



NLLEA GRAM

National Liquor Law Enforcement Association

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Fall 2006

Message from the President

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NLLEA Officers

Shawn Walker
President

Stacy Drakeford
Vice President

Charles Sumner
Secretary/
Treasurer

Ted Mahony
Sergeant-At-Arms

Linda Ignowski
Immediate Past
President

Greetings Fellow NLLEA Members!

It is hard to believe that over a month has passed since our conference in Baltimore. And what a conference it was! I would like to take this opportunity to thank our partners, OJJDP and NCALE, for all of their assistance and their willingness to allow NLLEA to be part of such an outstanding event. As evidenced again this year, NLLEA was recognized time and again as an integral part of the gathering. The exposure for NLLEA and the relationships that develop during the meetings are invaluable for all involved.

I would like to highlight that the conference logistics planner, The Dixon Group, was an impressive partner, and its staff was exceptionally attentive to NLLEA. The Dixon Group assigned one full-time staff member to assist us and serve as a liaison between the NLLEA conference and the hotel. This was of great value to NLLEA Board members and to the staff of NCALE who worked tirelessly to ensure an exceptional conference for our membership. Thanks to all for their assistance!

We have already begun discussions with the OJJDP folks about our next conference. I met with Johnnetta Davis-Joyce to discuss how to build upon the successes of this year's conference, and we have already begun addressing some of the concerns that our membership expressed. Most notably, we are in agreement that when the lodging negotiations with the conference hotel occur, all attempts should be made to have a dedicated block of hotel rooms at the site for our members. Additionally, efforts will be made to ensure that NLLEA conference attendees can attend the workshops in which they are interested. We will pass on more information as it becomes available.

Now I would like to give you a brief overview of the things that I plan to work diligently to accomplish this year as your association's president:

1. I would like to establish a tradition of the President making personal contact with all of our new members. I think this would have many benefits, the most important of which is to let the folks that have sought out our great organization know that we do appreciate each and every one of them joining us.
2. I plan to work with the other Board members to make contact with organizations with which we should have ongoing and productive relationships. Of these, MADD, NCSLA, and NABCA come immediately to mind.
3. With the support of the Executive Board and our newly formed By-Laws committee, I hope to have the long-needed revisions to the By-Laws completed and sent to you by the spring. Also, based on feedback at the Annual Business Meeting, some members identified the need for more electronic processes for communicating a variety of issues such as voting, etc. The Board will likely be reaching out to you for your help in moving us toward that goal.
4. Finally, the Board will continue to examine our future as an organization and develop a plan to follow over the next several years that will enable us to get where the membership wants us to be.

Again, I cannot express how honored I am to serve an organization that means so much to me and that has given me so much in my career.

2006-07 is going to be a banner year for our association, and I hope nothing more than to serve you well.

As always, be safe everyone,



Shawn P. Walker,
President



Are You Where We Think You Are???????

Please take a moment to visit the NLLEA website (www.nllea.org) to review the contact information that we have for you. The correct contact information will ensure that you are included in the email requests for assistance from your fellow NLLEA members.

You can find your contact information in the Members Only section of the website, which can be accessed by clicking the "Membership" button on the home page. Once there, click on "Members Only Info." You will be asked to enter your name and password before seeing the "Membership Roster" option. If you do not have a password, you can request one by sending email to support@nllea.org.

News from NHTSA

Impaired Driving Labor Day Crackdown

by *Bob Hohn*

Drunk driving is one of America's deadliest crimes. In fact, during 2004, nearly 13,000 people were killed in traffic crashes involving an impaired driver or motorcycle operator with an illegal blood alcohol concentration (BAC) of .08 or higher.

That's why the National Highway Traffic Safety Administration (NHTSA) this year conducted a National Crackdown over the Labor Day holiday period to reduce impaired driving.

Thousands of law enforcement agencies across the nation conducted highly visible enforcement activities during the holiday period, which is traditionally a high risk time of year, and NHTSA supported their efforts by launching a new impaired driving advertising campaign called: *Drunk Driving. Over the Limit. Under Arrest.*

The campaign's message is simple. No matter what you drive – a passenger car, pickup truck or motorcycle – if we catch you driving impaired, we will arrest you. No exceptions. No excuses. Law enforcement will be out in force conducting sobriety checkpoints, saturation patrols and using undercover officers to remove drunk drivers from our roads. Especially around holiday times, we want everyone to play it safe and always designate a sober driver or find a safe way home if they have been out drinking.



Driving with a BAC of .08 or higher is illegal in every State. According to the FBI's Uniform Crime Report, more than 1.4 million people were arrested for driving while impaired in 2004. Moreover, more than half of all impaired driving offenders had their last drink at a licensed alcohol establishment. Therefore, liquor law enforcement officers can play a powerful role in helping with enforcement and conveying these important messages.

With financial assistance from Congress, NHTSA spent \$11 million on paid advertising to air the new campaign during the Labor Day holiday period (August 19 – September 5, 2006) and will spend another \$7 million on paid advertising for the campaign in December during Drunk and Drugged Driving (3D) Prevention Month (December 20 – 31, 2006). We hope States and communities across the country will take advantage of the publicity generated by this national campaign to make a difference by conducting and publicizing impaired driving and liquor law enforcement activities during this period of time.

For further information about the campaign, go to www.stopimpaireddriving.org or, more specifically, <http://www.stopimpaireddriving.org/tools-campaignheadquarters.htm>. If you have questions, contact Bob Hohn at 202-366-9712.

News From the Hill

Their Recess Is Our Time to Work

by Jim Copple



Congress left town at the end of September not having completed work on the significant appropriations bills affecting liquor law enforcement. They will return after the election and will take up left over business in the lame duck

session. It is anybody's guess, based on the election results, what will be preserved and what will be cut. We urge you to reach out to current members of Congress and those that are challenging them in this election and urge their interest in alcohol enforcement. They need to know that this is a vital interest and concern for Americans across the country.

I have been on travel for the past several weeks in Seattle, Phoenix, and Florida. All three states or communities have recently lost law enforcement officers who were killed either in the line of duty or due to accidents. In all three communities, as I read about these tragedies, I could not help but notice that all three were involved or had been involved with DUI Task Forces or community efforts addressing underage drinking and problem drinking. The back story on the various lives lost was that they were committed to making their communities safer and healthier. Their work had brought about

dramatic results in the number of DUI arrests and the closing of problem establishments. These are three tragedies. There are many more acts of courage and heroism in communities across the nation. We need to remember those who make the ultimate sacrifice and celebrate those that continue to advance this important work.

Your state leaders and our Congressional leaders need to know of your work, the results of your work, and the commitment each of you make to assure that alcohol enforcement is not relegated to the trash heap of local, state, and federal budgets cuts. We must continue to press our funding agenda and educate citizens and policymakers about the important work that you do. This election recess is an excellent time in which to do that. Attend community forums, candidate debates, and other meetings where elected officials can hear our message. Let them know that we watch their decisions, and we communicate the results of their decisions. Alcohol enforcement does not have the luxury of a recess – it is at work 24/7/365, and we need local, state, and federal help doing it.

Jim Copple directs the International Institute for Alcohol Awareness and is a Senior Policy Analyst with the Pacific Institute for Research and Evaluation.

What's New

20th Annual NLLEA Conference Held in Baltimore

Is it really over? It seems hard to believe, but the NLLEA's 20th Annual Conference is now history. But wasn't it great? Held at the Baltimore Marriott Waterfront Hotel August 23 – 26, the conference occurred jointly with the Underage Drinking Enforcement Training Center's 7th National Leadership Conference. Approximately 100 NLLEA members attended the event while joint conference attendance exceeded 1,500.

The Conference officially started on Wednesday evening with the President's reception, and Opening Ceremonies followed the next morning. The Baltimore City Police Department Color Guard presented the flags before the



Baltimore City Police Department Color Guard.

playing of the national anthems of the United States and Canada. (The NLLEA includes the membership of three Canadian agencies.) NLLEA President Linda Ignowski presided over the ceremonies that, in addition to her remarks, included remarks from Baltimore Police Department Deputy Commissioner Marcus L. Brown, NHTSA Impaired Driving Division Chief Heidi Coleman, and OJJDP Program Specialist Sharie Cantelon.

Conference Sessions

Thursday and Friday morning's agenda featured several workshop sessions and two plenaries. Presenters traveled from Arizona, California, Colorado, Nevada, Texas, Vermont, and Washington to be present, and their topics address a number of issues related to alcohol beverage control law enforcement and administration. Most every workshop session was filled to capacity. Plenary sessions drew several hundred attendees between Thursday afternoon and Friday Morning.



Ft. Collins Police Department Presenters Darrell Franklin, Robert Younger, and Kelly Weaver

Catching Up with Colleagues

As always, the conference provided ample networking opportunities. The Association's Hospitality Room was open each evening, allowing participants and their guests to catch up with old friends and make new ones. And there was always time between sessions pack in a conversation or two. Some participants took advantage of conference optional activities like attending the Baltimore Orioles' games on Thursday and Friday evenings. Still others took advantage of the beautiful, balmy summer evenings to stroll Baltimore's Inner Harbor before dining in one of the many excellent seafood restaurants.



Tennessee ABC Executive Director Danielle Elks and Texas ABC Assistant Administrator Jeannene Fox



Connecticut Agents Kuria Kuria and Joe Raia

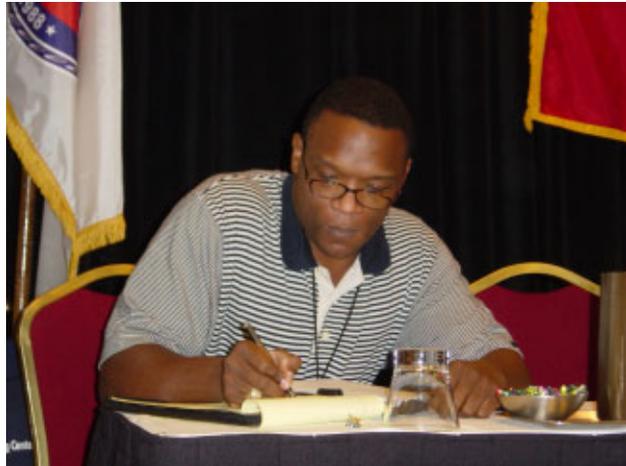
Law Enforcement Awards Luncheon

The conference ballroom was filled to capacity for the Friday luncheon during which the NLLEA's annual Law Enforcement Awards were presented. (See related article on page five.) The luncheon featured a keynote address by Maryland Attorney General J. Joseph Curran, Jr. who, along with President Linda Ignowski and NLLEA Vice President Shawn Walker, assisted with the award presentations.

Also during the luncheon, the name of Troy Woodall was added to the NLLEA Circle of Honor, a distinguished group of law enforcement officers who were killed in the line of duty. Lt. Woodall's son, Sergeant Les Woodall of the Alabama ABC was present to witness the induction ceremony and the standing ovation and sustained applause of all in attendance.

Business Meeting

The Annual Business Meeting immediately followed Friday's luncheon. The minutes of the 2005 Annual Business Meeting were accepted as was the Finance Report presented by Secretary/Treasurer Stacy Drakeford.



Secretary/Treasurer Stacy Drakeford

The membership voted to host next year's annual conference with the Underage Drinking Enforcement Training Center's 8th National Leadership Conference. As of this time, conference dates and location have not been determined.

Ted Mahony, Chief Investigator for Massachusetts ABC, submitted his name for consideration as the next NLLEA Sergeant-At-Arms. He was elected to the position with overwhelming support from the membership. (For more information about Chief Mahony, see page seven.)

Closing Banquet

The Closing Banquet on Saturday night was held off-site at the Pier V Hotel just a short walk from the conference hotel. The highlight of the event was the swearing in of the 2006-2007 NLLEA Board of Directors: Shawn Walker, President; Stacy Drakeford, Vice President, and Charles Sumner, Secretary/Treasurer. Linda Ignowski, as Immediate Past President, will also serve on the Board. (Due to travel arrangements that precluded Ted from remaining at the conference through Saturday evening, he was sworn in as Sergeant-At-Arms at the meeting.)

In her concluding remarks as President of the Association, Linda expressed appreciation to a number of individuals. Plaques were presented to Chuck Conkling and to the Utah Department of Public Safety in appreciation of their organizing and hosting the 2006 NLLEA Training Academy in Salt Lake City. A plaque was also presented to the National Center for Alcohol Law Enforcement, a center funded by the Bureau of Justice Assistance within the U.S. Department of Justice, for having provided administrative support to the conference.

In keeping with an old tradition, Linda Ignowski presented incoming President Shawn Walker with the Wisconsin "Cheese Head," a foam hat in the shape of a wedge of Swiss cheese. The hat dates back to the end of the Roger Johnson's term as president (2001 —2002). In a gesture first made at last year's banquet, the room included a table set for one to symbolize the spiritual presence of fellow liquor law enforcement officers who lost their lives as a result of the performance of their duties.

The 20th NLLEA Annual Conference was a big success with much learned and much accomplished. This winter the location of next year's gathering will be announced. Information about how to submit a workshop session proposal will also be available later in the winter. In the meantime, check out more pictures from the conference elsewhere in this issue of the *NLLEAgram* and on the NLLEA website www.nllea.org.

2006 NLLEA Award Recipients

NLLEA's Innovative Liquor Law Enforcement Program of the Year: "Operation Save Teens" (Alabama Alcoholic Beverage Control Board)

"Operation Save Teens" began in 2001 in response to the rising number of youth apprehended by law enforcement as result of their alcohol and drug use. The educational program targets youth, parents, teachers, school administrators, and law enforcement officials and is based on the premise that the solution to the problem of youth substance use rests with education, enforcement, and rehabilitative services for youth in need. During the program, audience members are informed about all of the risks and dangers associated with underage drinking and illicit drug use, with presentations featuring laws, statistics, and trends specific to the particular area. Presentations to youth also include heartfelt stories about the losses incurred by victims and their families while presentations for parents feature the various products and paraphernalia typically used by youth who drink or take drugs. Since its inception, the program has reached over 200,000 individuals throughout Alabama and the southeastern United States and received numerous expressions of support and appreciation from past audience members who praise the program's main speakers, Lt. Mike Reese and Mrs. Carol Hudson.



Lt. Mike Reese accepts the 2006 NLLEA Innovative Program of the Year Award on behalf the Alabama ABC Board.

John W. Britt Community Service Award: The Foxfield Races Coalition led by the Albemarle County Police Department

The Foxfield Races Coalition was formed in 2005 by the Albemarle County Police Department and the Virginia Department of Alcoholic Beverage Control after spectators at an annual steeplechase became violent, confrontational with police, and one 19 year-old woman registered a BAC in excess of .30. It began as a law enforcement response, but within weeks of its formation, the coalition quickly grew to include emergency medical personnel, community advocacy groups



Lt. Todd Hopwood (Albemarle County PD), Special Agent-in-Charge Roger D. Stevens (Virginia ABC), and Lt. Shawn Schwertfeger (Albemarle County PD) accept the 2006 Community Service Award on behalf of the Foxfield Races Coalition.

(MADD and Virginia College Parents), The Foxfield Races Association (the event sponsor), and the Virginia Motor Coach Association. The steeplechase takes place just outside of Charlottesville, home to the University of Virginia, and attracts an estimated 22,000 spectators each year, a large portion of which are college students from other institutions who arrive via motor coach. The coalition instituted several new policies, including a “zero tolerance” approach to underage drinking and possession, public intoxication, and disorderly conduct. The coalition is also responsible for arranging for on-site medical assistance for anyone in need as well as convincing motor coach companies to prohibit passenger drinking and transport of large quantities of alcohol. As a result of the changes pushed by the coalition, the numbers of arrests were higher than in previous years – an expected consequence of the zero tolerance approach. The event also experienced nearly a 66 percent reduction in the number of people treated for medical issues related to alcohol, and the average BAC level for those that were treated was much lower.

Liquor Law Enforcement Agent of the Year: Agent Howard A. Tyler, Georgia Department of Revenue, Alcohol and Tobacco Division

While at an international Emergency Medical Services conference in New Orleans, Agent Howard A. Tyler and his family were thrust into the chaos and destruction of Hurricane Katrina, one of the most devastating storms in our nation’s history. Conference attendees were ordered to leave the hotel, yet airports were closed and roads impassable. No alternative refuge was provided, and they were left to fend for themselves in the ensuing commotion. Displaying both professionalism and compassion, Agent Tyler immediately organized and instructed conference attendees and their families to

take shelter in the safest available location. He then established collaboration with the New Orleans Port Authority SWAT Team and obtained an on-going supply of food and water for his group. With his wife, Becky, Agent Tyler rendered first aid and emergency services first to law enforcement personnel and later to other hurricane victims with chronic and severe medical problems. He also maintained contact with staff at his department headquarters, relying information essential to the group’s rescue. After six grueling days, Agent Tyler, his family, other members of their group, and the patients for whom they cared were rescued and evacuated. His judgment and courage in restoring order and providing assistance to those around him exemplify outstanding leadership, ensuring the safety and rescue of numerous people trapped by the storm and subsequent flooding.



The 2006 NLLEA Agent of the Year Award is presented to Howard A. Tyler of the Georgia Department of Revenue, Division of Alcohol and Tobacco.

Liquor Law Enforcement Agency of the Year: Mississippi Alcoholic Beverage Control

In a year in which the United States was battered by a number of devastating hurricanes, Mississippi Alcoholic Beverage Control (MS ABC), an agency with a total of 25 agents, dispatched 17 of those agents to the Gulf Coast within hours of Hurricane Katrina’s landfall. Agents worked non-stop supporting local law enforcement, conducting search and rescue missions under extremely dangerous conditions, and apprehending numerous looters during their patrols. In the weeks and months following the hurricane, MS ABC agents continued to support local law enforcement and the Mississippi Bureau of Investigation (MBI). MBI Director Lt. Colonel Mike Berthay recognized MS ABC agents as the most efficient and hardworking officers assigned to the Missing Persons Task Force. Agents were directly responsible for finding hundreds of missing persons and re-connecting many families separated during the storm. MS ABC agents also participated in locating and apprehending displaced sex offenders that failed to register after fleeing the Gulf Coast.



Director of Training Charles Sumner and Deputy Chief of Enforcement Bill Martin accept the 2006 NLLEA Agency of the Year Award on behalf of the Mississippi Alcoholic Beverage Control.

The NLLEA extends special thanks to the following individuals and entities for their support and contributions to the 2006 Annual Conference:

**Baltimore Police Department
Honor Guard**

2006 Conference Presenters

**National Center for Alcohol Law
Enforcement**

**Underage Drinking Enforcement
Training Center**



**Lieutenant Troy D. Woodall
Alabama Alcoholic Beverage Control Board
September 30, 1970 - May 30, 1990**

Sadly, the August 2006 Annual Conference included the induction of a new name into the Association's Circle of Honor. Lieutenant Troy D. Woodall, a supervisor with the Enforcement Division of the Alabama Alcoholic Beverage Control Board, was killed in the line of duty on May 30, 1990. While conducting an aerial search for illegal distilling activities and illegal marijuana cultivation in Crenshaw County, Lt. Woodall and his partner, Agent Tom Oliver, observed two men unloading marijuana plants from a pick-up truck at an abandoned wood yard. Lt. Woodall landed his helicopter, and Agent Oliver pursued one of the fleeing suspects on foot. Lt. Woodall pursued the other suspect via helicopter. While in pursuit, Lt. Woodall was killed instantly when his helicopter struck a power line and crashed. Lt. Troy D. Woodall was inducted into the NLLEA's Circle of Honor on Friday, August 25, 2006.

Meet Sergeant-At-Arms Ted Mahony

Fredrick "Ted" Mahony has been with the Massachusetts ABCC since 1995 and Chief of the Enforcement Division since 2000. In 2003 he was instrumental in saving the Massachusetts ABCC from being eliminated by Governor Mitt Romney. Ted successfully filed and lobbied for legislation to move the agency to the Office of the State Treasurer. He was named the NLLEA's 2004 Agent of the Year for his work toward the stabilization of the Massachusetts ABCC. Ted received his Bachelors degree from Boston State College and attended New England School of Law.



News from Around the Nation

New AWOL Law in Illinois

On May 25, Illinois Governor Rod R. Blagojevich signed into law legislation prohibiting the purchase, sale, and use of devices that mix alcoholic liquor with oxygen for the purpose of inhalation. Anyone found in violation of the "AWOL Devise Act" is subject to a fine of up to \$1000 per occurrence. AWOL is an acronym for alcohol without liquid.



Illinois Liquor Control Launches TrAIL Program

The Division of Investigations at the Illinois Liquor Control Commission (ILCC) recently initiated its TrAIL (Tracking Alcohol in Illinois) program. The program is designed to hold those who provide alcohol to minors accountable following injuries and deaths that result from underage drinking. Based on California ABC's TRACE program, the TrAIL program involves conducting an alcohol source investigation whenever underage drinking results in a traffic crash, alcohol poisoning, underage drinking party, or any other incident in which public safety or individual health has been seriously compromised.



In addition to relying on ILCC agents to conduct investigations, TrAIL also engages Illinois State Police troopers, Secretary of State police officers, and the Department of Natural Resources Conservation Police. Officers from these agencies may be called to assist with investigations via a 24-hour hotline number. The program operates in four counties in the southern, central, and northern portions of the state.

Vertical License Law Passed in New Hampshire

In a bill signing ceremony on July 12, New Hampshire Governor John Lynch signed into law House Bill 1581, creating a new "vertical" drivers' license for drivers under the age of 21. The new license format is the same size as the standard drivers' license,



but is read "up and down" rather than horizontally. New Hampshire joins 13 other states that have adopted vertical licenses in an effort to facilitate detection of underage youth seeking to purchase alcohol. The new licenses will begin to be issued in January 2008.

Kauai DLC Hosts 2006 State Liquor Control Investigators Workshop

Twenty-seven Liquor Control Investigators from the County of Hawaii, County of Maui, City & County of Honolulu and County of Kauai converged on the island of Kauai for the 2006 Annual Hawaii State Liquor Control Investigators Workshop on September 14 and 15. Hosted by the County of Kauai Department of Liquor Control, the workshop, which rotates among the counties each year, was held at the Aloha Beach Resort.



Day one started with a welcome and introduction of attendees by Investigator Gerald Rapozo, Chairman of the workshop, who did an excellent job of scheduling speakers and creating a great agenda for the two-day event. This was followed by a PowerPoint presentation by Investigator Larry Moises on the Safety/Security Features of 50 State's Driver Licenses. After a fine lunch, Kauai Prosecutor Craig DeCosta gave a presentation on the enforcement of various new liquor laws, including the recently passed possession by consumption law. Investigators then discussed how each county handles noise complaints. Business for the day ended with a report from the Safety Committee. The Safety Committee was formed five years ago to address the lack of training and equipment for personnel safety.

Following the first day of business, attendees and their guests met for a dinner buffet followed by a hospitality cabana where an assortment of pupus (appetizers) were tested and ideas were shared.

The second day of the workshop began with a discussion of over-service in the licensed premises and T.R.A.C.E./source investigations. This was followed by a discussion on media relations conducted by Officer Pete Gaperio of Maui. It was disclosed that one of Maui's newspapers has a weekly column called the "LC Watch." Concerns were expressed that the media tends to cover negative stories, but seldom cover the liquor control departments' positive work.

Problems with unlicensed premises was the next topic of discussion on the agenda, followed by a discussion on Cops in Shops, Shoulder Tap, and compliance check operations. The day ended with a discussion of the

NLLEA Training Academy and other training opportunities. New investigators were encouraged to attend the academy.

Investigator Rapozo will give a report on the workshop to the directors and commissioners at their annual conference, which will be held on Kauai in October. All comments received indicate that the workshop was a success thanks to the efforts of Chair Rapozo and the Kauai office staff. Everyone looks forward to the 2007 workshop which will be hosted by the investigators of the City & County of Honolulu.

New Mexico Strengthens Liquor Regulations

Governor Bill Richardson of New Mexico announced in August new liquor regulations intended to crack down on drunk drivers. The state will now revoke the liquor license of any establishment with three convictions of sales to minors, three convictions for sales to intoxicated patrons, or any combination of three citations from either category during a 12-month period. The old standard was five. In addition to losing its license, a bar or restaurant would be fined \$10,000. New regulations also change the standard of evidence to allow police 90 minutes to secure a blood alcohol content or give a breathalyzer test. The old standard was one hour. Lastly, bar and restaurant employees are prohibited from drinking alcohol on the job. There will be two exceptions: managers who need to taste drinks to evaluate customer complaints and employees involved in product training and evaluation before business hours. In both cases, establishment employees must not become impaired.



Florida ABT's Source Investigation Program Begins

When Florida Governor Jeb Bush created the Governor's State Leadership Commission for Reducing Underage Drinking, he asked state agency heads to commit to working to reduce injuries, deaths, and property damage resulting from underage drinking. He asserted that education, research, and law enforcement could effectively address emerging issues and trends stemming from drinking by minors. Consequently, the Division of Alcoholic Beverages and Tobacco (ABT) within the Department of Business and Professional Regulation established the ICARE program last July. ICARE (Identifying Contributors to Alcohol-



Related Events) partners ABT agents with the State Highway Patrol to launch investigations into the sources of alcohol for youth whose underage drinking results in a death. The ABT will then take administrative or criminal action against the individual and/or the beverage licensee.

Maine to Conduct Statewide Retail Compliance Checks

The Maine Office of the Attorney General announced in August that the state would commence a statewide retail compliance check program. The program will involve inspections of all of the retail liquor licensees in the state and is slated to transpire over a two-year period. The effort is funded by a grant from the Office of Juvenile Justice and Delinquency Prevention and will include approximately 1500 compliance checks per year. Deputies of the Maine Sheriffs Association will conduct the inspections with youth ages 18 to 20.



Overnight Alcohol Investigation Targets Alcohol Delivery to Minors

An overnight investigation conducted within the city of Boise last August found several local businesses willing to deliver alcohol to minors. The operation employed underage individuals who called local cab companies, pizza delivery companies, and other establishments to order various items including alcohol. Several of the companies contacted delivered alcohol to the minors without asking for identification. The companies who were willing to deliver alcohol have been cited for delivering alcohol to minors. Other companies will be receiving alcohol beverage control violations for selling alcohol off premise at a later time. Officers hope that enforcement of the existing regulations regarding the delivery of alcohol to minors or off premise will deter future violations. Questions about this investigation should be directed to Boise police officer Jermaine Galloway at jgalloway@cityofboise.org.



Ohio Cracks Down on Imported Kegs

Early this month the Ohio Department of Public Safety (ODPS) began actively enforcing an Ohio law that requires all "intoxicating alcohol" consumed in the state to be purchased from the state's licensed establishments.

The decision to begin active enforcement of the law stems from underage and binge drinking episodes in which students attending colleges and universities in the Toledo area were founded to have consumed alcohol purchased just across the state line in Michigan.

Ohio has a keg registration law that requires beer kegs to be purchased from a distributor, and Toledo's two main beer distributors close at 5:00 p.m. The law can be circumvented (and the inconvenience avoided) relatively easily by purchasing kegs from retail establishments located close by in Michigan.



In early October, ODPS agents charged 14 people between the ages of 18 and 23 with "illegal transportation of beer or intoxicating liquor" - a first-degree misdemeanor punishable by up to six months in jail and a \$1,000 fine. The enforcement effort begins with surveillance near Michigan liquor and beer stores, watching motorists with Ohio plates as they load up kegs and head south. ODPS agents working with agents from the Toledo Police Department and Ohio Highway Patrol troopers then pull over vehicles in search of the kegs once the vehicles cross into Ohio.

Most of those charged with the misdemeanor were unaware that they were breaking the law, and the alcohol establishments in Michigan did not appear to be breaking any law when it sold the alcohol to adults. Earl Mark, the agent-in charge of the ODPS' Toledo investigative unit, pointed out that agents legally could have seized the vehicles, but they took only the illegal liquor. He noted also that there are very few exceptions to the Ohio law prohibiting the importation of alcohol. The law dates back to the years following the repeal of Prohibition.

Check MADD Out

As a follow-up to a summer meeting that was held with representatives with Mothers Against Drunk Driving (MADD), NLLEA has been asked to encourage our membership to visit the law enforcement section of the MADD website (www.madd.org/lawenforcement) and provide feedback on the content. Although MADD would welcome comments on the entire website, it is looking for specific feedback on the law enforcement section of the site. Please take a moment to scan the site and provide any suggestions or comments to Dora Hunter at dora.hunter@madd.org.



Thanks for taking some time to help MADD out. This is a great opportunity for demonstrating how valuable a resource our Association is!

Please Note Our New Address

The administrative office of the NLLEA has relocated.
Please note our new address:

The National Liquor Law Enforcement Association
11720 Beltsville Drive, Suite 900
Calverton, MD 20705

Our phone and fax numbers remain the same:
301-755-2795 (phone) 301-755-2799 (fax).



Congratulations!

At the end of September, **Dennis Theoharis** retired from his position as Executive Director of the Bureau of License Commissioners (BLC) in Montgomery County, Maryland. A Past President and founding member of the NLLEA, and the current Vice Chairman of the National Alcoholic Beverage Control Association's Regulatory Committee, Dennis' career as a public servant spanned 33 years with the county, during which time he served as a zoning inspector, health inspector, and liquor license program manager before heading the BLC.

Under his leadership, the Liquor Board Office was established in 1989. Dennis also successfully advocated for criminal record checks for all ABC applicants, alcohol server training for all ABC establishments, keg registration, and civil citation authority for ABC inspectors. The BLC was the first government agency in Maryland to have assigned inspectors for enforcement of the tobacco sales and tobacco promotion laws. The agency also established standards for diversity hiring within the alcohol and tobacco enforcement program.

The BLC received the NLLEA's Program of the Year Award in 1993 and its Agency of the Year Award in 1996. Dennis was also named Agent of the Year in 1995. As a Past President and founding member of the NLLEA, Dennis now becomes a Life Member of the Association. Congratulations again on your retirement, Dennis, and thank you for many years of outstanding service to the residents of

Montgomery County, Maryland and to our Association.



In a ceremony late last month at the Kansas City Police Department, the Sons of the American Revolution honored Missouri State Supervisor for Alcohol and Tobacco Control **Pete Lobdell** for his law enforcement work. The law enforcement commendation medal was created to recognize persons who have served with distinction and devotion, making contributions that exceed requirements and expectations of their job descriptions.

Under the Blunt Administration, the division has sought to modernize state regulations relating to alcohol and tobacco. The division has created a number of statewide ad hoc committees to review existing statutes and state regulations and to provide input from the industry. The division has also enhanced training for enforcement officers and streamlined the review of complaints filed against license holders.

Before assuming his duties as the State Supervisor, Pete was a special agent for the Bureau of Alcohol, Tobacco, and Firearms (ATF). He is a certified fire investigator, and has served as an ATF academy instructor, been a frequent instructor to state and local agencies on fire and explosives, and served on a number of special details with the United States Secret Service and the State Department.

The Law Corner

"Anything You Say Can And Will Be Used Against You"

by Aidan J. Moore, JD



In April 2006 Vermont Supreme Court handed down its opinion on *In re Odessa Corporation* 2006 VT 35; (2004-075); ___ A.2d ___. Odessa Corporation, doing business as Champlain Farms, appealed a Vermont Department of Liquor Control (VDLC)

order suspending its license for seventeen days after finding that one of Odessa's employees sold alcohol to a minor. In its appeal the licensee Odessa raised numerous claims of error that occurred in advance of as well as during the proceeding.

The Facts of the Case

In 2003 the licensee was notified that a hearing would be held on whether its license should be suspended or revoked based on an allegation that one of its employees sold alcohol to a minor. Approximately three weeks before the hearing, Odessa's attorney, William Simendinger, contacted William Goggins, the director of the Enforcement Division of the Department of Liquor Control, seeking to resolve the pending charge without a hearing. Goggins directed Simendinger, as he had in previous cases, to submit a written offer of settlement, which he would present to the Board.

Two days before the scheduled hearing, Goggins received a letter from Simendinger indicating that Odessa would agree to pay \$500 to resolve the charge. Goggins telephoned the Board members and informed them of Odessa's offer. He read the charge from the notice of hearing and summarized Odessa's history of prior violations. All three Board members rejected the proposal, indicating that they would settle the case if Odessa agreed to a fourteen-day or fifteen-day suspension of its license.

A contested case hearing ensued. On the day of the hearing, Odessa requested a continuance because one of its witnesses, the store clerk, failed to appear. The State opposed Odessa's request, noting that Odessa had failed to subpoena the clerk, and the State had several other witnesses who had traveled to Montpelier and were prepared to testify. The Board denied Odessa's request, explaining that Odessa was responsible for securing its witnesses and the State was prepared and ready to proceed.

Odessa then moved to recuse the Board members and dismiss the case, asserting that the communications between Goggins and the Board regarding Odessa's settlement offer violated due process and the Vermont Administrative Procedure Act. The Board heard evidence and argument on the motion. Goggins described the settlement process, noting that he had explained the process to Simendinger in advance without encountering objection. Goggins testified that he did not discuss the investigation, witnesses, evidence, or the strength or weakness of the State's case with the Board members.

The State offered the settlement letter into evidence and the Board admitted it over Odessa's objection. The Board explained that the letter provided the factual basis for Odessa's claim that the Board should be recused, and it demonstrated what the communication had been between Goggins and the Board with respect to Odessa's offer. Simendinger cross-examined Goggins about his conversations with the Board, inquiring if Goggins could remember the conversations verbatim. Goggins responded that he always followed the same procedure in discussing a settlement with the Board, but he acknowledged that he could not recall his conversations verbatim. Simendinger then sought to call the Board members as witnesses, asserting that Goggins had not adequately testified to the substance of his conversations with the Board. The State objected, arguing that it would be "extraordinary and inappropriate" for the Board members to become witnesses at a proceeding they were conducting.

The State noted that Goggins had testified to the conversations and had been subject to cross-examination. It also explained that Odessa's motion was based on an allegation that the Board had received "prejudicial evidence" from Goggins, and no evidence supported such an allegation, nor was there any evidence that the conversations involved disputed issues of fact as Odessa alleged. The Board denied Odessa's request that the Board members testify, as well as Odessa's recusal motion.

The Board then held an evidentiary hearing on the alleged violation. The arresting officer testified that on the evening in question, he observed a young woman exiting Odessa's store carrying a large quantity of beer. She looked obviously underage, and the officer spoke with her and asked her for identification. She produced a driver's license but eventually admitted to the officer that the identification was false and she was underage. The minor identified the clerk who had sold her the alcohol. The officer spoke to the clerk who informed him that she had sold alcohol to the minor "dozens of times," and she had not asked the minor for identification before completing the sale.

The officer verified this latter statement by looking at an “audit trail,” a mechanism used by Odessa to track sales. The minor also testified at the hearing. She stated that she had purchased a large amount of beer that evening at Odessa’s store. She stated that she frequently bought beer there. She admitted showing the officer false identification and she acknowledged that she was underage at the time of the sale. Counsel for the Board later asked if the minor’s false identification card would be made an exhibit, and the attorney for the State replied that it would obtain and submit the identification card. Odessa’s counsel objected, asserting that he would want to cross-examine the arresting officer, who had been excused, about the identification card. The Board overruled the objection but the identification card was not entered into evidence.

In January 2004, the Board issued its order suspending Odessa’s license for seventeen days based on its finding that one of Odessa’s clerks had sold “a considerable quantity of beer” to an underage individual. Odessa appealed.

Issues in the Case

First, Odessa argued that the adjudicative process unfairly allowed settlements to be negotiated between the prosecutor and the same individuals charged with conducting an evidentiary hearing on the allegation. According to Odessa, the Board could not impartially consider the merits of the allegation after considering and rejecting Odessa’s settlement offer, and the sanction imposed by the Board must be seen as a punishment for Odessa’s refusal to accept the Board’s settlement offer.

Secondly, Odessa argued that the hearing was unfair because the Board improperly engaged in ex parte communications about the settlement offer and failed to put its conversations with Goggins on the record, in violation of the Vermont Administrative Procedure Act (VAPA), 3 V.S.A. §§ 800-849. Finally, Odessa asserted that the Board committed reversible error by admitting the settlement offer into evidence.

Analysis of the Case

While the Court acknowledged that the settlement process used was imperfect, it nonetheless did not find that the process produced any prejudicial error. The Court held that

“...[t]he Vermont Administrative Procedures ACT (VAPA) allows for the informal disposition of any contested case by stipulation, agreed settlement, consent order, or default, unless

precluded by law. 3 V.S.A. § 809(d). We accord agency adjudicators a presumption of honesty and integrity, *Withrow v. Larkin*, 421 U.S. 35, 47 (1975), and recognize that some intermixing of roles within administrative bodies is plainly permitted.”

The Court established that the settlement procedures used by the VDLC should set forth in a written rule that is made generally available to the public.

Odessa argued that because Chief Goggins spoke to the Board when the settlement was proposed, the Board members had improperly prejudged the case and were biased against it because they learned about the case and the licensee’s prior administrative history and engaged in improper ex parte communication. The Court rejected this argument affirming that Odessa failed to substantiate these allegations and failed to demonstrate on appeal that the Board’s consideration of its settlement offer “create[d] an unacceptable risk of bias to overcome the presumption of honesty and integrity.” *In re Crushed Rock, Inc.*, 150 Vt. 613, 619, 557 A.2d 84, 87 (1988). The Court noted that while the VAPA prohibits individuals who conduct contested case proceedings from communicating with respect to any issue of fact or law “except upon notice and opportunity for all parties to participate,” 3 V.S.A. § 813, there was no evidence that any contested issue of fact or law was discussed in this case.

Odessa also argued the Board erred when they refused to testify during the proceeding on the sum and substance of their conversation with Chief Goggins. The Court noted that Chief Goggins testified and was subjected to cross examination and detailed the information he supplied to the Board. The Court rejected this argument showing they were not persuaded that the settlement discussions in this case constituted “prejudicial evidence” received and considered by the Board in rendering its decision on the merits of the allegation. The Court acknowledged that “...Odessa initiated the settlement process and was plainly informed by Chief Goggins of what would occur when it submitted its written offer, and they chose to proceed with the process. Any error in the Board’s consideration of Odessa’s offer was invited. See *In re Fiorillo Bros. of N.J., Inc.*, 577 A.2d 1316, 1322 (N.J. Super. Ct. App. Div. 1990) (addressing similar issue, and explaining that appellants’ attorney plainly understood that settlement offers would be conveyed to administrative board because case could not be settled without board approval, and thus “it is difficult to imagine why any settlement offer would be made unless the offer would reach the Board”).”

The Court continued its analysis of this issue by noting

“[t]he mere exposure to evidence presented in nonadversary investigative procedures is insufficient in itself to impugn the fairness of the Board members at a later adversary hearing. Without a showing to the contrary, state administrators are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.”

Odessa also challenged several of the Board’s evidentiary rulings and related findings. (1) It argued that the Board should have admitted the store clerk’s written statement about the disputed sale as a business record under Vermont Rule of Evidence 803(6). (2) It asserted that the Board gave undue weight to the testimony of the police officer. Finally it argued the Board should have obtained and considered evidence that it had objected to both during and after the hearing.

In addressing these challenges the Court found that Board did not err in admitting a statement of the clerk who sold the alcohol. The Board excluded the statement as inherently unreliable hearsay and unreliable. The Court deferred to the finding of the Board and noted that Odessa could have secured the presence of its witness to testify to the evening’s events, but it failed to do so. The Court also rejected Odessa’s argument suggesting the Board gave undue weight to the testimony of the police officer who investigated this case. The officer’s testimony was the picture on the identification card possessed by the underage buyer did not look like buyer. Because the ID was not used during the sale, the Court found the argument irrelevant.

Finally the Court rejected Odessa’s assertion that it was prejudiced because ID evidence that it sought to exclude at the hearing-the minor’s false identification card-was never entered into evidence. The record showed that at the close of the State’s case, the Board’s counsel asked if the minor’s false identification could be made an exhibit; the attorney for the State indicated that he would obtain the driver’s license and submit it to the Board. Odessa’s counsel objected and renewed its objection in its post-trial memorandum. The Board overruled the objection, but the license was not admitted into evidence. Odessa then argued that the Board was wrong to authorize the submission of evidence after the close of the hearing, and it was prejudiced when the evidence was not submitted. The Court rejected this argument finding it “illogical” and no prejudice demonstrated.

Summary

The Vermont Supreme Court established that the VDLC findings in this case were amply supported by the record and sustained the Board’s judgment that one of Odessa’s employees sold alcohol to a minor.

This case also illustrates how defense counsel can turn the good faith efforts of regulators and government officials to resolve cases back onto an agency or board. Agencies that operate under the direction of a state Administrative Procedures Act (APA) are required to periodically review existing rules before readopting the rules. It is a good idea to evaluate these rules to ensure they are consistent with applicable APA provisions.

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We’re looking for articles for the Winter 2007 issue of the *NLLEAgram* If you would like to contribute an article, news about your agency and its programs, or career updates to the next issue, please submit to the following address by **January 5, 2007**:

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