



# NLLEAGRAM

National Liquor Law Enforcement Association

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## Inside This Issue

1 Message from the President

2 What's New

3 Hot Issues

4 Perspectives

6 NHTSA Corner

6 On The Legal Side

7 Announcements

## *Message from the President*

Members and Friends of NLLEA:

As we enter 2002, we face many challenges and opportunities - some personal, some professional, some expected and many unexpected.

In my state, we face a \$1.2 billion budget shortfall. Each of us at the Department of Revenue office in Madison, Wisconsin, will be working half-time at our regular jobs and half-time doing tax processing until July; funds are not available to hire limited term employees, as was done in the past. Supervisors have been "asked" to "donate" an additional 10 hours per week. From what I've heard from other states, many of you are facing similar situations.

On a positive note, the NLLEA continues to make strides. The NLLEA Board of Directors/Advisory Group met in November to take up a variety of issues.

- The NLLEA Awards nomination form was amended to require the signature of the agency head. We are making this change so that the nomination is done with the knowledge and support of the agency being nominated.
- NLLEA signed a two-year contract (with a one-year option) to have PIRE provide accounting services for the Association. This will assist NLLEA in maintaining accurate records in handling grant monies, etc., as required as a condition of the grants.
- Greg Hamilton (Texas) asked to be relieved as Chair of the Awards Nomination Committee. Holly Pomelow (Maine) assumed the Chair of this committee, with Linda Ignowski (Oregon) assisting. I ask that anyone wishing to volunteer to serve on this committee, to please contact Holly. Thank you, Holly and Linda, and anyone who will serve with you.
- Bill Roche (Alaska), Stacy Drakeford (South Carolina), Linda Ignowski and Holly Pomelow are developing a "strategic plan" for the NLLEA.
- Chuck Conkling (North Carolina ALE, retired), along with agents of the Texas ABC, is putting the agenda together for the NLLEA National Training Academy to be held this May in El Paso. See "What's New" in the next section for details.
- Sergeant-at-Arms Aidan Moore sent a letter to the "Regulatory Compliance Services" of Florida, requesting that they remove the NLLEA endorsement of their training from their advertising brochure. NLLEA has no knowledge of this company and has not endorsed their program. I ask that each of you report any such noticed "endorsements" to the NLLEA Board.

- Special thanks to Mark Willingham who traveled to the NLLEA Conference in Maine on his own time and at his own expense. Mark gave an excellent presentation on Alcohol Licensing and Regulation in the UK. As the Association continues to grow, it is important for members to understand how alcohol is regulated in other parts of the world as well. Thank you, Mark!
- Bill Patterson (North Carolina ALE, retired) represented NLLEA at a National Highway Traffic Safety Administration (NHTSA) program in Washington D.C. in January, 2002, to discuss the future direction of traffic law enforcement and how our organization can contribute to implementing nationwide safety initiatives related to the law enforcement community.
- NLLEA members participated in an Office of Juvenile Justice and Delinquency Prevention (OJJDP) teleconference in January, 2002. The topic focused on how law enforcement agencies charged with providing effective administration of state liquor laws can become powerful allies in reducing underage drinking problems.
- Gwen Patterson and the NLLEA Spouses' Association sent a get-well card to Jim Anderson (Colorado) who is recovering from a recent heart attack. I know I speak for everyone at NLLEA in wishing Jim a speedy recovery.
- Jim Fell (PIRE) is compiling a series of "fact sheets" dealing with a number of alcohol issues; the first, "Underage Drinking in the United States" has been completed and is in the process of being printed and available for our use. Others being developed include one on the sources of alcohol for underage drinkers and enforcement strategies to reduce underage drinking. They will also be posted on our NLLEA website.

- I've been asked to attend the NABCA Educational Summit in Washington, D.C. in March. The group will include alcohol policy representatives, industry members, researchers and regulators. Its purpose is to begin ongoing communications to find practical and acceptable solutions to the misuse of alcohol in society, while at the same time increasing revenues for the states from its sale.

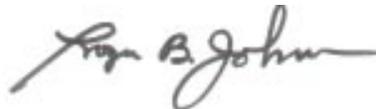
From this, I trust you will see that the NLLEA has become an ever-active organization, and one that is continuing to further its mission.

I also wish to extend my best wishes for a long and happy retirement to my friends and NLLEA members, Al and Frank Elwell of the Vermont Department of Liquor Control. Thank you for your years of service and affiliation with the NLLEA. Good luck to both of you.

As always, I encourage each NLLEA member to continue to play an active role in the association. Please keep the communications going; stay informed and please keep me informed.

Thank you for your continued support and participation in the NLLEA in the year ahead.

Sincerely,



Roger B. Johnson  
2002 President - NLLEA

## *What's New*

### **Training Academy Plans Well Under Way**

By Chuck Conkling

The 2002 NLLEA Training Academy will be held this year in El Paso, TX May 5 - 10. Many thanks to Greg Hamilton, Rod Venner, and Chris Champion with Texas ABC for their tireless

efforts and assistance. The Academy will be held at the Hilton Camino Real Hotel. The hotel is adjacent to the El Paso Convention and Performing Arts Center, El Paso Art Museum, and 15 minutes from El Paso International Airport. The room rate is \$80 for single rooms and \$93 for double rooms. Call 800-769-4300 for reservations and specify the NLLEA Training Academy. Please remember to make the hotel reservations by April 4 in order to reserve your room at the discounted rate.

The new class offered this year is "ENHANCE YOUR INVESTIGATIONS WITH ELECTRONICS" or "Getting in Bed with the Bug", a class on electronic surveillance of ABC Outlets taught by Jim Kraut with the Virginia ABC.

In the past two years, the NLLEA Association has had to supplement the Training Academy by paying for some of the instructor's expenses. The board and the members agree that the Academy should be self-supporting and asked me to estimate the costs of instructor's travel expenses and adjust the registration fee accordingly. I based the estimate on the hotel and meal expenses - not too hard to figure - and the flight expenses - more difficult to nail down. Based on an estimated enrollment of 50 students (a reasonable estimate), the registration fees would increase from last year's fee of \$100 to \$350 per student.

I realize this is a major increase from the past registration fee, but I believe the training is well worth \$350 and this should keep us from having to take Association monies to augment Academy funds.

The entire training staff and I look forward to working with you again this year to make our Training Academy one in which we can all be proud. If you have questions, concerns or suggestions, please do not hesitate to contact me. You can reach me at 919-469-1233 or [cconkling@cwcinva.com](mailto:cconkling@cwcinva.com).

## Save the Date for the 2002 NLLEA Conference

The Ohio Investigative Unit of the Ohio Department of Public Safety, under the direction of Ed Duvall, Jr., has graciously agreed to host the annual NLLEA conference this year. Gary Sullivan has taken the lead in securing a hotel and planning the agenda and social events. As usual, the officers from Ohio feel the pressure to outdo the excellent conference that the Maine Bureau of Liquor Enforcement hosted last year, but they say they are up to the challenge! The conference is tentatively scheduled for August 24-28, 2002 in Cleveland, Ohio at the Renaissance Cleveland Hotel in downtown Cleveland, less than a mile away from Jacobs Field, the Great Lakes Science Center, and the Rock and Roll Hall of Fame. For the latest information on the upcoming conference, please check in frequently at <http://www.nllea.org/Conferences.htm>.

## Hot Issues

### Drunk Drivers are Coming from Bars!

Although this headline may come as no surprise to many of you, it is essential to have the data to back up this statement. During recent discussions at the NLLEA/PIRE headquarters, the statement was made that **at least half of intoxicated drivers are coming from licensed establishments**. After doing a little research, PIRE found several studies that support this statement. In the December 1985 *Journal of Public Health Policy*, Mary O'Donnell conducted a literature review of studies that documented drinking locations and impaired drivers, both in post-DWI/DUI arrest surveys and BAC roadside surveys. After reviewing 11 site-specific studies, she found that approximately half of the intoxicated drivers on our highways drink at licensed premises, especially bars, before driving.

In a more recent study of impaired drivers in Sudbury, Ontario, Canada, researchers found that 51% of the drivers stopped for impaired driving during the study period (January, 1995-May, 1996) reported having their last drink at a licensed establishment, followed only by a friend's place with 22%. Even more importantly, the researchers noted that a small number of licensed establishments were named frequently. Ten licensed premises were identified as the place of last drink by 50.3% of these drivers.

**These studies lend support to the positive impact that liquor law enforcement agencies can have by preventing service to obviously intoxicated individuals.** If you would like copies of any of these studies, please contact Rebecca Ramirez from PIRE at 301-755-2761 or [rramirez@pire.org](mailto:rramirez@pire.org).

### **NLLEA Represented at Law Enforcement Association Presidents' Traffic Safety Summit**

While it is clear that alcohol law enforcement agencies are committed to preventing impaired driving deaths and injuries, the vital connection between the enforcement of alcohol control laws and traffic safety is only beginning to become well known in larger circles. In January, 2002, the National Highway Traffic Safety Administration (NHTSA) invited NLLEA to participate in the first annual Law Enforcement Association Presidents' Traffic Safety Summit in Washington D.C. At this summit, leaders from all areas of law enforcement met to discuss the future direction of traffic safety programs and how each organization can contribute to implementing nationwide safety initiatives related to the law enforcement community. NHTSA officials provided detailed explanations of the programs and funding opportunities available, and given that many alcohol law enforcement agencies are experiencing severe budget crises, it is important for your agencies to be aware of these funding opportunities.

As explained on the NHTSA web site ([www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)), "Section 2001 of TEA-21 reauthorizes the State and Community Highway Safety formula grant program (Section 402 of chapter 4 of Title 23) to support State highway safety programs, designed to reduce traffic crashes and resulting deaths, injuries, and property damage. A state may use these grant funds only for highway safety purposes; at least 40% of these funds are to be used to address local traffic safety problems." **Alcohol law enforcement agencies can apply for Section 402 highway safety grant funding for many of their enforcement efforts.** Enforcement programs to reduce underage drinking, such as compliance checks of alcohol outlets, "shoulder tap" operations to reduce third party transactions, and "Cops in Shops" enforcement programs would all qualify for this funding. In addition, enforcement programs to reduce over-service practices would also qualify. Contact your State Governor's Representative for Highway Safety for further information. If you don't know who your representative is, check out the following web sites: <http://www.nhtsa.dot.gov/nhtsa/whatis/regions/>, or [http://www.naghsr.org/html/membership/membershipdir\\_main.html](http://www.naghsr.org/html/membership/membershipdir_main.html).

## *Perspectives*

### **Columbus Ohio Prevents Riots and Excessive Underage Drinking through Collaboration and Strategic Interventions**

As a new column in the NLLEAGRAM, "Perspectives" provides an opportunity for those individuals who are not directly involved with alcohol law enforcement to comment on how the enforcement of alcohol laws has impacted them. We begin this column with an interview conducted with Lieutenant David Wood, supervisor of the SWAT Section of the Columbus Police Department in Ohio. During the past few years Columbus has experienced problems dealing with riots on and around their college campuses. We discussed the role that

the Ohio Investigative Unit (Liquor Control) played in preventing future riots after a particular rash of problems in Spring 2001.

***Tell us a little bit about the scene in and around the Ohio State University campus during Spring of last year.***

What was going on in Ohio State, and it seems to have increased over the years, is that they have quite a few bars close to campus. Once it became clear that the kids couldn't drink at the bars anymore, they started to have parties other ways. The students took the parties to off-campus areas, and they began having keg parties with lots of underage drinking. These parties got really out of hand, sometimes having 5-6,000 people, and taking over entire blocks for a regular weekend bash. Hundreds of fires were started in sofas in front yards and dumpsters. People were pretty intoxicated and getting in fights, and even turning over cars, and just messing with the neighborhoods in general. All these things were happening just given the sheer number of people at these parties.

***What was the typical response to these riots?***

Before we got organized, patrol officers would get called, and they would arrive at these parties and be totally overwhelmed. So, as a SWAT Team, we developed what we call a TANGO team, which is highly trained in dispensing ordnance. We'd go up there as a unit, and walk in front of the field force (50 patrol officers). If the kids were throwing bottles and creating problems, we would deploy ordnance to end the party, which are usually knee-knockers or sting balls. We understand that they are just kids, and they aren't necessarily bad people, they're just caught up in the moment, but obviously they can't be doing these things. We felt bad about deploying these ordnance because we knew that normally these weren't bad kids, and they were probably some of our own kids or our kids' friends. Some people were injured seriously during these situations, and this increases the liability for any city that has to implement these kinds of strategies. I've talked to my colleagues in other cities, such as Penn State and Kent State, and they seem to be having the same

problems. It just seems unique to the college community right now. We would have 300-500 officers stationed up there during these keg parties, and you can imagine not only people being injured, the potential civil liability, the costs of clean-up and damage, but also the staggering cost of manpower. The City of Columbus had to pay hundreds of thousands of dollars in overtime to deploy so many officers.

***What took place during the Fall that seemed to prevent the riots?***

The Ohio Investigative Unit and our Vice Bureau, which is in charge of liquor laws among other things, got together and devised a new strategy. They would go to the vendors of the kegs, and find out who had bought the kegs, so they knew where the parties would be. They would then go to these keg parties very early in the evening, and arrest anyone who was violating underage drinking laws. In doing so, they would impound all the kegs at the party as evidence. Consequently, the parties would never start up. They did this all this Fall during the football games, and not once was the TANGO team deployed up on campus. Even after we beat Michigan, which was a big deal for us here in Ohio, there was not any civil unrest like there has been in the past on such occasions.

In my personal opinion, the way they handled these situations was exactly right. No one was injured, either on the police side or the civilian side. What had become a very dangerous situation last Spring became manageable and was handled very effectively in the Fall by stopping the parties before any of the serious problems could really happen. With this strategy we're not hurting the kids or putting the cops in such dangerous situations, and we're saving the City thousands of dollars. So, now the TANGO team can just be on stand-by, and there aren't as many field forces on overtime standing down on campus trying to stop the violence.

***How did this collaboration occur?***

We've always worked closely with the Liquor Control, doing joint investigations, and have always had a good rapport. We

# NHTSA Corner

By Jim Wright

The prevention of underage drinking is a priority for NHTSA. Research has clearly shown the nexus between underage drinking and crash fatalities. After the advent of federal legislation tying a 21 "drinking" age to highway construction funds, reducing underage drinking was cemented as a NHTSA objective. As such, we collaborate with our sister federal agencies (i.e., Office of Juvenile Justice and Delinquency Prevention (OJJDP), National Institute on Alcoholism and Alcohol Abuse (NIAAA), etc.) that have similar mandates.

Our collaborative efforts have taken many directions. Raising awareness about the problems resulting from underage drinking and educating students, parents, public officials and others on methods to reduce the onset of alcohol use has been the focus of our prevention programs. While prevention is critically important and, we feel, effective with youth, much of our effort in this area has focused on support for the criminal justice system in dealing with the problem. Although underage drinking is a major factor in criminal and status offenses, it is also an offense that is considered troublesome to those in the system that have to deal with it and, in and of itself, a less serious offense.

We have examined the entire process, from arrest to treatment, and identified some of the hurdles that impede it. For instance, we have developed manuals and training workshops with IACP that provide strategies for successful enforcement of underage alcohol offenses. In partnership with OJJDP, we have developed training and a how-to manual for communities to set up "holdover" programs - short term holding facilities for juveniles so arresting officers need not "baby sit." Also in partnership with OJJDP, we have developed training and how-to information on teen courts, to provide an alternative for adjudicating these cases. For those cases that do make it to the courts we have developed, with NIAAA, a guide for prosecutors and judges on dispositional alternatives for youthful alcohol offenses. We have also initiated a workshop series for judges who handle youth alcohol offenses. At the tail end of the process, we have expanded the development of the "youth visitation program", where offenders visit trauma centers and listen to presentations by coroners as part of a court-directed education program. Information on all of these and other programs can be accessed through NHTSA.

The criminal justice system must respond to the underage drinking problem. It is often difficult to do so because of the unique obstacles related to these offenses. However, solutions are available to communities that are willing to rise to the challenge.

knew they were there and available, so it just took a phone call saying we need help. The Ohio Investigative Unit assisted not only with technical assistance, but they also provided manpower, which was a big help. Although I haven't been privy to the discussions about future efforts, I assume that they will continue with this strategy in the Spring.

## *On The Legal Side*

### **“Qualified Immunity for Enforcement of Beverage Alcohol Laws?”**

By Aidan Moore

The question for the Eleventh Circuit of the U.S. Court of Appeals in the case of *Crosby v. Paulk* was whether local law enforcement officers and state revenue agents were entitled to qualified immunity for a warrantless search during an investigation into underage drinking and after hour sales of alcohol in night clubs in Valdosta and Lowndes Counties, Georgia.

#### *GENERAL FACTS OF THE CASE*

In 1994, the Valdosta/Lowndes/Brooks Drug Task Force ("Drug Task Force") conducted a criminal investigation of unlawful alcohol sales to minors and Sunday alcohol sales of all establishments selling alcohol in Valdosta and Lowndes County. Nightclubs, known as "Some Place Else" and "Rick's", owned by Leverne Crosby and managed by her son, Rick Crosby, were known by local law enforcement officials as among the worst establishments for violating the underage drinking laws in Lowndes County.

On March 11, 1994, Agent Kendrick of the Drug Task Force, other revenue agents, and forty law enforcement officers united their respective investigations for the dual purposes of conducting an administrative search of the Crosbys' nightclubs to ascertain if underage alcohol sales as well as Sunday alcohol sales were occurring there and to execute the arrest warrants. Local news media accompanied the investigating officers. The nightclubs were secured so that identifications of approximately

400 patrons could be checked. In Georgia, verifying underage sales of alcohol requires that the minor be found under the influence of alcohol or in the possession of an alcoholic beverage. Having a sufficient number of law enforcement officers to check IDs of an expected 500 to 700 patrons was an integral part of the administrative search.

Agent Kendrick asked Joe Crosby to open his office and to produce credit card receipts so that Agent Kendrick could ascertain if there was evidence of after hours sales of alcohol. Agent Kendrick and other revenue agents also checked for credit card receipts in cash register drawers and inspected beer taps to see if they were dispensing the indicated beer. There was no evidence that any officer involved in securing the nightclubs and conducting the investigation drew a weapon or threatened the arrestees or any of the patrons. The investigation was completed in two hours and resulted in arrests of approximately seventy individuals and fifty-four convictions for underage drinking.

Agent Kendrick and other revenue agents conducted another inspection of the nightclubs on March 17, 1994. The revenue agents effected an administrative confiscation of what was believed to be unlawfully purchased alcohol. They enlisted the assistance of members of the Lowndes County Sheriff's Office and the Drug Task Force to assist in removing and transporting the confiscated alcohol. Leverne Crosby was issued a citation and was ordered to appear before an Administrative Law Judge from the Department of Revenue with regard to her confiscated alcohol. At the hearing the administrative charges were reduced to a warning and the confiscated alcohol was returned to Leverne Crosby based on her agreement not to file a claim for any damaged liquor.

Joe, Leverne, and Rick Crosby filed an action under 42 U.S.C. § 1983 against Sheriff Paulk, Drug Task Force Commander J.R. Winningham and Agent Griffin as well as Agent Kendrick of the Georgia Revenue Department in their individual capacities. They alleged Fourth

*(continued on page 8)*

## **Announcements**

### **Members: Keep in Touch!**

Please update your contact information when you have a change in address, phone number, email addresses, etc. With our new web site up and running, email updates are being sent out to all members, only to have some of the messages returned and follow-up phone calls unable to occur due to invalid numbers. If you have changes to your membership contact information, please be sure to contact the NLLEA offices and provide the updated information:

National Liquor Law Enforcement Association  
11710 Beltsville Drive, Suite 300  
Calverton, MD 20705-3102  
Phone: 301-755-2795  
Fax: 301-755-2799  
Email: [support@nllea.org](mailto:support@nllea.org)

### **Membership Renewal Forms are in the Mail!**

As many of you may know, memberships are typically renewed in January of each year. Although you have probably received your official renewal notice already, you may also download the application/renewal form from the web ([www.nllea.org/member.htm](http://www.nllea.org/member.htm)). Please note that some of the categories and membership fees have changed, so you may want to adjust your renewal accordingly. For those of you that became a new member after June 1, 2001, you do not have to renew your membership until January, 2003. If you have questions, please contact Lynn Cayford, NLLEA's Secretary/Treasurer, at 207-624-8973 or [lcayford@nllea.org](mailto:lcayford@nllea.org).

Amendment violations consisting of unreasonable, warrantless searches and seizures, due process violations, excessive force, and related state-law claims. All defendants-appellants raised the affirmative defense of qualified immunity.

### *THE HOLDING OF THE CASE*

In discussing the "privacy expectation" of the Plaintiffs the Court distinguished between private property and commercial property employed in 'closely regulated' industries.<sup>1</sup> The Court found there was no reasonable expectation of privacy over their products, which historically have been the subject of government oversight. *Burger*, 482 U.S. at 700, 107 S.Ct. at 2642. "[T]he liquor industry long [has been] subject to close supervision and inspection," *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77, 90 S.Ct. 774, 777, 25 L.Ed.2d 60 (1970). The Court said, when the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, *a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment.*" *Id.*, 107 S.Ct. at 2643-44 (emphasis added). Consequently, an administrative inspection of a closely regulated business is a "well-established exception to the warrant requirement" for a search. *Id.* at 712, 107 S.Ct. at 2649.

Citing established case law, the Court restated that a warrantless inspection of a pervasively regulated business can be reasonable when there is a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made, the warrantless inspections must be 'necessary to further [the] regulatory scheme and the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. Thus, as a substitute for a warrant and fulfilling that purpose, the regulatory statute must advise the owner of a commercial premises that the search is pursuant to the law and define the scope and the discretion of

the inspecting officials. Specifically, the statute must put the owner of the commercial premises on notice as to time, place, and scope when the commercial property will be subject to periodic inspections for a delineated purpose. The Court found the Georgia statute constructed in such a way to meet the standards required a warrantless administrative inspection thereby the Defendants were entitled to the qualified immunity and the suit filed under 28 USC 1983 was dismissed.

### *SUMMARY COMMENTS*

Liquor enforcement officers must be conscious of the implications of their actions while in the performance of their duties. Acting within the scope of the law as well as adhering to established case law principles can offer the officer and his/her employer protection from licensees who feel deprived of a Constitutional protection.<sup>2</sup>

### **About the Author**

Chief Aidan J. Moore has been with the New Hampshire Bureau of Enforcement since 1981. Prior to joining the Bureau he worked as a police officer for the City of Portsmouth, NH. Chief Moore is a member of the NH Attorney General's Underage Drinking Task Force, a member of the Governor's Commission on Prevention and Treatment, served as vice-chairman of the NABCA's regulatory committee and serves as a member of the education sub-committee for the Joint Committee of the States. He is a graduate of the 159th session of the FBI National Academy and the New England School of Law. He is admitted to the bar in New Hampshire and Maine. He is presently Sergeant-at-Arms for the NLLEA.



<sup>1</sup> The Georgia statute notifies owners of commercial properties where alcohol is sold of the time, place, and scope of inspections performed by the Commissioner of Revenue for the enforcement of the Georgia Alcoholic Beverage Code.

<sup>2</sup> For the full text of the case and the other issues raised in this case, you can access the Emory School of Law web page at <http://www.law.emory.edu/11circuit/sept99/97-8585.man.html>.