

A Discussion About Alcohol and Student Exchange

by Joel Epstein, Director of Special Projects, Higher Education Center for Alcohol and Other Drug Prevention and Gary Rhodes, Director of the Center for Global Education and SAFETI Newsletter Editor

A Discussion with SAFETI Project Director and SAFETI Newsletter Editor Gary Rhodes and Joel Epstein, Director of Special Projects, Higher Education Center for Alcohol and Other Drug Prevention. The experts discuss the Special Concerns Surrounding Use and Abuse of Alcohol For US Students Studying Abroad in Countries Where Alcohol is Available at an Age Earlier Than 21. The interview also explores practical, legal, and policy concerns where the institutional alcohol use policies would allow alcohol use or policies would allow alcohol use at university or student sponsored events where students under 21 are present. Lastly, the experts considers the challenges facing international students studying in the US.

Background and Purpose of Discussion: Prior to taking part in the May 2000 Health, Safety, Risk Management, and Liability Workshops in Melbourne, Canberra, and Sydney, Australia, additional reflections from Joel Epstein, one of the top US experts on alcohol use and abuse and institutional legal liability who had written the article "Study Abroad Programs: No Respite From the Drug Free Schools and Communities Act" for the first SAFETI Newsletter, would help provide an expert context on the relevant issues for institutions to take into account when developing policies and procedures.

Part 1: US Students Studying Abroad: Reflections

Rhodes: US students abroad have been seriously injured, raped, and died while participating in study abroad programs. The issues raised in this discussion focus on the possible institutional responsibility for alcohol use as well as what institutions can do to educate students and limit institutional liability. US students are studying abroad in countries where alcohol is available to students under 21 years of age. Many US students going abroad are below the US legal drinking age (alcohol). Many Alcohol Providing Institutions (API) send students an orientation booklet prior to going abroad and/or make that information available on the World Wide Web. When students arrive at these APU institutions, they take part in orientation programs which include issues like academic differences, housing, student services, etc.

One of the things that may not get presented in orientation materials or at these meetings is another part of API orientation: the social orientation programming. This takes place at many APIs and may be sponsored by API student organizations or housing units. One part of social orientation programs at some Universities includes a significant amount of alcohol use, resulting in students becoming intoxicated. These activities, which may not be officially sponsored by the University, take place with full knowledge of the institution and may use US student, API institution, student organization funds or may require payment by US students after arrival abroad.

Questions and Responses

Rhodes: *Is drinking by students, who are of legal drinking age abroad but not in the US, allowed by US colleges and universities?*

Epstein: U.S. colleges and universities are a very diverse lot and their response to the issue of drinking by "underage" students in countries where they are "legal" varies. In my view, the best approach for universities to take to the issue is a cautious, risk adverse one. I would urge U.S. schools to be sure their student funds are not going to purchase alcohol or support other dangerous activities. As for enforcing a U.S. drinking age on students studying abroad, this situation presents real problems for administrators. They will argue, often with reason, that it is simply not feasible to "police" students to this extent, where the local law permits drinking by "underage" U.S. students.

At a minimum, U.S. schools should take steps to ensure that underage drinking is not taking place in residence halls over which they exercise control. U.S. administrators should also work with the foreign host institution to develop approaches aimed at reducing the risk underage U.S. students may face due to their inexperience with foreign drinking behavior.

U.S. schools and their foreign counterparts should better learn how to pick their lawsuit. Parents often expect a higher degree of supervision than the programs actually provide. This situation may leave schools exposed legally.

Rhodes: *What are reasons that students who are of legal drinking age abroad, but not in the US, might not be allowed to drink alcohol during college and university study abroad program activities?*

Epstein:

- **Legal:** As noted above, the risk of liability stems from parental expectations of a high level of student supervision while abroad. The risk of "buying a lawsuit" should give administrators pause when they become aware of U.S. students engaging in high-risk drinking activities while abroad.
- **Student Health:** The health risks associated with high-risk drinking while abroad are identical with those experienced by students who drink too much while state-side. That said, medical care available to students studying abroad may not be of the quality commonly available in the U.S., increasing the potential risk to students who engage in high-risk drinking.
- **Other:** This sort of high-risk drinking can present very real public relations risks for schools that fail to put in place strategies for controlling the risk. A school can do irreparable damage to an otherwise fine study abroad program if it fails to prevent risk.

Rhodes: *What occurrences on US colleges and universities parallel this type of case?*

Epstein: Greek (fraternities and sororities) and athletic system rituals including hazing, athletic event tailgating and other "traditional" school festivals may present similar problems at U.S. colleges and universities.

Rhodes: *If this is a practice that US universities know is taking place, what liability may they have if something happens to a student on the program?*

Epstein: The trend in the case law, as seen in leading fraternity hazing cases like Knoll v. University of Nebraska is clear. Increasingly, courts are willing to examine what administrators knew or should have known. Models of shared responsibility for harm are emerging that confirm the need for colleges and universities to be proactive about preventing injury caused by high-risk drinking at college- and university-related events.

Rhodes: *SAFETI Editor Question 5: What liability could a foreign institution have under US law if a US university student dies or is injured during sponsored activities including alcohol?*

Epstein: In the case of a student death, the U.S. courts will look for a nexus between the foreign University and the U.S. and they will find it in the business relationship the foreign school has with the U.S. college or university. The foreign university is then interpreted as "doing business in" the U.S., and/or particular state jurisdiction. A smart plaintiff's lawyer will name both the host foreign university and the U.S.-based program sponsoring university in its pleadings. In theory, the foreign university could face the same potential legal liability as a U.S. college or university.

Rhodes: *What should an institution do?*

Epstein:

- Educate: Simply telling students not to engage in the high-risk drinking activity probably will not work. Students should be made aware of consequences of their actions: health, legal, academic (expulsion, suspension). Participation in these programs is not a legal right.
- Not Allow Students to Participate: Again, "policing" student behavior may just not be feasible. This problem underscores the need of schools to do a better job of recruiting students for study abroad programs who demonstrate a high degree of individual responsibility and appreciate risk.
- Try to Change Foreign University Policy: As noted above, U.S. administrators can and should work with API administrators to take a more critical view of high-risk drinking (and other traditional) campus rituals. These activities expose all schools to liability risks as well as may damage the reputation of the programs as irresponsible, dangerous, and poorly run.
- Other: Think proactively about safety, especially when sending students abroad. Conduct a foreign program safety audit that looks at the whole host of risks

students face when going abroad. Work closely with the host foreign university to reduce those risks, and improve safety for all students.

Rhodes: *From the perspective of many API administrators, local national students are of drinking age and are treated as adults and when US students study abroad, it is expected that they follow foreign law and custom and act as responsible adults as well. What US college and university experience and legal precedent (with samples of financial awards) gives reason to not allow student groups to freely provide alcohol to students as it would result in institutional liability? How much difference is there if the students are of legal drinking age?*

Epstein: The drinking age issue is a very fuzzy one especially with respect to U.S. students studying abroad in countries where the drinking age is 18 or even 16. While I interpret legislation such as the Drug Free Schools and Campuses Act (DFSCA) to apply to students enrolled in study abroad programs, the same cannot be said of the drinking age, say, in Australia. Additionally, it should be noted that other attorneys and many university administrators question the applicability of the DFSCA to their study abroad programs. In my view this is foolish. The DFSCA is an effective risk management tool for universities and compliance with the legislation can be used to resist a lawsuit alleging negligence on the university's part.

I fully agree that when studying abroad U.S. students should be expected to follow local law, particularly in a place where due process is accorded criminal defendants. Custom may be another matter. High-risk drinking at European football (soccer) matches may be the custom for some but it is certainly not the sort of behavior U.S. universities would want to encourage among their students going abroad. Ditto for drinking rituals elsewhere which involve consuming dangerous quantities of alcohol. Study abroad administrators should place greater emphasis of familiarizing students with the risks of excessive drinking, not through paternalistic and threatening talks but through presentations and materials that emphasize the negative consequences to health and often safety.

As for cases or legal precedents, there are few. Most problems are dealt with quietly and settled prior to final adjudication. As with other aspects of a school's risk management policy for foreign study programs, universities should go to considerable length to make their students aware of the risks of engaging in local "customs" that present unreasonable dangers to health and safety. Emphasizing the inexperience of the U.S. student may help convey the risk. For example, while most U.S. students going abroad know how to drive, not everyone is prepared to handle the challenge of driving on the other side of the road, as they do in some countries around the world.

Rhodes: *One of the primary types of alcohol shared by students is beer. The alcohol content of beer in many other countries, for example Australia, is higher than the alcohol content of beer in the US. What education would you suggest be provided to students before going abroad? Also, what practices should be recommended at events where it is known that alcohol will be provided that are known practices in the US (like being sure*

that non-alcoholic beverages are also served, promoting designated driver programs, etc.)?

Epstein: Here, too, the key will be conveying to students going abroad the risks involved in heavy drinking. I suspect many U.S. students do not know the simple fact that the alcohol content of beer in some countries is higher. The relative inexperience of U.S. students is no doubt a primary factor in their greater health and safety risk. Offering alcohol-free drinks and food at events is important as is making certain the events are not merely drinking fests. For example, programs may want to review their programs to be certain that events are not merely opportunities to sit around and drink. What is the purpose of the event? Is it to demonstrate a local cultural practice, a musical or cooking style, and a local dance? Another approach is to make activities and events highly interactive for students. Making certain that students are not left to just hang out and drink will be an important part of keeping all students engaged and less focused on getting drunk.

Designated driving programs should be fully integrated into the program where private transportation is the rule. In Europe and elsewhere, where good public transportation is available, students should be encouraged to get around that way. This can be turned into a teachable moment by emphasizing, for example, that intoxicated individuals are subject to arrest on the metro.

Rhodes: *What is binge drinking? Is it a problem in US colleges and universities? Why might API program administrators want to be aware of this in regards to US students studying there?*

Epstein: "Binge", high-risk, or dangerous drinking is drinking to a point that one's abilities are seriously impaired. Many in the U.S. have moved away from the term "binge drinking" because of the expression's flawed definition. The Harvard College Alcohol Survey defines "binge drinking" as five drinks in a sitting for men and four drinks in a sitting for women. The definition does not take into account the length of the drinking session, the weight, or level of experience with alcohol of the drinker. Many U.S. college students, administrators and alcohol researchers are using the terms high risk or dangerous.

High-risk or dangerous drinking is, of course, not simply a problem among U.S. college students. It is a common phenomenon in Europe, Australia, and elsewhere around the world. I have just returned from the International Congress on Campus Security (Barcelona, April 2000) where many of the 100 plus attendees from campuses in 40 countries affirmed my assertion that high-risk drinking is a problem on their campuses as well. Often, heavy drinking is so much a part of the culture that administrators do not recognize it as a problem. Once administrators are shown the various ways in which high-risk drinking manifests itself; administrators begin to recognize the connection. Vandalism and destruction of property, sexual assault, fighting, and car accidents are just some of the behaviors commonly associated with dangerous drinking.

That said, it does appear that the problem of high-risk drinking is greater among U.S. students than students from elsewhere. Administrators at institutes abroad will want to be aware of the tendency of U.S. students to engage in this aberrant form of over-the-top behavior. Making clear to U.S. students at the outset of the program that this simply is not done in the host country may help to prevent problems from occurring. Just as many U.S. colleges are taking steps to emphasize how most students do not engage in dangerous drinking, university administrators abroad will want to accentuate the positive side of life on their campus and in their society, rather than any unchecked drinking by a minority of students.

Rhodes: *How is alcohol use and abuse related to sexual harassment and assault? In US experience, are there many cases of sexual assault and rape that are tied to rape following alcohol use and abuse? For instance, if a woman is drunk and is not able to provide consent for sex, is the sex rape or sexual assault? What types of education should students get (knowing that many students may have never legally had alcohol before studying abroad) and what types of policies are in place in US institutions knowing that these incidents happen? What is some legal experience in the US and what are sample award amounts? Any other reflections on international university liability and responsibility in this area?*

Epstein: U.S. attitudes toward sexual assault and harassment have come a very long way in the last two decades. Similar progress has been made in the area of so-called "date rape" or acquaintance rape. Many, if not most, universities now have some sort of programming targeted at preventing date rape. Estimates of the extent of date rape on university campuses vary widely. Additionally, the nexus between high-risk drinking and date rape is commonly made with some estimating that 90 percent of campus sexual assaults involve drinking by the assailant, the victim, or both. Whatever the actual incidence of campus sexual assault and the role of drinking in such attacks, the connection is clearly profound. Hundreds of U.S. campuses have faced lawsuits alleging negligence on the part of the school in protecting women from sexual assaults by intoxicated male students. Though most of these cases are settled out-of-court with confidential payments to victims, ballpark figures range from \$20,000 to over \$1 million. The extent of the permanent physical and psychological injury to the victim and the particular details of the case account for the variation.

Although I am not familiar with foreign laws on this matter, I would advise U.S. universities operating programs in other countries and foreign universities with U.S. student programs to err on the side of caution. Aggrieved victims tend to "forum shop" for the best place to bring a lawsuit against the university. Additionally, as more victims come forward with their story of assault, public accusations against assailants for rape and universities for negligence seem to have become the norm. These cases can be highly embarrassing for the universities and damaging to their reputations and public image. Such cases can do long term damage to recruitment efforts.

Under U.S. law, consent cannot be given if a victim is incapacitated. By law, heavily intoxicated rape victims are presumed unable to consent to sexual activity. The burden is on the accused assailant to prove otherwise.

Rhodes: *What other thoughts might you have? Do you think it is only a matter of time before a US college or university student studying abroad will die or become seriously injured as a result of alcohol use and abuse on a study abroad program in countries where alcohol is available to students under 21? If so, what should foreign institutions do to limit this area of possible injury or death to their students and limit liability, resulting from legal action, taking place in either (or both) US and foreign courts?*

Epstein: Yes, regrettably I think it is only a matter of time before a US college student dies or becomes seriously injured in an incident involving alcohol abuse while participating in a study abroad program. This conclusion however may be less the result of negligence or poor policy and more the law of averages. That said, I think the legal and policy developments that have taken place in the college drinking area in the US are a prediction of what is coming elsewhere in the Anglo-English world, and at western universities generally. A thoughtful risk management analysis of foreign universities' programs and policies is in order. Universities will want to carefully consider their programs in light of the comments offered above.

Part 2: Issues Surrounding International Students Studying in the US

Rhodes: *What About the International Student Being of Legal Drinking Age in his/her Home Country and Not of Drinking Age in US? In this case, I'm thinking of the international student under 21, who has been drinking alcohol since he or she was 18, and now comes to the US and can't legally drink. As you know, many US university student social events include alcohol use (even if not sponsored by the US institution). If the student decides to drink, he or she must break US law if they are under 21 by: 1) Drinking and being underage 2) Obtaining a fake ID to go to bars where alcohol is served. What challenges does this raise?*

Epstein: U.S. law would control, even in the case of international students who have been drinking for years. That said, few jurisdictions are particularly hard on underage drinkers, even these days. I suspect that most schools would slap the international student "offender" on the wrist and say, don't do it again, that's illegal here. False IDs are another matter but given the continued perception that underage drinking is not a serious problem, I suspect the international students face little risk of severe punishment in the U.S. courts or on campus.

That said, again, it's a risk management issue. U.S. universities with foreign students can and should be doing much more to make these students aware of the local law and custom. And what the schools teach them about custom should not be that uncontrolled drinking is the accepted norm.

Rhodes: *This brings up the question of... If they are breaking the law, can their visa be revoked and can they be sent out of the country and/or can they be sent to US prison?*

Epstein: In principle yes, though I suspect few jurisdictions will go after an international student for what are widely viewed, both in law and by the public as serious offenses. That said, if the student is truly dangerous to himself or others, the university or city may want to use the loss of a visa as a sanction with real teeth.

Rhodes: *This brings up another question of... If one can guess that many of the international students studying in the US will have a propensity to break the law in this area, will that make it easier for them to break other laws, in particular, those dealing with drug use and/or abuse... or drinking and driving, etc, because of a set up of disdain for US law in this area.*

Epstein: While U.S. law and university alcohol policy is likely to go easy on the international student who drinks heavily while in the U.S., I expect law and policy with respect to an international student's drug use and other "criminal" activity will be somewhat rougher. Of course it will vary from state to state, city to city, school to school. At least with respect to the softer illicit drugs like marijuana. Marijuana use, like underage drinking is widespread on U.S. campuses. In my view, targeting students, be they American or international for smoking a single joint, drinking a few beers, etc., is foolhardy and a waste of a school's policing resources. With international students, as with the Americans, it should be a triage issue. Focus your enforcement energies on the greatest problems, those whose drinking is bound to result in serious injury to themselves and/or others.

Rhodes: *Binge Drinking in U.S. Would you think that students at US colleges and universities are practicing an increased level of binge drinking and do you think that students coming from other countries may be more social drinkers in a modest level, and if they are trying to fit in and join US custom, they would have a greater possibility of being involved in binge drinking than they would in their home country?*

Epstein: The data is hard to crunch. Hard drinking more? Less? Hard to tell. While some believe funnels and 21 shots on a 21st birthday are new phenomena, I don't. I think what has changed is the acknowledgement by college and university administrators of all the secondary/second hand effects, such as vandalism, sexual assault, fights, etc. Having never been to Australia I can't really say. My sense is that Australians tend to celebrate their "out there" hard drinking culture. Again I think the U.S. universities have an obligation (perhaps not legal but surely ethical) to warn foreign students of the risks, through good, well thought out orientation materials.

Rhodes: *Fraternities, Sororities, Social Clubs and Hazing. As you know, many times hazing goes hand-in-hand with alcohol use and abuse as does binge drinking in fraternities, sororities and other social clubs associated with US colleges and universities. What should an international student be informed about before they come to*

the US to be prepared to be faced with hazing or binge drinking as part of a rite of membership in a fraternity or social club?

Epstein: Good orientation materials, as discussed briefly above, can help forewarn international students of the aberrant behavior they can expect to encounter at some fraternities. Hazing, of course, is against the law in many states and universities can and should include in their orientation material information on how hazing is illegal, assuming it is. This may help prevent international students from getting into unacceptable situations. Also, it may help them resist hazing rituals that endanger their safety or the safety of others. Ditto for uncontrolled drinking.

Rhodes: *Sexual harassment or assault. What about the international student who is not prepared for the US binge drinking and was not an alcohol user prior to coming to the US and along with health issues related to alcohol use or abuse is sexually harassed or assaulted. What preparation should they receive? On the other side, what education should an international student receive about appropriate male/female relationships... consent issues, etc. that could result in their being taken to student conduct or a US court?*

Epstein: Good orientation materials should explain the university's policy on consensual sexual relations, sexual assault, etc. Hate crime laws and school policy may also apply. The better informed the international students are, the less likely they are to become the victim of sex assault, or to perpetuate sexual assaults or harassment against others. I for one believe schools should have pretty much zero tolerance policies with respect to non-consensual sex, or sex with someone who lacks the capacity to consent because of intoxication or other "disability." Universities will want to err on the side of caution here; otherwise they may be buying a lawsuit from a student who becomes a victim.

Rhodes: *Are there any other issues that you think should be considered by university administrators abroad when they send students to the U.S.?*

Epstein: For those students from areas that are not as ethnically diverse, who have not had much exposure to people from other ethnic groups, the materials/programs may want to focus on cultural diversity issues. On your campus this must be something of an issue for foreign students. Transportation safety is another important issue. This includes informing students about driving under the influence (DUI) and driving while intoxicated (DWI) laws in the U.S.