



NLLEAGRAM

National Liquor Law Enforcement Association

Volume 16, Issue 2

Spring, 2005

Message from the President

Inside This Issue

- 1 Message from the President
- 2 What's New
- 5 Alcohol Enforcement Roundup
- 7 Enforcement Research Notes
- 7 NHTSA Corner
- 8 On the Legal Side
- 10 Congrats

Dear National Liquor Law Enforcement Association Members,

I want to thank you for all the messages of encouragement and support that I have received since announcing that I was retiring to accept the position of Western Regional Director at PIRE's new National Center for Alcohol Law Enforcement (NCALE). While I'm anxious to get started in the new job, I remain committed to fulfilling the remainder of my term as NLLEA president to the best of my ability.

This year's NLLEA Conference will be held September 7-10, 2005 at Tysons Corner, Virginia, so save those dates! The conference theme is "Liquor Law Enforcement: Leadership in the New Millennium," in keeping with our vision of growing the association. You will find additional information about the conference on page 3.

In March, I sent out a survey via our web email list on our merchandise program. While only 13 members responded, 76 percent said they would like to be able to purchase NLLEA merchandise on a year-round basis if it was available. Respondents said they would like to be able to purchase the following: hats, key chains, pens, polo and sweatshirts in multiple colors, coffee mugs, nylon briefcase bags, shorts, golf towels, jackets, windbreakers, leather covered note pads, and window decals.

Other suggestions included making merchandise available on the website, and better advertising. Sixty-nine percent said they would support licensing another organization to sell NLLEA merchandise to our members if a volunteer could not be found. This was my suggestion because I

know how much work and expense is involved with these programs. When you consider the year-round storage, packaging, and shipping requirements, I personally believe that is a lot to ask of a volunteer. However, four members said they would be willing to run the program on a voluntary basis. They are Charles Sumner (who has done it the past), Frank Spera, Dan Boyce, and Sheri Zanger. I want to thank each of these members for their willingness to help!

Providing all the suggested items in our merchandise program on a year-round basis is a major financial commitment that the board does not feel comfortable making right now based upon the responses of 13 members. This is not intended to minimize what those 13 members said, and we are not assuming that the rest of our membership doesn't care. We are in the process of getting some cost estimates to accurately calculate the investment costs of expanding the NLLEA merchandise program, and we will schedule this for discussion at the business meeting at the annual conference in Virginia. If you have any thoughts or suggestions on this in the meantime, please let me know.

Sincerely,

Rick Phillips
NLLEA President



What's New

The Creation of the National Center for Alcohol Law Enforcement (NCALE)

As your Executive Board, we wanted to take the opportunity to let our membership know that the creation of the National Center for Alcohol Law Enforcement (NCALE) is a positive move forward for both our Association and our profession. The formation of NCALE signifies that the issues that our profession has faced for decades will be brought before local and state law enforcement as well as legislative bodies at all levels of government.

At the center of this activity will be the regional directors of NCALE. Not only are these directors knowledgeable in the field of alcohol law enforcement but each possesses a great deal of experience that will be critical in forging important relationships. Most importantly, they are members and past Presidents of our Association! In addition, our current President, Rick Phillips, will be assuming the role of a regional director in the Western region. We feel that this aspect of their background will only augment the local and national role of the National Liquor Law Enforcement Association in forwarding our, NCALE and NLLEA's, important work. The regional directors and their geographic areas of responsibility are:

Aidan Moore: Northeast
Chris Curtis: Southeast
Dave Reitz: Southwest
Rick Phillips: Western

We are excited about the potential opportunities that lie ahead with this relationship. We envision that the NLLEA will be working in concert with the NCALE to forge ahead with our mutual goals. Expect to hear from one of the directors soon to begin this crucial line of communication.

Thank you,
The NLLEA Executive Board

2005 NLLEA Training Academy: Good to Go!

By Chuck Conkling

The 2005 Training Academy is now underway with 48 students registered at this time. A special "Thank You" to Dallas Staples and Gig Robinson and everyone at West Virginia ABC for doing an excellent job of supporting this year's academy. And, as always, a very special "Thank You" to all the instructors and their agencies for their continued support of the Academy. We will have a full report for you after the Academy. If you have any special needs or concerns, please don't hesitate to contact me.

Chuck Conkling
NLLEA Training Coordinator
cconkling@cwcinva.com
(919)481-4998

The NLLEA would like to thank the following contributors to this newsletter:

Jamie Binienda	Ed Duvall, Jr.
Jack Blair	Linda Ignowski
Carol Cannon	Wesley Kuhl
Maria Carmona	Aidan Moore
Heidi Coleman	Rick Phillips
Chuck Conkling	Leo Sokoloski
Stacy Drakeford	Shawn Walker

We're looking for articles for the Summer 2005 Newsletter. If you would like to contribute an article, news about your agency and its programs, or career updates to the next NLLEAgram, please submit it to the following address by **July 15, 2005**:

NLLEA
11710 Beltsville Drive, Suite 300
Calverton, MD 20705
Phone: 301-755-2795
Fax: 301-755-2799
Email: support@nllea.org

Save the Date for the 2005 NLLEA Conference!

Liquor Law Enforcement: Leadership in the New Millennium



The 19th Annual NLLEA Conference is scheduled for September 7-10, 2005 at the Sheraton Premiere at Tysons Corner, Virginia. Hosted in partnership with the Virginia Department of Alcoholic Beverage Control, the conference will offer excellent training and networking opportunities, and the chance to socialize with colleagues and friends.

The conference location is just 20 minutes outside downtown Washington D.C., and will provide an ideal site for meeting one of the main goals of the conference—to make liquor law enforcement a national priority. In keeping with the conference theme, “Liquor Law Enforcement: Leadership in the New Millennium,” a highlight of the conference will be a visit to Capitol Hill for an event sponsored by America’s Partners to Prevent Underage Drinking of the International Institute for Alcohol Awareness (IIAA). The Hill event, currently scheduled for September 8th, will include a reception and meetings with members of Congress to discuss the importance of enforcement of alcohol laws in preventing alcohol-related problems.



Members and their families will find the location perfect for sightseeing at our nation’s Capitol, as well as for exploring other nearby attractions such as the National Air and Space Museum, George Washington’s Mount Vernon Estate and Gardens, and other historical sites from the Revolutionary and Civil War periods. A trip to a Washington D.C. Nationals baseball game is scheduled as an evening activity.

Conference registration fees are an economical \$150 for members, \$200 for non-members, and \$75 for spouses/guests. Hotel rooms will be available at the special discounted conference rate of \$129 single or double per night. Hotel reservations can be made by calling the Sheraton Premiere at Tysons Corner at (703) 448-1234. Be sure to mention the NLLEA conference when you call to receive the discounted rate.

Save the date for the conference—we look forward to seeing you there! A Call for Presentations and a conference registration form will soon be mailed out to all members. Note that the deadline for submitting workshop proposals is June 10, 2005. For the latest information about the conference, registration, and hotel accommodations, please check in frequently at <http://www.nllea.org/Conferences.htm>.

Enforcing Underage Drinking Laws Program (EUDL): National Leadership Conference Set for August

By Maria Carmona

The Underage Drinking Enforcement Training Center's 6th National Leadership Conference, *Law Enforcement and Communities: Sustaining Progress, Blazing New Trails*, will be held in Tucson, Arizona, August 18-20, 2005. Funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice, the conference will highlight enforcement efforts that address both retail and social sources of alcohol for youth and how community support has facilitated the implementation of enforcement strategies. Plenary and workshop sessions will offer guidance on how to establish linkages between law enforcement agencies and community advocates, how to develop a strategic plan to guide your work, and how to document success so that support for law enforcement efforts continues in the future.

Invited keynote speakers include Surgeon General Richard H. Carmona, OJJDP Administrator J. Robert Flores, and F.E. Warren Air Force Base Commander Colonel Evan Hoapili. Law enforcement awards will be presented to two individuals or agencies that are responsible for implementing innovative and effective enforcement operations to reduce youth access to alcohol. NLLEA members will assist in the selection of award recipients, and NLLEA President Rick Phillips will be on hand to present the law enforcement awards along with Col. Hoapili.

Approximately half of the people who attend the National Leadership Conference are law enforcement personnel. Other participants include policymakers, state and national advocates, researchers, and youth. More than 1,000 people are expected to attend this important gathering. To learn more about the conference, please visit www.udetc.org.



The National Liquor Law Enforcement Association is looking for people who are interested in promoting the growth and development of the Association. If you have a passion about making a difference and feel that you have the vision to lead this Association into the future, you should consider running for office.

As an officer of the NLLEA you will help formulate the Association's agenda, work with local, state and federal law enforcement and public safety agencies, and represent the growing ranks of law enforcement professionals who make up the NLLEA.

At our September 2005 conference in Virginia, we anticipate the board will have a vacancy for the **Sergeant at Arms** position. If you would like to declare your candidacy for this position you should submit:

- Picture of yourself for the upcoming NLLEAgram
- Background information (no more than 100 words)
- Brief statement on why you would like to hold office (no more than 150 words)
- Brief statement on your vision for the future of the NLLEA (no more than 150 words)

To be eligible you must be a person who is listed by your agency as one of the four agency members. Individual members are not eligible to seek office.

Applicants should email their information to support@nllea.org by July 15, 2005 for inclusion in the next NLLEA newsletter.



NLLEA Annual Awards



It's time to send in your nominations for our annual awards to individuals and organizations that have demonstrated outstanding service and achievements in the field of liquor law enforcement. These awards will be presented at the 19th Annual Conference in Virginia, September 7-10, 2005. The awards are:

- **Liquor Enforcement Agency of the Year**
- **Liquor Enforcement Officer of the Year**
- **Most Innovative Liquor Law Enforcement Program**
- **John W. Britt Community Service Award**

For an awards nomination form and additional information about eligibility criteria and required documentation, please visit the NLLEA website: <http://www.nllea.org/Awards.htm>.

All award nominations are due no later than July 15, 2005. Please send in your nominations with five copies of all supporting documentation to:

NLLEA
11710 Beltsville Drive, Suite 300
Calverton, MD 20705-3102

Ohio Moonshine Still on Display

By Ed Duvall Jr.

The Ohio Investigative Unit has ensured that an interesting part of Ohio's illegal alcohol production—the moonshine still—will be preserved for citizens to see one hundred years from now.



A seized moonshine still was ordered to the custody of the OIU as part of the moonshiner's conviction. We even set it up one year for display at the Ohio State Fair. Needless to say, we got many comments about the still and many more questions on how to brew the potent white lightning.

Last week we obtained a Judge's Journal Entry assigning custody of the moonshine still over to the Ohio Historical Society. The Museum will display this part of Americana, ensuring that Ohio citizens will be able to see how home brew was made back in the old days. We are proud to contribute to Ohio's Historical Society.

Alcohol Enforcement Roundup:

TRACING Underage Sales in Arizona

The Arizona Department of Liquor Licenses and Control (DLLC) has a new tool for reducing sales to underage persons and the alcohol-related emergencies that can result. Arizona is using the TRACE (Target Responsibility for Alcohol Related Emergencies) program to investigate the source of alcohol sold to underage individuals who are involved in alcohol-related emergencies. Originally developed by the California Department of Alcoholic Beverage Control, TRACE assists local law enforcement and the DLLC in apprehending and prosecuting any liquor-licensed establishments or person(s) found to have furnished or supplied alcohol to an underage person. In 2004, the California ABC won the NLLEA award for Innovative Liquor Law Enforcement Program of the Year for the TRACE program.

According to Sergeant Wes Kuhl of the DLLC, TRACE is implemented when a serious incident, such as a traffic collision, alcohol overdose, or extreme over-intoxication involving a person under the age of 21 occurs, and a licensed establishment is suspected of furnishing the alcohol. As of January of this year, the department had three TRACE cases currently under investigation and one submitted for compliance action. The Department will be closely tracking the results of the TRACE program to measure its effect.

Funded by a grant from Arizona's Oversight Council for DUI Abatement (which administers monies collected from DUI offenders' fines), the TRACE program is a good example of cross-agency cooperation. Arizona DLLC officers were trained by the California ABC in the techniques and procedures for implementing TRACE in Arizona. In turn, the DLLC aims to train all local law enforcement agencies in Arizona to implement TRACE investigations. TRACE will always be a joint effort between the state and local law enforcement departments, and Sgt. Kuhl describes this cooperation as "paramount" to successfully implementing TRACE.

TRACE is an important tool for reducing alcohol-related harm. As Leesa Berens Morrison, Director of the Arizona DLLC, stated, "With this new program, the Department of Liquor will be able to locate and punish those who provide alcohol to minors that were not caught at the time of the sale. Selling alcohol to minors is very serious and can contribute to tragic events."

For more information, contact: Sergeant Wes Kuhl, Public Information Officer, at (602) 542-9072 or Wes.Kuhl@azliquor.gov.



Bloomsburg, PA Raid Results in More than Underage Drinking Charges

By Leo Sokoloski

Greetings from Bloomsburg, Pennsylvania. I have a bit of an interesting case involving an off-campus University underage beer party. During a raid by police

who were in possession of a search warrant, they located \$32,500 in cash in a book bag/backpack. The University students did not obtain all of the money from hosting parties, of course, but were making GHB.

This was a noteworthy find. Not only will they be criminally charged with hosting the party, but they are also being charged with a felony for manufacturing with the intent to deliver controlled substances. The group of college students believed the charges would be filed quickly and they would be expelled. We just got the lab results and learned that they haven't attended class since the day of the bust.

For more information, contact: Leo Sokoloski, Chief of Police, Bloomsburg, Pennsylvania, at (570) 784-4155 ext 168, or LKSOKO@aol.com.

Massachusetts ABC Revokes License Linked to Reputed Mob Bookmaker

Massachusetts Alcoholic Beverages Control Commission investigators recently completed a long-term successful investigation that proved an undisclosed ownership of a licensed establishment by reputed organized crime bookmaker, Arthur Gianelli. The ABC Commission revoked the liquor license of the Big Dog Sports Bar located in Lynnfield, MA due to the fact that Gianelli had secretly invested almost \$1 million into the bar.

In 1991, The Massachusetts State Police identified Gianelli as a member of a major bookmaking and loan sharking ring that was backed by crime boss and one of the FBI's 10 most wanted, James J. "Whitey" Bulger. (Boston Herald)

ABCC investigators reported that Gianelli's stake in the Big Dog Sports Bar was listed under the name of a straw, Lawrence Murray. The investigators provided an undisclosed agreement between Murray and Gianelli that revealed Gianelli's undisclosed financial interest in the liquor license granted to the Big Dog Sports Bar.

In the past, ABCC investigators prevented Gianelli from trying to take control of two other bars in Boston, MA – McCarthy's Pub and Clarke's.

For more information, contact: Jamie Binienda, Investigator, Massachusetts ABCC, at 617-727-3040 X-22 or Jamie.Binienda@state.ma.us.

Enforcement Prevents Underage Drinking

A recently published study offers evidence that enforcement functions as a more effective deterrent to sales to underage persons than does server training. In a community trial study implemented in 20 cities in the Midwest, two interventions were made to test the likelihood of on and off-premise establishments selling alcohol to minors. A training program called Alcohol Risk Management-Express (ARM Express) was offered to all establishments in the intervention communities. Thirty-eight percent of the establishments (119 in all) participated in the program. For the second intervention, local law enforcement conducted enforcement checks involving youth under the age of 21 attempting to purchase alcohol from 959 licensed establishments. To test the effectiveness of both strategies, research staff (who were 21 or older but appeared to be underage) attempted to purchase alcohol without showing identification at the intervention establishments.

An immediate 17 percent reduction in the likelihood of sales to minors was observed at those sites where enforcement checks were conducted. Within three months, the effect of the enforcement checks decayed entirely in off-premise establishments and to an 8.2 percent reduction in on-premise establishments. In contrast, it was found that the training program appeared to have no effect on the likelihood of illegal sales to youth. In a separate project associated with this study that tested an expanded version of the training program, training appeared to be more likely to prevent sales to obviously intoxicated customers than underage individuals.

The results of this study indicate that enforcement is an effective tool in reducing sales to underage persons, but that the effects of enforcement decrease over time. The authors note that: "Clearly, the common practice of one enforcement check per year is not sufficient, and law enforcement agencies should be encouraged to conduct more frequent checks."

Wagenaar, A., Toomey, T., & Erickson, D. (2005) Preventing youth access to alcohol: outcomes from a multi-community time-series trial. *Addiction* 100 (3): 335-345.

If you would like a copy of this study, please contact the NLEEA at 301-755-2795 or support@nleea.org.

Reductions in Alcohol Related Traffic Deaths

By Heidi Coleman

In 2003, for the first time since 1999, the U.S. experienced a reduction in alcohol-related fatalities. There were 511 fewer alcohol-related traffic deaths in 2003, compared with 2002, which represents nearly a 3 percent reduction. How was this reduction accomplished and what is planned to reduce the numbers in the future? The National Highway Traffic Safety Administration (NHTSA) is pursuing three approaches to reduce alcohol-related fatalities. High visibility law enforcement is the foundation of all three approaches.

A Comprehensive Approach

In 2004, Congress appropriated \$3 million to NHTSA to pilot test a comprehensive impaired driving program in one State. The State of New Mexico was selected for this program. New Mexico had conducted an impaired driving technical assessment in 2002 and convened a Statewide Task Force to develop an Impaired Driving Strategic Plan. Under this project, New Mexico will seek to address the problem comprehensively by identifying weaknesses in its impaired driving system and filling the gaps. Enhancing its high visibility enforcement efforts is one of the most critical components of its program.

Priority Initiative Approach

Not every State has the personnel or the resources to implement such a comprehensive program at this time. Therefore, NHTSA has identified four priority initiatives to reduce impaired driving that we encourage every State to adopt.

- **High visibility enforcement:** Create general deterrence by increasing the perceived risk of arrest. This requires enhanced enforcement efforts, sufficient to be noticed by the public, conducted in a highly visible way and supported by media.
- **Support for the criminal justice system:** We encourage every State to create a Traffic Safety Resource Prosecutor (TSRP) and expand their use of DWI/Drug Courts. TSRPs can provide the training and technical assistance that is desperately needed for prosecution of DWI cases. DWI/Drug Courts ensure that serious offenders receive tough sentences (including treatment as

NHTSA Corner, Continued

appropriate), and complete those sentences, through close supervision by the judge. Preliminary studies show significant reductions in recidivism rates among offenders who complete these programs.

- **Alcohol screening and brief intervention:** Impaired driving is really just a symptom of the broader issue of alcohol abuse and dependency. We are encouraging medical and health care personnel to ask just a few questions of their patients to identify those with alcohol use problems and, as appropriate, briefly intervene at the time of this “teachable moment.” Research shows that brief interventions are effective in changing the behavior of these individuals.
- **Promoting enactment of primary safety belt use laws:** These laws increase safety belt use and the use of a safety belt is the best protection against an impaired driver.

Strategic Evaluation States Approach

Recent efforts have shown that enforcement’s impact is greatly enhanced through the use of media and communications. In 2002, NHTSA established the Strategic Evaluation States (SES) program to apply this strategy in States where it was likely to have the greatest impact. Thirteen States were selected that had especially high numbers and/or rates of alcohol-related traffic fatalities. NHTSA planned coordinated Impaired Driving Law Enforcement Crackdowns, supported by national advertising campaigns, and encouraged the SES States also to conduct sustained enforcement throughout the year. Seventy-five percent of the 2003 reduction in alcohol-related fatalities took place in States participating in the SES program!

Plans in 2005

The 2005 Crackdown will take place August 19 – September 5. As in past years, the theme will be *You Drink & Drive. You Lose.* We encourage law enforcement agencies across the country to conduct extensive, highly visible law enforcement efforts during this time, and also on a sustained basis throughout the year.

Look for useful materials that will be available through www.stopimpaireddriving.org or www.nhtsa.gov, including the *You Drink & Drive. You Lose.* Planner; the Saturation Patrol and Sobriety Checkpoint Guide; a Low Staffing Checkpoint Guide; Case Studies on Sustained Highly Visible Impaired Driving Law Enforcement Efforts; and seasonal and holiday mini-planners. For further information, contact Heidi Coleman, Chief, Impaired Driving Division, NHTSA, at heidi.coleman@nhtsa.dot.gov.

On the Legal Side

By Aidan J. Moore

“Exigency is Not Always in the Eye of the Beholder”

In the case *Brigham City v. Stuart*, 2005 P.3d ____ (2005 UT 13) (2005), the Utah Supreme Court reviewed the Court of Appeals’ affirmance of the trial court’s order granting defendants Charles W. Stuart, Shayne R. Taylor and Sandra A. Taylor’s motion to suppress evidence obtained during a warrantless entry into a home.

The Facts of the Case

Four Brigham City police officers responded to a complaint of a loud party. They arrived at the offending residence at about three o’clock in the morning. They traveled to the back of the house to investigate the noise. From a location in the driveway, the officers peered through a slat fence and observed two apparently underage males drinking alcohol. The officers then entered the backyard through a gate, thereby obtaining a clear view into the back of the house through a screen door and two windows.

The officers saw four adults restraining one juvenile. The juvenile broke free, swung a fist and struck one of the adults in the face. Two officers then opened the screen door and “hollered” to identify themselves. When no one heard them, they entered the kitchen. After entering, one of the officers again shouted to identify and call attention to himself. As those present in the kitchen became aware of the officers, they became angry that the officers had entered the house without permission.

The officers subsequently arrested the adults. They were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. The defendants filed a motion to suppress.

Discussion of the Law

The Court reviewed the findings of fact entered by the trial court in support of its order granting the motion to suppress:

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City Police officers were dispatched . . . as a result of a call concerning a loud party.
2. After arrival at the residence, the officers, from their observations from the front of the

residence, determined that it was obvious that knocking on the front door would have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.

3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.

4. Upon entering the backyard, the officers observed, through windows and a screen door, an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

5. At that point in time, the court finds no exigent circumstances to justify the officers' entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard, but under the 4th amendment he has an obligation to at least attempt before entering. *Brigham City v. Stuart*, 2002 UT App 317, 12, 57 P.3d 1111 (quoting trial court order).

The Court noted the officers' observation of the consumption of alcohol by underage youths and the blow struck by the juvenile in the kitchen of the dwelling were sufficient to establish probable cause and thus are not at issue. Brigham City instead challenges the Court of Appeals' determination that exigent circumstances did not exist.

Analysis of the Case

The Court articulated the protections contained in the Constitution protecting from unreasonable searches and seizures by the government.

U.S. Const. amend IV. A "cardinal principle" derived by this language is that warrantless searches "are per se unreasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Nowhere is this principle more zealously guarded than in a person's home, which is one of four domains expressly granted the security promised by the

Fourth Amendment. The Supreme Court has interpreted the Fourth Amendment as "draw[ing] 'a firm line at the entrance to the house,'" *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)), where even an "officer who barely cracks open the front door and sees nothing" is deemed to have violated its venerable protections, *id.* at 37. Even this most highly protected realm may, however, be subject to intrusion in exceptional circumstances where "the needs of law enforcement [are] so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 394. We have acknowledged that the requisite compelling need to enter a dwelling exists in the presence of probable cause and exigent circumstances. *State v. Ashe*, 745 P.2d 1255, 1258-59 (Utah 1987). Probable cause exists where the facts that an officer has acquired from reasonably trustworthy sources are sufficient to permit a reasonably cautious person to believe that an offense has been, or is being, committed. *State v. Dorsey*, 731 P.2d 1085, 1088 (Utah 1986).

The Court agreed with the analysis of the Court of Appeals that characterized exigent circumstances as

...those "that would cause a reasonable person to believe that [immediate] entry . . . was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *State v. Beavers*, 859 P.2d 9, 18 (Utah Ct. App. 1993) (quoting *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984)). Among the categories of possible exigent circumstances, only one is relevant here: whether the altercation within the dwelling and the blow struck by the juvenile could give rise to the officers' reasonable belief that their immediate entry was necessary to prevent physical harm to the occupants of the house.

Continuing their analysis the Court noted

... the Brigham City officers entered the home after witnessing four adults attempt to restrain a juvenile, the juvenile break a hand free and strike an adult in the face, and the adults struggle to regain control of the juvenile. When, after entering the kitchen of the house, the

officer gained the attention of its occupants the altercation abated. It was the acknowledged presence of the authority of the police that quenched the heat in the kitchen.

The degree of harm suffered by the adult victim of the juvenile's blow certainly nudges the line of that degree of harm sufficient to create an exigent circumstance. The restraint of the juvenile by the adults, both before and after the blow was struck, is less worthy of justifying an exigent circumstance, but underscores the reality that this case presents us with a close and difficult call. The efforts by the adults to control the juvenile certainly met the legal definition of an assault. If all that were required to authorize a warrantless entry into a home was probable cause that an assault of any severity whatsoever had occurred within the dwelling, the exigent circumstance component of the doctrine would disappear, subsumed within the probable cause requirement. The record reveals that the police officers heard the adults couple their efforts to physically restrain the juvenile with demands that he "calm down." The scene that played out before the officers prior to their entry into the kitchen was one in which the unanswered question was not whether the occupants of the kitchen were going to escalate the violence but instead whether the adults would be successful in accomplishing their goal of subduing the juvenile.

In affirming the decision of the appeals court the Utah Supreme Court held

... [w]e are ... unwilling to replace the reasonableness requirement with a per se rule concerning domestic violence that disregards other factors in the totality of the circumstances. Our rejection of a rule that would grant a suspicion of domestic violence the status of a per se exigent circumstance does not render considerations of domestic violence irrelevant. Just as it would be unwise to permit factors bearing on domestic violence to sweep aside other relevant considerations when applying a totality of the circumstances assessment, it would be likewise improper to dismiss the domestic violence as a factor which could contribute to a finding of exigent circumstances. There was no finding that any of the parties to the altercation in the Brigham City home were cohabitants, and therefore, domestic violence considerations have no

place in the evaluation of whether exigent circumstances justified the intrusion.

Summary

In his dissenting opinion Justice Durrant wrote

... [a]lthough the officers in this case were faced with uncertainties, the critical aspects of the situation were clear. The officers were eyewitnesses to a "loud, tumultuous," and ongoing brawl. Alcohol was obviously being consumed, one blow had been struck, and the officers could have reasonably believed that their intervention was necessary to prevent further injuries. In such a potentially volatile situation, neither the Fourth Amendment nor sound public policy prevents police intervention to secure the peace and protect the public. Accordingly, I would conclude that the officers did not offend the Fourth Amendment's reasonableness requirement in the present case and would therefore reverse the Court of Appeals.

This case represents a broad range of issues faced by today's law enforcement professional. As always, please check with your legal advisor to determine how case law is applied in your jurisdiction.

Congratulations!

Jack Blair, Assistant Director of the Kentucky Office of Alcoholic Beverage Control, writes that the Office is proud to announce the promotion of **Investigator William (Josh) Crain**. Josh was promoted on March 16th to the position of Branch Manager. He is filling the position vacated by John Barton, who is now the agency's Malt Beverage Administrator. Josh has been with the Kentucky ABC since July 1998. His first assignment was Jefferson County. In 2000 he transferred to Fayette County (Lexington). During his years as an investigator, Josh worked as a field training officer, assisted at the firing range and participated on many in-house committees dealing with enforcement issues. Josh was selected as the agency's Investigator of the Year for 2003.