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EDOUARD MANET

A BAR AT THE FOLIES-BERGÈRE

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Server Responsibility



PAGE 4



PAGE 30



PAGE 46

Prevention Research: *The Model Dram Shop Act of 1985* 4

A description of the current status of dram shop liability in the United States and a review of a model dram shop law.

Server Intervention: *Will It Work?* 119933 12

A report of ongoing research into the effects of a pilot server intervention program.

NHTSA Responsible Beverage Service Research and Evaluation Project 119934 20

A research project to develop and refine server training programs for commercial and social hosts.

Beyond Server Training: *An Examination of Future Issues* 24

A proposal for new administrative mechanisms to ensure responsible beverage service policies and practices.

"Because We Care . . ."—*The 1985 National Drunk and Drugged Driving Awareness Campaign* 28

Materials and activities involved in a public education campaign are described.

Arena Managers Project: *A TEAM Approach* 30

A collaborative project to develop and fieldtest responsible beverage service policies and practices for large arenas.

Social Host Liability: *Kelly versus Gwinnell* 119935 32

A report on the New Jersey Supreme Court decision concerning the liability of social hosts for damages caused by their drunken guests.

Point-of-Purchase Health Warning Notices 36

Some communities have begun to require that retail alcohol vendors post notices warning of the connection between drinking during pregnancy and the occurrence of birth defects.

Perspectives 38

Representatives of the legal profession, the alcohol field, consumer groups, and the hospitality industry comment on server responsibility issues.

College Alcohol Survey: *1985, 1982, and 1979* 46

Results of three surveys of alcohol problems and policies on college campuses are compared.

Social Host Liability

Kelly versus Gwinnell

On the evening of January 11, 1980, Donald Gwinnell of Middletown Township, NJ, drove away from the home of Joseph and Catherine Zak, where he had consumed an alleged 13 or more Scotches. Minutes later, while attempting to pass another car on a curve, Gwinnell's vehicle struck a car driven by Marie Kelly of Oceanport. As a result of the collision, Kelly suffered a broken ankle and jaw and lost six teeth. A blood test administered after the crash showed Gwinnell to be legally intoxicated.

Kelly's subsequent lawsuit against Gwinnell, later amended to include the Zaks, led to a ruling by the New Jersey Supreme Court that "where the social host directly serves the guest and continues to do so even after the guest is visibly intoxicated, knowing that the guest will soon be driving home, the social host may be liable for the consequences of the resulting drunken driving." The ruling was handed down in June 1984. In February of the following year, Kelly's suit went to trial and was settled the same day. She collected \$72,500 from the Zaks and \$100,000 from Donald Gwinnell, the limit of his automobile liability policy.

According to attorney George Chamlin, who represented Marie Kelly, the case is considered important because similar rulings in other jurisdictions have been set aside or nullified by legislative action. (The New Jersey legislature established a commission on alcoholic beverage liability in October 1984. The commission has recently issued recommendations calling for the legislature to take the issue out of the



Kurt Mutholland

hands of the courts and define social host liability through legislation.)

The decision in the Kelly case has been controversial from the beginning. The New Jersey Supreme Court itself had a dissenting vote. Writing for the majority, Chief Justice Robert N. Wilentz was quoted by the *Bergen Record* as arguing, "Does our society approve of the decision to continue to allow the charm of unrestrained social drinking when the cost is the lives of others, sometimes of the guests themselves?" Associate Justice Marie Garibaldi dissented: "The imposition of this liability on a social host places upon every citizen of New Jersey who pours a drink for a friend a heavy burden to monitor and regulate guests. It

subjects the host to a substantial liability that may be far beyond the host's resources."

Recent opinion polls by Media General-AP and Gallup suggest that the public has little enthusiasm for the notion of social host liability. In both polls, nearly two-thirds of those questioned said they disagreed with the New Jersey ruling. (A third poll, conducted in February 1985 by Harris, asked if bartenders or owners should be held liable if a patron leaves drunk and later kills or injures someone. Fifty-five percent of the respondents said no.)

The Kelly ruling applied only to small social events where the hosts actively serve guests and only when the host knows a guest will be driving later, according to Wilentz. But a later New Jersey case, settled out of court in 1985 for \$1.7 million, implicated a young woman who attended a "bring your own" party and subsequently drove away, ran a stop sign, and struck another car, injuring the driver. The young woman, the party's host, and the owners of the house where it was held all contributed to the settlement. The victim's attorney was quoted in news reports as warning hosts to be aware of the trend toward an "expanding interpretation" of their liability for guests. To date, 12 States—Colorado, Georgia, Illinois, Indiana, Louisiana, Michigan, New Jersey, New Mexico, Oregon, Pennsylvania, Washington, and Wisconsin—provide for at least a limited cause of action against social hosts for injuries caused by their intoxicated guests. Other States are considering legislation to similar effect. ■

—Thomas Prugh



Tips for Responsible Social Hosting

As *Kelly v. Gwinell* and other cases illustrate, the responsibilities of serving alcoholic beverages are complex. The legal liability of social hosts varies from one State to another, but many hosts and hostesses have sought information on how they can plan and carry out safe parties.

Listed below are a few simple guidelines, compiled from a variety of published materials, that social hosts can follow to reduce the risks associated with serving alcohol at parties. A parallel set of common-sense suggestions for guests is included as well. Information about the laws in each State that affect social host liability may be obtained from the legislative reference bureau or the office of legislative counsel (attached to the State legislature), or from the office of the State's attorney general.

Guidelines for Social Hosts

- Do your best to establish and maintain a tension-free atmosphere. Guests should not have to drink in order to relax.
- Have food available before and during alcohol service, but avoid salty foods that promote thirst. High-protein foods—shellfish, meatballs, and chicken, for example—are best at slowing the absorption of alcohol.
- Do not have an open bar. Deemphasize alcohol by putting the bar someplace out of the way. Serve your guests yourself or hire someone to do it. In either case, measure the alcohol carefully and use light doses.
- Have an attractive variety of nonalcoholic beverages on hand



and make them at least as easily and prominently accessible as the alcoholic drinks. If you are serving mixed drinks, be aware that noncarbonated mixers retard the absorption of alcohol into the bloodstream while carbonated mixers speed it up.

- If the event is a dinner-and-drinks affair, keep the drinking period short and have hors d'oeuvres available throughout.
- Don't push drinks. Respect your guests' right to refuse drinks. Make sure that nonalcoholic beverages are available during dinner as well as before.
- Never serve alcohol, or allow it to be served, to a guest who seems to be intoxicated.
- Stop serving alcohol at least an hour before the party is over.
- If, despite these precautions, a guest drinks to the point of impairment (not necessarily drunkenness) and you are not certain he or she will be driven

home by a sober companion, then drive the guest home yourself, arrange for a taxi, or put him or her up in your home for the night. *Never let a guest drive away intoxicated.*

Guidelines for Guests

- Support and cooperate with your host's or hostess' efforts to make the event safe and pleasant for all.
- Do not hesitate to exercise your right to refuse drinks or to avoid alcoholic beverages altogether.
- If you choose to drink, moderate your intake. If you arrive with a group, arrange for one member to take responsibility for doing the driving. That person should not drink alcohol on that occasion.
- Be aware that, while most people can metabolize about one standard drink every hour (a standard drink is one 12 oz. can of beer, 5 oz. of wine, or 1.5 oz. of spirits), metabolic rates vary. In general, women are more readily affected by alcohol than men are, because of lower average body weight, different tissue composition, and other factors.
- If a woman is pregnant or nursing, the safest decision for her and her baby is not to drink.
- Partygoers taking medication should be aware that many drugs—both prescription and over-the-counter—can interact with alcohol to produce unpleasant or even dangerous side effects. If in doubt, consult your physician or pharmacist. ■

—Thomas Prugh