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FEB 23 2016

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February 22, 2016

**VIA HAND DELIVERY**

Dr. G.P. "Bud" Peterson  
President, Georgia Institute of Technology  
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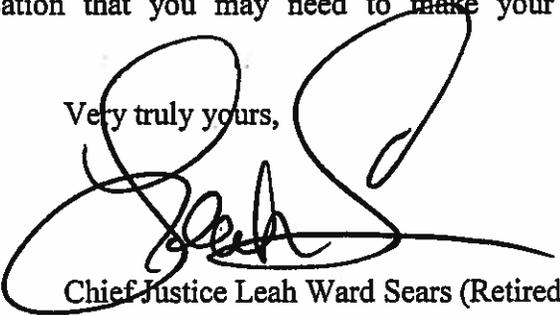
Dear President Peterson:

I am submitting herewith the Report and Recommendation ("Report") that my appellate team and I prepared in response to the appeal submitted to me, on January 14, 2016, by the Georgia Delta Chapter of the Phi Delta Theta Fraternity ("Fraternity"). I am also submitting a summary that provides a succinct overview of the findings in the Report.

The Report provides you with an in-depth analysis of the hearing that took place before the Undergraduate Judiciary Cabinet ("UJC"), the UJC's findings, the Fraternity's subsequent appeal and concludes with our recommendation. The purpose of the Report is to assist you in determining whether: (1) the original hearing was conducted fairly and in conformity with prescribed procedures; (2) there was sufficient evidence to support the decision that was made; (3) the imposed "Sanctions" and "Supplementary Requirements" were appropriate; and (4) the new information, not available at the time of the hearing, is relevant to the final decision.

If you have any questions, please do not hesitate to contact me. We hope the Report provides you with any guidance or clarification that you may need to make your final determination.

Very truly yours,



Chief Justice Leah Ward Sears (Retired)

**SUMMARY OF REPORT AND RECOMMENDATION**  
*(See Full Report for Complete Analysis)*

The Georgia Delta Chapter of the Phi Delta Theta Fraternity (“Phi Delta Theta” or “Fraternity”) submitted an appeal to former Georgia Supreme Court Chief Justice Leah Ward Sears, and the appellate team at Schiff Hardin LLP (“Schiff Hardin”), for a review of the determinations made by the Georgia Institute of Technology’s (“Georgia Tech”) Undergraduate Judiciary Cabinet (“UJC”), on September 15, 2015, regarding the racial incidents that allegedly occurred during the summer of 2015. Specifically, the UJC found (1) the incident on July 2, 2015 occurred;<sup>1</sup> (2) the incident on August 11, 2015 occurred;<sup>2</sup> and (3) Phi Delta Theta leadership was not complicit in these events.

Although the UJC determined the July 2, 2015 incident occurred, a finding that Schiff Hardin does not address or disturb, Phi Delta Theta was only notified of its Responsibility for the *August 11, 2015 incident* when, on September 22, 2015, Phi Delta Theta received a Notification of Decision. The UJC ultimately concluded the Fraternity was “Responsible” for violating Section C(23)(b) of the university’s Student Code of Conduct (“Code”) which prohibits, inter alia, discriminatory conduct based on race that incites reasonable fear of physical harm or unreasonably interferes with another’s ability to participate in work, education, research, living or other activities. Consequently, Georgia Tech placed Phi Delta Theta on Suspension Held in Abeyance until August 9, 2016 and imposed certain educational requirements as a pre-condition to the lifting of the sanction. Phi Delta Theta brought this appeal of the August 11, 2015 incident.

Schiff Hardin reviewed Phi Delta Theta’s written appeal as well as the entire record and finds as follows:

1. Phi Delta Theta’s hearing was conducted fairly and the Fraternity received due process. By this we mean the Fraternity was afforded (1) sufficient notice; (2) fair and impartial

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<sup>1</sup> On July 2, 2015, twenty to thirty students, in Georgia Tech’s Challenge Program, went to the Phi Delta Theta house for a party. When the students approached the Fraternity house, they were purportedly told that no party was taking place and were asked to leave the premises. As the students were leaving the Fraternity house, multiple individuals at the house allegedly yelled to the group “get on niggers,” “go home niggers,” and/or “leave niggers”.

<sup>2</sup> On August 11, 2015, Complainant was walking to her vehicle parked on Fowler Street. As she was walking, she noticed three white males sticking their heads out of a window of the Phi Delta Theta house. When Complainant got into her vehicle, she noticed the three white males were screaming something at her. She turned down her music to hear what they were saying. Complainant alleges the three men were screaming “fuck you nigger” and “fuck you asshole” at her.

fact-finders; (3) the opportunity to be heard at a meaningful time, and in a meaningful way, in a fair and impartial hearing where their evidence was heard and they faced their accusers; (4) the presence of legal counsel/advisors to which the Fraternity had no right; (5) a result, being a written decision, that was not capricious, unreasonable or arbitrary, but rather was supported by the record; and (6) a right of appeal.

2. There was sufficient evidence in the record for the UJC to conclude the August 11, 2015 incident occurred. Schiff Hardin does not address or disturb the UJC's finding that the July 2, 2015 incident occurred since that decision is not on appeal for review.
3. Section(A)(6) of the Code only provides for holding a Student Organization or its officers responsible for Code violations, by those associated with the Organization, when the Organization, its leaders or officers consent to or encourage the violative conduct. The UJC panel made the express determination that Phi Delta Theta leadership was not complicit in the August 11, 2015 incident. Furthermore, there is no other evidence in the record that Phi Delta Theta, as an organization, was complicit in the August 11 incident. As such, we do not believe the Fraternity should be sanctioned for the August Incident.
4. Consequently, Schiff Hardin recommends the sanctions against Phi Delta Theta be lifted.

Notwithstanding this outcome, it is important to recognize that raced-based discriminatory acts or practices have no place at Georgia Tech where students should be able to learn and engage in activities without the disquietude of prejudice and intolerance. It is also crucial to call attention to the importance of fraternities policing the behavior of its members. Fraternity men have made up eight-five percent (85%) of U.S. Supreme Court Justices since 1910, sixty-three percent (63%) of all U.S. presidential cabinet members since 1900, and, historically, seventy-six percent (76%) of U.S. Senators and eighty-five percent (85%) of Fortune 500 executives. And there is no indication that this trend will change anytime soon. With this great power comes great responsibility: to ensure that all brothers are good and fair people, willing to go beyond that which is required of them, desirous of treating others the way they want to be treated, and willing to learn from their mistakes. There is no place for stupidity at Georgia Tech, this state's best-regarded school of science, technology, engineering, and mathematics.