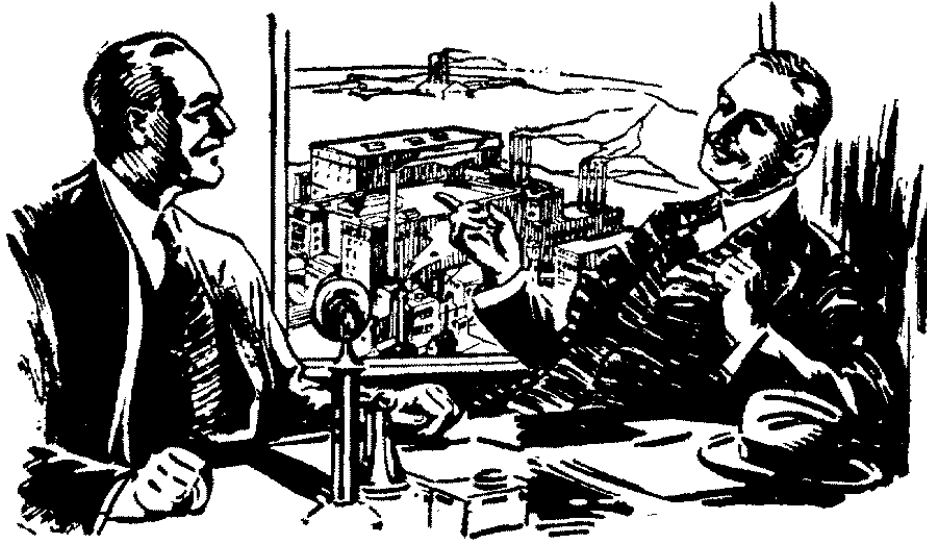


# ***What Can You Learn From Randy Durnal?***



You know your day is starting off on the wrong foot when the crew from “60 Minutes” shows up on your doorstep. The same must be true if you’re in court, seated at the defense table and you see Randy Durnal take the stand for the plaintiff. Case closed, take out your checkbook.

Durnal is the country’s most respected and widely relied upon standard of care expert. In the area of dram shop litigation, he is a tenacious investigator and a credible, highly persuasive witness. Having testified in over 500 liquor liability cases, Durnal’s reputation is well justified.

“I have nothing against the industry, in fact I’ve testified on behalf of many licensees who served liquor responsibly,” says Durnal. “But

I’m a family man and in most of the cases I work the licensees and their employees were grossly negligent and had failed to institute adequate measures to mitigate their liability. I confess that I have no sympathy for licensees who get people drunk and turn them loose on an unwitting public.”

Educated at the University of Arizona, Durnal is a ten-year veteran of the Tucson Police Department and the Arizona Department of Liquor Licenses and Control. He has witnessed just about everything that can be seen or heard at a bar. If staying on the right side of the law is important to you, it’s best to heed his advice.

Send us your comments at [amo@barmedia.com](mailto:amo@barmedia.com)

## ***Establishing Best Practices***

Durnal believes that operators make two critical mistakes when it comes to responsible service. “From my vantage point, licensees fail to make their bartenders and servers understand that liability is incurred with the first drink. Customers need not exhibit signs of intoxication to be dangerous. What licensees must appreciate is that if they wind up on the wrong end of a liability suit, the entire basis for a dram shop case is blood alcohol content, not whether the person may or may not have appeared intoxicated.”

Equally damning is the lack of written policies governing responsible service. Juries are particularly harsh on operators without clearly stated procedures for employees pertaining to the service of alcohol. “Licensees need to understand that the public is disdainful of customers who get intoxicated and the people who served them. One of the best defensive postures is to enforce a clear set of policies regarding alcohol service and back it up with ongoing training. Leaving things to chance is a losing hand.”

Compounding the difficulty for licensees is that nearly all state liquor laws make it illegal to serve alcohol to a person exhibiting signs of impairment. This unfortunately has left many with the impression that patrons can be served until they are obviously intoxicated. In reality, by the time people begin displaying signs of being impaired it's too late.

Durnal also recommends that licensees regularly assess their exposure to risk by hiring a shopping service and arming them with a specific list of concerns that they want documented. Action needs to be taken against any servers caught violating stated policies. “Have the shoppers look for excessive service and over-portioning liquor in mixed drinks. Use a jigger or similar device to ensure that the amount of alcohol is consistent. While far from foolproof, it minimally conveys to a jury that you're make a bona fide attempt to prevent the over-portioning of liquor.”

Few things change slower than perception. One such perception that must be reckoned with is that a blood alcohol concentration of 0.08 is now the nationally accepted standard of intoxication. While responsibly serving alcohol has always been somewhat challenging, the lowering of the legal limit has exasperated the situation.

Likely the soundest course of action is adopting a best practices defensive posture. That entails reviewing every aspect of your alcohol service and ensuring that there are responsible policies and procedures in place. You next need to train and regularly retrain your bartenders and servers, reemphasizing the message that you are resolved to serve alcohol responsibly is essential. Finally, and most important, you need to enforce without exception the service standards you put in place.

Durnal believes that all servers need to be certified through a state-sanctioned alcohol-awareness course, but that it is only the first phase of an on-going training program. There are numerous operation-specific questions that need to be addressed. When it comes to serving alcohol, one size doesn't fit all situations. For example, there needs to be set procedures on what happens when a guest is refused service. Cutting a person off and leaving it at that is a recipe for disaster.

He advises training bartenders to count the number of drinks that customers consume. There should be a simple to follow chart behind the bar that estimates a person's blood alcohol concentration based on weight, duration and amount of alcohol consumed. It is then vital that the bartenders use that estimate to guide their decision whether or not to serve.

Durnal frequently sees management undermine its own efforts through unsound business practices. “While I appreciate that promotions help drive traffic, those that offer

unlimited drinks for a set entry fee, or feature uncommonly inexpensive drinks are perceived as inducements to drink alcohol. They are so obviously irresponsible that they need be avoided at all costs. Before agreeing to host a promotion consider how a recounting of the event would sound in front of a jury. If it makes you start to sweat, don't do it."

Advice from Durnal is like the admonition to floss. You know what he's saying is obviously true yet it's tinged with an annoying underpinning. Maybe it's closer to the haunting phrase, "You can pay me now, or pay me later."

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**Robert Plotkin** is a judge at the San Francisco World Spirits Competition and the author of numerous books including *Secrets Revealed of America's Greatest Cocktails*. To read more from Robert visit his blog, [BarMedia.com/blog](http://BarMedia.com/blog). You can reach him at BarMedia— [robert@barmedia.com](mailto:robert@barmedia.com).

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