rivera & Larry Gordon, *Hazing Allegations Rock Cal State Bakersfield: Authorities Allege that Four Students Were Repeatedly Beaten and Shot with a BB Gun as Part of an Initiation to Join an Unsanctioned Fraternity*, L.A. TIMES (May 28, 2011), <http://articles.latimes.com/2011/may/28/local/la-me-hazing-20110528>.

¹⁸⁹ Jorge Barrientos, *Alleged Hazing Injuries Detailed in New Reports*, BAKERSFIELD CALIFORNIAN (May 26, 2011, 11:00 PM), <http://www.bakersfieldcalifornian.com/local/x504581239/Alleged-hazing-injuries-detailed-in-new-reports>.

¹⁹⁰ Rivera & Gordon, *supra* note 188.

¹⁹¹ Paige Rentz, *More Arrests in JSU Hazing Case*, JACKSONVILLE NEWS (Dec. 10, 2012, 6:38 PM), http://www.annistonstar.com/jacksonville_news/jacksonville_local/article_4f0a69c7-4911-5b42-9ea8-122a4b037df3.html.

¹⁹² *Id.*

¹⁹³ Laura Johnson, *Final Suspect in JSU Hazing Case Arrested*, THE JACKSONVILLE NEWS, (Apr. 30, 2013, 3:32 PM), http://www.annistonstar.com/jacksonville_news/jacksonville_local/article_e4d4fca4-2669-5bb7-9b27-f709ac8ca846.html. The victim also filed a civil complaint. *Id.*

¹⁹⁴ Paige Rentz, *With 11 More Guilty Pleas, JSU Hazing Charges Resolved*, ANNISTON STAR (June 10, 2013, 4:51 PM), http://www.annistonstar.com/news/article_e7962567-ed98-5733-9dec-8dde4b64f4e3.html.

Alpha Phi Alpha was dismissed from Jacksonville State's campus.¹⁹⁵

In November of 2011, three students and six Phi Beta Sigma alumni associated with Francis Marion University were arrested on hazing charges.¹⁹⁶ The following April in Arkansas, another student was hazed, being beaten with a wooden cane and paddle with such violence that he was hospitalized for nearly a month.¹⁹⁷ His injuries included kidney damage, fluid in the lungs, which required a medically induced coma.¹⁹⁸ Doctors suggest that his peak physical conditioning as a star athlete allowed him to survive injuries that would have likely killed another student.¹⁹⁹ Similar to Jacksonville State, Arkansas Tech permanently removed a chapter of Kappa Alpha Psi from campus when members were arrested for second-degree battery.²⁰⁰ According to the fraternity's own internal investigation, sixteen people were present, including five Tech students, even though only one Tech student was charged.²⁰¹ This incident mirrors other Kappa Alpha Psi incidents as recently as 2012, when investigations over canings occurred at University of Florida, Youngstown State University, Jarvis Christian College, and Florida A&M.²⁰²

In 2013, Virginia State University students, and members of the Alpha Phi Alpha fraternity, were charged with misdemeanors for an off-campus hazing incident.²⁰³ In Virginia, hazing is a class one misdemeanor, punishable by a fine of up to \$2500, or a jail term of up to twelve months.²⁰⁴ Additionally, all pledges at VSU attend mandatory anti-hazing education classes.²⁰⁵ Similarly, in 2014, six Alpha Phi Alpha fraternity members at the University of Akron were charged with assault and hazing for their actions against a twenty-one year-old pledge.²⁰⁶ All individuals are active in the fraternity and are accused of

¹⁹⁵ Rentz, *supra* note 191.

¹⁹⁶ Matt McColl, *Hazing Headlines: SC Mom Recalls Son in Fight Against Hazing*, INSIDE HAZING (Jan. 22, 2012), <http://www.insidehazing.com/headlines.php?idno=1732&headlines2Page=69>.

¹⁹⁷ Cheree Franco, *A Hazy Hazing Case at Arkansas Tech: A Fraternity Pledge Spent Nearly a Month at UAMS*, ARK. TIMES (Sept. 12, 2012), <http://www.arktimes.com/arkansas/a-hazy-hazing-case-at-arkansas-tech/Content?oid=2435587&showFullText=true>.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Mark Bowes, *Charges Dismissed Against 3 in VSU Hazing Case*, RICHMOND TIMES-DISPATCH (May 11, 2013), http://www.richmond.com/news/local/chesterfield/article_b05a4ebe-b3d9-5ff9-b683-790eb2485e84.html.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Six University of Akron Frat Members Charged in Hazing Incident*, CBSNEWS (Feb. 28, 2014, 2:09 PM), <http://www.cbsnews.com/news/six-university-of-akron-frat-members-charged-in-hazing-incident/>.

administering repeated paddling over the course of three weeks, creating a lingering sore on the unidentified victim, which required medical treatment.²⁰⁷ The University suspended all Alpha Phi Alpha activities including new member intake on January 31, 2014.²⁰⁸

B. Individual Liability

In some instances, individual actors are civilly liable for hazing. For example, in 1996, Santana Kenner sought initiation into the Beta Epsilon chapter of the Kappa Alpha Psi Fraternity at the University of Pittsburgh.²⁰⁹ During two chapter meetings that month, members of the fraternity "engaged in psychological and physical hazing of Kenner and other initiates."²¹⁰ A few months later, Kenner was told to attend a chapter meeting at a member's apartment.²¹¹ When he arrived, Kenner was greeted by four chapter members who beat him more than two hundred times on the buttocks with paddles.²¹² After he was beaten, Kenner noticed his buttocks were numb and his genitals were swollen.²¹³ He checked into the hospital the next day because he had blood in his urine and swelling in his genital.²¹⁴ "As a result of the beating, Kenner suffered renal failure, seizures, and hypertension requiring three weeks of hospitalization and kidney dialysis."²¹⁵

"Kenner filed a lawsuit [for] negligence against the defendants, both individually and in their official capacity with the fraternity."²¹⁶ The trial court granted summary judgment for the defendants, holding that there was no duty owed to Kenner.²¹⁷ On appeal, the court held that the individuals did, in fact, owe a duty to Kenner.²¹⁸ "Renal failure and the possibility of death" were both found to be foreseeable harms of the initiation process.²¹⁹ Additionally, it is in the public's interest to establish a duty to perform safe intake procedures.²²⁰ Kenner established a *prima facie* case against one of the individual defendants,

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Kenner v. Kappa Alpha Psi Fraternity, Inc.*, 808 A.2d 178, 180 (Pa. Super. Ct. 2002).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Kenner*, 808 A.2d at 180.

²¹⁶ *Id.*

²¹⁷ *Id.* at 179.

²¹⁸ *Id.* at 182-83.

²¹⁹ *Id.* at 183.

²²⁰ *Id.*

and the summary judgment for that defendant was reversed and remanded for trial.²²¹ He established this *prima facie* case by setting forth facts alleging that the defendant knew there was a moratorium on hazing; he failed to adequately address this issue at interest meetings for prospective members; he “did not understand the new . . . intake process[;] and he “did not take steps to find out what [hazing] activity had occurred after an informational meeting he had conducted.”²²² Had he “been more engaged in the [intake] process,” “Kenner would not have sustained his injuries.”²²³ The court found that these factors were sufficient to survive the defendant’s summary judgment motion.²²⁴

C. Organizational Liability

1. Findings of Liability

Fraternities and sororities may be sued under various theories, particularly agency theory.²²⁵ In *NAACP v. Claiborne Hardware Co.*, the United States Supreme Court articulated the standard for holding a national organization liable for the acts of one of its chapters.²²⁶ This case originated after a boycott of white merchants in Claiborne County, Mississippi in 1966, at a meeting of a local branch of the National Association for the Advancement of Colored People (NAACP) attended by several hundred Black persons.²²⁷ In 1969, respondent white merchants filed suit in Mississippi Chancery Court for injunctive relief and damages against petitioners (the NAACP, the Mississippi Action for Progress, and a number of individuals who had participated in the boycott, including Charles Evers, the field secretary of the NAACP in Mississippi and a principal organizer of the boycott).²²⁸

Unlike the lower court’s decision, the Supreme Court found that a national organization such as the NAACP could not be liable for the actions of a branch in the absence of any proof that the national organization authorized or ratified the misconduct in question.²²⁹ The Court noted, “[t]o impose liability without a finding that the NAACP authorized—either actually or apparently—or ratified unlawful conduct would impermissibly burden the rights of political association that are protected by the First Amendment.”²³⁰ The Court found no connection

²²¹ *Kenner*, 808 A.2d at 184.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ See *infra* notes 247–265 and accompanying text.

²²⁶ See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

²²⁷ *Id.* at 906–07.

²²⁸ *Id.* at 889–90.

²²⁹ *Id.* at 930–32.

²³⁰ *Id.* at 931.

or evidence to support the liability of the national organization.²³¹ And the Court noted a lack of evidence to show "that Charles Evers or any other NAACP member had either actual or apparent authority to commit acts of violence or to threaten violent conduct."²³² The Court finally ended its analysis by quoting from *NAACP v. Overstreet*:

To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it Thus we have held that forced disclosure of one's political associations is, at least in the absence of a compelling state interest, inconsistent with the First Amendment's guaranty of associational privacy.²³³

In analyzing whether to extend liability from a local chapter to the national organization through agency theory, courts determine whether a special relationship existed, and thereby a duty flowed between the national fraternity and the local chapter.²³⁴ Once this agency relationship has been established, courts determine whether the actions committed by the local chapter were within the scope of their relationship with the national fraternity.²³⁵ If so, courts consider local chapters to be acting as agents of the national fraternity.

The Court of Appeals of South Carolina, in 1986, held that a national fraternity was liable for the acts of its local chapters under agency theory.²³⁶ The court first imposed liability on the local chapter of the fraternity based on its precedent that placed a duty on organizations to not harm initiates in the initiation process.²³⁷ Here, participation in "hell night" was a requirement of the initiation process, and it led to injuries.²³⁸ Further, a jury might conclude that the existing members' abandonment of the pledge, while intoxicated, worsened his condition.²³⁹ The court then used agency principles to evaluate the local chapter's "hell night," in relation to the national fraternity.²⁴⁰ The national fraternity's constitution states that one could only become a member through a local chapter, and local chapters conducted their own new member initiation, which could supplemented the initiation process laid out in the national

²³¹ *Id.* at 929.

²³² *Claiborne Hardware Co.*, 458 U.S. at 930.

²³³ *Id.* at 931-32 (quoting *NAACP v. Overstreet*, 384 U.S. 118, 122 (1966)).

²³⁴ See *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 151-52 (S.C. Ct. App. 1986).

²³⁵ *Id.*

²³⁶ See *id.* at 154.

²³⁷ *Id.* at 146 (citing *Easler v. Hejaz Temple of Greenville*, 285 S.C. 348 (S.C. 1985)).

²³⁸ *Id.* at 146-47.

²³⁹ *Id.* at 149.

²⁴⁰ See *Ballou*, 291 S.C. at 152.

fraternity's constitution.²⁴¹ Therefore, the court concluded that the activities of "hell night" were within the scope of the local chapter's agency relationship with the national fraternity, therefore liability could be imposed on the national fraternity.²⁴²

In 1999, a potential member of Kappa Alpha Psi sued the fraternity for hazing in a local Illinois chapter.²⁴³ The Plaintiff first sued based on his claim that those who hazed him "acted for and on behalf of Kappa[.]" and additionally sued based on his claim that the national fraternity allowed "an aura of violence to exist . . . and that as a result of this negligence," he was hazed.²⁴⁴ In addition to examining whether the hazing activities were within the scope of authority of individual chapters, the Northern District of Illinois examined whether the national fraternity had control over its individual members and chapters, stating "[a]n association is not liable for the torts of its members when it has no control over the members' acts."²⁴⁵ Here, the court determined that the national fraternity had control as it set the method for new member intake and monitored each chapter's compliance.²⁴⁶ The Court looked at Kappa Alpha Psi's control over its individual chapters and circumstantial evidence surrounding the scope of the individual chapter's activities, and concluded that an agency relationship may have existed, and denied the national fraternities motion for summary judgment.²⁴⁷

The same year as the Illinois Kappa Alpha Psi case, the Court of Appeals of Louisiana held that Kappa Alpha Psi's national organization was not vicariously liable for the intentional hazing actions of local chapter members.²⁴⁸ Here, the court examined whether the national fraternity had control over the local chapter, and since it did not find any such control, it failed to impose vicarious

²⁴¹ *Id.*

²⁴² *Id.* at 152–53. In 2001, the Superior Court of Massachusetts noted that in addition to the local chapter, the national fraternity had knowledge of excessive drinking and dangerous behavior, yet both groups failed to take investigational and preventative steps. *See* *Krueger v. Fraternity of Phi Gamma Delta, Inc.*, No. 004292G, 2001 WL 1334996, at *1, *2 (Mass. Super. Ct. May 18, 2001). Phi Gamma Delta national argued that it owed no duty to the Plaintiff to protect him from excessive drinking, and that even if it did, no duty was breached as the Plaintiff voluntarily consumed the alcohol. *Id.* at *3. The court relied on *Ballou v. Sigma Nu*, which held the national fraternity liable for a hazing event resulting in death because it created a "hazardous situation" through its local chapter. *Id.* at *4. The Plaintiff argued the existence of a special relationship between the national fraternity and the activities of the local chapter to impose a duty on the national fraternity. *Id.* at *3. The Court gave the Plaintiff time to develop her agency argument based off the South Carolina case. *Id.* at *4.

²⁴³ *Edwards v. Kappa Alpha Psi Fraternity, Inc.*, No. 98 C 1755, 1999 WL 1069100, at *1 (N.D. Ill. Nov. 18, 1999).

²⁴⁴ *Id.* at *4.

²⁴⁵ *Id.* at *6.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at *5–6.

²⁴⁸ *Morrison v. Kappa Alpha Psi Fraternity*, 738 So. 2d 1105, 1120 (La. Ct. App. 1999).

liability.²⁴⁹ In contrast, the Court of Appeals of Louisiana held that Kappa Alpha Psi's national was directly liable for the acts of its local chapters because it "undertook a duty to regulate, protect against and prevent hazing . . . [but] failed to act reasonably to fulfill this duty."²⁵⁰ The court also relied on testimony from Kappa National's field deputy who detailed the control Kappa National had over the local chapters, and its history with dealing with prior incidents of hazing in the local chapters.²⁵¹ Kappa National maintained the power to control, expel, and suspend members for hazing.²⁵² Based on this testimony, the court found that monitoring and preventing fell within the scope of Kappa National's duty and that Kappa National's failure to fulfill its duty directly led to the plaintiff's injury.²⁵³ Therefore, the court determined that Kappa National could be directly liable for injuries resulting from hazing.²⁵⁴

2. Lack of Organizational Liability

The main rationale of courts in refraining to impose liability on national fraternities for the actions of local chapters is the lack of control the national fraternities have over the day-to-day operations of the local chapters.²⁵⁵ The Supreme Court of Delaware, in 1991, refused to impose liability on Sigma Phi Epsilon Fraternity's national body based on the fact that the national fraternity did not exercise control over the day-to-day activities of the local chapter, and believed its anti-hazing policies were being enforced.²⁵⁶ The court stated that notice of hazing alone was not sufficient to impose liability.²⁵⁷

Almost a decade later, the Supreme Court of Iowa held that no duty of care existed between the national fraternity of Lambda Chi Alpha Fraternity and the pledges of local chapters.²⁵⁸ The court distinguished this case from others where liability was imposed for excessive drinking, based on the fact that the drinking here was completely voluntary.²⁵⁹ Therefore, no special relationship existed as

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 1118.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.* at 1119-20.

²⁵⁴ *Morrison v. Kappa Alpha Psi Fraternity*, 738 So. 2d 1105, 1120 (La. Ct. App. 1999).

²⁵⁵ *Furek v. Univ. of Del.*, 594 A.2d 506, 514 (Del. 1991).

²⁵⁶ *Id.* Other courts have found similarly. See *Andres v. Alpha Kappa Lambda Fraternity*, 730 S.W.2d 547, 553 (Mo. 1987) (holding that the national fraternity was not liable, because it did not control the day-to-day operations of the local chapter); *Pawlowski v. Delta Sigma Phi Fraternity*, No. CV030484661, 2010 WL 3326707, at *3 (Conn. Super. Ct. July 28, 2010) (holding that the national fraternity was not liable, because it did not control the day-to-day operations of the local chapter).

²⁵⁷ *Furek*, 594 A.2d at 514.

²⁵⁸ *Garofalo v. Lambda Chi Alpha Fraternity*, 616 N.W.2d 647, 654 (Iowa 2000).

²⁵⁹ *Id.* at 653 (providing a list of cases distinguishable on the grounds of the pledges being forced and coerced into copious amounts of drinking).

the fraternity members did not coerce the Plaintiff into consuming large quantities of alcohol, and thereby did not implicitly create a special relationship based on "dependence or mutual dependence."²⁶⁰ The court explained that the fact that the alcohol was not paid for with fraternity money further distanced the fraternity and its national fraternity from implicit coercion and a "special relationship."²⁶¹

In 2002, the Supreme Court of Kansas held the national chapter of Pi Kappa Alpha Fraternity not liable for hazing potential members, where excessive alcohol consumption required several pledges to be hospitalized.²⁶² The court stated that since Kansas law did not hold suppliers of alcohol liable for injuries suffered by minors, the national fraternity could not be held liable for the same offense.²⁶³ The court held, that the national fraternity did not control or monitor the day-to-day activities of each individual chapter, but rather served as a resource and support organization.²⁶⁴

In 2014, the Indiana Supreme Court in *Yost v. Wabash College*, held that the national fraternity could not be held liable under a vicarious liability theory.²⁶⁵ The court rejected the pledge's arguments that the national fraternity should be liable both under a traditional duty analysis, and under agency theory.²⁶⁶ The court noted that the national fraternity did not have "direct oversight and control" of its local chapter members, did not maintain a staff or employee presence within the fraternity house, and the operational management of the local chapter was handled directly by the local chapter.²⁶⁷ The court concluded that because the national fraternity's relationship was so "remote and tenuous," the national fraternity did not have a duty toward the pledge.²⁶⁸ The court also rejected the pledge's agency argument, noting there was "no evidence that the actual management . . . is a responsibility consensually exercised by the local fraternity as the agent and at the direction of and on behalf of the national fraternity."²⁶⁹

²⁶⁰ *Id.* at 652.

²⁶¹ *Id.* at 653–54.

²⁶² *Prime v. Beta Gamma Chapter of Pi Kappa Alpha*, 47 P.3d 402, 413 (Kan. 2002).

²⁶³ *Id.* at 411.

²⁶⁴ *Id.* at 409–10 (further detailing how the national fraternity was not informed of nor approved the social functions where alcohol was consumed, and was "never informed as to the method, practice, procedure or custom" of the pledging events at the school).

²⁶⁵ *Yost v. Wabash Coll.*, 3 N.E.3d 509, 522 (Ind. 2014).

²⁶⁶ *Id.* at 521–22.

²⁶⁷ *Id.* at 521.

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 522.

3. Collecting on "Hidden" Assets

In hazing litigation, the primary means for Plaintiff recovery is via insurance payouts from the fraternity or sorority insurance carrier.²⁷⁰ Under certain circumstances, fraternity or sorority assets may be used to satisfy a judgment.²⁷¹ In the context of a fraternity like Omega Psi Phi, their assets as of 2012 were \$2,624,479.²⁷² One of the challenges of collecting a judgment from a Black Greek-Letter Organization is that it may shift much of its assets to a nonprofit entity affiliated with the organization.²⁷³ For example, fifteen members of Omega Psi Phi at the University of Louisville were involved in the off campus hazing of Shawn Blackston on April 2, 1997.²⁷⁴ Blackston, a twenty-three year old freshman, was repeatedly beaten with a large wooden paddle and forced to eat dog food.²⁷⁵ As a result of the beatings, Blackston sustained significant cuts to his body and kidney failure.²⁷⁶ Fortunately, dialysis was used to treat his life-threatening condition and he fully recovered physically.²⁷⁷ In his lawsuit, Blackston sued the national organization in the amount of \$500,000 in suffering damages, plus punitive damages, alleging they knew or should have known that hazing was taking place at the local chapter.²⁷⁸ There was evidence that the regional trainer for Omega Psi Phi knew of the hazing rituals but did nothing about them.²⁷⁹

During the summations, the attorney for the fraternity apologized, but put the blame on Blackston for volitionally participating in this conduct and keeping silent.²⁸⁰ Furthermore, the defense attorney argued that the fraternity should not be responsible for the actions of a few renegades, and that there were no damages since Blackston completely healed.²⁸¹ The jury was not persuaded and found that the fraternity was negligent in the intake and pledge process, but apportioned a 5% comparative fault to Blackston.²⁸² The verdict totaled \$190,977, minus Blackston's 5% fault, for suffering, medical bills, and lost

²⁷⁰ See generally Shane Kimzey, *The Role of Insurance in Fraternity Litigation*, 16 REV. LITIG. 459 (1997).

²⁷¹ See *id.*

²⁷² See Omega Psi Phi Fraternity, Inc. 2011 IRS 990 Form.

²⁷³ See *infra* notes 288 & 297 and accompanying text.

²⁷⁴ *Student Hazing*, CINCINNATI POST, Apr. 10, 1997, at 2K.

²⁷⁵ *Blackston v. Omega Psi Phi*, No. 97 CI 3463, 1999 KY Trial Ct. Rev. LEXIS 628 at *1 (Ky. Cir. Ct. 1999).

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.* at *2.

²⁸¹ *Blackston v. Omega Psi Phi*, No. 97 CI 3463, 1999 WL 33655000, at *2 (Ky. Cir. Ct. 1999).

²⁸² *Id.*

wages.²⁸³ The jury also awarded Blackston \$750,000 for punitive damages.²⁸⁴

Blackston attempted to collect the judgment and had a title search performed in Georgia where Omega Psi Phi's world headquarters were located.²⁸⁵ This search evinced that during the lawsuit, Omega Psi Phi transferred the world headquarters property to Friendship Foundation; the Foundation was an Omega Psi Phi nonprofit entity formed by Emerson Carey, the fraternity's trial attorney.²⁸⁶ Blackston sued both Friendship Foundation and Carey, alleging that they had transferred the property with intent to defraud Blackston.²⁸⁷ Defendants argued that they did not intend to defraud Blackston and that the property transfer was done in good faith (viz. a legitimate tax purpose).²⁸⁸ Carey was granted a defense verdict, and Friendship Foundation had to pay Blackston \$5,783 for the cost of a title search and \$44,111 in attorney fees.²⁸⁹

Such a scenario raises the question of whether an organization like Omega Psi Phi is a legally distinct entity from its affiliated nonprofit. The general rule is that legally distinct organizations are treated as separate defendants for the purpose of tort liability. Each organization is typically insulated from tort liability based upon any wrongs committed by another organization, even if they are related enterprises.²⁹⁰ In the fraternity context, separately incorporated entities will generally not be held liable for wrongs committed by members of another organization.²⁹¹ However, if the corporate form has been disregarded or abused courts may find tort liability for a separately incorporated entity, and will allow the plaintiff to pierce the corporate veil which would otherwise shield the separate organization from liability, if an organization is held to be a mere *alter ego* of another organization or entity. When the corporate veil is pierced as a result of this alter ego structure, the assets of both organizations can potentially be reached by a tort plaintiff.²⁹²

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ Blackston v. Friendship Found., No. 56926WL, 2002 WL 1353906, at *1 (Ga. Super. Feb. 14, 2002).

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ See generally Gardemal v. Westin Hotel Co., 186 F.3d 588 (5th Cir. 1999) (Westin Inc. is not the mere alter ego of Westin Mexico Inc., and not subject to tort liability in claim by plaintiff.).

²⁹¹ See *id.*

²⁹² There is no general legal standard for when piercing the corporate veil is allowed under an alter ego theory. Piercing the corporate veil is a common law doctrine that has developed separately in each jurisdiction. The two-pronged test used by courts in the District of Columbia appears to be representative: "(1) [I]s there such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist?; and (2) if the acts are treated as those of the corporation alone, will an inequitable result follow?" United States v. Emor, 850 F. Supp. 2d 176,

D. Chapter Liability

Few cases explore civil liability vis-à-vis a fraternity chapter, as opposed to national organizational liability. One that is instructive is *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*.²⁹³ In *Quinn*, the Illinois Court of Appeals found that a local fraternity owed a duty of care to a pledge who suffered neurological damage from excessive consumption of alcohol during an initiation ceremony.²⁹⁴ During the ceremony, each pledge had to drink forty ounces of beer from a pitcher, eight ounces of whiskey, and additional liquor purchased by the fraternity members.²⁹⁵ After the plaintiff lost consciousness from extreme intoxication, fraternity members brought him back to the fraternity house and left him on a hardwood floor.²⁹⁶ After sleeping for approximately fourteen hours, the plaintiff awoke, found that he “could not properly use his hands or arms[,]” and was taken to a hospital.²⁹⁷ The plaintiff alleged in his complaint that he “suffered neurological damage to his arms and hands necessitating the attention of a hospital, doctor, and physical therapist and causing partial disability.”²⁹⁸ The court of appeals determined that the local fraternity created a legal duty when it required the plaintiff to drink excessive amounts of alcohol in order to become a member, because it was foreseeable that injuries would occur.²⁹⁹ The court stated:

A fraternal organization, held in high esteem, is to be liable for injuries sustained when requiring those seeking membership to engage in illegal and very dangerous activities The social pressure that exists once a college or university student has

206 (D.C. Cir. 2012) (quoting *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir. 1982)). The relevant factors for determining whether two organizations are mere alter egos of each other include whether the organizations maintain separate corporate minutes, whether they compile separate corporate records, whether funds and other assets are commingled between the organizations, and whether corporate funds or assets are diverted from one organization to the other for non-corporate use by a dominant, controlling person or organization. *Id.* at 207. In *Emor*, for instance, despite the fact that a 501(c)(3) non-profit organization was a legally distinct entity from the defendant, the court held that this non-profit organization was a “mere alter ego” of Emor and its assets could be reached in a suit based upon wrongs committed by Emor in his individual capacity. *Id.* at 206. For a plaintiff to be successful in reaching 501(c)(3) assets, there would need to be strong evidence that the 501(c)(3) was not legally distinct because of failure to observe corporate formalities, undercapitalization, or other evidence of improper interactions (e.g. transfer of assets between entities for an unusually small consideration). Within Black Greek-letter Organizations, the policies and procedures for how they and their non-profit arms operate can often be quite lax, or the latter can be used to shield organization money. As such, the governance procedures for both the 501(c)(7) and 501(c)(3) entities must be investigated.

²⁹³ *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193 (Ill. App. Ct. 1987).

²⁹⁴ *Id.* at 1198.

²⁹⁵ *Id.* at 1195.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Quinn*, 507 N.E.2d at 1197.

pledged into a fraternal organization is so great that compliance with initiation requirements places him or her in a position of acting in a coerced manner.³⁰⁰

In *Nisbet v. Bucher*, parents filed suit against several campus organizations for the wrongful death of their son.³⁰¹ The freshman was invited to serve on a fraternity board that organized St. Patrick's Day activities on campus.³⁰² Initiation was a prerequisite for invitation on the board, and took place at fraternity-owned buildings on the university campus.³⁰³ Plaintiffs alleged that the deceased was forced to drink a heated mix of grain alcohol and green peas.³⁰⁴ They further alleged that pledges were forced to drink using tactics of "pushing, restraint, assault . . . verbal taunting, ridicule and challenge."³⁰⁵ The appellate court determined that the social host doctrine did not shield liability, because it was not alleged that the hosts merely supplied alcohol to the student—the court noted that the drinking involved with initiation was so intertwined with the membership requirements that "his will to drink or not drink may have been overborne by the requirements to achieve membership on the St. Pat's Board and by the pressure" by defendants.³⁰⁶ Ultimately, the court concluded that "[i]f great social pressure was applied to [a student] to comply with the membership 'qualifications' of [a campus organization, the student] may have been blinded to the danger he was facing."³⁰⁷

In *Yost v. Wabash College*, a pledge sued his campus fraternity for injuries sustained during an alleged fraternity ceremonial ritual, where the pledge was forcibly picked up and put into the shower.³⁰⁸ The Indiana Supreme Court allowed the pledge's claim of negligence against the local fraternity chapter to proceed past summary judgment.³⁰⁹ The pledge stated that not only did he live at the local fraternity's house, but he was "subject to the mentorship" of the local fraternity's hierarchy, participated in the pledge program and fraternity traditions, and was "at least partially under the control and direction of the local fraternity."³¹⁰ Additionally, the court noted that it was possible that a fact finder could determine that the local fraternity, through providing supervision to its members, undertook a duty to "reduce the risk of harm" to pledges, and thus

³⁰⁰ *Id.* at 1198.

³⁰¹ *Nisbet*, 949 S.W.2d at 113.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 116.

³⁰⁷ *Nisbet v. Bucher*, 949 S.W.2d 111, 116 (Mo. Ct. App. 1997).

³⁰⁸ *Yost v. Wabash Coll.*, 3 N.E.3d 509, 523 (Ind. 2014).

³⁰⁹ *Id.* at 524.

³¹⁰ *Id.* at 523.

failed to exercise reasonable care resulting in harm to the pledge.³¹¹ Although the pledge's claims against the college and national fraternity were ultimately dismissed as a matter of law, the court allowed the pledge to seek relief against the local chapter.³¹²

Courts remain inconsistent as to whether hazing is coercive.³¹³ However, a strong argument can be made, given the psychological literature, that hazing is a coercive situation, impairing a victim's ability to consent to hazing activities.³¹⁴

E. University Liability

Unlike the 1960s, where universities were considered *in loco parentis*, college and university institutions generally do not assume a duty to protect students from their own decisions made as adults.³¹⁵ This includes the duty to protect students against intoxication and the duty to regulate student conduct on university property.³¹⁶ Thus, it has become much more difficult for plaintiffs to recover from universities in hazing actions. Plaintiffs have attempted to assert a duty against educational institutions via: (1) landowner liability,³¹⁷ (2) custodial

³¹¹ *Id.*

³¹² *Id.* at 524.

³¹³ See generally Parks & Southerland, *supra* note 13.

³¹⁴ *Id.*

³¹⁵ *Bradshaw v. Rawlings*, 612 F.2d 135, 139–40 (3d Cir. 1979).

³¹⁶ See e.g., *Beach v. Univ. of Utah*, 726 P.2d 413 (Utah 1986); *Rabel v. Ill. Wesleyan Univ.*, 514 N.E.2d 552 (Ill. App. Ct. 1987) (both holding that regulations preventing alcohol consumption did not establish a custodial relationship between the University and the student); see *Univ. of Denver v. Whitlock*, 744 P.2d 54 (Colo. 1987).

³¹⁷ When the educational institution owns a fraternity or sorority house, plaintiffs may try to assert a duty through landowner liability. This theory has mixed results. Some courts, following the new practice to treat students as adults, have declined to hold universities liable even though they own the property where fraternity's events take place. See generally *Yost v. Wabash Coll.*, 976 N.E.2d 724 (Ind. Ct. App. 2012). For example, in *Yost*, the court specifically found that the owner of a fraternity house does not ordinarily have a legal duty to affirmatively supervise those present in the house and prevent them from voluntarily engaging in the conduct that creates the risk of harm to themselves. *Id.* at 737. This does not mean that the institution will never be liable for third party hazing activities that occur on its property. Even the *Yost* court agreed,

“we can envision a scenario in which a landowner college may be liable for inherently dangerous activities . . . a college might breach its duty of care to its students/invitees by creating or allowing an inherently dangerous environment to exist where no crime is committed but where it is foreseeable that students/invitees will be placed in jeopardy as a result, i.e., a college-sponsored event in which students are drinking and engaging in dangerous activities[.]”

Id. This form of liability seems inapplicable in this case given that Black Greek-letter organizations rarely have their own campus housing. When *Yost* was appealed to the Indiana Supreme Court, the issue of whether the property was leased or owned by the fraternity had important implications for liability. *Yost v. Wabash Coll.*, 3 N.E. 3d 509, 515 (Ind. 2014). The court determined that because the fraternity house where the injury occurred was leased to the local fraternity chapter and they

liability, (3) assumption of a duty, and (4) vicarious liability.³¹⁸

Generally, courts decline to apply custodial liability to universities in hazing cases unless the plaintiff can establish that the university had a special relationship with the student.³¹⁹ A special relationship must be more than simple authority to create the campus rules; it must involve a level of control.³²⁰ In *Bradshaw v. Rawlings*, the court declined to find a custodial relationship between the institution and its students even though it had policies against certain activities.³²¹ Something more is required to establish a special

were thus "in full control of the leased premises," the college could not be liable as landowners. *Id.* (quoting *Dutchmen Mfg., Inc. v. Reynolds*, 849 N.E.2d 516, 525 (Ind. 2006)).

³¹⁸ See *Brueckner v. Norwich Univ.*, 730 A.2d 1086 (Vt. 1999).

³¹⁹ See Byron L. Leflore, Jr., Note, *Alcohol and Hazing Risks in College Fraternities: Re-evaluating Vicarious and Custodial Liability of National Fraternities*, 7 REV. LITIG. 191, 216–17. Another way a university might be held liable for harm to hazing victims is for the negligent hiring and retention of an incompetent employee, or under a pure duty analysis. Like all tort actions, negligent hiring claims vary slightly from jurisdiction to jurisdiction, however general principles are consistent across states. Under the negligent hiring theory, an employer is directly liable to a third party if the employer knew or should have known that the employee, acting within the scope of her employment, would likely harm others. See, e.g., *Long v. Brookside Manor*, 885 S.W.2d 70, 74 (Tenn. Ct. App. 1994) (holding that an employer's failure to conduct a background check which would have revealed employee's negative history was not the proximate cause of the Plaintiff's injuries). The employees' general incompetence or inexperience is not enough to find the employer negligent; rather, the plaintiff must show that the hiring of someone with incompetency or bad character was the proximate cause of the alleged injury. *Id.* at 73–74. Importantly, it is not the employee's wrongful acts or incompetence that are at issue, rather it is the employer's negligent hiring. *Id.*

Most jurisdictions define proximate cause by examining the foreseeability of the harm, excluding liability for harms that were sufficiently unforeseeable at the time of the harmful conduct. RESTATEMENT (THIRD) OF TORTS § 29 cmt. d. (2014). For example, in *Evans v. Ohio State University*, the court declined to enforce a duty when it was not reasonably foreseeable to the university that the employee would come in contact with the plaintiff *Evans v. Ohio State Univ.*, 680 N.E.2d 161, 172 (Ohio Ct. App. 1996). It should be noted that view of proximate cause is often criticized for being overly confusing to the jury: combing the "factual cause with the scope of liability." RESTATEMENT (THIRD) OF TORTS § 29 cmt. b. (2014).

Direct causation is a minority approach for establishing causation. *Id.* Under the majority approach, proximate cause occurs when "a natural and continuous sequence of events produces the [injury]," and without which the injury would not have occurred. *Id.* This theory generally requires that the sequence be "unbroken by any efficient intervening cause." *Id.* This is the jury instruction for proximate cause. *Id.* For example, in *Gaines v. Monsanto Co.*, a court found the potential for proximate causation when 1) an employer knew of an employees convictions of rape, 2) hired him, 3) required him to circulate among female employees, 4) was able to learn the home addresses of his fellow employees and 5) eventually raped one of his fellow employees. *Gaines v. Monsanto Co.*, 655 S.W.2d 568, 572 (Mo. Ct. App. 1983). South Carolina recognizes this type of proximate cause for negligent hiring and negligent retention causes of action. See *McKnight v. S. C. Dep't. of Corr.*, 684 S.E.2d 566, 566–67 (S.C. Ct. App. 2009) (noting that negligence is not actionable without proximate cause which occurs only when without such negligence the injury would not have occurred).

³²⁰ See Leflore, *supra* note 319, at 216–17.

³²¹ See *Bradshaw v. Rawlings*, 612 F.2d 135, 141 (3d Cir. 1979). The court refused to find a custodial relationship between the University and its students, when the university had a policy against student consumption of alcohol on school property, and a student was injured in a car accident by a drunk driver who was another student. *Id.*

relationship to create custodial liability.³²² Case in point, in *Morrison v. Kappa Alpha Psi*, a local fraternity president beat a potential pledge in the president's dorm room.³²³ The student sued the fraternity and the university, and the university argued that "a university has no duty to shield a student from his own activities which may result in harm to himself."³²⁴ However, the court noted that the fraternity was a "student organization" falling under the university's Division of Student Affairs and Office of Student Life, and subject to the university's disciplinary boards.³²⁵ Additionally, the university had received numerous complaints about alleged hazing incidents perpetrated by the fraternity, with both anonymous and named potential victims.³²⁶ The trial court concluded that:

the pledging process to join a fraternal organization is not an activity which an adult college student would regard as hazardous. Furthermore, the administration assigned to oversee the student organizations had knowledge of prior hazing and that incoming freshman (sic) participating in the Kappa organization may also be victim to that same conduct . . . The Court finds that because of the prior knowledge and serious nature of hazing, social policy justifies a special relationship between the University and its students in this particular instance . . . a university with known and documented history of hazing by a fraternal organization does in fact obligate the university to monitor such further behavior by the fraternity.³²⁷

Ultimately, the court of appeals agreed with the trial court that a jury could find that Louisiana Tech breached a duty of reasonable care.³²⁸ Closely tied with custodial liability is the assumption of a duty. While rejecting custodial liability, courts have found liability when the university has assumed the duty of care by becoming involved in actively preventing hazing acts. For example, in *Furek v. University of Delaware*, the court held that the university assumed the duty of care when it repeatedly communicated with fraternities to emphasize rules and discipline for hazing infractions.³²⁹ This was a step further than the simple act of rulemaking, and actually established the university's knowledge and efforts to prevent the hazing activities.³³⁰ Similarly, in *Coghlan v. Beta Theta Pi*

³²² *Id.*

³²³ *Morrison v. Kappa Alpha Psi Fraternity*, 738 So. 2d 1105, 1110 (La. Ct. App. 1999).

³²⁴ *Id.* at 1114.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.* at 1115.

³²⁸ *Id.* at 1117.

³²⁹ *Furek v. Univ. of Del.*, 594 A.2d 506, 519-20 (Del. 1991).

³³⁰ *Id.* at 520.

Fraternity, the court found that by sending two of its employees to supervise one of the fraternity parties, the university voluntarily accepted the duty of care.³³¹

In *Yost*, the injured pledge claimed that the college was negligent because it assumed a duty to protect the pledge from hazing, through the colleges "strict" policies against hazing, awareness and prevention campaigns, and encouraging students to conduct themselves as gentlemen at all times.³³² The court noted that to be liable for assuming a duty, the college would have to have undertaken "affirmative, deliberate conduct" that would make it "apparent that the actor . . . specifically [undertook] to perform the task that he is charged with having performed negligently[.]"³³³ In other words, the college could only be liable under this theory if it failed to exercise reasonable care through its protective actions.³³⁴ The pledge argued that because the university adopted an anti-hazing policy along with guidelines and procedures for dealing with hazing, the college undertook an affirmative duty to protect students from hazing.³³⁵ The court disagreed, determining that the college's anti-hazing efforts "evinced no more than a general intent to elicit good behavior from" students.³³⁶ The court noted that although the college monitored student organizations like fraternities, the college did not "directly oversee"³³⁷ the fraternity's daily operations or events, and thus did not engage in undertaking the duty.³³⁸ The court recognized that a contrary result would essentially discourage colleges from taking proactive steps to address hazing problems—if prevention campaigns and developing policies and procedures translated into duty by undertaking, then colleges have little financial incentive to address the hazing problem.³³⁹

Additionally, the pledge claimed that the college's disciplinary control over the fraternity for hazing incidents produced an agency relationship, where the college should be liable because the fraternity acted as an agent of the college.³⁴⁰ However, the court rejected this argument, noting that the "essential element of [an] agency relationship" is that the agent's actions are "on the principal's behalf."³⁴¹ The court determined that "consent to governance does not equate to agency[.]"³⁴² and thus simply because the college had some oversight into the

³³¹ *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300, 312 (Idaho 1999).

³³² *Yost v. Wabash Coll.*, N.E.3d 509, 516 (Ind. 1999).

³³³ *Id.* at 517 (citations omitted).

³³⁴ *See Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Yost v. Wabash Coll.*, N.E.3d 509, 517–18 (Ind. 1999).

³³⁹ *Id.* at 518.

³⁴⁰ *Id.* at 519.

³⁴¹ *Id.*

³⁴² *Id.*

fraternity's actions did not mean that an agency relationship was created.³⁴³

Vicarious liability, or respondeat superior, is another method to assert a negligence claim against an institution.³⁴⁴ However, this is one of the more difficult duty theories because the plaintiff must establish that the third party hazing student acted within the scope of any employment relationship with the college.³⁴⁵

However, while difficult, some plaintiffs have succeeded in negligent actions against universities on the theory of vicarious liability. For example, in *Brueckner v. Norwich University*, the court held that a university could be held responsible through the theory of respondent superior.³⁴⁶ In *Brueckner*, the Plaintiff was subject to extreme hazing, beatings, and harassment by the ROTC cadre who were instructed by the institution to "indoctrinate and orient the rooks."³⁴⁷ The *Brueckner* court found that even though the university had specific rules against hazing, the hazing acts by the cadre fell within the scope of their employment because they had specifically been instructed to indoctrinate the rookies; thus the university could be held liable.³⁴⁸

F. University Leadership Liability

Few cases explore civil liability vis-à-vis university leadership, especially in the context of hazing. The closest example is *Mullins v. Pine Manor College*.³⁴⁹ The plaintiff sued the college and its Vice President for Operations, alleging that they breached their duty to protect her against the criminal acts of third parties.³⁵⁰ At trial in the Superior Court of Massachusetts, "the jury returned verdicts against the college and [the vice president] in the amount of \$175,000."³⁵¹ Both the college and vice president moved for judgment notwithstanding the verdicts.³⁵² The trial court denied both motions and both defendants appealed.³⁵³

On appeal, the college relied on Section 314 of the Restatement of Torts for

³⁴³ *Id.* at 519-20.

³⁴⁴ See *Brueckner v. Norwich Univ.*, 730 A.2d 1086 (Vt. 1999).

³⁴⁵ *Yost*, N.E.3d at 518-19.

³⁴⁶ *Brueckner*, 730 A.2d at 1091.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 334 (Mass. 1983).

³⁵⁰ *Id.* at 331, 334. On December 11, 1977, the plaintiff was awakened early one morning in her dormitory room by an unknown male intruder. *Id.* at 334. After discovering that she did not have a car on campus, the intruder took her to the college refectory and raped her. *Id.*

³⁵¹ *Id.* at 333. "The trial judge reduced the amount of the judgment against the college to \$20,000." *Id.*

³⁵² *Id.*

³⁵³ *Id.*

the “general proposition that there is no duty to protect others from the criminal . . . act[s] of third [parties].”³⁵⁴ The *Mullins* court, however, rejected the college’s argument as having no application to the facts of the case.³⁵⁵ The court determined that because of the steps that Pine Manor College took to provide adequate security for its students, “the college community itself has recognized its obligation to protect resident students from the criminal acts of third parties. This recognition indicates that . . . a duty of care is firmly embedded in a community consensus.”³⁵⁶ The court recognized the unique nature of the university-student relationship and the fact that the *in loco parentis* relationship was in decline.³⁵⁷ The court stated, “[t]he fact that a college need not police the morals of its resident students, however, does not entitle it to abandon any effort to ensure their physical safety.”³⁵⁸ The court went on to say, “[t]he concentration of young people . . . on a college campus, creates favorable opportunities for criminal behavior.”³⁵⁹

In *Mullins*, the court explicitly recognized a duty arising from the “existing social values and customs.”³⁶⁰ Restatement (Second) of Torts, Section 323 states:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.³⁶¹

Arguably, depending on what types of policies a university has instituted, the university president may have had a duty. What is peculiar is that, at least from published opinions, university presidents are rarely sued.³⁶² Accordingly, this may be the weakest liability argument.

This legal landscape is crucial to understanding hazing, but it fails to illuminate why hazing persists and how it manifests itself differently between fraternities and sororities. Even more, questions should remain as to how hazing

³⁵⁴ *Id.* at 334. See RESTATEMENT (SECOND) OF TORTS § 314 (1965).

³⁵⁵ *Mullins*, 449 N.E.2d at 334–35.

³⁵⁶ *Id.* at 335.

³⁵⁷ *Id.*

³⁵⁸ *Id.* at 335–36.

³⁵⁹ *Id.* at 335.

³⁶⁰ *Id.* (quoting *Schofield v. Merrill*, 435 N.E.2d 339, 341 (Mass. 1982)).

³⁶¹ *Mullins v. Pine Manor Coll.*, 449 N.E.2d 331, 336 (Mass. 1983) (quoting RESTATEMENT (SECOND) OF TORTS § 323 (1965)).

³⁶² Finding no instances of university Presidents as defendants.

is evinced among Greek-letter organizations that cater to different demographic groups. In short, what is the influence of race and gender on hazing?

III. A REVIEW OF THE INTERSECTION OF RACE, SEX AND HAZING

Over the past several decades, scholars have investigated hazing within collegiate culture, especially vis-à-vis fraternities and sororities. Implicit in much of this research has been the notion that all college fraternities and sororities are the same or at least similar. However, over the past decade, a handful of scholars have focused their attention on Black fraternities and sororities, suggesting that the hazing experiences of black members are unique.³⁶³

A. Studies of White Fraternities and Sororities

Hazing exists in White fraternities and sororities for a variety of reasons. The most common rationales are that it increases group cohesiveness, fulfills the psychological and sociological needs of rites of passage for the students, and fosters a group solidarity that makes the organization more likely to attract group membership.³⁶⁴ Many within White fraternities and sororities see these activities as a way of teaching and preserving the traditions of the organization rather than as abuse. In this light, hazing is perpetuated when the pledge becomes an official, active member of the organization and begins to haze the next incoming class of pledges.³⁶⁵

White fraternities are careful not to define activities as hazing, but instead choose to use words like "discipline," "tradition," "loyalty" and "commitment" to refer to such activities.³⁶⁶ Additionally, pledges enter fraternities and usually stay throughout the pledge and initiation process.³⁶⁷ Some research indicates that pledges wish to belong to a fraternity and view hazing as what will it take to make them into "fraternity men."³⁶⁸ Moreover, research indicates that many hazing acts are not done to the pledges by others, but are taken on or performed by the pledges themselves.³⁶⁹ Thus, the belief that hazing occurs due to a

³⁶³ See Gregory S. Parks et al., *Hazing as Crime: An Empirical Analysis of Criminological Antecedents*, LAW & PSYCHOL. REV. (forthcoming); Parks, "Midnight within the Moral Order," *supra* note 14; Parks et al., *Complicit in Their Own Demise?* *supra* note 14; Parks et al., *Victimology* *supra* note 14; Parks & Ray, *Poetry as Evidence*, *supra* note 14; Parks et al., *Organizational Deviance*, *supra* note 14.

³⁶⁴ Shelly Campo et al., *Prevalence and Profiling: Hazing Among College Students and Points of Intervention*, 29 AM. J. HEALTH BEHAV. 137, 138 (2005).

³⁶⁵ *Id.*

³⁶⁶ Stephen Sweet, *Understanding Fraternity Hazing*, in THE HAZING READER 1, 8 (Hank Nuwer ed., 2004).

³⁶⁷ See NICHOLAS L. SYRETT, THE COMPANY HE KEEPS: A HISTORY OF WHITE COLLEGE FRATERNITIES 247 (2009).

³⁶⁸ *Id.*

³⁶⁹ *Id.*

specific fraternity brother's personality or lack of intellect, is not wholly accurate.³⁷⁰

Hazing scholar Stephen Sweet argues that "hazing is [a] result of group-interaction processes that are linked with students' need for belonging, their isolation from other social relations on campus, and subcultural definitions that legitimate hazing events as a necessary component of fraternity initiation rites."³⁷¹ Sweet employs a "Symbolic Interactionist Theory" to help explain why young people, in particular young men, willingly enter into these periods of hazing and how the fraternities reinforce their sense of self.³⁷² Pursuant to the theory, Sweet posits that the self is divided into the material self and the social self.³⁷³ The material self is composed of tangible items like the clothes that one wears, the car one drives, or the music to which one listens.³⁷⁴ White fraternities and sororities give pledges new "identity kits"—that is, the fraternity gives the pledge fraternity paraphernalia like a pledge pin or t-shirt that helps to erect a new type of identity for the pledge.³⁷⁵

Social interactions and relationships with other people create the social self.³⁷⁶ According to Sweet, White fraternities are "greedy organizations" that seek to limit the social relationships that pledges have to just the fraternity.³⁷⁷ Fraternities try to break all ties pledges might have with other social organizations so the pledge is more isolated.³⁷⁸ This increases the "exit cost" for a pledge to leave a fraternity during pledging because his only existing social network is the fraternity.³⁷⁹

Sweet also employs the "Looking-Glass" Theory (first introduced by sociologist Charles Cooley in 1922) to understand the social-psychology of the pledge period that White fraternities use to their advantage.³⁸⁰ The Looking Glass theory proposes that a pledge perceives his self-concept through social reflections—through the feedback the fraternity gives him.³⁸¹ After the pledge accepts his bid into the fraternity, the brothers are extremely nice to him and

³⁷⁰ Sweet, *supra* note 366, at 4.

³⁷¹ *Id.* at 1.

³⁷² *Id.* at 5–6.

³⁷³ *Id.* at 6.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ Sweet, *supra* note 366, at 1, 6.

³⁷⁷ *Id.* at 6–7.

³⁷⁸ *Id.*

³⁷⁹ *Id.* at 7.

³⁸⁰ *See id.*

³⁸¹ *Id.*

compliment him, causing his ego to boost.³⁸² Once his other social connections are severed, however, the older brothers begin to give the pledge tasks and are mean to him, giving him the sense that he is lesser than the active members.³⁸³ Finally, the pledge is broken down and rebuilt through the initiation process.³⁸⁴

Two other methods used in examining hazing are the "Severity-Attraction Hypothesis" and the "Severity-Affiliation-Attraction Hypothesis."³⁸⁵ The former posits that the more effort a person puts toward reaching a goal, in this case initiation, the more the individual will rationalize the goal of being worthy of all the effort.³⁸⁶ In other words, the more hazing a pledge endures during pledging makes him more likely to rationalize initiation into the fraternity as worthy of all of the hazing. The second theory states that hazing brings together the pledges and forms a stronger bond, and that this bond increases group attractiveness.³⁸⁷

Due to the secrecy of most fraternity and sorority members, acts of hazing are often hard to identify by universities and Greek national organizations.³⁸⁸ However, hazing in White fraternities can be divided broadly into two types: physical and psychological.³⁸⁹ For example, physical hazing includes: paddling, forced runs or calisthenics, forced eating,³⁹⁰ forced viewing of pornography, blindfolding, sleep deprivation, forced alcohol consumption, forced vomiting, administration of electric shocks,³⁹¹ and forced destruction of property.³⁹² More specifically, pledges have been documented as having been pelted with snowballs while naked, stuffed in trunks or coffins for extended periods of time,³⁹³ forced to dig through trash with just their heads, forced to wear a sanitary pad,³⁹⁴ and chained to posts or fountains naked.³⁹⁵ Additionally, some examples of psychological hazing includes: sleep deprivation, constantly being

³⁸² Sweet, *supra* note 366, at 1, 6.

³⁸³ *Id.*

³⁸⁴ *See id.*

³⁸⁵ Chad William Ellsworth, Definitions of Hazing: Differences Among Selected Student Organizations 19-20 (2004) (unpublished M.A. thesis, University of Maryland), available at <http://drum.lib.umd.edu/bitstream/1903/1577/1/umi-umd-1647.pdf>.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 20.

³⁸⁸ *Id.* at 22.

³⁸⁹ *Id.* at 4, 13.

³⁹⁰ *See* SYRETT, *supra* note 367, at 245.

³⁹¹ Anthony W. James, The Defenders of Tradition: College Social Fraternities, Race, and Gender, 1945-1980 157 (1998) (unpublished Ph.D. dissertation, University of Mississippi) (on file with author).

³⁹² SYRETT, *supra* note 367, at 241-42.

³⁹³ Heather Wishart Holmes, The Role of Hazing in the Sorority Pledge Process 29 (Mar. 22, 1999) (unpublished Ph.D. dissertation, State University of New York at Buffalo) (on file with author).

³⁹⁴ James, *supra* note 391, at 131.

³⁹⁵ SYRETT, *supra* note 367, at 246.

yelled at or subjected to name-calling, stripping, intrusive questioning about sexuality and sex acts, and blind-folding.³⁹⁶ Recently, the use of alcohol in hazing activities has increased, making for an even more dangerous environment. Pledges and fraternities use the consumption of alcohol as a test where whoever can drink the most is praised, while the person who can drink the least is insulted and criticized.³⁹⁷

Hazing activities in White fraternities may be observed in terms of masculinity. For example, pledges often attempt to drink the most to impress the other men and to be considered the most masculine.³⁹⁸ Overt displays of masculinity within hazing can also be seen through the destructive acts committed by fraternity members and pledges.³⁹⁹ Such acts are usually targeted toward other rival fraternities at the same school, such as vandalizing a specific fraternity's bench in a Greek area.⁴⁰⁰ These destructive acts have gone so far as to require immediate intervention from collegiate administrators where fraternities refused to back down in order to display their masculinity over even the administration.⁴⁰¹

Moreover, many hazing activities are centered on humiliating the pledge in front of women through a sexual escapade while simultaneously exerting masculine power over them.⁴⁰² The famous "panty raids" of the 1950s demonstrate this idea; pledges were required to break into the female dorms and steal women's undergarments.⁴⁰³ Another example is when pledges at Dartmouth in the 1950s were forced to stand outside a female dorm in just their underwear and recite Alfred Kinsey's *Sexual Behavior in the Human Male*.⁴⁰⁴

However, when the notion of sexuality became more liberalized in the mid-twentieth century, so did the hazing practices of White fraternities. Previously, hazing acts could have had "potentially homoerotic connotations."⁴⁰⁵ For

³⁹⁶ James, *supra* note 391, at 157.

³⁹⁷ SYRETT, *supra* note 367, at 241.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 241–43.

⁴⁰¹ *Id.*

⁴⁰² *Id.* at 242.

⁴⁰³ SYRETT, *supra* note 367, at 243–44.

⁴⁰⁴ *Id.* at 243.

⁴⁰⁵ James, *supra* note 391, at 132. The relationship between masculinity and hazing is used to portray the fraternity as hyper masculine. However, this is reached by forcing pledges to partake in quasi-homoerotic hazing rituals and activities that oftentimes focus on nudity and the male genitalia. Simultaneously, pledges are expected to display masculinity by having sex with as many women as possible and to discuss their sexual encounters with the members of the fraternity and other pledges. In light of the psychological and sociological perspectives presented earlier, fraternities' focus on masculinity results by portraying homosexuality and homosexual acts represented through homoerotic acts performed during the pledge period as humiliating and something to be criticized.

instance, hazing rituals involved naked pledges and focused on male genitalia.⁴⁰⁶ Hazing activities changed to encourage a more aggressive heterosexual nature since the dichotomy between homosexuality and heterosexuality formed and strengthened during this period.⁴⁰⁷ However, White fraternities still used homoerotic hazing rituals to emasculate the pledges and to humiliate them even further. This in turn made the active members in the fraternity appear more masculine and heterosexual.⁴⁰⁸ Hazing then emerged as a test of manhood and discipline to the freshmen, whom the fraternity thought needed guidance into manhood.⁴⁰⁹

An interesting link between masculinity and hazing exists between pledges, fraternity brothers, and women. Perhaps due to the growing negative stigma of homosexuality combined with the greater number of women on college campuses, pledges and fraternity brothers feel the need to brag and boast about their sexual exploitations.⁴¹⁰ Sex accordingly became a new marker used to display masculinity in the group setting. A consequence of this new found sexuality was the increase in the number of reported gang rapes committed by fraternity members.⁴¹¹

Much less information is known about hazing within white sororities as compared to White fraternities. Nevertheless, similar to fraternities, hazing activity within sororities falls within the same broad physical and psychological categories. These activities usually include high-risk drinking or forced participation in humiliating acts—activities that degrade women in front of men.⁴¹²

Hazing persists in today's white Greek organizations primarily because people continue to enter the hazing cycle. Young men and women enter into these agreements with fraternities and sororities where they agree to undergo a pledge period, where many know hazing occurs, with the promise of receiving formal entry into the Greek organization at the end of the period. Then, once an active member of that Greek organization, those young men and women, who were once hazed, begin to haze a new class of pledges. It is extremely important to note that pledges enter into the pledge period on their own accord and perform these acts themselves. However, there is a disconnect between what

This forces the pledges to realize that heterosexuality is displayed through extreme masculinity, which is symbolized by the fraternity.

⁴⁰⁶ *Id.* at 149.

⁴⁰⁷ *Id.* at 193.

⁴⁰⁸ *Id.* at 193–94.

⁴⁰⁹ *Id.* at 144.

⁴¹⁰ SYRETT, *supra* note 367, at 261.

⁴¹¹ Jay Goodner, Comparison of Hazing Attitudes of Black and White fraternity Members at Colleges in the State of Alabama 13 (1992) (unpublished Ph.D. dissertation, University of Alabama) (on file with author).

⁴¹² See Holmes, *supra* note 393, at 1–29.

most college-aged men and women consider hazing and what actually constitutes hazing.

White fraternities and sororities purposefully use hazing during the pledge process in order to break down the pledges, remove their existing identities and social connections, and rebuild them in the image of the Greek organization with a new social identity. This new identity that the pledge receives in the shape of official group membership is the ultimate goal for the pledge. During this identity transformation, pledges that experience hazing undergo harsh and extreme conditions that usually include the aforementioned.

B. Black Sororities

While there may be classic challenges faced by historically White fraternities and sororities, the question remains as to whether hazing manifests itself differently within BGLOs. Hazing in Black sororities is any conduct that falls outside of the authorized Membership Intake Process ("MIP"). Such unauthorized conduct includes the use of emotional, mental, and physical discomfort as a means of teaching the prospective sorority members about the sorority history and background information about current members. Although hazing can cause severe injuries, sorority members may continue to participate in hazing before and after their organizations' official initiation processes to preserve the identity of their respective organizations and to maintain their own personal reputations.

Hazing in Black sororities is characterized by a secretive "underground" culture, where women in line for a Black Greek-Lettered Sorority undergo an unofficial process to gain membership into the sorority.⁴¹³ This hazing initiation is in addition to the official process approved by the national organization.⁴¹⁴ Some sorority chapters have decided to continue the traditional—old school—pledge process, now synonymous with hazing, irrespective of the National Pan-Hellenic Council's ("NPHC") ban on pledging in Black sororities.⁴¹⁵

Arguably, the ban on pledging created the secretive, underground nature of hazing within Black sororities.⁴¹⁶ Hazing incidents have increased in frequency and severity in Black sororities since the ban has taken effect.⁴¹⁷ Pledging is a part of the historically Black sorority experience and hazing is seen as a way to

⁴¹³ WHALEY, *supra* note 18, at 95.

⁴¹⁴ *Id.*

⁴¹⁵ See Eugena Lee-Olukoya, *Sisterhood: Hazing and Other Membership Experiences of Women Belonging to Historically African American Sororities* 161 (Dec. 2010) (unpublished Ph.D. dissertation, Illinois State University) (on file with author).

⁴¹⁶ See Antonio Dewan Jenkins, *On Line: The Pledging Experiences [of Members] of Black Greek-Lettered Organizations from 1970 to 1990* at 8, 10 (Dec. 2010) (unpublished Ph.D. dissertation, University of Memphis) (on file with author); Shawn D. Peoples, *Tragedy or Tradition: The Prevalence of Hazing in African American Fraternities and Sororities* 46 (2011) (unpublished Ph.D. dissertation, St. Louis University) (on file with author).

⁴¹⁷ WHALEY, *supra* note 18, at 92.

continue that tradition.⁴¹⁸ Interestingly, although hazing is a tradition within Black sororities generally, actual hazing activities are arguably more chapter-related than sorority-related.⁴¹⁹ Hazing is “a means to an end” in gaining credibility and admission in sorority chapters.⁴²⁰ Women who choose to go through the MIP—the new, non-hazing process—often retain a lower status among their own sorority members, and sometimes among other BGLO members, as opposed to those who choose to be hazed.⁴²¹

Ironically, all prospects are not presented with the choice to be hazed or not to be hazed in some chapters. Traditionally, the default rule was that everyone on line—a participant in the old school hazing process—pledged together as a unit, and hazing activities, occurred openly where other people who were not BGLO members could see.⁴²² Now, it is more common that certain women are selected by sorority members to be pre-hazed secretly apart from their other line sisters.⁴²³ This is due to the large number of women that now are initiated through the official MIP.⁴²⁴ The current members make their pledgee selections based on potential pledges who are least likely to be trouble—i.e., allow themselves to be hazed—and those who they like most.⁴²⁵

In her work, Eugena Lee-Olukoya contends that hazing in Black sororities is less common and less severe than hazing in Black fraternities; further, hazing in Black sororities is more emotional and psychological than it is physical.⁴²⁶ For example, hazing within Black sororities involves intimidation of the prospective members by sorority members, which ranges from activities that cause emotional discomfort to those that cause severe physical injuries.⁴²⁷

After reflecting on her experience being hazed, one woman in Lee-Olukoya’s study characterized hazing as involving a lot of “verbal type abuse” and suggested that sorority members were trying to make the pledges suffer.⁴²⁸ Another individual recalled members of the sorority asking her why she was pledging, and talked openly about how ugly she was.⁴²⁹ She felt degraded and

⁴¹⁸ Lee-Olukoya, *supra* note 415, at 107.

⁴¹⁹ *Id.* at 108.

⁴²⁰ *Id.* at 152–53.

⁴²¹ WHALEY, *supra* note 18, at 95–96.

⁴²² Lee-Olukoya, *supra* note 415, at 88–89.

⁴²³ *Id.* at 118.

⁴²⁴ *Id.*

⁴²⁵ *See id.* at 117–18.

⁴²⁶ *Id.* at 16, 39.

⁴²⁷ *Id.* at 103–04; *see also* WHALEY, *supra* note 18, at 92–94 (providing specific examples of hazing in sororities).

⁴²⁸ Lee-Olukoya, *supra* note 415, at 106.

⁴²⁹ *Id.* at 112.

depressed while she was pledging.⁴³⁰ Additionally, hazing activities allegedly gave one participant a mental breakdown that caused her to leave school.⁴³¹

Further, intense question and answer periods between the sorority members and the girls on line are a staple characteristic of hazing within Black sororities.⁴³² During these question and answer sessions, the sorority members put pressure on the girls to know sorority and chapter history among other information.⁴³³ It is typical for sorority members to scold the girls on line if they do not answer questions correctly.⁴³⁴ In addition to sorority and chapter history, girls on line may be responsible for learning social justice crusades and civil rights issues that the sorority participated in, as well as background information about those sorority members who pledged them—i.e., big sisters.⁴³⁵

Although some information and tasks are meaningful, pledges are also given arbitrary responsibilities and random assignments unrelated to the sorority itself.⁴³⁶ Some of these include cooking, washing cars, and running errands for current members.⁴³⁷ In some chapters, pledges are paired with a sorority member as that pledge's "special" big sister.⁴³⁸ One sorority member recalled always having to bring something specific (e.g., a treat or a gift) to pledge sessions for their special big sister.⁴³⁹ Potential members may be required to greet sorority members whenever they enter a room, as this is a way for sorority members to teach incoming members the expected method of demonstrating respect.⁴⁴⁰ Further psychological abuse is evident in one study, where pledges were told to kick down a wall, or to act as if they were having sex with a wall.⁴⁴¹ Pledges were expected to be creative, and not literal. For example, in kicking down the wall they might start by kicking the uppermost part of the wall, by standing on a chair, and work their way down, kicking the wall. Another survey participant revealed that another form of hazing might involve a sorority member who would "kidnap" one of the pledges, and her line sisters would be responsible for

⁴³⁰ *Id.*

⁴³¹ Will Sommer, *Hazing at Howard Sorority Alpha Kappa Alpha was "Dehumanizing"*, *Lawsuit Alleges*, WASH. CITY PAPER (Mar. 6, 2013, 4:29 PM), <http://www.washingtoncitypaper.com/blogs/citydesk/2013/03/06/hazing-at-howard-sorority-alpha-kappa-alpha-was-dehumanizing-lawsuit-alleges/>.

⁴³² WHALEY, *supra* note 18, at 107.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 108.

⁴³⁶ Lee-Olukoya, *supra* note 415, at 106–07.

⁴³⁷ *Id.* at 117; Jenkins, *supra* note 416, at 77.

⁴³⁸ Jenkins, *supra* note 416, at 76.

⁴³⁹ *Id.* at 77.

⁴⁴⁰ WHALEY, *supra* note 18, at 109.

⁴⁴¹ Lee-Olukoya, *supra* note 415, at 106.

finding and bringing her back to the starting location.⁴⁴²

Most of the women who completed these tasks characterized the activities as “mind game[s],”⁴⁴³ the goal of which was to encourage the girls on line to outsmart the current members.⁴⁴⁴ Additional examples of hazing involve requiring pledges to compose a song or poem to get out of doing a task.⁴⁴⁵ One sorority member recalls having to spontaneously perform a rendition of a television commercial.⁴⁴⁶ These assignments that are unrelated to the sorority itself also extend to the pledges having to consume undesirable foods and unusual food mixtures (e.g., whole raw onion, hot peppers, raw eggs, vinegar, hot sauce).⁴⁴⁷

Hazing in Black sororities also involves manipulating the appearance of the prospective members so that they conform to a uniform image.⁴⁴⁸ Prospective members are required to wear the same, typically all Black clothes to the pledge sessions.⁴⁴⁹ Until the prospective members become sorority members, they are expected to wear inconspicuous hairstyles, and are not permitted to wear make-up.⁴⁵⁰ Girls on line are not supposed to stand out more than any of their line sisters.⁴⁵¹ In one case, sorority sisters forced a pledge to cut her hair because she had natural hair, while the majority of the line had chemically treated hair.⁴⁵² These rules are purportedly in place to reinforce unity, prevent jealousy, and promote bonding among the girls on line.⁴⁵³

Physical hazing also happens often within Black sororities, and can be violent.⁴⁵⁴ Pledges are made to do strenuous exercises,⁴⁵⁵ some of which sorority members require routinely.⁴⁵⁶ For example, one woman told campus police that sorority members forced her to do sit-ups until the skin on her and her line sisters’ buttocks cracked.⁴⁵⁷ While being hazed, Alpha Kappa Alpha sorority

⁴⁴² *Id.* at 112.

⁴⁴³ *Id.* at 106.

⁴⁴⁴ WHALEY, *supra* note 18, at 111.

⁴⁴⁵ Jenkins, *supra* note 416, at 76.

⁴⁴⁶ Lee-Olukoya, *supra* note 415, at 106.

⁴⁴⁷ WHALEY, *supra* note 18, at 93.

⁴⁴⁸ *Id.* at 108.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.* at 109.

⁴⁵² Lee-Olukoya, *supra* note 415, at 112.

⁴⁵³ See WHALEY, *supra* note 18, at 109; see also Lee-Olukoya, *supra* note 415, at 118.

⁴⁵⁴ Lee-Olukoya, *supra* note 415, at 159.

⁴⁵⁵ *Id.* at 106.

⁴⁵⁶ WHALEY, *supra* note 18, at 93.

⁴⁵⁷ *Id.* 93–94.

members made two women do a rigorous set of calisthenics while wearing heavy jogging clothes, bogged in sandy beach waters.⁴⁵⁸ Pledges are slapped in the face by the members who pledged them, or the most recent pledge class to become members.⁴⁵⁹ In a hazing incident with Sigma Gamma Rho sorority, a pledge testified that she was slapped with a wooden spoon.⁴⁶⁰ In 2009, a student alleged she was sprayed in the face with vinegar, among other allegations of physical abuse.⁴⁶¹

Participants are also pinched, pushed, punched, kicked, and stomped by their line sisters and members of the sorority.⁴⁶² One participant said she was beat-up when she was on line,⁴⁶³ and another recalled an experience where members pulled her and her line sisters' hair.⁴⁶⁴ Another had soda poured in her hair,⁴⁶⁵ while yet another had her hairpiece pulled from her head and stuffed into her mouth.⁴⁶⁶ Another pledge was hit in the head with the sorority's history book after not being able to recite the sorority history correctly.⁴⁶⁷

Although it is commonly viewed as being a masculine characteristic of hazing in fraternities, paddling also occurs in sororities.⁴⁶⁸ For example, in court proceedings, members of Alpha Kappa Alpha testified to participating in wood paddling.⁴⁶⁹ During this process, sorority sisters beat the pledges with a duct tape wrapped wooden paddle known as "the enforcer."⁴⁷⁰ Members of Delta Sigma Theta were also suspended for injuries resulting from a paddling session.⁴⁷¹ In 2010, members of Sigma Gamma Rho sorority faced hazing charges for striking a pledge with a paddle over two hundred times before she went to the hospital.⁴⁷² During the same year, another student filed a lawsuit against Sigma Gamma Rho after being paddled and suffering other forms of

⁴⁵⁸ *Sorority Accused of Hazing in 100 Million Suit*, CNN (Sept. 24, 2002, 5:10 AM), edition.cnn.com/2002/LAW/09/23/sorority.death/.

⁴⁵⁹ WHALEY, *supra* note 18, at 88; Lee-Olukoya, *supra* note 415, at 105.

⁴⁶⁰ Tamar Lewin, *Hazing Accusations Against a Sorority*, N.Y. TIMES (Oct. 5, 2010), <http://www.nytimes.com/2010/10/06/us/06hazing.html?pagewanted=all&r=0>.

⁴⁶¹ Lee-Olukoya, *supra* note 415, at 164.

⁴⁶² WHALEY, *supra* note 18, at 88, 93; Lee-Olukoya, *supra* note 415, at 103; Peoples, *supra* note 416, at 45.

⁴⁶³ See Lee-Olukoya, *supra* note 415, at 103.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.* at 107.

⁴⁶⁶ WHALEY, *supra* note 18, at 93.

⁴⁶⁷ *Id.* at 94.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.* at 88.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 92.

⁴⁷² Lewin, *supra* note 460.

physical abuse for over a month.⁴⁷³ Members of Zeta Phi Beta paddled pledges for a month before hazing was reported.⁴⁷⁴

Hazing in Black sororities has caused serious emotional, physical, and sometimes fatal injuries. Many hazing incidents are discovered because participants had to seek medical care for the injuries resulting from hazing.⁴⁷⁵ For example, participants have had their eyes blackened from being hit in the face, and have suffered permanent scarring and bruising from being paddled.⁴⁷⁶ Some women have been knocked unconscious as a result of bleeding and receiving blows to the head.⁴⁷⁷ Some women paid the ultimate sacrifice and died while undergoing hazing.⁴⁷⁸

Sorority members commonly justify hazing in the following ways. Hazing ensures that the incoming women will be disciplined by the time they cross over into the sorority because it "correct[s] unwanted behavior."⁴⁷⁹ These physical hazing practices are social mechanisms to keep neophytes "in their places" so that they comply with the process.⁴⁸⁰ It supposedly weeds out the "good from the bad."⁴⁸¹ It is the way the neophyte gains respect.⁴⁸²

Due to the increasingly dangerous environment and the lawsuits resulting from hazing incidents in Black sororities, colleges and the national organizations have expanded the scope of behavior that can result in punishment for hazing participants.⁴⁸³ The stricter risk management policies now define hazing so broadly that it also encompasses activities that occur before the MIP begins and after the MIP ends.⁴⁸⁴ Sorority members overall do not agree on a uniform

⁴⁷³ See Peoples, *supra* note 426, at 44; see also Lisa M. Krieger, *Former SJ State University Student Sues School and Sorority for Hazing*, SAN JOSE MERCURY NEWS (Sept. 3, 2010, 6:08 PM), http://www.mercurynews.com/ci_15988608.

⁴⁷⁴ KIMBROUGH, *supra* note 18, at 78.

⁴⁷⁵ WHALEY, *supra* note 18, at 92–94.

⁴⁷⁶ *Id.* at 88.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Sorority Accused of Hazing in \$100 Million Suit*, *supra* note 458.

⁴⁷⁹ Lee-Olukoya, *supra* note 415, at 104.

⁴⁸⁰ *Id.* at 146 (quoting Ricky L. Jones, *The Historical Significance of Sacrificial Ritual: Understanding Violence in the Modern Black Fraternity Pledge Process*, 24 W. J. OF BLACK STUD. 112, 121 (2000)).

⁴⁸¹ *Id.* at 104 (quoting a participant in a study on hazing).

⁴⁸² *Id.* at 109–10.

⁴⁸³ See Peoples, *supra* note 416, at 103–06.

⁴⁸⁴ See, e.g., *Baker-Bey v. Delta Sigma Theta Sorority, Inc.*, 941 F.Supp.2d 659, 665 (E.D. Pa. 2013) (showing that members having "any and all interaction with prospective members regarding intake" not approved by the sorority amounted to hazing); *Jolevare v. Alpha Kappa Alpha Sorority, Inc.*, 521 F.Supp.2d 1, 13 (D. D.C. 2007) (characterizing hazing to include approved post-initiation activities based on the nature of the time, place, and conditions); *Gigger v. Delta Sigma Theta, Inc.*, No. CIV-

definition of hazing.⁴⁸⁵ Whereas the national organizations define all of these behaviors as hazing, the women who participate in them view it as pledging.⁴⁸⁶ Sorority members on the chapter level have not accepted the new MIP,⁴⁸⁷ and to an extent, sorority members believe "that hazing is necessary to maintain . . . order . . . [in] the organization."⁴⁸⁸

The negative aspects of hazing, however, must be considered in light of the benefits that hazing confers on members of Black sororities. After pledging, many women report a greater sense of self-determination and believing themselves more capable of completing goals.⁴⁸⁹ Women report feeling pride and honor about belonging to the sorority.⁴⁹⁰ Women also acknowledge feeling that hazing instills a sense of fictive-kinship and communal bonding as sisters in the organization.⁴⁹¹ Therefore, they experience joy and excitement in meeting other members of the same sorority over their lifetimes.⁴⁹²

Members of Black sororities and women interested in membership in Black sororities participate in hazing activities to protect two interests. On the one hand, sorority members are concerned about the betterment of the sorority. Members contend that hazing has organizational utility; it preserves organizational commitment and ensures that the organizations' mission will be carried out.⁴⁹³ Members of Black sororities think that the amount of time for MIP needs to be expanded, since the MIP does not allow the line sisters to become well acquainted with each other.⁴⁹⁴ Also, members are concerned with creating bonds between the old members and the new members within the sorority.⁴⁹⁵ Furthermore, sorority members are also concerned about maintaining the exclusivity and integrity of the organization.⁴⁹⁶ Sorority women articulated that hazing is "critical to the continuation of the values and mission of their organizations."⁴⁹⁷ These arguments support the theory that hazing in Black

97-0802-T, 1998 U.S. Dist. LEXIS 22622, at *3 (W.D. Okla. Oct. 19, 1998) (showing that improper interviewing of candidates during MIP can amount to sanctions for hazing).

⁴⁸⁵ Lee-Olukoya, *supra* note 415, at 161–62.

⁴⁸⁶ Jenkins, *supra* note 416, at 81; Lee-Olukoya, *supra* note 415, at 160–61.

⁴⁸⁷ Peoples, *supra* note 416, at 46.

⁴⁸⁸ Lee-Olukoya, *supra* note 415, at 162.

⁴⁸⁹ WHALEY, *supra* note 18, at 110.

⁴⁹⁰ Lee-Olukoya, *supra* note 415, at 93.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.* at 162.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 160.

⁴⁹⁶ Eugena Lee-Olukoya, *Sisterhood: Hazing and Other Membership Experiences of Women Belonging to Historically African American Sororities* 162, 165 (Dec. 2010) (unpublished Ph.D. dissertation, Illinois State University) (on file with author).

⁴⁹⁷ *Id.*

sororities is done to preserve the organizations' identification.⁴⁹⁸

On the other hand, participants are also concerned about their individual image and the reputations of those who will belong to the organization. Members do not want to be disrespected or be given line names that insinuate that they did not have to work or earn admission into the sorority.⁴⁹⁹ Women who do not pledge are called derogatory terms like "paper," "skater," and "slider."⁵⁰⁰ Sorority members haze the incoming women because they want them to have the reputation that they were "made right."⁵⁰¹ "[H]azing is a form of discipline . . . to shape those whom [the sorority members] care for or wish to succeed."⁵⁰²

Hazing is a prevalent underground tradition within Black sororities just as it is in fraternities. Hazing is emotional, mental, and physical in nature and usually involves intimidation of the women undergoing the process by those administering the process. The purpose of hazing is to shape the individual being hazed into a desired person. It is also done to ensure that the sorority's identity is preserved, as well as to maintain the reputation of the women undergoing the process. Ultimately, although there are incidents of injuries involved in hazing, women experience positive emotions after the hazing process is over.

C. Black Fraternities

While Black Greek-Letter Fraternities ("BGLFs") once served as a safe haven for its members, hazing incidents seem to be on the rise, and researchers believe that physical hazing among BGLFs is much worse than among white Greek fraternities.⁵⁰³ In 1990, the nine members of the NPHC suggested a ban on pledging (in addition to hazing) largely due to hazing deaths associated with Black fraternities.⁵⁰⁴ However, it is arguable that this act actually served as a driving force for the increase in severity and frequency of hazing. Fraternity members who desired to continue the pledge process were forced to carryout pledge activities "underground," without the supervision of organization leaders and school officials.⁵⁰⁵

In a study by Jerryl Briggs, men who became members of BGLFs after the

⁴⁹⁸ *Id.* at 162.

⁴⁹⁹ *Id.* at 115.

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.* at 117.

⁵⁰² Lee-Olukoya, *supra* note 415, at 165.

⁵⁰³ See Jerryl Briggs, *The Continuing Presence of Hazing During the Fraternity Membership Intake Process Post 1990*, in *AFRICAN AMERICAN FRATERNITIES AND SORORITIES: THE LEGACY AND THE VISION* 477, 481 (Tamara L. Brown et al. eds., 2012); Goodner, *supra* note 411, at 13.

⁵⁰⁴ Parks et al. *Victimology*, *supra* note 14, at 411.

⁵⁰⁵ Jenkins, *supra* note 416, at 33, 40.

1990 NPHC ban reported “much more . . . dangerous and . . . life-threatening incidents” than those who became members prior to the ban.⁵⁰⁶ While members may believe that participating in these activities links them to members who joined the organization prior to 1990, the original purpose of the pledge process seems to have been forgotten; there is no continuity in the processes for there to be optimal linkage.⁵⁰⁷

Most fraternity members point to upholding the traditions of BGLFs as a reason for engaging in hazing activities—often noting that they engage in hazing as retaliation for the hazing that they endured.⁵⁰⁸ They also argue that hazing allows them to separate those who are interested in furthering the organization’s goals from those who are simply interested in joining the organization for popularity.⁵⁰⁹ They argue that it protects the core of the organization by separating masculine men from feminine men.⁵¹⁰ And lastly, they argue that it helps to identify those men who will stay the course and endure the pain to become a member of their organization.⁵¹¹

Although pledging and hazing are used interchangeably, research has shown that BGLF members attribute different meanings to them. “Pledging is a process in which a person actively seeks membership in a Greek-lettered organization.”⁵¹² While hazing can be a part of this process, it is seen as an activity where a higher-ranking member orders a lower-ranking member or a prospective member, to perform a potentially harmful act that has no connection to the goals of the organization.⁵¹³

According to some research, BGLF members believe that pledging serves several purposes.⁵¹⁴ First, the process plays an important role in establishing and communicating the values of the organization to its prospective and new members.⁵¹⁵ As Dwayne J. Scott noted, the processes “test how much a prospective member [is] willing to endure in order to gain membership in the

⁵⁰⁶ Briggs, *supra* note 503, at 488.

⁵⁰⁷ *Id.* at 489.

⁵⁰⁸ Dwayne J. Scott, Factors That Contribute to Hazing Practices by Collegiate Black Greek-Letter Fraternities During Membership Intake Activities 35 (May 2006) (unpublished Ph.D. dissertation, Arkansas State University) (on file with author).

⁵⁰⁹ *Id.*

⁵¹⁰ Dwayne J. Scott, Factors That Contribute to Hazing Practices by Collegiate Black Greek-Letter Fraternities During Membership Intake Activities, in BLACK GREEK-LETTER ORGANIZATIONS 2.0, *supra* note 18, at 239.

⁵¹¹ *See id.* at 242.

⁵¹² Jenkins, *supra* note 416, at 32 (citations omitted).

⁵¹³ *See id.*

⁵¹⁴ *See id.* at 3–4.

⁵¹⁵ *See id.*; Scott, *supra* note 510, at 244.

organization.”⁵¹⁶ Another driving force behind hazing activities is a desire for BGLFs to provide a rite of passage through which its prospective and new members are broken down and rebuilt.⁵¹⁷ Hazing activities affirm the manhood of individual members.⁵¹⁸ It involves a symbolic remaking of self for the prospective member, and it is during this process that hazing activities are more likely to occur.⁵¹⁹ This process is believed to be required in order “to make the new member humble himself to the goals of the organization,” and provide a life long bond between new members.⁵²⁰ Similar to the process that military recruits experience during basic training, this process is believed to make the new members more confident and turn them into stronger men.⁵²¹

T. Elon Dancy identifies four dimensions of masculinity that Black men in BGLFs are pressured to adapt: “(1) ‘cool’ (postures or gestures of calmness and detachedness particularly in anxious moments), (2) ‘hard’ (hypermasculine and aloof), (3) ‘down’ (defending issues, realities, and concerns across African American communities), and (4) ‘real’ (culturally authentic to a social construction that is ‘black’ and ‘man’).”⁵²² Accordingly, hazing also serves as a way for BGLFs to identify any potential members who they perceive too effeminate to be a member of their organization. For example, homosexuality is one of the most common stigmas among BGLFs.⁵²³

According to Alan DeSantis and Marcus Coleman, BGLF members believe that because of the “intimate physical relationship” experienced during the pledge process, the presence of an openly gay member would interfere with the bonding of prospective members.⁵²⁴ A prospective BGLF member who is openly gay “stands almost no chance” of becoming a member of an undergraduate chapter.⁵²⁵ Although some BGLFs investigate to see if a prospective member is homosexual, at least one BGLF member in DeSantis and Coleman’s research admits that it is difficult to identify which prospective members may be

⁵¹⁶ Scott, *supra* note 508, at 35.

⁵¹⁷ See Jenkins, *supra* note 416, at 38; Scott, *supra* note 510, at 239.

⁵¹⁸ Jenkins, *supra* note 416, at 38.

⁵¹⁹ Scott, *supra* note 508, at 12.

⁵²⁰ Tresa Mitchell Saxton, *The Hazing Practices of Black Fraternities Located on White Campuses: The Interplay of Racism, Masculinity, and Male Violence* 86 (2003) (unpublished Ph.D. dissertation, University of North Carolina at Greensboro) (on file with ProQuest Dissertations and Theses).

⁵²¹ *Id.* at 88.

⁵²² T. Elon Dancy II, *Becoming Men in Burning Sands: Student Identity, Masculinity, and Image Construction in Black Greek-Letter Collegiate Fraternities*, in *BLACK GREEK-LETTER ORGANIZATIONS 2.0*, *supra* note 18, at 102.

⁵²³ Anderson et al., *Black Greek-Letter Fraternities and Masculinities*, in *BLACK GREEK-LETTER ORGANIZATIONS 2.0*, *supra* note 18, at 123.

⁵²⁴ Alan D. DeSantis & Marcus Coleman, *Not on My Line: Attitudes about Homosexuality in Black Fraternities*, in *BLACK GREEK-LETTER ORGANIZATIONS IN THE 21ST CENTURY*, *supra* note 18, at 295.

⁵²⁵ *Id.* at 299.

homosexual or bisexual.⁵²⁶ Still, prospective members who are openly, or suspected of being, homosexual, may be physically beaten until they quit.⁵²⁷ This is due to the fear of BGLF members, that the inclusion of openly gay members will result in ridicule of the organization, or an inference that heterosexual members or the organization are homosexual.⁵²⁸

Scholars have found that, although unsanctioned, many potential members accept hazing as normative.⁵²⁹ As such, it is not surprising that it persists. A 2000 study conducted by Walter Kimbrough discovered that although nearly all participants had joined BGLFs after pledging was banned, more than half reported having gone through the pledge process.⁵³⁰ As one participant in Dwayne Scott's 2011 research noted, no one can be forced into being hazed; a prospective member can walk away from the pledging process if he so desires.⁵³¹ However, Scott found that members who participated in hazing never perceived hazing activities as a personal attack.⁵³²

In fact, members of BGLFs have reported several benefits from joining a BGLF, and undergoing the hazing process. Jenkins notes that BGLFs help their members by providing social networks that support achievement in college, and increasing their likelihood of obtaining a college degree.⁵³³ In his 2006 study, Scott identified many benefits that those who were pledged attributed to hazing. According to Scott's research:

- (1) [h]azing allowed participants to prove their willingness and love for the fraternity, which translated into greater levels of respect and closeness among all involved in the process;
- (2) [h]azing experiences helped with the development into a stronger and more self-disciplined individual who possessed a positive outlook on life during times of difficulty;
- (3) [t]hrough experiencing various trials and tribulations during membership intake, participants developed greater appreciation, pride, and respect for their organization and were more encouraged to stand up for what they believed in regarding future endeavors;
- (4) [by] completing the membership intake process, participants felt more self-confident and better prepared for their various roles within the community and organization;
- (5) [t]he membership intake

⁵²⁶ *Id.* at 302.

⁵²⁷ *Id.*

⁵²⁸ *Id.* at 307.

⁵²⁹ See generally Kimbrough, *supra* note 16, at 37.

⁵³⁰ Briggs, *supra* note 503, at 481.

⁵³¹ Scott, *supra* note 510, at 240–41.

⁵³² Scott, *supra* note 508, at 42.

⁵³³ Jenkins, *supra* note 416, at 30.

process aided in becoming focused and involved in group oriented activities.⁵³⁴

In Scott's research, participants reported that "the only way to obtain respect was through the pledge process[.]" and that earning respect from BGLF members was a "top priority."⁵³⁵ According to Tresa Mitchell Saxton, "[r]espect is a core value in the description of Black male masculinity[.]"⁵³⁶ As a result, many BGLF members engage in the pledge process in order to earn respect. "Respectability and reputation are two practices of masculinity that are used to shape identities. These practices are especially important for Black men whose pathway to dominant and normative paradigms of masculinity is often stymied by various manifestations of racism."⁵³⁷ Hazing "is meant to secure respect, credibility, and status for the individuals who participate in these activities[.]" and through this process, "fraternity members seek [to prove themselves and] bolster their individual status and reputations" by enduring the hazing process.⁵³⁸

Members of BGLFs are afforded varying levels of respect based on whether or not they participated in hazing activities as part of their MIP. Members who become part of a BGLF through an MIP that does not include hazing activities are referred to as "paper" members.⁵³⁹ Some research has shown that "paper" members are afforded less respect than those who have undergone the process of hazing.⁵⁴⁰ However, ultimately, in his 2006 study, Scott found that most participants reported that "paper" members were not treated any differently than other members, and that "the work of the fraternity and those who did it was more important than whether or not a person was hazed" during membership intake.⁵⁴¹

With so much emphasis on notions of authentic masculinity within BGLFs, a lingering speculation has been about the extent to which BGLF hazing is more violent than hazing within other types of Greek-letter organizations. To date, scholars have not empirically explored this question.

IV. VIOLENT HAZING, RACE, AND SEX: AN EMPIRICAL ANALYSIS

In order to determine the extent to which race and sex intersect in the context of Greek life, particularly in the context of hazing, the authors conducted two studies. The first study is archival—a review of court cases and media accounts, while the second study is a nationwide survey of BGLO member

⁵³⁴ Scott, *supra* note 508, at 39.

⁵³⁵ *Id.*

⁵³⁶ Saxton, *supra* note 520, at 94.

⁵³⁷ Anderson et al., *supra* note 523, at 119.

⁵³⁸ Briggs, *supra* note 503, at 480–81.

⁵³⁹ See Jenkins, *supra* note 416, at 33.

⁵⁴⁰ Scott, *supra* note 510, at 244.

⁵⁴¹ Scott, *supra* note 508, at 43.

hazing experiences.

A. Archival Study

1. Methods and Sample

In order to get a sense of the differences in the nature of hazing between Black and White fraternities and sororities, we analyzed (1) published and unpublished state and federal court cases on Westlaw and (2) media accounts on Ethnic NewsWatch, Newsbank, and Newspaper Source Plus between 1980 and 2009. Our search terms were “hazing” and each fraternity and sorority in the NPHC, each fraternity in the North-American Interfraternity Conference, except those also in the National Association of Latino Fraternal Organizations, and each sorority in the National PanHellenic Conference. The search yielded 354 cases specifically involving either a Black or White fraternity or sorority. Of these 354 cases, about one-third involved reported acts of violent hazing.

2. Results

The results from this empirical study suggest that overall, violent hazing is more prevalent within BGLOs than it is within predominately white Greek organizations. As Table 1 indicates, the number of violent hazing incidents for Black and White fraternities is relatively similar, 58 and 48 respectively. Black sororities (9) are more likely than White sororities (3) to have violent hazing incidents. These statistics also imply an expected trend—fraternities in general are much more likely to engage in physically violent hazing practices than sororities. When examining the total number of cases in the study, the percentage of physical hazing cases for Black (49%) and White fraternities (41%), on one hand, and Black (8%) and White sororities (3%), on the other hand, are similar.

Table 1. Physically Violent Hazing Incidents by Race and Gender

	Fraternities		Sororities	
	Black	White	Black	White
Physical Hazing - V	58	48	9	3
% of Physical Hazing Cases	49%	41%	8%	3%
% of Total Cases (354)	16%	14%	3%	1%
% Proportionate to Total Cases (per subgroup)	68%	16%	36%	6%

Racial differences surface when comparing the proportionate number of incidents for each group by race and gender. For White sororities, physically violent hazing makes up only 6% of the total, reported cases for White sororities, which is the lowest of any group. For Black sororities, however, violent hazing makes up over one-third of their total cases, a stark difference

from White sororities. Fraternities show a similar racial gap. While physical hazing represents only sixteen percent of the total cases for White fraternities, physical hazing represent 68% of the total number of reported hazing incidents for Black fraternities. Collectively, these results support the narrative that physical hazing is much more prevalent within BGLOs.

Nonetheless, the total number of reported cases, generally, for Whites and Blacks is very different; as likely expected, representation via cases is overwhelmingly White. Looking at the totals illustrated in Table 2, White fraternities have more than three times the number of reported cases as Black fraternities, and white sororities represent double that of Black sororities. This is expected considering the overwhelming number of White organizations (n=94) compared to Black organizations (n=9). However, as it relates to mental, alcohol, prank, and sexual hazing, White fraternities (210), compared to Black fraternities (16) are overwhelmingly represented. The gap is also wide for this type of hazing incidents for sororities; 48 for White sororities and 13 for Black sororities.

Table 2. Hazing Incidents by Race and Gender

	Fraternities		Sororities	
	Black	White	Black	White
Physical Hazing (Violent)	58	48	9	3
Physical Hazing (Calisthenics)	11	42	3	0
Mental Hazing	11	52	10	7
Prank Hazing	0	68	2	13
Alcohol Hazing	5	84	0	25
Sexual Hazing	0	6	1	3
Total	85	300	25	51

Some sociologists contend it is possible that BGLOs are not more violent in their hazing practices than their White counterparts, but may be policed more on and near college campuses.⁵⁴² As a result, similar to the disparities in drug arrests and convictions between Blacks and Whites, we may see a similar trend in hazing incidents.⁵⁴³ Based on this current study, however, it appears as though BGLOs do have higher incidence of physically violent hazing. In addition to the reasons suggested here, more studies will have to be conducted in order to illuminate the specific causes for this disparity.

⁵⁴² See generally Rashawn Ray & Jason A. Rosow, *The Two Different Worlds of Black and White Fraternity Men: Visibility and Accountability as Mechanisms of Privilege*, 41 J. CONTEMP. ETHNOGRAPHY 66 (2012).

⁵⁴³ See generally RONALD WEITZER & STEVEN A. TUCH, *RACE AND POLICING IN AMERICA: CONFLICT AND REFORM* (2006).

*B. Survey*⁵⁴⁴

1. Methods

An email list was compiled by one of the authors (beginning in 2003), and included organizational directories, Yahoo! Groups, and chapter, district, provincial, and regional websites for the nine, major BGLOs: Alpha Phi Alpha, Alpha Kappa Alpha, Kappa Alpha Psi, Omega Psi Phi, Delta Sigma Theta, Phi Beta Sigma, Sigma Gamma Rho, and Iota Phi Theta. This resulted in a sampling frame of approximately 30,000. The email provided basic information about the study, which indicated that researchers were seeking to learn about the experiences and opinions of Historically Black Colleges and Universities. Potential participants were provided with a hyperlink that directed them to the survey.

The survey was created using Qualtrics. Participants were given detailed information about the study and were required to consent before given access to the survey. Participants were allowed to withdraw from the study at any time and without penalty. All responses were anonymous; no names or identifiable information were collected (including IP addresses).

2. Sample

The sample was comprised of 1357 individuals, of which 62% were female, and the majority were African-American (90.9%). The average age of participants was 40.04 (standard deviation=12.87), with a range of 18–83. The typical participant was initiated into her/his sorority/fraternity in 1996, although the years ranged from 1950–2010. In terms of type of university attended, most (59.2%) were from predominantly White institutions, and 38.3% were from historically Black colleges or universities. Geographically, participants attended colleges in quite diverse regions, including: the southeast (48.2%), midwest (20.7%), northeast and Washington, D.C. (19.1%), southwest (7.4%), west (4.0%), and international (0.4%).

3. Measures

Hazing. A total of 27 different forms of hazing were examined for this analysis. Participants reported whether any of these 27 acts were required of pledges. The mean number of acts reported was 14.16 (standard deviation=8.26). We also examined a variety of different forms of hazing. One set of items dealt with general hazing, and focused on relatively milder forms of hazing (e.g., pledges were required to dress alike, learn information about sisters/brothers, referred to by line numbers, etc.). This 10-item scale was reliable ($\alpha=.90$). The second variant focused on physical punishment (e.g., pledges were paddled), and this 5-item scale was reliable ($\alpha=.90$). The third was a 6-item scale ($\alpha=.84$), and dealt with controlling pledges (e.g., required to be

⁵⁴⁴ Parks et al., *Victimology*, *supra* note 14, at 37–39.

celibate, maintain a restrictive diet). Another scale focused on socialization (e.g., requiring pledges to learn rules of etiquette, Black history, etc.). This 4-item scale was modestly reliable ($\alpha=.67$). The last specific type of hazing examined extreme forms of hazing (e.g., left in unfamiliar locations, required to consume alcohol or drugs). This 4-item scale was also modestly reliable ($\alpha=.65$).

Demographics. Several demographic variables were used in the current analysis, including, sex, age, year initiated, region of country, and type of college attended. (Descriptive statistics for these variables are noted above, under Sample.)

4. Results

The first set of analyses focused on whether there were differences between women and men in terms of different hazing behaviors (see Table 3). The overall measure (that included all 27 acts) demonstrated a significant effect ($t=11.27$, $p<.001$). The mean number of acts reported by men (23.68) was significantly higher than that of women (17.53). In terms of effect size, this mean-level difference was strong ($d=.67$). This trend held for each specific manifestation of hazing assessed, including: general hazing ($t=8.98$, $p<.001$, $d=.51$), physical hazing ($t=16.27$, $p<.001$, $d=.99$), socialization hazing ($t=4.18$, $p<.001$, $d=.26$), control hazing ($t=7.22$, $p<.001$, $d=.44$), and extreme hazing ($t=7.68$, $p<.001$, $d=.49$).

Table 3: Mean levels of hazing for females and males.

Hazing type	Females	Males	t-statistic	Effect size (Cohen's d)
Total	17.53	23.68	11.27*	.67
General	7.07	8.54	8.98*	.51
Physical	1.33	3.17	16.27*	.99
Socialization	1.99	2.34	4.18*	.26
Control	2.23	3.15	7.22*	.44
Extreme	.31	.73	7.68*	.49

* $p<.05$

We next examined whether there were any differences across other factors, independently for women and men. Among women, there were some effects of age, although nearly all of them were modest (see Table 4). The older the female participant was, the less likely they were to have engaged in hazing overall ($r=-.16$, $p<.001$), general hazing ($r=-.10$, $p<.01$), physical hazing ($r=-.21$, $p<.001$), socialization hazing ($r=-.12$, $p<.001$), control hazing ($r=-.18$, $p<.001$), and extreme hazing ($r=-.13$, $p<.001$). Only half of the hazing scales demonstrated a significant relationship with year initiated, but even these were small effects: physical hazing ($r=.09$, $p<.05$), socialization hazing ($r=.08$, $p<.05$), and extreme hazing ($r=.09$, $p<.05$). Among women, geographic region where the student went to college had a limited effect on some of the outcomes. For overall and general hazing, the northeast and District of Columbia ("D.C.") region was

significantly higher than the southeast. For physical and control hazing, pledges attending international institutions had lower means than all other regions (none of which significantly differed from one another). In addition, international pledges had lower means on extreme hazing than the northeast/D.C., southeast, and midwest. These findings should be viewed with a fair degree of skepticism because there were only three females in the sample who indicated they were initiated at an international institution. Thus, these effects are not reliable. There were no significant mean-level differences for socialization hazing across regions.

Table 4: Correlations by age, year initiated, and type of hazing, separated by females and males

	Age		Year Initiated	
	Females	Males	Females	Males
Total	-.16*	-.30*	.04	.11*
General	-.10*	-.20*	.00	.08
Physical	-.21*	-.28*	.09*	.09
Socialization	-.12*	-.12*	.08*	.05
Control	-.18*	-.34*	.02	.15*
Extreme	-.13*	-.07	.09*	-.01

* $p < .05$

The last analysis among women explored whether there were differences by type of college attended (see Table 5). Because 97.5% of the sample attended predominantly White or historically Black colleges and universities, only those were examined. Women who attended predominantly white institutions were significantly more likely to engage in overall hazing ($t=3.86$, $p < .001$, $d=.30$), general hazing ($t=3.70$, $p < .001$, $d=.30$), physical hazing ($t=2.32$, $p < .05$, $d=.18$), and control hazing ($t=3.98$, $p < .001$, $d=.30$). With the exception of physical hazing (which demonstrated a small effect size), the other differences were moderate in magnitude.

Table 5: Mean levels of hazing among females across type of institution.

Type of Hazing	Historically Black colleges and universities	Predominantly White institutions	t-statistic	Effect size (Cohen's d)
Total	15.82	18.60	3.86*	.30
General	6.51	7.43	3.70*	.30
Physical	1.12	1.43	2.32*	.18
Control	1.85	2.47	3.98*	.30

* $p < .05$

We performed the same set of analyses for men only. Among men, the effects of age were stronger than that noted above for women (see Table 4). The older the male participant was, the less likely they were to have engaged in

hazing overall ($r=-.30$, $p<.001$), general hazing ($r=-.20$, $p<.001$), physical hazing ($r=-.28$, $p<.001$), socialization hazing ($r=-.12$, $p<.01$), and control hazing ($r=-.34$, $p<.001$). With the exception of socialization hazing (which demonstrated a small effect), the other relationships are moderate in magnitude. Involvement in extreme hazing among men was not related to age ($r=-.07$, $p=.12$). There was very little relationship between the hazing scales and year initiated among men, and these effects were small. Year initiated was significantly and positively related to overall hazing ($r=.11$, $p<.05$) and control hazing ($r=.15$, $p<.01$).

Among men, geographic region where the student went to college had a limited effect on a few of the outcomes. Importantly, no international pledges were included in these analyses. The only reliable effect was found for control hazing, whereby there were higher levels of this in the northeast/DC region compared to the southeast. While there was some evidence of significant differences in overall hazing and extreme hazing, post hoc analyses failed to find differences between any specific regions.

The last analysis among men explored whether there were differences by type of college attended (see Table 6). Because 97.5% of the sample attended predominantly White or historically Black colleges and universities, only those were examined. Men who attended predominantly White institutions were significantly more likely to engage in overall hazing ($t=2.65$, $p<.01$, $d=.27$), general hazing ($t=3.035$, $p<.01$, $d=.30$), physical hazing ($t=2.25$, $p<.05$, $d=.23$), and control hazing ($t=2.93$, $p<.01$, $d=.29$). With the exception of general hazing (which demonstrated a moderate effect size), the other differences were small in magnitude.

Table 6: Mean levels of hazing among males across type of institution.

Type of Hazing	Historically Black colleges and universities	Predominantly White institutions	t-statistic	Effect size (Cohen's d)
Total	22.24	24.59	2.65*	.27
General	8.10	8.83	3.03*	.30
Physical	2.91	3.35	2.25*	.23
Control	2.77	3.38	2.93*	.29

* $p<.05$

C. Analysis of Results

Among the many things that could be drawn from these results, one of the chief findings is that race and gender intersect in a peculiar way—underscoring the violence associate with BGLF hazing. Accordingly, questions about the relationship between Black masculinity and violence, even among college-educated men, are reasonable to ask. The concept of rites of passage is not unique to one culture. Most cultures in the world have indigenous traditions of

initiating youth from childhood to adulthood including African cultures.⁵⁴⁵ These rites of passage traditions are based on the values expected of the youth by the adults in the community, and values of each unique ethnic group.⁵⁴⁶ Before undergoing imposed changes by western hegemony driven processes, all African ethnic groups took young people (both men and women) on a journey into adulthood, which symbolized a new way of living with responsibility and pride.⁵⁴⁷ Analogously, rites of passage traditions in BGLOs may have resulted in bonding a group of people to enforce the values of that group.⁵⁴⁸

Like indigenous rituals that were altered by colonialism, BGLO traditions have been heavily influenced by American cultural norms. Specifically, the American cultural definition of masculinity has arguably changed initiation practices in fraternal organizations to be increasingly violent and dangerous over time. African American fraternities and sororities, which emerged in early nineteenth century, aimed at restoring the same sense of initiation that affirmed their own culture.⁵⁴⁹

Hegemonic masculinity theory claims that the American definition of masculinity praises characteristics of “heteronormativity, aggression, activity, sports-obsession, competitiveness, stoicism, and not being female or feminine.”⁵⁵⁰ However, such characteristics are often not naturally found in the majority of men, causing an identity crisis in many males that influences their interactions with other males.⁵⁵¹ Minorities have been affected differently compared to white males given our nation’s history.⁵⁵² Along with colonialism in America came the dehumanization of Black males, which continues today.⁵⁵³ Contrary to the assigned demonization of the past, “black males, no longer challenge this dehumanizing stereotype, instead they claim it as a mark of distinction, as the edge that they have over white males.”⁵⁵⁴ Similar to the original purpose of African rites of passage rituals, older generations of African Americans define “real men” as being able to “provide for their families, protect

⁵⁴⁵ P. Masila Mutisya, *Demythologization and Demystification of African Initiation Rites: A Positive and Meaningful Educational Aspect Heading for Extinction*, 27 J. BLACK STUD. 94, 94 (1996).

⁵⁴⁶ *Id.* at 95.

⁵⁴⁷ *Id.*

⁵⁴⁸ See generally Parks et al., *Organizational Deviance*, *supra* note 14.

⁵⁴⁹ See generally JAMES E. BRUNSON, FRAT AND SOROR: THE AFRICAN ORIGIN OF GREEK-LETTERED ORGANIZATIONS 71–85 (1999).

⁵⁵⁰ Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703, 711 (2010).

⁵⁵¹ *Id.*

⁵⁵² See Ann McGinley, *Introduction: Men, Masculinities, and Law: A Symposium on Multidimensional Masculinities Theory*, 13 NEV. L.J. 315, 317 (2013).

⁵⁵³ Historically, minorities have been categorized as the “demeaned Others in the construction of hegemonic U.S. masculinity.” Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies*, Terry Stops, and Police Training, 18 COLUM. J. GENDER & L. 671, 690 (2009).

⁵⁵⁴ BELL HOOKS, *WE REAL COOL: BLACK MEN AND MASCULINITY* 48 (2004).

the people they care about, and remain active in their communities.”⁵⁵⁵ Yet today’s generation has defined Black masculinity as “physical, sexual, hard, and street or urban smart[,]” which “[stands] in binary opposition to anything chaste, sensitive, studious, and refined.”⁵⁵⁶ Black males have explained the adoption of this identity as “a surrender to realities they cannot change,” and thus, they “often derive a sense of satisfaction from being able to create fear in others[.]”⁵⁵⁷ Ironically, the white patriarchal society assigned to Black males the very violent characteristic that they embodied.⁵⁵⁸ As a result, like the United States and other cultures of domination, male groups such as fraternities have developed the “principle that violence is necessary for the maintenance of the status quo.”⁵⁵⁹

Researchers claim that individually, men do not feel powerful, as they constantly strive to mimic a picture of masculinity they cannot achieve while constantly attempting to prove their masculinity.⁵⁶⁰ Thus, Black males, who have adopted the hegemonic masculine identity, believe they must prove their manhood by resembling predators with violent behavior.⁵⁶¹ Sociologists have identified this phenomenon, generally, vis-à-vis the “Masculine Overcompensation Thesis.”⁵⁶² Specifically, the way in which men respond to threats to their masculinity is by demonstrating extreme variants of masculinity.⁵⁶³ In a series of studies, researchers found confirmation of this thesis. In the first study, participants (both men and women) were randomly given feedback that suggested that they were either masculine or feminine.⁵⁶⁴ Women were unaffected “when told they were masculine[.]”⁵⁶⁵ When it was suggested to men that they were feminine, they became more hyper-masculine—expressing more support for masculine concepts (e.g., war, homophobic attitudes, and interest in purchasing masculine vehicles, such as

⁵⁵⁵ DeSantis & Coleman, *supra* note 524, at 291, 294.

⁵⁵⁶ *Id.* at 294.

⁵⁵⁷ HOOKS, *supra* note 554, at 49.

⁵⁵⁸ In her book, bell hooks discusses how white males assigned this violent characteristic to black males and used them to fight their wars. See *id.* at 49–53; see also ELDRIDGE CLEAVER, *SOUL ON ICE* 121–24 (1968).

⁵⁵⁹ HOOKS, *supra* note 554, at 49.

⁵⁶⁰ Abrams, *supra* note 550, at 712.

⁵⁶¹ HOOKS, *supra* note 554, at 56. This is manifested in racial profiling as “the hegemonic pattern of U.S. masculinity incorporates an expectation that one denigrates racial minority males.” Cooper, *supra* note 553, at 676. As a result, “symbolic shoot-outs occur in which black males are assigned the position of hypermasculine, out-of-control male body, and white males . . . are perceived to be acting with reason.” HOOKS, *supra* note 554, at 57.

⁵⁶² See Robb Willer et al., *Overdoing Gender: A Test of the Masculine Overcompensation Thesis*, 118 AM. J. SOC. 980 (2013).

⁵⁶³ *Id.*

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.*

Sport Utility Vehicles).⁵⁶⁶ In the second study, researchers found that men who had their masculine identities threatened, “expressed greater support for, and desire to advance in, dominance hierarchies.”⁵⁶⁷ The third study found, “that men who reported that social changes threatened the status of men also reported more homophobic and prodominance attitudes, support for war, and belief in male superiority.”⁵⁶⁸ In the fourth and final study, researchers found that the higher men’s testosterone levels the more intense reactions masculinity threats.⁵⁶⁹

Nigerian feminist author Chimamanda Ngozi Adichie addressed the resulting wounds left on men from such definitions of masculinity. She explained that “masculinity becomes this hard, small cage and we put boys inside that cage We teach them to mask their true selves because they have to be, in Nigeria speak: ‘Hard Man’.”⁵⁷⁰ By forcing men to prove their masculinity in such hard ways, “the worst thing we do to males . . . is that we leave them with very fragile egos.”⁵⁷¹ Indeed research shows that the socially constructed concept of masculinity “reinforce[s] emotional limitations that play out lifelong in a lack of empathy and difficulties with intimate relationships including both friendships and partnerships,” which can have a negative effect on brotherhoods.⁵⁷²

Colonialism and racial hegemony have had a direct negative effect on the rights of passage traditions established in BGLOs, which are heavily rooted in the warped concept of masculinity. Formed in response to the continued mistreatment of Blacks in universities, BLGOs served as brotherhoods and sisterhoods that promoted a sense of community and racial uplift.⁵⁷³ However, the symbolic initiation traditions have been misconstrued and misinterpreted as BGLOs have assumed practices that are inhumane and based on the internalized oppression passed down through socialized violence.

The focus during an initiation processes has become the concept of physicality and masculinity viewed through the lens of assigned patriarchal characteristics. In DeSantis and Coleman’s research, a male participant explained that “[o]ur bodies have always been important; it is the only thing that they [white society] can’t take. . . . It is why the Black male is a symbol of

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ Willer et al., *supra* note 562.

⁵⁶⁹ *Id.*

⁵⁷⁰ Chimamanda Ngozi Adichie, TedxEuston, *We Should All Be Feminists*, YouTube at 11:28 (Apr. 12, 2013), http://www.youtube.com/watch?v=hg3umXU_qWc.

⁵⁷¹ *Id.* at 12:40.

⁵⁷² Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J. L. GENDER, & SOC’Y 201, 230 (2008).

⁵⁷³ See Parks & Ray, *supra* note 14, at 221.

strength, physical strength.”⁵⁷⁴ The appropriation of white patriarchy is also evidence in BGLO traditions through the use of their poems that carry great meaning to each fraternal organization. The poems “If—” and “Invictus” are popular among Black Greek-Letter Organizations as a study showed that over half of the Greek sample had to learn both poems during their initiation.⁵⁷⁵ Although both sororities and fraternities learn them, fraternities are more likely to learn them than sororities, given that the message further promotes the American definition of manhood.⁵⁷⁶ “If—” has been described as a poem of wisdom similar to the book of Proverbs.⁵⁷⁷ In those lessons of wisdom are themes of perseverance, self-mastery, and the notion that keeping composed “in the midst of chaos,” brings one “closer to becoming the ‘Man’ at the end of the poem.”⁵⁷⁸ This notion turns into a test of pain endurance as “[t]he leader imagined in this poem can take a beating and maintain his dignified manhood through a stoic disposition paired with a strong will to persevere.”⁵⁷⁹ “Invictus” promotes the same message as the last two lines of the second stanza, “‘bludgeonings’ resulting in a ‘bloody’ head,” also provide the image of an enduring violence.⁵⁸⁰

For African Americans these poems took on a unique meaning given our history of enduring slavery and abuse during our fight for civil rights. Although the concepts of masculinity have been adopted from western patriarchy, BGLOs have made them their own, “in the spirit of reappropriation that underwrites the story of African adjustment to the Western culture.”⁵⁸¹ Unfortunately, the concept of endurance and overcoming pain from the poetry has been manifested in the initiation processes through brutal physical beatings.⁵⁸² Indeed, “violence [has become] a natural, if not necessary, extension” of the masculinity in the initiation process.⁵⁸³ Just as men of all classes of society believe, fraternities

⁵⁷⁴ DeSantis & Coleman, *supra* note 524, at 294.

⁵⁷⁵ Rashawn Ray et al., “Bloody, but Unbowed” Making Meaning of “Invictus” and “If—” for the Shaping of a Collective Black Greek Identity, in *AFRICAN AMERICAN FRATERNITIES AND SORORITIES: THE LEGACY AND THE VISION* 458 (Tamara Brown et al. eds., 2d ed. 2012).

⁵⁷⁶ *Id.* at 460, 467.

⁵⁷⁷ *Id.* at 447.

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.* at 450.

⁵⁸¹ Ray, et al., *supra* note 575, at 453. Ironically, the author of “If—” was known for his racist ideologies and, “[t]hus, there is a clear conflict in African Americans’ appreciation of poems written from the perspective of the dominant culture and, by extension, a conflict in the use of these poems in the sacred rituals of BGLOs.” *Id.* at 452.

⁵⁸² See *id.* at 470. “The language of ‘Invictus’ seems to invoke characteristics linked to the initiation process . . . whereby they experience many unknowns and . . . [are] commanded to keep persevering without being able to see their hands in front of their faces.” *Id.* Also, “If—” references the Middle Passage and some chapters “claim their initiation processes symbolically represent this event.” *Id.*

⁵⁸³ DeSantis & Coleman, *supra* note 524, at 295.

believe that at some point you have to show violence to prove your masculinity.⁵⁸⁴ As one interviewee commented, “[t]he physical part is what tests you, tests to see if you’re a man, your manhood.”⁵⁸⁵ This is consistent with the notion that men also are in competition with each other and their physical violence is used to impress one another.⁵⁸⁶

It seems that although BGLO’s have re-appropriated the meaning of the poems; the meanings have manifested into rituals that do more harm than good with regard to personal well-being and brotherhood. Some initiated members do not feel a sense of brotherhood following their brutal processes and do not find it to be worth abuse.⁵⁸⁷ As a result, BGLOs are simply imposing the same violence and mistreatment on each other in the name of masculinity that their ancestors endured at the hands of white oppressors.

Hegemonic masculinity teaches that to be masculine is to not be feminine and to not be homosexual.⁵⁸⁸ Hypermasculinity, another result of the hegemonic patriarchy, occurs when a man does not fit the norm of masculinity and thus becomes hypermasculine to compensate.⁵⁸⁹ By belittling or harassing weaker men, women, and homosexuals, the hypermasculine male claims his position in the patriarchal hierarchy.⁵⁹⁰ As Black males have adopted the hegemonic masculine identity, they too adopt the hypermasculine identity that denounces homosexuality.⁵⁹¹ One of the themes of BGLO initiation is physical strength and domination, which is tested by a great deal of physical contact.⁵⁹² Because physical contact is known to be a hallmark of brotherhood, it becomes tainted if the brotherly contact becomes sexual contact. Some BGLO members worry that “the dynamics of brotherhood would change with gay pledges[,]” as the rituals included situations “where they might be nude, they might be half-exposed, [and] they are closely lined up, sometimes pressed chest to back. It is highly

⁵⁸⁴ HOOKS, *supra* note 554, at 49.

⁵⁸⁵ DeSantis & Coleman, *supra* note 524, at 295.

⁵⁸⁶ See Cooper, *supra* note 553, at 672 (claiming that men gain their “masculine esteem . . . from other men’s acknowledgements of [their] masculinity”).

⁵⁸⁷ DeSantis & Coleman, *supra* note 524, at 303. One interviewee explained that during his initiation, after enduring a greater amount of abuse due to his sexuality, he did not feel it was “worth it” after becoming a part of the brotherhood. *Id.*

⁵⁸⁸ Dowd, *supra* note 572, at 209–10. Frank Cooper explained, “masculinity is the repudiation of femininity[,]” and that because “homoeerotic desire is depicted as feminine desire, the repudiation of homosexual men is a necessary component of hegemonic masculinity.” Cooper, *supra* note 553, at 690.

⁵⁸⁹ Cooper, *supra* note 553, at 691.

⁵⁹⁰ *Id.* at 691–92.

⁵⁹¹ See DeSantis & Coleman, *supra* note 524, at 291. “[B]lack men are more likely than whites to view homosexual relations as wrong and immoral.” *Id.*

⁵⁹² *Id.* at 295. “This male-on-male connection serves both to bind brothers together and to demonstrate a hypermasculine endurance in the face of pain.” *Id.*

intolerable that someone be homosexual within that mix."⁵⁹³

African American male violence is not unique. It was adopted from white male violence and has manifested to harm the Black community further.⁵⁹⁴ While examining all secret societies, Lionel Tiger suggests that the secrecy of the organizations largely limits the available information on such groups.⁵⁹⁵ Importantly however, Tiger observed that secret organizations "ha[ve] the capacity to stimulate aggression" because they are often formed in hostility or opposition to some type of authority.⁵⁹⁶ However, only to the nonmembers of the group would such behavior seem out of the ordinary as the secrecy in any organized group is not pertained to the members in the group but to the outsiders.⁵⁹⁷ This concept applied to BGLOs, the adoption of the violent characteristics into secret BGLO rituals normalizes the behavior such that members see nothing out of the ordinary with the behavior and view it as the status quo.

Any organized group develops its own rules that define its bonding process. Thus, another explanation for such violent hazing is the fact that when youth are left to guide one another without supervision they tend to push some acts to the extreme because they have no understanding of reality.⁵⁹⁸ As individuals attempt to mimic some unrealistic concept of masculinity, such activity becomes the norm within their organization and is passed down to generations that follow.

V. CONCLUSION

Hazing has been a persistent legal problem for universities, fraternities and sororities, their respective chapters, and their members. Even more, hazing has been, in too many instances, a life and death issues for individuals and their families, not to mention a cause of physical and psychological harm to many college students. Consequently, they or their families—or the government—often seek some form of legal recourse. The looming question, however, is: how can we bring hazing to an end? The first meaningful step toward such a solution is accepting that all organizations may not have the same historical or cultural framework and thus no uniformity in how hazing is manifested.

This article underscores that legal phenomena do not always manifest themselves in the same fashion across communities. Hazing has been a persistent legal problem that has bedeviled those who have sought to curb, if not eradicate, it. A proper remedy to a problem demands an accurate assessment of

⁵⁹³ *Id.*

⁵⁹⁴ HOOKS, *supra* note 554, at 66.

⁵⁹⁵ LIONEL TIGER, MEN IN GROUPS 126–27 (2005).

⁵⁹⁶ *Id.* at 131.

⁵⁹⁷ *Id.* at 136.

⁵⁹⁸ See *id.* at 131. This warped concept of reality is a result of the hegemonic masculinity engrained in American culture with which most males do not identify. ABRAMS, *supra* note 550, at 711.

the problem, and to say that hazing is simply the fault of naïve and errant young people, fails to capture the full essence of the issue; it does not allow for appropriate remedies either. As such, to say that hazing will stop when the hazers stop hazing fails to appreciate the motivations—psychological, sociological, and the like—that undergird collegiate fraternity hazing. It would be like saying robbery, or drug dealing, or murder will stop when those individuals committing such crimes just stop committing them. Such is true but provides no remedy in that it is simplistic and provincial in its assessment.

With regard to hazing, our work has found that hazing within BGLOs is more violent than hazing within White fraternities and sororities. Even more, hazing within Black fraternities is more physically violent than any comparison group. Such violence—the endurance of it and meting it out—is one of the hallmarks of the Black fraternity experience. The fact that hazing has become increasingly violent within Black fraternities, at least since the 1950s, suggests something beyond these organizations. It highlights that Black fraternities and their members are not immune from the narrow conceptions of Black masculinity that are pervasive in American society. To be the servant leaders is no longer enough for Black fraternity members. To be “hard” and masculine and far from what society, or maybe just the Black community, considers effeminate is a must. It is this quest to be this narrow definition of a “man” that is part and parcel of Black fraternities’ organizational, and ultimately legal, problems. Indeed, the quest for a narrow conception of masculinity leads too many members of these organizations to break the law and to put themselves, institutions, and organizations at legal risk. Even more, it is their inability to engage in any reasonable level of soul searching that is at the heart of this issue.