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The following editorial opinion is reprinted from *The Trident*, a student newspaper at Washington and Lee University, November 2000 edition. The tragic events of Homecoming Weekend referred to in the editorial included the deaths of two students, Adam Burchett, age 20, and Kristin Shelton, age 18. The students had attended several homecoming weekend parties, including one at Burchett's fraternity. Following their deaths in a traffic accident, it was determined that both students were heavily intoxicated. Burchett's blood-alcohol level of 0.20 percent and Shelton's blood-alcohol level of 0.22 percent were more than twice the 0.08 legal limit for driving in Virginia.

Washington and Lee University has been a vocal opponent of the alcohol-free housing movement among college fraternities and sororities, preferring instead to focus campus social activities at fraternity houses to allow the University to more directly oversee the safety of its students in an environment where students could be encouraged, if they choose to use alcohol, to do so responsibly and legally.

THERE IS SUCH A THING AS 'TOO MUCH FUN'

There is entirely too much drinking on the W&L campus, and it causes people to get hurt and killed.

I have been wanting to write an article about this since I first came to W&L two years ago, but I never felt it was the right time to criticize many fellow students' and friends' favorite pastime at the possible cost of some of those relationships. However, after the tragic events of Homecoming Weekend, including the deaths of two W&L students and injuries of others in alcohol-related incidents, this article can no longer be put off.

I am not one of those people who thinks drinking in itself is some unpardonable sin. I have grown up in a family in which alcohol was enjoyed in moderation. I personally disagree with underage drinking and do not think it is a behavior that becomes honorable, gentlemanly students. But let's put that aside for now.

The real problem at W&L is not drinking, but drunkenness. And not so much drunkenness, but habitual drunkenness, and the treatment of drunkenness as not only acceptable, but also even laudable.

I have been to so many parties where I have seen people kneeling by the toilet bowl, miserable. I have held girls' heads as they have cried and promised never to drink again... only to get drunk again the following weekend.

Why does this happen?

I have known people who came to college with a strong principled belief against underage drinking and drunkenness. I have seen their supposed friends pressure them into drinking. I have seen these people get into dangerous situations in which they have come very close to abandoning every principle they ever had, much to their regret later. I have seen people transform from self-respecting, self-controlled people to ones who can only feel good about themselves after getting drunk. I have seen girls who would dream with me about romance and true love and their knight in shining armor convince themselves that all they will ever be able to get are drunken hook-ups that leave them feeling cheap and unloved.

Why does this happen? And why do we let this happen?

> The real problem at W&L is not drinking, but drunkenness. And not so much drunkenness, but habitual drunkenness, and the treatment of drunkenness as not only acceptable, but also even laudable.

I am not sure why it happens, but there are some definite ways how it happens. There is an infrastructure in place at W&L that supports and promotes drinking and drunkenness.

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Part of this infrastructure is tradition. One "great" W&L tradition is drinking oneself out of one's mind. How this became a tradition, I am not sure. Somehow I do not think it was a part of orientation during Robert E. Lee's presidency here. However, at some point, it did become tradition. And people are loathe to part from it.

The Greek system perpetuates this tradition. Older fraternity brothers pressure pledges to take up the habit, which they then hand on to the next class and so on. Freshmen come to fraternity parties and get the feeling that "everyone's doing it." Upperclassmen, who know everyone is not doing it, do not care enough about these freshmen to risk getting some flak from friends for telling them. So, wanting to fit in more than anything else, freshmen take up the habit, also. And the cycle continues.

One would think that at a school full of such bright people, some intellectual discourse on this topic would be welcomed. Not so.

Professors have accepted drunkenness as part of life at W&L. I cannot say how many classes I have had in which the professor made some kind of joke about student drunkenness. While I am sure they are just trying to show students that they are "fun" and not stodgy intellectuals who cannot relate to the students, they are in fact normalizing this very dangerous behavior. How can a student possibly get out of the rut of drunkenness if his professor is sending messages that it is normal and acceptable?

Students that have been here for a few years, even if they are violently opposed to drunkenness, begin to just accept that it is "the way things are" at W&L.

One would think that at a school full of such bright people, some intellectual discourse on this topic would be welcomed. Not so. Those few who dare to speak up on this topic quickly shut up. I have no doubt that this article will ostracize me from many people at W&L, as a similar one ostracized a friend of mine our freshman year. In fact, even he will probably tell me that I am being far too serious about this whole thing. But if I am not serious, who else will be? If I do not speak out and say something is wrong, who will? No one has, and people are dying as a result.

My primary duty is not to W&L recruitment – my primary duty is not to lie about the problem to let the school save face. My primary duty is not to my friends in the Greek system, to ignore the problems in their system in hopes of encouraging a freshmen class to rush and pledge without thinking of any possible consequences. My primary duty is to let people know what I've seen in my years here, and warn them of the dangers. My primary duty is to the beloved classmates of ours who did not wake up this morning and go to class as we did, who will never have that chance again.

I love W&L, and I love all the people I know here. So it hurts to see what people are doing to themselves. You do not have to drink . You do not have to get drunk. I have had one of the best college experiences of anyone I know and have not had a drop of alcohol at a party.

If you disagree with my take on drinking, that is your prerogative. But please still think. Set boundaries before you start drinking. If you have been drinking at all, do not drive. If you do not drink, please watch out for any friends that choose to. Please do not write this article off right away. Think about it. Drunkenness kills.

• Elianna Marziani[1]

[1]Reprinted with permission from *The Trident*, an independent student publication of Washington and Lee University.

Editor's Note:

According to *The Roanoke Times*, two weeks after the Homecoming Weekend deaths, Washington & Lee's President John Elrod called a student assembly to decry alcohol abuse. President Elrod also appointed a task force to "reflect upon the culture of alcohol" at the school and make recommendations on how to control it, according to his memo to the task force. As of early February, no conclusions or proposals had been made.

2001 Fraternal Law Conference

November 9-10, 2001
Cincinnati, Ohio

The tenth national Fraternal Law Conference will take place November 9-10, 2001, at the Kingsgate Marriott Conference Center in Cincinnati, Ohio beginning at 9 a.m. on Friday and continuing through noon on Saturday. The conference is designed to assist national and student fraternity leaders, university officials, and their legal professionals, in ensuring a healthy and vigorous fraternity system effective in preventing legal difficulties.

The general fee for the 2001 Fraternal Law Conference is $225.00 per participant. The student rate is $140.00. The registration fee includes a luncheon and evening reception on Friday and continental breakfast on Saturday. Hotel reservations may be made by calling the Kingsgate Marriott at (888) 720-1299. Ask for the Fraternal Law Conference rates when making guest room reservations.

If you are in any way involved with fraternities and sororities and are concerned with evolving legal issues surrounding these groups, this conference is for you. If you have questions or would like to get more information about the 2001 Fraternal Law Conference, please contact Jana Shaw at (513) 721-5525 or jshaw@mblclaw.com.

FREQUENTLY ASKED FOUNDATION FUNDRAISING QUESTIONS

Introduction

While there has been a great deal of publicity in the past few years about the types of educational activities and programs that fraternal foundations may fund for their related fraternal organizations and the necessity of grant agreements in connection with same, some of the most frequently asked questions by fraternal foundation clients are in the realm of questions about day-to-day fundraising and donor cultivation matters. I find that these matters and the IRS position with respect to same are often misunderstood and that frequently, foundations may take too conservative a position on these matters or refrain from engaging in beneficial activities because they are fearful of running afoul of IRS rules.

This column will examine some of the most frequently asked questions of this type and discuss my views as to how the IRS approaches these various issues. A general guideline to be followed is that all expenses, especially those relating to fundraising and donor cultivation, must be reasonable in amount taking into account the size of the foundation, its annual fundraising receipts and the "stage in life" of the foundation. For example, a foundation that is just beginning to build a donor base or one that is engaged in a capital campaign may have to expend a higher percentage for these types of expenses than a foundation which is not in these situations.

Questions and Answers

1) **Can an officer, trustee or authorized volunteer of a foundation take a prospective donor to dinner or a similar event at the Foundation's expense?**

A foundation can certainly entertain donors and prospective donors at dinner as a fundraising expense, provided the particular dinner is not lavish in nature and the overall fundraising expenses of the foundation are reasonable in relation to amounts raised by the foundation and the foundation's overall budget.

2) **Can a foundation sponsor and pay for dinners, fundraising receptions, informal gatherings and the like which it conducts for donors and prospective donors to inform them of the foundation's mission?**

Again, these types of activities are perfectly appropriate for a foundation to fund subject to the caveats indicated above.

3) **Can a foundation give relatively small gifts to donors as donor recognition or appreciation items?**

These types of gifts may be made as long as they are reasonable in amount, but they are subject to special rules regarding donee disclosure and reporting requirements of the foundation. Thus, the foundation is required to notify donors who make contributions in excess of $75.00 if they receive articles in connection therewith, unless such articles fall within the low cost articles rules described in Revenue Procedure 90-12, that their contributions must be reduced. Generally, this means that the fair market value of all of the benefits received in connection with the contribution may not be more than two percent of the contribution or $50.00, whichever is less, or the contribution is more than $25.00 and the only benefits received by the donor are token items bearing the organization's name or logo. (The limit on the cost of the latter items for the year 2000 was $7.40 or less.) If these safe harbors are not met, then the foundation must make a good faith estimate of the value of the items given and the donor must be informed that the amount of his contribution is reduced by such value. Most foundations prefer to avoid having to so inform donors.

4) **What is the best way to handle expenses incurred by a foundation board member or volunteer in carrying out his duties for the foundation such as attending foundation board meetings? Many foundations like to publicize to donors that the board members "pay their own way," but the board members would like to be assured of a tax deduction for doing this. What is the best way to accomplish this?**

The general rule is that a deduction is allowed for transportation or other travel expenses including meals and lodging incurred in the performance of services away from home on behalf of a charitable organization if there is no "significant element" of personal pleasure, recreation or vacation. Thus, in most cases the best approach to this issue, in my view, is the straightforward one - the individual should pay

these expenses directly or reimburse them to the organization. Note that deductions are disallowed where two unrelated taxpayers pay each other's travel expenses or members of a group contribute to a fund that pays for all travel expenses. Individuals who qualify for a deduction for the use of an automobile may use the statutory standard mileage rate of 14 cents per mile in lieu of a deduction based on the actual expenses incurred (see Revenue Procedure 99-38), and may also take additional deductions for parking fees, tolls, etc.; depreciation and insurance are not deductible as part of the contribution.

5) **May a foundation accept donor-restricted contributions to fund a particular leadership conference or for fundraising activities of the foundation?**

A foundation may accept restricted contributions from donors for any legitimate foundation purpose, including educational and leadership programs, or to defray fundraising expenses of the foundation, provided there is no element of donor personal benefit involved. If a contribution is accepted to fund an educational or leadership program, then the foundation needs to make sure that it can, in fact, fund the particular activity. For example, if a contribution is accepted to fund a leadership conference in its entirety, then the foundation must ensure that the activity is 100% qualifying by IRS guidelines. By the same token, if the foundation accepts a contribution to support fundraising activities, it should ensure that those fundraising activities are reasonable and appropriate. However, foundations may want to consider, in deciding whether to accept these types of restricted contributions, whether the administration involved outweighs the beneficial nature of the contribution. For this reason, most mature foundations set a floor on the dollar amount for accepting this type of contribution.

6) **Is it a good idea for a foundation to have a written agreement with its related fraternal organization as to how fundraising activities are to be performed?**

Generally, in order to avoid misunderstandings, I believe that it is a good idea for a foundation to have a joint fundraising agreement with its related fraternal organization. Such agreements may cover such topics as the type of fundraising to be conducted, the population to be solicited, how expenses are to be handled and the like. Such agreements should be extremely carefully drafted to ensure that the foundation retains ultimate control of its own programs and activities, and they should never contain a legal commitment to grant a specific amount of funds to a related fraternal organization without review of particular programs and adequate grant documentation.

7) **Are joint fundraising campaigns by foundations and their related fraternal organizations a good idea?**

In general, such campaigns have been made logistically very difficult by the legal requirements for fundraising solicitations, including the requirement that non-deductible contributions to a fraternal organization be specifically stated to be such and the desirability of complying with the safe harbor rules for such a warning. If a joint fundraising campaign between the foundation and its related fraternal organization is being considered, specific and knowledgeable legal advice, as well as fundraising advice must be sought at an early stage.

8) **Can a foundation sponsor a breakfast, dinner or similar event at the fraternity's convention to award scholarships, describe foundation activities, have a philanthropic speaker, etc.?**

The answer to this question is certainly yes and, in fact, this kind of activity can be a necessity for a fraternal foundation. The foundation may pay all reasonable expenses of such an activity - some of them may be considered as educational in nature and some as fundraising expenses.

9) **Can a foundation make an award to a member or non-member of the fraternity at the fraternity's convention or other meeting and provide an honorarium to the awardee, as well as pay for a plaque or other symbol of the award? Can a foundation pay the travel and lodging expenses of the awardee to attend the convention or meeting?**

Again, all of these activities are perfectly appropriate, as long as the award is directly related to the foundation's purposes and the amounts involved are reasonable in relation to the achievement that is being honored. How-

ever, it is recommended that the honorarium be made in the form of a contribution to the awardee's designated public charity.

Conclusion

It can readily be seen through the above questions and answers that a foundation may engage in a wide variety of fundraising activities and pay reasonable expenses in connection therewith. The overriding guideline is whether the activity furthers the foundation's exempt purposes, either directly or by providing additional donor funds to carry out such purposes. Further, the amounts involved should always be reasonable, in light of the size and scope of the foundation's program. As long as a foundation keeps these basic points in the forefront, it is unlikely that the foundation will run afoul of IRS guidelines in the fundraising arena, but as always, specific and unusual questions or substantial expenditures should be referred for competent professional advice.

CHAPTER MEMBERS FACE CRIMINAL CHARGES

The Chapter President and two members of the Pi Kappa Phi Chapter at Chico State University were criminally charged and have now been convicted of "furnishing alcohol to a minor causing death." The charges, brought following a three-month investigation by the local district attorney, came in the wake of the death of 18-year old Adrian Heideman, after a chapter pledge event. According to the district attorney, during a pledge event, Heideman chugged a bottle of blackberry brandy that the district attorney alleged had been provided by upperclass members of the Chapter. Heideman was found passed out in the basement of the Chapter House. He could not be revived.

The Chapter's pledges had all been introduced to their big brothers the night Heideman died. The district attorney reported that his investigation found that the overwhelming majority of the other 23 pledges, all but three of whom were minors, had "become drunk or very drunk" that night.

The charges against the Chapter President, the Pledge Ceremony Organizer and the member who apparently purchased the alcohol, while only misdemeanors, could have meant up to a year in jail and a $1,000 fine for each of the defendants. However, in early February, following no contest pleas, each defendant was sentenced to 30 days in jail which they may be able to serve at nights and on weekends.

The district attorney reported that his investigation found that the overwhelming majority of the other 23 pledges, all but three of whom were minors, had "become drunk or very drunk" that night.

The National Fraternity has suspended its Chico chapter pending determination of final disciplinary action and, in a pro-active response to the tragedy, is paying for a series of billboards which will both memorialize Heideman and warn against the consequences of binge drinking. The fraternity also intends to circulate a tape of the 911 call in which fraternity members can be heard pleading for help to all of its chapters.

The actions of the California District Attorney contrast with the 1998 effort by a district attorney in Massachusetts to prosecute the Phi Gamma Delta Chapter at MIT for manslaughter following the death of Scott Krueger. There, the prosecution failed because the Chapter simply dissolved and there was no entity left to answer the charges. Individuals who provided alcohol to minors at MIT were not charged. They clearly could have been.

A chapter which allows alcohol to become a focus of chapter events, such as "wet" pledge parties, places all its officers who had anything to do with the event, particularly those who assisted in supplying alcohol to minors, in jeopardy of criminal prosecution.

The criminal charges at Chico State should send a warning to fraternities and sororities all across the country. An individual who supplies alcohol to a minor commits a crime. A chapter which allows alcohol to become a focus of chapter events, such as "wet" pledge parties, places all its officers who had anything to do with the event, particularly those who assisted in supplying alcohol to minors, in jeopardy of criminal prosecution.

There remains a potential for civil litigation against the individuals at Chico State, the chapter and the fraternity. The success of such litigation will depend upon proof of liability based on specific facts and the actions and responsibilities of each individual and entity that may be named as a defendant.

Preventing injuries and deaths like that of Adrian Heideman from the misuse of alcohol, ought to be more than enough reason to seriously confront the issue of alcohol abuse. The potential for criminal charges, jail time, and personal civil liability are, in the end, secondary.

• Timothy M. Burke

INTELLECTUAL PROPERTY IN THE 21ST CENTURY

As Greek letter organizations enter the 21st Century, they face new challenges and opportunities in regard to their intellectual property.

What is intellectual property? Do fraternities actually have intellectual property? Intellectual property includes all of the written and electronic information that a fraternity possesses about its organization, its members, its policies, its rituals, its name, its nicknames, and any distinguishing marks and emblems that it may use to identify itself. Training manuals, magazines, educational publications and videos, mailing lists, crests and Greek letters are all intellectual property.

Many Greek organizations take this valuable property for granted. The "internet age" makes it easier than ever before for pirates to steal Greek intellectual property. Sometimes the theft happens without the Greek organization's knowledge of the theft.

This is a new challenge, but it also is a new opportunity, because it should motivate the management of all fraternities to consult their intellectual property lawyers to make sure they have covered all bases to protect their valuable intellectual property assets.

The following is a series of issues that every manager of a Greek organization should be discussing with its intellectual property lawyer as soon as possible:

- Are our trademarks registered?
- Is the registration current?
- Are there other distinguishing trademarks, emblems or collections of words or letters that should be registered as trademarks but have not been registered as trademarks? For example, many Greek organizations have "nicknames" that ought to be registered as trademarks. Also, many Greek organizations have developed distinctive symbols that are very different from their emblems, badges or letters, but nonetheless need legal protection.
- Does the fraternity have a written policy that makes it clear that members are not authorized to use the registered trademarks of their fraternity without authorization of the general management of the fraternity? Such a written policy will make it easier to stop maverick members from producing silk screened vulgar cartoons on t-shirts that are identified with a particular fraternity.
- Does the fraternity have a written policy on the way in which a chapter may use the trademarks of the fraternity on chapter stationery and on the chapter web page?
- Does the fraternity have a written policy of how to enforce its trademarks?
- Does the fraternity have a history of effective enforcement of its trademarks?
- Does the fraternity have a written policy on the circumstances under which the mailing list of the fraternity may or may not be licensed for use?
- Does the fraternity have a written policy on governing the licensing and the use of its trademarks?
- Are printed materials copyrighted?

A serious discussion of these questions and similar questions with competent trademark counsel is more important as we enter the 21st Century than it ever has been in the past. Greek organizations had common law trademarks long before the United States Government Patent and Trademark Office began to register trademarks. Often in the past, Greek organizations have taken for granted their ownership rights in their intellectual property. Modern information technology makes it easy for mavericks to exploit fraternity trademarks on the Internet and in the production of affinity products. It is inexpensive to scan an emblem into a computer and then use it for improper purposes. If the emblems have not been registered as a trademark, it will be more difficult to stop the improper use of the emblem.

Many people in the fraternity world confuse the registration of a trademark and the issuance of a copyright. Copyrighted material is generally written or artistic material that is published. It may or may not be decorated with trademarks. Trademarks are distinctive marks that identify the organization in its field of activity. Generally, trademarks are more vulnerable to exploitation because of failure to keep the registration current or failure to have a viable enforcement policy.

• Robert E. Manley

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The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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