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The California S.T.E.P. Act: Prosecuting Fraternities as Criminal Street Gangs

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The California S.T.E.P. Act:
Prosecuting Fraternities as Criminal Street Gangs

A Thesis
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By
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Loyalty, brotherhood, initiation, rape; when first hearing these words one likely associates them with a criminal organization, such as a street gang, rather than a men's social fraternity at an undergraduate academic institution. Upon further reflection, however for many, the unclear parallel is drawn. Although both of these groups associate themselves with the behaviors and values listed above, why are they viewed so differently in popular culture? Because criminality is a social construct, it is up to society to both define and label criminality and criminals themselves. So, in the case of street gangs and fraternities, much of society believes that the former group engages in criminality as its main function, while the latter simply exists as a club, of sorts, within an institution of higher learning. Thus, because of society's differing perceptions of these two groups, gangs are considered to be one of American society's biggest problems, while fraternity membership is often encouraged among college-aged men. Similarities in the structure, initiation and recruiting processes, and motivations for joining both street gangs and fraternities, however, allow one to break down the rigid walls of the social construct of criminality in order to draw possible parallels in regulating and prosecuting these two groups, especially under California's most recent and impactful street gang legislation, the S.T.E.P. Act. More specifically, this research will utilize the California S.T.E.P. Act to compare and contrast the structure, motivation, and criminality of street gang and male fraternity members to explore the social construction of gang crime, and crime more broadly, in contemporary America.

Street Gang Overview: Why Members Join

Experts agree that while many reasons exist for why men are drawn to street gangs, there are a select few that overwhelmingly explain this phenomenon. First and foremost, men, especially young men, may join a gang to achieve a sense of belonging or brotherhood. This

brotherhood becomes even more of a motivation in those that do not have strong ties to their communities or families, as the gang itself may serve in these roles. Second, men join street gangs to achieve a sense of status or self-worth.¹ Especially when one joins a well-known gang, this sense of self-worth is enhanced by being able to associate with the group. For those who lack ties to community, membership in the gang gives their lives a sense of purpose; they are a part of something bigger than themselves. Additionally, young men may join street gangs as a result of peer pressure and intimidation by members of the gang. Through the use of the young men's desires for self-worth and belonging, the gang members convince the young men that the only way those two things can be achieved is through membership in the gang, hence pressuring them into joining.

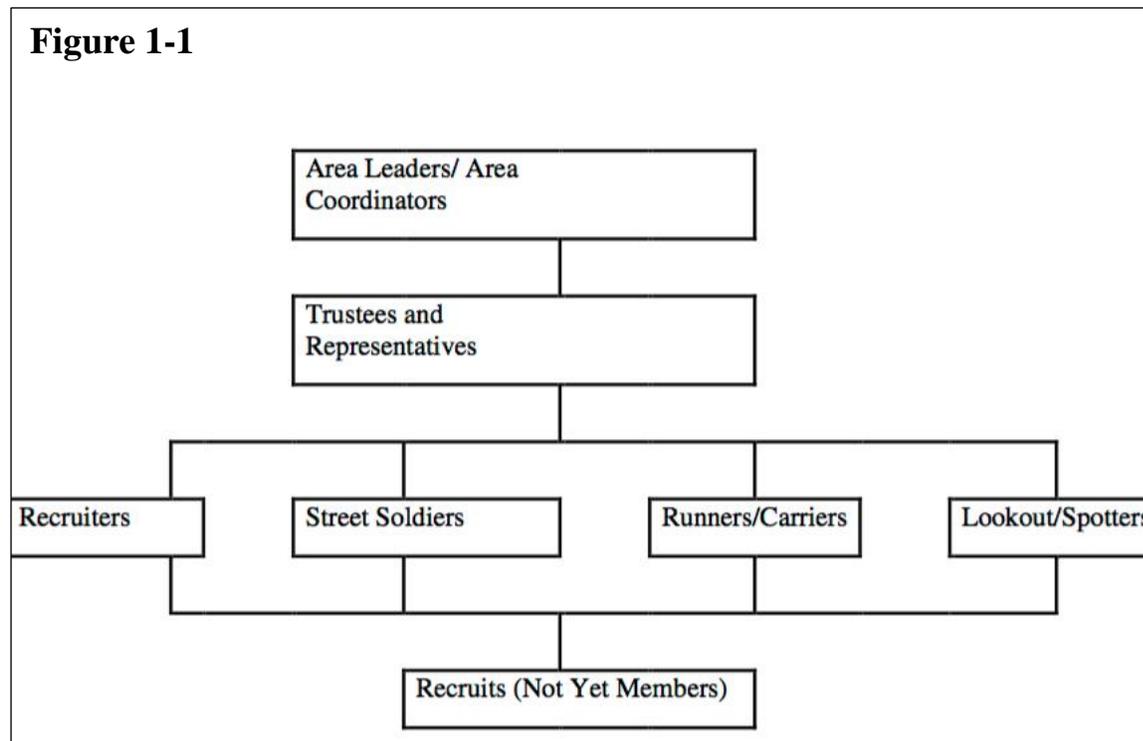
Street Gang Overview: Structure

Often, street gangs are highly organized and often have a hierarchical structure resembling that of a large corporation.² Many gangs have factions that operate in various locations, while still under the control of one central leader. For the purpose of this paper, it is important to analyze the structure of these factions, which are controlled by a leader as well. The typical structure of any given faction, that is any group of gang members that affiliate themselves with a larger organization operating outside of that specific group's given geographic location. Typically, an area leader and area coordinators exist at the top of the hierarchical structure of these street gang factions. Below these leaders are the trustees and representatives. Further down

¹ "Gangs: reasons Youth Join, Warning Signs, and Prevention Tips," *Middle Earth New Jersey* (blog), March 4, 2010, <https://middleearthnj.wordpress.com/2010/03/04/gangs-reasons-youth-join-warning-signs-and-prevention-tips/>.

² "Chicagoland Gangs," *Site of Big Shoulders*, accessed October 9, 2015, http://sobs.org/images/stories/chilocal/chicagoland_gangs/gnghome.html.

the hierarchical structure, there are recruiters, street soldiers, runners, and lookouts. Lastly exist those that are not yet members, also referred to as recruits. This structure is depicted in Figure 1-1 below.³



Street Gang Overview: Initiation

Street gangs are very selective in their recruiting process. Often, street gangs recruit members that have specific skills or assets that will benefit the gang, such as strength, a connection to illegal markets for drugs or guns, financial support, legal experience, or experience

³ Daniel A. Tenant, "Fraternities: The Gangs of the United States' Elite," *California Polytechnic State University*, 2011, 28, <http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1050&context=socssp>.

committing certain kinds of crimes.⁴ In order to prove that a potential new gang member is not a snitch and is loyal to the gang, most potential new gang members must go through initiation “ceremonies” in order to fully become a member of the gang. There are various means by which a recruit can be initiated into a gang. Examples include committing a theft, known as being “jacked in,” committing a gang assigned murder, known as “blood in,” being forced to have sex with a woman who has a sexually transmitted disease, known as “deeded in,” and being punched very aggressively over the heart, known as “punched in.”⁵ The remaining examples that have not been discussed all contain the same levels of violence, aggression, and demanded submission on the part of the recruit. It is important to note that these recruits are often killed in their initiation attempts. Partaking in these initiation ceremonies despite the risks posed both to the recruits health and criminal record shows the true commitment to the street gang.

Street Gang Overview: Affiliation

Street gangs distinguish themselves from one another through the use of various physical signs, such as symbols on or colors of their clothing, tattoos, clothing brands, or specific accessories worn by members. Gang members may have certain hand sign that they “throw” or hand shakes that are considered secret. Additionally, street gangs utilize graffiti to communicate and express their affiliation with their gang. For example, the Crips often wear the British Knights clothing line, as the BK in the line’s logo is thought to symbolize Blood Killers, ion reference to the Crips’s biggest rival, the Bloods. The Bloods are commonly known to wear red

⁴ Michael K. Carlie, *Into the Abyss: A Personal Journey into the World of Street Gangs* (St. Louis: Missouri State University, 2002), Part 10: How Youths Find Out About Gangs, http://people.missouristate.edu/MichaelCarlie/what_I_learned_about/gangs/how_youths_find_out.htm.

⁵ Michael K. Carlie, *Into the Abyss: A Personal Journey into the World of Street Gangs* (St. Louis: Missouri State University, 2002), Part 11: How to Join a Gang, http://people.missouristate.edu/michaelcarlie/what_i_learned_about/gangs/join_a_gang.htm.

clothing, while the Crips wear blue. Members of the Bloods often have tattoos of ‘M.O.B.’, or member of the Bloods, or a dog paw made of three dots. Their hand symbol spells out the word blood with the fingers.⁶

Street Gang Overview

The evidence suggests that street gangs act with purpose and are highly organized. Their structures resemble those of large corporations, and every member of the organization has a specific role within the group. The street gang recruitment process is highly selective, and even those recruited by the gang must prove their loyalty before they can become full members. Once fully initiated, street gang members affiliate with their gang by every means possible: graffiti, tattoos, clothing, hand signs, etc. This need to affiliate and represent their street gang demonstrates the intense commitment that these men feel to an organization that is bigger than themselves.

Fraternity Overview: The Basics

In the United States and Canada, there are more than 750,000 undergraduate members in Greek life in 12,000 chapters across 800 undergraduate campuses.⁷ On average, 8.7% of male undergraduates are members of a fraternity in the United States, while some schools see upwards of 84% participation in Greek Life for its male undergraduates.⁸ While schools differ in the depth of involvement of its students in Greek life, this factor does play a role in the activities of the

⁶ “Recognize the Sings: Gang Awareness Guide,” *New Jersey Office of the Attorney General Juvenile Justice Commission*, accessed November 8, 2015, <http://www.nj.gov/oag/gang-signs-bro.pdf>.

⁷ “Fraternity and Sorority Facts,” *New Jersey Institute of Technology*, accessed November 1, 2015, <https://www5.njit.edu/greeklife/directory/facts.php>.

⁸ Susan Snider, “10 Colleges with the Most Students in Fraternities,” *U.S. News & World Report*, June 23, 2015, <http://www.usnews.com/education/best-colleges/the-short-list-college/articles/2015/06/23/10-colleges-with-the-most-students-in-fraternities>.

fraternity. The forthcoming evidence will demonstrate that fraternity houses, which do not exist on every campus, play a large role in the crimes and actions committed by fraternity members. Further, one in eight American undergraduate students lives in a Greek house.⁹

Fraternity Overview: Why members join?

The question of whether or not to rush a fraternity is often a significant decision in the first phase of college life. Schools with Greek systems see membership in these organizations growing-why? Perhaps as the Greek, and specifically fraternity, community grows, men increasingly feel the pressure to join in order to be valued and recognized by their peers. Additionally, joining a fraternity gives these young men social capital, as they achieve access to participation in events, attendance at parties, and more. Men also join fraternities for the brotherhood. These undergraduate students, just starting their college careers, lack brotherhood and camaraderie, and fraternity involvement provides a means for involvement. Young men also join fraternities to achieve a sense of status. On college campuses with Greek life, the fraternity men are often the ‘popular’ men on campus. If one does not join a fraternity, they are often not allowed entrance into fraternity parties and are not invited to women’s social events. Fraternity membership allows young men access to the upper echelons of social life within their college community. Additionally, men may join fraternities for the connections that the organization provides. For example, 85% of Fortune 500 Executives belong to a fraternity, and 76% of all

⁹ Caitlin Flanagan, “The Dark Power of Fraternities,” *The Atlantic*, March 2014, <http://www.theatlantic.com/magazine/archive/2014/03/the-dark-power-of-fraternities/357580/>.

congressmen and Senators belong to a fraternity.¹⁰ With over nine million Greek alumni nationwide, the connections that fraternity membership provides are limitless.

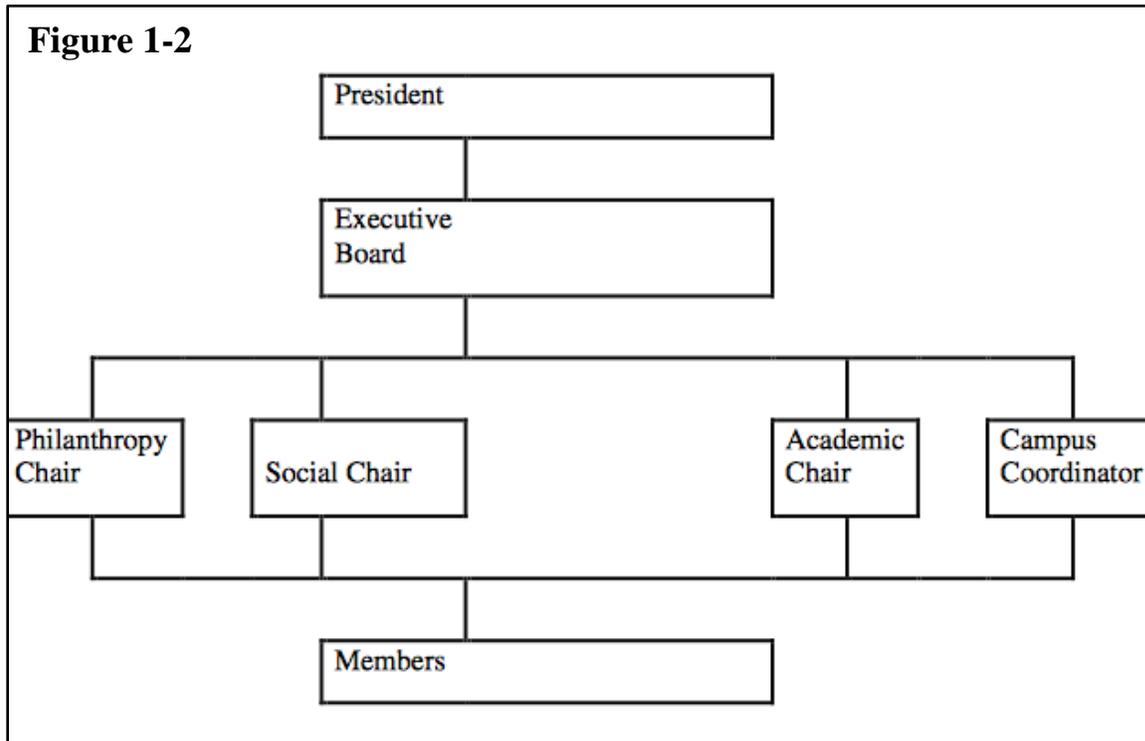
Fraternity Overview: Structure

Like a disproportionate number of America's street gangs, there is one overarching governing body for every chapter of a specific fraternity. For example, there exists one 'national' leadership for a fraternity, that consists of the President and Treasurer of the organization as a whole, as well as various directors in charge of areas such as risk management, alumni relations, insurance, chapter services, and education.¹¹ Under these directors are province directors, followed by local directors who advise the individual chapters. In order to draw the necessary parallels between street gangs and fraternities in order to apply the S.T.E.P. Act, solely the individual chapters of the individual fraternal organizations, just like the individual factions of the larger gangs, will be analyzed. Like a street gang, the organization of a fraternity chapter also resembles that of a corporation. Traditionally, the elected president of the fraternity serves as the highest member. Below the president is the executive board, usually consisting of the secretary, treasurer, and various vice presidents. Following the executive board are the appointed positions, usually including social chair and philanthropy chair, among others. The bottom of the hierarchical structure consists of the general body members. An example of a fraternity structure can be found in Figure 1-2 below.¹²

¹⁰ "Fraternity and Sorority Facts," *New Jersey Institute of Technology*, accessed November 1, 2015, <https://www5.njit.edu/greeklife/directory/facts.php>.

¹¹ Daniel A. Tenant, "Fraternities: The Gangs of the United States' Elite," *California Polytechnic State University*, 2011, 35, <http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1050&context=socssp>.

¹² Ibid.



Fraternity Overview: Initiation

Before a man becomes an initiated member of the fraternity, he must first be invited to participate in the pledging program. This program typically begins with fraternity rush, a highly selective process through which current active and initiated members of the organization meet with and get to know the potential new members. After the completion of various days of the rush process, the active members vote on whether or not they want each individual potential new member to return for the opportunity to spend more time with that organization. On preference night, fraternities vote who they are willing to extend a bid, or an invitation to join the fraternity's pledging process, to. Traditionally, the pledging process, which can range from a matter of weeks to up to a year, is a time during which the pledges have the opportunity to learn about the organization, as well as get to know the chapter's members. It is an opportunity for the

chapter to evaluate whether or not the pledge is committed to and fits in with the organization. Often, however, this pledging process is more of a hazing process, where in pledges are forced to clean, run errands, and follow any order given by active members. They are often forced to drink alcohol until they vomit. One example of this alcohol-included hazing is the game ‘Don’t F**k Your Brother.’ In this game, a group of pledges are forced to sit in a circle and given a 1.75 L bottle of alcohol. The pledges must finish the alcohol, but each has only one opportunity to drink from the bottle, so he must drink his share before passing the bottle onto the next pledge so that he does not force anyone else to drink more than his share.¹³

Upon successful completion of the pledging process, within some fraternities pledges must go through ‘Hell Week’ the week before initiation. Typically during this week, pledges are forced to eat only cold cans of spaghetti, or various other canned foods, are forced to sleep in various uncomfortable places such as bathroom floors, and are outright humiliated for the entirety of the week,¹⁴ in attempt to prove their worth to the fraternity. There have been reports of pledges being denied sleep, being urinated upon, and all too often, being beaten almost to the point of hospitalization.¹⁵ Once a pledge has successfully proved their loyalty to the fraternity and shown their respect for their organization and its active members, and the active members consider the pledge worthy, he becomes a fully initiated member of the organization.

¹³ “DFYB,” *Urban Dictionary*, September 23, 2011, <http://www.urbandictionary.com/define.php?term=DFYB&defid=6094052>.

¹⁴ John Marr, “A Brief History of the Brutal and Bizarre World of Fraternity Hazing,” *Gizmodo* (blog), September 30, 2015 (10:20 a.m.), <http://gizmodo.com/a-brief-history-of-the-brutal-and-bizarre-world-of-frat-1733672835>.

¹⁵ *Ibid.*

Fraternity Overview: Affiliation

It is seemingly evident in popular culture that fraternity members constantly sport their Greek name, letters, colors, and symbols. Members often wear t-shirts, sweatshirts, gym shorts, hats, ties, and various other clothing and accessory items bearing their fraternity letters and name. At universities that have Greek houses, the outsides of fraternity houses are often adorned with twelve-foot high Greek letters for all to see. Members often hang flags bearing the logo of their organization from their roofs and in various places throughout their residences. The members of fraternities have secret handshakes that are unique to that specific organization and only taught to them after initiation, and some even have hand signs, just as gangs do. From clothing to flags to stickers on their cars and hand signs, members of these fraternities associate themselves with their organization whenever possible. Their presence in the community is known, as they serve as walking billboards for their organization. Sometimes the affiliation with the fraternity is regulated, for example, as members are sometimes required to wear fraternity clothing when they work out in the gym, promoting their image of masculinity as a group.

Fraternity Overview

Fraternities, as have been described, are self-sufficient, fully operational organizations run primarily by eighteen to twenty-two year old men. These men must first go through a highly selective recruitment process, rush, before being invited to pledge that specific organization. It is not until they go through weeks or even months of torture that they are initiated into the organization. Once initiated, however, the commitment the members have to their brothers and the organization as a whole is shown through the adorning of their Greek letters to virtually every car, laptop, and piece of clothing they own. The men benefit from the rich network of

current and alumni members, as they are a part of that organization for life. Thus, fraternities form a multi-faceted organization with deep social bonds and a lifetime commitment.

The S.T.E.P Act: Overview

Initially enacted in 1988 as emergency legislation in response to increased street gang violence in Southern California, Los Angeles in particular, the S.T.E.P., or Street Terrorism Enforcement and Prevention Act, seeks to enhance punishments for gang members.¹⁶ The S.T.E.P. Act has two parts:

(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b)(1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.¹⁷

¹⁶ Erin Yoshino, "California's Criminal Gang Enhancements: Lessons from the Interviews with Practitioners," *Southern California Review of Law and Social Justice* 18, no.1 (2008): 118, [http://weblaw.usc.edu/why/students/orgs/rlsj/assets/docs/issue_18/Yoshino_\(MACRO2\).pdf](http://weblaw.usc.edu/why/students/orgs/rlsj/assets/docs/issue_18/Yoshino_(MACRO2).pdf).

¹⁷ "California Penal Code Section 186.22," *FindLaw*, accessed October 12, 2016, <http://codes.findlaw.com/ca/penal-code/pen-sect-186-22.html>.

The S.T.E.P. Act, as mentioned previously, enhances punishments for crimes associated with criminal street gangs. The first part of the act makes it a crime to be a gang member. In California, actively participating in a gang is a wobbler offense; as a misdemeanor, this crime is punishable by up to one year in jail, or if charged as a felony, is punishable by sixteen months, two years, or three years in prison. The second element of the S.T.E.P. Act imposes sentencing enhancements for crimes committed for the benefit of, under the direction of, or in association with a criminal street gang. Generic felonies receive enhancements of two, three, or four years in prison, while serious and violent felonies receive enhancements of five or ten years in prison, respectively.

The S.T.E.P. Act's broad application to any felony or misdemeanor crime committed by a gang member gives it extraordinary power and has reshaped the way gang crimes, and crimes committed by gang members, have been prosecuted since 2000, when the sentences were greatly enhanced. Further, the crime committed must only be proven to have been committed for the benefit of, in association with, or at the direction of a criminal street gang. As the scope of what groups can be defined as criminal street gangs widens, this second section of the law will have large consequences.¹⁸

Criminal street gangs are defined as such as any group consisting of three or more people, that have a common sign or symbol, with one of their primary activities being the commission of one of 25 specified crimes, and which engages in a pattern of this criminal gang activity.¹⁹

¹⁸ Alan Jackson, "Prosecuting Gang Cases: What Local Prosecutors Need to Know," *American Prosecutors Research Institute*, April 2004, http://www.ndaa.org/pdf/gang_cases.pdf.

¹⁹ *Ibid.*

Typically, one would not associate criminal street gangs such as the Bloods or the Crips with an undergraduate men's fraternity, such as Sigma Alpha Epsilon. Despite similarities in behavior and structure, popular perceptions of these groups differ, and thus society values these groups differently. But, because there are such strong similarities between the two, one could assume that these two groups could be legislatively controlled and prosecuted through similar means, which is not the case today. While the S.T.E.P Act is California legislation, because California often leads the nation in criminal justice policy and because many other states have adopted similar pieces of legislation,²⁰ the S.T.E.P. Act will be applied to crimes both in California and other states, as well. Given the behavioral and structural similarities between these two groups, this paper will explain in detail how Greek fraternities can be labeled and prosecuted as street gangs under California's S.T.E.P. Act.

Applying the S.T.E.P Act: Common Sign or Symbol

In order to meet the definition of a street gang, groups must consist of three or more members and have a common sign or symbol. Clearly proving these two elements of the definition apply to fraternities is not the case. Walk around any campus with Greek life and you will see herds of men wearing hats, t-shirts, and sweatshirts adorned with their fraternity letters. Additionally, on campuses with Greek housing, one will find streets lined with houses with 10-foot letters representing the fraternity chapters. In addition to the common name that the men of these organizations share, they also have a common symbol, whether it is their coat of arms, or the logo on their flags. For the members of these organizations, the letters and the symbols are the ultimate definition of who the men are; the group identity supersedes their individual identities.

²⁰ Joan Petersilia, "Understanding California Corrections," *California Policy Research Center*, May 2006, http://www.prisonpolicy.org/scans/carc/understand_ca_corrections.pdf.

Applying the S.T.E.P Act: Commission of Specified Crimes

In order to be prosecuted as a criminal street gang under the S.T.E.P. Act, two or more of the thirty specified crimes must be committed within three years of each other. These crimes range from serious and violent felonies such as homicide and rape to typically less serious offenses such as felony vandalism or ID fraud. Typically the pattern is established using the current charged offense as the most recent, and then any other offense in the last three years as the additional offense. What is interesting to note, however is that these specified, or predicate acts need not be gang related, nor do those who committed the acts need to be members of the gang at the time of commission of the act. This broadens the prosecutorial scope of the act, for both street gangs as we know them today, as well as fraternities.

Further, in order to be prosecuted as a criminal street gang, the commission of these specified crimes need be one of the group's primary activities. Because this phrase is vague in grammatical nature, it is implied that these groups must be "at the very least, more criminally active than society at large."²¹ In the case of fraternities, then, it must be proven that fraternities on college campuses are involved in the commission of more of these crimes than the campus community at large.

Street Gang Crime Data and Legislation

The 2011 National Gang Threat Assessment Report notes that about 48% of violent crime is associated with street gang activity. Some jurisdictions, however, report up to 90% of

²¹ Martin Baker, "Stuck in the Thicket: Struggling with Interpretation and Application of California's Anti-Gang STEP Act," *Bepress Legal Series*, August 26, 2006, <http://law.bepress.com/expreso/eps/1632>.

violent crime being gang related.²² The National Youth Gang Survey reports that 2,363 homicides in the United States are gang related annually, which equated to 15% of all homicides. In large cities such as Los Angeles and Chicago, however, half of homicides are gang related.²³

While most street gang activity is controlled through state-level policies and databases, the Racketeer Influenced and Corrupt Organizations Act (RICO), is a federal legislative action that allows the kingpins, shot callers, or leaders of street gangs, mafia groups, and other criminal enterprises to be held responsible for the crimes that they have forced other individuals to commit. Additionally the RICO statute allows for the seizure of the assets of these groups.²⁴ Aside from the RICO statute, most legislation aimed at combating street gang violence exists at the state level. California's S.T.E.P. Act, as outlined previously, is one example. Additionally, California has enacted the CalGang database that tracks the descriptions, tattoos and markings, associates, locations, vehicles, and criminal histories of known street gang members. In tracking street gang members, the CalGang database provides gang-related intelligence information to law enforcement agencies.²⁵

Fraternity Crime Data

While no comprehensive crime data exists for the Greek or fraternity communities on undergraduate university campuses, this project draws on the scant data available through

²² "2011 National Gang Threat Assessment," *National Gang Intelligence Center*, 2011, <https://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment/2011-national-gang-threat-assessment-emerging-trends>.

²³ Ibid.

²⁴ "Racketeer Influenced and Corrupt Organizations Act (Rico)," *Nolo*, accessed December 1, 2015, <https://www.nolo.com/legal-encyclopedia/content/rico-act.html>.

²⁵ "CalGang," *State of California Department of Justice Office of the Attorney General*, accessed March 4, 2016, <https://oag.ca.gov/calgang>.

popular media as well as data regarding crime on undergraduate campuses as a whole. While it is no guarantee, one can assume that if at a given school fraternity men make up 30% of the campus community, it would logically follow they likely are responsible for 30% of campus crimes. In 2015, the Association of American Universities conducted one of the most comprehensive and reliable campus crime data studies to date. The study collected 150,000 student responses across twenty-seven institutions. The study's results showed that 23% of undergraduates fall victim to sexual assault during their college careers.²⁶ This number, about one in four, is much higher than the previously held one in five statistic from 2011.²⁷ As mentioned, there is no comprehensive data concerning fraternity crime, however a study regarding fraternity insurance claims and liability found that on average, fraternities today spend one third of their budgets to pay liability costs.²⁸ Further, an analysis of these claims revealed that one in every four claims resulted from a death or serious injury.²⁹ No specific data exists for these claims, however, as most are settled out of court, and thus no public record exists.

Applying the S.T.E.P. Act: Prosecuting Fraternity Crimes

North Carolina State Alpha Tau Omega

²⁶ David Cameron, et al., "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct," *The Association of American Universities*, September 21, 2015, https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf.

²⁷ Christopher Krebs, Christine Lindquist, et al., "The Campus Sexual Assault Study," *U.S. Department of Justice*, December 2007, <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

²⁸ Nina Bernstein, "Behind Some Fraternity Walls, Brothers in Crime," *The New York Times*, May 6, 1996, <http://www.nytimes.com/1996/05/06/us/behind-some-fraternity-walls-brothers-in-crime.html?pagewanted=all>.

²⁹ *Ibid.*

In March of 2015, North Carolina State police alerted the university that a student had been sexually assaulted at a party at the Alpha Tau Omega house on campus. Aside from her assault, the woman detailed to investigators that she witnessed several physical assaults that evening, including one person being thrown out of a window.³⁰ She further detailed that she witnessed at least ten people purchase cocaine, ecstasy, and acid from an individual who was not her attacker.³¹ Having been granted a search warrant, authorities seized many items, including a scale and a white powder.³²

Under the provisions of the California S.T.E.P. Act, in order to be classified as a criminal street gang, this group, while consisting of more than three members who have a common sign and symbol, must have an established pattern of criminal activity. The events of the night in question in March 2015 establish this pattern. According to witness testimony as well as property seizures by the authorities, a minimum of three different individuals committed three different crimes on the predicate crimes list: possession of drugs for sale, rape, and felony assault. The S.T.E.P. Act only requires that two of the acts be committed by two separate individuals or at separate times, so clearly the incidences qualify as establishing a pattern of criminal activity, thus rendering ATO eligible to receive the sentencing enhancements outlined by the legislation.

San Diego State Theta Chi

³⁰ Elaina Athans, “NC State Fraternity Involved in Double Investigation, Suspended from Campus,” *ABC 11 Eyewitness News*, March 19, 2015, <http://abc11.com/news/nc-state-fraternity-suspended-from-campus/564928/>.

³¹ Kelly Gardener, “Warrant: Drug Sales Reported at NC State Fraternity House,” *wral.com*, March 19, 2015, <http://www.wral.com/warrant-drug-sales-reported-at-nc-state-fraternity-house/14525417/>.

³² Elaina Athans, “NC State Fraternity Involved in Double Investigation, Suspended from Campus,” *ABC 11 Eyewitness News*, March 19, 2015, <http://abc11.com/news/nc-state-fraternity-suspended-from-campus/564928/>.

The 2008 drug bust at San Diego State University, given the name Operation Sudden Fall, was the largest drug bust ever to occur on a college campus. In the bust, seventy-five SDSU students were arrested, including men from two fraternities. The authorities seized four pounds of cocaine, fifty pounds of marijuana, forty-eight marijuana plants, 350 ecstasy pills, psychedelic mushrooms, methamphetamines, one shotgun, and three automatic pistols.³³ The weapons were seized from the Theta Chi fraternity, as were many of the drugs seized.³⁴

In the situation of Theta Chi at San Diego State University, two possible crimes could establish the pattern of criminal activity necessary to define a group as a criminal street gang. First and foremost, the crimes of sale and possession of drugs for sale are evident. In addition to the drugs seized in the operation, law enforcement agencies found text messages from members of Theta Chi. These text messages, sent to numerous students before the Theta Chi fraternity went to Las Vegas explained that the members were “going to close out [their] inventory” and invited students to “buy up the cocaine at discounted prices.”³⁵ Upon their return to San Diego, these Theta Chi members texted that they were back and ready to do business. While reports of Operation Sudden Fall do not state whether or not the firearms seized were possessed illegally, if they were, this illegal possession of a firearm would qualify as the second predicate act needed to establish the pattern of criminal activity, and thus renders the Theta Chi fraternity at San Diego State University eligible to be prosecuted under the California S.T.E.P. Act.

Baruch College Pi Delta Psi

³³ “Undercover Operation targets SDSU Campus; 96 Arrested on Drug-Related Charges,” *Drug Enforcement Agency*, May 6, 2008, <http://www.dea.gov/divisions/sd/2008/sd050608p.html>.

³⁴ “College Drug Sting Snags Justice, Security Majors, Scores of Others,” *CNN*, May 6, 2008, <http://www.cnn.com/2008/CRIME/05/06/sdsu.bust/#cnnSTCText>.

³⁵ *Ibid.*

In 2013, at Baruch College, a fraternity pledge from the Pi Delta Psi house was murdered in a hazing incident. Active members of the fraternity forced him to lug thirty pound bags of sand in a backpack as he attempted to walk blindfolded across a field, while they tackled him football-style. As a result of the brain injuries the young man received, he died the day after the incident, leading to five active fraternity members being charged with murder. Additionally, two of the five men were charged with possession of drugs for sale.³⁶

The pattern of criminal activity required by the S.T.E.P. Act is established, in the case of Pi Delta Psi at Baruch College, by possession of drugs for sale and murder. Those involved in the crime extended beyond the men that physically injured the young man; one of the indicted was the fraternity president, who texted the men involved in injuring the young man to attempt to cover up the crimes.³⁷ Part of this cover up resulted in a delay in treatment which, experts say, greatly contributed to his death.³⁸ Given the crimes that these five men are charged with—possession of drugs for sale, involuntary manslaughter, aggravated assault, and murder³⁹—Alpha Delta Psi has an established pattern of criminal activity and crimes committed by the organization can receive sentencing enhancements under the S.T.E.P. Act.

Penn State Kappa Delta Rho

³⁶ Michael Schramm, Court Rules Baruch Hazing Death Trial can Move Forward,” *USA Today College*, December 1, 2015, <http://college.usatoday.com/2015/12/01/national-fraternity-aware-of-hazing-former-pi-delta-psi-president-testifies/>.

³⁷ *Ibid.*

³⁸ Haimy Assefa, “Five New York Fraternity Brothers Charged in Connection With Hazing Death,” *CNN*, September 15, 2015, <http://www.cnn.com/2015/09/14/us/pi-delta-psi-michael-deng-death/>.

³⁹ *Ibid.*

In 2014, a former pledge from Kappa Delta Rho at Penn State filed a lawsuit against the school for neglecting to investigate the hazing claims that he reported to the school. The complaint in the lawsuit details that the young man reported the life-threatening hazing he experienced as a pledge; he was forced to consume large quantities of vomit-inducing concoctions of alcohol and urine, among several other liquid and semi-liquid ingredients. Additionally, the young man noted that the fraternity maintained two private Facebook pages through which they shared photos of members sexually assaulting women and bought and sold drugs.⁴⁰

Kappa Delta Rho at Penn State can be classified as a criminal street gang because the pattern of criminal activity can be established through sexual assault, sale of controlled substances, and possibly torture. Not only were these violent crimes committed by different members of the organization within a three year time period, but the organization also maintained a Facebook page through which they orchestrated these crimes.⁴¹ The organized and continuous nature of the crimes committed by the members of the organization demonstrate that engaging in criminal acts was one of the primary activities of Kappa Delta Rho, and they existed as an organized criminal enterprise. Given all of these factors, Kappa Delta Rho would be able to be prosecuted under the California S.T.E.P. Act.

Other Fraternity Crimes

⁴⁰ Ethan Stoezer, “‘Honor Above All’: Hazing Victim at Penn State Frat Opens Up in Lawsuit,” *USA Today College*, June 30, 2015, <http://college.usatoday.com/2015/06/30/psu-frat-whistleblower-sues-over-hazing/>.

⁴¹ Tyler Kingkade, “Kappa Delta Rho Fraternity Expels 28 Penn State Members as Whistleblower Sues,” *Huffpost College*, June 8, 2015, http://www.huffingtonpost.com/2015/06/08/kappa-delta-rho-penn-state_n_7536272.html.

In addition to the previously noted examples that demonstrate that the S.T.E.P Act could be applied to specific instances of fraternity crimes, the following examples will provide only the first of the two specified crimes necessary to establish the pattern of criminal activity. Should the S.T.E.P. Act be used to prosecute fraternity crimes, any offense from a member of the following organizations that falls under the category of the specified crimes within a three-year window will subject these organizations to the sentencing enhancements, as these possible future crimes will complete the pattern of criminal activity.

In 2015, members of the Sigma Alpha Mu fraternity at the University of Michigan went on an out of town formal to a ski resort. Their weekend of excessive partying resulted in \$400,000 in damages to the resort.⁴² Members of the fraternity faced felony vandalism charges,⁴³ which is one of the specified crimes of the S.T.E.P. Act.

In March 2016, a drug bust at the University of California, Santa Cruz resulted in the seizure of over \$100,000 of MDMA.⁴⁴ Four members of the Lambda Phi Epsilon fraternity were arrested for possession of a controlled substance and possession of a controlled substance for sale, one of the thirty-three predicate crimes under the S.T.E.P. Act.⁴⁵

⁴² David Jesse, "Party's Over for Frat after Ski-Resort Rampage," *USA Today*, March 18, 2015, <http://www.usatoday.com/story/news/nation/2015/03/18/partys-frat-ski-resort-rampage/24943201/>.

⁴³ "Univ. of Michigan Frat Members Charged in Ski resort Vandalism," *Crimesider*, March 25, 2015, <http://www.cbsnews.com/news/3-university-of-michigan-fraternity-members-charged-in-ski-resort-vandalism/>.

⁴⁴ Hannah Albarazi, "UC Santa Cruz MDMA Ring Busted; Sorority, Fraternity Members Jailed," *CBS SF Bay Area*, March 7, 2016, <http://sanfrancisco.cbslocal.com/2016/03/07/uc-santa-cruz-mdma-drug-ring-dismantled/>.

⁴⁵ *Ibid.*

While only two possible examples of the first crime in the pattern have been given, there are many more fraternity members that have committed one of the thirty three predicate crimes in the past three years, whether known or unknown. From rapes to firearm possession, money laundering to unlawfully obtaining DMV information, fraternity crimes are limitless.

Legislating Fraternity Crime Today

Today's legislation intended to regulate undergraduate, specifically fraternity crime is almost obsolete, and that which does exist is not highly regulated.

Most of today's legislation surrounding sexual assaults falls under the Title IX federal civil rights law, which seeks to prevent sexual discrimination in education programs and activities. One important element of this legislation is that it declares volunteer advisors for undergraduate organizations mandated reporters.⁴⁶ While on the surface that they are mandated reporters seems beneficial to victims of sexual assaults, this element may actually deter the reporting of crimes. A study by the Association of American Universities found that three-fourths of students who have been sexually assaulted do not report the assault.⁴⁷ For many organizations, their volunteer advisors may be the only adult figure that that these victims feel comfortable turning to for consolation and advise. Rather than having the ability to encourage these victims to seek both help and report it to necessary law enforcement agencies, the fact that they are mandated reporters may deter victims for disclosing their assault to anyone.

⁴⁶ Catherine Lhamon, "Questions and Answers on Title IX and Sexual Violence," *United States Department of Education Office for Civil Rights*, April 19, 2014, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁴⁷ David Cameron, Bonnie Fisher, et al., "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct," *The Association of American Universities*, September 21, 2015, https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf.

Two controversial pieces of legislation that have been in the House of Representatives are the Safe Campus Act and the Fair Campus Act. The Safe Campus Act, which was introduced in 2015, forbids universities from investigating claims of sexual assault until law enforcement has concluded their investigations.⁴⁸ The important element of this legislation, according to lawmakers, is that it requires university disciplinary procedures to more closely resemble criminal procedures. While on the surface this seems like a worthwhile piece of legislation, there are many downsides. These downsides caused the national fraternity and sorority associations to revoke their support after lobbying for months on behalf of this bill.⁴⁹ While university disciplinary proceedings would better follow those of the criminal process, because they are not allowed to occur until criminal proceedings have concluded, this legislation has the potential to make the already abused victims even more uncomfortable. Today, university disciplinary proceedings abide by the preponderance of evidence standard, which means the conduct in question must have more likely than not did occur in order for the suspect to be held accountable.⁵⁰ These proceedings today occur quickly and swiftly. In the end, whether the abuser is suspended or expelled, it occurs soon after the incident. Should the Safe Campus Act pass, this would not be the case. Abusers would be allowed to remain as students at their undergraduate institutions until these hearings occur after criminal proceeding conclude, which can take over a

⁴⁸ Walbert Castillo, "National Sorority, Fraternity Groups Withdraw Support from Safe Campus Act," *USA Today College*, November 17, 2015, <http://college.usatoday.com/2015/11/17/safe-campus-act-sororities-distance/>.

⁴⁹ Tyler Kingkade, "Several Sororities Back Away From Safe Campus Act," *The Huffington Post*, November 13, 2015, http://www.huffingtonpost.com/entry/phi-mu-alpha-gamma-delta-safe-campus-act_us_5645f573e4b045bf3deead24.

⁵⁰ Tyler Bishop, "the Laws Targeting Campus Rape Culture," *The Atlantic*, September 11, 2015, <http://www.theatlantic.com/education/archive/2015/09/the-laws-targeting-campus-rape-culture/404824/>.

year's time. The Fair Campus Act, however, amends this requirement that criminal proceedings must conclude before university proceedings can occur.⁵¹

The Clery Act of 1991 requires undergraduate institutions that receive state and federal funding to report all crime data that occurs on campus. That data is to be submitted by October first and then distributed to all students, faculty, and staff of the institution.⁵² While the would-be university crime database that the Clery Act requires would seemingly be helpful in policing and monitoring undergraduate behavior, the provisions of the Clery Act are not enforced. Schools often do not report, report after the deadline, or inaccurately report their crime data to the responsible agency almost without punishment. For example, 3% of undergraduate schools have reported never having had a crime of violence since 1991. 20% of schools have never reported a sexual assault, and about half of all schools mandated by the Clery Act to report crime data report no sexual assaults for that given year, and two-thirds report no physical assaults.⁵³ Given that studies have found that about one in four women are sexually assaulted while in college,⁵⁴ these numbers reported as a provision of the Clery Act are wildly inaccurate.

⁵¹ Tyler Kingkade, "Several Sororities Back Away From Safe Campus Act," *The Huffington Post*, November 13, 2015, http://www.huffingtonpost.com/entry/phi-mu-alpha-gamma-delta-safe-campus-act_us_5645f573e4b045bf3deead24.

⁵² "Summary of the Jeanne Clery Act," *Clery Center for Security on Campus*, accessed March 20, 2016, <http://clerycenter.org/summary-jeanne-clery-act>.

⁵³ Collin Binkley, Jill Riepenhof, et al., "Reports on College Crime are Deceptively Inaccurate," *The Columbus Dispatch*, September 30, 2014, <http://www.dispatch.com/content/stories/local/2014/09/30/campus-insecurity.html>.

⁵⁴ David Cameron, et al., "Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct," *The Association of American Universities*, September 21, 2015, https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf. https://www.aau.edu/uploadedFiles/AAU_Publications/AAU_Reports/Sexual_Assault_Campus_Survey/AAU_Campus_Climate_Survey_12_14_15.pdf.

Aside from the legislative acts that control how crime on undergraduate campuses is monitored and regulated, disparities arise in protocol and procedure between public and private universities. Because private universities are able to handle certain crimes in-house, they are never reported to law enforcement agencies.⁵⁵ Additionally, many claim that private universities cover up certain crimes in an effort to protect their reputation.

Additionally, these fraternity criminals are often tried in a court of their peers through an institution such as the Greek Disciplinary Board. One must take into account the possibility of threatening, bribing, or guiling those making decisions to give less harsh punishments. There have been reports of witnesses for Greek Disciplinary Board being harassed and threatened, as well.

Street Gangs and Fraternities: The Final Comparison

As has been illustrated, street gangs and fraternities are very similar in structure, initiation processes, motivations, affiliations, and in behavior, including criminal behavior. Differences arise, however, in regulating and labeling these different groups. Because crime is a social construct, leaders within society and government have chosen to treat one of these groups negatively, labeling them as criminals, outcasts, and those who lack a future. As a result, street gangs are very heavily monitored and are prosecuted fully. Legislation regarding street gang crime is ongoing and ever changing. Many databases exist not only for tracking crimes committed by street gangs and their members, but also tracking the descriptions, associations, and whereabouts of the members. Fraternities, however, are regarded much differently in society. Because fraternity men typically do not fit society's preconceived notion of who a criminal is,

⁵⁵ Tyler Kingkade, "Private Colleges keep Sexual Assault dada Secret," *The Huffington Post*, October 1, 2015, http://www.huffingtonpost.com/entry/colleges-sexual-assault-data_us_560c52c1e4b0dd85030a9fba.

they are not prosecuted fully. Undergraduate, and specifically fraternity, crime is not accurately recorded and reported. With the help of their organizations, academic institutions, parents, and their wealth, the crimes by these men seem to go unnoticed and are covered up.

The examples of fraternity crimes noted demonstrate that the California S.T.E.P. Act could be used, even in its current state, to prosecute fraternity crime to the fullest extent of the law. Additionally, if hazing, which is illegal in 88% of the states, were to be added to the list of predicate crimes, the S.T.E.P. Act would have even broader influence and prosecutorial power. In order to further prosecute the crimes that have been committed and prevent future crimes, more strict legislation regarding reporting and investigating crime on undergraduate campuses should be introduced.

The evidence has demonstrated that fraternities and street gangs are not as different as society perceives them to be. Not only are they similar in structure, motivations for joining, and initiation process, but they are also similar in criminal behavior. This behavior on the part of street gang members, however, has been socially constructed as crime, while that same behavior committed by fraternity members is not as vigorously labeled or as vigorously punished. Ultimately, our criminal justice system is not functioning properly unless criminal behavior is judged objectively; only then can true justice be done.

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