

- **Legal Corner**  
Scott Silver, Esquire
- **Legislative Report**
- **Behind the Bar**

## ABL's HARRY WILES TO BE INDUCTED INTO SKY RANCH HALL OF FAME

Harry Wiles, Executive Director of the American Beverage Licensees (ABL), will be inducted into the Sky Ranch Hall of Fame on June 6, 2010. Wiles, along with other members of the 2010 Sky Ranch Hall of Fame class, will be honored at the 50th Anniversary Celebration of Sky Ranch for Boys, which has been helping troubled kids from all parts of America since 1960. Members of the alcohol beverage industry have been partners with the project since the start, supporting Sky Ranch's three thousand acre working ranch in South Dakota.

"I'm humbled and honored to be recognized by Sky Ranch," said Wiles. "The work that Sky Ranch does with so many kids is commendable and I am proud to be associated with its mission."

Wiles' is a long-time member of the beverage alcohol industry. Since 2002, he has led American Beverage Licensees (ABL), "America's Beer, Wine and Spirits Retailers". Wiles was selected to head the national trade association and its nearly 20,000 members following its inception after the merger of the National Association of Beverage Retailers and the National Licensed Beverage Association in that same month.

Prior to joining ABL, Wiles was the Senior Vice President for Federal Government Relations, and later Senior Counsel for the Wine and Spirits Wholesalers Association of America (WSWA) from 1987-2000. During that time he expanded WSWA's government relations and grassroots efforts in Washington.

Wiles came to Washington in 1976 to serve as a Legislative Director for a member of the House of Representatives and went to become Majority Counsel to the Senate Judiciary Committee. He is a lifelong advocate of western heritage and actively participates in several organizations that promote the ranching way of life.

For more information about Sky Ranch, visit [www.skyranchfoundation.org](http://www.skyranchfoundation.org).

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## TAM TRAINING

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By TAM training your employees, you may save your employees and your establishment from a costly civil lawsuit or a citation for a violation of ABC regulations. Some insurance companies offer discounts to businesses that have TAM trained employees.

To hold a seminar in your place of business, you need an area that allows for no distractions, classroom seating and on-time attendance. Successful completion of the course results in the issuance of a certification card, which is good for three (3) years.

To schedule a TAM seminar in your establishment or to find out when the next seminar will be held in your area, call TAM coordinator Judy at 609.394.6730.

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*continued on page 4*

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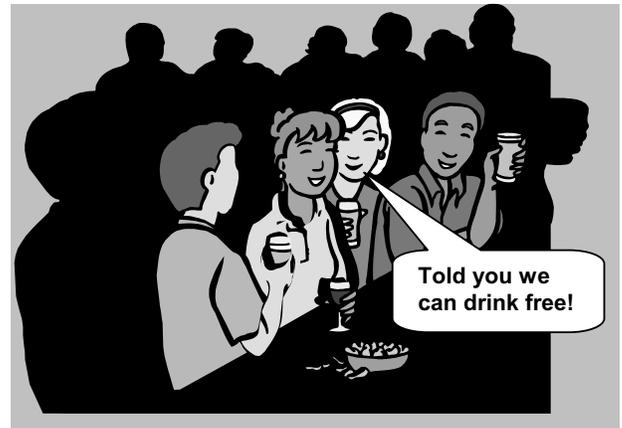
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**Editor: Lewis B. Rothbart**  
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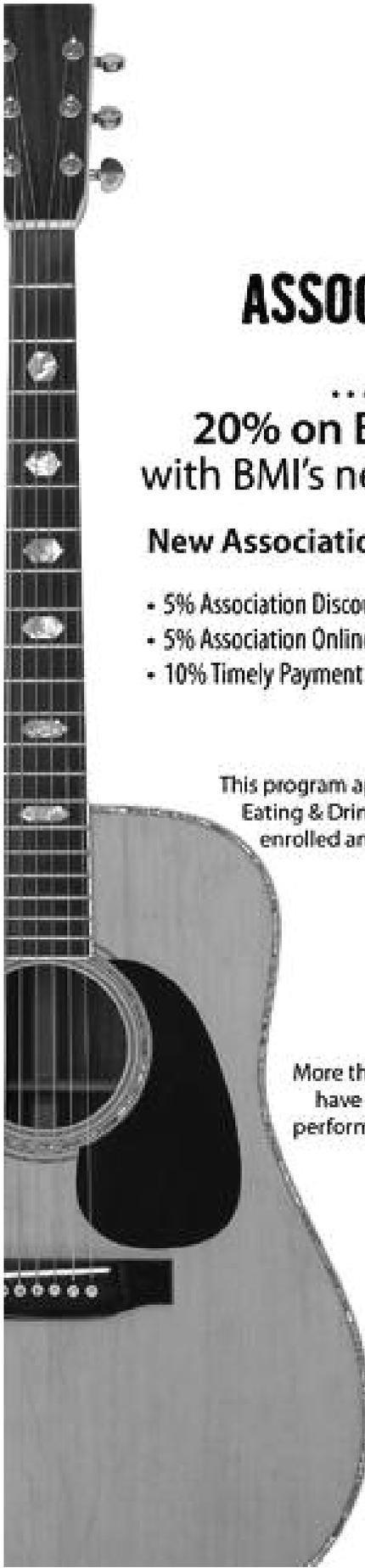
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# WORKERS' COMP

Have you heard about the new payment method many bars and restaurants are using to pay their Workers' Compensation premium? The Pay As You Go payment plan allows business owners to pay their premium based on actual payrolls instead of estimated payrolls. This flexibility allows for seasonal increases and decreases in business and accommodates cash flow variances.

As most business owners know, traditionally, Workers' Compensation insurance premium is based upon an estimated amount of payroll for that policy year. Most insurance companies require a 15-25% down payment with monthly installments spread out over the next 3 to 10 months. With the Pay-As-You-Go Program, your Workers' Compensation premium is calculated and based upon the **actual** payroll experienced each pay cycle (weekly, bi-weekly, monthly). For participating in this payment program, our insurance companies offer down payments ranging from 0% to 9%. This payment plan has also been useful in eliminating large year-end audit bills because of underestimated payroll.

Normally, this payment plan is only offered to insured that pay high payroll fees with one of the big three payroll companies who can only offer limited insurance company options. Risk Partners, a managing general underwriter providing both insured and agents access to a national workers comp underwriting facility, has multiple A rated carriers offering up to 20% credits in New Jersey to both reduce your overall insurance cost while providing this flexible and convenience payment option. Imagine keeping your current payroll company, and still being able to enjoy this payment option.

For more information on this program, please call Nick Gligor at Risk Partners, 609.498.6046 or [ngligor@riskpartnersinc.com](mailto:ngligor@riskpartnersinc.com), and make sure you mention the New Jersey Bar and Liquor Association to take advantage of this discount and payment plan for your Workers' Compensation Insurance.

## First Data

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## NEW NJLBA OFFICERS



*Mike Marsh, Treasurer, Ken McCormick, Secretary, Fred Barnes, President, Bonnie Petrock, Vice President, Sherwood Brown, Sergeant-At-Arms.*

At the 77th annual Convention held at Resorts International in Atlantic City, Fred Barnes, owner of Dingo's Den and Dingbatz in Clifton was unanimously elected to the office of President of the Association for the 2009-2010 term. Fred has previously served as Vice President and Secretary of the NJLBA. Fred was a former Passaic County Director and a former Regional Director. Fred was very active in the Clifton Chapter. Fred had also served as Convention Chairman.

Bonnie Petrock, owner of Petrock's in Hillsborough, was elected to the position of Vice President. Bonnie has served in the position of Association Treasurer and Secretary. She represented Somerset County as Director for many years. Bonnie also sits on the ABC Advisory Committee and Wellhofer/Wilinski Scholarship Committee.

Elected to the office of Secretary was Ken McCormick of the Hotel Somerset in Somerville. Ken has been a long-time member and has served as Somerset County Director and as Chairman of the Constitution Committee and the Strategic Planning Committee. Ken's father served as President of the NJLBA in 1955-1956.

Mike Marsh has held every office in the Association except for President. Fortunately for the Association, Mike was elected to a second term as Treasurer. Mike is owner of Trio Tavern in Williamstown. Mike is very "hands on" with the collection of moneys due to the Association and oversees the payment of the Associations obligations. Mike has served as Membership Chairman and continually stresses the importance of a strong grassroots organization.

Sherwood Brown of the Trenton Bistro on Olden was elected Sergeant-At-Arms. Sherwood has been an active member of the NJLBA for over ten years and has served as Mercer County Director. Sherwood brings to the table the experience and problems confronting the intercity businessman.

Mel Gitler of Herbert's Billiards in Secaucus will serve as immediate Past President. Mel is finishing the second year of serving as Vice President of the American Beverage Licensees, the national association.

The governing body of the NJLBA is the Executive Committee made up of the officers elected by the membership and by County Directors elected independently by each county. Monthly meetings are held on the second Wednesday of each month. Members are encouraged to attend the meeting and voice their opinions. Volunteers to serve as County Directors are needed in the following counties: Atlantic, Bergen, Cumberland, Hudson, Mercer, Sussex, Union and Warren. If you are interested in formulating policy and finding solutions to the issues facing the industry, please call the office. 1.800.LBA.0076.

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## THE BASIC CONSIDERATION IN DEVELOPING A BAR SECURITY PLAN

Regardless of the nature of a bar's security plan, an incident will undoubtedly occur which will challenge that security plan. We are a litigious society – virtually anyone can sue virtually anyone else for virtually any reason. And while a proprietor is not required to guarantee the absolute safety of patrons, he must be able to demonstrate that his security measures were reasonable, adequate and sufficient in relation to foreseeable risks. In reality, a proprietor can't do anything to guarantee that he won't be sued; but there is much he can do to significantly reduce the chances of a legal challenge being successful. So a security plan is essential (a) to provide the framework by which an establishment protects itself and its patrons from inappropriate behaviors and criminal acts, which then leads to a sound business; and (b) to protect the proprietor from legal claims alleging that security was not adequate or sufficient.

Each establishment's security plan will be different, and should be based on an assessment process which has been generally recognized by court decisions from across the country. That process includes a review of the inherent nature of the establish-

ment; a review of past incidents at the establishment; a review of past incidents in the geographic area immediately surrounding the establishment; and any relevant industry standards. The results of the assessment can then be used to implement a security program commensurate with the threats and risks that the specific establishment can reasonably be expected to encounter.

In the licensed beverage industry, there are really no security *standards* ("standards" defined as measures which are universally accepted, practiced and promulgated). This is because each establishment has its own unique set of circumstances which must be taken into account when developing its own security program – there is no "one-size-fits-all," "everyone-does-it-like-this" kind of security plan. So rather than relying on fixed "standards," a bar security plan must be developed using an assortment of guidelines and best practices from a wide variety of sources to best meet its own particular needs.

This process assures that a sound method has been used to develop the security plan, showing a conscious effort to develop

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# IGNORING SEXUAL HARASSMENT IS EXPENSIVE: 5 Tips to Prevent Lawsuits

by Judith Lindenberg

In the 1980s, after a \$1 million dollar sexual harassment lawsuit against the government, I developed and conducted the first-ever training for federal employees. Fast forward thirty years and the workplace is still rampant with sexual harassment claims and lawsuits.

In 2006, the largest sexual harassment lawsuit ever, at \$1 billion dollars, was filed. The complaint cites lewd behavior and reduced opportunities for women who returned to the job after maternity leave.

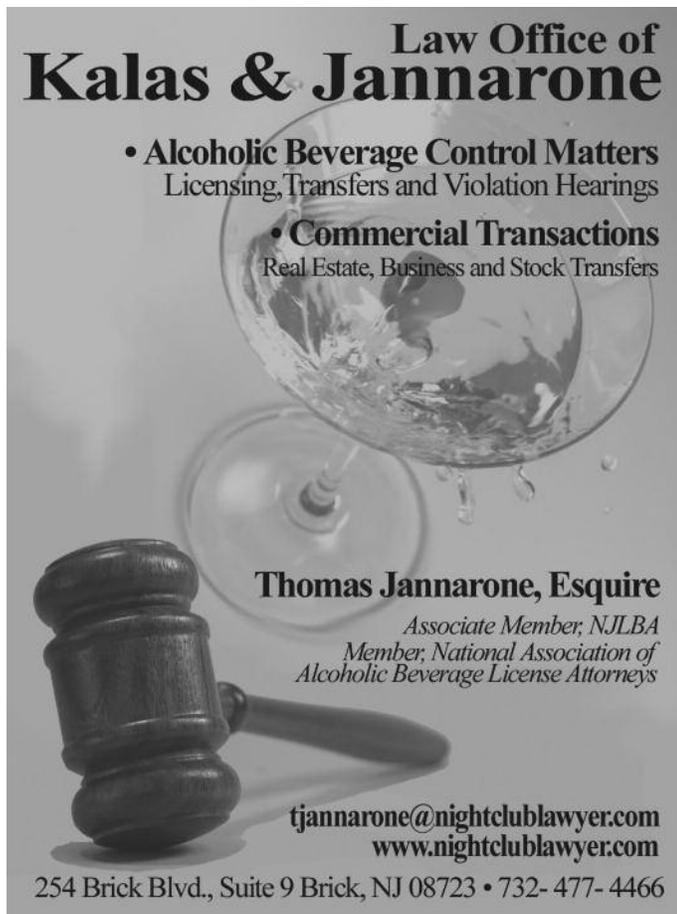
Sexual harassment in the workplace presents an ongoing and growing risk. From a purely business prospective, your establishment stands to gain if it acts proactively. Not only is it the right thing to do, it is the smart thing to do. Here are five tips:

1. **Act before a problem occurs.** Failure to adopt a proactive and aggressive stance can result in costly lawsuits (averaging \$250,000 not including legal fees), as well as loss of employee morale, decline in productivity, and erosion of a business's public image. It is less expensive to act now than to be involved in one lawsuit.
2. **Implement policies.** Include sexual harassment, discrimination and dress code policies in your employee manual.

3. **Educate employees.** The Supreme Court made it clear that training may protect your business in a lawsuit. Educate employees about company policies and provide clear examples of inappropriate behavior.
4. **Make it safe to voice complaints.** Implement a reporting system and make employees aware of it. The law prohibits employers from retaliating against an individual for filing or supporting charges of discrimination. Train leaders how to listen and respond appropriately to complaints.
5. **Hold leaders accountable to model your company values.** When leaders fail to live up to company values, employees become de-motivated and angry. Provide ongoing training, coaching and review of your leaders.

The Lindenberg Group offers sexual harassment prevention training (online and workshops). Contact them at 609.730.1049, info@lindenberggroup.com or www.lindenberggroup.com.

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# Fine in Lieu of Revocation

by Scott Silver, Esquire

In the early morning of April 16, 2000, a severely intoxicated driver, Humberto Herrera Salsa (Herrera) drove his car out of the Cheerleaders parking lot, drove the wrong way down Route 130, a divided highway, slamming headlong into another car. The driver and the front seat passenger in that car died at the scene. That car's other two passengers, and Herrera himself, were grievously injured. Prior to the accident, Herrera had been drinking at Cheerleaders, a gentlemen's club in Gloucester City.

The ABC Director filed civil disciplinary charges against MAG Entertainment, t/a Cheerleaders. The charges alleged that Cheerleaders served alcoholic beverages to Herrera when he was clearly and visibly intoxicated, in violation of N.J.A.C. 13:2-23.1(b). After a hearing in which the facts were hotly contested, the Director found that Herrera was visibly and unmistakably intoxicated (with a BAC estimated to be 0.28%). In a December 2007 decision, Cheerleader's license was revoked.

In imposing revocation, the Director observed that, "when Herrera became obnoxiously drunk and combative, [Cheerleader's] employees forcibly removed him from the bar and threw him out into the parking lot, where they admittedly left him unattended and unrestrained, with keys in his pocket, knowing that he had driven to the bar. The Director considered Cheerleaders' actions to be "extreme aggravating circumstances" calculated to keep Mr. Herrera out of the establishment - where he might have disrupted business - and instead, "foisting him" on an "unsuspecting motoring public."

Despite these findings and conclusions, in response to Cheerleader's a petition for reconsideration, the Director allowed MAG six months to sell its liquor license (in lieu of revocation), provided it could also reach a settlement with the ABC to pay a monetary penalty. The buyer of the license would need to be a "bona fide" purchaser - meaning one that had no relationship to the seller or any of its principals outside of the purchase and sale transaction. On appeal, the Appellate Division of Superior Court upheld the Director, concluding that his findings were supported by substantial credible evidence in the record and that revocation was a permissible penalty under the circumstances. Most notable about this decision is the court's holding that the ABC Director had the authority to issue a fine in lieu of revocation, even though the ABC's enabling statute expressly authorized only fines in lieu of suspension. The court did so without any substantive discussion or analysis. This validated a practice which the Director had occasionally employed in some revocation cases for some time.

The court also remanded the matter to the Director for the purpose of establishing the amount of the fine it would accept in lieu of license revocation.

In a December 8, 2008 "Supplemental Decision on Remand From the Appellate Division", the Director established the amount which he would accept in lieu of revocation: \$617,925.00 plus 90% of the sale price of the license (or 90% of the fair market value, if the license was sold for less than fair market value). The Director's decision was again appealed by Cheerleaders to the Appellate Division of Superior Court. The Director was upheld in a decision dated November 19, 2009. Cheerleaders did not accept the settlement within the time frame established by the Director, and its license has been revoked

effective February 17, 2010

What is most significant about the Director's Supplemental Decision and its affirmation by the court is not the decision in the immediate Cheerleader's case. Rather, it is the Director's statements concerning how the ABC establishes and assesses fines in lieu of suspension and revocation, and the Court's finding that the ABC's methodology and policy for establishing fines is permissible.

N.J.S.A. 33:1-31 allows the ABC Director, in his discretion and subject to rules and regulations, to accept a fine in lieu of a license suspension for disciplinary violations. However, a careful reading of the ABC regulations, from cover to cover, will not shed any light on when fines will be accepted or how they will be calculated. Regulations on the subject do not exist. To uncover the method used to calculate fines in lieu of suspension one must locate a rather obscure ABC Bulletin from October 1988. This Bulletin substantially reflects the ABC's current practice.

To somewhat oversimplify the Bulletin, the fine imposed in lieu of a suspension will generally be equal to one-half the daily gross profits derived from the operation of the alcoholic beverage license, times the number of suspension days imposed as a penalty. Thus, for example, if a licensee's average daily gross profit (on an annualized basis) from alcoholic beverage sales is \$500, a fine of \$250 will be imposed for each day the license would otherwise be suspended. A fine of \$7,500 would be imposed in lieu of a 30-day suspension. This calculation is subject to a minimum per day fine of \$100, and the fine may be adjusted upward or downward in light of aggravating or mitigating factors. The theory behind this methodology is to deprive the licensee of what may be the one most significant benefit of the license - the ability to profit on the sale of alcoholic beverages. The fine so calculated assumes that one-half of the gross profit goes toward overhead, and one-half works its way down to the licensee's bottom line. It is intended to deprive the licensee of the profit he or she would have made if his license was actually suspended, without inconveniencing members of the public or putting waiters, waitresses, bartenders and similar non-culpable employees out of work for even a day.

This decision continues a trend by which the courts have acknowledged the Director's authority to establish standardized policy and practice through ABC Bulletins, rather than through the more traditional method of promulgating regulations.

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# Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION

TRENTON, NEW JERSEY

by Barbara McConnell

## The Election 2009

After spending close to \$125 million of his own money to win election to the United States Senate, and as Governor of New Jersey, this year's election proved that "money cannot always buy you love." While the election was considered to be "neck and neck" going down to the wire on election day, it was apparent after the polls closed that the voters were angry, frustrated and disenchanted with the economy, high property taxes, and unemployment, and decided to "fire" the millionaire governor and replace him with a neophyte politician, Republican Chris Christie who made his name as a "crime busting" prosecutor when he served as U. S. Attorney for the State of New Jersey.

While Governor Elect Chris Christie promised to cut more waste from government, cut taxes and lower property taxes, the tough job begins now with how he is going to achieve all this with New Jersey again facing a huge budget gap, and a Legislature controlled by the Democrats. Starting January 19, no law, budget or gubernatorial appointment can pass without approval of the Legislature and the Governor. While Christie has said, "I am looking to get along with everyone." New Jersey has not had a politically divided Statehouse with brand new leadership in over 25 years.

The new leadership is expected to be Assemblywoman Shelia Oliver (D-Essex) as the new Speaker of the Assembly, with Joe Cryan (D-Union) as the Majority Leader; and Senator Stephen Sweeney (D-Gloucester) replacing Senate President Richard Codey. While this divided Statehouse could represent great potential for the new Governor, it could also result in stalemates, and contentious debates over how Trenton will operate next year. However, the Governor-Elect has admitted that "campaigning is one thing; governing is another and my job now is to govern." NJLBA congratulates Governor-Elect Christie and stands ready to work with him on the many issues facing small businesses in the state – especially in the hospitality industry.

## Governor Corzine to cut \$400 million from the Budget for 2009

After a painful defeat for Governor, Corzine announced that he intended to cut an additional \$400 million in spending for the remainder of the 2009-2010 Budget, and wants legislators to shelve any new spending plans during their upcoming lame-duck session – all to offset revenue shortfalls blamed on the poor economy. "My administration will con-

tinue to live up to our responsibility to maintain a fiscally balanced budget during the next two months," said Corzine. *These cuts will be tough but necessary choices that need to be addressed now. The Republicans quickly praised this announcement and said they were glad to see the Governor respond to "their" call for less spending and "no new programs".* Revenue projections for the first three months of the budget year that began in July 2009 were below estimates by \$190 million, or about 3 percent, according to state Treasurer David Rousseau.

## Atlantic City Smoking Ban

Remember how Atlantic City was able to get the Legislature to escape from the statewide indoor smoking ban in 2006? And how the Atlantic City council rescinded a short-lived ban last October and said it would revisit the issue in 12 months. Well, the debate was supposed to start at the Council's meeting on October 21; however, there was no mention of the issue on the Council's agenda. Currently, 75 percent of casino floors are non-smoking, and 25 percent smoking. The casinos continue to argue that an entire smoking ban would be "catastrophic" to an already suffering industry. The advocates of "no-smoking" continue to say the smoking ban did not hurt bars and restaurants – that it was the economy that caused more people to eat and drink at home. Following that logic, they argue that neither will it hurt the casinos.

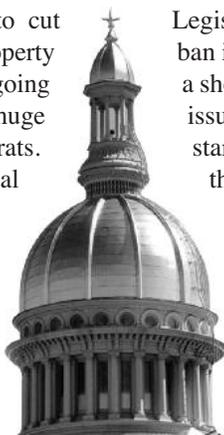
## Xanadu: Christie May Have a Different Leader in Mind

The four-year term of the New Jersey Sports and Exposition Authority board chairman will end just eight days before Governor-Elect Christie takes office. This timing could allow Christie to name a successor to the current chairman Carl Goldberg; and, the implications for the future of Xanadu.

Corzine and Goldberg have been optimistic about Xanadu. Christie has not!

## Pub Crawl Comes to a Halt in Rhode Island

Following the death of a college student during a pub crawl last spring, the Rhode Island legislature voted to prohibit any liquor licensee from knowingly allow use of its premises as part of an organized pub crawl. The ban was added to an existing law prohibiting bars and restaurants with liquor licenses from advertising certain promotions such as "happy hour" or two-for-one nights.



# Behind the Bar

by David T. Kratt

## BRINGING IN THE NEW YEAR WITH A FRESH START



I was talking with my niece at a family get-together over the holidays. Her semester had just ended and she was on a three week break. I said, "What a great way to start the holidays. Get through the semester and now you have a carefree break before starting your next semester. Wouldn't it be great if life was more like that? "

I don't remember quite what happened, but the conversation ended there. And thinking back, I don't think she really agreed with me.

Well, so much for my brilliant epiphany.

**Real life is full of mixed emotions –**

Later on, we continued our conversation.

Okay, I brought it back up.

She said, "I have a lot of mixed emotions." She said it has been a long haul and, though she enjoys school, it's easy to fall into a rut if you don't watch it. Then there's the stress of final projects, presentations and exams. Finishing a semester is an accomplishment. It was like a weight had been lifted off her shoulders. But now she can put that semester behind her. She also pointed out that, while she does enjoy the break, it's not all care-free. She still has to deal with money issues, scheduling problems, financial aid headaches and so forth.

She said that she is excited to start a new semester. You're starting out fresh. It's like the blank sheets of paper in a spiral notebook. But, since this is her last semester, she now has to worry about getting a job in the real world. Then she qualified that statement with, "But this is the real world. It's my real world."

**And bartending is our real world –**

At that family get-together I had to quick eat my dinner so I could get to work on time. In general, I don't think that friends and family really understand why I can't take a weekend night off to do something with them. People I've known for a long time, but don't see very often, ask if I'm still bartending; as if bartending is a temporary job until I can find a "real" job. And, usually at a most busy stressful time, a customer will comment that bartending seems like a lot of fun.

I'm sure you have mixed emotions about bartending, as well.

So let's see if I can salvage something from my brilliant epiphany or maybe qualify it with my niece's wise perspective.

Even with the mixed emotions, and over that long haul, I hope you can still say that you enjoy bartending as much as when you first started bartending. I hope you consider the past year as an accomplishment because it is. But, we all know the not-so-good things about bartending that will cause those mixed emotions. Can't some of the not-so-good emotions be put behind you; like starting a new semester? I hope you can bring in the New Year feeling excited and, as my niece put it, with blank sheets of paper in a spiral notebook.

And may you also feel a weight lifted off your shoulders.

Please send correspondence to dtkratt@chartermi.net or P.O. Box 638, Grand Haven, Michigan 49417.

## SEASON'S GREETINGS

### Security Plan

*continued from page 5*

an adequate and sufficient security plan – which is important if or when the security program faces a legal challenge.

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## LOOKING AHEAD TO UPCOMING EVENTS

<b>April 2010</b>	Golf Outing
<b>May 2010</b>	May is Tavern Month
<b>June 13-15, 2010</b>	American Beverage Licensees 8th Annual Convention Louisville, Kentucky
<b>June 23, 2010</b>	Wellhofer/Wilinski Scholarship Picnic Oak Tree Lodge, Wall Township
<b>September 2010</b>	78th Annual Convention Atlantic City
<b>Monthly Meeting</b>	2nd Wednesday of each month Call the office for the location

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