



NLLEA GRAM

National Liquor Law Enforcement Association

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Immediate Past
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Message from the President

Dear Fellow NLLEA Members,

Happy New Year! On behalf of your Executive Board, we send everyone our best for a prosperous 2007.

Well, let me begin this year by bringing some items to your attention that we have been working on since our last newsletter.

Outreach to Other Organizations:

I have had the opportunity to speak to Phil Lang, President of the National Alcohol Beverage Control Association, and to Lou Bright, President of the National Conference of State Liquor Administrators, about renewing the relationship between NLLEA and their respective organizations. Both were receptive to the idea, and we will be continuing discussions with these organizations in the near future.

Another organization with which we have worked very hard to develop a relationship is MADD. Past President Linda Ignowski will serve on the MADD National Advisory Board until 2008 at which time the NLLEA President will assume the seat. Thereafter, the seat on the Advisory Board will rotate annually to the next NLLEA President. Additionally, I have been asked to serve on a Social Host working sub-committee of the Advisory Board. This committee is tasked with developing recommendations for MADD on strategies to address problems associated with of-age providers of alcohol to underage persons. This is a six-month project, and it will give the NLLEA a great deal of positive exposure. Finally, I would be remiss if I did not mention that one of our NLLEA members, Mark Willingham of Florida ABT (retired), is also on the sub-committee and brings his many years of experience and insight to the group. Mark maintains his ever-present passion for the NLLEA and for this subject in our discussions.

In November, NLLEA was invited to be a participant in a discussion with the National Criminal Justice Association and representatives from all of the national criminal justice associations such as the International Association of Chiefs of Police, the National Sheriff's Association, the National Judicial College, and the National Association of Prosecutors. I attended and participated in a discussion on how to reduce the number of alcohol-related fatalities on our nation's roadways. While it was very exciting to be at the table with organizations that are on the forefront of policy issues regarding what we do, it was also very interesting to see how non-traditional law enforcement partnerships can be established to have a greater impact on this issue. I suspect we will see our membership included more and more in these efforts.

NLLEA Training Academy:

This year, the NLLEA Training Academy will be hosted again by the West Virginia ABC. Chuck Conkling and the crew from West Virginia ABC have set the dates for Sunday, June 3, 2007 through Friday June 8, 2007. Information will be posted on the website and will also be sent via email to members, so please make certain your email addresses are up-to-date on the NLLEA list-serve. I would again like to thank Chuck, all of the instructors, and especially the West Virginia ABC for stepping up to present this program in 2007. I would also like to issue a challenge to our members – please send as many folks to the Academy as possible! This is a very valuable and unique program that is offered to our membership, and we want to be able to continue to present it each year. Therefore, your participation and that of your agency are critical!

National Conference

We have again partnered with the Underage Drinking Enforcement Training Center to have our annual conferences together. The conference will be held at the Rosen Centre Hotel in Orlando, Florida from August 1, 2007 through August 4, 2007. We are again excited about this opportunity, and we know that we will have a great conference.

Finally, I would like to congratulate Vice President Stacy Drakeford both for recently completing his Masters degree as well as for his recent promotion to Assistant Director of the South Carolina Law Enforcement Division. Please join me in doing the same when you speak to him.

We have covered a lot of ground in 2006. I anticipate that this pace will continue through 2007 and beyond! Until next time, everyone BE SAFE!



Shawn P. Walker, President



NHTSA Corner

The Mystery of Federal Funding

by Bob Hohn

In August 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU) was signed into law. SAFETEA-LU reauthorized a number of Federal programs administered by NHTSA and created a number of new ones.

Each year, appropriations laws are enacted to establish the actual funding levels for each of the authorized programs. Most of the funds that are appropriated for these programs are awarded directly to the States, through their State Highway Safety Offices. The States may then distribute the funds further to promote highway safety. Each State specifies its own application requirements and timelines for the further distribution of these funds.

Some of these programs may be of particular interest to liquor law enforcement agencies:

- Section 402 State and Community Highway Safety Program Grants are awarded to all States and U.S. Territories each year to promote highway safety, including activities designed to reduce impaired driving and underage drinking.
- Section 410 Alcohol-Impaired Driving Countermeasures Incentive Grants are awarded to States and U.S. Territories that meet certain qualification requirements. The funds may be used to reduce impaired driving and underage drinking, including high visibility enforcement activities.



- Under Section 154 and 164 of 23 of the U.S. Code, States that have not enacted Repeat Offender or Open Container laws that conform to Federal requirements are subject to a transfer of funds each year, under which a portion of the State's highway construction funds may be used only for hazard elimination or impaired driving activities.

It is recommended that you (or someone in your agency) seek to establish (or strengthen) your relationship with the State Highway Safety Office. This will allow you to identify ways in which you can help your State reduce impaired driving, underage drinking and over-service violations, while working with other law enforcement agencies in your State. Every State is involved each year in the Labor Day, and the Drunk and Drugged Driving (3D) Prevention Month Impaired Driving National Crackdowns. All States encourage their law enforcement agencies to participate, and many States provide financial support for Crackdown enforcement activities. While there is no guarantee that your agency will receive funding, your willingness to participate in the National Crackdowns may provide opportunities not previously available.

Your State Highway Safety Office also can be an excellent resource for other highway safety information that may be useful to your agency. For example, they may be able to help broker relationships between your organization and other law enforcement agencies within the State. Working as a team with these other agencies may provide opportunities for the utilization of staff without depleting any single agency's resources.

News From the Hill

New Congress Tackling Budget Crisis

by Jim Cople



In the event you have been sleep walking for the past 30 days or in isolation somewhere in Sub-Saharan Africa, Congress left town in December leaving the country and the budget in a mess. We are currently operating under a Continuing Resolution (CR) until February 15. The leadership in appropriations of the newly elected majority party, Senator Byrd (D-WVA) and Congressman Obey (D-WI) announced that the budget process is in such chaos that they intend to suspend all FY 07 earmarks and will, conceivably, extend the current CR to run throughout this next year. They want the time to evaluate and clear the deck. That decision has angered Republicans and Democrats alike. Frankly, as Congress returns, they are trying to sort out what to do next.

What this means for alcohol law enforcement is uncertain. All indications are that the Enforcing Underage Drinking Laws Initiative at the Department of Justice will be secure under the CR. It has a long shelf-

life and is now part of the operating culture of the Department of Justice. The future of the National Center for Alcohol Law Enforcement (NCALE) is still up in the air. There is an effort to encourage the Attorney General to support funding of this project under the CR. Also, as the Congress sorts out the FY 07 earmark mess, it could determine to support NCALE. We simply do not know at this time.

Earmarks: NCALE is an earmark and as most of you know, the earmark process will undergo significant reform. None of these reforms threaten the way we do business. The new Congress wants transparency. It also wants all marks attached to an existing authorization and it wants to be sure the budget can pay for the request (PAY-GO). Lastly, the new Congress wants to be sure a member's name is attached to the request. This has been the way we have conducted business throughout our tenure. The FY 08 budget process is wide open, and I believe there is real interest from the new leadership about our work. We must continue to inform them of our efforts at every opportunity we can take.

While there is no great news to report at this time - we certainly are still in the process and will continue to press the agenda of alcohol law enforcement.

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

Congratulations!

With approximately one thousand people in attendance at the Sacramento Convention Center, California Governor Arnold Schwarzenegger awarded Silver Medals of Valor to ABC Investigators **David Raymond** and **Michael Houser** on December 5. Raymond and Houser were recognized for their courage and bravery in August of 2003 when they prevented two suspects from kidnapping and choking a 19 year old man.

According to the award citation the investigators, "observed a young man ask two adult males to purchase beer for him from a local store. Following the purchase, the young man entered the adults' vehicle, and they drove away from the premises to pass the beer off away from the store. At one point, the minor attempted to exit the vehicle but was prevented from doing so by one of the adults who began to choke him from behind. The vehicle fled the scene with the youth still struggling to escape, with the two ABC investigators now in pursuit. The investigators were able to initiate a vehicle stop and arrest the two adults for kidnapping, providing alcohol to a minor, attempted robbery and battery. The investigators recognition of the situation and their quick response resulted in the safe release of the young man. No one was injured."

At the conclusion of the event, the Medal of Valor recipients and their families joined the Governor and First Lady Maria Shriver for a special Tree Lighting Ceremony on the steps of the State Capitol.

2007 NLEA Training Academy

Hosted by
West Virginia ABC

Chester, West Virginia.
Sunday, June 3 – Friday, June 8

Check the NLEA Website for information.
More detailed information will also
appear in the next issue of the NLEAgram.

This Just In...

New Director Appointed in Arizona

Last month, Arizona Governor Janet Napolitano announced the appointment of Jerry Oliver Sr. as Director of the state's Department of Liquor Licenses and Control (DLLC). He replaced Leesa Berens Morrison who was named Director of Arizona's Department of Homeland Security. Oliver came to the DLLC from his position of Deputy Director of the Department of Administration.



STOP Act Becomes Law But No Additional Funding for LLE

On December 20, 2006, President Bush signed into law the Sober Truth on Preventing (STOP) Underage Drinking Act. The legislation implements some of the recommendations of the Institute on Medicine's September 2003 report to Congress, *Reducing Underage Drinking: A Collective Responsibility*.

The STOP Act calls for a \$1-million annual national media campaign on underage drinking; \$5 million in grants to help community coalitions address underage drinking; \$5 million in grant funding to prevent alcohol abuse at institutions of higher education; an annual report on state underage-drinking prevention and enforcement activities; the establishment of a federal interagency coordinating committee on underage drinking; and \$6 million for research on underage drinking.

Support for the legislation came from groups like Mothers Against Drunk Driving, the Center for Science in the Public Interest, Community Anti-Drug Coalitions of America, the Center on Alcohol Marketing and Youth, and the American Medical Association, as well as alcohol industry groups like the Wine & Spirits Wholesalers of America, the National Beer Wholesalers Association, the Distilled Spirits Council of the United States, and the Beer Institute.

The industry supported the key prevention aspects of the bill, but succeeded in getting allies in Congress to delete legislative "findings" from the measure that detailed the harm caused by underage alcohol use. Industry supporters also added language

that supported the "three-tiered" alcohol distribution system that includes wholesalers as the middleman in most alcohol sales.

NABCA Creates New Senior Staff Position

The National Alcohol Beverage Control Association (NABCA) announced in November that it had hired Steve Schmidt to serve as its Vice President for Public Policy/Communication. The new position signals NABCA's increased commitment to taking a leadership role in alcohol policy research. In a statement released by NABCA, the board acknowledged a need to provide state leadership with information about the effects of alcohol abuse and underage drinking as attempts are made in state legislatures to change regulations regarding alcohol sales and distribution; attempts that often minimize the effects problem drinking.



Formerly the Director of Alcohol Education and Prevention with the Pennsylvania Liquor Control Board, Schmidt assumed the new Vice President position in December. The department will also include two communications specialists with expertise in research/writing and graphics.

Alcopops Reclassification Up for Consideration

The California Board of Equalization decided last month to consider whether to reclassify flavored alcoholic beverages (FABs) as distilled liquor rather than malt liquor. The decision came in response to a lawsuit filed in November in Santa Clara County. The current classification enables FABs (often referred to as "alcopops") to be more accessible to youth because they are sold in convenience stores and are relatively inexpensive. Low cost is possible due to state tax laws that apply a 30 cents per gallon tax on beer and beer-based products. Distilled beverages carry a tax of \$3.30 per gallon. Advocates pushing for the reclassification note that the state loses \$40 million per year in tax revenues because of the current classification. If FABs are reclassified as distilled spirits, their cost could increase as much as \$2 per six-pack. Public hearings are expected to occur in the spring.

Liquor Enforcement Around the Nation

Cooperative Investigation Yields Apprehension of Identity Thieves

In a joint investigation involving the U.S. Secret Service Manchester, New Hampshire Field Office, the Portsmouth Police Department, and the New Hampshire State Police, investigators from the financial services industry, and the New Hampshire Bureau of Liquor Enforcement (BLE) played a critical role in identifying and arresting two individuals on charges of identify theft and credit card fraud.

The investigation was initiated in February 2005 when the Portsmouth Police Department received a call from a resident of the State of Ohio who had unusual credit card purchases from the State of New Hampshire Liquor Store located in Portsmouth. The victim had never been to the state. The department opened an investigation and notified the BLE of the fraudulent purchase. It learned that numerous similar complaints had been reported.

The BLE contacted the U.S. Secret Service Field Office in Manchester and the Fraud Investigations Unit of American Express (located in Boston) as well as similar divisions within MasterCard and Visa. American Express discovered a common denominator among its client victims of the fraud. "Take over" of victims' credit card numbers initiated out of the same location (a large hospitality center) in Ridgefield, New Jersey, just across the border with New York.

BLE investigators traveled to New Jersey and working with American Express, the U.S. Secret Service Newark office and the New York Secret Service office, they were able to determine the employee working at the location associated with the criminal activity. The suspect was accessing victims' accounts, making copies of victims' credit cards numbers, and selling them to individuals based in New Hampshire and Massachusetts.

The investigation revealed the same three names used numerous times at different locations throughout New Hampshire. BLE then contacted all state stores, placed fraud alerts in all of the state retail locations, and interviewed the employees that had interacted with the suspects. BLE received a break when a suspect was caught on surveillance tapes while in the Hampton store.

The State Photography Lab made numerous stills for distribution, and the BLE made numerous compact disks of the tape to send to other state agencies. The images and case profiles were also submitted to the New Hampshire and Massachusetts "Most Wanted" websites. BLE came close to arresting the suspects near



Portsmouth. It appeared that the group tended to operate off of major roadways, hitting stores off the major routes and, eventually, smaller stores off secondary roads. After a three-week lull in criminal activity, BLE received a "break" in May 2005. Two suspects made fraudulent purchases at the State store in Lebanon, New Hampshire and attempted to use a fraudulent credit card at a liquor store in Hooksett.

Alert employees recognized one of the suspects from previously issued fraud alerts and disseminated photographs. The employees contacted State Police Headquarters and provided a description of the suspects' vehicle and a physical description of the occupants. The information was immediately broadcast to area State Police units working the I-93 corridor. Trooper Sean Haggerty setup his unit at the southbound Windham scales and shortly after the broadcast, observed the suspect vehicle and two occupants matching the description of the fraud suspects.

Trooper Haggerty initiated a traffic stop on the suspects. While approaching the suspect vehicle, he observed in plain view suspected stolen products from the Lebanon liquor store. Trooper Haggerty detained the suspects based on probable cause, and the employees that interacted with the suspects in Hooksett came to conduct a roadside identification of the vehicle and the alleged suspects. With the positive identification made, the suspects and vehicle were transported to Windham Police Department for questioning. BLE agents obtained a search warrant for the vehicle and recovered the fraudulently purchased liquor and four counterfeit cards.

Interviews with the suspects yielded additional information of use to the Secret Service's New York Field Office, leading to the identification of additional suspects. The ringleader of the criminal enterprise was positively identified, and the U.S. Attorney's Office in New Hampshire presented the case to a federal grand jury in March 2006. The main suspect was charged with aggravated identify theft and use of unauthorized access devices affecting interstate or foreign commerce. The trial is pending. Other suspects identified in the investigation have been tried and convicted in New York. The search for the remaining suspect continues.

BLE Investigators Valerie Smith and Ernie Beaulieu invested hundreds of hours in this investigation, and they have been credited with providing tremendous assistance to the successful effort to apprehend the criminals. The case is an informative case study of how partnerships among law enforcement agencies and business communities are effective in addressing such issues as protection of critical infrastructure and associated fraud.

North Carolina ALE Addressing Illegal "Liquor Houses"

Murders in the Charlotte-Mecklenburg area last October brought together three agencies to address the issue of illegal liquor houses. Agents from the North Carolina Division of Alcohol



Law Enforcement noted an increase in violence involving liquor houses and are now working with the Charlotte Mecklenburg Police Department and Mecklenburg County Alcohol Beverage Control to address the problem which led to three fatal shootings in one week.

Known decades ago as a "speak-easy," a liquor house in the area today tends to be a private home where liquor is illegally sold after hours. A liquor house can range from a frat house that charges for drinks to private homes that also sell a small selection of food. A liquor house can also be a club with armed bouncers, dance floors, drugs, prostitutes, and gambling. One suspected liquor house in Charlotte uses pit bulls to guard against unexpected entry.

When violence occurs at a suspected liquor house, partygoers often scatter, and those that remain often will not provide police with useful information. This can impede an investigation because investigators must build a good case before obtaining a search warrant to raid the "establishment." Agents in the Charlotte-Mecklenburg area work with landlords to force evictions or show a pattern of violations of city ordinances. The city police have also trained patrol officers to spot such homes and gather evidence.

Law enforcement has asked residents to look for signs of liquor houses in their neighborhoods. Signs include a high volume of people walking around the property for an extended period of time, frequency of crowds gathering at the location the same time every week, gunshots, and loud music.

Source: *The Charlotte Observer*, Tuesday October 17, 2006. <http://www.charlotte.com/mld/charlotte/news/15776887.htm>

Oregon Liquor Control Commission Preps to Address Drunk Driving

The Oregon Liquor Control Commission (OLCC) recently partnered with the Oregon Department of Transportation (ODOT) to provide comprehensive training for liquor inspectors with the goal of preventing overservice of alcohol before it leads to driving under the influence - or worse. Statistics out of the National Highway Traffic Safety Administration showed that alcohol was a factor in approximately 36 percent of the traffic deaths in the state in 2005.



With funding from ODOT's Division of Transportation Safety, more than three dozen OLCC liquor inspectors and managers attended a specialized academy at the Oregon Department of Public Safety Standards and Training. Inspectors learned about new developments in DUI-related issues, such as evaluating alcohol service levels and determining customer impairment. They also polished their techniques with ID checking, tactical skills, party dispersal, undercover observations, and premises checks, and they brushed up on their knowledge of administrative and criminal law and licensing within the state.

"This is good example of public safety agencies working together to keep impaired drivers off the road," said Rudy Williams, OLCC Deputy Director. "With ODOT's help, our inspectors received some valuable training to focus on our licensed premises, which in turn will help keep the highways safer."

Illinois Expands TrAIL Program

A previous issue of the NLEAgram reported on the Illinois Liquor Control Commission's (ILCC) new TrAIL (Tracking Alcohol in Illinois) program. Designed



to hold those who provide alcohol to minors accountable following injuries and deaths resulting from underage drinking, this source investigation program was recently expanded to Jo Daviess, Carroll, and Whiteside counties. The expansion brings the total number of counties participating in the program to seven.

While the primary goal is to hold accountable those who provide alcohol to minors, a secondary goal is to enable the ILCC to collect more extensive data on injuries and deaths caused by underage drinking. According to ILCC Industry Education Manager Ted Penesis, the agency will also track type of liquor involved in cases and create a

central repository to catalog those establishments who sell to underage youth.

Funded through a traffic safety grant from the Illinois Department of Transportation (IDOT), the ILCC aims to implement the TrAIL program statewide. To complement increased law enforcement in counties where the program currently operates, the Governor will also expand the ILCC's Don't Be Sorry campaign to educate teens, parents, and liquor retailers on the consequences of underage drinking and providing alcohol to minors.

Ontario California PD Implements ABC Grant

Last July the Ontario Police Department received a \$125,000 grant from the California Department of Alcohol and Beverage Control (ABC).



The grant aids local law enforcement agencies in their efforts to limit the availability of alcohol to minors, reduce alcohol-related crimes and disturbances, and assist with getting local establishments to comply with alcohol laws.

In the past six months, the Ontario PD and the California ABC have conducted inspections on 183 alcohol establishments, arrested 31 individuals and provided ABC LEAD (Licensee Education on Alcohol and Drugs) training for 152 employees from 74 different alcohol establishments. As result of this work, two alcohol licenses have been suspended. Throughout the year, the police department and ABC have also conducted minor decoy, shoulder tap, and other undercover operations as well as multi-agency bar sweeps and training for Ontario police patrol officers.

The next six months of the grant will continue with the enforcement work but will also focus on completing the Ontario Alcohol Deemed Ordinance. The ordinance places operating standards on existing alcohol outlets, and they are designed to reduce nuisance-related activities occurring around the premises. Outlets that fail to comply with the deemed approved standards may be asked to abate the nuisance and be subject to review under the city's Conditional Use Permit ordinance. Businesses that refuse to comply may lose their city business permit.

Alaska Law and Retailer Spin Fill Gap

In the mid-1990s, resource limitations forced prosecutors in Alaska to decide not to process cases involving the use of false identification by minors wishing to enter restricted alcohol establishments. Many retailers



continued to confiscate false identifications, particularly in the more populated areas of the state. However, knowledge that minors would not be prosecuted only bolstered youths' willingness to continue to use false ids.

A civil penalty solution to the problem was introduced on the municipal level, and it was enacted into state law in 2001. The law states that minors who illegally enter alcohol licensed premises, clearly marked with a required sign, can be required to pay a \$1000 penalty to the licensee. In other words, licensees that catch a minor with a fake ID in Alaska can sue the minor for \$1000. The \$1000 penalty is applied to offset the cost of security and to pay substantial bonuses to the employees that seize the ID.

The civil penalty concept is unique in that it does not put a strain on already limited law enforcement resources. No city or state dollars are used to implement the process. As a small action claim between the licensee and the minor, no prosecution funds are involved.

Retailers in Alaska note several interesting drinking dynamics in the civil penalty concept. First, it gets the family involved when a minor is caught in a liquor store or bar. When the state decided to cease prosecution of minors, the parents were no longer informed that their son or daughter had been caught trying to buy alcohol. Minors caught in a liquor store by licensees generally do not self report to their parents until they are forced to do so. This happens when the certified demand letter appears in the mail informing the minor that he or she now owes a \$1000 penalty that must be paid within 15 days.

Another powerful dynamic is that of employee motivation. By paying substantial bonuses to employees, licensees reinforce proactive ID checking by staff and provide tremendous incentive to network with other industry professionals to train staff in how to check ID and refuse service/entry. The bonuses have also turned the door attendant job into a destination job, reducing position turnover and professionalizing the position.

In 2003 the civil penalty concept was expanded to include adults who buy alcohol for minors and minors that solicit adults to buy for them. The penalty is also \$1000.

Ed O'Neill with Brown Jug Inc. says that the company offers an alternative to paying the \$1000 penalty: a diversion program that requires the minor or adult buying for a minor to attend a 16-hour class on substance abuse facilitated by a local drug treatment center, a two-hour drunk driving victim impact class facilitated by MADD, and a one-hour class put on by a local rape crisis center. If violators complete the classes, and pay a reduced amount to Brown Jug, (\$300 to compensate the employee who seized the ID), the minor is relieved from paying the remaining \$700.

Source: Anchorage Responsible Beverage Retailers Association.

Latest Research & Guidance

Alcohol Control, Underage Drinking, and Impaired Driving Deaths

A recent study published in *Accident Analysis and Prevention* finds approximately 15 percent fewer current drinkers among high school students in control states with a monopoly over retail sales of distilled spirits or wine and distilled spirits when compared to high school students in non-control (or license) states. The study also finds approximately 17 percent fewer current binge drinkers. Lower consumption rates in control states, in turn, were associated with a 9.3 percent lower alcohol-impaired driving death rate for drivers under the age of 21 in control states versus license states.

Conducted by researchers based at the Pacific Institute for Research and Evaluation, the study found that control states with monopolies over both wine and distilled spirits were associated with larger consumption reductions than control states with monopolies over distilled spirits only.

The researchers estimate that state alcohol control systems may prevent up to 45 impaired driving deaths annually and conclude that state control on retail alcohol sales help to reduce the prevalence of underage drinking and associated problems.

Miller, T., Snowden, C., Birckmayer, J., and Hendrie, D. (2006). Retail alcohol monopolies, underage drinking, and youth impaired driving deaths. *Accident Analysis and Prevention* 38:1162-1167.

COPS Releases Updated Guidance Publication

The Office of Community Oriented Policing Services (COPS) within the U.S. Department of Justice recently released *Assaults*



In and Around Bars, 2nd Edition. Part of COPS' Problem-Specific Guides Series, the publication provides updated information on factors that contribute to increases in the risks of assaults in and around bars, how to assess the nature of local assault problems in around bars, and law enforcement responses to identified problems. The document is available online at <http://www.cops.usdoj.gov/default.asp?Item=271>.

The Law Corner

"The Handwriting Was on the Wall"

by Aidan J. Moore, JD



In October of 2006 the Wisconsin Court of Appeals handed down its opinion in the case *Eichenseer v. Madison-Dane County Tavern League*, 2006 WL 3025696. Two University of Wisconsin-Madison students and a third plaintiff commenced a class action suit for (1) injunctive relief and (2) damages against twenty-four campus-area taverns and the Madison-Dane County Tavern League, Inc. They alleged that the defendants had engaged in an illegal conspiracy in restraint of trade by voluntarily agreeing to limit "drink specials" on Friday and Saturday nights after 8:00 p.m. "Drink specials" appears to be a term of art in this record referring to advertised promotions offering either (1) special, high-potency drinks containing multiple shots of liquor or (2) multiple drinks for the price of one regular drink.

The circuit court granted summary judgment to the defendants and dismissed the action. The plaintiffs appealed, claiming the circuit court erred in concluding that the tavern owners are not liable for antitrust violations because they agreed to limit drink specials in response to City of Madison regulatory initiatives.

The Facts of the Case

In 1999, the City of Madison began to address issues of high-risk drinking. The city's concerns were that alcohol and over-consumption issues seemed to be increasing in the campus area, leading to more frequent life-threatening conveyances to detoxification facilities and the great consumption of expensive police response services to the campus area.

About the same time, the University of Wisconsin (UW) began to involve itself actively in the City's decisions on issuing retail liquor licenses in the campus area. The University's involvement was spurred by a grant it received from the Robert Wood Johnson Foundation to fund multi-year research, political action and monitoring efforts to try to reduce binge drinking in the campus area. The University's view was that drink specials encouraged high-risk, high-volume drinking.

Under pressure from the University, the City began to flex its regulatory muscle by imposing the so-called “Luther’s Blues conditions” on virtually all liquor licenses issued to new or relocating liquor establishments in the campus area. These conditions neither limit nor set prices, but rather appear to be designed to discourage price reduction “specials” that city officials believed encouraged high-volume and dangerous drinking.

The “Luther’s Blues” conditions requested by UW and imposed by the City included the following:

- Not to increase the volume contained in a serving without increasing proportionately the price charged for such serving.
- Not to give away any drink or sell at a price that is different from the usual price for the drink for any period of time less than one full week.
- Not to give away any drink or reduce the price of any drink conditioned upon the purchase of any drink or number of drinks.
- Not to sell or give away an unlimited number of drinks during a set period of time for a fixed price.

The “Luther’s Blues” conditions were a product of the cities Alcohol License Review Committee (ALRC), chaired for many years by Alderman Tim Bruer. While the “Luther’s Blues” conditions were termed “voluntary,” they were in fact required at the time by the ALRC and the City for new and relocated liquor licenses to be granted. This new policy of the City also extended to existing licensees, who faced substantial pressure from ALRC to limit drink specials

In the summer of 2001, the ALRC created a “Sub-Committee on Comprehensive Alcohol Issues” to continue its efforts to address problems associated with high-risk drinking, including life-threatening detox conveyances and other frequent, high risk and expensive calls for police services. The report issued on April 25, 2002 contained draft ordinance language banning all drink specials at all Madison taverns seven days a week after 8:00 P.M. Madison taverns and the downtown business community opposed this report and the concept of a drink special ban because the bar owners believed the ban was overbroad and that drink specials contributed little to high-risk drinking behavior on campus.

In September of 2002, a number of Madison bar owners agreed to publicly support a voluntary ban on “drink specials” on Friday and Saturday nights at a press conference designed to signal tavern owners’ compliance with the City’s regulatory demands and policies.

The press conference and press releases had their desired effect: at the next ALRC meeting, the committee placed

its previously stated intent to draft and pursue a citywide drink special ban ordinance on hold. At approximately six-month intervals, the ALRC receives detailed reports from University officials active in monitoring campus drinking issues. These reports track detox runs and the utilization of police services in the campus area.

Issues in the Case

Both parties moved for summary judgment in this case with neither party contesting the facts pled by their opponent. “In reviewing a motion for summary judgement the Wisconsin Court of Appeals noted that summary judgment is proper when the pleadings, answers, admissions and affidavits show no genuine issues of material fact and the moving party (or the opposing party) is entitled to judgment as a matter of law. See WIS. STAT. 802.08(2) & (6) (2003-04; *Maynard v. Port Publ’ns Inc.* 98 Wis.2d 555, 558, 297 N.W.2d 500 (1980). We will reverse a decision granting summary judgment if the trial court incorrectly decided legal issues or if material facts are in dispute. *Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548,555, 508 N.W.2d 610 (Ct.App.1993).”

Analysis of the Case

The UW students based their claims for damages and injunctive relief on allegations that the Taverns (whom they labeled in their complaint “the Madison Bar Cartel”), in agreeing to eliminate drink specials on Friday and Saturday nights after 8:00 p.m., violated the provisions of WIS. STAT. s 133.03(1) which prohibits “conspirac[ies] in restraint of trade.”

While acknowledging that the State can displace competition with regulation and require or authorize private conduct that would otherwise violate the state antitrust laws, the students argued the legislature did *not* “impliedly repealed” the antitrust law with respect to the retail sale of alcohol drinks.

The Taverns responded by noting that, under both Wisconsin and federal antitrust law, it was well established that a municipality may engage in or foster anticompetitive conduct that would otherwise be prohibited under Wis. Stat. ch. 133, provided the legislature “intended to allow municipalities to undertake such actions.” See *Town of Hallie v. City of Chippewa Falls*, 105 Wis.2d 533, 539, 314 N.W.2d 321 (1982). The Taverns contended that the “extensive authority the legislature granted municipalities under Wis. Stat. ch. 125 to regulate the sale and consumption of alcohol beverages showed that the legislature ‘has impliedly repealed its antitrust prohibitions’ with regard to the sale of alcohol drinks in taverns.”

The Court of Appeals agreed with the Taverns’ view, because their agreement to eliminate drink

specials on Fridays and Saturdays after 8:00 p.m. came in direct response to the City's exercise of its legitimate regulatory authority over tavern operations. The Taverns cannot be held liable for any violations of ch. 133 the agreement may entail.

In support of the Tavern's arguments the Court recognized the power of the state to regulate alcohol.

"The justification for the exercise of the police power in restraining or prohibiting the sale of intoxicating liquors has been stated and restated by the courts time and again. It may be summed up as resting upon the fundamental principle that society has an inherent right to protect itself; that the preservation of law and order is paramount to the rights of individuals or property in manufacturing or selling intoxicating liquors; that the sobriety, health, peace, comfort, and happiness of society demand reasonable regulation, if not entire prohibition, of the liquor traffic. Unrestricted, it leads to drunkenness, poverty, lawlessness, vice, and crime of almost every description. Against this result society has the inherent right to protect itself—a right which antedates all constitutions and written laws—a right which springs out of the very foundations upon which the social organism rests; a right which needs no other justification for its existence or exercise than that it is reasonably necessary in order to promote the general welfare of the state." *Odelberg v. City of Kenosha* 20 Wis.2d 346, 350,

122 N.W.2d 435 (1963) (quoting *Zodrow v. State* 154 Wis 551, 555, 143 W.W. 693 (1913).

The Court also concluded that the Taverns' agreement, made in response to the City's "regulatory pressure," to do voluntarily what the City could well have ordered them to do, and expressly threatened it would order them to do, was entitled to the same exemption from the provisions of Wis. Stat. ch. 133 that would apply if drink specials had been limited directly by way of a City ordinance.

The Court rejected the notion that the City was not the decision maker behind the Taverns' agreement. After detailing in its written decision the facts of record that established the "enormous" regulatory pressure the City brought to bear on the Taverns regarding drink specials, the circuit court summarized as follows: "The conclusion from this scenario, is that *but for* the intense demands of the City [brought] through its ALRC, there would have been no voluntary ban on weekend drink specials by campus bar owners."

Summary

In this writer's opinion, this case represents what can happen when law students have too much free time on their hands. The case also demonstrates how communities can reshape their alcohol environment. Time will tell whether these changes will produce the desired long term impact. In the short term they will save police resources and improve the quality of life for UW students and the citizens of Madison.

SAVE THE DATE!

AUGUST 2007

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4
5	6	7	8	9	10
11	12	13	14	15	16
17	18	19	20	21	22
23	24	25	26	27	28
29	30	31			

NLLEA 21st Annual Conference

Wednesday, Aug. 1, 2007 through Saturday August 4, 2007

**Rosen Centre Hotel
Orlando, Florida**

Call for Proposals to be posted soon. Look for updates on the NLLEA website (www.nllea.org). Remember to book your rooms early!

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

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We're looking for articles for the Spring 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 address below by **April 6, 2007**.

NLLEA

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