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| *August 18, 2006* | |

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**I. NATIONAL NEWS.**

**1. Restaurant Business in Worst Slump Since ‘91**

*By* Kate MacArthur - *AdAge.com*  
August 14, 2006

**Casual-Dining Chains Hit the Hardest as $331 Billion Industry Struggles in Q2**

CHICAGO (AdAge.com) -- Sharp same-store sales declines among some of the biggest players in the $331 billion restaurant industry have analysts and marketers worrying whether the slide is a long-term trend or a short-term hit due to less disposable income. In either case, casual-dining chains and independents are the biggest losers.



Casual-dining chains were among the biggest losers in the recent slide in sales.

**Slumping sales**

Following a week of disappointing sales reports, John Glass, restaurant analyst for CIBC World Markets reported Aug. 8 that restaurants are facing their worst sales slump since the 1991 recession. Indeed, total comparable sales grew just 1.4% in the second quarter.

"This time around, the consumer faces a more volatile mix: Rising energy costs and interest rates have slowed personal consumption expenditures, while unit growth, especially in casual dining, has impeded same-store sales growth," he said. "While we are not in a recession, we have more industry-inflicted damage this time around."

**Trading down to fast food**

Fast-food chains have thus far been less vulnerable than the casual-dining concepts, as consumers trade down to offset higher fuel bills. Casual-dining chains reported a 0.2% decline in same-store sales during the second quarter, while quick-service chains reported a 1.8% gain, according to Mr. Glass.   
  
"I wouldn't want to be near casual dining right now," said Tony Pace, chief marketing officer for Subway Restaurants' Franchisee Advertising Fund Trust.   
  
Although restaurants represent only 4% to 6% of consumer disposable income, restaurant patronage is viewed as a leading economic indicator as industry trends tend to shift ahead of the economy.

**Can't afford to eat at Applebee's**

One example is casual-dining leader Applebee's, which recently said 5% of its customers can't afford to eat there on household incomes below $35,000. And the recent heat wave that caused consumers to crank up their air conditioners has a "disproportionate impact on those below the $35,000 household income," said consultant Malcolm Knapp. On the flip side, he noted that consumers in households above $70,000 aren't as affected by energy costs. He pointed to the strong sales of upscale dining players including Ruth's Chris Steakhouse and Capital Grille during the second quarter. "Are times good? No," he said. But "things aren't as bad as some of the reported numbers. It's not true for everyone. "

Technomic also recently lowered its forecast for the industry. Among publicly held chains representing 108 brands excluding McDonald's, same-store sales grew 3.15%. Within that group, among 71 full-service chains that have reported so far, the gain was just 1.63%, the lowest since the second quarter 2003.

**Actual sales decline**

While restaurant traffic has been declining for years, actual sales declined for the first time in two and a half years the week of July 28, according to NPD Group. Worst-hit are independent restaurants, which aren't tracked well but represent 43% of the market, down from 47% in 2002. "Independents have really been getting hammered," said Harry Balzer, VP of NPD Group's Foodworld.

<http://adage.com/article?article_id=111131>



**2. In Dry South, a New Push for Liquor Sales**

By Melanie Warner – *New York Times*

August 13, 2006

While much of America put prohibition to rest 73 years ago, large parts of the South have remained strictly off limits to alcohol sales.

But local and national business interests that stand to profit from the sale of alcohol, including real estate developers, grocery chains, restaurant groups and Wal-Mart, are combining their political and financial muscle to persuade hundreds of dry towns and counties to go wet. In the process, they are changing the face of the once staunchly prohibitionist Bible Belt.

Since 2002, business groups have spent upwards of $15 million on campaigns, including professional lobbyists, to persuade voters in more than 200 dry towns and 25 dry counties in six southern states to legalize alcohol sales in stores and restaurants.

Wal-Mart has financed dozens of local elections, contributing from $5,000 to $20,000 a campaign, said Tim Reeves of Beverage Election Specialists, which supports local alcohol referendums.

Wal-Mart, which is based in a dry county in Arkansas, forbids drinking at events held at corporate headquarters. But the giant retailer has made a push in the last year to sell more liquor, along with beer and wine, in its stores.

Attempts by Wal-Mart and others to allow alcohol sales in other places that remain dry -- 415 counties in the South and Kansas still prohibit such sales -- are meeting fierce resistance from some church groups and religious leaders. They argue that returning to the days when liquor flowed will mean more family violence, underage drinking, drunken driving and a general moral decay in the community.

But voters are increasingly likely to follow their pocketbooks rather than the words of their pastors on Sunday. Alcohol proponents often make the case that liberalizing laws will increase tax revenue and reduce the need for property tax increases, an issue looming large in voters' minds.

More dry-to-wet referendums have passed than have been defeated in the last four years in Texas, Alabama, Kentucky, North Carolina, Tennessee and Kansas, where the battles are concentrated. ``The communities who effectively make arguments about economic development and tax dollars typically win the votes,'' said John Hatch, a political strategist based in Austin, Texas.

Some churches are taking a moderate stand on drinking. Mike Hunter, senior minister at the First Christian Church in Lufkin, Texas, said he was invited by some of the more conservative clergy members in town to participate in meetings against the alcohol vote, but declined. ``It's a decision we leave up to individuals,'' he said. ``The legal, responsible consumption of alcohol is not a pulpit point in our congregation.''

The issue is playing out in Lufkin, an old railroad town 115 miles northeast of Houston. On a recent Monday night, 175 citizens gathered at the town's civic center to voice their opposition to a referendum proposal, scheduled for a vote in November, that would allow beer and wine sales in stores and drinks in restaurants all across Angelina County. Lufkin is the county's largest town, with 35,000 people.

``This is an unprecedented attack against the family,'' the Rev. Ronnie L. Frankens, pastor of Homer Pentecostal Church in neighboring Diboll, said of the alcohol vote. ``We are going to fight this tooth and nail.'' His rousing words were greeted with cries of ``amen'' and ``praise Jesus.''

Like many in attendance that night, Linda Jones, who works for the city of Lufkin and whose husband is a pastor at the First Baptist Church in nearby Moscow, said she thought the referendum, if passed, would invite more pernicious forms of commerce, like bars, nightclubs and liquor stores. She said she considered drinking to be a sin and does not partake. ``My grandmother was an alcoholic, and I never wanted to be like that,'' she said.

On the other side of the debate are people like Sarah Strinden, a mother of four who moved to Lufkin in the 1980s from Madison. She said that most people she knows are moderate drinkers and would just like the convenience of being able to buy beer and wine on their regular shopping trips. Currently, she said that getting some wine to go with dinner involves a 40-minute round trip drive to a liquor store in neighboring Nacogdoches.

Diners who wish to order alcoholic drinks in restaurants in dry areas of Texas can do so only if they become members of the restaurant's ``club.'' Such memberships are usually free to the customer, but restaurants must spend up to $20,000 a year for record-keeping and fees to the alcoholic beverage commission. ``Lufkin needs to come into the modern age,'' Strinden said.

Across the South, some business groups seem to agree with her, backing efforts to nudge dry towns and counties to go wet.

``It's going to be much harder to attract restaurants and grocery stores to your town if they can't sell alcohol,'' said Hatch, the political strategist who has been hired to help get the vote passed in Angelina.

Hatch and other proponents say their campaigns have been financed by a diverse group that includes grocery chains like Albertson's, Kroger and Safeway; and restaurant groups like Brinker International, which owns Chili's Grill and Bar and Darden Restaurants, owner of Red Lobster and Olive Garden.

And, of course, Wal-Mart. ``I think Sam Walton, being the family-oriented man he was, would be rolling over in his grave about this,'' Frankens, the pastor of Homer Pentecostal Church, said in a telephone interview, referring to the Wal-Mart founder. ``I'm really disappointed in Wal-Mart as a company.''

Wal-Mart does not break out revenue from alcohol, but according to A.C. Nielsen at the end of 2004 Wal-Mart had U.S. alcohol revenue of $1 billion out of total domestic revenue of $229 billion.

Those who fight against alcohol sales say the extra tax revenue comes at a cost. Lee Miller, one of the leaders of Angelina Citizens for a Better Community, the group vowing to defeat the measure, points to data from the state of Texas showing that for every $1 in revenue the state received from alcohol, $9 was paid for expenses like treatment for alcohol abuse, law enforcement services and motor vehicle crashes.

``This will not benefit us as a community,'' Miller said. ``It costs us more money in expenses and in the lives of our children.'' Miller, who does not drink, said he was concerned that if the vote passes, his 12-year-old daughter and 14-year-old son will have easier access to alcohol.

Hatch, the political strategist, argued that Miller's cost revenue figures paint an inaccurate picture because they do not consider the additional sales taxes collected from alcohol purchasers, only revenue from alcohol excise taxes, the bulk of which flow to the state.

<http://www.duluthsuperior.com/mld/duluthsuperior/15265943.htm>



**3. Old Wine in New Bottles? How Much '04 is in an '04?**

By Frank J. Prial - *New York Times News Service*

August 12, 2006

Remember that 2004 chardonnay you liked so much? Was it all from 2004? Maybe not.

Most wine drinkers are unaware that winemakers are free to add some of last year's wine, or some from the year before for that matter, to a vintage wine. Since 1972, federal regulations have permitted the addition of up to 5 percent of another vintage to the current year's wine.

Two weeks ago, the government increased the legal amount to 15 percent, about four ounces in a standard 750-milliliter wine bottle. A wine's vintage is determined by the year the grapes in it were harvested. advertisement

The rule applies only to wines with state and county appellations. It does not affect the more prestigious American Viticultural Areas (AVAs) like Dry Creek Valley or the Santa Rita Hills in California, Willamette Valley in Oregon or the North Fork of Long Island in New York.

Thus, a Gallo wine with a Sonoma County or California appellation would be covered by the new rules but a Rodney Strong wine from the Alexander Valley AVA would not, even though the Alexander Valley is within Sonoma County. Wineries using an AVA appellation are still governed by the 5 percent rule although most of them, committed exclusively to making fine wines, use 100 percent of the current vintage except in emergencies.

In announcing the new ruling, the Treasury Department's Tax and Trade Bureau said it would "give greater flexibility to domestic winemakers in blending wine to better suit consumer tastes."

The Wine Institute, the promotional arm of the California wine industry, had been urging the adoption of the new ruling for years, saying it would permit winemakers to add softer, riper wine from an older vintage to a thinner, more acidic current vintage, "improving taste appeal and quality perception."

The institute noted that American wines adhering to the 95 percent rule could be at a disadvantage when competing with foreign wines. Australia, New Zealand and countries in the European Union already have an 85 percent standard, while Chile and South Africa can blend in 25 percent of another vintage if they choose.

Large commercial wineries will use the new rule for what Tim McDonald, a spokesman for E&J Gallo, called "inventory management." Two different styles of wines can be blended to achieve a consistent taste. Then, too, a wine from a large harvest can be added to wine from a short harvest, providing the market with a consistent supply.

"New York's Finger Lakes had two severe winters," said Jim Trezise, president of the New York Wine & Grape Foundation, a statewide trade association, "and last year Long Island had torrential rains, all of which reduced crop size. Under the new ruling the wineries could fill out their production with wines from better years."

Vintage dating has been important, particularly in Europe, where the wine-country weather has always been unpredictable. Before winemakers had today's level of skill, there were years when dreadful wine was produced, like 1956, 1963 and 1967 in Bordeaux and 1980 in Germany. Vintage dating helped steer consumers away from those years. Conversely, it signaled great vintages like 1945, 1961 and 1982.

Vintage dating is still valuable for fine wines because they are all about nuances between years. They are also meant to last for many years and, theoretically, improve with time. But for most inexpensive wines, vintage dating is irrelevant. Producers, though, aware that newcomers to wine are impressed by vintages, display them on wines not meant to last more than a year.

Fred Franzia, the creator of the $1.99 Charles Shaw line of wines better known as Two Buck Chuck, dismissed vintaging as "a historical thing, meant to keep the customer comfortable."

Paul Draper, the president and winemaker at Ridge Vineyards in Cupertino, Calif., said he is glad that the new rule does not apply to his winery, which owns vineyards in several viticultural areas.

"But I object to the change anyway," he said. "Given the climate we've got here in California, we don't have to do it. There's nothing wrong with freshening up a wine, but 5 percent is all you need. Five percent can make a tremendous difference." As for France and Italy, Draper said: "I don't blame them if they blend in other vintages. With the weather they've got they probably have to."

Not all commercial winemakers welcomed the change. The California Association of Winegrape Growers, which represents large-volume grape farmers, said in a statement that "diluting the restrictions and meaning of the vintage date will only further contribute to consumer confusion."

Probably the most famous wine region in the world, Champagne, has always blended several vintages to achieve a house style, be it Krug, Bollinger or Moet & Chandon. But a Champagne producer can declare a vintage if he believes he has had a particularly excellent harvest, and in recent years there has been a marked increase in the number of vintage Champagnes. There is a question as to whether the trend reflects an exceptional number of fine harvests or a not so subtle attempt by the producers to get in on the public's fascination with vintages.



**4. A Test for Alcohol -- And Its Flaws**

By Kevin Helliker - *The Wall Street Journal*

August 12, 2006

HARRISBURG, Pa. -- The state of Pennsylvania this year suspended Nancy Clark's nursing license, saying the recovering addict violated her agreement to remain free of alcohol. Its evidence: a new type of urine test that Ms. Clark flunked.

The new analysis "is the gold standard of testing," Shawn E. Smith, a lawyer for the state, argued during a June 7 hearing here on Ms. Clark's fate.

Ms. Clark counters: "I didn't drink."

Throughout history, few questions have prompted more lies than, "Have you been drinking?" For decades, the truth has been obtainable through urine tests and breathalyzers. But since alcohol dissipates from the system in a matter of hours, that truth always has been as fleeting as drunkenness itself. Whether a person is drunk this moment can be documented. But how about last weekend?

Now comes a test that can answer that question. Known as EtG, the test is being administered by the industry that searches the urine of millions of Americans annually for illicit drugs. Because alcohol is legal, EtG testing is being performed only within a hidden society of people who aren't supposed to drink at all -- and are required to provide regular urine samples to prove it.

A breakthrough for the $4 billion-a-year urine-testing industry, the new test doesn't screen for alcohol. It screens for ethyl glucuronide, or EtG, a byproduct of the metabolization of alcohol, which remains in the system for about 80 hours. Now that Sunday's gin can be detected in Monday's urine, about 10% of people who had been passing conventional urine screens are testing positive for alcohol, say administrators of the test.

About 20,000 urine samples a month are now being tested for EtG, which was introduced about two years ago, and that growth is continuing exponentially. At $25 -- compared with about $7 for a standard drug screen -- EtG represents an important new source of revenue for the urine-testing industry, whose largest players include Quest Diagnostics Inc. and National Medical Services.

Little advertised, though, is that EtG can detect alcohol even in people who didn't drink. Any trace of alcohol may register, even that ingested or inhaled through food, medicine, personal-care products or hand sanitizer.

The test "can't distinguish between beer and Purell" hand sanitizer, says H. Westley Clark, director of the federal Substance Abuse and Mental Health Services Administration's center for substance-abuse treatment. His office intends to study EtG and issue a statement on its use in the fall. "When you're looking at loss of job, loss of child, loss of privileges, you want to make sure" the test is right, he says.

Because EtG is simply a molecule that any laboratory can identify, nobody owns the test. Urine-testing companies are marketing it to courts, which increasingly demand abstinence from drunk-driving defendants. The test is also being marketed to boards or companies that license workers in health care, aviation, law and other professions. These boards routinely require urine monitoring of professionals who are recovering addicts. About 4,500 physicians alone in the U.S. are subject to urine monitoring.

The urine-testing industry doesn't need federal approval for tests that aren't used to monitor federal employees and aren't sold over the counter. Testing firms say it is up to their clients -- the courts and licensing boards -- to decide how to use the results.

"It's a powerful tool," says Doug Lewis, president of United States Drug Testing Laboratories Inc. near Chicago. "But it's only a tool."

Some in sobriety enforcement contend any alcohol, however ingested, could trigger a relapse in recovering addicts. "They must abstain from alcohol in any form," says Kevin Knipe, manager of a Pennsylvania state program for monitoring physicians, nurses, pharmacists and others.

Yet critics worry that growing acceptance of the EtG test is punishing those who haven't relapsed or aren't problem drinkers. They argue it's unfair to demand addicts produce urine free of any trace of alcohol because there is no comprehensive list of products that contain it. Mouthwash and cold medicine are sources of alcohol. It can also be found in pastries, perfume, salad dressing, insecticide, ripe fruit, lunch meat, vanilla extract, ice cream and automotive fuel.

Such critics have gained an unusual ally: the physician who pioneered EtG testing in America. "Use of this screen has gotten ahead of the science," says Gregory Skipper, an Alabama addiction specialist and recovering addict. He says he has received about $10,000 in consulting fees, mostly from urine-testing firms, in connection with the test.

An unfair monitoring test could dissuade addicts from entering monitoring programs voluntarily. After Ms. Clark, the Pennsylvania nurse, confessed her addiction to her supervisor, she entered a state-monitored program, requiring attendance at two 12-step meetings a week. On average, she has attended three a week, her sponsor says. She also has to phone a toll-free number each weekday morning to find out whether a urine sample is required that day.

In five years, she has never failed to call or submit a specimen, according to court testimony. She pays the $120-a-month cost of monitoring. According to testimony, after getting sober, Ms. Clark joined a church, entered its ministerial program, started a program to entertain patients and raised three children.

In 2004, the state of Pennsylvania introduced the EtG test. After flunking it, she says she read the label of every imaginable product -- edible and inedible -- only to flunk it again. "I don't know what else I could have done," says Ms. Clark, 49, who has practiced nursing since 1978. She recently passed a polygraph test asking whether she has drunk alcohol.

In January, the state suspended her license, costing Ms. Clark her job of eight years as an assessor of patient care in a hospital. She is spending thousands of dollars to fight her suspension. Her witnesses include her boss at the hospital, who describes Ms. Clark as indispensable, and Dr. Skipper, who doesn't believe her positive EtG scores represent proof of drinking.

The purpose of urine monitoring has always been to prevent -- or provide early warning of -- relapse. Preliminary evidence suggests monitoring programs may increase success: Addicted physicians subject to urine monitoring relapse at a rate of 25% over five years, studies show, compared with a rate among the general population of 75% in a single year. No comparison exists for unmonitored physicians.

Despite innocent positives, some courts and licensing boards are digging in their heels. They are arguing that a participant "must produce a negative urine" sample, says Mr. Lewis, the drug-testing company president. "Trying to argue that you're an innocent victim -- good luck."

Indeed, the state of Pennsylvania isn't saying that Nancy Clark drank, only that she failed to produce clean urine. "This case is not about relapse," said Mr. Smith, the lawyer for the state, in the June argument against her appeal.

Until the EtG test, a determined drinker could deceive monitors, because, unlike illicit drugs, alcohol dissipates from the system in a matter of hours. Recovering alcoholics say they could easily drink weekends -- when random tests typically aren't required -- and could also drink weekdays if they stopped early enough.

Sobriety monitors say their main responsibility is to protect the public. "I had one physician walk into my office with a [low-level EtG score] and he said he didn't drink," says Martha Brown, a University of South Florida psychiatrist who monitors addicted professionals. "He looked great. I believed him." Six months later, he admitted he had been drinking all along, she says.

Catching such drinkers wasn't the primary interest of Dr. Skipper when he set about searching for a better screen for alcohol. As director of Alabama's monitoring-and-assistance program for addicted physicians, he wanted to find more convincing proof of sobriety.

Dr. Skipper, a 56-year-old internist, had a personal interest in such a test: He is a recovering narcotics addict. After entering a chemical-dependency program in 1981, he underwent additional training, received a certification in addiction medicine, and began caring for others. He had a relapse in 1990, and confessed to stealing painkillers from the medical facility where he worked. His license was suspended for a year.

Dr. Skipper says he has been clean and sober since Nov. 16, 1990. He continues submitting voluntary urine samples, and advises other recovering physicians to do the same.

One physician in Alabama's monitoring program says he has been sober 14 years, yet continues submitting urine specimens, expressly for his malpractice insurer. "The only proof of my sobriety is my urine," says James, a gynecologist who asked that his last name not be used.

In 2001, Dr. Skipper attended a conference in Europe and heard a lecture about ethyl glucuronide. It had been discovered nearly a century earlier, but only now was its use as a possible marker of alcohol consumption being explored. Dr. Skipper and the lecturer, a Swiss psychiatrist named Friedrich Wurst, eventually conducted research together. Their studies revealed a powerful connection between alcohol consumption and creation of EtG.

The publication of these results generated much interest among U.S. urine-testing laboratories and their clients.

Lacking funds, Dr. Skipper and colleagues conducted only limited research, most of it focused on this issue: Could drinkers somehow avoid producing EtG? Except for rare cases, the answer was no. Whether alcohol derived from other sources could show up in the test wasn't a central focus of their research.

With all published research on EtG having examined about 1,500 specimens, Dr. Skipper expressed the belief that any level of EtG above 100 nanograms per milliliter of urine -- an infinitesimal amount -- represented proof of drinking.

Some in the urine-testing industry went a step further, saying any EtG is evidence of drinking. A news release from Quest Diagnostics's Northwest Toxicology unit asserted: "EtG is not detectable in urine unless an alcoholic beverage has been consumed." A spokeswoman for Quest says, "That was the best information we had at the time." Before introducing the test, a Quest scientist says that the company "evaluated it on some people here at the lab."

Statements about the infallibility of the test bewildered Lorie Garlick, a California pharmacist who says she is in recovery from narcotics addiction. To comply with an agreement with the California Board of Pharmacy, she says she attended 12-step meetings and avoided drugs and alcohol. When her urine tested positive -- twice -- for EtG in 2005, she went online and discovered the new screen was touted as definitive proof of drinking.

"The first thing that went through my head was that there must have been a mix-up at the lab -- my urine got swapped with somebody else's," says Ms. Garlick, who says she never drank. Her license has been suspended and she hasn't worked in more than a year. The California Board of Pharmacy didn't return phone calls.

She found a Web site with a chat room for addicts claiming to have been victimized by EtG. Its founder: Dr. Skipper. "I'd been hearing from people saying they were innocent, and I wanted to research that," he says.

He became convinced that so-called incidental exposure to alcohol could create higher levels of EtG than he had imagined. His suspicion fell on a product that has been sweeping the halls of health care: hand sanitizers.

The federal Centers for Disease Control and Prevention recommends the use of alcohol-based sanitizers in hospitals, schools and day-care centers. Whether alcohol in these sanitizers could be absorbed doesn't appear to have been deeply studied, says physician John Boyce, who served as chairman of the CDC's hand-hygiene task force. The question also remains uninvestigated by Pfizer Inc., owner of the dominant brand, Purell, the company says.

A small study of 24 people that Dr. Skipper helped perform found that use of Purell could result in EtG showing up in urine. It concluded alcohol in the sanitizer can enter the body through inhalation, rather than through the skin. That study, presented in May at the scientific conference of the American Society of Addiction Medicine, hasn't been published or peer-reviewed.

At Dr. Skipper's suggestion, Ms. Garlick, 43, entered a treatment center in California and stayed two days under the supervision of counselors instructed to search her and her belongings for any products containing alcohol. Each morning, she provided a urine sample that tested negative for EtG. Then she washed her hands repeatedly during the day with Purell -- and her urine that night had an EtG score of 770. That was more than seven times the cutoff that Dr. Skipper originally thought represented proof of drinking. By contrast, a single drink would produce a peak EtG level of perhaps 6,000 nanograms.

To Dr. Skipper, this finding didn't diminish the value of the test. After all, a negative EtG score provided definitive proof of sobriety. He says he has always believed a low-level score should be regarded as a red flag rather than grounds for prosecution. In his experience, most secret drinkers offered no defense when confronted with EtG scores.

Worried that states are treating low EtG scores as grounds for suspension, Dr. Skipper felt "a moral obligation" to speak out. Last August, he wrote an open letter to state boards that monitor health-care workers, urging them "to refrain from taking action against an employee or licensee based on urine EtG testing alone." He said he now believes incidental exposure to alcohol could create EtG levels as high as 1,500 nanograms -- far above the level that was costing many addicts their professional licenses.

His warning has gone largely unheeded. Licensing boards and other sobriety monitors continue punishing recovering addicts for producing positive EtG scores.

Most laboratories are now recommending cutoff levels of 250 or 500 nanograms. But they say it is up to their clients to decide whether a level above that amount represents proof of drinking or some other exposure to alcohol.

"The industry needs to do some population studies to get a sense of what a reasonable cutoff is," says Dr. Clark of the federal substance-abuse office.

He notes that after an opiate screen was introduced about 20 years ago, some people who tested positive protested they hadn't used opiates. When observers speculated that poppy seeds -- a baking ingredient which is also a source of opiates -- might be the explanation, "labs were saying that poppy seeds could not produce a positive for morphine at the cutoffs used," Dr. Clark says. "A few empirical tests later proved this to be false."

Establishing an EtG cutoff high enough to spare the innocent may involve allowing the guilty occasionally to slip through, concedes Dr. Clark. But the only ethical option is "to err on the side of due process," he says, noting that a true addict will get caught soon enough anyway.

Not everyone being monitored for sobriety is an addict or alcoholic. Tina Schroeder, a home-health nurse in Wichita, Kan., made what she calls the mistake of her life last year. At a going-away party for a colleague, she drank a martini -- even though she had a patient yet to visit. The smell of alcohol on her breath caught the attention either of the patient or a fellow nurse. She promptly found herself seated before her boss, to whom she confessed.

Referred to the state disciplinary board, Ms. Schroeder learned that to keep her license she had to attend 12-step meetings, visit an addiction specialist, abstain from alcohol and submit to random urine testing.

Ms. Schroeder says she has never had a problem with alcohol. Her ex-husband, Craig Schroeder, agrees. He says he never saw her consume more than two drinks at a sitting -- and that would happen once or twice a year. Her boss, Ed Cornejo, says he has seen her at many social functions but never with a drink. He believes the martini was an isolated incident. "In my opinion, she did not have a drinking problem," says Mr. Cornejo, general manager of Interim Healthcare of Wichita. "She's responsible and loyal -- an excellent nurse."

It looked as though she would gain early release from the monitoring program -- until her urine tested positive for EtG. "I didn't drink," she says.

That result meant Ms. Schroeder would remain in the program. It also prompted a letter warning that a second such score would result in immediate suspension.

"Please be aware that [over-the-counter] medications that contain alcohol can cause a positive alcohol screen," wrote Mary Carder, executive director of the Kansas Nurses Assistance Program, which oversees monitored nurses in Kansas. "You should also be cautious of any foods, sauces, pastries etc. that may have alcohol."

Ms. Schroeder says she's in such fear of getting suspended for a positive EtG test that she plans to return to school in the fall to pursue another career



**5. Supermarket Wine Bargains Under Fire (United Kingdom)**

*The Guardian*

August 14, 2006

Supermarkets and large wine groups are making false claims for discounted wine, according to a leading industry executive. Jean-Manuel Spriet, UK boss of the company behind Jacob's Creek, has accused some competitors of producing wines intended for sale at pounds 3.99 but then introducing them at the inflated price of pounds 7.99. They then reduce the price to pounds 3.99, claiming to be offering half-price bargains, says Mr Spriet, the head of Pernod Ricard UK. Supermarkets, which accounted for 60% of wine sold in the UK last year, denied offering bogus discounts. A Tesco spokeswoman said wine promotions were "very popular".



**6. United Kingdom: End Shops’ Cheap Beer**

By Rosa Prince, Political Correspondent - *The Mirror*

**Big stores 'fuel binge drinking'**

PUB bosses yesterday urged the Government to curb binge drinking - by clamping down on cheap supermarket booze.

The British Beer and Pub Association said that as boozers are axing irresponsible happy hours, shops should also encourage sensible supping.

During the World Cup cut-price booze was used to lure shoppers into superstores with beer sold for 30p to 40p a pint - compared to £2.20 and £2.50 in neighbourhood pubs.

Now the Association's 40,000 pubs are calling on ministers to probe the link between cheap supermarket offers and the increase in binge drinking.

The UK's biggest brewer Scottish and Newcastle told the Competition Commission's probe into the grocery industry: "We strongly believe that the sale of alcoholic drinks at low cost, used primarily to drive footfall into stores, is not consistent with the promotion of responsible drinking."

The brewer says it has "firm anecdotal evidence" that revellers stock up on cheap booze to drink at home before hitting pubs and bars. It fears the smoking ban, due in England and Wales next year, will make home-drinking even more common.

Mark Hastings, of the British Beer and Pub Association, added: "The growing presence of the supermarkets on the High Street, through convenience stores, means a significant amount of town centre drinking is due to sales from their chiller cabinets.

"This bargain basement approach does not seem consistent with the need to promote responsible drinking."

But supermarkets insist they are not being irresponsible.

A spokesman for J Sainsbury said: "We wholly support the Government's alcohol consumption guidelines and publish units of alcohol on all our own-label beers, wines and spirits to let customers make an informed choice."

Asda added that most booze was purchased at its stores by drivers doing weekly or monthly grocery shopping.

A spokesman added: "They are not buying for immediate consumption."



**7. Miller Parent Completes Purchase of Caffeinated Beer Brands**

*Associated Press*

August 14, 2006

MILWAUKEE - The parent company of Miller Brewing Co. has completed its purchase of two brands from McKenzie River Corp. for $215 million cash.

SABMiller PLC said Monday the deal to acquire the Sparks and Steel Reserve brands was approved by U.S. antitrust authorities.

The purchase means Miller now moves into the growing caffeinated alcoholic malt beverage market with the purchase of Sparks, considered the leader in that category. The citrus-flavored drink has taurine, ginseng and guarana, besides caffeine, and an alcohol content of between 6 percent and 7 percent, depending on the style.

Steel Reserve is considered the leader in the high gravity lager category, meaning it is slow-brewed.

The deal was originally announced last month.

Miller looks forward to working with San Francisco-based McKenzie River on developing new products, said Tom Long, president and chief executive officer of Miller Brewing Co., the country's second-largest brewer after Anheuser-Busch Cos. of St. Louis. Miller hopes the brands will add to the brewer's mix of products, he said.

"We acquired these two fast growing brands to improve our portfolio mix and increase our overall profitability," Long said.



**8. More Acquisitions Likely as Part of 7-Eleven Growth Plan**

Source: *CSN*

August 15, 2006

DALLAS -- 7-Eleven's purchase last week of White Hen Pantry for $35 million is likely the first of several acquisitions the nation's largest c-store chain will make in the coming months as it seeks to grow its business.

Joseph DePinto, president and chief executive of 7-Eleven, outlined the company's new strategy to grow under a three-pronged approach: acquisitions, building new stores and inviting store operators to become 7-11 franchisees, according to The Dallas Morning News.

"There's a real opportunity to continue to grow our business through acquisitions," he told the Texas daily.

Last Thursday's acquisition of White Hen was 7-Eleven's largest acquisition in more than 20 years, and the first since the company was taken private last year by its Japanese-based owner. The deal doubled 7-Eleven's size in Chicago to more than 400 stores.

As a franchise operator of 206 stores in greater Chicago and licensor of 55 units in Boston, White Hen fits 7-Eleven's plan to grow its number of franchised and licensed stores. Its expertise in prepared foods, including take-home meals, is also something that will benefit 7-Eleven.

"We've respected them for a long time." DePinto told The Dallas Morning News. "They do a nice job in prepared fresh foods and meal replacement.

"As a franchise company, they also believe in the individual operator and have outstanding real estate," he added.

For the past few years, 7-Eleven has largely sat on the sidelines as competitors like Circle K parent, Alimentation Couche-Tarde, The Pantry and others have been buying up small chains in the U.S. In addition, competition in the western United States will heat up next year when Tesco, the United Kingdom's largest retailer, debuts its convenience store concept in California, Nevada and Phoenix.

However, to the Morning News, DePinto downplayed the foreign threat, calling Tesco a solid company but "It's got to learn our marketplace, and that will take some time."

"We're not worried about their entry," he added. "We have a significant concentration of West Coast stores and will open more stores.

White Hen stores will continue to operate for the near term as they have, DePinto stated.



**9. Yo! Smirnoff Raps for Malt Beverage**

By Suzanne Vranica *– Wall Street Journal*

August 16, 2006; Page B3

**'Tea Partay' Video Parody Is Launched on YouTube Site In Move to Generate Buzz**

Croquet, yachting and a trio of blue bloods aren't typical rap-video imagery. But those ingredients are helping turn a two-minute parody of a rap video into a smash hit on the Internet -- and building buzz for a new iced-tea malt beverage from Smirnoff.

Since Smirnoff posted the video, dubbed "Tea Partay," on YouTube on Aug. 2, it has been viewed more than half a million times. Showing three polo-shirt-wearing blond men rapping lines such as "Straight outta Cape Cod, we are keepin' it real," the video has also begun to spread via email as people have begun to pass it on to friends and colleagues. Mainstream media are beginning to pay attention: Last week, "The Scarborough Report" on MSNBC aired part of the video.

Smirnoff, which is so far only testing the beverage on the East Coast, has heard from retailers in other parts of the country who say they are getting requests for the drink, according to Christian McMahan, brand director for Smirnoff.

Smirnoff, a unit of Diageo, joins an increasing list of marketers using YouTube to generate word-of-mouth buzz. Some marketers are posting short videos meant to entertain while subtly promoting a product -- as Smirnoff did. Others are posting traditional commercials, although some ad executives say conventional ads won't work because the site's typical viewers are likely to be turned off by overt marketing.

Posting videos such as "Tea Partay" can be a cheap way to get attention. Bartle Bogle Hegarty, the New York firm that crafted the film, says it spent less than $200,000 to create the Smirnoff video. A traditional TV spot costs an average of $350,000 to make plus the cost of air time -- which typically runs into the hundreds of thousands of dollars for one 30-second spot.

Kevin Roddy, executive creative director at BBH, played a big role in the creation of "Tea Partay." He describes below the background to the video and what its success says about advertising in today's Web-driven marketplace.

**WSJ:** How did you come up with the idea for "Tea Partay"?

**Mr. Roddy:** The client brief ... called for an idea for iced tea with Smirnoff alcohol. We started to think about what was cliché about iced tea. The product is launching first in New England, so we decided to take advantage of what is cliché about New England and iced tea -- then we added some attitude.

**WSJ:** Why does this only appear online?

**Mr. Roddy:** When the client came to us, they told us they didn't have a lot of money to do this. So we asked ourselves, 'What's the smartest way to spend a little amount of money?' We figured as long as we make a piece of content that was entertaining and engaging, enough people would want to see it no matter where we put it.

**WSJ:** The first time I watched the video I didn't know it was for Smirnoff Ice Tea. Why was there so little appearance of the brand name or even the product in the video?

**Mr. Roddy:** Within the lyrics, there are a lot of mentions of Smirnoff and the products. One line says: 'We'll serve Smirnoff Raw Tea and finger sandwiches.' The characters in the video also hold the bottles in some scenes. But they did not hold them in a prominent way, like you would see in a typical TV ad. There were no bottle close-ups. If we want this to get picked up, have people watch it and have them pass it along, we can't play by the rules of advertising. As soon as you do the classic bottle close-ups, big company graphics or lots of shots of sweaty bottles -- people reject it.

**WSJ:** So the lack of branding is supposed to make people think it's not an ad?

**Mr. Roddy:** It's not that people don't know it's an ad -- it's just that it doesn't feel like an ad. People give it more room. If it feels too much like a commercial, they won't pass it along because they don't want to be seen as becoming part of the advertising game. If it's done right, they see it as fun.

**WSJ:** How did the lack of the Smirnoff name or the product sit with Diageo?

**Mr. Roddy:** The client bought into it. They understand that advertising is no longer about talking at someone, it's about engaging with the consumer. To do that, you have to play by different rules. It requires you to be more entertaining. Brands aren't advertisers anymore. ... At their best, they're tools, something consumers can get involved with, experience and take part in.

**WSJ:** With millions of visitors heading to YouTube, the video is bound to be watched by minors. Was there any concern about minors viewing this ad?

**Mr. Roddy:** It was definitely a concern, but Diageo as a company takes this very seriously. They are not going to break their own rules in terms of how far that message can go. They live under the same rules online as they do on television. There is a line at the end of the video that says 'Please drink responsibly,' and on the teapartay.com Web site you have to sign in and say you are over 21.



# 10. Ad Campaign, Checkpoints Target Men Driving Drunk

By Blarry Copeland - *USA TODAY & National Highway Traffic Safety Administration*

August 17, 2006



"If you drive drunk, you will be arrested," says Acting Transportation Secretary Maria Cino in Rockville, Md.

A nationwide crackdown on drunken driving aimed primarily at men ages 21 to 34 began Wednesday as federal authorities reported that alcohol was a factor in 16,885 traffic deaths last year.

"Drunk driving is one of America's deadliest crimes," Acting Transportation Secretary Maria Cino said. "Our message is simple: If you drive drunk, you will be arrested."

Cino announced an $11 million campaign of television, radio and Internet advertisements. The campaign — "Drunk Driving. Over the Limit. Under Arrest." — is the largest such effort ever and will coincide with increased roadside sobriety checkpoints between now and Labor Day.

The ads show authorities pulling over three men driving in vehicles filled with beer, wine or liquor and tell viewers: "Make no mistake: You will get caught, and you will be arrested."

Alcohol was a factor in 39% of all traffic deaths in 2005, Cino said. Male drivers ages 21 to 34 were involved in more alcohol-related crashes than any other group, followed by men 35 to 44.

It is illegal to drive in the USA with a blood-alcohol content at or above 0.08%. The number of fatalities in crashes involving a driver or motorcycle operator who was illegally drunk dipped slightly.

Deaths in crashes involving a driver with a blood-alcohol level of 0.15% — nearly twice the legal limit — rose modestly.

The overall number of alcohol-related traffic deaths represented a small decline from 2004. The total includes people killed in crashes in which at least one driver had a blood-alcohol reading of at least 0.01%.

Twenty-three states recorded decreases in alcohol-related traffic deaths from 2004 to 2005. But Eric Bolton, a spokesman for the National Highway Traffic Safety Administration, said the data represent a "snapshot" and not a significant trend.

The figures have shown little improvement in recent years. In 1997, for example, 16,711 people were killed in alcohol-related traffic crashes.

Safety advocates predicted that the enforcement campaign would bring results.

"Everybody in this country's going to hear about this campaign," said Jim Champagne, Louisiana's top highway safety official and chairman of the Governors Highway Safety Association. "We will be using sobriety checkpoints at a level that we've never done before."

<http://www.usatoday.com/news/nation/2006-08-16-driving-drunk_x.htm?POE=NEWISVA>



**11. U.S. Court Bans Sale of ‘Light,’ ‘Ultralight’ Cigarettes**

By Ira Teinowitz – *AdAge.com*

August 17, 2006

**Big Tobacco Ordered to Run Corrective TV, Print Ads**

WASHINGTON (AdAge.com) -- Deciding that Big Tobacco engaged in a racketeering conspiracy against U.S. taxpayers, a federal court judge today issued the most punishing ruling ever against the industry, banning the sale of "light" and "ultralight" cigarettes and demanding corrective advertising.



A judge ruled that tobacco companies can no longer refer to their cigarettes as being 'light' or 'ultralight.'

Ad groups had no immediate comment on the decision by U.S. District Court Judge Gladys Kessler, except to say it was "significant." But sweeping advertising sanctions could set a precedent for other industries, including food and alcohol, leaving little doubt that the ad industry will move to involve itself in the appeal, probably through friend-of-the-court briefs.

The ad industry has gone to court before to battle tobacco-related ad curbs proposed by the Food and Drug Administration under former FDA Commissioner David Kessler, which were eventually overturned for procedural reasons.

Judge Kessler's 1,742-page decision -- the order was another 18 pages --included sweeping limits on tobacco makers. Among them:

* the use of the terms "low tar," "light," "ultra light," "mild" and "natural" are banned;
* for two years, big tobacco is required to buy full-page corrective advertising monthly in the Sunday editions of more than two dozen major newspapers with the schedule alternated so the ads appear at least weekly;
* major tobacco makers are ordered to run 15-second corrective TV spots once a week during prime time for a year;
* packaging and in-store signs must carry new corrective advertising.

Judge Kessler indicated she might have imposed additional sanctions that would cost tobacco makers billions of dollars, but she felt she didn't have the authority to do so.

The U.S. case was filed by the Clinton administration against what was originally five tobacco makers: Altria, parent of Philip Morris; R.J. Reynolds; Lorillard; Brown & Williamson; and BAT.

<http://adage.com/article?article_id=111200>



**12. Big Tobacco Faulted But Not Fined**

By William McQuillen and Susan Decker– *Chicago Sun Times*

August 18, 2006

A federal judge ruled that Altria Group Inc.'s Philip Morris USA and other cigarette makers violated anti-racketeering laws by marketing low-tar cigarettes as healthier alternatives to regular brands.

Thursday's ruling clears a hurdle for Altria, owner of Philip Morris, to spin off Northfield-based Kraft Foods Inc. to make it more valuable for shareholders.

U.S. District Judge Gladys Kessler, while deciding the Justice Department had proved its claims at a nine-month trial that ended in June 2005, declined to order the companies to fund large-scale programs to help smokers quit.

Altria shares rose $1.89, or 2.3 percent, to $82.64 in trading after the close of U.S. exchanges. The stock climbed as high as $83 after the ruling.

With the ruling out, some analysts said a spinoff of Kraft could take place by the end of this year. However, Morningstar Inc. analyst Greg Warren said he doubts the decision alters the timetable for a spinoff, which he still expects in 2007. Warren said it'll take until early next year for Kraft to organize itself under new Chief Executive Irene Rosenfeld, appointed in June.

"They are very smart at Altria, and when they do the spinoff, they'll want to do it right," Warren said.

Altria had identified the Justice Department suit as a possible obstacle to the spinoff.

Kessler ruled that the industry must stop marketing ''low tar'' and ''light'' cigarettes. The companies ''have marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted,'' she wrote.

Kessler said ''unfortunately'' she lacks authority to order a costly smoking-cessation program. The government had sought billions of dollars from the tobacco companies to help smokers quit and to reduce youth smoking.

The Justice Department said it was disappointed the court didn't impose all suggested penalties, though they are ''hopeful that the remedies that were imposed by the court have a significant, positive impact on the health of the American people.''

The Clinton administration filed the suit in 1999, seeking to recover hundreds of billions of dollars the government claimed it spent treating sick smokers.

<http://www.suntimes.com/output/business/cst-fin-smoke18.html>



**13. Face-To-Face Transactions Best Way To Assure Legal Sales**

Source: *ABL*

August 17, 2006

"America's Beer, Wine & Spirits Retailers" Concerned About Internet Alcohol Survey; Support States' Regulation of Alcohol Laws to Prevent Sales to Minors

Bethesda, MD (8/17/06) - In a statement released today, the American Beverage Licensees (ABL) responded to a new Wine and Spirits Wholesalers of America (WSWA) study that demonstrates that millions of minors either purchase alcohol online or know a friend who does, reaffirming their position that face-to-face transactions by state-licensed alcohol beverage retailers remain the surest way to confirm legal sales.

"This survey is proof that minors are searching for and finding new sources of alcohol, in part because alcohol beverage retailers working with law enforcement and state regulators have cracked down on illegal underage purchases," said ABL Executive Director Harry Wiles.

"Local retailers have a vested interest in their communities and can lose their license for illegal underage sales to minors. As brick and mortar retailers - licensed and regulated by the state - make inroads to closing the door on underage purchases, unscrupulous alcohol providers are now hanging 'open for business' signs via the Internet."

In stark contrast to the silence of anonymous Internet-based alcohol purveyors, ABL and it members continue to promote social responsibility through programs like "We Don't Serve Teens". Developed by The Century Council and Federal Trade Commission, "We Don't Serve Teens" emphasizes ABL's desire to stamp out underage access to beverage alcohol. ABL's message to would-be underage purchasers is clear - your business is not welcome.

"ABL hopes that this sobering report will reach the desks of attorneys general and state legislators throughout the country who may just be waking up to the realties of Internet alcohol sales and the threat posed by weak enforcement and regulation of a unique and age-restricted product."



**14. Group Fighting Online Liquor Sales Serves Up a Questionable Stat on Kids**

**By Carl Bialik - *Wall Street Journal***

**August 18, 2006**

A trade group for liquor retailers put out a press release last week with an alarming headline: "Millions of Kids Buy Internet Alcohol, Landmark Survey Reveals."

The announcement, from the Wine and Spirits Wholesalers of America, received wide media attention. On NBC's Today Show, Lea Thompson said, "According to a new online survey, one in 10 teenagers have an underage friend who has ordered beer, wine or liquor over the Internet. More than a third think they can easily do it, and nearly half think they won't get caught." Several newspapers mentioned the study, including USA Today and the Record of New Jersey. The news even made Australia's Gold Coast Bulletin.

Are millions of kids really buying booze online? To arrive at that jarring headline, the group used some questionable logic to pump up results from a survey that was already tilted in favor of finding a large number of online buyers.

For starters, consider the source. The trade group that commissioned the survey has long fought efforts to expand online sales of alcohol; its members are local distributors who compete with online liquor sellers. Some of the news coverage pointed out that conflict of interest, though reports didn't delve more deeply into how the numbers were computed.

The Wine and Spirits Wholesalers of America hired Teenage Research Unlimited, a Northbrook, Ill., research company, to design the study. Teenage Research, in turn, hired San Diego polling firm Luth Research to put the questions to 1,001 people between the ages of 14 and 20 in an online survey. Luth gets people to participate in its surveys in part by advertising them online and offering small cash awards -- typically less than $5 for short surveys.

People who agree to participate in online surveys are, by definition, Internet users, something that not all teens are. (Also, people who actually take the time to complete such surveys may be more likely to be active, or heavy, Internet users.) It's safe to say that kids who use the Internet regularly are more likely to shop online than those who don't. Teenage Research Unlimited told me it weighted the survey results to adjust for age, sex, ethnicity and geography of respondents, but had no way to adjust for degree of Internet usage.

Regardless, the survey found that, after weighting, just 2.1% of the 1,001 respondents bought alcohol online -- compared with 56% who had consumed alcohol. Making the questionable assumption that their sample was representative of all Americans aged 14 to 20 with access to the Internet -- and not just those with the time and inclination to participate in online surveys -- the researchers concluded that 551,000 were buying alcohol online.

But that falls far short of the reported "millions of kids." To justify that headline, the wholesalers' group focused on another part of the survey that asked respondents if they knew a teen who had purchased alcohol online. Some 12% said they did. Of course, it's ridiculous to extrapolate from a stat like that -- one buyer could be known by many people, and it's impossible to measure overlap. Consider a high school of 1,000 students, with 20 who have bought booze online and 100 who know about the purchases. If 100 of the school's students are surveyed at random, you'd expect to find two who have bought and 10 who know someone who has -- but that still represents only two buyers, not 10. (Not to mention the fact that thinking you know someone who has ordered beer online is quite different from ordering a six pack yourself.)

Karen Gravois Elliott, a spokeswoman for the wholesalers' group, told me, "The numbers are real," but referred questions about methodology to Teenage Research. When I asked her about the potential problems of conducting the survey online, she said the medium was a strength of the survey: "We specifically wanted to look at the teenage online population."

Nahme Chokeir, vice president of client service for San Diego-based Luth Research Inc., told me that some of his online panel comes from word of mouth, which wouldn't necessarily skew toward heavy Internet users. He added that some clients design surveys to screen respondents by online usage, though Teenage Research didn't.

I asked Michael Wood, a vice president at Teenage Research who worked on the survey, whether one could say, as the liquor trade group did, that millions of teenagers had bought alcohol online. "You can't," he replied, adding, "This is their press release."



**15. Study Finds Many Parents Oblivious to Alcohol, Drug Use**

*The Washington Post*

August 18, 2006

A third of American teenagers have attended parties where parents were at home while alcohol or illegal drugs were used, according to an annual back-to-school survey on teens' attitudes that paints an overall portrait of a generation of parents clueless about their kids' vices.

The study did not suggest that parents were aware of what was happening when teenagers were partying in their homes. To the contrary, only 12 percent of parents see drugs and alcohol as a problem for their children, while 27 percent of teenagers ranked it their biggest concern. Fifty-eight percent of parents cited social pressure as their child's biggest issue.

"These parents are like the three monkeys," said Joseph Califano, chairman and president of the National Center on Addiction and Substance Abuse at Columbia University. "They see no beer, smell no pot and don't hear all hell breaking loose in the family room."

"These parents don't understand the world their children are living in," he said. "There is a lot of denial here."

The center, which studies risk factors for substance abuse, took a close look at parents and delved into the private party scene, where much of the underage drinking and drug abuse is thought to occur. In a number of areas, the opinions of the parents were strikingly at odds with the views of their children.

The study found that 80 percent of parents think that neither alcohol nor marijuana is usually available at parties that their teenagers attend. Fifty percent of teenagers said they had been at parties where alcohol and drugs were being used.

For the first time, the center's survey also found that the substance-abuse gender gap has closed, with girls 12 to 17 at equal or higher risk compared with boys.

Family structure showed up as a strong indicator of substance-abuse risk. Teenagers who regularly ate dinner with their families and attended church services were at less risk, as were teenagers who slept more than eight hours a day.

Califano said that white, black and Hispanic teens experiment with drugs to the same degree and that "poor kids are more likely to get hooked and less likely to get serious treatment."



**16. Ad Campaign, Checkpoints Target Men Driving Drunk**

By Larry Copeland, *USA TODAY*

August 16, 2006

A nationwide crackdown on drunken driving aimed primarily at men ages 21 to 34 began Wednesday as federal authorities reported that alcohol was a factor in 16,885 traffic deaths last year.

"Drunk driving is one of America's deadliest crimes," Acting Transportation Secretary Maria Cino said. "Our message is simple: If you drive drunk, you will be arrested."

Cino announced an $11 million campaign of television, radio and Internet advertisements. The campaign - "Drunk Driving. Over the Limit. Under Arrest." - is the largest such effort ever and will coincide with increased roadside sobriety checkpoints between now and Labor Day.

The ads show authorities pulling over three men driving in vehicles filled with beer, wine or liquor and tell viewers: "Make no mistake: You will get caught, and you will be arrested."

Alcohol was a factor in 39% of all traffic deaths in 2005, Cino said. Male drivers ages 21 to 34 were involved in more alcohol-related crashes than any other group, followed by men 35 to 44.

It is illegal to drive in the USA with a blood-alcohol content at or above 0.08%. The number of fatalities in crashes involving a driver or motorcycle operator who was illegally drunk dipped slightly.

Deaths in crashes involving a driver with a blood-alcohol level of 0.15% - nearly twice the legal limit - rose modestly.

The overall number of alcohol-related traffic deaths represented a small decline from 2004. The total includes people killed in crashes in which at least one driver had a blood-alcohol reading of at least 0.01%.

Twenty-three states recorded decreases in alcohol-related traffic deaths from 2004 to 2005. But Eric Bolton, a spokesman for the National Highway Traffic Safety Administration, said the data represent a "snapshot" and not a significant trend.

The figures have shown little improvement in recent years. In 1997, for example, 16,711 people were killed in alcohol-related traffic crashes.

Safety advocates predicted that the enforcement campaign would bring results.

"Everybody in this country's going to hear about this campaign," said Jim Champagne, Louisiana's top highway safety official and chairman of the Governors Highway Safety Association. "We will be using sobriety checkpoints at a level that we've never done before."



# 17. Call to Raise Drinking Age Rebuffed

By Tarina White - *The Calgary Sun*

August 17, 2006

A recommendation to raise Alberta’s legal drinking age to 21 to curb violence at bars is getting little support from Premier Ralph Klein and some of those vying to claim his throne.

Speaking to media at the unveiling of the new Alberta Children’s Hospital in the northwest on Thursday, Klein said boosting the drinking age likely wouldn’t solve the issue of alcohol-related violence among young adults.

“If you raise the drinking age, it raises the possibility of people who are 21 or 19, or whatever it’s raised to, buying booze for kids under age,” he said, adding the report will be considered by caucus and the cabinet.

The provincial roundtable that prepared the report, released Wednesday, agreed violence is prevalent among bar patrons under the influence of drugs or alcohol, gang members, men aged 18 to 24, ethnic groups or visible minorities, tourists and transients.

Tory leadership candidate Mark Norris, Klein’s former economic development minister, said if Albertans are recognized as adults at 18 it should also be legal to consume alcohol at that age.

“If we’re willing to have people lay their lives on the country in the form of joining the army at 18, then they’re certainly reasonable enough to understand drinking,” Norris said.

He doubted raising the legal drinking age would prevent those underage from consuming liquor.

“If you want to do it, you’ll find a way,” Norris said.

Norris said he recommends increasing education about responsible drinking.

“Hammer hard on people the responsibility that is associated with that right. It’s not something that should be taken lightly,” he said.

“The reality is that once you get to be an adult you have to act like one. Changing the age from 18 to 21 I don’t think will make people more mature.”

Fellow Tory leadership candidate Jim Dinning also disagreed with the report’s recommendation to raise the legal drinking age.

“Studies and other things have shown that that’s not going to prevent misuse of alcohol,” said Dinning.

Albertans’ opinions on raising the legal drinking age are split.

Poll results released by the Alberta Alcohol and Drug Abuse Commission last winter reveal about 49% want it to remain at 18 and about 46% want it raised.

Three percent thought the legal drinking age should be lowered.

Peter Davison, Calgary’s deputy chief of community policing, said he’s not sure raising the drinking age would curb violence at night spots.

“We’ve had establishments in the city... that have limited access to (those 25 and over) but we still have action there,” Davison said.

<http://calsun.canoe.ca/News/Alberta/2006/08/17/1762208.html>



**18. U.S. Lifts Ban on Duty-Free Liquor**

***United Press International***

**August 16, 2006**

CHICAGO, IL -- A ban on the sale of liquor and perfumes from duty-free airport stores has been lifted in the United States.

The Transportation Security Administration says passengers may now take duty-free items on board if they are delivered directly onto the aircraft by store workers, the Chicago Tribune reported.

Liquids and gels were barred from all passenger airplanes last week after British authorities arrested two dozen people allegedly plotting to use a liquid-based explosive to blow up passenger jets.

While the TSA says it will allow liquor and perfume sold from duty-free stores onboard, passengers making connections from international to domestic flights must transfer the items to their checked baggage before boarding their domestic flight.

The ban on duty-free liquor and perfumes remains in place at most airports in England, the newspaper said.

<http://www.upi.com/NewsTrack/view.php?StoryID=20060816-090622-5106r>



**19. Pernod Ricard Files US Complaint Over Havana Club Rum**

*Dow Jones Newswires*

August 16, 2006

MIAMI (AP)--Barely a week after a Bacardi rum based on a famed Cuban recipe began arriving in stores, a rival company selling a spirit by the same name has sued to try to pull it from shelves.

Pernod Ricard USA filed its federal complaint over Havana Club rum Tuesday in Delaware, where Miami-based Bacardi USA is incorporated. It claims Bacardi doesn't have the right to use the Havana Club trademark in the U.S. and that consumers are being led to believe the Puerto Rican-produced rum is actually made in Cuba, as the Pernod Ricard version is.

Francisco de la Vega, a spokesman for Pernod Ricard at its international headquarters in Paris, said Wednesday that Bacardi is attempting to keep it from distributing Havana Club in the U.S. should the Cuban embargo be lifted.

"They have a dominant position," de la Vega said, "and they want to keep that dominant position without having to compete."

Bacardi called the allegations distorted and said it would continue to ship the product. "We will defend our brand in the wake of these inaccurate allegations," company spokeswoman Patricia Neal said. She said the product's labeling clearly indicates it is Puerto Rican rum.

Pernod Ricard (12069.FR), which has its U.S. headquarters in Purchase, N.Y., says it could have made a version of its Havana Club rum outside of Cuba to distribute within the U.S. - as Bacardi is doing - but chose not to because it would be misleading.

The dispute over the rum dates back decades and is entangled in property seizures during the Cuban revolution, the trade embargo with the island nation and U.S. trademark law.

As Bacardi explains it, Havana Club rum was developed in 1935 by a family-owned Cuban company, Jose Arechabala SA. When Fidel Castro rose to power, the family's plant and trademark were seized and the Cuban government began producing rum under the Havana Club label, though Bacardi and the Arechabala family say it was based on a different recipe.

Cuba partnered with Pernod Ricard in the mid-1990s, making Havana Club available around the world, though not in the U.S., where the trade embargo prohibits it. Bacardi bought the original recipe and the Havana Club name from the Arechabala family in 1994 and offered a rum based on the recipe for three years until an initial lawsuit removed it from shelves.

The U.S. trademark for Havana Club was obtained by Cuba in 1976, but the U.S. Patent and Trademark Office recently ruled against government-owned Cubaexport, saying it wouldn't renew the registration.

Richard Maulsby, a spokesman for the U.S. Patent and Trademark Office, said an appeal on the trademark decision had not been filed, a prerequisite for legal action. Still, he said, the Havana Club trademark remains registered until any legal or appeals process is complete.



# 20. Beer Wins Back Its Top Ranking

By Mark Fisher -  *Cox News Service*

August 15, 2006

It's not that more Americans are drinking. But those Americans who do drink are drinking more, according to a new Gallup Poll.

And beer is back on top as the alcoholic beverage of choice, after a one-year reign of wine as Americans' favorite drink.

The survey of 1,007 people ages 18 and older conducted July 6-9 showed 64 percent of Americans say they drink alcohol -- virtually unchanged since 1939, according to WebMD.

But what has changed is the amount of alcohol consumed: The 2006 poll showed drinkers are consuming an average of 4.5 drinks per week, up from 2.8 in 1996. The WebMD authors suggest Americans are responding to health studies that suggest that drinking alcohol -- especially wine -- in moderation may promote better health. Many of those studies have focused on daily, moderate alcohol consumption and the apparent benefits to cardiac health.

As for the beer-versus-wine debate, beer regained the upper hand in 2006: 41 percent of American drinkers surveyed said they drink beer most often, 33 percent said they drink wine most often, and 23 percent said they drink liquor most often. Last year, for the first time in more than a decade of Gallup polling, more Americans (39 percent) identified wine as their drink of choice, compared to 36 percent naming beer.

Why the shift? Gallup speculates that beer regained its footing as people began abandoning low-carb diets.

Could be, could be. But I have another theory: I think the numbers were skewed last year in part by the "Sideways" movie phenomenon that propelled sales of pinot noir and put wine of all varieties on people's radar screens.

Either way, it looks like wine's top ranking was a one-year wonder.

<http://www.charlotte.com/mld/charlotte/living/food/15280741.htm>



**II. IOWA NEWS.**

**21. Imports/They Still Account for Small Share of Market**  
By Steve Gravelle - *The Cedar Rapids Gazette*

August 12, 2006

CEDAR RAPIDS - They're still a minority, but more Iowans are making their brew a foreign one, according to industry consultants.

Import sales ofbeer jumped 72 percent in Iowa from 2000 to 2004, according to Adams Beverage Group.

That pace led the Midwest, but it's really just another case of the Midwest catching up to the rest of the nation, said Brian Sudano, managing director for Beverage Marketing Corp. of New York, the industry's top consulting firm. "It's a lag market," Sudano said. "Last year there was a pickup in the trend for importbeer, and this year it's accelerated."

Even after the big jump, imports amount to just 2.8 percent of beer sales in Iowa, compared with 11.7 percent nationally. Commercial brewing's Big Three - Anheuser-Busch, Miller and Coors - continue to account for about 90 percent of the state'sbeer sales, but sales growth is on the edges where the imports are stocked.

"We're seeing double-digit increases in our import segment," said Mike Schulte, general sales manager for Fleck Sales Co. in Cedar Rapids. "It really ties in with the broader consumer trend of affordable luxury" epitomized elsewhere by brands like Starbucks. Import sales at Hy-Vee stores jumped 25 percent to 40 percent over the past five years, said company spokeswoman Donna Tweeten. The chain doubled its import selection during that period, she said.

Tweeten said imports gained sales in all stores, "from rural to suburban to urban markets. The growth is across the board."

Hy-Vee's top imports are Corona (from Mexico), Heineken (the Netherlands) and Guinness (Ireland).

While imports gained, sales of the Big Three were "flattish," Schulte said.

"Where we see softness .-.-. is in the lower-end brands. It's a very mature category. What's driving it is the higher end," Schulte said.

That range covers familiar brews such as Heineken, Beck's and Corona, to Cantillon St. Lamvinus, a Belgian lambic selling for $30 for a 0.75-liter bottle at John's Grocery in Iowa City, where about half the beer sold is imported.

"Once you try really goodbeer, you're not going to say, `Hmmm, I want a Budweiser,'-" said Doug Alberhasky, co-owner, store manager and "bier guy."

Opened just two years ago, Benz Beverage Depot in Cedar Rapids has steadily increased its import selection, said Jared Hanlin, the store's owner.

"The quantity of types ofbeers we're able to get into the store has increased substantially," Hanlin said. "People are expanding their availability, and we're finding that's good for the market."

Mexicanbeers are by far the most popular imports. Mexican brewers shipped 365.7 million gallons to the United States last year, compared with 187.2 million gallons from the Netherlands – mostly Heineken.

Nationally, Mexican immigration drives the demand for Mexicanbeers. In Iowa, vacation travel is a large factor, although demand is also strong in smaller markets with heavy Mexican populations.

"There's enough vacation and travel there, a lot of sampling opportunities," Fleck's Schulte said.

Iowa City is a strong import market, "with the different cultures they have coming in," said Joe Peska, general manager for Dale Lee Distributing. "The students that are of drinking age come from all different areas. They kind of bring their tastes with them."



**22. UI Tightens Smoking Policy**

By Wesley Cropp - *The Daily Iowan*

August 17, 2006

Smokers around the UI campus were forced to face the music this week, as an interim policy banning smoking near campus buildings' entryways went into effect. The newest universitywide rule mandates those lighting up must stay at least 25 feet from the entrances.

The newest UI smoking limitation supplements a July 1 policy that barred UI Hospitals and Clinics employees, patients, and visitors from smoking on hospital grounds. Nonsmokers may be basking in the smoke-free air many of them have sought, but the new boundaries leave smoking visitors and residents without many options, smokers contend.

Patty O'Tool, a Dubuque resident who is receiving treatment at the UIHC, takes smoke breaks from the monotonous hospital routine, sometimes smoking two cigarettes in the same sitting. She said she walks a 25-minute roundtrip just to smoke.

O'Tool, who was dragging her IV pole required for constant treatment, said the new ordinance would force her to walk down a flight of stairs.

"I could never get this thing up and down the stairs," she said after struggling to lift the chrome stalk over a low curb.

With the bans have come signs depicting crossed-out cigarettes in heavy red and banners boasting "smoke-free campus." The random plume of smoke is now only a remnant of a hazy past.

A handful of benches outside the Wendell-Johnson Speech and Hearing Center fill one of the few remaining areas not affected by the 25-foot rule. Sitting on one of the benches, Craig Hempenius, a UI pathology clinical technician, finds a brief respite from the antismoking policy. He calmly ponders what the policy actually means for people such as himself.

"[UIHC] is setting policies like a lot of other hospitals," he said. "But these others are on private property - this is public property - it needs to be challenged somehow."  
  
Yet, most nonsmokers say they don't want to walk through a gray cloud of burning tobacco in order to enter a building. The Field House, where teams of smokers began congregating to circumvent the July 1 hospital-grounds ban, provided a forum for the clashing of smokers and athletes but is now included in the newest regulation.

But unlike the turf wars of the common jail yard, there will be no authority on patrol to enforce the UI policy.

Steve Parrott, the director of University Relations, explained that the university is "just asking people to voluntarily comply; if there are serious problems, we could contact public safety." On a more optimistic note, he said officials don't foresee that happening.

The only instance in which the UI police would have to intervene is if complaints come in about a smoker who refuses to move from the exclusion zone. Charles Green, the assistant vice president for the UI police, did not indicate what might happen to smokers who refuse to follow the new restrictions - but if smokers refuse to comply and/or are not employed at the building in which they are refusing to move away from, criminal-trespass warnings and citations will be handed out.

<http://www.dailyiowan.com/media/storage/paper599/news/2006/08/17/Metro/Ui.Tightens.Smoking.Policy-2221138.shtml?norewrite200608171002&sourcedomain=www.dailyiowan.com&mkey=433542>



**23. Code Takes Aim at Bar Crowds**

By Brittney Berget - *The Daily Iowan*

**August 18, 2006**

|  |  |
| --- | --- |
| |  | | --- | | On top of their usual duties checking IDs and charging cover, Josh Adair (right) and Brett Meyer (center) use a clicker to keep track of the number of customers entering and exiting the Atlas on Thursday evening. The maximum capacity of the establishment is 188; around 10:20, the ticker read 68.  Media Credit: Melanie Patterson/The Daily Iowan  On top of their usual duties checking IDs and charging cover, Josh Adair (right) and Brett Meyer (center) use a clicker to keep track of the number of customers entering and exiting the Atlas on Thursday evening. The maximum capacity of the establishment is 188; around 10:20, the ticker read 68. | |

For many UI students, going out to the bars on a Friday or Saturday night means being slammed into every five seconds, enduring spilled drinks, and squeezing through the teeming hordes to get to the restrooms.

However, if pub attendance is any indication that bar-goers care, the answer is definitely no.

That all may change if the Iowa City City Council approves a new fire code that would significantly raise the fines for facilities that exceed capacity. At present, the fine is $250 for a first offense, $500 for a second offense, and $750 for each subsequent offense. If the City Council passes the new fire code on Aug. 22, a first offense would be $750, and all subsequent offenses would be $1,000.

City Councilor Connie Champion said she has been pushing for an ordinance similar to this one for five or six years.

"A lot of these buildings are right next to each other and have two levels," she said. "If there were a fire, it would be disastrous."  
  
Fire Chief Andy Rocca agrees that the city needs to do something.

"Sept. 1, all emergency-evacuation plans need to be turned in," he said, referring to the first step in trying to make local bars safer. "We have been working with bar owners and educating them on crowd-control management."

Tom Lenoch, the manager of College Street Billiards Club & Deli, 114 E. College St., said representatives of all bars are going to be required to take crowd-control management classes.

"Bars are going to be required to have one crowd-control manager for every 250 customers," he said.

When asked about the higher fines, he said, "Fines are fines. If you break them, you break them. You still have to run a tight ship."

Josiah Service, a bouncer at 808, 121 Iowa Ave., said he doesn't think much will need to be changed if the new fire code passes. "For the most part, managers plan for big crowds and busy nights," he said. When asked if the big crowds are an annoyance, he said: "It's more fun to have more people.

And we always try to keep the environment as safe as possible."

Mike Dunlap, a manager of Martinis, 127 E. College St., which will reopen today after repairing tornado damage from last April, feels that his facility won't need to make any drastic changes, either.

"We have never had a problem in the past," he said. "We always try to keep the number of people in the bar down for the sake of our customers."

UI students interviewed have mixed feelings on the crowded bar scenes.

UI junior Alecia Tank said, "[The crowds] annoy me and make me not want to go to those bars."

But Heidi Tangren, also a UI junior, had a slightly more sympathetic view.

"Certain nights when I want to have a relaxing time, I can't," she said. "But other times, it doesn't bother me, and I know that's how those bars get."

<http://www.dailyiowan.com/media/storage/paper599/news/2006/08/18/Metro/Code-Takes.Aim.At.Bar.Crowds-2221500.shtml?norewrite200608181007&sourcedomain=www.dailyiowan.com&mkey=433542>



**24. New Alcohol Program a Must for UI Frosh**

By Ashton Shurson - *The Daily Iowan*

August 18, 2006

College: A time to learn, a time to grow, and a time to party.

This year, the UI is trying to show its concern about the wilder part of the university life.

The 2006-07 school year is the first time that freshmen have been required to take AlcoholEdu, an online course created by Outside the Classroom, a national health-awareness group. Angela Reams, the director of the UI Student Services Campus and Community Relations Office and the coordinator of the project, feels the action is necessary.

"It is something that has been on the back burner for years," she said. "We felt it was time."

There was talk about the need for education on high-risk drinking on campus among both students and members of the Stepping Up Project, she said.

"We want to provide students with information they need to make good, healthy choices," she said.

A universitywide group consisting of Phillip Jones, the UI vice president for Student Services and officials from Student Health Service, University Housing, and other departments decided to implement the course.

The UI has a four-year contract with Outside the Classroom, and it should cost less than $36,000 a year, Reams said. However, she added, "It's hard to say what costs will be."

The first part of AlcoholEdu is a cumulative three-hour course consisting of an initial survey and pre-test, three listening chapters, a final exam, and a final survey.

Although a three-hour course compared with a semester of class may not seem so harsh, some freshmen disagree.

"I just watched TV [during the lessons]," said Matt Midgaard, who recently moved into the residence halls from Northwood, Iowa.

Others shared his lack of enthusiasm but still see the value in AlcoholEdu.

"It was the exact same stuff [we learned] in high school," said UI freshman Sarah Kenneke, a Slater resident. "But a couple of facts about the brain were interesting."

There are three listening chapters focusing on making decisions, knowing the facts, and using the knowledge "when it matters."

Student Health Director Mary Khowassah, a member of the Stepping Up executive committee, said she is enthusiastic about the new collaborative effort.

Freshmen had to finish the first part of the course by Aug. 16, and they must complete the second by Oct. 13. Students who fail to complete the course may see their spring semester registration put on hold.

AlcoholEdu is also open to anyone who wishes to learn more about alcohol and its effects.

"There are separate [lessons] for subpopulation levels," Reams said. "When classes begin, we will advertise for other students and university members."

While this is a new idea for the UI, other universities and colleges have been using the course - 450 schools, according to Outside the Classroom.

AlcoholEdu debuted last year at Texas Tech University, but students were not required to complete the course. Only 30 percent participated in the online instruction.

"This fall, it is a requirement," said Juli Buchanan, health education manager for Texas Tech Student Health Service. "Eighty percent of students have completed it so far. We're hoping this causes small changes."

Although Reams is optimistic about the success of the program, she said it's too early to determine AlcoholEdu's effectiveness on campus. Final surveys will be released in February to indicate how the program fared.

<http://media.www.dailyiowan.com/media/storage/paper599/news/2006/08/18/Metro/New-Alcohol.Program.A.Must.For.Ui.Frosh-2221454-page2.shtml?sourcedomain=www.dailyiowan.com&MIIHost=media.collegepublisher.com>



**25. Online Drinking Program Offers Information, Not Much Else**

DI Editorial Board – *Daily Iowan*

Auust 18, 2006

The UI has launched a new online drinking program, Alcohol Education for College, which is required for freshmen, in an effort to educate incoming students on the alcohol culture at college. Marked with some of the highest binge-drinking rates in the country - a fact not to be proud of - the university needs consistently innovative approaches to alcohol education that will truly connect with new students. The DI Editorial Board endorses the program, with reservations: While the intentions are obviously sincere, it is unknown how effective this new measure will prove in curbing drinking trends.

Pre-emptively tackling the issue is a positive step - logically, many UI binge drinkers start their habit as freshmen, and addressing alcohol consumption before major problems arise is common sense.

Of course, many students will simply laugh their way through the course - the expectation for unintentional comedy is undoubtedly high. But even skeptics can take something from the information provided. Incoming students, even those who consider themselves to be savvy about alcohol, are often vastly ignorant about alcohol-related matters. Even if the only piece of information students remember is how many drinks it takes for them to get drunk, the program will have accomplished something. Uninformed and unaware incoming students will undoubtedly prove more likely to binge drink. Knowledge is a key to more alcohol-mature students.

But the UI must be wary in its approach. Any campaign attempting to discredit alcohol consumption entirely will inevitably drive more students to drink. Additionally, every student will make alcohol mistakes - it is college, after all. But the university must not assume the role of the worried, doting parent or that of the absolute authoritarian figure. Rather, the purpose should be to create wise students, capable of making intelligent decisions for themselves; forceful measures will only worsen the problem.

Results from AlcoholEdu, created by Outside the Classroom, a nationwide alcohol-awareness advocacy group, will not be available until February 2007. In the meantime, UI students and administrators must not sit and wait - vigilant preparation should be made for whatever the results may show. Reformation of the process will inevitably be required, but steps can be taken, in the meantime, to ensure the groundwork is laid.

This effort, among others, will never eliminate binge drinking - and certainly not college drinking entirely: To think otherwise would be absurd. But even denting the problem is a positive step. For a university and city constantly battling widespread intoxication, any thoughtful idea should be lauded: A more interactive and broader approach to the UI's alcohol problem is long overdue. The ubiquitous 19-ordinance debate is annoying, and this Editorial Board hopes AlcoholEdu can prove part of a final, comprehensive solution - but we're not holding our breath.

<http://www.dailyiowan.com/media/storage/paper599/news/2006/08/18/Opinions/Online.Drinking.Program.Offers.Information.Not.Much.Else-2221431.shtml?norewrite200608181020&sourcedomain=www.dailyiowan.com&mkey=433542>



**26. Drinking by Boaters Prompts Speed Traps**

*Des Moines Register*

August 18, 2006

North Liberty, IA -- State Officials are running more safety checks and speed traps on Coralville Lake, saying they’re concerned about an increase in the number of boats and the number of boaters who are drinking.

“We get complaints saying it is getting too dangerous out here, and to some extent it is,” said Shawn Meier, a conservation officer with the Iowa Department of Natural Resources. “And alcohol use has been the big issue.”

So far this year, 10 people have been arrested at the lake and charged with operating a boat while intoxicated. Statewide, 31 boaters have been charged.



**27. Drivers To See More Enforcement Through Labor Day**

*KCCI.com*

August 18, 2006

DES MOINES, Iowa --Law enforcement agencies will have extra patrols out on Iowa's roads now through Labor Day.

Federal and state money will help put more officers out looking for speeders and people not wearing seat belts. The campaign will also look for drunken drivers.

Organizers said the DWI crackdown is so important that state, county and city departments will be stretching their limited resources to reduce Iowa's accident fatality rate.

"Part of this program is the use of overtime monies to bring officers out on the Labor Day weekend," said Iowa State Patrol Col. Robert Garrison. "So, we will be putting extra resources out, but everybody's short of resources it seems as budgets have been tightened."

Officials said Iowa is in the top 10 states in seatbelt use. Iowa also has the second-lowest alcohol related fatality rate in the country, but Garrison said officials would still like to see those numbers improve.

<http://www.kcci.com/news/9699805/detail.html>



**28. Arrests Made During Juvenile Alcohol Enforcement Project**

*The Fairfield Ledger*

August 16, 2006

Members of the Fairfield Police Department, with assistance from the Jefferson County Police Reserve and Jefferson County Attorney's Office conducted a juvenile alcohol enforcement project Friday and Saturday.

According to a press release from the law enforcement officials, most of the officers were in plain clothes, and two were on bike patrol.

The officers made 65 contacts with members of the community during the two days.

Officers were dispatched to a private residence for a noise complaint that resulted in five possession-under-the-legal-age citations being issued, and 15 other people under the legal age were given breath tests.

Also during the enforcement project, officers arrested one person for operating a motor vehicle while intoxicated and arrested four people for public intoxication. Officers arrested one individual for possession of a controlled substance and possession of drug paraphernalia.

<http://www.zwire.com/site/news.cfm?newsid=17061717&BRD=1142&PAG=461&dept_id=567522&rfi=6>



**III. OTHER STATE NEWS.**

**29. Diners’ Use of ‘Wine Doggy Bags’ Still Corked (Nebraska)**

By John Keenan, Staff Writer – *Omaha World Herald*

August 14, 2006

Put a cork in it, buddy.

|  |
| --- |
| http://www.omaha.com/c_images/fills/clear.gif |

|  |  |
| --- | --- |
| [[Click to Enlarge](javascript:gen_open_win('toolbox/photo.php?u_sid=2223473&u_id=97256',%20'bigPhoto',%20fs_photo);)](javascript:gen_open_win('toolbox/photo.php?u_sid=2223473&u_id=97256',%20'bigPhoto',%20fs_photo);) |  |
| |  | | --- | | Restaurants, such as M's Pub, can now allow patrons to take unfinished bottles of wine with them in a doggy bag, like the one shown here. | |

Your wine, that is - at least if you plan to take it when you leave the restaurant.

You'll also need a clear plastic bag. And a restaurant receipt to prove you had a full-course meal. The bottle must go in the trunk, or behind the seat in cars without trunks.

Nebraska's "wine doggy bag" law, which allows diners to take home one opened bottle of wine from a restaurant, took effect a month ago.

Proponents called it an anti-drunken driving measure, a way to prevent customers from feeling compelled to finish a bottle of expensive wine rather than leave it for waste.

But several restaurant owners say customers are unaware of the law. Few eateries promote the law on their menus, and many haven't bothered to stock the bags yet, perhaps because there's little demand from patrons.

"It hasn't been a huge deal; I didn't expect it to be and I hope it doesn't become one," said Ron Samuelson, who owns Old Market restaurants M's Pub and Vivace.

Walter Hecht, owner and chef at Bistro 121, isn't sure how to interpret the law.

To carry out the wine, customers need a receipt for a full-course meal, which the law defines as "a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking."

So if you get a burger, does that count? Is pizza OK, if you use a fork to eat it?

"It's just confusing," said Hecht, whose restaurant is at 12129 West Center Road.

Hecht noted that when he has eatenat restaurants over the past month, waiters have told him he can't take his half-finished wine bottle because "it's against the law."

Of course, if the restaurant doesn't have the plastic bags, it is against the law, which calls for it to be "visibly apparent" that the bagged bottle hasn't been reopened or tampered with.

Eric Lemke, owner of Lincoln's Green Gateau, said he hasn't yet stocked the bags.

"We're going to get (the bags), but nobody is requesting them," he said.

In Kearney, Neb., the Lodge Restaurant hasn't stocked the bags, either. An employee said she didn't know of any customers who had asked about them.

The law seems tailor-made for someone like Dr. Roger Peterson, past president of the Omaha branch of the International Wine and Food Society. Peterson has a 2,000-bottle-capacity cellar at home and has studied wine for 25 to 30 years.

But he hasn't heard about the new law.

It's still a good idea, he said.

"It makes more sense for that law than to say, 'Sir, ma'am, I'm sorry, but you can't take the wine you've purchased here. Even though you have half a bottle left, you can't take it out of here. We get to keep it.'"

State Sen. Mick Mines agreed that the law is flying below the radar but pointed out that several states recently have passed similar laws.

"To have dinner and leave a half bottle of wine there that you may have paid $30 for?" said Mines, who sponsored the measure. "This just made all kinds of sense."

Bob Beck, a spokesman for Winedoggybag.com, said restaurants are missing a marketing opportunity.

The California-based company supplies clear, tamper-proof plastic wine bottle bags to restaurants in 25 states. Kentucky, Illinois, Ohio and Kansas are among the states that passed similar laws this year, according to Beck. Iowa has allowed take-home wine since 2000.

Restaurants that tell customers about the law can sell more wine, Beck said. Some use tabletop cards and menu stickers to promote the practice.

At V. Mertz in the Old Market, manager Matt Stamp stocked up on bags but does not alert every guest of the carryout option. He's bagged only two bottles since the law took effect.

Stamp said the need for the law rarely comes up because those who order a bottle of wine tend to finish it.

"I know I do," he said.

<http://www.omaha.com/index.php?u_pg=1458&u_sid=2223473>



**30. Chicago Bears Limit Alcohol During Night Games (Illinois)**

*ABC7Chicago.com*

August 18, 2006

LAKE FOREST, Ill. - Chicago Bears fans who want a beer in the fourth quarter during night games at Soldier Field will be out of luck.

The Bears say they've got new rules about selling alcohol at night home games, beginning with tonight's pre-season contest against the San Diego Chargers.

For every night game this season, all alcohol sales in the seating bowl will end five minutes into the third quarter. For day games, alcohol sales will end at the end of the third quarter.

For night games, there will also be a limit of one beer per person with beer vending in the seating areas.

Fans are prohibited from carrying alcohol into the stadium.

<http://abclocal.go.com/wls/story?section=local&id=4473734>



**31. Carry-On Wine Won't Fly Under New Rules (California)**

By Jerry Hirsch – *Los Angeles Times*

August 13, 2006

New security measures banning liquids from airplane carry-on luggage have some vintners seeing red.

Passengers jamming multi-bottle wine carriers into overhead bins and under seats were a common sight on flights departing from San Francisco, Oakland and Sacramento airports in California until Thursday's ban, which was sparked by the Britain's foiling of an alleged plot to blow up jetliners.

Since then, unwitting oenophiles have been chugging prized vintages or dumping full bottles of wine into bins with lipstick, sunscreen and other banned liquids.

Fallout from the ban also is killing wine sales at airport gift and duty-free shops and wine bars.

Each year, hundreds of thousands of cases of wine travel across the country as carry-on luggage, a small but important part of California's $16.5 billion wine industry.

"More than half of our tasting room sales are to people who plan to carry the wine onto the plane," said Michaela Baltasar, spokeswoman for Clos Du Val Wine Co. in the Stag's Leap district of Napa Valley. "Hardly anybody ever checks it."

They are people like Linda Ulrich, a congressional aide from Vienna, Va., who on Thursday was tasting the offerings at St. Supery Vineyard and Winery in Napa Valley when she learned about the ban.

"I was going to take a few bottles back because the wine is so much cheaper here," she said.

Ulrich said several wineries balked at shipping any purchases to her home because of Virginia's restrictions on direct sales to consumers. She plans to return home from her Napa Valley vacation empty-handed.

On Friday, Clos Du Val began selling 12-bottle foam packing containers to its tasting room customers at cost--$10. Smaller containers are $5. The boxes are sturdy enough to travel as checked baggage, Baltasar said.

California's largest wineries, which rely on a vast distribution network to get their vintages onto store shelves and restaurant menus, won't be affected by the ban, said Joe Hart, who owns Hart Winery and is president of the Temecula Valley Winegrowers Association.

Hart said he sells about 80 percent of the 5,000 cases he produces annually directly to consumers, and "a lot of that is tourism-based."

His winery provides customers with a six-pack bottle holder that works as carry-on luggage.

The ban on moving wine in carry-on luggage caught consumers and the industry completely unprepared, said Barbara Insel, managing director of MKF Research, a wine industry consulting company in St. Helena, in California's Napa Valley.

"This is going to slow down sales while people figure out what to do. In the very short term there will be a lot of wine stuck in airports," Insel said. "I saw people getting into the car at the Embassy Suites in Napa this morning, and they all had three-packs of wine from various places and they were clearly on their way to the airport. I don't think they had thought about what they were going to do with the wine. You couldn't check it in those packages."

Stopping off at a shipping company service on the way to the airport won't help. UPS and FedEx won't knowingly accept wine shipments from consumers out of fear of violating one of the many different regulations that govern the transport of alcoholic beverages.

"If we find out shipment is a box of wine, we will just hold it wherever we discover the fact," said UPS spokesman Steve Holmes. "It might be in the middle of Kansas. You would have a couple of days to retrieve or else we are going to dump it."

<http://www.chicagotribune.com/news/nationworld/chi-0608130358aug13,1,81580.story?coll=chi-newsnationworld-hed>



**32. New Mexico Stiffens Penalties for Liquor-Law Violations (New Mexico)**

August 11, 2006

ALBUQUERQUE, NM -- The state will automatically revoke a bar or restaurant's liquor license after three convictions of serving alcohol to minors or customers who are already drunk, under a new law that takes effect Oct. 15.

Gov. Bill Richardson had advocated the changes to gain better compliance from the industry to laws regarding alcohol sales to minors and intoxicated people, according to published reports.

Representatives of the New Mexico Restaurant Association and the New Mexico Hospitality Retail Association had described the new law as stringent but fairer than an earlier proposal, which had called for a business to lose its liquor license after two infractions. The previous law allowed up to five convictions before a license was rescinded.

Rachel O'Connor, an advisor to the governor, told the Albuquerque Journal that research has shown nearly 50 percent of people arrested on suspicion of drunken driving statewide did their drinking in bars.



**33. Is This Wine Before Its Time? (California)**

By Mike Zapler and Kate Folmar - *MediaNews Sacramento Bureau*

**Zinfandel as state grape is now up to Governor**

SACRAMENTO - So among all the weighty issues being debated here this summer, here's one question that, ahem, consumed some Capitol watchers on Thursday: What's Arnold Schwarzenegger's position on zinfandel?

The governor, who has a well-known taste for cigars and Schnapps, will soon decide the fate of a bill that would designate zinfandel the ``historic wine of California.''

Originally the measure would have named zinfandel the state's ``official'' wine, but lawmakers amended it after howls of protests from cabernet and pinot noir devotees. The zinfandel grape was born in Croatia but raised in California during the 1850s.

Even the scaled-back version of the bill, sponsored by Sen. Carole Migden, D-San Francisco, didn't go down smoothly with some Assembly members.

Assemblywoman Rebecca Cohn, D-San Jose, said she didn't mean to ``crush'' expectations or ``wine'' about a bill, but ``I'm a cabernet and chardonnay gal, so I don't know that I can support this.''

Assemblyman Chuck DeVore, an Irvine Republican, was baffled by the whole discussion. Why not make Anchor Steam or Sierra Nevada the state's historic beers, he asked.

``I don't even know what a zinfandel is,'' groused DeVore. ``It kind of sounds like a French swear word.''

But the bill overcame those sour grapes, passing the Assembly 45-20. The Senate already approved it, and now it heads to the governor.

So, will he raise a toast to zin? Or put a cork in it? The governor's office said Thursday he hasn't decided.



# 34. Judges Debate the Legal Reach of State's Alcohol Enforcers (Utah)

By Dawn House - *The Salt Lake Tribune*

August 15, 2006

In a state long known for its eccentric liquor laws, do alcohol enforcers get to operate outside Utah's established administrative rule book or must they conform to state statutes?

That's the question state judges are attempting to resolve, even as the Utah Department of Alcoholic Beverage Control, or DABC, continues to suspend private clubs' liquor licenses in what's become a muddled legal arena.

The Utah Legislature created the problem nearly 20 years ago by passing two conflicting laws, judges say. One part of the legislation says the agency's decisions "are final and are not subject to review." The second provision says that private clubs whose liquor licenses are suspended can challenge agency decisions by asking for full-blown trials.

"The two bodies of legislation are hard to reconcile," wrote 3rd District Judge Bruce C. Lubeck in allowing the Monkey Bar to keep its liquor license while a dispute with the DABC is resolved by trial. "Indeed, there are provisions that to this court seem irreconcilable."

Despite the ruling, the liquor agency continues to rely on the law that says its decisions are final. The agency has interpreted this to mean that clubs slapped with suspensions must go to the Utah Court of Appeals - which takes no new evidence and examines only the record created by the liquor agency. DABC commissioners are, however, expected to adopt a new rule during a public meeting Aug. 25, which would allow clubs to question undercover officers and other witnesses before commissioners decide whether to suspend or revoke liquor licenses or impose fines of $3,000 or more.

"The rule would streamline the process so that decisions won't have to be tried twice, once at the agency level and again in district court," agency spokesman Earl Dorius said.

But 3rd District Judge Dennis Frederick reached a similar conclusion on the conflicting laws during a trial conducted last week involving the Southern X-Posure club. And in 2001, Judge Leslie Lewis took a different tact with the Paper Moon, considering both the record and new testimony. She ruled the agency had allowed illegal hearsay evidence in its decision to close down the Murray club.

"Judge Lewis tried to take a middle ground," said Paper Moon attorney Richard Golden. "It's impossible to make both laws work."

Lewis reversed the liquor commission's suspension of the Paper Moon's liquor license for ads that supposedly promoted the consumption of alcohol that at the time was illegal. The 10th U.S. Court of Appeals eventually overturned Utah's ban against liquor advertising in still another case, ruling the state's prohibition was irrational and probably unconstitutional.

For its part, the Utah Attorney General's Office sees no conflict in the law assigning special powers to the liquor agency or in the Utah Administrative Procedures Act that gives "no deference" to state agency decisions that are appealed in district court.

Assistant Attorney General Thom Roberts said if there appear to be differences in the statutes, courts are to look at specific powers the Legislature granted to the liquor commission, giving it the final say. The issue could be resolved as cases make their way to the state's higher courts, he added. But that may take time. The case involving Southern X-Posure deals with a suspension slapped on the South Salt Lake club in 2002.

<http://www.sltrib.com/business/ci_4187749>



# 35. Action-Alert: Back-to-School With Beer! (Oregon)

*Oregon Partnership*

August 16, 2006

We are alarmed to see that Macy’s is featuring an “alcohol-promoting T-shirt” in its “Back-to-School” advertising.

A T-shirt featuring “beer pong,” a drinking game, was included in an Oregon newspaper as part of Macy’s “Back-to-School” full page ad. (see ad below.) Other "alcohol-promoting" T-shirts were found in Macy’s / Meier and Frank stores. This advertising is promoting illegal drinking by youth and is promoting dangerous drinking practices among legal drinkers.

Alcohol is a factor in the leading causes of death among youth. In Oregon, 30 percent of eighth graders report drinking in the past 30 days. And nearly 30 percent of high school juniors say they have binged in the past month.

We are sending this action alert to you, our colleagues and national partners, to urge you to protest Macy’s advertising and selling practices.

Please join us in this effort!

<http://www.orpartnership.org/web/images/actionalert/beerpong.png>

<http://www.orpartnership.org/web/images/actionalert/sixpack.png>

<http://www.orpartnership.org/web/images/actionalert/breakfast.png>

If you have seen this or similar ads in your community we encourage you to write a letter expressing your objections. See attached PDF for letter to Macy's parent company, Federated Department Stores.



**36. Patterson First to Ban House Parties That Serve Alcohol to Minors (New York)**

By Eric Gross *– Putnam County Courier*

08/18/2006

PATTERSON - The Town of Patterson has become the first municipality in the region to adopt a local law prohibiting house parties that serve alcohol to minors.

The board unanimously approved the resolution at its meeting last week. Officials said the law was prompted by a raucous party earlier this year where a deck collapsed under the weight of young people congregating on it. Police discovered that the young people attending the gathering had been served alcohol by the homeowner.

Councilwoman Ginny Nacerino introduced the local law following a presentation last month by Joe DeMarzo, Putnam Director of Mental Health Services, Alcohol, Substance Abuse and Youth Services, along with County Executive Robert Bondi's Chief of Staff Lisa Denig, who co-chair the county's Alcohol Abuse Task Force.

Nacerino said parents and guardians who host underage drinking parties in their homes were "breaking the law. These actions will no longer be tolerated. We must do everything in our power to protect and ensure our children's safety and welfare."

Sheriff Donald Smith concurred. "Parents or guardians who exercise irresponsible behavior by serving alcohol to teens must be held accountable," he said.

Supervisor Michael Griffin said while Patterson may be one of Putnam's smaller communities, "our board is sending a message loud and clear. This pro-active position by the unanimous support of the Host Liability Legislation Law should be approved by every municipality across our land. Children must be protected."

The law calls for stiff penalties for those who violate it. Parents and guardians who host underage drinking parties in their own homes would be charged with a Class A misdemeanor punishable by up to one year in jail plus fines of $3,000.

Reaction to the new legislation was all positive last weekend during a stop at the Patterson Post Office.

William Totten said the legislation was long overdue.

"Any parent who serves booze to kids at a party should not only be fined and sent to jail but he or she should be 'tarred and feathered.' What kind of a jerk gives kids alcohol at a party these days?"

Martha Schwartzman agreed. "Every piece of publicity out there urges teens to refrain from smoking and drinking. Parents must support these beliefs, not give kids an opportunity to act illegally while in the confines of a home environment," she said.

<http://www.zwire.com/site/news.cfm?newsid=17081819&BRD=1708&PAG=461&dept_id=72445&rfi=6>



**37. Report: Wyo has Alcohol Problem (Wyoming)**

By Noelle Straub - *Star-Tribune Washington Bureau*

August 18, 2006

WASHINGTON -- Wyoming has some of the highest rates of alcohol dependence or abuse in the nation, with south-central Wyoming ranking first among all areas of the country, a new federal report on substance abuse rates from 2002 to 2004 shows.

The report, which measured drug and alcohol abuse by geographic regions within states, showed that Albany and Carbon counties in south-central Wyoming had the highest rate in the country of past-year alcohol dependence or abuse, at 13.5 percent.

Of the 15 areas with the highest rates of past-year alcohol dependence or abuse, most were in seven states in the West and Midwest, including Wyoming and Montana.

Experts in substance abuse prevention and treatment in the two states attribute the problem largely to a widespread cultural acceptance of alcohol use, social norms and the early age at which many young people begin drinking or using drugs.

“We have very much of a belief you can drink and drive as long as you don’t hurt anybody, that open containers are OK,” said Laura Schmid-Pizzato, manager of recovery services at the Southwest Counseling Service in Sweetwater County. “We’ve got a very different belief about alcohol use in our state than in other states, and that tends to lead to higher rates of underage drinking.”

The same area of south-central Wyoming also had the nation’s highest rate of alcohol or illicit drug dependence or abuse, at 15 percent.

Nine of the 15 areas with the highest rates of use of an illicit drug other than marijuana in the past month were in six Western states, including Wyoming.  
  
Schmid-Pizzato said Wyoming has been ranked first in the nation in binge drinking for youth.

“The earlier you start using, the bigger chance you have of getting addicted later on,” she said. “Whenever you’ve got a high incidence of underage drinking, you’re going to have more incidence of alcohol dependence.”

Most research shows that if you can delay children from using tobacco, alcohol or methamphetamine by five years, addiction rates will drop dramatically, she added.

At her center, meth has become the No. 1 diagnosis, even though it is unusual for any drug to top alcohol. “I think once meth really gets a stronghold on your community it’s very hard to turn that around,” she said.

Nationally, the report showed 7.66 percent of Americans suffered alcohol dependence or abuse in the past year. In Wyoming that rate was 9.37 percent, with the south-central area at 13.54 percent. The second-highest region, consisting of Fremont, Sublette and Teton counties, had a rate of 9.89 percent.

Albany County includes the University of Wyoming, which is probably why that section of the state rated highest in the report, said Sharon Guerney, coordinator for the Wyoming First Lady’s Initiative to Reduce Childhood Drinking.

“My personal observation from working on this, is yes, there is a high concentration there, but the pervasiveness of the problem is statewide,” she said. “The university inherits students from all over the state, and they don’t start drinking at this level and this age… The university inherits this problem from communities all over the state.”

Guerney said she thinks the alcohol abuse rates stem from a “higher level of acceptance” of drinking in the state. She said a measurable number of 9- and 10-year-olds in the state are using alcohol on a regular basis.

She noted that first lady Nancy Freudenthal has been talking to parents and communities about the problems of childhood drinking through town hall meetings and other venues. Parents sometimes feel that since they too drank growing up it’s simply a rite of passage, but don’t know the new science on how alcohol affects adolescents’ brains, she said.

“When people do their community festivals, no one is saying they should be alcohol free,” Guerney said. “But have a beer tent that’s separate from the other family functions…. None of these things cost money, it’s just pay attention.”

As for drugs, the national estimate of Americans who used illicit drugs in the past month was 8.13 percent, or 3.64 percent when marijuana is excluded. In Wyoming an estimated 7.37 percent of the population had used illicit drugs in the past month, or 3.76 percent without marijuana. South-central Wyoming had a 9.38 rate of past-month illicit drug use and 4.69 percent without marijuana.

Some experts in the field said the report might not have surveyed enough Wyoming residents, but all agreed that the state ranks high in substance abuse in other surveys as well.

**Improvement?**  
  
The report shows that almost all Rocky Mountain states have a “pretty serious” problem with alcohol, noted Janet Jares, prevention program manager for the Substance Abuse Division of the Wyoming Department of Health.

But Jares said that several other surveys the state uses show that the trends have improved since the mid-1990s in Wyoming. For instance, 45.4 percent of surveyed Wyoming high school students in 2005 reported using alcohol in the past month, down from a high of 55 percent in 1997.

In 2005, 17.8 percent of the students reported using marijuana in the past month, down from 23.4 percent in 1997. Also in 2005, 8.5 percent reported using meth in the past month, down from 12.6 percent in 1999.

Among Wyoming adults, 14.4 percent reported past-month binge drinking, or having five or more drinks on one occasion, in 2005, down from 18.1 percent in 2002.

Jares noted that the state alcohol tax is “just pennies on the gallon,” and that price matters with alcohol. She also said the state has been slow to implement broad-based policies, although the Legislature has recently “stepped up to the plate” by passing keg laws and lowering the blood-alcohol content level to .08.

Alcohol abuse rates have gotten “just a little bit better in the last four years” thanks to recent action around the issue, she said. The Department of Health soon will begin a new project addressing substance abuse issues on a county-by-county level throughout the state, she added.

Nationally 7.27 percent of people needed but did not receive treatment for alcohol use in the past year. In Wyoming the rate was 9.16 percent, with a high of 13.73 in the south-central area.

The report presents estimates of the prevalence of substance use or mental health problems in sub-state areas during 2002-04 based on the National Survey on Drug Use and Health, an annual survey of the civilian, non-institutionalized population aged 12 or older. It was released by the Substance Abuse and Mental Health Services Administration, which is part of the Health and Human Services Department.

The survey collected information from about 204,000 respondents. In Wyoming the sample size was 2,649 people.

<http://www.casperstartribune.net/articles/2006/08/18/news/wyoming/162233fa1e52ce8b872571cd0081abf9.txt>



**38. Alcohol-Sensing Flashlights are New Weapon in DWI War (Illinois)**

By Leah Thorsen *– St. Louis Post-Dispatch*

August 17, 2006

COLLINSVILLE, IL -- Police throughout Illinois will use new flashlights equipped with alcohol sensors to look for drunk drivers in upcoming weeks as part of a sweeping safety campaign, authorities said Thursday.

The flashlights are part of a statewide 17-day effort, today through Sept. 4, to stop drunken driving.

"This is the largest crackdown we've ever had in the state of Illinois over Labor Day weekend," said Eugene Brenning, a state Department of Transportation spokesman.

He and local police announced the safety campaign at a news conference Thursday at Cahokia Mounds State Historic Site.

Police will work 2,500 hours of overtime during the campaign. Statewide, 244 roadside safety checkpoints are planned, compared with 150 during the same holiday period last year. The locations of the checkpoints were not revealed.

Authorities also plan 1,400 saturation patrols, with officers who look only for drunk drivers on their patrol shifts. That's up from 300 such patrols last year, Brenning said.

These efforts are funded by $1.7 million in federal funds, which are used to pay officers and for education efforts.

Officers will use 100 flashlights, which cost $750 each and are owned by the state transportation department, in their efforts to catch drunken drivers.

The tools look and work like regular black flashlights that police carry on their duty belts.

The flashlights have sensors that give a reading of how much alcohol is detected on a person's breath when the person under scrutiny is less than a foot away, said Illinois State Police Lt. Jerry Culp.

A green light means it detects a slight amount of alcohol, and red signals a powerful odor.

The flashlights don't give a blood-alcohol reading and results are not admissible in court, Culp said. The readings only help officers determine whether to ask a person to perform field-sobriety tests.

State police don't know how many of the flashlights will be used in the Metro East area.

<http://www.stltoday.com/stltoday/news/stories.nsf/metroeast/story/DFB83AE580B3377F862571CE001F397D?OpenDocument>



**39. 3rd Circuit Rules PA. Statute Prohibiting "Lewd" Conduct at Liquor-Licensed Establishments Unconstitutional (Pennsylvania)**   
By: Q. Boyer *(Courtesy of* [*YNOT.com*](http://www.ynot.com)*) Business Review*  
August 17, 2006

**Philadelphia, PA –** Philadelphia topless bar Club Risque and two of its dancers have achieved at least a partial victory in their challenge of a Pennsylvania statute prohibiting “lewd, immoral or improper entertainment” at liquor-licensed establishments in the state.

In a ruling filed August 15th, a panel of judges from the U.S. Court of Appeals for the Third Circuit unanimously ruled that the language of the statute was overbroad and that “possibility of expanded enforcement creates a chilling effect.”

The case, Conchatta Inc v Miller, was originally filed in 2001, when the plaintiffs filed suit against the Commissioner of the Pennsylvania State Police seeking preliminary and permanent injunctive and declaratory relief, as to enforcement of a Pennsylvania statute that prohibits unspecified “lewd” acts in establishments that are licensed by the State’s Liquor Board to serve alcohol.

Under the challenged portion of the statute, it is unlawful “for any licensee, under any circumstances, to permit in any licensed premises or in any place operated in connection therewith any lewd, immoral or improper entertainment.”

Club Risque and its two employees also sought relief with respect to one of the statute’s implementing regulations, which states in part “A licensee may not permit an employee… or a person engaged directly or indirectly as an entertainer in the licensed establishment or a room or place connected therewith, to be in contact or associate with the patrons in the establishment, room or place for a lewd, immoral, improper or unlawful purpose.”

Writing for the unanimous panel, Judge Julio M. Fuentes wrote that the statute and supporting regulation in question “are facially invalid because they are substantially overbroad, punishing a significant amount of protected speech in relation to their legitimate scope.”

The Court noted that, under the language of the statute, the law could be applied to a wide range of establishments that serve alcohol, including “plays, musicals, concerts, political satires, comedies, ballets, dramas, singing performances, dancing performances, poetry readings, and art shows throughout Pennsylvania.”

Chief Deputy Attorney General John O.J. Shellenberger had argued on behalf of the State that the Liquor Board had no intention of enforcing the statute against “legitimate” performances like plays and concerts, but the Court appeared to take little comfort in such assurances.  
  
As Fuentes wrote for the court, “the mere fact that an agency does not currently intend to apply a statute in an unconstitutional manner cannot have the effect of an explicit limiting construction.”

“In short,” added Fuentes, “the current enforcement intentions of the Liquor Board are of no relevance to our analysis of the scope of the Challenged Provisions.”

Fuentes also wrote that the Court shared the plaintiffs’ concern over the extremely vague language of the statute.

“As for what expression falls within the prohibition on ‘lewd entertainment,’ we, like the plaintiffs, find this to be a difficult question to answer,” Fuentes wrote for the panel.

Fuentes noted that Pennsylvania courts have indeed construed “lewd entertainment” to include “fully exposed breasts, genital exposure, or genital touching,” but added that “the statutory definition has not been limited to include only entertainment with those characteristics, and this exacerbates the chilling effect on a wide range of First Amendment protected expression when the Challenged Provisions are applied to artistic, theatrical, and other non-adult entertainment venues.”

Fuentes contended that the panel didn’t need to predict how “how expansively Pennsylvania courts might construe the prohibition,” because “in light of the broad array of forms of entertainment to which the prohibition is applicable, that even assuming the Challenged Provisions proscribe no more than entertainment involving nudity or genital touching, those Provisions are unconstitutionally overbroad.”

The state, as is often the case in such litigation, argued that the law was enacted and enforced in order to limit alleged “negative secondary effects” that stem from the combination of serving alcohol and providing “lewd” entertainment.

The Court accepted the State’s assertion that statute was “content neutral,” and therefore applied the “intermediate scrutiny standard” laid down by the US Supreme Court in United States v. O’Brien.

As Fuentes noted in the panel’s decision, under the so-called “O’Brien test,” a regulation that restricts expression is constitutional only if it:  
  
1) is within the constitutional power of the Government;

2) furthers an important or substantial governmental interest;

3) the governmental interest is unrelated to the suppression of free expression;

- and

(4) the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

The panel concluded that the challenged provisions of the Pennsylvania statute are “substantially overbroad under the fourth O’Brien requirement because the asserted government interest is not applicable to a large number of affected establishments,” Fuentes wrote.

The panel’s decision does not shut the door on Pennsylvania’s ability to regulate strip clubs under Liquor Board regulations, as Fuentes made clear in the decision.

“With respect to nude or topless dancing at clubs or bars, an interest in limiting harmful secondary effects may justify the Challenged Provisions,” Fuentes wrote. “With respect to ordinary theater and ballet performances, concerts, and other similar forms of entertainment, however, the Commissioner provides no evidence that the Challenged Provisions prevent harmful secondary effects, and we are exceedingly doubtful that they do.”

Lacking evidence to support the secondary effects argument with respect to such “legitimate” types of performances, “there is no state interest to justify a substantial fraction of the Challenged Provisions’ scope,” wrote Fuentes.

Fuentes also dropped what could be interpreted as a heavy hint to Pennsylvania’s state legislators, writing that the statute’s “language clearly could have been drafted more narrowly to specifically target secondary effects associated with nude or topless dancing.”

With the District Court’s denial in part of Conchatta’s motion for summary judgment now reversed, the case will now continue with, to use Fuentes’ words, “further proceedings consistent with this opinion.”



**40. Bill Allowing Liquor Distillers to Sell to Retail Stores Gets Veto (New York)**

*The Business Review*

August 18, 2006

Albany, NY -- Fear of inviting litigation from out-of-state companies has caused New York Gov. George Pataki to veto a bill that would have given small distillers of liquor the same ability to sell their product at retail as farm wineries have.

Current law allows distillers to produce up to 35,000 gallons of specialty liquors a year, but they are limited to selling that product to wholesalers because they cannot sell to retailers for off-premises consumption.

The legislation would have ended that prohibition and allowed the small distillers to sell their product at retail. It would also have allowed the liquor products to accept orders by mail or over the Internet for shipment to New York customers.

Pataki said the bill, if it had become law, would have invited litigation from out-of-state distillers seeking the same ability to ship their products to New York consumers. A similar legal fight ultimately resulted in out-of-state wineries being able to ship their product directly to New York consumers, but only from states which allow New York wines to be imported to their citizens.

<http://albany.bizjournals.com/albany/stories/2006/08/14/daily46.html>

