
The consumption of alcoholic beverages is as much a part of American life today as it has been over the past three hundred years.¹ Shrouded in mystery and myth,² the use of alcohol in America has met with extreme periods of unabashed social approval³ and absolute prohibition.⁴ During the last fifty years, the use of alcohol in moderation has been almost universally accepted in the United States as a legitimate social activity.⁵ Modern concern regarding alcohol has centered on the problem of overindulgence and consequential injuries suffered by the drinker and by innocent third parties.⁶ In an effort to combat this problem, modern American society has responded in various ways⁷ — from instituting youth alcohol awareness programs⁸ to

¹ See A. Fleming, Alcohol: The Delightful Poison 95 (1975). For a complete discussion of the history of alcohol consumption in America, see id. at 47-96.
² Id. at 111-20.
³ See id. at 61. Eighteenth century Americans considered alcoholic beverages vital to ensure an individual's health and well-being. Id. The following language explains the importance of alcoholic beverages in early America:

The following language explains the importance of alcoholic beverages in early America:

In the early days of the United States, most people thought that human beings could not exist without alcohol. Men and women, old and young, rich and poor, regularly started the day with a morning dram. The drink might be anything from cherry brandy to wine mixed with sugar and water, as long as it contained alcohol. A daily glass of "bit ters" was considered essential for warding off disease, clearing the head, and keeping the heart in good working order.

Id.

⁴ Id. at 81-96. The era of prohibition began in 1919 with the passage of the eighteenth amendment and ended in 1933 with the passage of the twenty-first amendment. Compare U.S. Const. amend. XVIII with U.S. Const. amend. XXI.
⁵ M. Hyde, Alcohol: Drink or Drug 2 (1974).
⁷ See Getting Straight, Newsweek, June 4, 1984, at 62-69. Alcoholics Anonymous (AA), one of the most well-known organizations designed to aid the problem drinker, was founded in 1935. Id. at 63. Membership in AA has more than tripled since 1968, reaching a high of 586,000 in 1984. Id. at 62. The American Medical Association and the United States Government have councils which study the problems of alcohol abuse and make recommendations to counter it. See id. at 66. In addition, many alcohol rehabilitation centers, including the Betty Ford Center and the Palmer Drug Abuse Program, have been established to help combat the problem of alcohol abuse. Id. at 66, 68. See generally Help for Those Who Drink Too Much, Changing Times, Aug. 1984, at 63-66 (discussion of some other measures society has taken to fight problem of alcohol abuse).
⁸ M. Hyde, supra note 5, at 124.
imposing severe criminal penalties upon intoxicated drivers. These approaches have focused on affecting and reforming the drinker himself, reflecting the traditional philosophy that responsibility for alcohol-related injuries lies primarily with the person who has overindulged. In a recent decision, which has generated unusual amounts of public interest and controversy, application of that traditional concept was drastically limited by the New Jersey Supreme Court. In *Kelly v. Gwinnell*, the supreme court held a social host liable for negligently serving liquor to an intoxicated adult guest who subsequently injured a third party in an automobile accident.

At approximately 5:15 p.m. on the afternoon of January 11, 1980, Donald Gwinnell, a Middletown painting contractor, left his home in response to a request for assistance from Joseph Zak, whose truck was bogged down on a muddy road. Because efforts to free the truck were unsuccessful, Gwinnell offered to drive Zak home in his own automobile. Upon their arrival, Zak invited Gwinnell into his house for a drink. Gwinnell stayed with Zak and his wife at their home until approximately 8:45 p.m. When Gwinnell decided to leave, Zak accompanied him to his automobile, chatted with him briefly, and watched him drive off into the night. Minutes after leaving the Zaks' home, Gwinnell was involved in an automobile accident with Marie Kelly, who sustained serious injuries.

Gwinnell maintained that he had consumed only two or three drinks of scotch over ice on the evening of the accident —

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14 Id. at 548, 476 A.2d at 1224.
16 Id. at 321, 463 A.2d at 388.
17 Id.
18 Id.
21 *Kelly*, 96 N.J. at 541, 476 A.2d at 1220.
a contention attested to by Zak and his wife. In addition, Zak stated that at no time prior to Gwinnell's departure did he perceive that Gwinnell was intoxicated. Tests administered to Gwinnell after the collision, however, revealed that his blood alcohol content at the time of the accident was 0.286%, which was over two and one-half times the level that renders a driver legally intoxicated in New Jersey. Kelly's expert witness testified that a blood alcohol content of 0.286% indicated that Gwinnell had not simply indulged in two or three drinks that evening, but rather had consumed approximately thirteen drinks before driving home.

Kelly subsequently filed suit for the injuries she sustained, naming Gwinnell and the owner of the automobile, Paragon Corporation, as codefendants. Paragon Corporation in turn filed a third-party complaint against the Zaks, alleging that they had been negligent in allowing Gwinnell to drive from their home in an intoxicated state. Kelly later amended her complaint to include the Zaks as primary defendants. The trial court granted the Zaks' motion for summary judgment on the question of host liability. The appellate division affirmed, holding that, as a matter of law, a social host could not be held liable for harm to third parties caused by intoxicated guests who were involved in automobile accidents.

On appeal, the New Jersey Supreme Court reversed and held that a social host who serves liquor to an adult guest, knowing that the guest is intoxicated and will soon be driving, is liable for injuries to third parties caused by that guest's negligent operation of a motor vehicle due to intoxication. The supreme court then remanded the matter for a factual determination of whether the Zaks should have been held liable for causing

22 Id.
24 Id. Kelly secured the services of a chemist to determine Gwinnell's blood alcohol content at the time of the crash based on the tests administered to Gwinnell immediately following the accident. Id.
26 Kelly, 96 N.J. at 541, 476 A.2d at 1220.
27 Id. at 541-42, 476 A.2d at 1220-21.
29 Id.
30 Id.
31 Id. at 325-26, 463 A.2d at 390-91.
32 Kelly, 96 N.J. at 548, 476 A.2d at 1224.
the injuries sustained by Kelly.33

At common law it was not a tort to furnish liquor to an otherwise ordinary and able-bodied person.34 The belief was that the consumption of alcoholic beverages, and not the service of them, was the proximate cause of any alcohol-related injury.35 With the advent of prohibition,36 however, New Jersey enacted a statute which imposed strict liability on the seller of alcoholic beverages where the sale resulted in injury.37 After the repeal of prohibition,38 that statute was replaced by the Alcoholic Beverage Control Act,39 which delineated — albeit not clearly — the specific duties of persons who served alcoholic beverages.40 Although the repeal of the prohibition-era statute did not preclude liability for negligent service of alcoholic beverages,41 the question of whether servers of liquor might be held liable for alcohol-related accidents remained unaddressed for over twenty-five years.42

In New Jersey, the development of liability for the negligent provision of alcohol demonstrates a judicial sensitivity to the conflicting policy considerations present in cases involving intoxicated minors as opposed to adults,43 and those involving

33 Id. at 560, 476 A.2d at 1230. On remand the Kelly litigation was settled. Settlement Ends Landmark Case Under Host Liability, Star-Ledger, Feb. 21, 1985, at 1, col. 2. The settlement required Kelly to receive $100,000 from Gwinnell and $72,500 from the Zaks. Id.
35 Id.
36 Prohibition was effected in 1919 by the eighteenth amendment to the United States Constitution, which provided that “[a]fter one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.” U.S. Const. amend. XVIII, § 1.
38 Prohibition was repealed in 1933 by the twenty-first amendment to the United States Constitution. See U.S. Const. amend. XXI, § 1.
41 See Rappaport v. Nichols, 31 N.J. 188, 201, 156 A.2d 1, 8 (1959).
42 Prohibition was repealed in 1933. See supra note 4. In 1959, Rappaport, a case of first impression for the New Jersey Supreme Court, presented the question of whether a tavern owner could be held liable for negligently serving an intoxicated minor. See Rappaport v. Nichols, 31 N.J. 188, 193, 156 A.2d 1, 4 (1959).
43 See, e.g., Kelly, 96 N.J. at 545-46 & 556 n.14, 476 A.2d at 1222-23 & 1228 n.14; see also, e.g., id. at 561 n.1, 476 A.2d at 1230-31 n.1 (Garibaldi, J., dissenting).
negligent commercial licensees as opposed to social hosts. The New Jersey Supreme Court first considered imposition of liability for the negligent service of alcoholic beverages in *Rappaport v. Nichols*. In *Rappaport*, a minor named Robert Nichols had been served intoxicating beverages at four different taverns in Newark. Nichols became inebriated and subsequently was involved in an automobile accident in which Arthur Rappaport was killed. *Rappaport*’s administratrix brought suit against each of the four tavern owners alleging, *inter alia*, that their negligent service of liquor to Nichols had contributed to the wrongful death of Rappaport. The lower courts sustained the tavern owners’ motion for summary judgment, holding that the plaintiff had failed to state a cause of action.

On appeal, the New Jersey Supreme Court reversed. It opined that a regulation promulgated by the Division of Alcoholic Beverage Control supported the plaintiff’s claim of negligence. That regulation prohibited commercial licensees from serving liquor to a minor or to any “‘actually or apparently intoxicated’” person, but it provided no directive for liability if a licensee ignored its mandate. The *Rappaport* court reasoned that the regulation was promulgated for the protection of the general public, as well as for the protection of minors and intoxicated persons. It stated that the sale of alcohol to minors and to persons already intoxicated not only was unlawful, but also presented a clear and foreseeable danger to the traveling pub-
lic. Therefore, the supreme court unanimously ruled that a tavern owner who served a person he knew or should have known was a minor, or a person he knew was intoxicated, subjected himself to a claim of common law negligence.

The next development concerning the potential liability of a commercial host occurred in Soronen v. Olde Milford Inn, Inc. In that case, the decedent, John Soronen, had been drinking for at least four hours when he entered the Olde Milford Inn at 1:00 p.m. While at the Inn, Soronen was served two shots of whiskey and three beers. At about 3:00 p.m. he rose from his bar chair, took a few steps, and fell, sustaining head injuries which proved to be fatal. His widow brought an action against the Inn, alleging that its negligence in serving liquor to Soronen while he was visibly intoxicated was a legal cause of his death. At the first trial, the court dismissed the action, ruling that there was no evidence from which a jury could find that the bartender knew or should have known that the decedent was intoxicated. The appellate division reversed and remanded, holding that there was sufficient evidence for a jury determination. In addition, the appellate division flatly rejected the defendant's claim that the decedent's contributory negligence precluded liability. On retrial, a verdict was rendered in the plaintiff's favor. The defendant appealed, but the supreme court granted certification before the appellate division heard oral argument.

The supreme court upheld the plaintiff's cause of action, but it ordered a retrial so that the jury could be clearly instructed that the defendant's civil responsibility revolved around whether it provided liquor to a person who was visibly intoxicated. The

56 Id. at 202-03, 156 A.2d at 8.
57 Id. The defendant, however, was free to prove that he acted reasonably under the circumstances. Id. at 203, 156 A.2d at 9.
59 Id. at 584, 218 A.2d at 631. Soronen had been seen drinking at another tavern at 8:30 a.m. and again at his home later that morning. Id.
60 Id., 218 A.2d at 631-32.
61 Id., 218 A.2d at 632.
62 Id.
63 Id.
65 Id. at 378, 202 A.2d at 211.
66 Soronen, 46 N.J. at 584, 218 A.2d at 631.
67 Id.
68 See id. at 594, 218 A.2d at 637.
69 Id. at 594-95, 218 A.2d at 637.
court stated that the policy considerations set forth in *Rappaport* were "readily adaptable" to the case before it. Accordingly, an action for damages could be based on the claim that a tavern owner created an unreasonable risk of harm by continuing to serve a patron whom he knew or should have known was intoxicated. The *Soronen* court broadened the post-*Rappaport* scope of responsibility by holding that commercial licensees were potentially liable for injury to the customer himself. In addition, the supreme court held that contributory negligence was not available to tavern owners as a defense because an intoxicated person was "in no position to exercise self-protective care." Finally, the supreme court recognized that the plaintiff carried the burden of proving that the defendant knew or should have known that the decedent was intoxicated. The defendant tavern owner thus could protect himself from liability by showing that his bartenders exercised reasonable care under the circumstances.

In 1976, the New Jersey Superior Court examined the possible liability of a social host for serving liquor to a minor. Thomas Nacnodovitz served alcoholic beverages to Lucy Rand, a minor, and allowed her to drive home. While driving home, Rand struck and seriously injured Glenn Linn, an infant. Linn's guardian *ad litem* brought suit against Nacnodovitz for contributing to Linn's injuries. The court, however, agreed with Nacnodovitz's assertion that as a matter of law he was under no duty to the plaintiff; accordingly, the defendant's motion for summary judgment was granted.

The appellate division reversed, holding that the plaintiff's...
suit was not barred under New Jersey law.\textsuperscript{82} The appellate court opined that it would make little sense to hold commercial licensees liable for negligent service of liquor to a minor while freeing social hosts from liability for the same wrongful conduct.\textsuperscript{83} Furthermore, the court reasoned that any existing immunity from liability for the negligent service of liquor to a minor should be removed.\textsuperscript{84} Consequently, it determined that the plaintiff could sustain a cause of action by proving the following: (1) that Rand was a minor; (2) that Nacnodovitz knew she was a minor and would soon be driving; (3) that Nacnodovitz nevertheless served Rand liquor to the point where she was unfit to drive; (4) that injury to Rand or others was reasonably foreseeable; and (5) that Nacnodovitz’s negligence was a proximate cause of Linn’s injuries.\textsuperscript{85} The appellate court noted that although the burden of proving negligence might be greater in the case of social hosts than in the case of commercial licensees, that fact should not have barred what was otherwise a perfectly valid cause of action.\textsuperscript{86}

The liability of a social host for negligently serving intoxicating beverages to an adult was first addressed by a New Jersey court in \textit{Figuly v. Knoll}.\textsuperscript{87} In \textit{Figuly}, the defendant, Longfield, hosted a party at which the codefendant, Knoll, was served approximately twelve alcoholic drinks.\textsuperscript{88} Knoll became intoxicated and was subsequently involved in an automobile accident in which the plaintiff was injured.\textsuperscript{89} The plaintiff brought an action against both Knoll and Longfield.\textsuperscript{90} Upholding the validity of the plaintiff’s action, the law division reasoned that prior New Jersey law provided “no reasonable basis” for limiting liability to hosts

\begin{footnotesize}
\begin{enumerate}
\item \textit{Linn}, 140 N.J. Super. at 215, 356 A.2d at 17.
\item \textit{Linn}, 140 N.J. Super. at 216, 356 A.2d at 17. The court noted that “[t]he forward-looking and far-reaching philosophy expressed in \textit{Rappaport} should also be applicable to negligent social hosts.” \textit{Id}.
\item \textit{Id}. at 217, 356 A.2d at 18.
\item \textit{Id}. at 220, 356 A.2d at 19.
\item \textit{Id}. at 217, 356 A.2d at 18.
\item \textit{Id}.
\item 185 N.J. Super. 477, 449 A.2d 564 (Law Div. 1982).
\item \textit{Id}. at 479, 449 A.2d at 564.
\item \textit{Id}. at 478-79, 449 A.2d at 564.
\item \textit{See id}. at 479, 449 A.2d at 564.
\end{enumerate}
\end{footnotesize}
who served minors as opposed to adult guests. The court concluded that, if Longfield had been able to discern Knoll's drunkenness but did not prevent Knoll from driving, then Longfield might have breached a duty owed to Figuly and to the general public. The decision in Figuly, however, was never appealed.

Within two years of Figuly, the same issue concerning social host liability was addressed by the appellate division in Kelly v. Gwinnell. Faced with facts similar to those in Figuly, the appellate division nevertheless decided that a social host could not be held liable for negligently serving liquor to an adult guest. It was against this background of conflict with Figuly that the Kelly case was appealed to the New Jersey Supreme Court.

The Kelly majority began its analysis by noting that the appellate division's decision not to hold the Zaks liable for Marie Kelly's injuries was based on the reluctance of other states to impose similar liability. While other states may have policy reasons for exempting social hosts from liability, the supreme court recognized that such immunity is not the natural product of conventional negligence analysis. The traditional test for negligence, as articulated by the court, was "whether [a] reasonably prudent person at the time and place should recognize and foresee an unreasonable risk or likelihood of harm or danger to others." The supreme court, "viewing the facts most favorably to [the] plaintiff," determined that "one could reasonably conclude" the Zaks knew that Gwinnell was intoxicated on the eve-

91 Id. at 480, 449 A.2d at 565. The Figuly court also relied on the California Supreme Court's decision in Coulter v. Superior Court, 21 Cal. 3d 144, 154-55, 577 P.2d 669, 674-75, 145 Cal. Rptr. 534, 539-40 (1978) (upholding cause of action against social host serving intoxicating beverages). The Figuly court, however, failed to mention that the Coulter decision was subsequently overruled by the California Legislature. CAL. CIV. CODE § 1714(b) (West Cum. Supp. 1984).

92 See Figuly, 185 N.J. Super. at 479, 449 A.2d at 564.


95 Compare supra notes 19-26 and accompanying text (Kelly facts) with supra notes 88-90 and accompanying text (Figuly facts).

96 Kelly, 190 N.J. Super. at 325-26, 463 A.2d at 390-91.

97 Kelly, 96 N.J. at 542, 476 A.2d at 1221.

98 Id. at 543, 476 A.2d at 1221. More specifically, the court stated that the "immunization of [social] hosts is not the inevitable result of the law of negligence, for conventional negligence analysis points strongly in exactly the opposite direction." Id.

99 Id.

100 This view of the facts was necessitated because Kelly's complaint had been dismissed on a motion for summary judgment. Id.
ning of the accident. The court also found that the Zaks knew Gwinnell would soon be driving in that condition. Thus, the court observed, the defendants helped to create an unreasonable risk of harm by serving Gwinnell excessive amounts of liquor and by allowing him to drive while intoxicated. Since traditional negligence analysis pointed in favor of liability, the only remaining question was whether the Zaks had a duty to prevent the risk they had helped to create.

In the court’s opinion, the decision of whether or not to impose such a duty on social hosts serving alcoholic beverages to adult guests was a question of fairness and state policy. The majority perceived that combating the problem of drunken driving was a major state concern, and it viewed the problem as a strong consideration in favor of imposing a duty of care on the Zaks and other social hosts. Furthermore, the majority believed that past New Jersey decisions supported the imposition on social hosts of a duty to exercise care when serving liquor to adult guests. To corroborate that position, the court cited Rapaport, which had imposed on commercial licensees a common law duty to refrain from serving minors, and Soronen, which had imposed a duty on licensees to refrain from serving visibly intoxicated persons. In addition, the Kelly majority noted that Linn had extended the duty that had been created in Rapaport to social hosts. The court approved Linn, and it observed that the case before it also involved a social setting and thus em-

101 Id.
102 See id. at 544, 476 A.2d at 1222.
103 Id.
104 Id.
105 Id. (citing Palsgraf v. Long Island R.R., 248 N.Y. 339, 162 N.E. 99 (1928)).
106 Id. (citing Goldberg v. Housing Auth., 38 N.J. 578, 583, 186 A.2d 291, 293 (1962)).
107 Id. at 545 & n.3, 476 A.2d at 1222 & n.3 (describing social cost of alcohol related accidents and deaths in New Jersey) (citing NEW JERSEY DIV. OF MOTOR VEHICLES, SAFETY SERVICE INTEGRITY: A REPORT ON THE ACCOMPLISHMENTS OF THE NEW JERSEY DIVISION OF MOTOR VEHICLES, APRIL 1, 1982 THROUGH MARCH 31, 1983, at 45 (1983)).
108 See id. at 545, 476 A.2d at 1222 (“[T]he imposition of a duty is both consistent with and supportive of a social goal — the reduction of drunken driving — that is practically unanimously accepted by society.”).
109 Id.
110 See supra notes 46-57 and accompanying text.
111 See supra notes 58-74 and accompanying text.
112 See Kelly, 96 N.J. at 546, 476 A.2d at 1223.
113 Id. at 547, 476 A.2d at 1223.
114 See id. at 546-47, 476 A.2d at 1223. Compare supra notes 75-78 and accompany-
bodied practically the same policy considerations as that case.\footnote{Kelly, 96 N.J. at 546-47, 476 A.2d at 1223. Comparing Kelly to Linn, the court noted that in Linn

\[\text{[there] was a social setting at someone's home, not at a tavern; the one who provided the liquor to the intoxicated minor was a host, not a licensee; and all of the notions of fault and causation pinning sole responsibility on the drinker were present. The only difference was that the guest was a minor. . . .}\]

Id. at 546, 476 A.2d at 1223.} Consequently, the majority found no reason to distinguish between the social host/adult guest scenario of Kelly and the situations presented in Rappaport, Soronen, and Linn.\footnote{See id. at 547-48, 476 A.2d at 1224.}

Based on these considerations, the court held that a social host who serves alcoholic beverages to an adult guest, knowing that the guest is intoxicated and soon will be driving, can be held liable for all third party injuries that result from that guest's negligent operation of an automobile.\footnote{Id. at 548, 476 A.2d at 1224.} Although the majority acknowledged that its ruling might disrupt normal social behavior and lessen the enjoyment of social gatherings, it believed that the benefit to society resulting from its decision would far outweigh the detriment.\footnote{Id. More specifically, the majority explained:

While we recognize the concern that our ruling will interfere with accepted standards of social behavior; will intrude on and somewhat diminish the enjoyment, relaxation, and camaraderie that accompany social gatherings at which alcohol is served; and that such gatherings and social relationships are not simply tangential benefits of a civilized society but are regarded by many as important, we believe that the added assurance of just compensation to the victims of drunken driving as well as the added deterrent effect of the rule on such driving outweigh the importance of those other values.}

To further justify its position, the court analogized the liability imposed by its decision to the liability presently imposed by other jurisdictions upon persons who lend their automobiles to visibly intoxicated persons.\footnote{Id. at 549, 476 A.2d at 1224.} The majority found no persuasive distinction between the two situations, and it perceived the risks created in each to be of similar gravity.\footnote{Id., 476 A.2d at 1224-25.}

The court then addressed the arguments that had been advanced against imposing liability on social hosts for the negligent service of liquor to adult guests.\footnote{See id. at 549-55, 559, 476 A.2d at 1225-28, 1230.} The majority first rejected the
claim that such an imposition is disproportionate to the fault of social hosts, stating that such a contention implies the questionable social judgment that a host who serves liquor in a negligent manner has not committed a serious wrong. The majority also opined that, in light of the risk of death or injury to guests and third parties, it is relatively easy for a social host to refrain from negligently serving liquor.

The majority next considered the argument that, absent adequate insurance protection, imposition of liability might result in the loss of a host’s home. First, the court stated that a typical homeowners’ insurance policy would cover such a situation. Second, it noted that if only one spouse were liable, and the liability exceeded the policy limits, jointly owned property would not be lost because creditors could not reach the interest of the non-liable spouse. Finally, the court reasoned that, in view of a severe injury to a totally innocent third party, the loss of a home might be an appropriate penalty for a negligent host. The court did, however, lighten the burden of its holding on homeowners by limiting application of its decision to prospective events.

The majority stated that its goal was to assure fair compensation for victims who are injured as a result of drunken driving. It also hoped to reduce the number of injuries and fatalities caused by intoxicated drivers by making it “more likely” that social hosts will exercise greater care when serving alcoholic beverages to their guests. Although this deterring effect was a desired result, the Kelly court believed that its goal of fair compensation provided a sufficient justification for its decision. The court next rejected the argument that the decision to

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122 Id. at 549, 476 A.2d at 1225.
123 Id. at 549-50, 476 A.2d at 1225.
124 See id. at 550, 476 A.2d at 1225.
125 Id.; see also id. at 550 n.9, 476 A.2d at 1225 n.9 (responding to dissent and stating that critical issue is not whether present policies cover host liability, but whether tort law should spread risk of loss through use of insurance rather than imposing entire risk on innocent victim).
126 Id. at 550, 476 A.2d at 1225 (citing Newman v. Chase, 70 N.J. 254, 266, 359 A.2d 474, 480 (1976); King v. Greene, 30 N.J. 395, 153 A.2d 49 (1959)).
127 See id. at 550-51, 476 A.2d at 1225.
128 Id. at 551, 476 A.2d at 1225. The majority noted that, by giving its decision prospective application only, homeowners and apartment dwellers would have a reasonable opportunity to obtain adequate liability insurance. Id.
129 Id., 476 A.2d at 1226.
130 Id.
131 See id. at 551-52, 476 A.2d at 1226.
impose liability on social hosts should be left for the legislature.\textsuperscript{132} Rather, it pointed out that determinations concerning the "scope of duty in negligence cases [have] traditionally been a function of the judiciary."\textsuperscript{135} The majority cited \textit{Linn} as an example of a case in which the judiciary had imposed a duty absent any prior legislative activity.\textsuperscript{134} The absence of an adverse reaction to the \textit{Linn} decision by the New Jersey Legislature was interpreted by the court as legislative assent to judicial involvement in this area of the law.\textsuperscript{135} The fact that courts in most other states have deferred to their legislatures on the question of social host liability did not convince the \textit{Kelly} majority that it should do the same.\textsuperscript{136} The court noted that in most of the jurisdictions wherein courts have deferred to the legislature, dram shop acts\textsuperscript{137} have previously been enacted.\textsuperscript{138} The \textit{Kelly} majority concluded that the presence of a dram shop law indicates that those state legislatures are interested and active in the area, a fact which justifies deference to the law-making body.\textsuperscript{139} The court reasoned that the absence of a New Jersey dram shop law — coupled with the New Jersey Legislature's apparent acceptance of \textit{Rappaport, Soronen}, and \textit{Linn} — indicates that the Legislature is amenable to its action.\textsuperscript{140} The majority afforded little weight to the argument that the Legislature possesses superior knowledge and investigative resources.\textsuperscript{141} Instead, the \textit{Kelly} court rationalized its position by stating that, if the Legislature determines that the imposition of liability is improper, it has the power to overrule the decision.\textsuperscript{142} The majority continued its discussion by denying that its decision would have an "extraordinary" impact on "the average cit-

\textsuperscript{132} See \textit{id.} at 552-55, 476 A.2d at 1226-28.
\textsuperscript{133} \textit{Id.} at 552, 476 A.2d at 1226.
\textsuperscript{134} \textit{Id.} at 553, 476 A.2d at 1226.
\textsuperscript{135} See \textit{id.}
\textsuperscript{136} See \textit{id.} at 553-54, 476 A.2d at 1227.
\textsuperscript{137} In general, a dram shop act is a civil liability statute that imposes liability on one whose sale of alcoholic beverages legally causes the buyer to injure a third party. \textit{BLACK'S LAW DICTIONARY} 444 (5th ed. 1979).
\textsuperscript{139} \textit{Id.} at 554, 476 A.2d at 1227 ("very existence of a Dram Shop Act constitutes a substantial argument against expansion of the legislatively-mandated liability").
\textsuperscript{140} See \textit{id.} at 553-55, 476 A.2d at 1226-28.
\textsuperscript{141} \textit{Id.} at 555-55, 558, 476 A.2d at 1226-29.
\textsuperscript{142} \textit{Id.} at 555, 476 A.2d at 1227.
izen."143 The court expressed its belief that social hosts already monitor their guests' drinking, and it reiterated the contention that homeowners' insurance would cover the liability incurred by social hosts as the result of its decision.144 Furthermore, the Kelly majority noted that liability is limited to hosts who directly serve visibly intoxicated guests, knowing that those guests will soon be driving home.145 The court stressed that injuries for which a host can be held liable must result directly from a guest's intoxication and not from some other cause.146 It emphasized that its narrow holding made fears of a deluge of host-related lawsuits unfounded.147

In her dissenting opinion, Justice Garibaldi expressed fear that the duty imposed by the majority might expose social hosts to undue financial burdens.148 In addition, she believed that the "almost limitless implications" of the majority's decision render the question of host liability more appropriate for legislative resolution.149 Reminding the court of her historically strong posture against drunken driving,150 Justice Garibaldi nevertheless questioned the wisdom of creating a cause of action that is not recognized by any other state judiciary.151 Although she recognized that New Jersey courts have previously imposed liability on commercial licensees, as well as on social hosts who serve minors,152 Justice Garibaldi stated that those decisions were supported by specific statutory provisions.153 In contrast, the dissent perceived no such legislation supporting the type of liability created by the

143 Id. at 554, 476 A.2d at 1227.
144 Id. at 554-55, 476 A.2d at 1227.
145 Id. at 556, 476 A.2d at 1228.
146 Id. at 559, 476 A.2d at 1230.
147 Id.
148 Id. at 560, 476 A.2d at 1230 (Garibaldi, J., dissenting).
149 Id.
150 See id. (citing In re Kallen, 92 N.J. 14, 455 A.2d 460 (1983)).
151 See id. at 561, 476 A.2d at 1231 (Garibaldi, J., dissenting). In 1970, the Oregon Supreme Court created a duty on the part of a social host to refrain from serving a guest under circumstances in which a reasonable person would not allow the guest to continue drinking. Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity, 258 Or. 632, 639-40, 485 P.2d 18, 21-22 (1970). This cause of action was subsequently limited by the Oregon Legislature, which provided that "[n]o private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated." Or. Rev. Stat. § 30.955 (1981).
152 See Kelly, 96 N.J. at 554 n.13, 476 A.2d at 1227 n.13.
153 See Kelly, 96 N.J. at 560-61, 476 A.2d at 1230 (Garibaldi, J., dissenting) (citing Rappaport and Linn).
154 Id. at 560-61 & n.1, 476 A.2d at 1230-31 & n.1 (Garibaldi, J., dissenting).
Justice Garibaldi noted that most state courts have reasoned that the legislature is best suited to study the propriety of imposing such far-reaching liability and have therefore left the determination of host liability to their respective legislatures. A legislature, she observed, may hold hearings, conduct debates, and organize investigations to determine if the imposition of liability properly serves public policy. Justice Garibaldi stated that the majority had acted "with seemingly scant knowledge and little care for the possible negative consequences of its decision." She also questioned the majority's belief that the court's decision was necessary to ensure full recovery to the victims of drunken drivers. She noted that the New Jersey Legislature has already enacted broad automobile insurance statutes designed to assure that persons injured on the state's highways will always be fully compensated. Whether or not those statutes actually provide full compensation for the victims of drunken driving was uncertain, but Justice Garibaldi perceived that such a determination should properly be made by the Legislature after a detailed study. The dissent recognized that the court's holding might help to provide full recovery for victims under very limited circumstances, but it disapproved of the

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154 See id. at 561, 565, 476 A.2d at 1230-31, 1233 (Garibaldi, J., dissenting). The dissent agreed with the Kelly majority's approval of Linn. Id. at 561 n.1, 476 A.2d at 1230 n.1 (Garibaldi, J., dissenting). Justice Garibaldi, however, saw an important distinction between a social host who negligently serves a minor and the situation presented in Kelly. Id. The distinction the dissent drew between Linn and Kelly was "based on the clearly and frequently expressed legislative policy that minors should not drink alcoholic beverages . . . and on the fact that minors occupy a special place in our society and traditionally have been protected by state regulation from the consequences of their own immaturity." Id. (citation omitted). But see id. at 556 n.14, 476 A.2d at 1228 n.14 (finding dissent's distinction "difficult to understand" and stating that difference between Kelly and Linn is "simply one of degree").


156 Id. (citing Holmes v. Circo, 196 Neb. 496, 505, 244 N.W.2d 65, 70 (1976)) (further citations omitted).

157 Id. at 563, 476 A.2d at 1232 (Garibaldi, J., dissenting).

158 See id. at 564, 476 A.2d at 1232-33 (Garibaldi, J., dissenting).

159 See id., 476 A.2d at 1232 (Garibaldi, J., dissenting).

160 Id., 476 A.2d at 1233 (Garibaldi, J., dissenting).

161 Id. More specifically, the dissent stated that the only situation in which the majority's holding would provide a remedy unavailable under the insurance laws is a situation in which the intoxicated driver is insolvent and both the intoxicated
majority's hasty and uninformed decision. Justice Garibaldi approved of the liability imposed on commercial licensees in prior decisions, but she was not convinced that those decisions warranted imposition of similar liability on social hosts. The dissent discussed a number of practical distinctions between commercial licensees and social hosts, which tend to support the imposition of liability on the former but not on the latter. Commercial licensees, she noted, have more experience than social hosts in perceiving drunken behavior and therefore possess an "expertise" in determining the degree of a person's intoxication. Moreover, the dissent pointed out that, in contrast to social hosts, commercial licensees generally do not drink while they are serving alcohol and thus are better able to detect drunkenness. Justice Garibaldi also cited the ease with which a bartender can stop serving a drunken patron as a significant difference between commercial licensees and social hosts. The dissent noted that, although "[i]t is easy to say that a social host can just refuse to serve the intoxicated person, . . . [w]e should not ignore the social pressures of requiring a social host to tell a boss, client, friend, neighbor, or family member that he is not going to serve him another drink."

Furthermore, Justice Garibaldi cited medical evidence that alcohol affects everyone differently, and she questioned the ability of the average host to recognize precisely when a guest is "obviously intoxicated." She commented that it takes time for alcohol to enter the bloodstream and that, in addition, there are persons who manifest no outward signs of drunkenness when they are, in fact, intoxicated. Moreover, the dissent charged that objective tests administered after an accident, which indicate

\[\text{driver and the victim are uninsured motorists.} \]
\[\text{Id., 476 A.2d at 1232-33 (Garibaldi, J., dissenting).} \]
\[\text{Id. at 563, 476 A.2d at 1232 (Garibaldi, J., dissenting).} \]
\[\text{See infra notes 165-67, 178-84 and accompanying text.} \]
\[\text{Kelly, 96 N.J. at 565, 476 A.2d at 1233 (Garibaldi, J., dissenting).} \]
\[\text{Id. at 566-67, 476 A.2d at 1234 (Garibaldi, J., dissenting).} \]
\[\text{Id. at 567, 476 A.2d at 1234 (Garibaldi, J., dissenting).} \]
\[\text{Id.} \]
\[\text{Id. at 565-66, 476 A.2d at 1233-34 (Garibaldi, J., dissenting) (citing Perr, Blood Alcohol Levels and "Diminished Capacity", 9 J. Legal Med. 28 (1975)).} \]
\[\text{See id. at 566, 476 A.2d at 1233-34 (Garibaldi, J., dissenting); cf. Comment, supra note 10, at 103 ("determination that an individual is obviously intoxicated not so obvious after all").} \]
\[\text{Kelly, 96 N.J. at 566, 476 A.2d at 1233 (Garibaldi, J., dissenting).} \]
\[\text{Id.; accord Comment, supra note 10, at 103.} \]
that a party guest was legally intoxicated, do not necessarily prove that the guest appeared to be drunk in the subjective eye of the social host.\textsuperscript{173} The dissent recognized that, although the majority purported to base liability on the subjective knowledge of the host, in actuality the majority relied on the objective results of a blood test to conclude that Gwinnell must have appeared visibly intoxicated to the Zaks.\textsuperscript{174} Justice Garibaldi also criticized the majority's failure to delineate the extent to which a social host must monitor the drinking of guests and the extent to which a host must attempt to prevent intoxicated guests from driving.\textsuperscript{175} This imprecision, the dissent intoned, coupled with the almost impossible duties which the decision placed on social hosts, would inevitably open the door for many "speculative and subjective" impositions of host liability.\textsuperscript{176}

The dissent then outlined other compelling policy reasons for distinguishing imposition of liability in commercial situations from the social host scenario presented in \textit{Kelly}.\textsuperscript{177} Justice Garibaldi noted that commercial licensees are the subject of specific legislative prohibitions; therefore, she reasoned that it made sense to hold commercial licensees liable for ignoring specific statutes and regulations.\textsuperscript{178} A host's service of liquor to adult guests, however, is not subject to such regulation.\textsuperscript{179} Furthermore, in the opinion of Justice Garibaldi, the most important distinction between a commercial licensee and a social host was the ability of a licensee to distribute the costs of liability among his customers.\textsuperscript{180} By charging customers more per drink in order to cover the added costs of potential liability, commercial licensees can shelter themselves from devastating losses.\textsuperscript{181} In contrast, the dissent observed, social hosts possess no ability to spread such

\textsuperscript{173} \textit{See Kelly}, 96 N.J. at 566, 476 A.2d at 1233-34 (Garibaldi, J., dissenting).
\textsuperscript{174} \textit{Id.} at 565, 476 A.2d at 1233 (Garibaldi, J., dissenting).
\textsuperscript{175} \textit{Id.} at 567-68, 476 A.2d at 1234 (Garibaldi, J., dissenting). The dissent noted that the majority's opinion left many unanswered questions concerning the scope of a social host's duty. \textit{Id.} For example, the dissent asked whether the host [is] obligated to use physical force to restrain an intoxicated guest from drinking and then from driving? Or is the host limited to delay and subterfuge tactics short of physical force? What is the result when the host tries to restrain the guest but fails? Is the host still liable?
\textsuperscript{176} \textit{Id.}
\textsuperscript{177} \textit{See id.} at 567, 476 A.2d at 1234 (Garibaldi, J., dissenting).
\textsuperscript{178} \textit{See infra} notes 178-84 and accompanying text.
\textsuperscript{179} \textit{Kelly}, 96 N.J. at 565, 476 A.2d at 1233 (Garibaldi, J., dissenting).
\textsuperscript{180} \textit{See id.}
\textsuperscript{181} \textit{Id.} at 568, 476 A.2d at 1234 (Garibaldi, J., dissenting).
losses among their guests. Justice Garibaldi also stated that the majority's contention that homeowners' insurance will cover such liability was completely unsubstantiated. Consequently, the dissent warned that the majority's decision may result in "catastrophic" losses to many social hosts.

Concluding her dissent, Justice Garibaldi could find little solace in the fact that the New Jersey Legislature has the ability to reverse the *Kelly* decision. The dissent faulted the majority for misinterpreting the absence of dram shop legislation in New Jersey. In Justice Garibaldi's view, New Jersey's legislative efforts to combat the problem of drunken driving constituted unequivocal proof that the Legislature is active in the area. Justice Garibaldi thus concluded that the court should have deferred to the Legislature; only then, she opined, could the courts be sure that imposition of social host liability would properly serve the dictates of accepted New Jersey public policy.

Perhaps the most perplexing aspect of the *Kelly* decision is the majority's belief that a social host will be able to tell when a guest is intoxicated. The majority never considered the actual knowledge of the Zaks with respect to Gwinnell's level of intoxication. Rather, on the basis of Gwinnell's objectively verified blood alcohol level, it concluded that the Zaks must have realized that he was visibly intoxicated. Readily available medical research, however, strongly contradicts this type of inferential reasoning. Alcohol affects everyone differently, and the effects of excessive consumption on any given drinker are rarely apparent to the subjective onlooker. A controlled study by James W. Langenbucher and Peter E. Nathan of Rutgers University showed that neither social hosts nor commercial bartenders could accurately determine whether test subjects were drunk — even when

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182 See id.
183 Id., 476 A.2d at 1235 (Garibaldi, J., dissenting). Justice Garibaldi noted that, even if present homeowners' policies did cover host liability, it was unrealistic to believe that the majority's decision would not cause a rise in premiums. Id.
184 Id., 476 A.2d at 1234-35 (Garibaldi, J., dissenting).
185 Id., 476 A.2d at 1235 (Garibaldi, J., dissenting).
186 Id. at 569, 476 A.2d at 1235 (Garibaldi, J., dissenting).
187 See id.
188 See id., 476 A.2d at 1235-36 (Garibaldi, J., dissenting).
189 See id., 476 A.2d at 1233 (Garibaldi, J., dissenting).
190 See infra notes 191-93 and accompanying text.
191 Langenbucher & Nathan, *Psychology, Public Policy, and the Evidence for Alcohol Intoxication*, 38 AM. PSYCHOLOGIST 1070, 1076-77 (1983); Perr, supra note 169, at 29 ("heavy drinker may still not appear intoxicated even with a blood [alcohol] level of 0.20% ").
those subjects were, in fact, legally intoxicated. In addition, other studies have shown that heavily intoxicated persons often can mask the symptoms of intoxication and feign sobriety before the subjective onlooker. In view of these studies, the Kelly decision has placed an impossible burden on social hosts by requiring them to determine when their guests are intoxicated. While hindsight may be the best teacher, objective tests, which reveal a guest’s level of intoxication after an accident, do not necessarily prove that the guest appeared to be drunk in the subjective eye of his host.

Another shortcoming of the Kelly decision is the majority’s failure to outline clearly the duties of social hosts who choose to serve liquor to their adult guests. How far a host must go in attempting to stop a drunken and potentially obnoxious guest from driving remains unclear. In addition, the Kelly opinion does not consider the added difficulties in determining a guest’s level of intoxication for hosts who choose to drink with their guests. The majority offers little guidance as to whether its subjective test will take into account the social host’s own alcohol-affected state in determining whether he has acted negligently. Certainly, there are steps a host might take in order to minimize the chances of being exposed to Kelly-type liability. Taking the car keys from the guests who will be drinking, checking guests closely before they leave, and offering intoxicated guests a bed for the night are all obvious ways by which a social host can ensure that guests do not suffer alcohol-related automobile accidents. The Kelly decision does not guarantee, however, that a social host who takes any or all of these precautions will escape liability if a drunken guest injures a third party in an automobile accident. Thus, the circumstances under which a host may be subject to the liability that Kelly imposes is left largely to the

192 Langenbucher & Nathan, supra note 191, at 1076-77. Langenbucher and Nathan concluded that “[w]hether a person is sober or intoxicated is not a matter of common observation; rather, it requires special skill and special training.” Id. at 1077 (emphasis in original).
194 See supra note 175.
195 See id.
196 See Kelly, 96 N.J. at 567, 476 A.2d at 1234 (Garibaldi, J., dissenting). The dissent noted that “[i]t would be anomalous to create a rule of liability that social hosts can deliberately avoid by becoming drunk themselves.” Id.
guesswork of the New Jersey citizenry. The majority's open-ended imposition of liability offends the sensibilities of the normal person who wants to know the specific duties of hosts who choose to serve alcoholic beverages. In addition, the damoclean threat of liability may have a crippling effect on the commonly accepted process of social interchange, which is often supplemented by the moderate consumption of alcoholic beverages.

An undesirable consequence of the Kelly opinion is the specter of increased litigation. The Kelly majority's failure to outline specifically the duties of social hosts increases the probability that host negligence will be asserted as a contributing factor in every alcohol-related accident involving partygoers. The majority's belief that its decision will not increase litigation is tenuous in light of the fact that the Kelly rationale has already been extended to cover business hosts in social situations. Justice Garibaldi appears correct in citing "the almost limitless implications of the majority's decision" as a reason why judicial determination of host liability was improper. The possibility of increased litigation is an unfortunate and unnecessary by-product of the Kelly decision.

Particularly distressing is the Kelly court's failure to address fully the potentially destructive effects that its decision might have for social hosts. The majority's belief that homeowners' insurance will cover the costs of host liability is unsubstantiated, and, even if homeowners' insurance does cover such liability, the Kelly decision is certain to cause an increase in premiums. It is quite possible that such price increases will make the cost of insurance prohibitive for many homeowners. In any event, the potential burden of increased insurance premiums is an unfortunate result of the majority's judicial activism. Homeowners cannot spread the costs of increased insurance premiums among their guests in the same way that commercial licensees

197 See id. Justice Garibaldi recognized that "[i]t is unrealistic to assume that the standards set down by the [majority] will not be applied to hosts in other social situations." Id. Thus, in her opinion, the Kelly decision "leaves the door open for all of the speculative and subjective impositions of liability that [the dissent] fear[ed]."

198 See supra note 197.

199 Kelly, 96 N.J. at 559, 476 A.2d at 1230.


201 See Kelly, 96 N.J. at 560, 476 A.2d at 1230 (Garibaldi, J., dissenting).

202 Id. at 568, 476 A.2d at 1235 (Garibaldi, J., dissenting).
can spread costs among their customers.\textsuperscript{203}

The New Jersey Legislature has enacted a broad automobile insurance scheme that is designed to provide adequate recovery for accident victims.\textsuperscript{204} The integrity of that scheme as a means of adequate recovery for the victims of drunken driving should be respected by New Jersey courts. In her dissenting opinion, Justice Garibaldi persuasively argued that only through a thorough legislative study can the adequacy of the recovery provided by New Jersey’s insurance legislation properly be determined.\textsuperscript{205} Similarly, any alternatives or additions to this insurance legislation, including any imposition of host liability, should also be studied by the Legislature before being adopted as law.\textsuperscript{206}

California’s treatment of the social host liability issue supports the argument that any determination concerning host liability is best left to the state legislature.\textsuperscript{207} In 1978, the California Supreme Court imposed host liability similar to that adopted in the \textit{Kelly} decision.\textsuperscript{208} Later that year, California’s legislature effectively overruled that decision by immunizing social hosts from liability for the injuries caused by intoxicated guests.\textsuperscript{209} California’s experience with host liability clearly was not important to the \textit{Kelly} majority, but it nevertheless raises the possibility that the New Jersey Legislature will closely examine the \textit{Kelly} decision in the future.\textsuperscript{210}

Preliminary indications are that the \textit{Kelly} decision is not as

\textsuperscript{203} Id., 476 A.2d at 1234 (Garibaldi, J., dissenting).
\textsuperscript{205} See supra notes 160-62 and accompanying text.
\textsuperscript{206} See \textit{Kelly}, 96 N.J. at 569, 476 A.2d at 1235 (Garibaldi, J., dissenting).
\textsuperscript{207} See infra notes 208 & 209 and accompanying text.
\textsuperscript{208} Coulter v. Superior Court, 21 Cal. 3d 144, 147, 577 P.2d 669, 670, 145 Cal. Rptr. 534, 535 (1978).
\textsuperscript{209} \textsc{Cal. Civ. Code} § 1714(b), (c) (West Cum. Supp. 1984). The California statute provided that “[n]o social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of such beverages.” Id. § (c).
\textsuperscript{210} It is noteworthy that in January 1984 a bill was introduced for consideration in the New Jersey Assembly that would effectively exempt New Jersey hosts from the liability the \textit{Kelly} decision imposes. A.43, Leg., Sess., 1984 N.J. The bill provides in pertinent part:

No person, other than a person licensed according to the provisions of Title 33 of the Revised Statutes to sell alcoholic beverages, who furnish-
popular as the majority believed it would be. Public concern with the decision has been apparent since the Kelly court first imposed social host liability, and several respected and influential figures — including state assemblymen and well-known media sources — have expressed grave doubts concerning the wisdom of the supreme court's decision. Most critics of the decision believe that the supreme court has usurped a function that is more appropriately exercised by the Legislature. Some state assemblymen have said that the Kelly majority was hasty in imposing host liability without fully examining the possible broad effects of its decision. The Legislature is the governmental body which is most responsive to the people, and if the court's decision is as publicly unpopular as initial reactions would suggest, the probable course for the New Jersey Legislature will be to eliminate Kelly entirely.

While stopping drunken driving is an almost universally accepted goal of modern society, the proper means to achieve that goal are not unlimited. Any reasonable law designed to curb the problem of drunken driving must logically be tailored to penalize those who are ultimately responsible for alcohol-related injuries — the intoxicated drivers. In light of the majority's reliance on after-the-fact blood test results, the imposition of liability on hosts who may legitimately fail to perceive correctly a guest's degree of intoxication is distinctly probable. The Kelly decision has necessarily made it most prudent for social hosts to refrain en-

injuries or property damage inflicted as a result of the intoxication by the consumer of the alcoholic beverages.

Id. 211 See, e.g., Legal Rulings Befuddle Liability of Party Hosts, Star-Ledger, Aug. 12, 1984, at 23, col. 5; A Study on Host Liability, Star-Ledger, July 14, 1984, at 3, col. 4.
212 See articles cited supra note 11.
213 A Study on Host Liability, Star-Ledger, July 14, 1984, at 3, col. 4; Letter from Robert P. Hollenbeck to James B. Clark (Nov. 27, 1984).
214 WPIX Editorial No. 84-118, July 11, 1984. This editorial stated in part:
The management of WPIX is fully aware of the death and devastation caused by drunk drivers, and accepts that society is justified in going to extreme measures to reduce it, but we agree with the one dissenting Justice who believes this action is unwise because of what she called "the almost limitless implications" of the decision. We think the Justice is right in believing that if such liability is warranted, it should be adopted by legislative action after very careful study.

Id. 215 See supra notes 213 & 214.
216 See A Study on Host Liability, Star-Ledger, July 14, 1984, at 3, col. 4.
217 See Kelly, 96 N.J. at 543, 476 A.2d at 1221; id. at 565, 476 A.2d at 1233 (Garibaldi, J. dissenting).
tirely from serving alcoholic beverages to their guests. For this reason, the Kelly decision would appear to infringe upon the accepted rights of citizens who choose to serve alcoholic beverages to their guests, and the supreme court has employed questionable means to achieve what is otherwise a most desirable end — the elimination of drunken driving.

James B. Clark III