

SOCIAL NETWORKING AND LEADERSHIP ACCOUNTABILITY IN (QUASI) SECRET ORGANIZATIONS

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INTRODUCTION

Almost a century ago, United States Supreme Court Justice Louis Brandeis articulated an insightful analysis in a *Harper's Weekly* article titled *What Publicity Can Do*.¹ He noted that “[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”² Justice Brandeis’s idea vis-à-vis the virtues of publicity had germinated more than two decades prior when he expressed an interest in writing a companion piece to his article *The Right to Privacy*. This time, however, he would focus on the duty of publicity. He noted that he had been thinking “about the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men.”³ His proposed remedy was that, “[i]f the broad light of day could be let in upon men’s actions, it would purify them as the sun disinfects.”⁴

Fortunately, we live in an era in which organizations have difficulty keeping their conduct in the dark. The Sarbanes-Oxley Act and whistleblower protection laws amplify the sunlight cast upon organizations. But there are, for a range of reasons, organizations that operate in the shadows—possibly due to the law but certainly due to internal dynamics. A classic example is black Greek-letter organizations (“BGLOs”). These organizations, with their secret rituals and yet public operations, are now more than one century old and have a membership that is a veritable who’s who in black American achievement. In the past few years, several of these organizations have been rocked by scandals about their national presidents engaging in financial malfeasance with organization

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

2. *Id.*

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

4. *Id.*

funds.⁵ What is more interesting is that members have had tremendous difficulty addressing these issues. There are, after all, a number of organizational dynamics that might constrain BGLO members from being able to hold their leadership accountable for financial malfeasance. This Article contends that where organizational mechanisms militate against leadership accountability, (quasi) secure social networking sites may be the best hope for (quasi) secret organization members to hold their leaders accountable.

I. QUASI-SECRET ORGANIZATIONS AND THE CHALLENGE OF LEADERSHIP ACCOUNTABILITY

While business organizations are amenable to leadership accountability, a BGLO's national president's financial malfeasance may go relatively unchecked. First, the organization's national board members may be intimidated by the national president. On the other hand, they may be unwilling to question his or her authority out of tradition or a desire to preserve the power of that office with the hopes that they will someday occupy that seat and the power it holds. While the organization's general counsel may be in the best position to represent the interests of the organization, he or she is often handpicked by the national president, which makes it more likely that the general counsel will be beholden to and represent the interests of the national president to the detriment of the organization and its members. Second, BGLO members may never learn about the financial malfeasance. Unlike some democratic institutions, within BGLOs there is no free press to ferret out facts for members. Third, BGLOs' national presidents hold an awesome amount of power within their respective organizations. While each BGLO has a legislative branch (i.e., each member has the power of one vote), members' representative votes have the greatest effect at national meetings, which might only occur once every two years. In the interim, the national president is at the height of his or her power, often with the ability to be the sole interpreter of the organization's ultimate authority, the constitution. In addition, there is no judicial branch to check the national president's authority during the gap between national meetings. Fourth, assuming organization members are aware of financial malfeasance, their voices still may not be heard. The national president or his or her surrogates may shrewdly use procedural maneuvering to thwart members' efforts to acquire pertinent information during official meetings. Fifth, BGLOs have an antisnitching culture predicated on a belief that anything pertaining to the official or unofficial operations of the organization is secret. As such, to some members, financial malfeasance is just as sacred and secret as their organization's formal ritual. On the other

5. *See infra* Part I.

hand, members may fear that if certain facts were made public about their BGLO, those facts could harm the organization's brand.

There have emerged, in recent years, several examples of alleged financial malfeasance on the part of BGLO national presidents and BGLO members being sanctioned for whistleblowing. In 2008, the United States Court of Appeals for the D.C. Circuit handed down an opinion in matter brought by a Zeta Phi Beta Sorority member. In *Stark v. Zeta Phi Beta*,⁶ Natasha Stark discovered that the sorority's then International President, Barbara Moore, had used the sorority's credit cards to purchase personal items totaling more than \$300,000.⁷ These improprieties violated both the sorority's internal bylaws as well as the IRS code.⁸ The sorority's Board of Directors dealt with the situation by allowing Moore to keep her position in exchange for signing a promissory note to repay the debt over a five-year period.⁹ Stark took it upon herself to inform both the media and the U.S. Attorney for the District of Columbia of Moore's actions. Ultimately, the Assistant U.S. Attorney for the District of Columbia launched a federal grand jury investigation. In response, Zeta Phi Beta suspended and later expelled Stark from the sorority.¹⁰ Stark brought a civil suit against the sorority in the U.S. District Court for the District of Columbia, which she lost at both the trial and appellate level.¹¹

After the Stark lawsuit, there were several lawsuits filed in regard to alleged financial malfeasance on the part of Barbara McKinzie, Alpha Kappa Alpha Sorority's then International President. In the District of Columbia, sorority members brought suit in *Daley v. Alpha Kappa Alpha*.¹² In *Daley*, the plaintiffs brought claims of waste, fraud, unjust enrichment, breach of fiduciary duty, and wrongful discipline.¹³ Prior to filing a lawsuit, the plaintiffs had voiced their concerns at chapter meetings and within the organization.¹⁴ They sought to receive answers from sorority leadership, and when their inquiries were rebuffed they asked to inspect the sorority's records to assuage their concerns.¹⁵ When they exhausted more amicable options, they initiated a lawsuit against the sorority and its officers and directors. In response, they then had

6. 587 F. Supp. 2d 170 (D.D.C. 2008).

7. Complaint at 2, *Stark*, 587 F. Supp. 2d 170 (No. 1:07-cv-00553).

8. *See id.* at 2–3; *see also* Answer at 2, *Stark*, 587 F. Supp. 2d 170 (No. 1:07-cv-00553).

9. *See Stark*, 587 F. Supp. 2d at 174; Complaint, *supra* note 7, at 3; *see also* Answer, *supra* note 8.

10. Complaint, *supra* note 7, at 4.

11. *See generally Stark*, 587 F. Supp. 2d 170.

12. 26 A.3d 723 (D.C. 2011).

13. *Id.* at 726.

14. Brief of Appellant at 6, 12, *Daley*, 26 A.3d 723 (No. 10-CV-000220).

15. *Id.* at 12.

their membership privileges suspended.¹⁶ In late 2011, the D.C. Court of Appeals remanded this case to the D.C. Superior Court for further resolution of the matter.¹⁷

II. SOCIAL NETWORKING: A REMEDIAL MEASURE FOR QUASI-SECRET ORGANIZATION LEADERSHIP ACCOUNTABILITY

One recent model for holding governing bodies accountable has been the use of social media platforms (e.g., Facebook and Twitter). These platforms have played an important role in the explosion of civic activism taking place in Arab countries and toppling autocratic regimes.¹⁸ By allowing for the instantaneous dissemination of information, social media sites provide citizens with up-to-the-minute coverage and developments of political affairs. Social media outlets also allow users to organize events and post updates as they develop. Many countries that experienced the Arab Spring have long had active and prolific blogospheres. Autocratic governments often view these social media sites as a threat and have taken different approaches to banning the use of social media sites among their citizens. Some governments, such as in Tunisia, instituted a heavy filtering regime.¹⁹ Others (e.g., Egypt) completely terminated Internet service.²⁰ Governments have also adapted to the explosion of social media networks and are now using them to entrap activists by crowd sourcing the identity of people or tracking people through their online group affiliations.²¹

It is this social media approach that Alpha Phi Alpha Fraternity members used to oust some of the fraternity's national leadership in 2012. Specifically, after the 2010 fiscal year, an independent audit firm conducted an audit of the fraternity's recording and accounting.²² The fraternity had experienced some financial shortcomings and sought to reign-in spending. Once the audit firm completed its work, it produced a letter, which detailed the findings of the audit.²³ According to Herman "Skip" Mason, the fraternity's

16. *Id.*

17. *See generally* Daley, 26 A.3d at 731.

18. Simba Russeau, *Social Media Lifts the Silence*, ARAB AM. NEWS (Oct. 15, 2011), <http://www.arabamericannews.com/news/index.php?mod=article&cat=ArabWorld&article=4823>.

19. *Id.*

20. Catherine O'Donnell, *New Study Quantifies Use of Social Media in Arab Spring*, UW TODAY (Sept. 12, 2011), <http://www.washington.edu/news/2011/09/12/new-study-quantifies-use-of-social-media-in-arab-spring/>.

21. Philip N. Howard, *The Upside Downside of Social Media Protests*, REUTERS (Aug. 23, 2011), <http://blogs.reuters.com/great-debate/2011/08/23/the-upside-downside-of-social-media-protests/>.

22. Respondents' Brief in Opposition to Petitioner's Emergency Petition for Temporary Restraining Order at 4, *Mason v. Alpha Phi Alpha Fraternity, Inc.*, No. 12CV08809-9 (Ga. Super. Ct. July 25, 2012).

23. Amended Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction at 5, *Mason*, No. 12CV08809-9.

General President, someone on the Board of Directors leaked the letter, which contained numerous errors, to the fraternity's membership prior to the correction of those errors.²⁴ The letter managed to cause a backlash against Mason because the letter contained a list of "unauthorized" personal purchases that Mason made with fraternity funds.²⁵ Amongst the unauthorized purchases were payments for his children's dependent care and private school tuition, negligent adherence to fraternity accounting policies, and a purchase of fraternity books from Mason's wife's publishing company to be used for resale.²⁶ As a result of the letter and membership backlash, the fraternity's Board of Directors suspended Mason's corporate credit card and took action to further investigate Mason's financial actions.²⁷ The Board also removed Mason and Keith Bishop, the fraternity's General Counsel, from their positions on the fraternity's Board.²⁸ In response, Mason filed a Petition for Temporary Restraining Order and Preliminary Injunction against Alpha Phi Alpha in a Georgia state trial court, suing the fraternity, its Board members, and its Executive Director.²⁹ The Georgia state trial court denied Mason's request for an emergency temporary restraining order.³⁰ The most striking aspect of this case is that Alpha Phi Alpha members employed "'uncensored' and 'unsanctioned' social media sites" to disseminate information and organize around Mason's conduct, which ultimately lead to his and Bishop's ouster.³¹

CONCLUSION

Members of (quasi) secret organizations, like BGLOs, have employed a range of options in efforts to hold (what they perceived to be) corrupt national heads accountable. In a number of instances, members felt as though the mechanisms internal to the organizations were ineffective. As such, they turned to the courts and the media. Given the culture within BGLOs—one of antisnitching and a keep-it-in-the-house mentality—those members were sanctioned. In short, even where taking the malfeasance public is the only option,

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 6.

28. *Id.* at 7; see also *Alpha Phi Alpha Names Acting General President: 33rd General President Mason's Suspension Leaves Vacancy*, THE SPHINX, Winter/Spring 2012, at 14, available at <http://www.alpha-phi-alpha.com/Page.php?id=243>.

29. See generally Brief for Petitioner in Support of Amended Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction *passim*, *Mason*, No. 12CV08809-9; Respondent's Brief in Opposition to Petitioner's Emergency Petition for Temporary Restraining Order, *supra* note 22.

30. Order at 2, *Mason*, No. 12CV08809-9.

31. Amended Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction, *supra* note 23.

within BGLOs it is an option worthy of sanction. Arguably, most BGLO members have deep emotional ties to their respective organization. Furthermore, many remain active in their fraternity or sorority throughout their lives. Given that many members may have familial and professional relationships intertwined with their fraternal ties, suspension or expulsion can have a devastating effect on such members. That is why the approach that Alpha Phi Alpha members took is so remarkable. They found a way to keep fraternity business largely internal to their fraternity while also circulating pertinent information, toppling an allegedly corrupt leader, and avoiding the sanction of rank-and-file members. But what does the future portend? If these organizations do not seek fundamental change in how they conduct business (e.g., electing or appointing independent general counsels, enacting whistleblower provisions, making annual audits accessible to members), it is up to members to police the organizations' resources and brand. Like leaders in autocratic Middle Eastern regimes, however, BGLO leaders may brand these social networking sites as the dark side of their organizations—a threat that warrants banning. On the other hand, individual activists on these sites may be targeted for any number of formal or informal sanctions.