

FRATERNITY AND SORORITY SOCIAL EVENT LIABILITY: THE LEGAL LANDSCAPE AND SOLUTIONS

Gregory S. Parks* & Victoria Grieshammer**

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INTRODUCTION

Greek life is a ubiquitous part of university culture, and fraternities and sororities are often spaces for students to bond and have fun. They are also sites

of mishaps and injuries, though, that are frequently fueled by alcohol.¹ Under social host liability, fraternities and sororities—and host institutions—can be held responsible for injuries resulting from these events. Social host liability places responsibility on these organizations and institutions for the damages resulting from alcohol they provided.² Even beyond alcohol-fueled injuries, fraternity and sorority events are ripe spaces for physical harm from simple accidents to acts of violence. In this article, we will explore both scenarios—those that involve alcohol (social host liability) and those that do not or where it is unclear that they do (social event liability)—in the fraternity and sorority context. In doing so, we will offer solutions that organizations can use to curtail such liability from best practices in risk reduction to best practices for compliance to research on nudge theory. In Part I, we will analyze the common, legal framework for social host liability. In Part II, we will analyze incidents where alcohol was not the predominant, or reported, issue but that gave, or could give, rise to social “event” liability. In Part III, we will offer solutions to reduce social event liability based on best practices from corporate compliance and behavioral economics nudge theory.

I. THE COMMON FRAMEWORK: SOCIAL HOST LIABILITY

Social host liability may be imposed where the event host has a legal duty of care, based on a “special relationship” with guests and third parties, to protect them from alcohol-related harm.³ If a court determines that such a legal duty exists, social host liability adheres

if it is proved (1) that the duty of care was breached; (2) that the actual injury sustained by the plaintiff was a direct result of alcohol intoxication; (3) that the injury that resulted was reasonably foreseeable; and (4) that imposing a legal duty on the social host is fundamentally fair.⁴

Social host liability is influenced by factors such as institutional knowledge that an event was occurring, the nature of the property on which the injury occurred, whether a member of the organization caused the injuries, and whether the organization provided alcohol to the individual who caused the injuries or who was injured.⁵ These facts can be difficult to establish, particularly at the national level of fraternal organizations. As such, this section explores when fraternities or sororities are held liable, and why or why not.

* Associate Dean of Strategic Initiatives and Professor of Law, Wake Forest University School of Law. Thank you to Clare Magee for her tremendous research assistance.

** Associate Attorney, Shaw Bransford & Roth, P.C.

¹ Spring J. Walton et al., *The High Cost of Partying: Social Host Liability for Fraternities and Colleges*, 14 WHITTIER L. REV. 659, 659 (1993).

² *Id.* at 660–61.

³ *Id.* at 664.

⁴ *Id.* at 664–65.

⁵ See *infra* Section I.B.

A. The Early Case Law

During the 1970s and 1980s, courts laid the groundwork for fraternity and sorority social host liability. Below are several cases that show how the social host liability framework developed into its current state.

In *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, the plaintiff brought an action against the Gamma Phi Chapter of Alpha Tau Omega for injuries resulting from an automobile accident.⁶ He also brought an action against a fraternity member and the owners and operators of a ranch where the driver of the automobile was given alcoholic beverages during a fraternity party.⁷ The plaintiff claimed negligence on the part of the fraternity for serving alcohol to an underaged individual; allowing the individual to drive the car that plaintiff was in when it crashed; failing to supervise functions at the ranch; and failing to provide a safe means of transportation.⁸ “The trial court entered an order allowing a motion to quash service of summons as to defendant Gamma Phi Chapter of Alpha Tau Omega Fraternity, an unincorporated association, and sustained the demurrers filed by each of the other defendants.”⁹

Although the party was thrown at a ranch rather than on fraternity property, the complaint alleged that the fraternity made arrangements for and conducted the party; that it invited students, some of whom were minors, to attend; and that it caused beer and alcoholic beverages to be served to all attendees of the party, including the driver.¹⁰ The plaintiff further alleged that the “fraternity knew or should have known that [the driver] was a minor, and that he had driven an automobile to the premises and would necessarily have to return” home.¹¹ The court reasoned that the fraternity’s “status as host and its direct involvement in serving the liquor . . . [were] sufficient to raise the duty . . . to refuse to serve alcohol to a guest when it would be unreasonable under the circumstances to permit him to drink.”¹² It therefore held that the trial court erred in sustaining Gamma Phi Chapter’s demurrer against plaintiff’s cause of action.¹³ It reversed the decision of the trial court as to Gamma Phi Chapter, but “[t]he judgments in favor of [the fraternity member] and the owners and operators of the Ranch” were affirmed.¹⁴

⁶ *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 485 P.2d 18, 19 (Or. 1971), *superseded by statute*, Act effective July 25, 1979, ch. 30, 1979 Or. Laws 321 (limiting liability of licensees) (statute repealed).

⁷ *Id.* at 20.

⁸ *Id.* at 20–21.

⁹ *Id.* at 19–20.

¹⁰ *Id.* at 23.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 23–24.

The Beta Rho Chapter of Beta Theta Phi was not held liable in *Stein v. Beta Rho Alumni Ass'n, Inc.*¹⁵ Here, the plaintiff was a burlesque dancer hired to perform at a fraternity party.¹⁶ The fraternity members were drinking and, during her show, they began grabbing at her.¹⁷ After her performance, she was dragged out of a dressing room, thrown off of a bridge, and was seriously injured.¹⁸ The plaintiff sued the Beta Rho Alumni Association on four theories: (1) that the fraternity provided too much alcohol, (2) that the alcohol was served to underaged individuals, (3) that the fraternity did not provide protection to the plaintiff, and (4) that the fraternity failed to stop the assault.¹⁹

The court here held that the defendant could not be held liable despite its landlord-tenant relationship because the defendant did not have the right to control the actions of the officers and members of the local fraternity, and thus it could not be held vicariously liable for injuries suffered by the plaintiff.²⁰ Additionally, the court held that there was no evidence that defendant knew that the local fraternity was going to have a party, that defendant did not know the fraternity members were intoxicated and rowdy prior to the plaintiff's performance, and that "[t]here was no evidence of prior conduct to put the defendant on notice."²¹ Specifically, the court reasoned that the plaintiff was unable to prove the requisite existence of an agency relationship such that defendant had the right to control the physical details of the members' actions "as in the relationship of [the] master and servant."²² "The mere fact that the defendant owned and furnished the house [did] not make the members of the local fraternity agents of the defendant."²³ Further, despite the landlord-tenant relationship, there was no evidence of defendant's knowledge of the events or the risk, and defendant had no duty to supervise parties and provide protection.²⁴

In *Ballou v. Sigma Nu General Fraternity*, though, the fraternity was held responsible. In this case, the father of a deceased fraternity pledge brought a wrongful death action against the fraternity.²⁵ A jury decided in favor of the father, the fraternity appealed, and the appellate court affirmed.²⁶ In this case, the deceased participated in an event called "hell night" that required the pledges to consume alcohol at several points throughout the night.²⁷ At ten thirty in the evening, the pledge laid down, and several members of the fraternity checked

¹⁵ *Stein v. Beta Rho Alumni Ass'n, Inc.*, 621 P.2d 632, 634 (Or. Ct. App. 1980).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 634–35.

¹⁹ *Id.* at 635.

²⁰ *Id.* at 637.

²¹ *Id.* at 637–38.

²² *Id.* at 637.

²³ *Id.*

²⁴ *Id.* at 638.

²⁵ *Ballou v. Sigma Nu Gen. Fraternity*, 352 S.E.2d 488, 490–91 (S.C. Ct. App. 1986).

²⁶ *Id.* at 490.

²⁷ *Id.* at 491.

on him, concerned by his pale color and lack of responsiveness, but ultimately left him on the couch.²⁸ He was found deceased the next morning.²⁹

On appeal, the fraternity argued that there was “no evidence of actionable negligence on its part.”³⁰ The court disagreed, and it first established that state law “has determined that a fraternal organization owes a duty of care to its initiates not to cause them injury in the process.”³¹ In light of that duty, then, the evidence allowed the jury to determine that Sigma Nu “created a hazardous condition” for the deceased by “plying [him] with dangerous quantities of alcoholic liquors and beverages over a short period of time, and pressuring [him] to consume these intoxicants to excess” and then failing to assist him when he became ill.³²

Sigma Nu next argued that “the proximate cause of [the victim’s] death was his own voluntary consumption of the alcohol.”³³ The court similarly rejected this argument, stating that the evidence showed that the “primary purpose” of providing alcohol was to push the pledges to extreme intoxication through ridicule and pressure, and that alcohol played the “leading, if not the principal, role in the initiation process.”³⁴ Therefore, the deceased may not have consumed deadly amounts of alcohol without the prompting of fraternity brothers, and the deceased may not have passed away if he had not been abandoned by the brothers after reaching acute alcohol intoxication.³⁵ The court was careful to point out that liability could be established here because “the action does not involve a third party,” and that “the party furnishing the alcohol promoted its excessive consumption by the injured party.”³⁶

Lastly, Sigma Nu argued that it should not be held liable for the wrongful death because the brothers were not performing acts “within the scope of the local chapter’s agency with Sigma Nu,” despite acknowledging an agency relationship.³⁷ But Sigma Nu’s by-laws prescribed an initiation ceremony and did not prohibit additional initiation activities.³⁸ This chapter had chosen to supplement its initiation ceremony with the hell night activity, which was a “required” component of proceeding to the initiation ceremony.³⁹ Because “the introduction of new members ‘is the life blood of all such organizations,’” the

²⁸ *Id.* at 492.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 493.

³³ *Id.*

³⁴ *Id.* at 494.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 495.

³⁸ *Id.* at 496.

³⁹ *Id.*

court determined that the fraternity chapter was acting “within the scope of . . . apparent authority conferred on it by Sigma Nu.”⁴⁰

In *Fassett v. Delta Kappa Epsilon*, three teenagers who had just left a Delta Kappa Epsilon fraternity party collided with another driver in an automobile accident.⁴¹ One of the passengers, Monica Buckley, was killed, and the other passenger, Anne Fassett, was rendered a quadriplegic.⁴² Fassett and the estate of Buckley both brought suit against several members of the fraternity, and the cases were consolidated.⁴³ “The district court concluded that, as a matter of Pennsylvania law, a defendant would have had to have physically served (i.e., directly handed) an alcoholic beverage to [the driver] in order to be civilly liable.”⁴⁴ The United States Court of Appeals for the Third Circuit held that the district court’s “conclusion as to the scope of Pennsylvania social host liability law is unduly restrictive” and that it therefore erred in granting summary judgment to the defendants.⁴⁵ The court examined three Pennsylvania Supreme Court cases to establish the scope of social host liability in Pennsylvania law.⁴⁶ It ultimately concluded that social host liability “does apply to those circumstances in which *minors* serve alcohol to minors.”⁴⁷ In addition, the court rejected the defendant’s argument that social host liability can only apply where the defendant was a “furnisher” of alcohol by physically handing alcohol to a minor.⁴⁸

The court followed a three-step reasoning process established by the Pennsylvania Supreme Court.⁴⁹ First, it looked to the relevant criminal code to determine if the action committed constituted a criminal offense.⁵⁰ Second, it determined if the criminal code established a standard of conduct that was applicable in civil liability.⁵¹ Third, it looked to the Pennsylvania accomplice statute in order to establish that “it is the minor who . . . must be characterized as the ‘principal’ in the crime” and that any other person to whom the criteria of accomplice applies “may then be held to be the minor’s accomplice.”⁵² In order to hold a defendant civilly liable as an accomplice under this standard, it must be clear that “(1) the alleged accomplice must have had an *intention* to promote or facilitate the consumption of alcohol by a minor . . . and (2) the al-

⁴⁰ *Id.* (quoting *Derrick v. Sovereign Camp, W.O.W.*, 106 S.E. 222, 224 (S.C. 1921) (Cothran, J., concurring)).

⁴¹ *Fassett v. Delta Kappa Epsilon*, 807 F.2d 1150, 1152 (3d Cir. 1986).

⁴² *Id.* at 1153.

⁴³ *Id.*

⁴⁴ *Id.* at 1154.

⁴⁵ *Id.* at 1157.

⁴⁶ *Id.* at 1158.

⁴⁷ *Id.* at 1160.

⁴⁸ *Id.* at 1161.

⁴⁹ *Id.* at 1160.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 1161.

leged accomplice must have *aided, agreed or attempted to aid* in the minor's consumption of alcohol."⁵³ In addition to intent to aid, the court determined that the aid given must be substantial to find a minor civilly liable as an accomplice.⁵⁴ "Each defendant's liability or freedom from liability must depend not on the particular label attached to him, but rather on the complex of factors which determine whether the particular defendant, in aiding, agreeing or attempting to aid a minor in consuming liquor, did so in a substantial fashion."⁵⁵

When applying this standard to the defendants, the court reasoned that one of the defendants was the fraternity president who planned the party and supplied some of the alcohol; another was the fraternity treasurer who signed a blank check to purchase alcohol; and the next three defendants "all knowingly allowed their apartment to be used for the purpose of serving intoxicants to minors."⁵⁶ It held, then, that there were questions of fact as to whether the "defendants intentionally rendered substantial assistance" to the driver.⁵⁷

In *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, the plaintiff, a pledge, brought action against the fraternity for injuries he sustained during the initiation ceremony.⁵⁸ During this ceremony, the plaintiff, a minor, was instructed to drink a 40-ounce pitcher of beer, then an 8-ounce bottle of whiskey, and was left to sleep on the hardwood floor.⁵⁹ He suffered from neurological damage to his arms and hands.⁶⁰ On appeal, the

question presented . . . [was] whether the fraternity owed a duty to plaintiff with respect to requiring the commission of very dangerous acts, including the highly excessive consumption of intoxicants, as a part of the initiation ceremony. In other words, if there is a duty on the part of fraternities and sororities to refrain from requiring participation in such acts⁶¹

The trial court dismissed the complaint for failure to state a cause of action, and the appellate court reversed and remanded.⁶²

The defendant fraternity argued that "it had no duty to prevent plaintiff's intoxication" because its relationship with plaintiff should be characterized as a "social host-guest relationship" and pointed to cases that denied liability against social hosts for furnishing alcohol.⁶³ The court declined to characterize the relationship in this manner, reasoning that the situation "consist[ed] of more than the mere furnishing of alcohol" because the plaintiff was "required to drink to

⁵³ *Id.*

⁵⁴ *Id.* at 1164.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193, 1195 (Ill. App. Ct. 1987).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 1198.

⁶³ *Id.* at 1197.

intoxication in order to become a member of the fraternity” and that, “[w]hen required to consume such large amounts of alcohol, it is foreseeable and likely that injuries will occur.”⁶⁴ As a result, it held “that a legal duty [had been] created and the complaint state[d] a cause of action in negligence.”⁶⁵ But the court “narrowly construe[d] this duty” based on “two factors.”⁶⁶ The first factor was that the plaintiff was *required* to drink, which “sufficiently distinguish[ed] the instant case from the social host-guest situation.”⁶⁷ The second factor was the pertinent state statute against hazing that indicated a “social policy against embarrassing or endangering our youth” and therefore established a cause of action for negligence.⁶⁸

In *Alumni Ass’n, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan*, appellant, a minor, was served alcohol at a fraternity party and set fire to another fraternity house.⁶⁹ The fraternity home destroyed by the fire brought suit against the appellant, who filed a joinder complaint against the college, national fraternity, and fraternity chapter that served him alcohol.⁷⁰ As to the national fraternity and fraternity chapter, the joined complaint alleged that the chapter created a known foreseeable risk by serving alcohol to a minor, and that the national fraternity, as the owner of the chapter house at which the party took place, should be liable because it knew or should have known that alcohol was being served to minors.⁷¹ The trial court dismissed appellant’s complaint with prejudice based on the defendants’ preliminary objections.⁷² On appeal, the court affirmed the dismissal as to the national fraternity and the college but reinstated the joinder complaint as to the fraternity chapter.⁷³

The court pointed to *Congini by Congini v. Portersville Valve Co.*, a Pennsylvania Supreme Court decision that “extended the scope of liability to include social hosts, who knowingly serve or furnish alcoholic beverages to a minor” and allowed these hosts to be held liable for “harm proximately resulting from the minor’s intoxication” because “minors are deemed legally incompetent to handle the effects of alcohol.”⁷⁴ The appellant’s allegations of negligence against the fraternity chapter were enough to sustain the joinder complaint given that the chapter did not challenge the allegations that it was the social host of the event at which the appellant was served alcohol.⁷⁵ Therefore, the court held

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 1198.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Alumni Ass’n, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan*, 535 A.2d 1095, 1097 (Pa. Super. Ct. 1987).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 1099.

⁷⁵ *Id.* at 1100.

that there was a foreseeable risk of “harm to life and property” resulting from the chapter serving alcohol to minors.⁷⁶ The appellant could not establish liability in regard to the national fraternity, though, because he did not plead that it knowingly furnished alcohol to him, and instead pleaded that the national fraternity knew or should have known of the chapter’s alcohol service to minors.⁷⁷

In *Jefferis v. Commonwealth of Pennsylvania*, the plaintiff, a minor, was injured after drinking alcohol at a Theta Chi fraternity party and filed action arguing that the fraternity was negligent under social host liability theory for furnishing alcohol to a minor.⁷⁸ The trial court granted the fraternity’s motion for summary judgment, and plaintiff appealed.⁷⁹ On appeal, the court reversed and remanded, holding that the trial court erred in its interpretation of social host liability law.⁸⁰ It established the following test to be used “to determine the extent of liability in a social host situation involving an intoxicated minor:”

- (1) the defendant must have intended to act in such a way so as to furnish, agree to furnish or promote the furnishing of alcohol to the minor, and
- (2) the defendant must have acted in a way which did furnish, agree to furnish, or promote the furnishing of alcohol to the minor, and
- (3) the defendant’s act must have been a substantial factor in the furnishing, agreement to furnish, or the promotion of alcohol to the minor.⁸¹

The court explained that

[f]actors relevant to determining whether the defendant’s act was a substantial factor in the commission of the tort include, but are not limited to, the nature of the act encouraged, the amount of assistance given, the defendant’s presence or absence at the time of the tort, the defendant’s relation to the tortfeasor and the foreseeability of the harm that occurred.⁸²

Accordingly, the court remanded and instructed the trial court to answer the question of whether the national fraternity “intentionally rendered substantial assistance to the minor appellant in his consumption of alcohol.”⁸³

Throughout these fundamental cases, courts grappled with the level of involvement and knowledge on the part of fraternities and sororities that was needed to hold them responsible for alcohol-related injuries or damages. Courts have found that a fraternity that knew or should have known that a minor was consuming alcohol that the fraternity provided was enough to raise the question of liability and submit the case to the jury. Alternatively, the rule the court rejected as unduly restrictive in *Fasset* required proof that a fraternity physically handed alcohol to a minor. Another important element of the social host liabil-

⁷⁶ *Id.*

⁷⁷ *Id.* at 1099–100.

⁷⁸ *Jefferis v. Commonwealth*, 537 A.2d 355, 356 (Pa. Super. Ct. 1988).

⁷⁹ *Id.*

⁸⁰ *Id.* at 357, 359.

⁸¹ *Id.* at 358.

⁸² *Id.*

⁸³ *Id.* at 358–59.

ity analysis that is reflected in these cases is the differentiation between a social host-guest relationship—in which the injured individual is an unaffiliated third party—and events that are required for membership in fraternities and sororities. Courts similarly considered the organization’s status as either a local chapter or national organization. Last, the victim’s status as an underaged drinker proved to be particularly important, creating a greater risk of liability. In these courts’ eyes, the group’s status as legally incompetent to consume alcohol, despite being legal adults, resulted in foreseeability of property damage and injury. Many of these factors continued to be reflected in the fraternity and sorority social event liability cases that followed.

B. Findings of Liability

Social host liability on college campuses has its roots in the 1970s and 1980s when courts began to impose liability on fraternities for alcohol-related risk.⁸⁴ As Peter Lake, noted higher education legal scholar, indicated, “[t]hese cases constituted a shift away from notions of exclusive student personal responsibility for high-risk drinking injuries.”⁸⁵ Starting in the 1990s, courts offered greater nuance and texture to what constitutes social host liability.

In *Gilhooly v. Zeta Psi Fraternity*, the plaintiff was walking by the fraternity house on her way elsewhere.⁸⁶ She slipped and fell on the sidewalk in front of the fraternity house, and subsequently brought action against the fraternity.⁸⁷ In considering whether to characterize the property as commercial or residential, the court emphasized the use of the property and the nature of the ownership.⁸⁸ It stated, “[w]hile defendant argues that the fraternity house is used exclusively as a residence for its members it is evident from the statements of defense counsel that it is also used as a social club for both its residential and nonresidential members.”⁸⁹

Further, the dues “paid by both residential and nonresidential members [were] not utilized to defray cost of room and board for the residential members but instead [were] used to pay, at least in part, for social events which include parties and alumni functions.”⁹⁰ Because the home was used for social functions, the court reasoned that it was likely that the invited guests would need to use the sidewalk in front of the house to enter the house.⁹¹ “[S]afe access to defendant’s fraternity house, especially at night during social events [was] a fore-

⁸⁴ See Peter F. Lake & Joel C. Epstein, *Modern Liability Rules and Policies Regarding College Student Alcohol Injuries: Reducing High-Risk Alcohol Use Through Norms of Shared Responsibility and Environmental Management*, 53 OKLA. L. REV. 611, 616 (2000).

⁸⁵ *Id.* at 616–17.

⁸⁶ *Gilhooly v. Zeta Psi Fraternity*, 578 A.2d 1264, 1265 (N.J. Super. Ct. Law Div. 1990).

⁸⁷ *Id.*

⁸⁸ *Id.* at 1266–67.

⁸⁹ *Id.* at 1267.

⁹⁰ *Id.*

⁹¹ *Id.*

seeable and necessary element to be considered in defendant's function as a successful social club"⁹² The fraternity was considered a hybrid organization because it was both commercial and residential, and therefore Zeta Psi was a commercial landowner and subject to liability for negligent maintenance of its sidewalk.⁹³

In *Beta Beta Chapter of Beta Theta Pi Fraternity v. May*, the plaintiff attended a Beta Theta Pi fraternity party that featured a makeshift pool.⁹⁴ She was pushed into the pool against her will, and she injured her foot.⁹⁵ The plaintiff brought a negligence action against the fraternity and the housing corporation alleging that the defendants were negligent in designing and constructing a temporary pool on the premises, which created a dangerous condition she was not warned of.⁹⁶ She additionally alleged that the fraternity was negligent in providing alcohol to underaged individuals, and that the housing corporation was negligent in failing to properly supervise the fraternity.⁹⁷

The appellate court upheld the jury verdict that found for the plaintiff.⁹⁸ Additionally, the court established that the fraternity was a suable entity because, despite being an unincorporated organization, "an unincorporated association authorized by statute to contract in its own name for certain purposes, has a legal capacity to be sued on such contracts in its association name."⁹⁹ In determining this, the court emphasized that the fraternity did business with private and public entities and that it had economic and social effects on the local community.¹⁰⁰

In *Butler v. Gamma Nu Chapter of Sigma Chi*, a university student was assaulted by a member of the Gamma Nu Chapter of Sigma Chi in the portion of a residence hall that was under the jurisdiction of the fraternity.¹⁰¹ The student sued the fraternity, the fraternity's local chapter, and the fraternity member for assault, battery, outrage, and civil conspiracy.¹⁰² A jury returned a general verdict, awarding the plaintiff \$25,000 in actual damages against a chapter member, the chapter, and national fraternity; it awarded \$5,000 in punitive damages against the local chapter.¹⁰³ The jury found the national and local fraternity responsible based on their own negligence rather than respondeat superior.¹⁰⁴

⁹² *Id.*

⁹³ *Id.* at 1267–68.

⁹⁴ *Beta Beta Chapter of Beta Theta Pi Fraternity v. May*, 611 So. 2d 889, 890–91 (Miss. 1992).

⁹⁵ *Id.* at 891.

⁹⁶ *Id.* at 890.

⁹⁷ *Id.*

⁹⁸ *Id.* at 889–90.

⁹⁹ *Id.* at 893–94.

¹⁰⁰ *Id.* at 894.

¹⁰¹ *Butler v. Gamma Nu Chapter of Sigma Chi*, 445 S.E.2d 468, 469 (S.C. Ct. App. 1994).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 471.

Appellants brought issues regarding relevance of evidence, hearsay, jury instructions, and a special verdict form.¹⁰⁵ The appellate court affirmed the jury's finding and denied the appellants' arguments on the issues brought on appeal.¹⁰⁶

In *Weber v. Delta Sigma Phi Fraternity*, the fraternity cosponsored a hayride and, during the hayride, a vehicle hit a wagon and injured many of the people on board.¹⁰⁷ In the lower court, a jury found the national fraternity and local chapter liable, even though the national fraternity was not named in the suit.¹⁰⁸ The national fraternity argued on appeal that it was not named as a defendant or served with process and, thus, the trial court erred in finding that it was a party defendant.¹⁰⁹ The appellate court held that the trial court properly found that local and national fraternities constitute separate entities as they have "different officers and different geographical locations."¹¹⁰ Here, the national fraternity was located in Michigan, and the plaintiff never served process on the national fraternity as required by the Michigan Court Rules.¹¹¹ However, the finding that the fraternities were separate entities did not affect the liability ruling by the trial court, and that court found both fraternities were liable.¹¹² On appeal, the court held that while the national fraternity may have received a copy of the summons and complaint from the local chapter, this still did not satisfy the due process requirements.¹¹³ Therefore, while the national fraternity could not be held liable for the accident as they were never a properly made party to the suit, the local fraternity remained responsible as they were a proper party throughout the court proceedings and fully sponsored the hayride event.¹¹⁴

In *Godfrey v. Omega Psi Phi, Omicron Kappa Chapter*, the plaintiff was an unsuspecting victim of a round of the "knockout game" taking place at a party held at the fraternity house of Omega Psi Phi, Omicron Kappa Chapter.¹¹⁵ This game involved the attendees of the party walking up to unknowing bystanders and hitting the victims in the head to knock them out.¹¹⁶ The plaintiff lived next to the fraternity house.¹¹⁷ The party members first attacked plaintiff's

¹⁰⁵ *Id.* at 469–71.

¹⁰⁶ *Id.* at 470–72.

¹⁰⁷ *Weber v. Delta Sigma Phi Fraternity*, No. 203736, 1999 Mich. App. LEXIS 2400, at *2, (Mich. Ct. App. Sept. 28, 1999) (per curiam).

¹⁰⁸ *Id.* at *1, *5–6.

¹⁰⁹ *Id.* at *5.

¹¹⁰ *Id.* at *6.

¹¹¹ *Id.*

¹¹² *Id.* at *1.

¹¹³ *Id.* at *6–7.

¹¹⁴ *See id.* at *11–12, *14.

¹¹⁵ *See Godfrey v. Omega Psi Phi, Omicron Kappa Chapter*, No. 1703220003, 2017 WL 1091235 (Mo. Cir. Ct. Feb. 15, 2017).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

roommate, who went back into their home but did not inform the plaintiff of what happened.¹¹⁸ The plaintiff then left his house, walked to his car, and was attacked by the party members who hit him in the head from behind and succeeded in knocking him unconscious.¹¹⁹ Plaintiff fell to the ground, knocked his head on the ground, and began convulsing; the party members continued to physically attack him until they returned to the fraternity house.¹²⁰ The plaintiff claimed that he suffered “traumatic brain injury, a seizure, headaches, memory loss, loss of teeth, a dislocated shoulder, head and facial lacerations and bruising, and emotional distress.”¹²¹ Plaintiff brought action for negligence against defendant Omega Psi Phi, Omicron Kappa Chapter, alleging that it was negligent in

promoting and hosting a party without proper security or supervision, allowing aggressive groups and/or individuals to attend the party, failing to monitor the aggressive groups and/or individuals, allowing intoxicated guests to attend and/or remain at the party, failing to stop the knockout game, and failing to remove the guests who exhibited dangerous propensities.¹²²

Defendant argued that it could not be held liable because it did not control the property, was not involved in the planning of the party, had no knowledge of any prior violent crimes on the property, did not owe a duty to plaintiff to protect him from the criminal acts of third parties, and plaintiff was not an invitee to the party.¹²³ The jury found in favor of the plaintiff and awarded him \$630,000 in compensatory damages and \$1,000,000 in punitive damages.¹²⁴

Generally, establishing liability on the part of fraternities and sororities for injuries that occur at their events or on their properties can be difficult. In the instances where claims against national organizations or local chapters have succeeded, though, there are important distinctions in the facts and in the courts’ analyses. For example, the social or business aspects of the organization as well as the nature of the property where the injuries occurred influences the analysis. When a Greek-letter organization (“GLO”) operates like a business or social club, it may be more likely to be found liable as a social host than a GLO that operates as a residence. Additionally, the nature of the relationship between the national and local levels of the organizations is continuously important in the liability analysis, and a strong relationship between the two leads to a higher likelihood that both will be held liable. Lastly, when the organization has control over the perpetrator or when organization members participate in or oversee the incident, these facts will weigh in favor of establishing a GLO’s responsibility for injuries occurring on its properties or at its events.

¹¹⁸ *See id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *See id.*

¹²⁴ *Id.*

C. No Findings of Liability

Starting in the 1990s, courts also offered greater nuance and texture to what failed to constitute social host liability. In *Millard v. Osborne*, a student died in a car accident after drinking at a party at a Lambda Chi Alpha fraternity house.¹²⁵ The estate sued Lambda Chi Alpha, the national fraternity, for providing alcohol to a minor.¹²⁶ The trial court ruled that the plaintiff produced no evidence that could support a finding of a factual issue in dispute as to whether defendants knowingly served alcohol to minors, and that a showing that the fraternity *should have known* was not enough.¹²⁷ It further reasoned that the national fraternity is a separate organization that cannot be held liable because it only has the power to discipline *after* a violation, and it does not have the resources to monitor activities.¹²⁸

In the appellate court, the plaintiff asserted a “substantial assistance” theory, arguing that the national fraternity aided and assisted the decedent in his consumption of alcohol by its policies and actions.¹²⁹ The appellate court upheld the trial court and reasoned that the national fraternity could not be responsible because it did not encourage alcohol consumption, and it could not control the actions of its fraternity members.¹³⁰

In *Booker v. Lehigh University*, an underage student brought suit against the university for injuries sustained in a fall after she became intoxicated at several on-campus fraternities and attempted to walk home on a steep, wooded path.¹³¹ At these parties, she poured her own alcohol, was not asked to show identification, and did not observe any security guards from Lehigh or anyone who was hired by the fraternities.¹³² The plaintiff pointed to Lehigh’s Social Policy as a premise for legal responsibility for her injuries.¹³³ The Social Policy required students to register parties with the school, but it otherwise specified that the responsibility to follow the requirements, such as prohibiting underage drinking and hiring security guards, rested with the party hosts.¹³⁴

The plaintiff argued that Lehigh was liable because the Social Policy created a duty to protect underage students and that Lehigh failed to implement its policy and ensure the attendance of security guards.¹³⁵ She also argued that

¹²⁵ *Millard v. Osborne (Millard II)*, 611 A.2d 715, 715–16 (Pa. Super. Ct. 1992).

¹²⁶ *See id.* at 716.

¹²⁷ *Millard v. Osborne (Millard I)*, 12 Pa. D. & C.4th 637, 645 (Pa. Ct. Com. Pl. 1991), *aff’d*, 611 A.2d 715 (Pa. Super. Ct. 1992).

¹²⁸ *Id.* at 645–46.

¹²⁹ *Millard II*, 611 A.2d at 716–17.

¹³⁰ *Id.* at 719.

¹³¹ *Booker v. Lehigh Univ.*, 800 F. Supp. 234, 235–36 (E.D. Pa. 1992), *aff’d*, 995 F.2d 215 (3d Cir. 1993).

¹³² *Id.* at 235.

¹³³ *Id.* at 237.

¹³⁴ *Id.* at 236.

¹³⁵ *Id.* at 237.

Lehigh was responsible because it was the landlord of the fraternity homes at which she drank.¹³⁶ The court characterized the arguments as an *in loco parentis* claim and rejected them.¹³⁷ It reasoned that “[p]laintiff, being over the age of eighteen at the time of the incident, was an adult There can be no question that she was competent, legally or otherwise, to decide, *inter alia*, whether to break the law.”¹³⁸ It further reasoned that colleges are not insurers of student safety and that the Social Policy did not create a legal duty for Lehigh to control its students, as the policy made clear that the responsibility to follow the rules rested on the hosts of the parties.¹³⁹

The court pointed out that the Social Policy and registration forms explicitly stated “that registration of a party does not constitute Lehigh University’s approval of the party, and that the host [was] responsible for complying with applicable laws.”¹⁴⁰ Additionally, the court followed Pennsylvania Supreme Court precedent in declining a “known or should have known” standard, instead holding that “Lehigh did not knowingly furnish alcohol, or knowingly aid or assist plaintiff’s consumption of alcohol.”¹⁴¹ Lastly, as to the plaintiff’s landlord liability argument, the court summarily concluded that “no potential liability could be imposed on Lehigh” on this basis.¹⁴²

In *Sparks v. Warren*, the plaintiff brought a common law negligence claim against Sigma Chi, a college fraternity, to recover for injuries the plaintiff sustained when he was assaulted by a minor fraternity member who had obtained alcohol at a local chapter house.¹⁴³ The assault did not occur on fraternity property.¹⁴⁴ The court held that the fraternity was not liable because the plaintiff presented no evidence that the fraternity knew or should have known that underage drinkers could be violent.¹⁴⁵ Further, the plaintiff incorrectly characterized the risk of defendant’s failure to supervise its members and enforce rules regarding underage drinking.¹⁴⁶ The court stated, “[t]he risk flowing from the negligence alleged here is not that a minor will drink but that someone predictably will be exposed to danger of an assault if defendants were negligent as alleged.”¹⁴⁷

In *Pellicane v. Lambda Chi Alpha Fraternity*, a fraternity member of the Theta Upsilon Zeta Chapter of Lambda Chi Alpha sustained an injury “when he

¹³⁶ *Id.*

¹³⁷ *Id.* at 237–38, 240.

¹³⁸ *Id.* at 238.

¹³⁹ *Id.* at 238, 240.

¹⁴⁰ *Id.* at 240.

¹⁴¹ *Id.*

¹⁴² *Id.* at 240–41.

¹⁴³ *Sparks v. Warren*, 856 P.2d 337, 338 (Or. Ct. App. 1993).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 339.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

stepped on a nail protruding from a floor board.”¹⁴⁸ The nail had been placed on a pile of debris in the backyard of the fraternity during renovation of the kitchen floor, which was performed exclusively by the fraternity members.¹⁴⁹ The plaintiff did not properly preserve the issue of whether the national fraternity was responsible for the negligence of the chapter fraternity members, so the court did not address this issue.¹⁵⁰ Additionally, the court upheld the grant of summary judgment against the plaintiff.¹⁵¹ The court reasoned that there was no duty to warn the plaintiff of “the obvious potential danger presented by the pile of debris from the renovation project,” especially because the plaintiff had been involved in the renovation.¹⁵²

In *Foster v. Purdue University Chapter, The Beta Mu of Beta Theta Pi*, a member of a college fraternity was rendered a quadriplegic when he dove head-first onto a makeshift “waterslide” erected by the fraternity.¹⁵³ He brought charges against the fraternity chapter, the housing association, and the national fraternity.¹⁵⁴ The general rule in Indiana was that, because the chapter was an unincorporated association, negligence would be imputed to all members.¹⁵⁵ The court denied the plaintiff’s argument that the organization should have an exception to this rule because the fraternity existed independent of its members.¹⁵⁶ As to the housing association that owned the house the fraternity members lived in, the plaintiff proposed two theories: assumption of duty and vicarious liability as agents.¹⁵⁷ The plaintiff argued that there was a special relationship giving rise to a duty to control created by the association’s execution of by-laws giving them the ability to establish rules and regulations.¹⁵⁸ The court denied this argument, reasoning that the housing association, although it could pass resolutions, was only able to give simple recommendations.¹⁵⁹ “[I]f it contracted to control the social behavior of members of the Purdue Chapter, [the plaintiff], as an Association member, would be contractually bound to control his own behavior.”¹⁶⁰ As to vicarious liability, the court denied the argument that the fraternity social chairmen who purchased alcohol acted as agents,

¹⁴⁸ *Pellicane v. Lambda Chi Alpha Fraternity, Inc.*, 644 N.Y.S.2d 769, 769 (App. Div. 1996).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 770.

¹⁵¹ *Id.* at 769.

¹⁵² *Id.* at 770.

¹⁵³ *Foster v. Purdue Univ. Chapter, The Beta Mu of Beta Theta Pi*, 567 N.E.2d 865, 867 (Ind. Ct. App. 1991).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 870.

¹⁵⁶ *Id.* at 870–71.

¹⁵⁷ *Id.* at 871.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

reasoning that there were “no disputed facts [that] might lead to an inference that the Association manifested an intent to create an agency relationship.”¹⁶¹

Finally, as to the national fraternity, the court denied any gratuitous duty.¹⁶² “We conclude that only one inference could reasonably be drawn from the Fraternity’s ‘advisory’ communications to the Purdue Chapter concerning alcohol use. The Fraternity did not gratuitously assume a duty to control alcohol consumption by the Purdue Chapter members.”¹⁶³ The court focused on several important factors, such as the fraternity discouraging alcohol abuse in its advisory pamphlet, sanctioning at least one chapter for alcohol-related problems, and conducting an inspection of the Purdue Chapter.¹⁶⁴ Further, it reasoned that the national fraternity functioned “only as a resource and support service organization offering guidelines to local chapters” with “no power to implement specific procedures within the chapters.”¹⁶⁵

In *Brakeman v. Theta Lambda Chapter*, the plaintiff was a guest of a member of Theta Lambda Chapter of Pi Kappa Alpha.¹⁶⁶ The Theta Lambda Chapter was hosting a party at a bar that the plaintiff attended.¹⁶⁷ The plaintiff was then injured when she fell out of one of the bar’s windows.¹⁶⁸ She brought a premises liability claim against the fraternity.¹⁶⁹ The court held that the fraternity could not be held liable because there was no evidence to show the fraternity had the requisite control to be a possessor of the land on which the plaintiff was injured.¹⁷⁰

With respect to “control,” the court reasoned that “[i]n order to have the occupation or control of premises necessary to impose a legal duty with respect to the condition or use of those premises, one must ordinarily have the power and the right to admit individuals to the premises, or to exclude them from the premises.”¹⁷¹ Here, the bar staff was on the premises and took responsibility for determining if patrons were legally able to drink, and they served the alcohol and had the right to shut down the party.¹⁷² Further, the bar was shared with another group, and there was no evidence indicating the fraternity was able or ex-

¹⁶¹ *Id.* at 871–72.

¹⁶² *Id.* at 872.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Brakeman v. Theta Lambda Chapter of Pi Kappa Alpha*, No. 01–0250, 2002 Iowa App. LEXIS 1258, at *2 (Iowa Ct. App. Nov. 25, 2002).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at *1–2.

¹⁶⁹ *Id.* at *1.

¹⁷⁰ *Id.* at *7–8.

¹⁷¹ *Id.* at *6.

¹⁷² *Id.* at *6–7.

pected to enter the premises and cure any defects.¹⁷³ Finally, there was no evidence that any member of the fraternity caused the fall.¹⁷⁴

In *Miller v. International Sigma Pi Fraternity*, the plaintiff, an underaged individual, sustained injuries at a Sigma Pi fraternity party.¹⁷⁵ The plaintiff sued the fraternity and the university, alleging the fraternity was liable as an accomplice because it aided and encouraged a violation of the underaged drinking statute.¹⁷⁶ The court held that there was no liability for the fraternity.¹⁷⁷ The dispositive issue was that no one in the organization knew about this party specifically.¹⁷⁸ The elements to be considered an accomplice to providing alcohol to minors are:

(1) the defendant must have intended to act in such a way so as to furnish, agree to furnish or promote the furnishing of alcohol to the minor, and (2) the defendant must have acted in a way which did furnish, agree to furnish, or promote the furnishing of alcohol to the minor, and (3) the defendant's act must have been a substantial factor in the furnishing, agreement to furnish, or the promotion of alcohol to the minor.¹⁷⁹

Here, there was no liability in providing alcohol to minors because the national fraternity and university did not act in concert with the local fraternity in furnishing alcohol to the underaged plaintiff.¹⁸⁰

In terms of social host liability, “[i]n order to be liable as a social host, one must have ‘knowingly furnished’ alcoholic beverages to a minor.”¹⁸¹ The plaintiff argued that, because the fraternity had tried to stop parties before and because similar incidents of underaged drinking had occurred, they must have known that alcohol was being served to minors.¹⁸² The court denied this argument, reasoning “[u]nless defendants fraternity and university had actual knowledge of the party at which the plaintiff was injured, liability will not follow. [The] [p]laintiff fails to aver actual knowledge on the part of plaintiff.”¹⁸³ The court also denied that the fraternity should sustain liability as a vendor under a state statute because it did not know about the specific party or sponsor the party.¹⁸⁴ “It would be absurd to consider these unwilling participants licensees and therefore liable” for violating the statute.¹⁸⁵

¹⁷³ *Id.* at *7.

¹⁷⁴ *Id.*

¹⁷⁵ *Miller v. Int’l Sigma Pi Fraternity*, 41 Pa. D. & C.4th 282, 283, 285 (Pa. Ct. Com. Pl. 1999).

¹⁷⁶ *Id.* at 284.

¹⁷⁷ *Id.* at 289–90.

¹⁷⁸ *Id.* at 287.

¹⁷⁹ *Id.* at 285 (quoting *Jefferis v. Commonwealth*, 537 A.2d 355, 358 (Pa. Super. Ct. 1988)).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 285–86 (quoting *Alumni Ass’n v. Sullivan*, 572 A.2d 1209, 1212 (Pa. 1990)).

¹⁸² *Id.* at 286.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 287.

¹⁸⁵ *Id.*

The court also rejected arguments under business invitee, public nuisance, and imputed conduct theories. “A business invitee is a person who is invited to enter or remain on the land of another for a purpose directly or indirectly connected with business dealings.”¹⁸⁶ The court reasoned that the plaintiff failed to allege that the fraternity is the possessor of the land in question.¹⁸⁷ Secondly, because the fraternity was not involved in a party thrown by the local chapter, a public nuisance claim was considered invalid.¹⁸⁸ Finally, the court denied the imputed conduct argument by simply stating that the national fraternity should not be held responsible for any negligent conduct of the local fraternity.¹⁸⁹

In *Gwin v. Phi Gamma Delta Fraternity*, a non-fraternity member fell off the roof of a fraternity house after drinking at a party at the house.¹⁹⁰ The plaintiff sued the fraternity and the college.¹⁹¹ The lower court granted summary judgment to the fraternity, and the appellate court upheld the lower court’s decision.¹⁹² The plaintiff presented three theories for fraternity liability: social host or land occupier, violation of a statute that prohibited serving alcohol to minors, and abandoning the plaintiff in a position of peril.¹⁹³ Under the social host theory, the court reasoned that the plaintiff’s voluntary intoxication led to a lower standard of care on the basis that adults should be responsible for themselves.¹⁹⁴ Further, the court stated that the danger of going onto a roof is obvious and the landowner had no duty to warn.¹⁹⁵ In regard to the violation of the state statute, the court held that the fraternity appellees were not liable for injuries that the plaintiff, an adult, suffered due to his own intoxication, even though he was underage for the purposes of the statute.¹⁹⁶ Finally, the court reasoned that the duty not to abandon the plaintiff is only applicable if he was placed in danger by the defendant’s negligence.¹⁹⁷ Since this was not the case, the duty not to abandon did not apply.¹⁹⁸

In *Kappa Sigma International Fraternity v. Tootle*, an intoxicated driver who had attended a fraternity party struck and killed another driver.¹⁹⁹ The intoxicated driver was drinking before he attended the party at a Kappa Sigma International Fraternity house, and he then brought and consumed his own al-

¹⁸⁶ *Id.* at 288 (quoting *Emge v. Hagosky*, 712 A.2d 315, 317 (Pa. Super. Ct. 1998)).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 289.

¹⁸⁹ *Id.*

¹⁹⁰ *Gwin v. Phi Gamma Delta Fraternity*, No. 71694, 1997 Ohio App. LEXIS 4658, at *3–4 (Ohio Ct. App. Oct. 16, 1997).

¹⁹¹ *Id.* at *1–2.

¹⁹² *Id.* at *15.

¹⁹³ *Id.* at *6.

¹⁹⁴ *Id.* at *8–9.

¹⁹⁵ *Id.* at *10.

¹⁹⁶ *Id.* at *14.

¹⁹⁷ *Id.* at *15.

¹⁹⁸ *Id.*

¹⁹⁹ *Kappa Sigma Int’l Fraternity v. Tootle*, 473 S.E.2d 213, 214 (Ga. Ct. App. 1996).

cohol while at the party.²⁰⁰ The intoxicated driver then drove while still intoxicated.²⁰¹ The decedent's estate brought suit against the international fraternity as well as its local chapter.²⁰² The trial court denied the fraternity's motion for summary judgment and the appellate court reversed this decision.²⁰³ Importantly, even though the fraternity was serving alcohol, there was direct testimony that the driver only consumed his own alcohol.²⁰⁴ The court stated, "[t]here is simply no evidence disputing [the driver's] own testimony that he did not consume any alcohol provided by the Fraternity."²⁰⁵ It further reasoned that it was not enough that the driver was drinking at the party; the fraternity must have "knowingly sold, furnished, or served alcoholic beverages" to the driver.²⁰⁶ Because the fraternity did not knowingly provide alcohol to the driver, it was not relevant whether the fraternity knew he was intoxicated or that he would be driving.²⁰⁷

In *Pingeton v. Erhartic*, the defendant, an underaged individual, drank throughout the night at several locations, including the fraternity house of Gamma Sigma of Alpha Tau Omega.²⁰⁸ The defendant and plaintiff both fell asleep at the house, but when the defendant and plaintiff awoke they fought, and the plaintiff suffered stab wounds to his head that were inflicted by the defendant.²⁰⁹ The defendant filed a third-party complaint against Alpha Tau Omega alleging that, if he was liable to plaintiff, then the fraternity was also liable because it contributed to the injuries when it allowed the defendant to consume alcohol at the house.²¹⁰ The court reasoned that the national fraternity did not exercise enough control to be liable, so it did not matter if the local fraternity supplied the alcohol.²¹¹ Importantly, the national fraternity only punished the local fraternity after they committed violations, rather than trying to control their behavior before any infractions.²¹² Further, the court reasoned that it did not matter that the national fraternity had distributed guidelines against alcohol abuse, as this did not rise to the level of control necessary to hold the national fraternity responsible.²¹³

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 214–15.

²⁰⁵ *Id.* at 215.

²⁰⁶ *Id.* (emphasis omitted).

²⁰⁷ *Id.*

²⁰⁸ *Pingeton v. Erhartic*, No. 991407, 2001 WL 292992, at *1 (Mass. Super. Ct. Feb. 5, 2001).

²⁰⁹ *Id.*

²¹⁰ *Id.* at *2.

²¹¹ *Id.* at *3.

²¹² *Id.*

²¹³ *Id.*

In *Holiday v. Poffenbarger*, the plaintiff was stabbed after walking by a fraternity house belonging to the Mu Chapter of Sigma Pi Fraternity International.²¹⁴ The perpetrator, an underaged individual, drank in his dorm room and then went to the fraternity house.²¹⁵ He got into an altercation that began at the house, and then, after the plaintiff left, the perpetrator stabbed him.²¹⁶ The plaintiff sued both the national and local fraternity.²¹⁷ The court held that the fraternity was not negligent and that it was not liable for giving alcohol to underaged individuals.²¹⁸ The court reasoned that the national fraternity did not knowingly provide the alcohol; that the perpetrator was drunk before arriving at the party; and that, even though a fraternity member gave the perpetrator a drink at the party, one of his friends took the drink from him.²¹⁹ It was undetermined whether the perpetrator drank anything at the party.²²⁰

In *Whebbe v. Beta Eta Chapter of Delta Tau Delta Fraternity*, the plaintiff was severely injured by a nonfraternity member during a fight at a fraternity party for the Beta Eta Chapter of Delta Tau Delta.²²¹ Although the confrontation started verbally, the plaintiff was suddenly hit in the head by an unidentified person and, after being hit, fell and hit his head on the pavement.²²² He subsequently had a seizure, was hospitalized in a coma, and suffered several lasting mental and physical disabilities, some of which required surgery.²²³ The plaintiff then brought a negligence claim against the fraternity on the theory of landowner liability.²²⁴ The court affirmed the lower court's ruling of no liability because, it reasoned, a landowner does not have a duty to protect an invitee from the criminal actions of a third party.²²⁵ It decided this in spite of the fact that the police had been called to the fraternity house fourteen times between June 20, 2005, and May 7, 2006.²²⁶ Further, the university had warned the fraternity that it did not approve of the parties.²²⁷ Importantly, though, the party was not an event sanctioned by the national fraternity even though it was a registered university event.²²⁸ The plaintiff had also brought his own alcohol.²²⁹

²¹⁴ *Holiday v. Poffenbarger*, 973 N.Y.S.2d 276, 279 (App. Div. 2013).

²¹⁵ *Id.* at 278.

²¹⁶ *Id.* at 278–79.

²¹⁷ *Id.* at 279.

²¹⁸ *Id.* at 280.

²¹⁹ *Id.* at 278, 280.

²²⁰ *Id.*

²²¹ *Whebbe v. Beta Eta Chapter of Delta Tau Delta Fraternity*, No. A12-1675, 2013 Minn. App. LEXIS 270, at *2–3 (Minn. Ct. App. Mar. 25, 2013).

²²² *Id.* at *3.

²²³ *Id.* at *3–4.

²²⁴ *Id.* at *6.

²²⁵ *Id.* at *8–9.

²²⁶ *Id.* at *1.

²²⁷ *Id.* at *2.

²²⁸ *Id.*

²²⁹ *Id.* at *2–3.

Focusing on landowner liability, the court stated that a landowner's duty to an invitee is to "use reasonable care in carrying on activities on the land and to maintain the property's physical condition to ensure entrants on its land are not exposed to unreasonable risks of harm."²³⁰ Further, the court relied on *Rasivong v. Lakewood Community College*.²³¹ In that case, a college hosted an event for the local Asian community and was told there might be violence.²³² Violence did ensue, but the college was not held responsible because, as the court in that case reasoned, a landowner was not responsible for the criminal acts of a third party, even despite warnings of violence.²³³ The court further reasoned that foreseeability is irrelevant if duty has not been established, so the previous police interactions with the fraternity were irrelevant.²³⁴ Because there was no duty in this case on the part of the fraternity—and no special relationship because the victim was not vulnerable or dependent—the fraternity had no power over him, and it did not deprive him of protection.²³⁵ The court ultimately concluded that the plaintiff voluntarily attended the party, had attended several of this fraternity's parties in the past without issue, supplied and consumed his own alcohol, and voluntarily entered into a verbal altercation that unexpectedly became violent.²³⁶

In *Pawlowski v. Delta Sigma Phi Fraternity*, the plaintiff was illegally served alcoholic beverages at a party thrown by the Theta Iota Chapter of Delta Sigma Phi.²³⁷ The party was held off campus at a home where the university students lived.²³⁸ At approximately one o'clock in the morning the intoxicated plaintiff left the party and was struck and killed by a motor vehicle while crossing the street.²³⁹ The court held that the national fraternity had no duty to control the parties thrown by the local fraternity.²⁴⁰ Public policy made clear "that Delta Sigma Phi Fraternity had no duty to control the conduct of the individual members of its Theta Iota Chapter so as to protect [the plaintiff]. Connecticut adheres to the principle . . . that generally there is no duty to control the conduct of a third person."²⁴¹

In its analysis of the national fraternity's duty to control, the court observed that "[n]umerous appellate courts from other jurisdictions have concluded that,

²³⁰ *Id.* at *6 (quoting *Rasivong v. Lakewood Cmty. Coll.*, 504 N.W.2d 778, 783 (Minn. Ct. App. 1993)).

²³¹ *Id.* (citing *Rasivong*, 504 N.W.2d at 783).

²³² *Id.* at *8 (citing *Rasivong*, 504 N.W.2d at 780).

²³³ *Id.* at *8–9 (citing *Rasivong*, 504 N.W.2d at 780–84).

²³⁴ *Id.* at *9–10.

²³⁵ *Id.* at *11–12.

²³⁶ *Id.*

²³⁷ *Pawlowski v. Delta Sigma Phi Fraternity*, No. CV030484661, 2010 WL 3326707, at *1 (Conn. Super. Ct. July 28, 2010).

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.* at *2.

²⁴¹ *Id.*

in the absence of control of the day-to-day activities of the local chapter, a national fraternity does not have a duty to supervise the activities of a local chapter in order to prevent harm to [the] third parties.”²⁴² Additionally, because the national fraternity did not have a special relationship with the plaintiff, it owed him no special duty.²⁴³ Finally, the court reasoned that there was no valid claim for respondeat superior because there was no evidence that the individual fraternity members were agents of the national fraternity, and the plaintiff did not argue that they were.²⁴⁴

In *Doe v. Emerson College*, a student sued Emerson College, as well as other defendants, alleging that it failed to investigate off-campus sexual assaults promptly and appropriately, which subjected her to a hostile environment and denied her educational opportunities in violation of Title IX.²⁴⁵ She also alleged negligence and negligent infliction of emotional distress.²⁴⁶ The plaintiff, an Emerson College student, alleged she was sexually assaulted on another school’s campus by a fraternity member in a fraternity house.²⁴⁷ As to Emerson College, the court held that it did not owe a duty to prevent consumption of alcohol by students, it did not have a legal duty to protect students from criminal acts off campus, and that the plaintiff failed to state a claim for negligent infliction of emotional distress or intentional or reckless infliction of emotional distress.²⁴⁸

The plaintiff argued that Emerson had a duty to protect its students based on the contents of its school publications and that Emerson’s publications also acknowledged that sexual assaults were a foreseeable risk.²⁴⁹ She therefore asserted that Emerson was negligent in failing to strictly enforce its alcohol policy and by “failing to follow the school’s guidelines with respect to responding to reported sexual assaults perpetrated by Emerson students.”²⁵⁰ The court reasoned that Emerson did not have a legal duty to supervise the social activities of adult students despite any social policies and that the assault occurred at a fraternity on another campus, further removing it from Emerson’s responsibility.²⁵¹

The court next rejected the negligent infliction of emotional distress claim, noting that it was based on the same allegations underlying the failed negligence claim.²⁵² It further noted that the complaint did not allege any physical

²⁴² *Id.* at *3.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Doe v. Emerson Coll.*, 153 F. Supp. 3d 506, 508 (D. Mass. 2015).

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 508–09.

²⁴⁸ *Id.* at 514, 517–18.

²⁴⁹ *Id.* at 513.

²⁵⁰ *Id.* at 514.

²⁵¹ *Id.* at 514–15.

²⁵² *Id.* at 517.

harm manifested by the emotional distress.²⁵³ In addressing the intentional infliction of emotional distress claim, the court stated that the complaint did not “allege any conduct by Emerson . . . that [was] sufficiently extreme and outrageous to meet” the standard that the conduct be outside the bounds of decency.²⁵⁴ It pointed out that, even if a defendant’s conduct violated the plaintiff’s civil rights, that did not, standing alone, state a claim for intentional infliction of emotional distress.²⁵⁵

In *Jones v. Pi Kappa Alpha International Fraternity, Inc.*, the plaintiff brought suit as a result of a sexual assault that occurred at a fraternity party on Ramapo College’s campus.²⁵⁶ After the plaintiff was sexually assaulted, the fraternity members became aware of this situation, and both the plaintiff and the man who assaulted her were expelled from the party.²⁵⁷ The man drove the plaintiff across campus, where they passed two campus security checkpoints, to a dormitory where he assaulted her a second time, this time with another student engaging in the assault, two other students watching, and one other student videotaping the assault.²⁵⁸

The plaintiff alleged violations of Title IX, negligence under state tort law, equal protection violations under § 1983, and violations of the New Jersey Civil Rights Act and the New Jersey Law Against Discrimination.²⁵⁹ She also alleged deliberate indifference and state-created danger under § 1983 because Ramapo “‘had the opportunity to intervene and stop’ her assault and rape.”²⁶⁰ In the trial court, Ramapo moved to dismiss the plaintiff’s complaint, and the trial court denied on all claims except those that the plaintiff did not contest.²⁶¹

On appeal, the court held that Ramapo and its officers were entitled to sovereign immunity.²⁶² It reasoned that, although Ramapo was only partially state-funded, the college was treated as an arm of the State and that it did not retain significant autonomy from state control.²⁶³ The court concluded this because Ramapo was subject to the same statutory scheme as other schools that had been deemed arms of the state.²⁶⁴ Additionally, Ramapo’s officers argued that

²⁵³ *Id.*

²⁵⁴ *Id.* at 518.

²⁵⁵ *Id.* (citing *Guckenberger v. Boston Univ.*, 957 F. Supp. 306, 319 (D. Mass. 1997)).

²⁵⁶ *Jones v. Pi Kappa Alpha Int’l Fraternity, Inc. (Jones II)*, 765 F. App’x 802, 804 (3d Cir. 2019).

²⁵⁷ *Id.* at 805.

²⁵⁸ *Id.*

²⁵⁹ *Jones v. Pi Kappa Alpha Int’l Fraternity, Inc. (Jones I)*, No. 2:16-CV-7720-KM-MAH, 2017 WL 4074547, at *1 (D. N.J. Sept. 13, 2017), *aff’d in part, rev’d in part*, 765 F. App’x 802 (3d Cir. 2019).

²⁶⁰ *Jones II*, 765 F. App’x at 805 (internal citation omitted).

²⁶¹ *Jones I*, 2017 WL 4074547, at *1.

²⁶² *Jones II*, 765 F. App’x at 806–07.

²⁶³ *Id.* at 807–08.

²⁶⁴ *Id.*

they were entitled to qualified immunity, and the court agreed.²⁶⁵ It also reasoned that “[a]t most, Jones ha[d] alleged that Ramapo employees should have done more to protect her from a private actor, which [was] outside of the scope of the state-created danger doctrine.”²⁶⁶

When liability does not attach to a GLO, it is often because of either interceding factors or a lack of clear connection between the injury and the organization’s involvement. For example, when the incident is the result of the criminal actions of a third party, sororities and fraternities generally are not responsible for protecting the victim from that third party. Additionally, the organizations typically do not owe a duty to, or have a special relationship with, the victims unless there are additional facts that give rise to this duty, such as a victim’s special vulnerability. Most important, though, is the role that GLOs play in controlling the details leading up to the incident. In terms of the relationship between the national organization and the local chapter, when the national organization did not act in concert with the local chapter in planning the event or in supplying alcohol, for example, liability will likely not be established for the national organization. Further, it is often not enough that the organization simply supplied alcohol at the event. Instead, it must have “knowingly served” alcohol to the victim or to the individual or individuals who harmed the victim. The organization also will not be liable if it should have known that the individual in question was underage, already intoxicated, or would be driving; it must actually know. Further, sororities or fraternities will not be held liable if they simply admitted an intoxicated person or allowed an individual to consume his or her own alcohol on its premises. Additionally, when the GLO members are involved—either as victims or perpetrators—courts often take into consideration that the members are not controlled by the organization, that the organization does not encourage alcohol consumption, and that the members are not acting on behalf of the organization.

D. Liability Undecided

In some cases, courts failed to find social host liability or a lack thereof because it was a jury issue. In *Baker v. Pi Kappa Phi Fraternity*, the plaintiff attended a party at the Gamma Phi chapter of Pi Kappa Phi and got into a dispute with a fraternity member that ended in a physical assault in which the fraternity member broke the plaintiff’s jaw and caused nerve damage.²⁶⁷ The plaintiff brought an action against the fraternity for assault and battery, negligence, and wantonness.²⁶⁸ The trial court entered summary judgment, but the appellate court reversed and remanded.²⁶⁹ The appellate court reasoned that both parties

²⁶⁵ *Id.* at 808–09.

²⁶⁶ *Id.* at 809.

²⁶⁷ *Baker v. Pi Kappa Phi Fraternity*, 628 So. 2d 423, 424 (Ala. 1993).

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 424, 426.

acknowledged that Pi Kappa Phi, an unincorporated association, may be liable in tort for the wrongful acts of its members “when acting collectively in the prosecution of the business for which it is organized” and that “it is responsible for the torts of its members or employees when it has encouraged or authorized them.”²⁷⁰ So the court held that there was sufficient evidence for a jury to find that the aggressor was an agent of the fraternity and that his use of force was within the scope of his duties as a fraternity member.²⁷¹ The court focused on evidence that showed that he was assigned a role at the fraternity to enforce rules with physical force, that it was foreseeable to Pi Kappa Phi that he might use force, and that force was “at least impliedly authorized by the fraternity.”²⁷²

In *Delta Tau Delta, Beta Alpha Chapter v. Johnson*, the plaintiff was sexually assaulted at a fraternity party where alcohol was served.²⁷³ She brought several claims against the perpetrator, the local fraternity chapter, and the national fraternity.²⁷⁴ The plaintiff had been invited to a fraternity party and, when she arrived, beer was being served in a common area.²⁷⁵ After a fraternity alumnus offered to drive her home, she stayed and drank with that fraternity alumnus and other individuals.²⁷⁶ The fraternity alumnus told the plaintiff he would drive her home when he was sober again, and he then locked her in a room and sexually assaulted her.²⁷⁷ The plaintiff sued both the local fraternity and the national fraternity on breaches of care claims, and the local fraternity for a violation of the Dram Shop Act.²⁷⁸ The local fraternity and national fraternity both moved for summary judgment; both claims were denied.²⁷⁹ “On interlocutory appeal, the Court of Appeals reversed both denials of summary judgment”²⁸⁰ The case was then brought to the Supreme Court of Indiana, which affirmed the reversal of summary judgment in part, reversed it in part, and remanded to the trial court.²⁸¹

The first issue that the supreme court addressed was whether the local chapter owed the plaintiff a common law duty of reasonable care.²⁸² The second issue was whether the plaintiff could proceed on a Dram Shop claim against the local chapter.²⁸³ The third issue was whether the national fraternity gratuitously

²⁷⁰ *Id.* at 425.

²⁷¹ *Id.*

²⁷² *Id.* at 426.

²⁷³ *Delta Tau Delta, Beta Alpha Chapter v. Johnson*, 712 N.E.2d 968, 970 (Ind. 1999), *vacated*, 712 N.E.2d 968 (Ind. 1999).

²⁷⁴ *Id.* at 969–70.

²⁷⁵ *Id.* at 970.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.* at 970–71.

²⁸³ *Id.* at 974.

assumed a duty of care toward the plaintiff.²⁸⁴ It reversed and remanded on the first issue, finding it was a question of fact for the jury as to whether the local fraternity met its duty of care toward the plaintiff.²⁸⁵

Starting with negligence of the local chapter, the court used a totality of the circumstances test to determine if the chapter owed the plaintiff a duty of reasonable care against the criminal acts of a third party.²⁸⁶ It established that the chapter had a duty to protect her from foreseeable sexual assault, and that there was a jury question as to whether the chapter violated that duty.²⁸⁷ In determining this, the court focused on the fact that the local chapter had two similar incidents within two years of this assault.²⁸⁸ In the first incident, a student was physically assaulted during a party where alcohol was being consumed.²⁸⁹ In the second incident, a female was blindfolded, forced to drink until she became sick, and then was spanked when she refused to keep drinking.²⁹⁰ Additionally, the court found it significant that, a month before the assault at issue, the chapter was provided information by the national fraternity about sexual assault at fraternity parties.²⁹¹

The court next considered the application of the Dram Shop Act, which allows for civil liability when one party furnishes alcohol to another who then injures a third party.²⁹² The plaintiff asserted that there were genuine issues of material fact regarding whether the local chapter provided the perpetrator with alcohol while knowing that he was already intoxicated, and whether his intoxication was the proximate cause of the plaintiff's injury.²⁹³ The court denied this argument, reasoning that the knowledge component on the part of the chapter was not satisfied.²⁹⁴ It stated, "even if one assume[d] that a member of [the chapter] furnished [the perpetrator] with alcohol, there [was] no evidence that [he] exhibited visible signs of intoxication for a pledge to notice."²⁹⁵

Finally, as to the gratuitous assumption of duty, the court held that the national fraternity did not owe the plaintiff a duty of care.²⁹⁶ The plaintiff presented evidence that the national fraternity sent the local chapter posters to be hung, which proclaimed that the fraternity was "a leading fighter against date rape and alcohol abuse."²⁹⁷ The local fraternity then hung the posters in public plac-

²⁸⁴ *Id.* at 975.

²⁸⁵ *Id.* at 973.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 973–74.

²⁸⁸ *Id.* at 973.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* at 973–74.

²⁹² *Id.* at 974.

²⁹³ *Id.*

²⁹⁴ *Id.* at 974–75.

²⁹⁵ *Id.* at 975.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

es.²⁹⁸ The court reasoned that these posters did not create an inference that the national fraternity assumed a duty because the posters did not claim that the fraternity provided security or that the fraternity could be called for help in an emergency.²⁹⁹ Therefore, the court upheld the summary judgment as to the national fraternity.³⁰⁰

In *Scheffel v. Oregon Beta Chapter of Phi Kappa Psi Fraternity*, a party guest brought a negligence action against Phi Kappa Psi and its local chapter after she was sexually assaulted by a chapter member during a party held at the chapter house.³⁰¹ She asserted claims for premises liability, failure to control, and negligence per se.³⁰² She alleged that Phi Psi was vicariously liable and that it had negligently performed its voluntary duty to supervise, control, and guide the local chapter.³⁰³

Although the national fraternity had guidelines it distributed to college fraternity chapters about drinking, this fraternity chapter in particular did not enforce any underage drinking prohibitions for its own members.³⁰⁴ The national fraternity also required its members to complete a training that discussed both sexual assault and alcohol abuse.³⁰⁵ On the night of the party, which was held with another fraternity, four fraternity members were “sober monitors” and checked in guests at the house entrance, “track[ed] the number of guests, and direct[ed] guests to the basement where the party was held.”³⁰⁶ The fraternity did not serve alcohol, but guests over twenty-one could bring their own alcohol and check it at a monitored bar.³⁰⁷ After showing ID, the guests could retrieve their alcohol.³⁰⁸ The fraternity also provided separate male and female bathrooms on different floors.³⁰⁹ On the night in question, fraternity members were aware that the perpetrator was intoxicated and put him in his room away from the party; later that evening he came downstairs and sexually assaulted the plaintiff.³¹⁰

The court of appeals reversed and remanded as to the summary judgment ruling for the local fraternity but upheld the summary judgment as to the national fraternity.³¹¹ Starting with the claims against Beta Chapter, the plaintiff

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Scheffel v. Or. Beta Chapter of Phi Kappa Psi Fraternity*, 359 P.3d 436, 441–42 (Or. Ct. App. 2015).

³⁰² *Id.* at 442.

³⁰³ *Id.* at 439.

³⁰⁴ *Id.* at 440–41.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 441.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at 441–42.

³¹¹ *Id.* at 458.

first asserted negligence based on a theory of premises liability.³¹² She asserted that she was an invitee of the chapter because she was a social guest and that she was owed a duty of care that the chapter failed to meet.³¹³ She argued that it failed to keep the property reasonably safe because it “(1) failed to properly monitor the party, (2) permitted underage members of the fraternity to possess and consume alcohol in their private rooms, and (3) allowed chapter members and their guests unmonitored access to private rooms.”³¹⁴ The court agreed with the plaintiff.³¹⁵ It reasoned that the chapter, as the possessor of land, had a duty to exercise reasonable care at the party and monitor “activities that occurred on the land.”³¹⁶ The plaintiff also argued that, based on a theory of “failure to control,” the chapter knew or should have known that there was a foreseeable risk of sexual assault of female party guests.³¹⁷ She emphasized the facts that the “underage members had access to private alcohol supplies . . . the party was not properly monitored, and . . . the chapter allowed members and their guests access to private rooms during the party.”³¹⁸

In terms of the negligence *per se* claim against the chapter, the plaintiff argued that the chapter failed to comply with administrative rules for student organizations, and that its failure constituted a *per se* violation of the standard of care.³¹⁹ Specifically, the plaintiff claimed that the chapter violated rules when it served alcohol to minors and intoxicated persons and failed to control access to alcohol in private rooms, and when the chapter did not provide security or monitor disorderly conduct.³²⁰ According to the court, these rules implicated the “‘rights and responsibilities’ of student organizations” at the university, and were meant to regulate alcohol use at closed events hosted by social organizations.³²¹ The court reasoned that there was evidence in the record creating a question of fact about whether the chapter followed the rules; specifically, that it did not control access to alcohol in private rooms.³²² Therefore, the court held that summary judgment was inappropriate.³²³

The court also clarified that the plaintiff established a question of foreseeability, further making summary judgment improper.³²⁴ Foreseeability can be established by knowledge of the propensity for criminal violence in certain situations, rather than the propensity of a certain individual to commit criminal

³¹² *Id.* at 442.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.* at 444.

³¹⁶ *Id.*

³¹⁷ *Id.* at 442.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 452 (internal citation omitted).

³²² *Id.* at 453.

³²³ *Id.*

³²⁴ *Id.* at 444–45, 453.

violence.³²⁵ Here, the record included evidence that would allow a reasonable factfinder to infer that the chapter could have foreseen a risk of sexual assault to female guests without “too many intermediate inferences and assumptions.”³²⁶ Importantly, “the chapter knew that alcohol-related sexual assaults were a foreseeable risk of hosting social events” when participants were drinking, especially in light of “permissive alcohol use by underage members and access to private rooms.”³²⁷ This conclusion was supported by the fact that the chapter required its members to participate in a training covering the increased risk of sexual assault at fraternity parties.³²⁸

In considering whether an event was foreseeable, “evidence of foreseeability will differ depending on whether the risk of injury is claimed to be specific to a school, or schools generally, or a neighborhood, or a class of potential victims such as women or particular ethnic groups.”³²⁹ The court went on to state that the “relevant inquiry” is whether there was evidence in the record from which a factfinder could infer that the “chapter knew or should have known that, if it was negligent in the manner alleged by the plaintiff, that negligence placed [the] plaintiff at an unreasonable risk of criminal conduct.”³³⁰ Ultimately, the court reasoned that, although the chapter did take some precautions, it also failed to take other important ones, such as prohibiting access to private rooms and allowing unmonitored alcohol use by underage fraternity members.³³¹

Turning to the national fraternity, the pertinent question posed by the court was whether the factfinder could conclude that Phi Psi had the right to control the physical details of hosting and monitoring the party in question.³³² The “right to control” theory is based in agency law, and it allows a principal to be held vicariously liable for the negligence of its nonemployee agents.³³³ The court held that a reasonable factfinder could not conclude that the national fraternity had the right to control the local chapter.³³⁴ It stated,

the evidence establishes only that Phi Psi’s powers, at least with respect to the type of day-to-day operations at issue here, were essentially remedial in nature. That is, Phi Psi could react to violations of its policies or to a chapter’s misconduct with punishment but . . . the policies were generalized standards that al-

³²⁵ *Id.* at 446.

³²⁶ *Id.* at 447.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.* (quoting *Fazzolari v. Portland Sch. Dist. No. 1J*, 734 P.2d 1326, 1338 (Or. 1987) (en banc)).

³³⁰ *Id.* at 449–50.

³³¹ *Id.* at 450.

³³² *Id.* at 455.

³³³ *Id.* at 453.

³³⁴ *Id.* at 455.

lowed day-to-day control over the functions of Beta Chapter to remain with the local chapter.³³⁵

So, like many other cases involving a national fraternity, the inability to proactively enforce rules meant that the national organization would not face liability for injuries sustained during a chapter's event.

In cases where liability remained undecided that were sent back to the lower court, the facts tended to raise questions about the level of involvement and control of the GLO. For example, evidence that an organization encouraged or authorized the tort or that it was involved as a host or supplier of alcohol was sufficient to allow the case to progress forward. Additionally, jury questions about foreseeability, when paired with a duty to exercise reasonable care and monitor activities on the organization's land, were also sufficient to send the case to a jury. In sum, while many of the factors overlapped between cases, variations in facts, especially those indicating the extent of the organization's control over the events, as well as nuances in jurisdictional law, made the most significant differences in whether sororities and fraternities were held liable for injuries that occurred at their events and on their properties.

II. THE BROADER FRAMEWORK: SOCIAL EVENT LIABILITY

The social host liability framework focuses on events where alcohol precipitated the harm in question. In these instances, when liability attaches, it is often because the fraternity or sorority was responsible for providing the alcohol that caused the harm, failed to restrict alcohol from already intoxicated or underaged individuals, or both. Even in the absence of alcohol, though, violent events or dangerous accidents still take place on fraternity and sorority property or at their events. These incidents can include stabbings, fist fights, shootings, and sexual assaults. Such altercations are the result of uninvited party attendees, arguments over romantic partners, or simply boiled over tensions. On some sad occasions, injuries and death result. Even when alcohol plays little-to-no role in causing these incidents, fraternities may still be held liable. This section provides examples of instances in which violence or death took place in Greek life associated circumstances.

A. *Fist Fights*

While fist fights can take place in a variety of Greek life settings, often these run-ins are the result of tensions boiling over with groups of people or at parties. On October 30, 2011, outside a Hobart College fraternity house, a group of four men beat up a Hobart student.³³⁶ The student suffered a broken jaw from the fight, and one of the aggressors, Demetree Eldridge, was charged

³³⁵ *Id.*

³³⁶ Victoria E. Freile, *Geneva Teen Charged in Beating of Hobart Student at Frat Party*, ROCHESTER DEMOCRAT & CHRON., Oct. 31, 2011, ProQuest, Doc. ID 901198357.

with second-degree assault.³³⁷ A year later in February of 2012, Washington State University football player C.J. Mizell was denied entry to a Delta Tau Delta party and punched a member as a result.³³⁸ He was arrested the next day and arraigned on charges in the Whitman County District Court.³³⁹ In 2013 there were two fraternity-related fights at Arizona State University. The first, on April 27, involved Delta Kappa Epsilon members fighting two nonstudents over a female.³⁴⁰ This fight also led to two Arizona State University students, among others, needing medical attention for head injuries.³⁴¹ The second Arizona State University fight occurred on November 18, when twenty Tau Kappa Epsilon members attacked three Delta Kappa Epsilon men.³⁴² Lastly, on August 27, 2014, two men sustained facial injuries after a fight at Pennsylvania State University's Delta Sigma Phi fraternity house.³⁴³

There are many incidents in which fights break out over uninvited guests entering fraternity parties. For example, on February 23, 2014, there was an off-campus party at Bloomsburg University's Zeta Psi's house.³⁴⁴ Some football players from Kutztown University tried to enter the private party and were denied, thus leading to an altercation.³⁴⁵ Bloomsburg student Jackie Lithgow tried to break up the fight and ended up with a fractured skull and brain bleed.³⁴⁶ Lithgow spent months in the hospital and rehab centers.³⁴⁷ Another Bloomsburg student, Donald Hoover, suffered ear injuries during the same fight.³⁴⁸ Two of the four Kutztown football players, Angel Cruz and Justin Wieder, were suspended from the team and charged with aggravated assault.³⁴⁹

³³⁷ *Id.*

³³⁸ Bob, *NW Sports from the AP*, COAST RADIO (Feb. 8, 2012), <https://kcfmradio.com/2012/02/08/nw-sports-from-the-ap-109/> [<https://perma.cc/3ZYL-DKLE>].

³³⁹ See Christian Caple, *Brief: Pullman Police Arrest Cougars LB C.J. Mizell*, SPOKESMAN-REV., Feb. 7, 2012, ProQuest, Doc. ID 920037364. Christian Caple, *Mizell Dismissed from Washington State Football Team*, SPOKESMAN-REV. (Feb. 7, 2012), <https://www.spokesman.com/stories/2012/feb/07/mizell-dismissed-washington-state-football-team/> [<https://perma.cc/N6US-HVEU>].

³⁴⁰ *ABC News Good Morning America*, ABC (May 1, 2013, 7:35 AM), https://archive.org/details/WJLA_20130501_110000_ABC_News_Good_Morning_America/start/2100/end/2160 [<https://perma.cc/2JKR-A33H>].

³⁴¹ Jackee Coe & Dianna Nañez, *Tempe Party Rules Pushed*, ARIZ. REPUBLIC, Apr. 30, 2013, at B1.

³⁴² *Id.* at B3.

³⁴³ *News Brief: Second Man Assaulted at Fraternity*, DAILY COLLEGIAN (August 29, 2014), https://www.collegian.psu.edu/news/crime_courts/news-brief/article_880f07c2-2f07-11e4-a378-0017a43b2370.html [<https://perma.cc/TBJ9-YDXT>].

³⁴⁴ Rochel Leah Goldblatt, *Bloomsburg Brawl Victim Takes Turn for Worse*, READING EAGLE, Apr. 5, 2014, ProQuest, Doc. ID 1512690327.

³⁴⁵ *Id.*

³⁴⁶ See Rochel Leah Goldblatt, *Bloomsburg University Student Making Progress After February Beating*, READING EAGLE, May 29, 2014, ProQuest, Doc. ID 1529766647.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

The other two Kutztown students, Jake Wygant and Eric Condron, avoided legal prosecution since it could not be proven they were part of the physical altercation.³⁵⁰

On September 12, 2015, an unidentified person entered a private party at UCLA's Sigma Phi Epsilon fraternity house without an invitation, a fight started, and the person hit a UCLA student over the head with a bottle.³⁵¹ Similarly, on September 23, 2016, there was a fight—this time involving golf clubs—at the Kappa Sigma house at Tennessee Tech University after an individual was not let into a party.³⁵² On January 26, 2019, an individual was denied entry to a Sigma Alpha Epsilon house party at the University of New Hampshire and brought back football players to assault the fraternity brothers.³⁵³ Four men—Quinlen Dean, Jackson Housman, Zachary Banks, and Kyle Hamper—were charged with felony counts of riot, but three men's charges were reduced to misdemeanors, which they all pleaded guilty to.³⁵⁴

B. *Stabbings*

In addition to fist fights, stabbing incidents are another common source of fraternity and sorority related injuries. Clashes between fraternities are one such source of these violent assaults. For example, in 2003, San Jose University student Alam Kim was stabbed to death in a fight between Pi Alpha Phi and Lambda Phi Epsilon.³⁵⁵ Students from UC Santa Cruz were also involved and injured.³⁵⁶ Stabbings can result from an array of different dilemmas, though, as outlined below.

³⁵⁰ Manuel Gamiz, *No Charges for 2 KU Football Players: Whitehall Grad, Philly Athlete Can Return to Team in Wake of Bloomsburg Brawl Case*, MORNING CALL, Mar. 26, 2014, at A.8, ProQuest, Doc. ID 1510371802.

³⁵¹ Roberto Luna Jr., *UCLA Student Assaulted with Bottle at Fraternity House*, DAILY BRUIN (Sep. 15, 2015, 4:47 PM), <https://dailybruin.com/2015/09/15/ucla-student-assaulted-with-bottle-at-fraternity-house> [<https://perma.cc/69PE-TERW>].

³⁵² Tracey Hackett, *Frat Fight Leads to 11 Arrests*, HERALD-CITIZEN (Sept. 26, 2016), <https://herald-citizen.com/stories/frat-fight-leads-to-11-arrests,17504> [<https://perma.cc/7LCE-P3W2>].

³⁵³ Kimberly Haas, *UNH Football Players Involved in Brawl Plead Guilty*, N.H. UNION LEADER (May 20, 2019), https://www.unionleader.com/news/crime/unh-football-players-involved-in-brawl-plead-guilty/article_16905e47-cd71-5217-8ba6-7738482daf05.html [<https://perma.cc/7WM6-9L3H>].

³⁵⁴ *Id.*; Karen Dandurant, *UNH Football Players Charged in Frat-House Riot*, FOSTER'S DAILY DEMOCRAT, <https://www.fosters.com/story/news/crime/2019/02/01/unh-football-players-charged-in-frat-house-riot/6135397007/> [<https://perma.cc/D73E-Z85T>] (Feb. 1, 2019, 5:27 PM); Brian Early, *3 UNH Football Players Plead Guilty to Riot Charges*, FOSTER'S DAILY DEMOCRAT, <https://www.fosters.com/story/news/crime/2019/05/23/3-unh-football-players-plead-guilty-to-riot-charges/5077683007/> [<https://perma.cc/FNF9-PZ6M>] (May 23, 2019, 5:54 PM).

³⁵⁵ Michelle Maitre, *Fraternity Rivalries Seldom Lead to Violent Brawls - Local Greek Community Says*, SAN MATEO CNTY. TIMES, Jan. 24, 2003, at Front Page, NEWSBANK.

³⁵⁶ *Id.*

Like fist fights, many stabbings have occurred because of denial of entry to parties, and from 2008 to 2009, there were several such incidents. In 2008, following rejection from a fraternity party at San Diego's Mesa College, Esteban Nunez and three of his friends stabbed and killed Luis Santos.³⁵⁷ Nunez also stabbed two others at the same party.³⁵⁸ Nunez pleaded guilty to voluntary manslaughter and assault with a deadly weapon.³⁵⁹ Originally Nunez was sentenced to sixteen years in prison, but Governor Arnold Schwarzenegger reduced it to seven years—likely because his father, Fabian Nunez, was the former Assembly Speaker of California.³⁶⁰ Additionally, on September 20, 2009, Nicholas Condit barred Rashaun K. Cameron and his friends from entering a party at Syracuse University's Alpha Tau Omega fraternity house.³⁶¹ Cameron then stabbed Condit twice.³⁶² When other Syracuse students, John Tate and Ryan Saroya, tried to intervene, Cameron stabbed them as well.³⁶³ Cameron pleaded guilty to a felony count of first-degree assault.³⁶⁴ Finally, in July of 2009, a group of people unknown to the Zeta Psi fraternity at University of Texas-Austin tried to enter their rush party.³⁶⁵ The group was prevented from entering.³⁶⁶ In response, they stabbed Tyler Currier, a member of the fraternity.³⁶⁷ The perpetrator was arrested for aggravated assault.³⁶⁸

In addition to denial of entry, many stabbings have taken place resulting from disagreements or arguments that arose because of behavior at parties. In November of 2009, Jacob Herbert was reportedly at a Phi Kappa Psi party at the University of Buffalo.³⁶⁹ Although Herbert was allowed entry to the party, when the cops broke the party up, Herbert demanded his cover charges get refunded.³⁷⁰ Following this demand, a fight broke out in which Herbert was stabbed and later died.³⁷¹ On January 15, 2011, Daren Venable stabbed Jeffrey

³⁵⁷ See Tom Verdin, *California Republicans Condemn Schwarzenegger Clemency for Political Ally's Son*, CANADIAN PRESS, Mar. 20, 2011, NEWSROOM.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ Jim O'Hara, *Man Admits Stabbing Student*, POST-STANDARD, May 28, 2010, at A6, NEWSBANK.

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ See Andrew Martinez, *U. Texas Student Stabbed in Fraternity House*, DAILY TEXAN, July 3, 2009, U-Wire.

³⁶⁶ *See id.*

³⁶⁷ *See id.*

³⁶⁸ *Id.*

³⁶⁹ T.J. Pignataro, *Students Step up to the Plate, Join Neighbors in Effort to Deter Crime*, BUFFALO NEWS (Nov. 4, 2009), https://buffalonews.com/news/students-step-up-to-the-plate-join-neighbors-in-efforts-to-deter-crime/article_2669911a-fe16-53f2-82b9-8005ce1c7920.html [https://perma.cc/8UUJ-ZKE8].

³⁷⁰ *Id.*

³⁷¹ *Id.*

Bordeaux in a fight over a woman at the Delta Upsilon house of the University of Rochester River.³⁷² Bordeaux ultimately died.³⁷³ Venable pleaded not guilty to second-degree murder on the account of self-defense.³⁷⁴ Monroe county court judge, John L. DeMarco, found him not guilty.³⁷⁵ Bordeaux's parents filed a lawsuit seeking \$24 million in damages.³⁷⁶

In 2013, another stabbing took place when uninvited party attendees attempted to enter. Two men were stabbed near the Sigma Alpha Epsilon house at the University of Michigan in Ann Arbor.³⁷⁷ They suffered minor wounds.³⁷⁸ The police took the male suspect into custody.³⁷⁹ Sigma Alpha Epsilon member Matthew Skoro stated that the fight that led to the stabbing was over an individual being denied entry to their party.³⁸⁰

There are also instances of stabbings that do not have an explicitly stated motive or, tragically, that are the result of individuals trying to deescalate a fight that was already occurring. On September 29, 2013, Jace Jeffrey Ugrich was stabbed in the back while attempting to break up a fight between two men at Bemidji State University's Theta Tau Epsilon.³⁸¹ The suspect, Jacob Andrew Young, was arrested.³⁸² In the early morning of July 19, 2014, a San Diego State University student was stabbed in the back three times while trying to break up a fight at Sigma Alpha Epsilon.³⁸³ There were three suspects being investigated.³⁸⁴ Additionally, on January 19, 2014, Johns Hopkins student Giovanni Urquilla was stabbed by an unknown suspect at the Phi Kappa Alpha house.³⁸⁵ On April 5 of the same year, University of Southern Mississippi stu-

³⁷² See James Goodman, *UR Reviews Its Policies After Stabbing*, ROCHESTER DEMOCRAT & CHRON., Apr. 23, 2011, ProQuest, Doc. ID 863035680.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ James Goodman, *Family of Slain UR Student Files \$24M Lawsuit*, ROCHESTER DEMOCRAT & CHRON., Nov. 28, 2012, ProQuest, Doc. ID 1220634913.

³⁷⁷ Austen Hufford, *Two Stabbed Near Sigma Alpha Epsilon House, Suspect in Custody*, MICH. DAILY (Nov. 1, 2013), <https://www.michigandaily.com/uncategorized/developing-police-search-knife-near-sae/> [<https://perma.cc/BW6C-7SBT>].

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Suspect Arrested in Stabbing of Bovey Man at Bemidji Fraternity Party*, DULUTH NEWS TRIB. (Oct. 6, 2013, 7:05 AM), <https://www.duluthnewstribune.com/news/suspect-arrested-in-stabbing-of-bovey-man-at-bemidji-fraternity-party> [<https://perma.cc/G4WG-MQKA>].

³⁸² *See id.*

³⁸³ Associated Press, *San Diego State Student Stabbed at Frat Party*, SAN DIEGO UNION-TRIB. (July 21, 2014, 7:11 AM), <https://www.sandiegouniontribune.com/sdut-san-diego-state-student-stabbed-at-frat-party-2014jul21-story.html> [<https://perma.cc/3AA8-T6EW>].

³⁸⁴ Camile Lozano, *SDSU Student Stabbed at Fraternity House*, DAILY AZTEC (July 21, 2014), <https://thedailyaztec.com/54609/daily-aztec-stories/sdsu-student-stabbed-at-fraternity-house/> [<https://perma.cc/PLU3-9269>].

³⁸⁵ Ashley Emery, *PIKE Brother Stabbed at House Party*, JOHNS HOPKINS NEWS-LETTER (Jan. 30, 2014), <https://www.jhunewsletter.com/article/2014/01/pike-brother-stabbed-at-hous>

dent and member of Sigma Alpha Epsilon Elijah Dollar stabbed a fellow brother, Kevin Inmom, at their fraternity house.³⁸⁶ Dollar was suspended from school, charged with aggravated assault, and went to jail but was released on bail.³⁸⁷

In 2014, there was a large fight at Northern Illinois University (NIU) connected to the Alpha Psi Lambda fraternity.³⁸⁸ Nine people, including six NIU students, were charged in connection with the fight.³⁸⁹ Alpha Psi Lambda member Juan D. Rodriguez was charged with two counts of aggravated battery for stabbing a man who entered the fraternity party without an invitation.³⁹⁰ Two non-NIU students, Rory Rhynes and Lo Angelo Harvey, were charged with felony aggravated battery.³⁹¹ Similarly, on September 18, 2015, Polytechnic State University and Cuesta College students were stabbed for not allowing uninvited people into the Alpha Gamma Rho party.³⁹² The attackers were unknown.³⁹³

On August 28, 2016, Ithaca College student Anthony Nazaire and his friend Rahiem Williams got into a fight with Nagee Green over Williams bumping into a woman at an Omega Psi Phi party at Cornell University.³⁹⁴ Nazaire was stabbed and eventually died.³⁹⁵ In 2017, Green was sentenced to twenty years in prison for assault and second-degree murder.³⁹⁶ Next, on September 10, 2017, Robert Mannifield stabbed Joseph Venditto with a box cutter

e-party-91027 [https://perma.cc/EDU7-TSFF].

³⁸⁶ Kirstie Lowery, *UPD Investigates Fraternity Altercation*, S. MISS. STUDENT MEDIA CTR. (Apr. 10, 2014), <https://sm2media.com/3421/news/upd-investigates-fraternity-altercation/> [https://perma.cc/QP33-9VEN].

³⁸⁷ *Id.*

³⁸⁸ Andrea Azzo, *Fight Outside DeKalb Party Leads to Stabbing*, DAILY CHRON. (Oct. 14, 2014, 12:27 PM), <https://www.shawlocal.com/2014/10/14/fight-outside-dekalb-party-leads-to-stabbing/a4uw01/> [https://perma.cc/Y5J8-6W4Q].

³⁸⁹ *9 Charged in Frat Fight at NIU*, DAILY HERALD, Oct. 8, 2014, at 19, NEWSBANK.

³⁹⁰ Azzo, *supra* note 388.

³⁹¹ *9 Charged in Frat Fight at NIU*, *supra* note 389.

³⁹² See *Double Stabbing Near Mustang Village*, MUSTANG NEWS (Sep. 18, 2015), <https://mustangnews.net/double-stabbing-near-mustang-village/> [https://perma.cc/59KK-7WSS].

³⁹³ *Id.*

³⁹⁴ Mike Kennedy, *Ithaca College Student Stabbed to Death at Cornell University*, AM. SCH. & UNIV. (Aug. 30, 2016), <https://www.asumag.com/safety-security/article/20853364/ithaca-college-student-stabbed-to-death-at-cornell-university> [https://perma.cc/X4WV-QCZH]; Josephine Chu, *Nazaire Stabbed After Attending Omega Psi Phi Event, Source Confirms*, CORNELL DAILY SUN (Aug. 29, 2016), <https://cornellsun.com/2016/08/29/nazaire-stabbed-after-attending-omega-psi-phi-event-source-confirms/> [https://perma.cc/ET84-R22P]; Anna Delwiche & Nicholas Bogel-Burroughs, *Man Convicted of Murder of I.C. Student Sentenced to 20 Years in Prison*, CORNELL DAILY SUN (Nov. 7, 2017), <https://cornellsun.com/2017/11/07/man-convicted-of-murder-of-i-c-student-sentenced-to-20-years-in-prison/> [https://perma.cc/RL2T-PLWP].

³⁹⁵ Chu, *supra* note 394.

³⁹⁶ Delwiche & Bogel-Burroughs, *supra* note 394.

outside a Rutgers University fraternity party.³⁹⁷ Venditto entered the party despite not being a member of that fraternity.³⁹⁸ Mannifield was “charged with aggravated assault and possession of a weapon for an unlawful purpose.”³⁹⁹

Lastly, a unique disagreement gave rise to a 2017 stabbing at Radford University.⁴⁰⁰ On September 28, 2017, Elijah Zavion Nichols stabbed three people after fraternity members attempted to escort him out.⁴⁰¹ The fraternity members had tried to force him out of the party after Nichols rolled a blunt of marijuana.⁴⁰² Nichols was sentenced to ten years in prison.⁴⁰³

C. Shootings

Like the incidents of stabbings and physical assaults, shootings have also occurred because people were not allowed into or asked to exit Greek life events. On September 25, 2010, Nicholas Welch refused to pay the cover charge for a Seton Hall fraternity party and was not allowed in; therefore, Welch opened fire.⁴⁰⁴ This shooting led to the death of student Jessica Moore and injured four other people.⁴⁰⁵ It is believed that Marcus Bascus provided Welch with the gun.⁴⁰⁶ Both men were arrested.⁴⁰⁷ Welch pleaded not guilty to murder, conspiracy, and weapons charges in his first court appearance.⁴⁰⁸

The following year, after Columbus Jones Jr. was thrown out of an Omega Psi Phi party at Youngstown State University, he returned with his friend, Braylon L. Rogers, and a gun.⁴⁰⁹ Jamail Johnson, a party attendee, was trying to

³⁹⁷ Suzanne Russell, *Man Charged in Rutgers Frat Party Attack*, ASBURY PARK PRESS, Sep. 14, 2017, at A.14, ProQuest, Doc. ID 1938382644.

³⁹⁸ *Id.*

³⁹⁹ Suzanne Russell, *North Brunswick Man Accused of Rutgers Party Attack Released*, HOME NEWS TRIB., Sept. 21, 2017, at A.2, ProQuest, Doc. ID 1940830629.

⁴⁰⁰ Mike Gangloff, *Radford Stabbing Case Brings 10 Years*, ROANOKE TIMES, Dec. 18, 2018, at 13, NEWSBANK.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ See Associated Press, *Second Man Charged in Shooting of Seton Hall Student Faces Court Appearance*, NJ.COM (Oct. 13, 2010, 3:00 PM), https://www.nj.com/news/2010/10/man_charged_in_shooting_of_set.html [<https://perma.cc/EB63-53HH>].

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Seton Hall Shooting Suspect Pleads Not Guilty*, CBS N.Y. (Sept. 29, 2010, 1:56 PM) <https://www.cbsnews.com/newyork/news/seton-hall-shooting-suspect-due-in-court/> [<https://perma.cc/E5TW-WSAW>].

⁴⁰⁹ Associated Press, *Man Gets 92 Years in Ohio Frat House Shooting*, BOS. GLOBE (Sept. 1, 2012, 12:00 AM), <https://www.bostonglobe.com/news/nation/2012/08/31/man-gets-years-ohio-frat-house-shooting/ffLo27Cl3uNY8olNfAUXdN/story.html> [<https://perma.cc/5SVX-FBKK>]; *Youngstown Shooting Suspects Will Face Murder Charges*, REUTERS (Feb. 7, 2011, 3:46 PM), <https://www.reuters.com/article/us-ohio-shooting/youngstown-shooting-suspects-will-face-murder-charges-idUSTRE7166NU20110207> [<https://perma.cc/KV59-9CWS>].

help others get away from the gunfire when he was shot in the head and killed.⁴¹⁰ The gunfire also wounded eleven other people.⁴¹¹ Rogers and Johnson were arrested for aggravated murder.⁴¹² In June of that year, two people were denied entry into Fresno State University's Pi Kappa Alpha party.⁴¹³ They ended up shooting three people at this party.⁴¹⁴ Following this event, the school suspended Pi Kappa Alpha.⁴¹⁵

Shooting deaths at fraternities can also happen by accident or without a stated motive. In January 2011, Evan Wilhelm was showing off his AK-47 rifle when it unintentionally discharged and killed Florida State sophomore Ashley Cowie.⁴¹⁶ On September 22, 2013, there was a shooting at a fraternity house near Western Michigan University's campus.⁴¹⁷ Emon Edwin Williams was the shooter, and he fired the gun into his own leg.⁴¹⁸ His weapon also caused flying glass injuries to a 20-year-old woman.⁴¹⁹ There was no stated motive.⁴²⁰ At Eastern Illinois University, two people were shot and injured at Phi Beta Sigma's "Barn Party" in 2014.⁴²¹ This led to the fraternity being removed from campus.⁴²² Lastly, Nicholas Kapusniak was tragically killed in 2014 by a seemingly random drive-by shooting at a fraternity party.⁴²³ The St. Louis College

⁴¹⁰ 2 *Held in US for Fatal Shooting*, DAILY PAK BANKER, Feb. 8, 2011, 2011 WLNR 2568419.

⁴¹¹ *Id.*

⁴¹² *Youngstown Shooting Suspects Will Face Murder Charges*, *supra* note 409.

⁴¹³ See Associated Press, *Fresno State Suspends Fraternity After Shooting*, SAN DIEGO UNION-TRIB. (June 21, 2011, 5:20 AM), <https://www.sandiegouniontribune.com/sdut-fresno-state-suspends-fraternity-after-shooting-2011jun21-story.html> [<https://perma.cc/G3SH-L6EQ>].

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ See *MSNBC Live with Cenk Uygur* (MSNBC television broadcast Mar. 1, 2011).

⁴¹⁷ Aaron Mueller, *Man Shot During Fight at Fraternity House*, KALAMAZOO GAZETTE (Sept. 23, 2013), <http://www.mlive.com/news/kalamazoo/index.ssf/2013/09/s.html> [<https://perma.cc/DP6T-F8MC>].

⁴¹⁸ *Police: Man Shot Self Near Western Michigan Campus*, AP STATE NEWS, Oct. 23, 2013, NEWSROOM. *But see* Aaron Mueller, *Charges Against Emon Williams Dropped in September Frat House Shooting*, MLIVE, https://www.mlive.com/news/kalamazoo/2013/12/charges_against_emon_williams.html [<https://perma.cc/ZQC3-MSKR>] (Dec. 23, 2013, 8:40 PM).

⁴¹⁹ *Police: Man Shot Self Near Western Michigan Campus*, *supra* note 418.

⁴²⁰ *Id.*

⁴²¹ Dave Fopay, *Barn Party Suspect Pleads Guilty*, J. GAZETTE & TIMES-COURIER, April 8, 2014, 2014 WLNR 9475761.

⁴²² *Id.*

⁴²³ Don Walker, *Student from Waukesha Killed in Apparent Drive-by Shooting in St. Louis*, MILWAUKEE J. SENTINEL (Mar. 2, 2014), <https://archive.jsonline.com/news/crime/student-from-waukesha-killed-in-apparent-drive-by-shooting-in-st-louis-b99216583z1-248104141.html> [<https://perma.cc/9GJ2-GDCM>].

student was at his Alpha Zeta Omega backyard party when a white sedan in an alley shot at them.⁴²⁴

On April 18, 2014, another shooting occurred because of a guest being asked to leave a party. In this occurrence, Shaquan Landrum was asked to leave a Sigma Theta Chi fraternity party at Kean University.⁴²⁵ Landrum left and returned to the house with a gun, shooting a student who was attending the party.⁴²⁶ This shooting led to one student being hospitalized.⁴²⁷ Landrum faced weapons charges.⁴²⁸

Sadly, some victims of shooting altercations are not the initial perpetrators. In one such instance, in September 2015, victim Derrick Page Jr., was trying to break up a fight, where Page was shot and killed by Marquette L. West for trying to stop his friend, Aaron Williams, from fighting at an Aurora University Alpha Phi Alpha event function.⁴²⁹ West pleaded guilty to first-degree murder and is now serving a twenty-seven-year sentence.⁴³⁰ Next, in another escalation of an attempt to end an altercation, Louisiana State University basketball player Wayde Sims was shot and killed while trying to break up a fight.⁴³¹ There is DNA evidence that Dyteon Simpson fired the gun, but he pleaded not guilty.⁴³²

⁴²⁴ See Don Walker, *Police Search for Clues in Shooting Death of Student from Waukesha*, MILWAUKEE J. SENTINEL (Mar. 4, 2014), <https://archive.waukeshanow.com/communitywatch/248216921.html> [https://perma.cc/Z8JR-PQ3H].

⁴²⁵ *Man Faces Charges in Kean Frat Shooting*, STAR-LEDGER, May 6, 2014, at 19, NEWSBANK; *N.J. Man Charged with Attempted Murder in Kean University House Party Shooting*, CBS N.Y. (May 5, 2014, 3:50 PM), <https://www.cbsnews.com/newyork/news/n-j-man-charged-with-attempted-murder-for-kean-university-house-party-shooting/> [https://perma.cc/5GBY-D7GM].

⁴²⁶ *Man Faces Charges in Kean Frat Shooting*, *supra* note 425.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ See Harry Hitzeman, *Lawsuit: Inadequate Security at Aurora Frat Party Where Man Was Killed, Suit Says*, DAILY HERALD (Sept. 6, 2017, 4:08 PM), <https://www.dailyherald.com/news/20170906/lawsuit-inadequate-security-at-aurora-frat-party-where-man-was-killed-> [https://perma.cc/E38B-ZR8U].

⁴³⁰ *Man, 25, Pleads Guilty to Murder in 2015 Fatal Shooting Outside Aurora Party*, CHI. SUN-TIMES (Jan. 28, 2019, 6:33 PM), <https://www.chicagotribune.com/suburbs/aurora-beacon-news/ct-abn-marquette-west-jury-trial-begins-st-0127-story.html> [https://perma.cc/F8VT-2WA3].

⁴³¹ Glenn Guilbeau, *Man Arrested in Connection with Shooting Death of LSU Basketball Player Wayde Sims*, DAILY ADVERTISER (Sept. 29, 2018, 3:58 PM), <https://www.theadvertiser.com/story/sports/college/lsu/2018/09/29/man-arrested-connection-shooting-death-lsus-wayde-sims/1471270002/> [https://perma.cc/Z2FL-UNPT].

⁴³² See Joe Gyan Jr., *In Slaying of LSU Basketball Player Wayde Sims, Baker Man Indicted on Murder*, ADVOC. (Jan. 24, 2019, 5:30 PM), https://www.theadvocate.com/baton_rouge/news/courts/article_e1446156-1f36-11e9-ba65-7b3a996dc375.html [https://perma.cc/VQ4E-ERJL].

In 2018, Tobechei Opara was shot at a fraternity party at UNC Greensboro, and no suspect has been identified yet in this case.⁴³³

In April of 2015, three students from various fraternities and sororities at Delaware State University were injured at a cookout when an unknown suspect shot into the group.⁴³⁴ Lastly, in October of 2015, a member of Northern Arizona University's Sigma Chi, Steven Jones, decided to play "ding dong ditch" with the Delta Chi fraternity; however, the Delta Chi's interpreted this as Jones crashing their party.⁴³⁵ This led to a heated argument in which Jones found his handgun in his car, killed one man, and injured three others.⁴³⁶ Jones pleaded guilty in January 2020 to manslaughter and three counts of aggravated assault and was sentenced to six years in jail.⁴³⁷

In another occurrence of an uninvited party attendee gone wrong, Daniel Magee was denied entry into a Sigma Chi party at the University of Texas-Austin in 2016 by the security guard because he was not a University of Texas student or a member of the fraternity.⁴³⁸ Magee left, returned with a gun, and shot the guard in the foot.⁴³⁹ Magee was charged with aggravated assault with a deadly weapon.⁴⁴⁰ He was released on bail and was assumed to be hiding with family outside of the country.⁴⁴¹ Similarly, in the early hours of October 28,

⁴³³ See Danielle Battaglia, *Shooting Breaks up Off-Campus UNCG Party Thursday Morning*, WINSTON-SALEM J. (Apr. 26, 2018), https://journalnow.com/shooting-breaks-up-off-campus-uncg-party-thursday-morning/article_1b9ff257-0f2f-5e76-b971-e3da19a1e167.html [<https://perma.cc/HFR6-TCAD>]; *New Details Reveal UNCG Student Shot at Off-Campus Party*, FOX 8 NEWS, <https://myfox8.com/news/new-details-reveal-uncg-student-shot-at-off-campus-party> [<https://perma.cc/TR9G-89LN>] (Apr. 27, 2018, 7:05 PM).

⁴³⁴ Dover Post, *DSU Official: Campus 'as Safe as Possible' Despite Shootings*, DEL. ONLINE, <https://www.delawareonline.com/story/news/local/2015/04/21/dsu-official-campus-as-safe/34722752007/> [<https://perma.cc/FK6A-4JBT>] (Mar. 4, 2015, 12:38 PM).

⁴³⁵ See Michelle McManimon, *Blindsided or Shooting Blindly?*, AZ. DAILY SUN (Nov. 24, 2015), https://azdailysun.com/news/local/crime-and-courts/blindsided-or-shooting-blindly/article_b62bdb03-3fcb-582e-a4f5-11e253fabf45.html [<https://perma.cc/JQ2F-NUUA>].

⁴³⁶ *1 Dead, 3 Wounded in NAU Shooting; Suspected Shooter Held on \$2M Bond*, 12NEWS, <https://www.12news.com/article/news/1-dead-3-wounded-in-nau-shooting-suspected-shooter-held-on-2m-bond/75-29063814> [<https://perma.cc/G8BR-UFW4>] (Oct. 9, 2015, 6:17 PM).

⁴³⁷ Scott Buffon, *Steven Jones Given Six-Year Sentence for NAU Shooting in 2015*, AZ. DAILY SUN (Feb. 12, 2020), https://azdailysun.com/news/steven-jones-given-six-year-sentence-for-nau-shooting-in-2015/article_6aedff61-b7ac-5b91-80f2-de128d51dacc.html [<https://perma.cc/3CCW-8N4V>].

⁴³⁸ *Teen Arrested in Shooting at Texas Fraternity Party*, AP NEWS (Sept. 12, 2016), <https://apnews.com/article/3d89d589998244e296506723e982fa23> [<https://perma.cc/J6AB-2DCU>].

⁴³⁹ *Id.*

⁴⁴⁰ See Alan Shields, *Sued for £4m, the Teen Accused of Shooting at University Party*, SCOT. DAILY MAIL (Jan. 10, 2017), <https://www.pressreader.com/uk/scottish-daily-mail/20170110/281990377208400> [<https://perma.cc/A3NH-8HKB>].

⁴⁴¹ Ryan Autullo, *Suspected UT Frat Party Shooter Might Be Hiding in Scotland*, AUSTIN AM.-STATESMAN, <https://www.statesman.com/story/news/2017/10/30/suspected-ut-frat-party-shooter-might-be-hiding-in-scotland/10112516007/> [<https://perma.cc/EUQ4-XE23>] (Sept. 25, 2018, 11:39 AM).

2017, a group of men were denied entrance to a Rutgers' fraternity party.⁴⁴² This led to a fight in which a gun was used to shoot a twenty-one-year-old man in the shoulder.⁴⁴³ The suspect is still unknown.⁴⁴⁴

At University of Northern Iowa in 2017, Darius Devon Nickelous shot several times into a crowd of 150 people at a campus event.⁴⁴⁵ Nickelous was sentenced to ten years for unlawful possession of a firearm.⁴⁴⁶ A year later in 2018, Kemontie Johnson was shot and killed at Indiana University's Kappa Alpha Psi.⁴⁴⁷ The suspect is still unknown.⁴⁴⁸ Next, in 2019, at Jackson State University's Omega Psi Phi "Que party," Ryan Davis got in an argument with an individual at the party, and he shot at the crowd.⁴⁴⁹ Davis was charged with six counts of aggravated assault.⁴⁵⁰ Additionally, Moral Abram, who was shot at this party, sued the fraternity for not providing enough protection for partygoers.⁴⁵¹

Lastly, discrimination and bias can also play a role in fraternity shootings. On December 13, 2019, eleven members of Indiana University's Pi Kappa Phi beat up two members of Alpha Epsilon Phi, a Jewish fraternity, for trying to enter their party uninvited.⁴⁵² These actions resulted in Pi Kappa Phi being suspended for various reasons, including anti-Semitism.⁴⁵³

⁴⁴² Nick Muscavage, *Rutgers Sorority, Frat Party Ends in Shooting, Man Hurt*, ASBURY PARK PRESS, Oct. 30, 2017, at A.5, ProQuest, Doc. ID 1957307811.

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ Jeff Reinitz, *Waterloo Man Sentenced in UNI Campus Area Shooting*, WATERLOO-CEDAR FALLS COURIER, Dec. 14, 2017, Newspaper Source Plus, No. 2W64075675372.

⁴⁴⁶ *Id.*

⁴⁴⁷ Ab Tonsing, *Man Shot Eight Times in Sunday Homicide*, HERALD-TIMES, Oct. 30, 2018, ProQuest, Doc. ID 2126760562.

⁴⁴⁸ *Id.*

⁴⁴⁹ Jimmie E. Gates, *Fraternity Faces New Lawsuit over Shooting: Claims Party Was Hosted Without Proper Security*, CLARION-LEDGER, July 10, 2019, at A.4, ProQuest, Doc. ID 2254325584.

⁴⁵⁰ *Id.*

⁴⁵¹ Jimmie E. Gates, *Suit Filed in Omega Psi Phi Shooting*, CLARION-LEDGER, July 17, 2018, at A.4, ProQuest, Doc. ID 2070698974.

⁴⁵² See Jaden Amos, *Update: Security Camera Video Shows Fight Between IU Fraternity Members*, IND. DAILY STUDENT, <https://www.idsnews.com/article/2019/12/security-camera-video-shows-fight-between-alleged-iu-fraternity-members> [<https://perma.cc/49FB-7V4N>] (Dec. 15, 2019, 5:05 PM).

⁴⁵³ See David Matthews, *Officials Investigating Alleged Assault and Anti-Semitic Slurs at Indiana University Fraternity*, N.Y. DAILY NEWS (Dec. 16, 2019, 9:50 PM), <https://www.nydailynews.com/news/national/ny-indiana-university-frat-assault-anti-semitic-slurs-investigation-20191217-hodrvdmok5fsznblt7xb42m4xq-story.html> [<https://perma.cc/2RJ6-FP3P>].

III. REDUCING SOCIAL EVENT LIABILITY

The first step to reducing social event liability is to understand the relevant state laws.⁴⁵⁴ Generally, though, the two major responsibilities of the host are to, first, avoid over-consumption of alcohol by guests, and second, ensure intoxicated guests get back home safely.⁴⁵⁵ There are several methods GLOs can employ when planning an event that will help to achieve these goals. For example, hosting an event at a bar or restaurant with a liquor license will help to minimize alcohol liability risks.⁴⁵⁶ If an event includes drinking, hosts should encourage guests to establish a designated driver to drive them home after the event, and hosts should make sure to limit their own alcohol intake to be able to better judge guests' sobriety.⁴⁵⁷ Hosts should also ensure that guests are not pressured to drink, avoid serving alcohol to any guests who are visibly intoxicated, and make sure that non-alcoholic beverages and food are also being served.⁴⁵⁸ Explicitly stating that overdrinking is not condoned and prohibiting drinking games can help attendees keep their drinking limited.⁴⁵⁹ These tactics can help to decrease overdrinking while also making clear that the organization does not encourage drinking.

Taxi vouchers can also be provided to guests to encourage attendees to abstain from drinking and driving.⁴⁶⁰ Hosts should ensure that any guests who do not use a cab service have designated drivers that do not drink alcoholic beverages to drive them home after the event.⁴⁶¹ It may be helpful to hire a professional bartender who is trained to recognize signs of intoxication and will know not to serve to guests who are visibly intoxicated.⁴⁶² Event hosts should enforce the conduct rules and be an example for all guests.⁴⁶³ Additionally, hosts should

⁴⁵⁴ *Social Host Liability*, INS. INFO. INST., <https://www.iii.org/article/social-host-liability> [<https://perma.cc/S3YK-Y2SH>].

⁴⁵⁵ SCOTT BOWER & JOAN BILSLAND, *HOST LIABILITY* 7 (10th ed. 2016), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjE3_-D-_75AhUIL0QIHdt5CzEQFnoECAyQAQ&url=https%3A%2F%2Fwww.bennettjones.com%2F-%2Fmedia%2Ffiles%2FBennettJones%2FPublications%2FBennett-Jones--Host-Liability-2016--10th-Edition-12Page.pdf&usg=AOvVaw36B6MLwKzh0kGFNUoNI-gQ [<https://perma.cc/7URX-U9PQ>].

⁴⁵⁶ INS. INFO. INST., *supra* note 454.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

⁴⁵⁹ BOWER & BILSLAND, *supra* note 455, at 8.

⁴⁶⁰ *Id.* at 7.

⁴⁶¹ *What Is a Host's Responsibility When Having a Holiday Party?*, SPIVEY L. FIRM (Dec. 2, 2016), <https://www.spiveylaw.com/blog/what-is-a-host-s-responsibility-when-having-a-holiday-party/> [<https://perma.cc/BN6S-J2P6>].

⁴⁶² *Id.*

⁴⁶³ See Julia E. Judish, *Harassment at Events: Liability Concerns and Prevention Best Practices*, PILLSBURY (Feb. 20, 2018), <https://www.pillsburylaw.com/en/news-and-insights/harassment-at-events-liability-concerns-prevention-best-practices.html> [<https://perma.cc/35KG-YNMQ>].

structure the event so that drinking is limited.⁴⁶⁴ For example, toward the end of the evening, hosts should stop serving liquor and switch to an alternative beverage, such as coffee, tea, or soft drinks, and encourage all of their guests to wear seatbelts as they drive home.⁴⁶⁵

Even if drinking is not involved, GLOs should pay attention to equal opportunity issues and ensure that a social event is not discriminatory.⁴⁶⁶ For example, they should opt for a gender-neutral activity instead of a “males only” football game.⁴⁶⁷ Establishing a comprehensive, written anti-harassment policy and publicizing it prior to the event will also aid in reducing discrimination-related liability.⁴⁶⁸ Additionally, hosts should empower GLO members to avoid harm and help stop harm through mandatory sexual harassment training, as well as bystander intervention training.⁴⁶⁹ Hosts should avoid sponsoring physical activities that are high risk, such as skiing.⁴⁷⁰ If they sponsor an event centered around physical activities, hosts should require participants to sign a waiver and specify that the event is not mandatory.⁴⁷¹ To further show that an event is not mandatory or business related, hosts should schedule the event away from the official GLO premises and on a weekend.⁴⁷² Further, hosts should make it explicit whether the event is purely social or has an association with the organization.⁴⁷³ If the event includes alcohol, hosts should establish a drink limit, such as handing out drink tickets to guests upon entry, and assign someone to check IDs and filter out underage drinkers.⁴⁷⁴ Hosts are responsible for making sure that minors are not drinking.⁴⁷⁵ Additionally, hosts should avoid naturally provocative locations, such as casinos or bars, and hosts should establish expectations prior to the event, which can help decrease social event liability.⁴⁷⁶ Finally, if any form of misconduct arises in relation to an event, hosts should immediately act upon it and investigate.⁴⁷⁷

For certain types of social events, security may be crucial to prevent harm. Courts have grappled with the extent to which the presence of security deters crime and other antisocial behavior. As one California court noted, “When a

⁴⁶⁴ BOWER & BILSLAND, *supra* note 455, at 8.

⁴⁶⁵ INS. INFO. INST., *supra* note 454.

⁴⁶⁶ See Jennifer Brown Shaw & Carolyn Burnette, *Potential Liability for Employer-Sponsored Social Events*, SHAW L. GROUP (Apr. 11, 2007), <https://shawlawgroup.com/2007/04/potential-liability-for-employer-sponsored-social-events/> [<https://perma.cc/5UE3-SU5F>].

⁴⁶⁷ *Id.*

⁴⁶⁸ Judish, *supra* note 463.

⁴⁶⁹ *Id.*

⁴⁷⁰ Shaw & Burnette, *supra* note 466.

⁴⁷¹ *Id.*

⁴⁷² *Id.*

⁴⁷³ Judish, *supra* note 463.

⁴⁷⁴ Shaw & Burnette, *supra* note 466.

⁴⁷⁵ SPIVEY L. FIRM, *supra* note 461.

⁴⁷⁶ Shaw & Burnette, *supra* note 466.

⁴⁷⁷ *Id.*

property owner supplies no security whatsoever—to say nothing of when it falls below the standard of care appropriate to the threat of crime on the premises—logic and common sense tell us absence of security is a contributing cause of most crimes occurring on that property.”⁴⁷⁸ In addition, a Louisiana court found an expert witness’s contention that “the primary purpose of a security guard is deterrence of crime by a visible presence” and that “the highest degree of security would consist of an armed uniformed police officer in plain view.”⁴⁷⁹ This is so much so that one judge noted, “Even an inattentive security guard is a better deterrent than no security guard.”⁴⁸⁰

Despite these best practices, there is no guaranty that GLO chapters will comply with said practices. As such, compliance approaches found in other organizational spaces should be applied. As a general matter, social event compliance should be part of a broader compliance initiative. This section details the process of setting up a compliance program as well as the elements of an effective compliance program, including policy creation, reports and investigation, and training and investigation. It also offers insights from behavioral economics about ways to effectively “nudge” organizational members and subunits to be compliant with best practices for reducing social host and social event liability.

A. *Introduction to Compliance*

To set up a compliance program, national fraternities and sororities should have a good understanding of what constitutes compliance and why a compliance program is important. Compliance is defined as “adherence to, or conformance with, rules, laws, standards, and policies.”⁴⁸¹ Within organizations, compliance is defined as policies that prevent and notice any violation of the rules.⁴⁸² Compliance programs are valuable, because they can help organizations avoid legal liability,⁴⁸³ and they increase the likelihood that the individuals at fault, instead of the whole organization, will be punished.⁴⁸⁴

⁴⁷⁸ *Saelzler v. Advanced Grp.* 400, 92 Cal. Rptr. 2d 103, 111 (Cal. Ct. App. 1999), *rev'd*, 23 P.3d 1143 (Cal. 2001).

⁴⁷⁹ *Harris v. Pizza Hut of La., Inc.*, 455 So. 2d 1364, 1368 (La. 1984).

⁴⁸⁰ *Dye v. Schwegmann Bros. Giant Supermarkets, Inc.*, 627 So. 2d 688, 696 (La. Ct. App. 1993) (Byrnes, J., concurring).

⁴⁸¹ NITISH SINGH & THOMAS J. BUSSEN, *COMPLIANCE MANAGEMENT: A HOW-TO GUIDE FOR EXECUTIVES, LAWYERS, AND OTHER COMPLIANCE PROFESSIONALS* 4 (2015) (ebook).

⁴⁸² *Id.*; Norris Syed Abdullah et al., *Compliance Management Ontology—A Shared Conceptualization for Research and Practice in Compliance Management*, 18 INFO. SYS. FRONTIERS 995, 995 (2016).

⁴⁸³ SINGH & BUSSEN, *supra* note 481, at 7–8.

⁴⁸⁴ *Id.* at 6.

B. *Compliance Program Leadership*

There is not a single profession that is the most suitable for the compliance officer role.⁴⁸⁵ A successful compliance officer should understand that the job of a compliance officer is to identify and prevent any legal and ethical violations.⁴⁸⁶ Compliance officers should have access to resources from multiple realms of expertise.⁴⁸⁷ Therefore, a successful compliance officer must have a broad and deep understanding of the requirements of compliance programs and have support from multiple areas of expertise in organizations.⁴⁸⁸ People who should not be compliance officers are those who just happen to work in organizations and are assigned to the compliance programs, rather than those with the correct skill sets.⁴⁸⁹ Organization members assigned to the role may view the situation from a “check the box” perspective.⁴⁹⁰ However, organization members can quickly learn that compliance is not simple work.⁴⁹¹ New compliance officers must learn the work at hand quickly, and also appeal to leadership for resources and support.⁴⁹²

C. *Setting up a Compliance Program*

The first step in setting up a successful compliance program is to do an initial risk assessment to identify which areas need the most focus,⁴⁹³ including but not limited to social events. When conducting risk assessments, it usually helps to know the organization well. Therefore, those who are implementing the compliance program should not be afraid to ask people in different departments to get a better understanding of the organization.⁴⁹⁴ When speaking with individuals in different departments, compliance personnel should also be focused on determining which types of risk the organization is most susceptible to.

There are three main types of risk: (1) primary risk, (2) internal risk, and (3) external risk.⁴⁹⁵ When identifying primary risk, instead of only anticipating the risk itself, it is also important to figure out what the organization could do if it found itself in risky situations.⁴⁹⁶ In identifying internal risk, compliance of-

⁴⁸⁵ SUSAN LEE WALBERG, *INSIDER’S GUIDE TO COMPLIANCE: REAL WORLD ADVICE FOR BUILDING A SUCCESSFUL COMPLIANCE PROGRAM* 11 (2018).

⁴⁸⁶ *Id.* at 19; Maria Krambia-Kapardis et al., *Contextualizing Compliance Officers and Their State of Practice*, 124 *BUS. & SOC’Y REV.* 385, 390 (2019).

⁴⁸⁷ WALBERG, *supra* note 485, at 14.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.* at 13.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ SINGH & BUSSEN, *supra* note 481, at 46.

⁴⁹⁴ *Id.* at 52–53.

⁴⁹⁵ *Id.* at 47, 50.

⁴⁹⁶ *Id.* at 47.

ficers should check the organization's past violations.⁴⁹⁷ If possible, it is always a good idea to learn organization members' ideas about any potential risks.⁴⁹⁸ In identifying external risk, compliance officers should study the past violation history of other organizations in the industry.⁴⁹⁹ Then, compliance officers should look at complaints about certain areas in the organization.⁵⁰⁰ After going through assessments on all three risks, the organization should figure out the most pressing risks and share those results among leaders and members alike.⁵⁰¹ Risk assessments should be conducted regularly (e.g., annually).⁵⁰²

Compliance officers should also assess potential risks from all sources, such as enforcement activity, hotline calls, and new laws and regulations to determine the risk level.⁵⁰³ Another way to identify risk is to survey the leadership who is able to provide their own risks and data; however, this information can be biased, since no one wants to add extra work to the department, and they may not even understand the meaning of risk.⁵⁰⁴ In addition, compliance officers could conduct interviews with members and ask follow-up questions or explain the basis of questions.⁵⁰⁵ The final step of risk assessment is to evaluate the compliance program, if one already exists.⁵⁰⁶ This work should be done by an outside consultant instead of the compliance officer, just to avoid a potentially biased view on the enhancement of the program.⁵⁰⁷

After the initial risk assessment, the organization should work on structuring the compliance program. When starting from scratch, it may be difficult to know how to best set up a compliance program. While a compliance program should be tailored to each organization's risk factors and vulnerabilities, the organization should also look to leaders in the field when constructing its program.⁵⁰⁸ This is especially helpful if there are industry-specific rules or standards to follow.⁵⁰⁹ Next, the organization needs to consider how to fill the compliance program roles. Besides selecting reliable organization members to fill those important positions, the organization should know that the compliance team should remain its own entity while consistently communicating with high-level leaders.⁵¹⁰

⁴⁹⁷ *Id.* at 48.

⁴⁹⁸ *Id.* at 49.

⁴⁹⁹ *Id.* at 50.

⁵⁰⁰ *Id.* at 50–51.

⁵⁰¹ *Id.* at 51.

⁵⁰² *Id.* at 52.

⁵⁰³ WALBERG, *supra* note 485, at 45–46.

⁵⁰⁴ *Id.* at 153.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.* at 154.

⁵⁰⁸ SINGH & BUSSEN, *supra* note 481, at 59.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.* at 56; MARTIN T. BIEGELMAN & DANIEL R. BIEGELMAN, BUILDING A WORLD-CLASS COMPLIANCE PROGRAM 169 (2008) (ebook).

D. Compliance Programs: Code of Conduct and Compliance Committee

One of the key elements of a successful compliance program is the Code of Conduct. It should begin with a statement summarizing the code and explaining its significance.⁵¹¹ Instead of making an exhaustive list, the code should stay simple to enhance understanding and engagement. The organization does not want to frighten or irritate its members by having too many complicated rules.⁵¹² The organization always can let members know that they could get more information if they need it.⁵¹³ However, as the rules are general, assigned responsibilities should be specific.⁵¹⁴ Also, it is beneficial if the code could offer definitions and examples to better illustrate each requirement.⁵¹⁵

Once the Code of Conduct has been established, the next step is to ensure organization members are following the policy and that the organization is enforcing the policy. Record keeping is a critical component of this effort because compliance issues often emerge later.⁵¹⁶ Additionally, compliance officers should monitor, observe, and audit frequently.⁵¹⁷ Another important element in compliance program is the compliance committee. Before discussing the structure of the compliance committee, companies should note that political environments play a huge role in compliance officer positions. Therefore, organizations should be strategic in how they fill their compliance committee roles. In a committee, members from a broad cross-section with diversity should be included; and each member should have authority in their field.⁵¹⁸ Diversity of committee members helps compliance programs have more credibility in organizations.⁵¹⁹

E. Policy Creation

Creating policies is one of the important aspects of the compliance work.⁵²⁰ Policies are usually implemented after the structuring of the compliance program, as well as after the creation of the Code of Conduct.⁵²¹ There are five steps in constructing a compliance policy process. The compliance officer should (1) conduct a risk assessment to identify any compliance risks at the or-

⁵¹¹ See SINGH & BUSSEN, *supra* note 481, at 64.

⁵¹² *Id.* at 65, 68–69.

⁵¹³ *Id.* at 65.

⁵¹⁴ *Id.* at 69–70.

⁵¹⁵ *Id.* at 65.

⁵¹⁶ *Id.* at 70.

⁵¹⁷ *Id.* at 71–72; *Building World-Class Ethics and Compliance Programs: Making a Good Program Great*, DELOITTE 25 (2015), <https://www2.deloitte.com/global/en/pages/risk/regulatory---legal/articles/building-world-class-ethics-and-compliance-programs.html> [https://perma.cc/6PZL-KQKD].

⁵¹⁸ SINGH & BUSSEN, *supra* note 481, at 38.

⁵¹⁹ See *id.*

⁵²⁰ WALBERG, *supra* note 485, at 45.

⁵²¹ *Id.* at 46.

ganization, (2) conduct the research required to draft policies with the support of key stakeholders, (3) train members and leaders on the policies, (4) ensure the implementation of policies through auditing and monitoring, and (5) create corrective plans of action as deficiencies arise annually.⁵²² When policies are created, it must be noted that these policies, or standards, are requirements.⁵²³ More specifically, compliance policies are not guidelines.⁵²⁴

In fact, developing disciplinary standards is a powerful method for ensuring that organization members understand that policies are indeed requirements. Similarly, disciplinary standards are one of the important components of the compliance program because they demonstrate that those who violate the standards should be punished for their behaviors.⁵²⁵ Consistency is key while implementing policies, and organizations should be aware that there are two types of frequent violations that they should look out for. The first level of violation is an infraction that normally was not done intentionally to break the rules; the second level applies to those who choose to ignore the rules. When dealing with each type of violation, it is important that organizations distinguish between the intent and harm in each case.⁵²⁶ Also, these factors should be considered in determining mitigating and exacerbating circumstances. A mitigating circumstance may occur, for example, when a member is caught for violation but willing to tell the truth.⁵²⁷ Similarly, an exacerbating circumstance may occur when a member is caught for a violation and their behaviors lead to significant harm to a person or the organization.⁵²⁸

The communication policy is another important part of the compliance program since it discusses the reporting system that members could use.⁵²⁹ The communication policy should include a statement addressing the organization's expectations on members voicing their concerns.⁵³⁰ After structuring the communication policy, the internal investigation and corrective plan policies should then receive the same amount of attention that other policies have received.⁵³¹ Along with the communication policy, there should be a policy on education and training, establishing that the organization will offer training to new members and annually thereafter.⁵³² Members with specific jobs typically will need to receive specialized training. To ensure adherence to the education requirements, the policy should include that all trainings will be tracked and moni-

⁵²² *Id.* at 45–46.

⁵²³ *Id.* at 46.

⁵²⁴ *Id.*

⁵²⁵ *Id.* at 145.

⁵²⁶ *Id.* at 147.

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.* at 87; DELOITTE, *supra* note 517, at 8–10.

⁵³⁰ WALBERG, *supra* note 485, at 87.

⁵³¹ *See id.* at 89.

⁵³² *Id.*

tored.⁵³³ Lastly, a non-retaliation policy is also an indispensable part of compliance programs.⁵³⁴

F. Report and Investigation

A good internal reporting system is necessary for the successful implementation of compliance policies.⁵³⁵ Normally, reports go through a hotline, but hotlines are not always sufficient. Hotlines, combined with active checking, are regarded as more effective.⁵³⁶ Furthermore, there should be multiple formats of hotlines, such as online or mail hotlines. Organizations should encourage members to use hotlines first, and then let them know about the entire reporting system.⁵³⁷ Members' reporting should be good-faith.⁵³⁸ Lastly, compliance officers should ensure members that they may file reports anonymously and will never be retaliated against in any form.⁵³⁹

Besides the basic internal reporting system discussed above, there are several important details concerning the reporting mechanisms in an organization. The most common form of reporting mechanism is, as mentioned above, the hotline.⁵⁴⁰ In large organizations, hotlines are usually outsourced: an organization (or call center) will record all concerns and send them to compliance officers.⁵⁴¹ An advantage of call centers is that they can gather data on callers and their concerns. The organizations then can use the data to find out the issues inside the organization.⁵⁴² In small organizations, internal hotlines may not seem confidential, but it can be beneficial that the individuals answering the calls know the organization well and may be able to provide an answer to the caller right then and there.⁵⁴³ Notably, compliance officers are responsible for reporting the types of calls the hotline is receiving.

While all concerns should be heard, organizations need to pay special attention to confidentiality.⁵⁴⁴ It is true that confidentiality is hard to maintain since reporting warrants investigations.⁵⁴⁵ However, compliance officers must assure members that the confidentiality of all members will be respected to the

⁵³³ *Id.*

⁵³⁴ *Id.* at 87.

⁵³⁵ SINGH & BUSSEN, *supra* note 481, at 98.

⁵³⁶ *Id.* at 100; Linda Klebe Treviño et al., *Managing Ethics and Legal Compliance: What Works and What Hurts*, 41 CAL. MGMT. REV. 131, 134 (1999).

⁵³⁷ SINGH & BUSSEN, *supra* note 481 at 103; Trevino, *supra* note 536, at 134.

⁵³⁸ SINGH & BUSSEN, *supra* note 481 at 101.

⁵³⁹ *Id.* at 100–03.

⁵⁴⁰ WALBERG, *supra* note 485, at 133.

⁵⁴¹ *Id.* at 133–34.

⁵⁴² *Id.* at 134.

⁵⁴³ *Id.*

⁵⁴⁴ *See id.*; *see also* LYNN S. PAINE & LARA ADAMSONS, LEGAL COMPLIANCE PROGRAMS 4 (2012), HBS No. 9-312-111.

⁵⁴⁵ WALBERG, *supra* note 485, at 138–39.

best extent possible.⁵⁴⁶ Further, compliance officers should launch an ongoing awareness campaign about the communication policy, so that members understand their protections and options in reporting.⁵⁴⁷

Once a possible violation is raised, the compliance department should start an investigation. When beginning this investigation, investigators should be very clear on the area they need to focus on. Contacting the members who filed the complaint can be useful for obtaining more information.⁵⁴⁸ Additionally, compliance officers want to make sure to get as much information as possible before interviewing members because word can travel fast,⁵⁴⁹ and officers do not want the potentially offending organization members to have enough time to prepare excuses for themselves.⁵⁵⁰ Once the investigation gets to the point of confrontation with the accused, compliance officers want to make sure to have another person who is able to verify the facts.⁵⁵¹ If the investigation reveals a violation of compliance policies, members who violated the rules must be punished in order to deter others from engaging in similar misconduct.⁵⁵² However, the punishments should be fair and based on the code.⁵⁵³

G. Education and Training

When starting a training and education program, it is essential to communicate why the program is needed in the first place.⁵⁵⁴ This step usually starts with the board, who leads the organization and must understand the importance of the program themselves.⁵⁵⁵ To raise awareness, compliance officers should introduce themselves to the members, national board, and organizational head and explain why they need this program.⁵⁵⁶ This explanation helps compliance officers to establish connection with the leadership and get the program on the right track.⁵⁵⁷ Once the organization understands the importance of the program, compliance officers should play a part in the new member orientation.

The orientation should be held as soon as possible once the program is ready so that new members may get the latest policies and procedures.⁵⁵⁸ There are several suggestions compliance officers can utilize in constructing an effec-

⁵⁴⁶ *Id.* at 139.

⁵⁴⁷ *Id.* at 140.

⁵⁴⁸ SINGH & BUSSEN, *supra* note 481, at 105.

⁵⁴⁹ *Id.* at 106–07.

⁵⁵⁰ *Id.* at 107.

⁵⁵¹ *Id.* at 108.

⁵⁵² *Id.* at 110.

⁵⁵³ *Id.* at 110–11; PAINE & ADAMSONS, *supra* note 544, at 5.

⁵⁵⁴ WALBERG, *supra* note 485, at 95–96.

⁵⁵⁵ *Id.* at 95; Ing. Lucie Andreisová, *Building and Maintaining an Effective Compliance Program*, 5 INT'L J. ORGANIZATIONAL LEADERSHIP 24, 26 (2016).

⁵⁵⁶ WALBERG, *supra* note 485, at 97.

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.* at 101.

tive and efficient training session. First, compliance officers should make the training mandatory.⁵⁵⁹ Compliance officers should also work to better engage members when they are in the session and working with members to come up with solutions is always better than plainly saying “no.”⁵⁶⁰ Another suggestion for effective training is to use priming and goal setting in training sessions.⁵⁶¹ Lastly, the training and education program should be held regularly.⁵⁶²

Additional strategies or modifications can be employed for effectiveness depending on the specific organization. Both the size of the organizations and resources available could determine the way the program is delivered.⁵⁶³ In smaller organizations, the session could be delivered in team meetings; in larger organizations, an online format could be a better option. If an in-person system is used for the program, a sign-in sheet is necessary to record attendance, keep track of completion, and offer makeup sessions for anyone who missed the training.⁵⁶⁴ However, if the online format is chosen, there are multiple options available. Organizations could get the program from a vendor, create their own programs, or have a combination of the two.⁵⁶⁵ One of the biggest advantages of an online program is that it is trackable.⁵⁶⁶ It is thus easy for organizations to check who has completed the training and who has not.⁵⁶⁷

H. Compliance Program Evaluation: Auditing, Monitoring, and Corrective Plans

In his work, internal audit expert Craig Cochran provides an extensive guide to the key elements of internal auditing with the intention of instructing an individual preparing to execute a role as an internal auditor. His chapters explore distinct subsections of proper performance, but each chapter works to enhance the reader’s understanding of how internal audits function and how readers can best use this information to perform effective and professional audits.

Cochran argues that the crux of internal auditing is the process, not the people involved.⁵⁶⁸ One principle that he emphasizes is not striving to find non-conformities.⁵⁶⁹ This principle is important because an auditor’s purpose is to

⁵⁵⁹ SINGH & BUSSEN, *supra* note 481, at 85.

⁵⁶⁰ *Id.* at 83.

⁵⁶¹ *Id.* at 85.

⁵⁶² WALBERG, *supra* note 485, at 104; Dan K. Webb & Steven F. Molo, *Some Practical Considerations in Developing Effective Compliance Programs: A Framework for Meeting the Requirements of the Sentencing Guidelines*, 71 WASH. U. L. Q. 375, 394–95 (1993).

⁵⁶³ WALBERG, *supra* note 485, at 104; *see also* Andreisová, *supra* note 555, at 28.

⁵⁶⁴ WALBERG, *supra* note 485, at 105.

⁵⁶⁵ *Id.*; *see also* Andreisová, *supra* note 555, at 30–31.

⁵⁶⁶ WALBERG, *supra* note 485, at 105.

⁵⁶⁷ *Id.*

⁵⁶⁸ CRAIG COCHRAN, INTERNAL AUDITING IN PLAIN ENGLISH: A SIMPLE GUIDE TO SUPER EFFECTIVE ISO AUDITS 3 (2017).

⁵⁶⁹ *Id.* at 4.

find evidence that the organization is meeting its requirements, not evidence that proves the contrary.⁵⁷⁰ Another characteristic necessary to be an effective auditor is being unbiased and impartial.⁵⁷¹ Similarly, auditors must be independent. Fair auditors do not audit their own work and avoid auditing their own department or any other areas where they have existing reporting relationships.⁵⁷² A successful internal auditor must understand relevant requirements when conducting audits, and they must search for evidence that meets the requirements.⁵⁷³ Lastly, auditors must behave professionally to ensure the credibility of the audit is evident to the audit client.⁵⁷⁴

Audit programs are established through three central actions by upper management: selecting someone to lead, communicating the program to the organization itself, and ensuring resources for the audit program.⁵⁷⁵ The title of the person whom top management selects to lead is often referred to as the “audit manager” but sometimes can also go by other titles, such as “audit director” or “lead auditor.”⁵⁷⁶ Critical competencies such an individual must exemplify include communication, audit principles, audit techniques and procedures, standard requirements, organization documentation, and diplomacy.⁵⁷⁷ Top management must also communicate to the entire agency how the audit will function and how it will be used.⁵⁷⁸ They should articulate ideas along the lines of how audits help the organization improve, who is leading the audit, the expectation of cooperation, audit scheduling, and the resources to contact someone regarding questions about auditing.⁵⁷⁹

Resources are also critical to internal audits and are often framed as a preventive cost to ensure the success of an organization.⁵⁸⁰ The highest cost of internal auditing is the time in which it takes to complete an audit.⁵⁸¹ Accordingly, more frequent audits of shorter lengths can be helpful in mitigating this cost because they have less of a disruptive impact.⁵⁸² Auditor training is another resource that must be taken into consideration. In typical practice, the training requires at least two days; however, another type of training—problem-solving

⁵⁷⁰ *Id.*; see also Russell Jackson, *Today's Internal Auditor*, 64 INTERNAL AUDITOR 38, 41 (2007).

⁵⁷¹ COCHRAN, *supra* note 568, at 4.

⁵⁷² *Id.* at 5; Jeffrey Cohen et al., *Corporate Governance and the Audit Process*, 19 CONTEMP. ACCT. RSCH. 573, 579 (2002).

⁵⁷³ COCHRAN, *supra* note 568, at 5.

⁵⁷⁴ *Id.* at 6; Jackson, *supra* note 570, at 40.

⁵⁷⁵ COCHRAN, *supra* note 568, at 11.

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.* at 11–13.

⁵⁷⁸ *Id.* at 13; Cohen et al., *supra* note 572, at 588.

⁵⁷⁹ COCHRAN, *supra* note 568, at 13–14.

⁵⁸⁰ *Id.* at 15; see also Andreisová, *supra* note 555, at 32.

⁵⁸¹ COCHRAN, *supra* note 568, at 15.

⁵⁸² *Id.*

training—also comes into play.⁵⁸³ The target clientele of problem-solving trainings are the individuals who manage the processes that are being audited.⁵⁸⁴ Because any nonconformities resulting from an audit have the possibility to generate corrective actions, it is pertinent that the individuals issuing corrective actions have expertise in the creation and execution of corrective actions.⁵⁸⁵

Cochran states that the internal audit procedure is “the guiding document of your audit process.”⁵⁸⁶ He emphasizes the need for concise and succinct language in this document as well as the importance of observing and borrowing effective concepts from other audit procedures.⁵⁸⁷ The scope of the internal audit procedure should be crafted to indicate the specific parts of the organization that the internal audit is covering.⁵⁸⁸ Next, it should describe how scheduling notification will take place and designate the responsibility for maintaining the audit.⁵⁸⁹ Planning, as well as designating who will receive audit information upon its release, should be done in advance.⁵⁹⁰ Once the audit procedure is established, a brief opening meeting should be held with the necessary individuals.⁵⁹¹ The evidence gathering process will include sampling of information, including organization member interviews, records, and observations of the processes.⁵⁹² Similar to the opening meeting, a closing meeting is required wherein the audit findings are shared with the auditee.⁵⁹³ Since audit nonconformities are almost always handled through corrective action, the audit procedure should provide clear guidance on how audit nonconformities will be managed.⁵⁹⁴ Specifically, the procedure should designate an individual whose responsibility it is to follow up on corrective actions after they are issued.⁵⁹⁵ Finally, the audit results are an important part of the management review agenda, as is the individual who will present those results.⁵⁹⁶

The selection and training of internal auditors plays an instrumental role in the success of an internal audit program.⁵⁹⁷ Several criteria should be consid-

⁵⁸³ *Id.* at 16.

⁵⁸⁴ *Id.* at 18.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.* at 21.

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*; Flamur Bunjaku, *Audit Components: Literature Review on Audit Plan, Risk and Materiality and Internal Control*, 4 J. ECON. 36, 37 (2019).

⁵⁸⁹ COCHRAN, *supra* note 568, at 21.

⁵⁹⁰ *Id.* at 22.

⁵⁹¹ *Id.*

⁵⁹² *Id.*; Edward Seipp & Deborah L. Lindberg, *A Guide to Effective Audit Interviews*, 82 CPA J. 26, 26 (2012).

⁵⁹³ COCHRAN, *supra* note 568, at 22.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.* at 23; Robert Eli Rosen et al., *The Framing Effects of Professionalism: Is There a Lawyer Cast of Mind? Lessons from Compliance Programs*, 40 FORDHAM URB. L.J. 297, 353 (2012).

⁵⁹⁶ COCHRAN, *supra* note 568, at 23.

⁵⁹⁷ *Id.* at 25.

ered during selection, including curiosity, persistence, and focus.⁵⁹⁸ These qualities ensure that the selected internal auditors have a learning mindset and strength as well as diplomacy and resolve.⁵⁹⁹ Detail orientation is another characteristic particularly geared towards internal auditing, and strategic thinking also proves crucial in the component of process examination.⁶⁰⁰ Individuals with positive attitudes and demeanors may also be more enthusiastic about their mission and work harder to understand and believe in auditing.⁶⁰¹ Common training topics for internal auditors include audit principles, standard requirements, audit procedure, preparing for an audit, developing an audit plan, interviewing techniques, audit requirements, objective evidence, matching evidence to requirements, conducting opening and closing meetings, audit reporting, the link to corrective action, and follow-up on audit findings.⁶⁰²

There are generally two accepted approaches to developing an audit schedule, and these approaches vary in structure as well as effects.⁶⁰³ The first approach includes several short duration audits, typically two to four hours throughout the year.⁶⁰⁴ This is beneficial because improvements can take place continually and the processes have more frequent scrutiny.⁶⁰⁵ It can also be helpful to the auditors themselves because they have more practice opportunities and can maintain higher energy levels.⁶⁰⁶ The next approach consists of longer audits, one or two large audits typically, that last at least a day in length.⁶⁰⁷ This serves to benefit the organization and auditors because there is less frequent planning needed, fewer disruptions, and no overlapping of results.⁶⁰⁸ But this approach can prove ineffective because it reinforces two counter-productive ideas: (1) the audit is a major event instead of a normal process, and (2) the audit is an event to prepare for, rather than showing constant discipline.⁶⁰⁹ It also provides auditors with fewer opportunities to practice and makes auditees less comfortable being audited.⁶¹⁰ When making the choice between these two practices, it is most often a balancing game of resources, time, and practicality.⁶¹¹

⁵⁹⁸ *Id.* at 25–26; R. Richard Riggs, *How to Think Like an Auditor*, 49 *GOV'T ACCTS. J.* 10, 11 (2000).

⁵⁹⁹ COCHRAN, *supra* note 568, at 25–26.

⁶⁰⁰ *Id.* at 26.

⁶⁰¹ *Id.* at 27.

⁶⁰² *Id.* at 29–31.

⁶⁰³ *Id.* at 35.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.* at 36.

⁶⁰⁶ *Id.* at 37.

⁶⁰⁷ *Id.* at 35.

⁶⁰⁸ *Id.* at 36.

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ *Id.* at 35.

Regardless of which audit schedule is chosen, to properly function in their roles, auditors must have a comprehensive understanding of the auditable requirements.⁶¹² Cochran defines them as “the obligations that the organization has committed to implementing.”⁶¹³ Most of the time and work put into an audit is directed towards verifying that these requirements have been met.⁶¹⁴ During the preparation portion of audit work, auditors should request the procedures and documents that are key to its audit from the organization they are working for.⁶¹⁵ After receiving these documents, auditors will perform a careful analysis to determine which requirements are worth verifying.⁶¹⁶

Next, Cochran defines objective evidence as “proof that the organization did—or didn’t—meet its requirements.”⁶¹⁷ The mission behind objective evidence is providing credibility to the audit, forming material for nonconformities, and aiding in the drafting of meaningful positive findings. Objective evidence is characterized as evidence that is unbiased, factual, first-hand, and traceable.⁶¹⁸ He contends that one should remind oneself that the organization is doing many things correctly, that the people are interesting, that one will be able to learn a lot throughout the course of the audit, and that the evidence being gathered should be focused on the bigger picture.⁶¹⁹ Examining records is a productive means of objective evidence collecting, but to ensure the highest rate of success, an auditor should verify a record’s credibility.⁶²⁰ To do so, an auditor should seek out qualities such as its completeness, dates, participants, actual results, and the subsequent actions taken.⁶²¹ The sampling of evidence during an audit does not need to be statistically based but does need to be representative.⁶²² Notetaking is yet another evidence gathering process that requires detail and traceability.⁶²³ Effective auditors make sure to actively look for positives during an audit.⁶²⁴ Generally, a balanced snapshot of the organization should be presented and assessed in an audit.⁶²⁵

An audit interview should be perceived as a casual and friendly conversation.⁶²⁶ Interviewing styles and methods are highly characteristic of an individ-

⁶¹² *Id.* at 45; Riggs, *supra* note 598, at 14.

⁶¹³ COCHRAN, *supra* note 568, at 45.

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Id.* at 55.

⁶¹⁸ *Id.* at 56.

⁶¹⁹ *Id.* at 57.

⁶²⁰ *Id.* at 55, 60.

⁶²¹ *Id.* at 60.

⁶²² *Id.* at 61.

⁶²³ *Id.*

⁶²⁴ *Id.* at 63.

⁶²⁵ *Id.*

⁶²⁶ *Id.* at 65; see also John T. Burr, *Keys to a Successful Internal Audit*, 30 QUALITY PROGRESS 75, 77 (1997).

ual's communication styles and techniques.⁶²⁷ To maintain the casual and friendly nature of the interaction, Cochran instructs auditors to put themselves in a learning state of mind before commencing.⁶²⁸ Once the interview has begun, the auditors should introduce themselves, explain their purpose and ask if the auditees have some time to talk.⁶²⁹ In order to put the auditee at ease, the auditor should commence with basic questions and test the process with "what if" questions.⁶³⁰ Cochran then suggests using the checklists, following the audit trails, and implementing active listening behaviors.⁶³¹ Next, auditors should confirm any nonconformities, compliment all positives, and conclude with a message of gratitude to the auditee.⁶³²

Although the term nonconformity often has an ominous connotation, Cochran frames it as an opportunity for improvement on the part of the management system.⁶³³ The definition for a nonconformity is "the failure to meet a requirement."⁶³⁴ As such, an organization must have a requirement in place for a nonconformity to occur.⁶³⁵ The process for writing a nonconformity is described as a simple one-two process.⁶³⁶ As with other aspects of the audit, writing nonconformities should never have an opinion included either explicitly or implicitly.⁶³⁷ Cochran aids auditors in writing interviews by explaining that one should match the requirements with concise evidence, write in complete sentences, include all applicable identifiers, use descriptive words, and state only the facts.⁶³⁸ Cochran also mentions the importance of holding auditors to a high standard as investigative professionals.⁶³⁹

Auditing should not be used as a "gotcha exercise," so the following techniques should be avoided: searching until one finds a problem, expressing satisfaction at identifying nonconformities, focusing on minor issues, ignoring the bigger picture, and intimidating individuals until they admit fault.⁶⁴⁰ There are several notable phrases indicating that auditors may be improperly inserting their opinions into the audit.⁶⁴¹ Such phrases include, "what you . . . should be doing is" and "consider these best practices."⁶⁴²

⁶²⁷ COCHRAN, *supra* note 568, at 65.

⁶²⁸ *Id.*

⁶²⁹ *Id.* at 66.

⁶³⁰ *Id.* at 66–67.

⁶³¹ *Id.* at 68–70.

⁶³² *Id.* at 71–72.

⁶³³ *Id.* at 77.

⁶³⁴ *Id.*

⁶³⁵ *Id.*

⁶³⁶ *Id.*

⁶³⁷ *Id.* at 78.

⁶³⁸ *Id.* at 78–79.

⁶³⁹ *Id.* at 80.

⁶⁴⁰ *Id.* at 81–82.

⁶⁴¹ *Id.* at 82.

⁶⁴² *Id.*

While auditors may think the element of surprise can be useful, they should avoid it entirely.⁶⁴³ Rather than leaving information to be revealed at the end of the audit, the auditor should engage in frequent and clear communication.⁶⁴⁴ When auditors believe they have encountered a nonconformity, they should confirm the requirement in question, confirm the evidence, get agreement from the auditees, and take accurate notes of the details.⁶⁴⁵ This will ensure the auditor has all the facts necessary to make an accurate determination.⁶⁴⁶ One aspect of notating nonconformities is handling the aftermath. This often includes avoiding offering solutions, as the auditee may inquire about the auditor's thoughts or advice.⁶⁴⁷ In response, an auditor should remind the auditee that the auditee is much more well-versed in the process and that the auditee should take some time and think about a range of options.⁶⁴⁸ In addition to offering solutions, explanations of the nonconformities sometimes arise. However, if this is deemed necessary, then it may speak to the quality of the auditor's writing of the nonconformity.⁶⁴⁹ For example, it may mean that the auditors did not explain the nonconformities as clearly as they could have.⁶⁵⁰

While commonly neglected, audit planning is essential to the execution of a successful audit and typically happens in three basic phases: determining the audit scope, researching the organization to be audited, and developing an audit plan.⁶⁵¹ Cochran conceptualizes scope as a contract between the auditors and auditees wherein the auditee agrees to provide evidence within the established scope and the auditor agrees to audit it within those bounds.⁶⁵² Next, researching involves careful confirmation of the details necessary to develop a plan. The audit plan itself is distinct from the audit schedule because it is the detailed agenda for a single audit, as opposed to an analysis of several different audits over an extended time frame.⁶⁵³ The audit plan is chiefly used to inform the audit team and be its guiding body, but it also shows the auditees what they should expect during the audit.⁶⁵⁴ While certainly subject to modifications during the audit, an audit plan should be created before the audit has begun.⁶⁵⁵ Audit plans typically address the date, location, scope, and objective of the au-

⁶⁴³ *Id.* at 83.

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*; Burr, *supra* note 626, at 77.

⁶⁴⁶ COCHRAN, *supra* note 568, at 84.

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.* at 87; Burr, *supra* note 626, at 75.

⁶⁵² COCHRAN, *supra* note 568, at 87.

⁶⁵³ *Id.* at 91.

⁶⁵⁴ *Id.*

⁶⁵⁵ *Id.* at 92.

dit.⁶⁵⁶ They also provide the information of the auditors themselves, the areas and topics being audited, and the timing of the audit.⁶⁵⁷

Audit checklists can also serve as a device to aid the efficiency of an audit.⁶⁵⁸ These can either be prepared from scratch by the auditor before the audit, or the auditor may “select appropriate checklists from a library of checklists [that] the organization maintains.”⁶⁵⁹ While standard checklists can prove useful, the checklist is stronger with customizations that are unique to the organization itself.⁶⁶⁰ One style of checklist is referred to as the “Look at/Look for,” which consists of two columns.⁶⁶¹ “The left column defines a type of evidence, such as a record, process, document, or person.”⁶⁶² In contrast, “the right column provides a list of [the] requirements that the evidence must meet.”⁶⁶³

The opening meeting describes the audit plan and outlines the basic details of the audit itself.⁶⁶⁴ It is short and informal in nature.⁶⁶⁵ For internal audits, these meetings can be as short as five minutes long.⁶⁶⁶ The organization may also pose potential changes to the audit plan as well as general questions about the audit during this meeting.⁶⁶⁷ The meeting is spearheaded by the lead auditor.⁶⁶⁸ The desired outcome of the meeting is more comfort about the process, some partnership establishment, and trust that the auditors are seeking only to aid the organization.⁶⁶⁹ Next, introductions should be made among all members of the meeting so that they can become familiar with one another, if that was not established previously.⁶⁷⁰ As the content begins, scope and criteria should be explained clearly.⁶⁷¹ The objective of the audit should also be made known before moving on to reviewing the audit plan itself.⁶⁷² The organization should make it clear to all members that sampling does not represent the entire organization and that the auditors will abide by all organization rules and regulations.⁶⁷³ Towards the closing of the meeting, any changes should be confirmed,

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.* at 99; Burr, *supra* note 626, at 76.

⁶⁵⁹ COCHRAN, *supra* note 568, at 99.

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.* at 104.

⁶⁶² *Id.*

⁶⁶³ *Id.*

⁶⁶⁴ *Id.* at 109; S. G. Volsen & M. M. Masson, *A Novel Audit Model for Assessing Quality in Non-Regulated Research*, 12 QUALITY ASSURANCE J. 57, 60 (2009).

⁶⁶⁵ COCHRAN, *supra* note 568, at 109.

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ *Id.* at 110.

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.* at 111.

⁶⁷² *Id.*

⁶⁷³ *Id.* at 112.

and questions addressed, and then the participants should be released with thanks for their cooperation.⁶⁷⁴

The report of an audit, conducted after the audit is finished, is essentially just a written summary of its results, and its length can range.⁶⁷⁵ Auditors typically submit their reports closely following their closing meeting, as interest in the audit and the report itself will likely drop for every day that passes after the closing meeting.⁶⁷⁶ There are many benefits to an audit report. Not only does it serve as an official record of the audit, but it also facilitates analysis of the trends it observes.⁶⁷⁷ In addition, the audit report provides proof that the audit covered its entire intended scope, assists auditors in preparing for subsequent audits, and aids in assigning resources for future audits.⁶⁷⁸ There are also several key elements of a report form that auditors should include, such as the date, audit team members, areas audited, documents used, records examined, number of nonconformities, and more.⁶⁷⁹

One of the final steps in the audit process is following up on nonconformities.⁶⁸⁰ Cochran emphasizes that, to be most effective in the follow-up process, an auditor should focus on finding evidence that can show how the process has changed and how the work output has been improved due to the corrective actions taken.⁶⁸¹ First, an auditor should follow up by examining the causes that were identified during corrective action.⁶⁸² In doing so, auditors should be careful to recognize ineffective causes such as sloppy work and management oversight.⁶⁸³ When noting such causes, auditors should dig deeper to find the actual underlying cause by asking probing questions.⁶⁸⁴ Next, an auditor should look at the planned actions. An auditor should be wary of ineffective actions such as merely holding a meeting or warning members, which will likely not change the way work is being done.⁶⁸⁵ The next step of following up is confirming that corrective actions have been implemented in their entirety.⁶⁸⁶ All actions must be “sustainable” or, in other words, formally incorporated into the processes themselves.⁶⁸⁷ Once the actions are confirmed, Cochran suggests that the audi-

⁶⁷⁴ *Id.*; Larry D. Hubbard, *Opening and Closing Meetings*, 61 INTERNAL AUDITOR 27, 27–28 (2004).

⁶⁷⁵ COCHRAN, *supra* note 568, at 125.

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.* at 125–26.

⁶⁷⁹ *Id.* at 126.

⁶⁸⁰ *Id.* at 129.

⁶⁸¹ *Id.*

⁶⁸² *Id.*

⁶⁸³ *Id.* at 129–30.

⁶⁸⁴ *Id.* at 130.

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.* at 131.

⁶⁸⁷ *Id.*

tor look for evidence that the process output has improved.⁶⁸⁸ Evidence for this outcome can come in several forms but usually takes the form of data or records.⁶⁸⁹ An auditor must also make sure that the timing of verification matches up with the actions that were taken.⁶⁹⁰

I. *A Behavioral Economics Approach*

To make the compliance program more effective, GLOs should employ choice architecture, such as behavioral nudges. Nudges are positive reinforcement and indirect suggestions intended to influence people's behavior and decision-making while allowing them to maintain their choice autonomy.⁶⁹¹ There are two types of nudges: educative nudges or non-educative nudges.⁶⁹² Educative nudges increase knowledge, thus increasing decision-makers' power of agency, and include disclosure reminders and warnings.⁶⁹³ Non-educative nudges are nudges that maintain choice, but do not increase individual agency (e.g., default rules).⁶⁹⁴

Nudges are everywhere, and it is impossible to avoid them.⁶⁹⁵ Nudges require transparency to remain ethical, though, and can be an issue if people do not consent to them.⁶⁹⁶ So, choice architecture should remain transparent and allow for active choosing.⁶⁹⁷ There are some issues surrounding the use of nudges and debate about whether it is a form of manipulation. However, nudges are a form of persuasion rather than manipulation.⁶⁹⁸ Manipulation does not reserve choice autonomy, whereas nudging does allow reflection and choice.⁶⁹⁹ Therefore nudges are mainly not manipulative, especially nudges such as disclosures, warnings, or reminders.⁷⁰⁰ For example, information disclosure can be used as a regulatory tool.⁷⁰¹ However, it must be "concrete, straightforward,

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.* at 132.

⁶⁹⁰ *Id.*

⁶⁹¹ Cass R. Sunstein, *People Prefer System 2 Nudges (Kind Of)*, 66 DUKE L.J. 121, 122–24 (2016).

⁶⁹² *Id.* at 123.

⁶⁹³ *Id.* at 123–25.

⁶⁹⁴ *Id.* at 123, 125.

⁶⁹⁵ Cass R. Sunstein, *The Ethics of Nudging*, 32 YALE J. REGUL. 413, 422 (2015).

⁶⁹⁶ *Id.* at 446–47.

⁶⁹⁷ *Id.* at 446.

⁶⁹⁸ CASS R. SUNSTEIN, *Fifty Shades of Manipulation*, in THE ETHICS OF INFLUENCE: GOVERNMENT IN THE AGE OF BEHAVIORAL SCIENCE 78, 80 (2016).

⁶⁹⁹ *Id.* at 84–85.

⁷⁰⁰ Cass R. Sunstein, *Manipulation, Welfare, and Dignity: A Reply*, 1 J. BEHAV. MKTG. 351, 351–52 (2015).

⁷⁰¹ Cass R. Sunstein, *Nudges.gov: Behaviorally Informed Regulation*, in THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW 719, 728 (Eyal Zamir & Doron Teichman eds. 2014).

simple, meaningful, timely, and salient,” and “clearly identify the steps that might be taken to obtain . . . relevant goal[s].”⁷⁰²

There are a variety of nudges. One is the use of social norms. People are more likely to engage in a certain behavior if they believe others are also engaging in the behavior.⁷⁰³ Becoming aware of social norms and practices can greatly influence individuals’ decision-making. Social norms can also help decrease economic and environmental costs. For example, if an individual is aware that he or she is using more energy than their neighbors, that individual’s use might decrease.⁷⁰⁴ Another example of a nudge is a warning, which is a type of educative nudge.⁷⁰⁵ Further, there are factual warnings as well as graphic warnings. Graphic warnings are more effective than factual information.⁷⁰⁶ This is because nudges that only have short-term effects are less effective since much of the information thrown at an individual may lose meaning or become irrelevant.⁷⁰⁷ Reminders are another type of educative nudge.⁷⁰⁸ Feedback is the best way to help individuals improve performance, and informing people of the nature and consequences of their actions can help tell them what they are doing correct and when they may be making a mistake.⁷⁰⁹ Ultimately, disclosure nudges and educative nudges may be ineffective and produce confusion because information is often complex to process.⁷¹⁰

Alternatively, social norms are usually effective because the individual being nudged is exposed to what the majority believes is right. Once people are exposed to this information, they do not want to stray from the normative as a result of reputational concerns.⁷¹¹ Oftentimes, the decisions of others greatly influence individual behaviors and actions, a form of “compliance without enforcement” in order to uphold societal standards and norms.⁷¹² Typically, this occurs because people lack certain information to make decisions on their own, and, therefore, they follow the lead of others.⁷¹³ The use of social comparisons can actually be of economic and environmental benefit because individuals may base their courses of action on the behavior of relevant others.⁷¹⁴ However,

⁷⁰² *Id.* at 729.

⁷⁰³ Cass R. Sunstein, *The Council of Psychological Advisers*, 67 ANN. REV. PSYCH. 713, 718 (2016).

⁷⁰⁴ *Id.* at 723.

⁷⁰⁵ Sunstein, *supra* note 691, at 124.

⁷⁰⁶ *Id.* at 130–32, 134, 136.

⁷⁰⁷ Cass R. Sunstein, *Nudges That Fail*, 1 BEHAV. PUB. POL’Y 4, 21 (2017).

⁷⁰⁸ Sunstein, *supra* note 691, at 124.

⁷⁰⁹ Richard H. Thaler et al., *Choice Architecture*, in THE BEHAVIORAL FOUNDATIONS OF PUBLIC POLICY 428, 433 (Eldar Shafir ed., 2013).

⁷¹⁰ Sunstein, *supra* note 707, at 20–21.

⁷¹¹ Meirav Furth-Matzkin & Cass R. Sunstein, *Social Influences on Policy Preferences: Conformity and Reactance*, 102 MINN. L. REV. 1339, 1349–50 (2018).

⁷¹² Sunstein, *Nudges.gov: Behaviorally Informed Regulation*, *supra* note 701, at 723.

⁷¹³ *Id.* at 723, 725.

⁷¹⁴ *Id.* at 731.

disclosure may not be effective if it is only used alone. In some cases, specific disclosure of information may not be effective if the information is too vague or too complex and overwhelming to be useful.⁷¹⁵ Therefore, disclosures need to be straightforward and simple.⁷¹⁶ These policies are based on the understanding of how people process information.⁷¹⁷ There seems to be more support for nudges when they appeal to deliberate thinking rather than the subconscious.⁷¹⁸ Appealing to deliberate thinking avoids the implication of manipulation, which compromises agency.⁷¹⁹ In addition, there is more suspicion surrounding mandates than nudges.⁷²⁰

While nudges aim to steer people in a particular direction, some nudges, typically the use of social norms, can cause reactance. While this is uncommon, it occurs because individuals may feel that they are being pushed or moved to behave in a certain way and want to maintain some sense of control.⁷²¹ Ultimately, people need to care about social norms for them to be effective and followed.⁷²² When it comes to resisting nudges, two factors are typically considered: the costs of decisions and the costs of errors.⁷²³ Thus, a nudge will be ineffective if it is not costly to reject or if doing so will reduce error costs.⁷²⁴ When people learn about the majority opinion, some individuals, usually the minority group, might intensify their opposite opinion or stance on the topic at hand.⁷²⁵ However, this may vary based on whether a decision-maker's opinions on the topic are fixed. If a decision-maker lacks enough knowledge on the subject, they are more likely to be swayed by majority opinion. However, a fixed opinion may cause reactance if it goes against the majority opinion.⁷²⁶

It may be that some nudges are less effective than others due to “counter-nudges,” which persuade decision-makers to act in a way that confounds the efforts of choice architects.⁷²⁷ Another way that nudges can be ineffective is when they are based on inaccurate understandings of how choice architecture can influence individuals in different situations and the things to which certain people respond. Oftentimes, “skepticism, fear, or inertia might be the problem,

⁷¹⁵ *Id.*

⁷¹⁶ See Sunstein, *supra* note 691, at 132.

⁷¹⁷ Sunstein, *Nudges.gov: Behaviorally Informed Regulation*, *supra* note 701, at 727.

⁷¹⁸ Cass R. Sunstein, *Do People Like Nudges?*, 68 ADMIN. L. REV. 177, 177 (2016).

⁷¹⁹ *Id.* at 206.

⁷²⁰ See *id.* at 200–01.

⁷²¹ See generally Hendrik Bruns & Grischa Perino, *The Role of Autonomy and Reactance for Nudging – Experimentally Comparing Defaults to Recommendations and Mandates*, (Aug. 25, 2019) (unpublished manuscript), <https://ssrn.com/abstract=3442465> [<https://perma.cc/532V-GGDD>].

⁷²² Sunstein, *supra* note 707, at 21.

⁷²³ *Id.* at 6.

⁷²⁴ *Id.*

⁷²⁵ See generally Furth-Matzkin & Sunstein, *supra* note 711, at 1377.

⁷²⁶ *Id.*

⁷²⁷ Sunstein, *supra* note 707, at 11, 13.

and simplification might not much help” when it comes to nudges.⁷²⁸ Similarly, strong antecedent preferences can affect some nudges. Strong preferences are usually enough to ensure that any default rules will not persist.⁷²⁹ In this case, decision-makers will not be influenced by suggestions that may be included in the default rule.⁷³⁰ Any relevant social norms will ultimately define how any loss is measured.⁷³¹ There are also some nudges that, while they may produce certain desired behaviors, may also produce compensating behaviors that nullify the effect, resulting in a concept known as the “rebound effect.”⁷³²

There also seems to be resistance to nudges if people can tell or understand what the motivation or goal of the nudge is.⁷³³ Sunstein found that people dislike nudges that seem to promote an illicit goal such as religious or political favoritism.⁷³⁴ People also tend to be against nudges that are for policies or policy makers they oppose, whereas the same nudges from policies or policy makers they favor are supported.⁷³⁵

CONCLUSION

Social events can be sources of considerable liability for GLOs. The common scenario is where alcohol is involved, and the organization has not attempted to mitigate the effect of alcohol social event attendees. The other scenario, often ignored in the scholarly literature, are social events where violent acts take place—e.g., fights, stabbings, shootings—and the host organization has failed to mitigate the risk. For both types, alcohol and non-alcohol related, there are a range of best practices to reduce risk. It is not enough that the best practices exist. Organizations must implement them for them to work. Despite these best practices, there is no guarantee that GLO chapters will implement them. As such, models for organizational compliance initiatives should be applied by national organizations. As a general matter, social event compliance should be part of a broader compliance initiative. Further, insights from behavioral economics (i.e., nudge theory) could amplify the benefits of organizational compliance strategies via positive reinforcement and indirect suggestions as ways to reduce risky behavior among GLO chapter members and the harm associated with said behavior.

⁷²⁸ *Id.* at 20.

⁷²⁹ *Id.* at 9.

⁷³⁰ *Id.*

⁷³¹ *Id.*

⁷³² *Id.* at 21.

⁷³³ Sunstein, *supra* note 718, at 177.

⁷³⁴ *Id.* at 185.

⁷³⁵ *Id.* at 217.

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