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## *Federal Report Raising Industry Concerns*

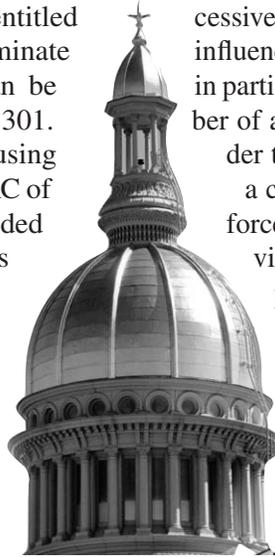
by Jeffrey A. Warsh, Legislative Agent

On May 14, 2013, the National Transportation Safety Board (NTSB) adopted a formal report entitled “Safety Report/Reaching Zero: Actions to Eliminate Alcohol Impaired Driving.” The full report can be found at [www.nts.gov/doclib/reports/2013/SR1301.pdf](http://www.nts.gov/doclib/reports/2013/SR1301.pdf). While the media ran with the headlines focusing on the NTSB’s recommendation of a national BAC of .05% - down from .08% - the NTSB Report included a much more extensive list of recommendations than solely increased restrictions on BAC.

First – a word about the NTSB. The NTSB is an independent federal agency dedicated to promoting aviation, railroad, highway, marine, pipeline, and hazardous materials safety. Established in 1967, the agency is mandated by Congress through the Independent Safety Board Act of 1974 to investigate transportation accidents, determine the probable causes of the accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The NTSB makes public its actions and decisions through accident reports, safety studies, special investigation reports, safety recommendations, and statistical reviews.

It is important to note that NTSB is NOT a federal rule making or enforcement agency.

In short, the NTSB’s May 14 Report recommended the following steps it believes would help state and federal officials reduce the number of fatalities. These include: lowering the blood alcohol content (BAC) threshold for driving under the influence (DUI) to .05 from the current .08; dramatically increasing high-visibility enforcement of impaired driving laws with checkpoints and roadblocks; expanding use of both in-vehicle devices (ignition interlocks) and passive devices used by officers to assess driver impairment without a field sobriety test; expanding the use of specific courts for repeat DUI offenders; and, implementing measurable goals to track progress nationwide.



For decades studies have shown that the habitual excessive drinker presents the most serious driving under the influence danger. The nation in general - and New Jersey in particular - have made great strides in reducing the number of accidents and fatalities associated with driving under the influence. This has been accomplished through a combination of public education, more effective enforcement and technologies like ignition interlock devices. New Jersey’s hospitality sector has been supportive of these increased diligence measures.

However, the adoption of .05% BAC would create a radical standard that arguably violates the central tenet of the American system of justice: that knowledge of wrongdoing is a condition precedent to culpability and to an eventual finding of guilt in a court of law. This would not be a case of the classic “ignorance of the law is no excuse.” Full knowledge of the driving under the influence laws and a full and complete self-, spousal or friend inspection of the would-be driver will still, in most cases, not provide sufficient guidance to avoid an arrest and prosecution at the .05% BAC level. The typical, responsible person who’s BAC is .05% will not feel drunk or even tipsy. This same typical, responsible person leaving a house party, having satisfied himself or herself that he or she is sober and can safely drive, may very well nonetheless, if stopped at a BAC checkpoint (the NTSB Report also calls for more robust enforcement), blow a .05% BAC if they have had a few drinks over the last 4-5 hours. It is this very real scenario that strongly argues against the adoption of the .05% BAC. The focus of New Jersey’s actions to eliminate alcohol-impaired driving should be further steps to get the habitual drunk driver off the road and increased enforcement of existing driving under the influence laws.

Members of the hospitality industry - New Jersey’s largest employers - are urged to contact their Federal and State legislators to voice their concerns about the NTSB’s .05% BAC recommendation.

# Operation Swill

by Jose Rodriguez, Esquire

Recently the Division of Alcoholic Beverage Control (ABC) announced it had conducted an operation directed at licensees who had actually done what most tavern owners consider unthinkable. They had purposely served their patrons a drink of lesser quality. The alleged offenses range from serving patrons an inferior brand of whiskey, vodka or scotch to flat out watering down the good stuff to make more of a profit. The unfortunates were all named in a tidy list in the newspapers and there was a press conference announcing to the public that perpetrators had been identified and would be properly dealt with.

The enforcement action, given the name “operation swill” caused a cautionary ripple in the industry. Many shouted indignant remarks against the perpetrators. Others whispered in shadows with worried looks on their faces. Yet others startled nervously with each knock at the door. The majority, however, ponder what type of greed would cause a tavern owner to “cut” his liquor with water or rubbing alcohol.

Early on in my legal training I was taught that there are degrees of stupidity. You have the fool, the damned fool and the God Damned Fool. I would suggest that we are dealing with the latter in this case. I don’t think anybody in their right mind would water down their whisky to make a few extra bucks. However, the problem is that what I may consider foolish, others may consider slick, stealthy, sly business practices. The nature of the offenses range from well thought out deliberate attempts to cheat customers; to mind-boggling stupidity, by even more stupid, crooked employees. In the end, the Division may want to rename this to “Operation We Can’t Make This Stuff Up”.

The license holders have been instructed to provide certain documents to the ABC on or before a date certain (in this case June 19, 2013). Some of the license holders may be required to answer questions on that date. I would also assume that depositions are planned somewhere down the line. Documents required are invoices and sales receipts and employee records. High end bottles like Kettle One, Grey Goose, and Johnny Walker Black and Blue were seized from all the businesses, and some of that product has already undergone laboratory tests for “proof” or alcohol content. Word on the street is that the test results substantiate the ABC’s concerns. From the outside looking in, it looks like the perfect case... But there are some obstacles for the ABC to overcome.

First, there were only a limited number of bottles seized from each business. Those bottles by themselves may establish a tainted product. But one bottle does not establish a history of watering down the booze. Second, the bottles that were seized may be subject to “chain of custody” scrutiny where one sloppy break in the chain of possession of those

bottles may render the evidence itself tainted and prove disastrous to the case. Third, if there are witnesses against the licensee their credibility must also hold up to scrutiny. For example, is the witness providing the testimony a disgruntled employee who got fired for stealing? Fourth, were the bottles properly sealed by the investigating officers (all the seized bottles were open stock) using the prescribed procedures to be utilized by law enforcement agencies? These are the basic pitfalls for the ABC in this case.... There are others.

Those lawyers who have been retained to represent these “perpetrators” have a very hard row to hoe. Besides the embarrassment suffered by the clients, there is also the negative impact these allegations can have on the business. At this point the ABC holds all the cards because it is still collecting information. It remains to be seen just how damaging or how weak their case against each licensee may be. However, we do know that in this business there are some things you just don’t do... You don’t tug on Superman’s cape, you don’t spit into the wind, you don’t pull the mask off the old Lone Ranger and you don’t water down your Gin.

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Liquor license transactions are not recorded by the state of New Jersey or otherwise tracked. Unlike real estate transactions, the value of liquor license transactions is only known to the participants involved in the restaurant transaction. Our firm has developed a data base over a 20 year period to track trends and liquor license values.

Our firm prepares liquor license appraisals in all 50 States for a variety of clients including; Restaurant Chains, Trustees, Banks, Estates, and Individual Independent Restaurant Owners. Our appraisals are used for valuations by CFO's, Courts, Executors of Estates, Attorneys, and Asset Managers to name a few examples.

Liquor license values are dynamic in New Jersey.

The value of a license is basically worth to what the seller and

buyer is willing to agree. Our data base is full of information which identifies comparable sales in similar towns, current research relative to demographic data and trends, economic indicators, and other critical data points which have both positive and negative impacts on liquor license values. All of this aggregated data is essential to accurately establishing liquor license values.

A completed appraisal includes a signed liquor license value letter and an appraisal document which explains all of the data and variables used to determine the value.

Visit our website at: [www.USA-Liquor-License-Appraisals.com](http://www.USA-Liquor-License-Appraisals.com)

If you are in the market to purchase a New Jersey, visit our liquor license brokerage website at: [www.newjerseyliquorlicensesareus.com](http://www.newjerseyliquorlicensesareus.com)

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## Jerry Fischer, former Director of the New Jersey Division of Alcoholic Beverage Control, has joined Post, Polak, Goodsell, MacNeill & Strauchler, P.A. as Of Counsel

Jerry Fischer, the former Director of the New Jersey Division of Alcoholic Beverage Control, has joined the law firm of Post, Polak, Goodsell, MacNeill & Strauchler, P.A. as Of Counsel. Mr. Fischer has had a distinguished 37 year career with the Office of the New Jersey Attorney General, serving for 12 years as the Director of the Division of Alcoholic Beverage Control. Mr. Fischer has been the longest serving Director in the history of the State.

Prior to assuming the role of Director, Mr. Fischer served as Senior Associate Counsel to Governor Whitman, Section Chief of the Claims Litigation Section, Senior Deputy Attorney General in Charge of Litigation, and Assistant Deputy Director in Charge of Litigation.

Over the course of his career, Mr. Fischer has developed extensive expertise in several practice areas, including the New Jersey Tort Claims Act, eminent domain and inverse condemnation, civil rights, employment law, alcoholic beverage law and administrative and appellate practice.

Mr. Fischer has served as lead or "of counsel" with regard to more than 20 published decisions. He has served on a

number of New Jersey Supreme Court committees and has also been a lecturer for local and State bar associations, the New Jersey Institute for Continuing Legal Education and the New Jersey Attorney General's Advocacy Institute.

Mr. Fischer also spent the first year of his professional career as a law clerk for the Honorable John W. Fritz, Jr. in the Appellate Division of the New Jersey Superior Court. Before becoming a lawyer, Mr. Fischer was a nuclear chemist. Mr. Fischer can be reached at 973-228-9900.

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## WHAT'S YOUR PRICING POLICY

What is your reason to reduce prices?

1. Compete with competition
2. Attract new business
3. Create a value image
4. Customer satisfaction

Having low prices to beat the competition sounds good, but rarely accomplishes that goal, and may eventually put you out of business. Most businesses cannot afford having a low pricing policy. Pricing & profits go hand in hand; *you simply cannot have low prices and expect to make a reasonable profit.*

### WHAT IS RIGHT FOR YOU?

Pricing policies cannot be the same for everyone; it is not a one size fits all. Pricing depends on many factors, such as type of business, your debt service, costs of operation, drink sizes & ounces poured. If you have no mortgage, or a low rent, and not paying off loans, you may be in a better position to offer a lower price than someone else may have. Have you ever wondered how the chains charge more, and still do very large volume of business?

If you are thinking about, or currently have, a low pricing policy, you need to ask yourself if it is working, and meeting your expectations. What have you gained from it?

As the owner, you need to avoid the pressure of bartenders and customers requesting lower prices. They have a vested interest for you lower pricing. Most customers will respect and patronize fair pricing policies.

### LOW PRICES v PRICE SPECIALS

There is a huge difference between having low prices, and having low priced specials. Using specials during Happy Hour and sporting events are very effective marketing tools and rarely affect the bottom line adversely. This is because specials are generally time limited to off peak day hours, or to an event. Specials should be watched closely, and if they begin to exceed 15% of your business, then you have crossed the line from your having specials, to your having low prices.

Based on hours of operation, specials are done 8% -10% of your hours of operation. Even if the specials are at extreme discounts, they generally will not negatively affect your profit structure, because they are not in effect long enough to have a severe impact. However, if they represent too much of the gross, then they need to be altered so the image remains, but the profits are not negatively impacted.

**Business is about survival.** It is also about image & perception. Are you a sports bar, a neighborhood saloon, a nightclub? Are you a restaurant that serves liquor, or a bar that serves food? Do you pour heavy? Do you serve a lot of take out? Are you a shot & beer or martini bar? All these factors need to be considered, and will have a bearing on the prices you can reasonably charge. There are reasons why each type of operation needs to work on a different percentage. Depending on your type of operation, a "Pouring Cost" could range from 15% to 25%. Anything over 25% may indicate you are working with a very thin profit margin.

### IMPORTANCE OF TAKING LIQUOR AUDITS

Your accountant tells you if you are making a profit. It is *not* the accountant's job, nor can the accountant tell you if you have shrinkage, or what the *perfect* scenario should be. Does your accountant tell you what the pour costs are on a monthly, quarterly, or semi annually basis? Are you aware that a 2% difference from the ideal could mean a 10% shortage at the register? (Every percentage point off is about 5% shrinkage)

You may be aware of your current pouring cost. ***Do you know what the ideal should be? Keep in mind: the POS / register system only reflects what is entered into it. On the other hand, the physical inventory & report gives you the accurate accounting of what should have been collected.*** You need to protect yourself by using spotters and be aware by doing weekly audits for financial reasons. Without knowing the perfect scenario, you will then have a point of measurement, and be aware if there is shrinkage.

Count On Us meets a different need than your accountant. Our service deals with employee integrity, measures profits on a weekly basis, and analyze your ever-changing profit structure. When vendors raise their price, they lower your profits. You need to know whether profits are shrinking due to theft and/or price increases.

As a business owner, you need to be proactive. You cannot afford to wait six months to a year or more without adjusting prices at the bar. Count On Us offers a Liquor Inventory, Spotter Service, and a Complete Price Evaluation.

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## Wellhofer/Wilinski 2013 Scholarship Winners are.....

Congratulations to Amelia Edwards and Jodi DiSilvestro who are the 2013 recipients of the Wellhofer/Wilinski Scholarship Award. Both of these young women had the highest level of academic achievement and are well deserving of this year's scholarship. Ms. Edwards grandfather Robert Edwards is the owner of Gyp's Tavern located in Sandyston, NJ and Ms. DiSilvestro's father Joe DiSilvestro is the owner of Woodbridge Bowling Center in Woodbridge, NJ. Both winner's families have been long standing members in the New Jersey Licensed Beverage Association.

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# The NJLBA Is Working With The Hero Campaign For Summer 2013

The NJLBA is working with William Elliott, Chairman of the HERO Campaign, to encourage all licensees in the State to promote the use of a designated driver. This is a special program designed specifically for New Jersey Bars, Taverns and Restaurants. All you need to do to participate in this FREE program is register, display the HERO poster and decals and provide complimentary soft drinks or coffee to designated drivers. **We encourage all of our members to sign-up and promote the HERO Campaign.**

Below is a message from William Elliott:

Greetings,

**We invite you to join an exciting, life-saving campaign this summer that also will benefit you and your establishment at little or no cost.** From June through Labor Day, the Jersey Shore HEROES Campaign will promote the use of safe and sober designated drivers from Sandy Hook to Cape May and beyond.

**You will join the more than 175 bars, taverns and restaurants who are already supporting the program by displaying Jersey Shore HEROES posters and decals, and serving free soft drinks to safe and sober designated drivers.** The program is part of the John R. Elliott HERO Campaign for Designated Drivers®, which was born in New Jersey in memory of Navy Ensign John Elliott. Ensign Elliott, whose family lives in Atlantic County, was killed by a drunken driver in July, 2000, two months after graduating from the United States Naval Academy in Annapolis, MD.

At the Naval Academy, John was named the Outstanding HERO of his graduating class. Now you can be a HERO by joining our campaign, one of the fastest growing and popular drunk driving prevention programs in the nation. **Your establishment will be promoted through the news media and on the HERO Campaign's website.**

**Registration is easy!**

**Simply visit [www.JerseyShoreHEROES.org](http://www.JerseyShoreHEROES.org).** It's time we put a positive spotlight on the Jersey Shore. Help us attract national attention by promoting and registering designated drivers and make the Jersey Shore a model for safe and responsible summer fun. If you have any questions, call us toll free at 1-866-700-4376 or [info@herocampaign.org](mailto:info@herocampaign.org).

**Catch the wave, join the HERO Campaign, and become a Jersey Shore HERO this summer!**

Sincerely,



William Elliott, Chairman  
The Ensign John R. Elliott  
HERO Campaign for Designated Drivers



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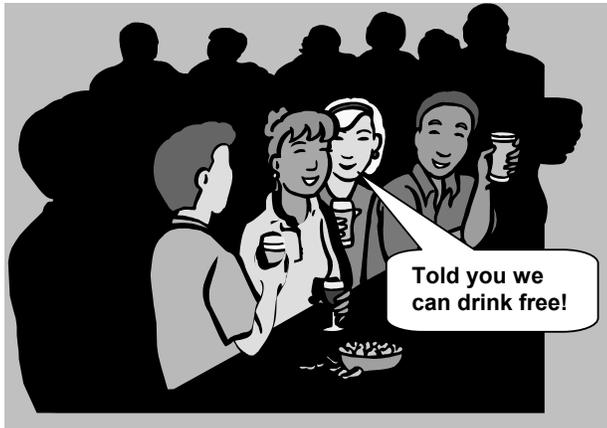
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## LOOKING AHEAD TO UPCOMING EVENTS

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2-7 pm Oak Tree Lodge, Wall Township
- October 3, 2013** NJLBA Cape May County Golf Tournament  
Shore Gate Golf Club  
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- November 19-20  
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