

STUDENT AFFAIRS PROFESSIONALS, BLACK “GREEK” HAZING, AND UNIVERSITY CIVIL LIABILITY

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Violent hazing within Black Greek-letter organizations (BGLOs) has cost lives and millions of dollars in civil damages to BGLO members, BGLOs, and host institutions. To date, little scholarship has focused on the role of the law as it relates to BGLO hazing. This article explores the role student affairs professionals play in BGLO collegiate chapter advising and how their advising may place their academic institutions at risk for hazing liability. Prophylactic measures are recommended.

National Pan-Hellenic Council organizations, typically discussed as Black Greek-letter organizations (BGLOs) by scholars (Parks, 2008), have existed for more than a century (McKenzie, 2005). A confluence of factors that predated and existed parallel to them provided the context for their development. The African American church and secret societies, White college fraternities and sororities as well as literary societies, and the broad racial milieu at the turn of 20th century America shaped BGLOs' organizational identity (Armfield, Bradley, Clarke, & Parks, 2011; Butler, 2005; Torbenson, 2005; Washington & Nuñez, 2005). In the fall of 1906, on the campus of Cornell University, seven men founded Alpha Phi Alpha, which would become the first con-

tinuous intercollegiate BGLO. During the next decade and a half, seven other collegiate-based BGLOs were formed—sororities Alpha Kappa Alpha (1908), Delta Sigma Theta (1913), Zeta Phi Beta (1920), and Sigma Gamma Rho (1922); and fraternities Kappa Alpha Psi (1911), Omega Psi Phi (1911), and Phi Beta Sigma (1914). Decades later, in 1963, Iota Phi Theta Fraternity was added to this number (McKenzie, 2005). Over the course of more than 100 years, BGLOs have stood for academic achievement, brotherhood and sisterhood, as well as leadership in the area of African American uplift (Armfield et al., 2011).

Despite their longevity, serious scholarship on BGLOs did not exist until the mid-1990s

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(Kimbrough, 1995). Even still, such scholarship only began to flourish a half decade later (Brown, Parks, & Phillips, 2005; Fine, 2002; R. L. Jones, 2004; Kimbrough, 2003). This scholarship has been wide and varied, focusing on these organizations' hallmark features—academic achievement (Johnson, Chambers, & Walpole, 2011) as well as brotherhood (Ray & Spragling, 2011) and sisterhood (Phillips, 2005). Black Greek-letter organizations' racial uplift activity—community service and philanthropy (Gasman, Louison, & Barnes, 2008; Myers & Gasman, 2011), civic action (Gasman, 2011; Harris & Mitchell, 2008; Weems, 2011), and shaping public policy (R. L. Harris, 2005; Weems, 2011)—has also been a fertile source of scholarly inquiry. Branch (2005), McCoy (2005), and Posey (2005) explored BGLO public rituals and displays such as stepping, calls, and branding, respectively. Others have analyzed the role of racial, religious, and sexual orientation diversity within and among BGLOs (Chen, 2011; DeSantis & Coleman, 2008; Hughey, 2008; Ray & Spragling, 2011). And while some scholars have also provided biographical sketches of luminary BGLO leaders (Y. Y. Johnson, 2011; Mack, 2012; Rasheed, 2012), other scholars have grappled with more esoteric issues like BGLO poetry (Ray, Heard, & Ingram, 2012) and fraternity stereotypes (Anderson, Buckley, & Tindall, 2011; Hernandez, McDaniel, Gyant, & Fletcher, 2012).

This proliferation of BGLO scholarship in such a short period of time is bookended by the scant analysis of BGLO collegiate chapter advising on one end and hazing on the other. Whipple, Crichlow, and Click (2008) discuss how Black and White “Greeks” might be brought together for more collaborative efforts, while R. Johnson, Bradley, Bryant, Morton, and Sawyer (2008) specifically address the advising of BGLOs. With regard to hazing, some scholars have provided a broad and general analysis (R. L. Jones, 2004; Kimbrough, 2003; Parks & Brown, 2005). Others have explored the motivational (Scott, 2011), public relations (Hughey, 2008), constraining

(Govan, 2011; Reddick, Anderson, Frazier, & Jenkins, 2011), and organizational behavior (Holmes, 2011) factors associated with BGLO hazing.

This article analyzes the relationship between student affairs advising and hazing among BGLO collegiate chapters and what it means for university liability. The first section analyzes the current methods of advising BGLO collegiate chapter and the role of cultural competence vis-à-vis said advising. The second section provides an overview of the problem of BGLO hazing. The third section outlines hazing liability placed on colleges and universities and how student affairs professionals who advise BGLOs may be implicated in said liability. The article concludes by providing some prophylactic measures to address negligent advising with regard to BGLO hazing.

STUDENT AFFAIRS ADVISING OF BGLOS

Research on BGLO undergraduate chapter advising underscores two pressing concerns. The first is that the manner in which student affairs professionals advise BGLO undergraduate chapters is deficient. The second is that student affairs professionals may lack the requisite cultural competence with regards to BGLOs to effectively advise their collegiate chapters.

The role of the student affairs advisor to BGLO collegiate chapters cannot be understated. R. Johnson and colleagues (2008) argue that since BGLOs typically do not have traveling consultants, and officers at both the national and regional level do not visit campuses with any regularity, campus advisors serve as the frontline of BGLO collegiate chapter advising. They add that student affairs professionals often have a superficial understanding of the similarities and distinctions between BGLOs and their White counterparts. Ultimately, BGLO advisors' understanding, or lack thereof, impacts BGLO collegiate chapter

advising. New advisors are often unaware of how to connect with BGLO chapter members. This is, in part, because universities fail to hire people with the necessary expertise or adequately train them (R. Johnson et al., 2008).

R. Johnson and colleagues (2008) add that the absence of culturally aware advisors at predominantly White institutions has led to BGLO collegiate chapters being advised by multicultural student affairs offices or, if by Greek affairs personnel, by graduate or professional students not working on degrees in higher education administration. For student affairs professionals who are White, advising can be even more challenging, as BGLO collegiate chapters often seek to keep their distance from and operate on the periphery of the campus “Greek” system. On the other hand, at least at predominantly White institutions, BGLOs are often considered a low priority or completely ignored. More generally, R. Johnson and colleagues (2008) contend that many student affairs professionals have failed to provide adequate structure and support to BGLO collegiate chapters. Moreover, most of these professionals have a limited understanding of BGLO culture, history, and organizational norms. And most of these professionals have little advanced training in advising and/or developing BGLOs. Consequently, R. Johnson and colleagues write, BGLO collegiate chapters are poorly advised. They note that given the complexity of BGLOs, they require advising by a “highly trained professional,” but usually only receive “an entry-level administrator, newly graduated, or a semi-experienced administrator with an expressed interest in working with these organizations ... [or] the advisor may be a graduate member of a BGLO who is working on campus” (R. Johnson et al., 2008, p. 451).

A recent study, Strayhorn and McCall (2012) investigated the cultural competence of university fraternity and sorority, BGLO advisors. Cultural competence, as defined in this study, is “the capacity to work effectively within the cultural context of an individual, family, or community whose background dif-

fers from one’s own” (p. 5). Pursuant to this definition, the components of cultural competence are cultural awareness, cultural knowledge, cultural skills, cultural encounters, and cultural desire (Campinha-Bacote, 1999). The study’s sample consisted of 71 university fraternity and sorority BGLO advisors, consisting of five racial categories—White (70%), Black/African American (20%), Hispanic/Latin American (7%), Asian Pacific Islander (1%), and American Indian/Alaskan Native (1%). Data was collected via an online survey—the *Cultural Diversity Questionnaire for Greek Advisors*—that the researchers sent to members of the Association of Fraternity Advisors listserv (Strayhorn & McCall, 2012).

Among their findings, Strayhorn and McCall (2012) discovered that on cultural awareness—whereby “professionals discover and learn to appreciate a culture’s values, beliefs, practices, and customs” (p. 4)—part-time and better educated participants self-reported higher scores. On cultural knowledge—the general knowledge one possesses “about diverse cultures including differences in commonalities in meanings, values, and symbols between them” (p. 4)—White advisors rated themselves as higher on this scale than advisors of color. Furthermore, all participants reported low scores on this scale. On cultural skills—“the ability to collect information that can be used to effectively assist BGLO members” (p. 4)—White advisors reported higher scores than advisors of color. Strayhorn and McCall (2012) found that White advisors reported significantly higher scores than advisors of color on cultural encounters—an advisor’s direct engagement with students from diverse cultural backgrounds. On cultural desire—the care for out-croup members and desire to provide them with culturally congruent service—there were no group distinctions. Paradoxically, on the global cultural competence measure, White advisors had higher average scores than advisors of color.

While this study bodes well for the notion that student affairs professionals, especially Whites, are likely providing culturally compe-

tent advising to BGLO undergraduate chapters, there are two issues raised by these findings. First, the entire sample self-reported relatively low levels of cultural knowledge. Second, despite White participants' higher scores, participants of color on a number of scales, there may be a counternarrative to these findings. At its core, this counternarrative is that people tend to hold overly favorable views about their abilities in a host of social and intellectual domains. This overestimation occurs, to some extent, because people who are unskilled in chosen domain not only reach erroneous conclusions and make unfortunate choices as a result of those conclusions, but their incompetence in the chosen domain robs them of the ability to introspect and realize it (Kruger & Dunning, 1999). For example, in one study, Kruger and Dunning (1999) found that participants who scored in the bottom quartile on tests of humor, grammar, and logic overestimated their test performance and ability. Despite having test scores in the 12th percentile, they estimated themselves to be in the 62nd percentile. Analyses linked this miscalibration to deficits in metacognitive skill.

In their work, Ehrlinger, Johnson, Banner, Dunning, and Kruger (2008) found that poor performers lack metacognitive abilities vis-à-vis their shortcomings even in real world settings and even when given incentives to be accurate. In essence, what happens during—what may be termed the “Dunning-Kruger Effect”—is that those lacking in competence in a given domain do not know what they do not know and, therefore, overestimate their abilities in that domain. In fact, though not discussing this specific effect, Strayhorn and McCall (2012) explained that White advisors' self-appraisal of higher levels of cultural knowledge could result from their unrealistic perception, and thus overrating, of themselves in this regard.

R. Johnson and colleagues (2008) contend that given both the Black and fraternal elements of BGLOs, effective advising of these groups necessitates a deep understanding of the groups' cultural norms as well as ethnic

and fraternal practices. In essence, effective BGLO collegiate chapter advising demands a robust knowledge of BGLO history, culture, and contemporary issues. Kimbrough and Hutcheson (1998) note that the “scarcity of research on BGLOs handicaps administrators who are unfamiliar with the Greek system, but who contend with the serious problems by which these organizations are beset” (p. 104). This assertion, on the part of Kimbrough and Hutcheson, though true at the time when their words were written, no longer holds true given the growing robustness of BGLO scholarship. However, the mere availability of more scholarship does not guarantee that White advisors avail themselves of that scholarship to increase their awareness and increase their competence. Thus, administrators may still be handicapped by their limited exposure to the increasingly available BGLO scholarship.

THE PROBLEM OF BGLO HAZING

C. Johnson (1972), Nuwer (1999), and Parks and Brown (2005) provide detailed accounts of the origins of hazing, generally and with regard to BGLOs. By the 1970s, BGLO hazing began to take a deadly and more publicly analyzed turn. In 1977, Robert Brazile sought membership in Omega Psi Phi at the University of Pennsylvania (Valente, 1977). Brazile, a sophomore premed student who wanted to practice in his native Haiti, made it through the first 7 weeks of pledging, despite receiving only a few hours of sleep most nights (Valente, 1977). However, during “Hell Week,” Brazile went to one last initiation where pledges were beaten and forced to participate in strenuous running (Valente, 1977). Brazil collapsed in the fraternity house meeting room and died a few hours later at the campus hospital center (Valente, 1977). Brazile's death was later linked to a previously undetected heart ailment, but Penn officials still withdrew all recognition from the Omega chapter (Vrazo, 1983).

A year after Robert Brazile's death, a 20-year-old Omega Psi Phi pledge named Nathaniel Swinson died at North Carolina Central University, during an off-campus initiation. His death occurred after he was forced to run several miles and complete a battery of grueling exercises. The autopsy revealed that Swinson had sickle cell anemia and died from excessive physical stress (Associated Press, 1989). While the North Carolina Central chapter was not officially recognized by the national body of Omega Psi Phi, members had appropriated the name during the pledge process at issue (Nuwer, 2002).

During the same decade, at Bradley University, an Alpha Phi Alpha pledge was beaten with fists and paddles (R. L. Jones, 2004). He was later treated for acute kidney failure. Twelve Alpha Phi Alpha members pled guilty to hazing charges (R. L. Jones, 2004). At the University of Florida, 18 Omega Psi Phi pledges were violently hazed, with some of the pledges indicating that they were forced to consume large amounts of alcohol and marijuana (R. L. Jones, 2004). One pledge indicated that he needed to spend the night in a psychiatric ward due to a mental break (R. L. Jones, 2004). The mental break was attributed to excessive paddling, beating, interrogations, and drinking during his initiation (R. L. Jones, 2004; Rozsa, 1985).

Black Greek-letter organization hazing persisted into the 1980s and continued to receive media attention. In 1986, Steven Jones, a North Carolina A&T University Omega Psi Phi member, faced 10 charges, including 2 felony counts of assault with a deadly weapon, for hazing 8 fraternity pledges (Charlotte Observer, 1986). The pledges endured the bulk of their injuries when Jones struck 7 pledges with a 2x4 on their heads, arms, and shoulders, and lit another pledge's beard on fire. One pledge suffered a large wound on his head, which would not close with stitches, and another pledge required 7 stitches for a wound on his head (Associated Press, 1986).

Three years later, in 1989, Earl McKenzie and five other Kappa Alpha Psi pledges at Fort

Valley State College were beaten with canes and paddles as part of a "pledge line" (Garcia, 1983). McKenzie received blows to his chest, kidneys and back over a period of 5 hours and was hospitalized as a result, requiring three units of blood due to internal bleeding (Garcia, 1983). The hazing began in earnest on November 6 to punish McKenzie and other pledges for failing to memorize fraternity history and rap songs, praising the active members (Goldberg, 1989). The pledges had their shirts ripped off, were slammed to the ground, punched, and forced to eat raw eggs (Goldberg, 1989). The beatings continued on November 14 (Goldberg, 1989). When one of the active members said that he was going to "put somebody in the hospital tonight," the pledges fled to McKenzie's parents' house (Goldberg, 1989). This decision, however, led to an even worse punishment the following evening when the pledges were locked inside the fraternity house and pummeled with canes, kicks and fists (Goldberg, 1989). McKenzie felt dizzy and sick from the abuse, but the active members thought he was faking and continued striking him (Goldberg, 1989). As a result, McKenzie and another pledge, Brian Beeler, were hospitalized. McKenzie's kidneys were on the verge of failure and Beeler was treated for a sprained back, bruised buttocks and sore kidneys (Goldberg, 1989). Six members of Kappa Alpha Psi were charged with battery (Goldberg, 1989).

The same year and at a college in the same state as where Earl McKenzie and his pledge brothers were hazed, another death struck the BGLO community. Joel Harris, an 18-year-old sophomore at Morehouse College and Alpha Phi Alpha pledge, collapsed during a hazing ritual at an apartment complex (Uzdansky, 1989). The evening began with the pledges reciting historical events of the fraternity. Errors, however, were punished with an array of physical abuse (Ricks, 1989). One option was "Thunder and Lightning," which involved getting hit in the chest and slapped in the face (Ricks, 1989). Another method, called "Free Fall," involved elbows, slaps, and punches to

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the chest (Ricks, 1989). Harris collapsed as a result of a series of slaps, blows, and punches. The hazing lasted between 3 and 5 hours, and the postmortem examination revealed two abrasions on Harris's chest that looked like fingernail marks and may have come from a beating, although members denied striking Harris (Ricks, 1989). Harris died of an abnormal heart rhythm linked to congenital heart disease (Ricks, 1989).

Joel Harris' mother, Adrienne Harris, vowed to begin a crusade to end hazing in response to her son's death (Miller, 1989). The response to the incident by BGLOs was swift—the National Pan Hellenic Council convened a special summit in February 1990 (Frazier, 1991). At the meeting, just 4 months after Harris' death, the National Pan Hellenic Council voted unanimously to eliminate pledging and related activities, including dressing alike, head shaving, and walking in straight lines (Frazier, 1991). The name of the initiation process was changed from "pledging" to "membership intake process," which would involve merely making an application for membership and being accepted without enduring the rigors of hazing and pledging (Banks Harris, 1990; Mitchell, 1990).

Despite National Pan Hellenic Council's efforts, BGLO hazing injuries, deaths, and lawsuits have persisted. In 1997, Omega Psi Phi lost a civil suit resulting from an Indiana University hazing incident and paid \$774,000 in damages; the fraternity also settled out of court for \$375,000 in the Joseph Snell (University of Maryland) case. The same year, Kappa Alpha Psi settled a wrongful death suit and paid \$2.25 million in the Michael Davis (Southeast Missouri State University) case. In 1999, Omega Psi Phi was again sued in the Shawn Blackston (University of Louisville) case and lost with a damage award of \$931,428. Then, in 2002 the deaths of Kristin High and Kenitha Saafir resulted in a \$100 million wrongful death suit against Alpha Kappa Alpha, its Far West regional chapter, and its Sigma chapter (Parks & Brown, 2005). In 2009, the parents of Prairie View A&M stu-

dent and Phi Beta Sigma pledge, Donnie Wade II, settled their suit against the fraternity for the alleged hazing death of their son (George, 2010; Horswell, 2010).

Over the past 2 decades, researchers have attempted to make sense of why BGLO hazing persists. John Williams' (1992) study investigated the perceptions of undergraduate BGLO members about the no-pledge policy for the new MIP. He found that participants felt that the new policy was enacted too quickly and without the input of undergraduate members, that it was too restrictive vis-à-vis pledge activities, and that the reduced time frame for membership intake did not provide initiates with sufficient time to properly learn the history and traditions of the organizations. Williams (1992) also found that participants believed the no-pledge process would not allow for adequate screening of applicants, members initiated under the no-pledge process would not have strong bonds with one another, and undermine a spirit of unity and common experience among pledged and nonpledged members. In addition, he found that the need for respect is so great that undergraduate students are willing to participate in an underground pledge process (Williams, 1992).

Walter Kimbrough (2003) replicated Williams' study and found that while undergraduate BGLO members were more optimistic about the membership intake process than those in Williams' study, the basic assumptions about the benefits of pledging remained intact. In her study on prospective members, Teresa Saxton (2003) found that aspirants endure hazing initiations for a host of reasons. According to her participants, the desire for belonging, bonding, proving one's manhood, developing self-esteem and self-confidence, garnering respect, and continuing tradition were facilitated by hazing.

Given the moral, physical, public relations, and liability perils associated with BGLO hazing, and despite the contemporary rationales that BGLO members use for continuing the practice, opposition to hazing within BGLOs has been long-standing and public (Parks &

Brown, 2005). Nonetheless, the practice has been a dominant, enduring, and well-known element of the BGLO experience (Parks & Brown, 2005). Even more, it shows no sign of coming to an end.

**UNIVERSITY HAZING LIABILITY:
NEGLIGENT ADVISING AND
NEGLIGENT HIRING/RETENTION**

This intersection of deficient methods in student affairs professionals' advising of BGLO collegiate chapters, a lack of cultural competence vis-à-vis BGLOs, and a violent BGLO hazing culture could be probative as to university liability in a BGLO hazing incident (Strayhorn & McCall, 2012). Courts already find evidence of university staff members' supervision methods probative in hazing suits against academic institutions. In addition, litigation efforts focused on universities' negligent hiring of employees that they know or should know are incompetent to perform their task could also be made in BGLO hazing cases.

In recent years, courts have increasingly gone against the precedent of holding that universities are not liable for physical injury to students on their campuses. In lieu of the old rationale for granting immunity to colleges through doctrines like *in loco parentis*, courts now use a duty analysis in examining university liability. Cases in recent years have established actionable duties to students in several areas, including safety of premises, curricular and cocurricular activities, and residential life (Lake, 1999). Included in this trend of expanded university liability in certain jurisdictions is hazing within Greek organizations, both on and off university premises (C. M. Jones, 2000).

A groundbreaking case in establishing an actionable duty to students involved in off-campus, school affiliated activities is *Mintz v. New York* (1975). In *Mintz* (1975), a New York appellate court held that the defendant-university owed a duty of care to students participating in an overnight, university sponsored

canoe trip. Although the court found that the school was not liable because the duty of reasonable care had not been breached (*Mintz v. New York*, 1975), the case was significant because the duty rule clearly extended to extra-curricular activities where the school exercised supervision, direction, structure and control (Lake, 1999).

Roughly 25 years after *Mintz* (1975), the Supreme Court of Delaware went a step further in *Furek v. University of Delaware* (1991) by holding that a claim was stated for breach of the duty owed by a university in hazing. In *Furek* (1991), plaintiff-student had oven cleaner poured over his head during a fraternity hazing ritual and suffered permanent injuries. The university had implemented an antihazing policy and had notice that hazing had taken place within different Greek organizations in the past, although hazing activity was denied by Furek's fraternity in the time leading up to the incident. Accordingly, the court relied, in part, on the *Restatement of Torts* (Second) § 323 to find a duty on the part of the university. Quoting the relevant section, the court indicated that it "applies to any undertakings to render services to another which the defendant should recognize as necessary for the protection of the other person' and the harm from negligence in 'performance of the undertaking or from failure to exercise reasonable care to complete it or to protect the other when he discontinues it'" (p. 520). In essence, the court found that the evidence suggested that the university was not only knowledgeable about the dangers of hazing but had also communicated to students in general and fraternities in particular, its discipline policy for hazing infractions. As such, the university's antihazing policy constituted an assumed duty to protect its students from hazing.

Separate and apart from the university's §323 liability, the *Furek* (1991) court also found that the university had landowner liability. On the landowner duty claim, the court held that the university owed a duty to its students, as invitees, to regulate and supervise against foreseeable dangerous activities on

property within its control, including harms inflicted by third parties. Accordingly, the Supreme Court of Delaware found that the trial court's grant of the university's motion for a directed verdict was in error.

Other courts have continued to follow the trend toward expanding university liability by treating the university-defendant just as they would any other business entity. In *Coghlan v. Beta Theta Pi Fraternity* (1999), Idaho's Supreme Court found that a university had assumed a duty via its affirmative actions of trying to regulate and supervise Greek behavior where an underage student suffered injuries resulting from drinking at parties under the supervision of university employees. In *Nova Southeastern University v. Gross* (2000), the Florida Supreme Court found that where the university acts to create a program or activity, no special relationship is required in order for the court to find a duty of reasonable care owed to students by the university.

The same year as *Nova Southeastern*, in *Morrison v. Kappa Alpha Psi Fraternity* (1999), a Louisiana court of appeals held that despite the fact that the plaintiff-university's students were adults who could protect their own interests, the school had a duty to monitor the behavior of Kappa Alpha Psi since the university knew the fraternity was engaged in hazing and other illegal conduct. The appeals court adopted the reasoning of the trial court's denial of summary judgment for the defendant-university, explaining that, "because of the prior knowledge and serious nature of hazing, social policy justifies a special relationship between the University and its students" (p. 1105). This special relationship was the basis for finding a duty on the part of the university to exercise reasonable care to protect the plaintiff from hazing. Like in *Furek* (1991), the *Morrison* (1999) court concluded that the university's failure to monitor fraternity activities was a cause-in-fact of the plaintiff's injuries, because the failure was a "precipitating or contributing factor that made it possible for [the student] to be physically hazed" and a legal cause, because the hazing

injuries were "clearly within the scope of protection contemplated by imposition" of a duty to monitor and prevent hazing activities (p. 1117).

Even as many courts continue to deny liability to schools in many alcohol related cases under bystander laws, the focus is now on duty rather than applying blanket immunity to educational institutions. It now seems likely that courts will disassociate from the old bystander protection approach and embrace an analysis similar to *Furek* (1991), which applies a more traditional tort analysis to the duty owed to students (Lake, 1999). A similar expansion of duty owed in Greek-letter organization hazing cases appears possible as well as more courts embrace the duty analysis and application of general tort principles. With regard to BGLO collegiate chapter advising, the seemingly deficient method by which university student affairs offices supervise and advise BGLO collegiate chapters would appear to leave universities tortiously liable, at least under *Furek* (1991) and *Morrison* (1999).¹

While courts have yet to address the negligent hiring and/or retention of employees in the context of BGLO hazing, these torts appear to fit well with the concerns about the extent of BGLO advisors' cultural competence raised by Strayhorn and McCall's (2012) research. As articulated in *Martinez v. Hays Construction, Inc.* (2011), the plaintiff must, however, show that the employer's hiring and/or retention of the allegedly incompetent employee proximately caused the plaintiff's injuries. This proximate cause element consists of cause-in-fact and foreseeability. A plaintiff establishes cause in fact if that plaintiff demonstrates that the negligent act or omission was a substantial factor in causing the injury, without which the harm would have failed to occur. Furthermore, an employer breaches this duty when he or she hires and/or retains an employee that the employer should know is incompetent (*Plains Resources Inc. v. Gable*, 1984).

For example, in the wrongful death action, *Morehouse College v. Russell* (1964), the plaintiffs—parents of a college student who

drowned while taking a required swimming class—alleged that the defendant college had been negligent in selecting and employing two students as instructors for a swimming class who Morehouse should have known were not competent as swimming teachers. The Supreme Court of Georgia held that liability for administrative negligence, such as that involved in employing or retaining incompetent employees, would open Morehouse's assets to recovery by the plaintiff. As such, the court affirmed the trial court's decision to overrule Morehouse's request to the trial court to dismiss this part of the pleadings.

Student affairs professionals' potential lack of cultural competence vis-à-vis BGLOs is, arguably, a legitimate grounds upon which to bring a suit against a university for hazing at the hands of that institution's collegiate BGLO members. The challenge for any litigator, however, would first be to demonstrate that the university had a duty to protect the hazing victim. Then, a litigator would need to demonstrate that a more culturally aware advisor and a more robust method of advising BGLO collegiate chapters and members would have reduced the likelihood that hazing would occur. Given that there is such a paucity of data on BGLO advising, particularly with regard to best practices, such an argument would be a difficult case to make. Nonetheless, given the growing body of scholarship on BGLOs, including BGLO advising, and what is known about the law as it pertains to negligent hiring and retention, the future may portend that this difficulty for litigators may grow increasingly less challenging.

CONCLUSION

In sum, this article adds to the small body of scholarship on BGLO collegiate chapter advising. It suggests that the mode in which student affairs professionals currently advise these groups may place some universities at risk for civil liability. This article serves only as a cautionary note, not a universal truth. In fact,

courts may not converge on a single legal rule—either embracing the *Furek* (1991) and *Morrison* (1999) approach or one that is more restrained with respect to imposing liability on universities for student injuries by third parties. For instance, in *Bradshaw v. Rawlings* (1979), a federal appellate court held that imposition of a duty on universities to supervise students' extracurricular activities would be impractical to perform, as it would place universities in a custodial relationship with their students who are, legally, adults.

Similarly, in *Lloyd v. Alpha Phi Alpha Fraternity* (1999), a Cornell University student injured during a hazing incident sued under three theories: negligent supervision and control, premises liability, and breach of implied contract. A federal trial court rejected each claim. With respect to the negligent supervision and control claim, the court ruled that even though Cornell had published materials about the dangers of hazing and had provided training to its fraternities to improve their pledge processes, Cornell had not assumed a duty to supervise the student-plaintiff and prevent him from participating in the Alpha Phi Alpha, Alpha chapter pledge process. The court rejected the premises liability claim, because it concluded that while Cornell owned the Alpha chapter fraternity house, Cornell had no knowledge that there had been recent hazing activities therein. And while Cornell required fraternities to have an advisor, that fact did not necessarily make the advisor Cornell's agent. As to the breach of contract claim, the court rejected it, because the university had never promised to protect students from hazing.

A lingering question, however, is how any jurisdiction factors a university's knowledge about hazing on its campus into a duty analysis. In *Morrison* (1999), the university's knowledge was about what was specifically taking place on its campus with Kappa Alpha Psi. In *Furek* (1991), however, the university's knowledge was about the problem of hazing more generally.

For some universities, this concern is irrelevant. They either (1) do not have BGLOs on their campus; (2) are quite clear about the limits of their supervision of BGLOs (and other “Greeks”); or (3) are in a Morrison (1999) jurisdiction and are swift in addressing hazing allegations. For other institutions, however, a significant prophylactic measure is in order—a better knowledge of BGLOs and a more adequate structure for BGLO advising. Research shows that experience and knowledge enhance professional decision making (Purdue, 1987). While student affairs professionals may attempt to rely on an annual university lecture on BGLOs or professional conference workshop on the same, such approaches are limited in scope and content. The authors suggest that a deepening of experience and knowledge vis-à-vis BGLOs can be obtained by doing what other professionals do—that is, staying abreast of the scholarly literature in their professional area.

While a call for an elaborate set of prescriptive remedies may be appropriate, the solutions are quite simple. Student affairs professionals must take it upon themselves to keep pace with the extant and growing scholarship on BGLOs. For example, numerous scholarly books have been written about BGLOs in the past decade, providing a wide range of information about these groups. In fact, Tamara Brown and colleagues second edition of *African American Fraternities and Sororities: The Legacy and the Vision* (2012) provide a detailed bibliography of writings on BGLOs. Student affairs professionals also have the benefit of having access to a wide variety of university, research databases where they can search for and identify articles on BGLOs. For those student affairs professionals who have graduate training in research methods and statistics, they may deepen their cultural competence by conducting empirical research on BGLOs to answer research questions that have yet to be addressed.

Where individual professionals may be disinclined from taking such action, universities should offer a graduate course on BGLOs as

part of their higher education administration graduate programs. Similarly, professional organizations like the Association of Fraternity Advisors should set standards for what constitutes a culturally competent BGLO advisor and best practices in BGLO advising. And while universities may employ BGLO graduate or professional students to serve as BGLO advisors under the assumption that such individuals have a robust understanding of BGLOs, that assumption may prove wrong. Accordingly, university employers should require their student affairs professionals to have a deep, research-based understanding of BGLOs and to remain current with bodies of knowledge on these groups, and they should have processes in place to verify that said university employers possess such knowledge. Finally, only those student affairs professionals who seek to be competent about BGLOs should be assigned to advise them.

In its simplest form, while greater cultural competence about BGLOs will not be the proverbial nail in the coffin of BGLO hazing, it could possibly curtail it. Gaining a deeper and broader insight into BGLOs may help student affairs professionals correct their heightened self-appraisals about their cultural competence with respect to BGLOs. It may also provide student affairs professionals with the competence and confidence to reign in a body of student organizations that often operate on the periphery of the student affairs system. For example, greater BGLO cultural competence may provide student affairs professionals with specific insights into often tell-tale signs of BGLO hazing—such as the precipitous drop in pledge grade point average the semester he or she is hazing (Rambo, 1981).

NOTE

1. Herein, we focus mainly on state court cases, because it is largely within state courts where university liability issues arise—especially when it comes to hazing. Kaplin and Lee (2009) note that duty is a matter of state common law. Even where these matters arise in

federal court, they are most likely to arise under diversity jurisdiction (where the student-plaintiff is from a different state than the university-defendant). Pursuant to the United States Supreme Court decision, *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), federal trial courts, sitting in diversity, must look to the governing law in the state where the federal court sits—underscoring the significance of state law.

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