

THOUGHTS ON THE POTENTIAL LEGAL IMPLICATIONS OF THE APRIL 2002 NIAAA REPORT

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In April 2002, a task force of the National Institute on Alcohol Abuse and Alcoholism (NIAAA) released a report on college drinking that will have an important impact on alcohol prevention efforts on U.S. college campuses. The task force did not focus on the legal implications of their report; nonetheless the report has significant legal ramifications. Perhaps for the first time in the history of college law, there is one document that sets out scientifically valid approaches to reducing high-risk alcohol use by college students that can also be used to prove the legal standard of the reasonableness of a college's approach to these issues.

When a college has a legal duty of care to its students, the standard of care associated with that duty is invariably a standard of reasonable care to protect against foreseeable dangers to students. Just 25 years ago, courts took judicial notice of the perceived "scientific" belief that all efforts to reduce college drinking were pointless (recall that many judges in this era remembered prohibition's failure and wanted no part of a valueless war on alcohol). Much has changed. Many jurisdictions now believe that there can be success in reducing the salient risks of high-risk alcohol use, and have asked Greek organizations, college athletics groups, and colleges themselves to join the fight against targeted risks of alcohol use.

One way to assess any group's reasonableness is to compare the group's approaches to safety issues to scientifically valid safety customs and practices of the industry as whole. From many lawyers' perspectives, the science of alcohol prevention was not sufficiently conclusive on many key issues to argue to courts of law. The field scored huge scientific advances in the 1990s—including the breakthrough idea of environmental management—but that did not necessarily correlate into that science having the same impact on the law. The law of safety custom often requires identification of industrywide custom—not just the successful behaviors of specific actors or promising theoretical ideas. Courts intuitively sensed the change in the field and began asking colleges more and more to use reasonable care to prevent high-risk alcohol use, but the new position of the courts has not focused on requiring colleges to take specific scientific steps.

Perhaps, until now.

There is no reported court decision on the April 2002 report . . . It is too new to make it into the reported process of slow moving appellate decisionmaking. But courts have ruled extensively on the issues of safety custom, and it is well established that reliable evidence of a safety custom of an industry is probative of reasonable care, or lack thereof. Although colleges are not *per se* required to follow safety customs and practices—such as those set out in the NIAAA report as effective and promising—a college has a powerful argument it used reasonable care when it implements the recommendations. Significantly, colleges not using the report do so at their peril. I often tell people that the new NIAAA report is either defendant's exhibit one or plaintiff's exhibit one. The report has significance beyond its scientific implications: it is evidence of valid safety customs in the college industry and it is the single best document of its kind for legal purposes that I know of.

Some points about implementation. First, do it. Now. Second, do not blindly implement the report without first evaluating how the specific recommendations do or do not fit your campus. Social norms marketing can be very effective, but not if your Core drinking rate is the 80s, I suspect. Use judgment, always with an eye to attempting to create a reasonably safe environment. The NIAAA report is an enormous asset and ally in this cause. Remember that if there is an alcohol death on your campus, the first question at your deposition will be, "Have you seen this report . . . ?"