

MUST UNIVERSITY PREVENT CAMPER'S ALCOHOL CONSUMPTION
ON FIELD TRIP?

James C. Kozlowski, J.D., Ph.D.
© 1987 James C. Kozlowski

Over the years, I have had several inquiries from educators in Recreation regarding the duty of care owed to participants on field trips. Another area of continuing concern is potential liability associated with alcohol consumption by participants on field trips. The Beach decision described herein from the Supreme Court of Utah illustrates some of the points a court is likely to address in considering liability for alcohol related injuries sustained on a field trip.

NIGHTCAP ON THE ROCKS

In the case of *Beach v. University of Utah*, 726 P.2d 413 (Utah, 1986), plaintiff Danna Beach was injured when she fell from a cliff at night during a field trip sponsored by the University. The facts of the case were as follows:

Beach, a twenty-year-old student at the University of Utah, enrolled in a freshman-level field biology class during the spring quarter of 1979. The class, taught by a tenured professor, Orlando Cuellar, required students to attend three one-day field trips and three weekend field trips. Before the first trip, Cuellar instructed his students that they must follow his directions during class time, but were free to pursue personal interests when the day's work was completed. Students were urged to drop the class if the field trips posed any physical or other problems for them. Beach had lived away from home for three years, and although she lacked camping experience, she enjoyed athletics and had no trouble keeping up with the physical demands of the trips.

Prior to the outing, Beach had attended all of the field trips and experienced only one minor problem. On a field trip to Lake Powell, she fell asleep in the bushes near the camp after drinking some wine. Cuellar and several students later found her and returned her to the camp. Beach informed Cuellar that the incident was unusual.

The final trip of the quarter took place over the Memorial Day weekend in the Deep Creek mountains of Utah. Beach arrived at the campsite late Friday afternoon with Cuellar's teaching assistant. Before dinner, Cuellar took all of the students on a hike to orient them to their surroundings. The hike included the area in which Beach's fall later occurred, an area of high rocks off which Beach and several other students rappelled on Saturday.

On Sunday, the students attended a lamb roast given by a local rancher after completing their field work. Beach stated that she had one mixed drink and three or four glasses of home-brewed beer while at the lamb roast. Cuellar testified that he assumed most people at the lamb roast were drinking alcohol and that he had several beers. After the lamb roast, Beach returned to camp in a university van driven by Cuellar. While in the back of the van, Beach drank some whiskey.

Beach testified that when the van reached the campsite, she did not act inebriated or in any way impaired, but appeared to be well-oriented and alert. She had no trouble getting out of the van and headed for her tent, just across the stream from the van and one hundred twenty-five feet from the center of the camp. On the way, however, she became disoriented. When no one responded to her call for assistance, she decided to retrace her route. Beach had no memory of anything else that happened that night.

Beach's tentmate noticed her absence at six o'clock the next morning. Because Beach was usually one of the last to turn in at night, she had not been missed the previous evening. A search began, and about six hours later, she was found unconscious in a crevice near the rocky area where she had rappelled the previous day. As a result of injuries sustained in her fall, Beach is a quadriplegic with some limited use of her arms.

The trial court granted summary judgment to the University. Beach appealed to the Supreme Court of Utah.

On appeal, Beach argued that "a special relationship existed between the parties which gave rise to an affirmative duty on Cuellar's part to supervise and protect her." According to the state supreme court, "one essential element of a negligence action is a duty of reasonable care owed to the plaintiff by defendant."

Ordinarily, a party does not have an affirmative duty to care for another. Absent unusual circumstances which justify imposing such an affirmative responsibility, one has no duty to look after the safety of another who has become voluntarily intoxicated and thus limited his ability to protect himself. The law imposes upon one party an affirmative duty to act only when certain special relationships exist between the parties. These relationships generally arise when one assumes responsibility for another's safety... The essence of a special relationship is dependence by one party upon the other or mutual dependence

between the parties. [E]xamples of special relationships include common carriers and passengers [i.e. buses, airplanes, trains, etc.], employers and employees, owners and invitees, and parents and children. Other situations involve innkeepers and their guests [i.e. motels and hotels], and possessors of land and their guests.

The issue before the state supreme court was, therefore, "whether the facts in the record establish some basis for imposing an affirmative duty upon the University to protect Beach from her own intoxication and disorientation on the night in question." Consequently, Beach had to prove that "she had a special relationship with the University which obligated the University to supervise and protect her and that the duty was breached, causing her injuries."

At trial, Beach had conceded that "the mere relationship of student to teacher was not enough to give rise to such a [special] duty." The state supreme court also noted that Beach admitted "Cuellar had no duty to walk each student to his or her tent or sleeping bag on the night of the accident, a measure that presumably would have prevented the accident." As a result, to establish a special duty, the court found "Beach must distinguish her circumstances from those of other students on the field trip."

Based upon the incident during the earlier field trip to Lake Powell, Beach contended that "Cuellar knew or should have known of her propensity to become disoriented after drinking." Consequently, Beach maintained that "the University had a special duty to supervise her on the evening in question." The state supreme court rejected this argument.

We do not agree that any special duty arose by reason of Cuellar's knowledge. The Lake Powell incident, which Beach relies upon heavily, is not determinative of whether a special relationship arose. Beach testified that at Lake Powell, she became dizzy when she reached the bushes after leaving the rest of the company. Therefore, there was nothing about her demeanor during the time she was within Cuellar's sight that would have alerted Cuellar or other participants in the field trip to the fact that she had a tendency to become dizzy or disoriented when she consumed alcohol. Equally important, Beach told Cuellar after that incident that what had occurred was not normal behavior for her.

At the time of the final field trip, Beach had attended other field trips and had had no further incidents. She evidenced the judgment and skills of any normal twenty-year-old college student. There was nothing to suggest that she was not in good physical condition; in fact, on the final trip she joined several other students in rappelling from rocks located just above the area where she was later injured. Cuellar testified that on the night of the accident, he did not know that Beach in particular

had been drinking. Indeed, Beach testified that when she left the van for her tent, her behavior was normal and would not have suggested to any observer that she was intoxicated or disoriented... Nothing Cuellar knew would have led him to conclude that if he did not walk Beach to her tent and see that she was down for the night, she might wander off and be injured.

Given these facts, the state supreme court found that "Beach's situation was not distinguishable from that of the other students on the trip." As a result, the court concluded that "no special relationship arose between the University and Beach." which would impose an obligation on the University to protect or supervise Beach.

Beach argued further that "Cuellar failed to properly instruct her in camping skills as required by the University's regulations on student safety and that his failure to do so proximately caused her injuries." The state supreme court also rejected this argument.

[E]ven if we assume there was such a duty and that it was breached liability could not result. There is no evidence that Beach's injuries could have been avoided if she had possessed better camping skills. According to Beach's own testimony, her injuries were caused by her wandering into the night in an intoxicated and/or disoriented state. She cannot remember what occurred after she decided to retrace her steps from camp. Under the circumstances, a jury could not permissibly find any nexus [i.e. connection] between the University's duty to instruct Beach in camping skills and her injuries.

In addition, Beach argued that "Cuellar had a duty to refrain from drinking at University functions and to enforce University rules and state laws proscribing underage drinking and drinking at University functions." According to Beach, Cuellar would have been able to properly supervise the students had he abstained from drinking. For the following reasons, the state supreme court found this argument "unpersuasive."

First, the record does not establish that Cuellar was intoxicated and unable to supervise his students. But, even if Cuellar had a duty to avoid drinking, there is no evidence that his breach of that duty had any causal connection with Beach's injuries. As has been noted, the facts known to Cuellar on the night in question - assuming that he was sober - could not have alerted him to the need to take special precautions regarding Beach.

In the opinion of the state supreme court, a more difficult issue was presented by "Cuellar's failure to enforce the state law and university rule against underage drinking." Specifically, the issue was "whether by reason of the state statute or the University's rule, a special relationship arose between underage students and the University requiring the University to protect these students from their voluntary off-hours intoxication during a field trip sponsored by the

University." As noted by the court, "Utah law prohibits the consumption of alcohol by those under twenty-one years of age." The court acknowledged, however, that there was no claim that the University furnished alcohol to Beach.

As characterized by the state supreme court, Beach maintained that "a large, modern university has a custodial relationship with its adult students and that this relationship imposes upon it the duty to prevent students from violating liquor control laws whenever those students are involved directly or indirectly in a University activity." The state supreme court rejected this argument. Despite the fact that the twenty-year-old plaintiff was denied the right to drink under Utah law, the court noted that Beach was entitled to be treated as an adult in virtually all other respects, such as the constitutional right to vote.

Elementary and high schools certainly can be characterized as a mixture of custodial and educational institutions, largely because those who attend them are juveniles. However, colleges and universities are educational institutions, not custodial... Their purpose is to educate... It would be unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students and to charge it with the responsibility for preventing students from illegally consuming alcohol and, should they do so, with responsibility for assuring their safety and the safety of others. Fulfilling this charge would require the institution to babysit each student, a task beyond the resources of any school. But more importantly, such measures would be inconsistent with the nature of the relationship between the student and the institution, for it would produce a repressive and inhospitable environment largely inconsistent with the objectives of a modern college education... A realistic assessment of the nature of the relationship between the parties here precludes our finding that a special relationship existed between the University and Beach or other adult students.

According to the state supreme court, this conclusion was not affected "by the presence of any university rules that might have existed regarding the consumption of alcohol, over and above the state ban on underage drinking."

A college regulation that essentially tracks a state law and prohibits conduct that to students under twenty-one is already prohibited by state law, does not, in our view indicate that a college voluntarily assumed a custodial relationship with its students for tort [i.e. personal injury liability] analysis purposes... The behavior code established by the University may permit discipline of students for infractions, but it certainly does not change the nature of their relationship.

As a result, the state supreme court found that "the University breached no duty to Beach." The state supreme court, therefore, affirmed the summary judgment of the trial court in favor of the University of Utah.