



NLLEAGRAM

National Liquor Law Enforcement Association

Volume 15, Issue 1

Winter, 2004

Message from the President

Inside This Issue

- 1 Message from the President
- 2 What's New
- 2 NHTSA Corner
- 3 Hot Issues
- 5 On The Legal Side

Dear NLLEA Members,

At a recent meeting your Board of officers made some decisions that we believe will enhance the stature of our Association and build upon our previous successes.

Annual Conference

We felt that our joint conference with the OJJDP/PIRE National Leadership Conference was a great success. We decided to again join forces with PIRE and merge our annual conferences. The conference will be held in San Diego, California from August 25th through August 28th. Check page 2 of this newsletter for more information.

Training Academy

After much discussion and soul searching the board decided to suspend the 2004 Academy session and instead focus on a 2005 date. The decision was very difficult, but it was clear that ballooning budget deficits nationally and the uncertainty of having a sufficient number of attendees could have a significant impact on the Association's finances. The decision will allow for an assessment from the membership on the content and format of NLLEA training in 2005. NLLEA remains deeply committed to the training and professional development of our members. The decision to postpone the academy will not change that core commitment. No discussion of the Academy would be complete without recognizing the significant contributions of Mr. Chuck Conkling and the dedicated cadre of instructors. We look forward to their participation in 2005.

Additional Initiatives and Opportunities

The Board voted to work with PIRE and Fox Valley Technical College in Appleton, Wisconsin to propose the development of national standards and curriculum development for local law enforcement officers who enforce alcohol beverage laws. The decision of these organizations to approach your Association to become involved in the planning and development of such an ambitious initiative certainly acknowledges the importance of our mission and the high level of professionalism and expertise possessed by our membership.

In the near future we hope to engage the National Sheriffs' Association in discussion on how the NLLEA can join forces in their Neighborhood Crime Watch program. Our membership clearly understands the correlation between the proactive enforcement of alcohol beverage laws and the measurable improvement in crime statistics and the quality of life in our communities. I am excited about the opportunity for discussion with the NSA and once again our Association emerges as a potential partner with other law enforcement organizations on the important issues of crime and protection of the public interest.

Membership

One of our most important priorities in 2004 is to increase our membership. We will be working with Mr. Jim Copple, from PIRE, to develop strategies to increase membership. In the short term we would like to challenge each agency member to recruit one additional agency member. We want to challenge each individual member to recruit one or more additional individual members.

Stay well and stay healthy,

NLLEA President



What's New

Save the Date for the 2004 NLLEA Conference



(Sheraton San Diego Hotel and Marina)

NLLEA and PIRE's Underage Drinking Enforcement Training Center have again coordinated their plans for this year's NLLEA annual conference to be set in **San Diego, California**. The conference is tentatively scheduled for **August 25-28, 2004**, slightly earlier than last year, but we expect a strong attendance rate from our members. Look forward to a great week filled with excellent training and networking opportunities, and a chance to meet and greet colleagues and friends. The Sheraton San Diego Hotel has a magnificent view of the bay and downtown city skyline, and is a 10-minute drive from Sea World, San Diego Zoo, historic Old Town, Balboa Park, and Seaport Village. For the latest information on the conference, please check in frequently at <http://www.nllea.org/conferences.htm>.



(View of San Diego skyline)

NHTSA Corner

EXPANDING PARTNERSHIPS

By Bob Hohn

In my last column, I noted increased interest in developing partnerships between liquor and traditional law enforcement, and in identifying innovative ways that NHTSA, NLLEA, traditional law enforcement and others can work together. NHTSA is committed to help promote such partnerships. We believe they can greatly enhance efforts to reduce underage drinking and reduce impaired driving.

I am pleased to report on one such partnership. NHTSA has initiated a demonstration project with the BACCHUS and GAMMA Peer Education Network, to reduce impaired driving and underage drinking on three college campuses - Texas A&M, the University of California at Riverside and the University of Tampa. As part of this project, each college will form a coalition that includes both traditional and liquor law enforcement representatives. I recently participated in kickoff meetings at these three colleges and was encouraged by the level of enthusiasm from all participants, including the city and campus law enforcement agencies and the local liquor enforcement officials. I look forward to sharing the results of these efforts with you.

What role can you play in forming or strengthening similar partnerships? If there is a college campus in your jurisdiction, consider making contact with appropriate officials, such as campus law enforcement or the college's chapter of BACCHUS and GAMMA. If a chapter does not exist on that campus, you may contact the national office, through their website, at www.bacchusgamma.org.

In addition, contact traditional law enforcement agencies in your jurisdictions about assisting each other with impaired driving and underage drinking enforcement. In 2004, NHTSA will again support a National Crackdown on impaired driving using the theme "You Drink & Drive. You Lose." The crackdown will take place from August 27 through September 12, and be supported by national paid advertising. Last year, an estimated 11,000 law enforcement agencies in the U.S. participated in this effort, and we hope for even higher levels of participation this year. I encourage you to consider ways in which you can partner with traditional law enforcement agencies and support the crackdown or other sustained high visibility enforcement efforts throughout the year, intended to reduce underage drinking and impaired driving. Your contributions to these efforts can make a big difference.

Hot Issues

The Washington State Liquor Control Board introduces the “Raising the Bar” Program

Four years ago, the Lakewood Police Department began an aggressive program to reduce violent crime in the South Puget Sound community. Working collaboratively with businesses, other government agencies and community groups, the department was successful in reducing the community’s overall violent crime rate, especially in its motels and apartment complexes.

In 2003, however, the department noted an increase in violent crime in the city’s liquor-licensed establishments. This prompted Police Chief Larry Saunders to initiate a new crime-reduction program in collaboration with the Washington State Liquor Control Board (WSLCB), the Lakewood Fire Department, the Lakewood Chamber of Commerce and My Service Mind, an Asian social service agency.

The new program, “Raising the Bar,” was initiated in July 2003. The program focus is to reduce violent crime, while making sure licensed establishments are in conformance with fire safety code requirements and liquor laws regulating over-service, service to minors, signage and Mandatory Alcohol Server Training (MAST).

The new program was prompted, in part, by growing public concern about alcohol-related crime, including fatalities resulting from driving under the influence, and fights and crowd disturbances related to over-service. Additionally, a number of fatal fires in clubs in the Eastern United States focused greater emphasis nationwide on enforcing fire safety codes and occupancy limits in liquor-licensed establishments.

To initiate the program, the Lakewood police invited all on-premise liquor-licensed establishments to attend a free seminar given by the WSLCB, Chief Saunders and the Lakewood Fire Department. Because the Lakewood community has many licensed establishments in which Korean is spoken, the seminar was given in both languages. Licensees were informed about the concerns that prompted the “Raising the Bar” initiative and were given instruction in best bar practices. A total of 35 licensees attended the sessions and the seminar received high marks from all those who participated.

Licensees were told that under the “Raising the Bar” program, Lakewood police would begin conducting complete ‘checks’ of licensed establishments two to four times per month. In addition, ‘sweeps’ involving a specific checklist

for server permits, licenses, overcrowding, over-service, and service to minors, would be conducted once or twice per month in cooperation with the Lakewood Fire Marshal and WSLCB. A sweep involves six to eight Lakewood officers and two WSLCB officers.

Sweeps target the establishments identified by the Lakewood police as those establishments with the greatest number of calls for police service and are those most frequently mentioned by people arrested for DUI. In addition, these establishments have a history of liquor code violations and other infractions.

To conduct a sweep, the team arrives together at the establishment, police officers are posted at the entrances to keep people from leaving, officers collect IDs to check for possible warrants (on a wireless laptop computer brought into the club), the WSLCB agents check the liquor license and server permits, and inspect for potential over-service and/or service to minors violations. In addition, the Fire Marshal checks for code violations. If a liquor violation is detected, the Lakewood Police Officer will write a criminal citation to the offender and the WSLCB will initiate an Administrative Violation Notice.

To date, the Raising the Bar program has produced promising results, with many licensees choosing to voluntarily comply. However, some licensees feel the program places unfair scrutiny on their business. Following is a list of what the police, liquor officers and fire marshal found in some of these establishments.

- *Premises visits resulted in 3 arrests on warrants.*
- *During one visit a major fight broke out on the dance floor resulting in five arrests. A stabbing had occurred at this establishment about a month earlier.*
- *A 20-year old male found in the restroom of one establishment had an altered ID and was arrested.*
- *A licensee whose establishment has a history of violence, including several shootings, was found to be serving minors. In fact, all four patrons in the establishment at the time of the sweep were found to be minors. Only 17 days later, a second sweep was conducted at this establishment. A minor was being served at the bar and 11-year-old male entered the bar during the sweep. The licensee said the 11-year-old was ‘in the band.’*

Thanks to Chief Larry Saunders for his lead role in initiating such a positive program. If you are ever in Washington State, specifically Lakewood, please contact Larry Saunders, Lakewood Chief of Police at lisaunders@ci.lakewood.wa.us, or Jackie Eliason with the WSLCB at jhe@liq.wa.gov. You are always welcome!

Arrests Made in Illegal Alcohol and Tobacco Sales in New Mexico

Agents of the Special Investigations Division (SID) of New Mexico Department of Public Safety arrested four employees and served a search warrant at Border Shoppers, a “duty-free” retail business located near the border in Columbus, New Mexico. The four arrested will face state felony liquor and tobacco violations, and misdemeanor charges of selling to minors. Shortly after the arrests and search of the store, US Customs seized the business and its inventory of alcohol and tobacco products.

The arrests and seizure follows a two-month investigation into illegal alcohol and tobacco sales at Border Shoppers. In that period, undercover agents of the SID collected evidence that the business was selling alcoholic beverage without a state liquor license, unlawfully transporting alcoholic beverage into the state, selling counterfeit alcoholic beverage, selling alcohol to minors, and selling tobacco products labeled for export and foreign use only.

SID agents discovered the business was selling counterfeit alcoholic beverage. After noting particles of unknown matter floating in bottles of Stolichnaya, a well-known Russian vodka, agents became suspicious of the contents and the labeling on the bottles. Bottles were sent for testing at the State Scientific Lab in Albuquerque, and to the bona fide licensed importer of Stolichnaya Vodka, Allied Domecq Spirits, USA in West Port, Connecticut. Tests revealed the bottles contain high proof grain alcohol that is not genuine Stolichnaya Vodka. Additionally, labels on the bottles do not match the approved labeling approved on file with the Bureau of Alcohol, Tobacco and Firearms.

“Counterfeit alcohol is not the tested and approved product sold in licensed liquor stores, but is of questionable composition and origin”, said Agent Todd Griffin, public



information officer for the SID. “Aside from the fact that customers have been deceived in their purchases, there are obvious health and public safety concerns.”

Border Shoppers first opened for business in November of 2003, and has been open to the public operating as a retail sales outlet. Shortly after opening, the SID received numerous complaints alleging the establishment was selling without a state license, selling to minors and selling alcohol and tobacco products at uncharacteristically low prices.

While conducting surveillance of the location agents observed minors purchase alcohol from the business. The minors crossed into Mexico and then back into the U.S. Agents caught the minors a short time later in Columbus. Through further investigation agents have come to suspect several local teenagers have acquired alcoholic beverage from Border Shoppers. The recent arrests were preceded by a sting operation during which employees of the business sold to two 18 year-old undercover minors.

This investigation is ongoing. For additional information and updates, please contact:

Agent Todd Griffin
Public Information Officer
New Mexico Department of Public Safety
Special Investigations Division
6301 Indian School N.E., Suite 310
Albuquerque, New Mexico 87110
(505) 841-8053, ext. 1129

Sgt. Lee Mullen
South Zone Supervisor
New Mexico Department of Public Safety
Special Investigations Division
3000 East Pine Street
Deming, New Mexico 88030
(505) 546-8548

The NLLEA congratulates the New Mexico Special Investigations Division of the Department of Public Safety on a well-done investigation!

On the Legal Side

“Follow the Rule....No Exceptions”

By Aidan Moore

On November 23, 2003, the United States District Court, Eastern District of Michigan, Northern Division handed down its opinion in a case involving a challenge to the constitutionality of a Bay City, Michigan ordinance that allows police officers, upon reasonable suspicion, to demand that a person who has not reached 21 years of age take a breath test, without first having obtained a search warrant.¹ The Plaintiff, 19 year old Jamie Spencer, filed a motion for partial summary judgment and on the defendant's motion to dismiss or for summary judgment. The parties agree that a preliminary breath test constitutes a “search” within the meaning of the Fourth Amendment. The Court held that the purpose of the authorization contained in the ordinance is to gather evidence of a criminal violation, and thus concludes that the ordinance's blanket authorization of warrantless searches is repugnant to the Fourth Amendment to the Constitution.

The Facts of the Case

At about 6:30 p.m. on August 20, 2001, the plaintiff, Jamie Spencer, who was 19 years old at the time, left work and drove to the home of her fiancé, Van Spencer. The two discussed going to a location in Bay City to “roller blade,” and invited Ashley Ball, Van Spencer's cousin, and Timothy Kolka, the plaintiff's friend, to join them. The plaintiff, Van Spencer, and Ball drove to Bay City in Van Spencer's car and parked at the Veterans Memorial Park in downtown Bay City, arriving at approximately 8:30 p.m. At the park they met Kolka and two of Kolka's friends, Eric Tweddle and Matt McDaniel. All six individuals left the park and went roller blading around the city. At approximately 11:30 p.m., they returned to the park. Shortly thereafter, Bay City police officers Rod Schanck and Brian Schroer were dispatched to the park after the police received a report of a disturbance and a possible fight near

the boat launch area. Officer Schanck arrived at the park at approximately 12:03 a.m. on August 21, 2001.

Upon entering the park, he observed an individual on roller blades, later identified as Eric Tweddle, standing next to two vehicles near the park entrance. Schanck said that Tweddle appeared to be a juvenile. He also noticed two other vehicles parked near some tennis courts in the park and four individuals, later identified as the plaintiff, Van Spencer, Ball, and Kolka, standing next to those vehicles. Schanck drove around the park and, after not finding any evidence of a disturbance, returned to the entrance way where Tweddle was still standing. The two vehicles that were near the entrance way had departed by this time. Schanck testified that he approached Tweddle to inform him that the park closed at 10:00 p.m., and as he did, he “could smell a lot of intoxicants” coming from Tweddle. Schanck asked Tweddle if he had been drinking. Tweddle denied that he had been drinking; Schanck then read him his preliminary breath test (PBT) rights from a laminated card that Bay City police officers customarily carry with them. Tweddle was administered a breath test and produced a .09% BAC. The officers then asked Tweddle if he knew the four individuals that were standing next to the cars parked by the tennis courts. Tweddle said that he had arrived at the park with those individuals. The officers left Tweddle in the patrol car and walked over to the group to talk to them.

Officer Schroer testified in speaking with the group he recalled observing or smelling an odor of intoxicants coming from one of the individuals or possibly the group. Schroer also testified that there was no alcohol visible. Plaintiff was read her PBT warnings and took the PBT test which produced no evidence of beverage alcohol in Spencer's system. The officers did not issue any citations to the three individuals for being in the park after it closed and Plaintiff testified that the entire encounter lasted anywhere from 45 minutes to an hour and 15 minutes. The plaintiff filed her complaint in this Court on the basis of 42 U.S.C. §1983, alleging that

¹ B.C. Ord. § 10-57(e).

A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath test analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol tests are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor. A person less than 21 years of age who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

Section 10-57(e) of the Bay City Code of Ordinances is unconstitutional, as is Bay City's policy and practice requiring individuals who are twenty years old or younger to take "breathalyzer" tests to measure alcohol consumption without first seeking a search warrant.

Discussion of the Law

Bay City contends that one of the main purposes of the ordinance is to stem the pernicious trend of increased underage drinking, and to protect the public from the damage that can be caused by young people under the influence of alcohol. The Court agreed that there is a strong interest in preventing "harms associated with the use of alcohol by persons lacking the maturity necessary to do so responsibly" and "to reduce underage drinking and, by extension, the fatalities and serious injuries caused by teenage drunk driving." *In re Stark*, 250 Mich. App. 78, 82, 645 N.W.2d 340, 342 (2002)

While acknowledging the importance of the public policy issue, the Court established however, that the principal purpose of B.C. Ord. § 10-57(e) was to gather evidence in aid of criminal prosecution. That purpose is evident from the ordinance's plain language, which states: "the results of a preliminary chemical breath test analysis or other acceptable blood alcohol tests are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor." B.C. Ord. § 10-57(e).

The Court explained that while there may also be another purpose behind the law, which might be characterized as a "special need," it did not shelter the ordinance from demands of the Fourth Amendment's warrant requirement. The Supreme Court made clear in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), that laudable, non-criminal purposes of a law authorizing warrantless searches will not exempt the practice from the traditional mandate of a warrant issued upon probable cause when an objective to gather evidence also exists. In that case, a municipal hospital had adopted a practice of conducting tests on urine samples of pregnant women to look for the presence of cocaine. Positive test results were used for diagnostic purposes, but they also were turned over to the police. The Court held that the tests constituted unreasonable searches under the Fourth Amendment.

In its decision to grant the Plaintiff's motion for partial summary judgment, the court thoroughly discussed the

exceptions to the general rule requiring a warrant by law enforcement officers before violating a person's expectation of privacy. "The purpose of obtaining the breath samples was primarily to gather evidence of a violation of the City's criminal ordinance. Moreover, exigent circumstances do not automatically exist that justify the failure to obtain a search warrant. To the extent that Section 10-57(e) of the Bay City Code of Ordinances authorizes warrantless searches in all cases, it is unconstitutional. No exigent circumstances have been demonstrated on the record in this case that would have excused the City's police officers from obtaining a warrant to take the breath sample from Jamie Spencer." *Spencer v City of Bay City*, No. 02-10280-BC.

Summary

An editor's note in a legal advisory issued by the Office of the Michigan Attorney General, "...[t]his decision is binding on Bay City only, and does not effect MCL 436.1703(5). You can expect, however, that the decision will be used to challenge this aspect of the state MIP law. While Judge Lawson addressed the issue of whether exigent circumstances would allow a warrantless breath test before the evidence is metabolized, he did so without discussion of the primary authority on this issue, *Schmerber v California*, 383 US 757 (1966).

It should be noted that Michigan is the only state to have such a statute or ordinance in effect as of the date of this article.

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

**Jackie Eliason
Todd Griffin
Ivette Hernandez
Bob Hohn
Aidan Moore**

***We're looking for articles for the
Spring 2004 Newsletter.
If you would like to contribute an article to the
next NLLEAGRAM, please submit it to:***

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