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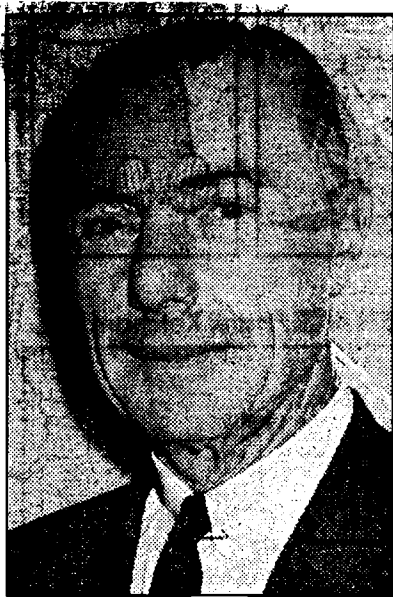
Jefferson E. Peyser

THE LAW AND THE CALIFORNIA WINE INDUSTRY

With an Introduction by
Maynard A. Amerine

An Interview Conducted by
Ruth Teiser

January 6, 1990



JEFFERSON E. PEYSER
Former S.F. supervisor

Jefferson Peyser — S.F. Jewish Leader And Wine Lawyer

Jefferson Edwin Peyser, a pillar of San Francisco's Jewish community and a longtime lawyer for the California Wine Institute, has died at the age of 90.

A former San Francisco supervisor and state assemblyman, Mr. Peyser died December 30 at his home on Nob Hill, where he was recovering from a hip fracture.

"He was a very close friend, someone who was one of a kind," said Norman Simon, executive director of B'nai B'rith, one of Mr. Peyser's favorite causes. "He was a fiercely independent and outspoken individual. He believed in telling it like it was."

A World War I veteran and a 1923 graduate of the Boalt Hall law school at the University of California at Berkeley, Mr. Peyser won his seat on the Board of Supervisors only five years later.

That year, 1928, a future California governor, James (Sunny Jim) Rolph, was mayor, and one of his colleagues was James McSheehy, known among history buffs as the Sam Goldwyn of City Hall.

Mr. Peyser was the first San

Francisco politician openly to oppose Adolf Hitler. In 1933, Hitler's first year in power, Mr. Peyser withdrew from a German Day celebration, saying he would not sit on a platform where the Nazi swastika was displayed.

In 1934, Mr. Peyser was elected to the first of two terms in the state Assembly. The same year he drew up the incorporation papers for the California Wine Institute and he went on to serve as the powerful trade group's general counsel for 43 years.

He quit the Legislature in 1938 to become lobbyist for the San Francisco Chamber of Commerce.

Mr. Peyser, who still worked at his Mills Tower law office until last year, was elected international vice president of B'nai B'rith at a meeting in Tel Aviv in 1965.

He was active in Masonic affairs and he became state president of the Kiwanis in 1960.

Divorced in 1935 after a seven-year marriage, he leaves no family; at his request, no funeral was held and the body was cremated. According to Simon, a memorial service is planned in late January at Temple Emanu-El.

— Maitland Zane

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PREFACE

The California Wine Industry Oral History Series, a project of the Regional Oral History Office, was initiated in 1969, the year noted as the bicentenary of continuous wine making in this state. It was undertaken through the action and with the financing of the Wine Advisory Board, and under the direction of University of California faculty and staff advisors at Berkeley and Davis.

The purpose of the series is to record and preserve information on California grape growing and wine making that has existed only in the memories of wine men. In some cases their recollections go back to the early years of this century, before Prohibition. These recollections are of particular value because the Prohibition period saw the disruption of not only the industry itself but also the orderly recording and preservation of records of its activities. Little has been written about the industry from late in the last century until Repeal. There is a real paucity of information on the Prohibition years (1920-1933), although some wine making did continue under supervision of the Prohibition Department. The material in this series on that period, as well as the discussion of the remarkable development of the wine industry in subsequent years (as yet treated analytically in few writings) will be of aid to historians. Of particular value is the fact that frequently several individuals have discussed the same subjects and events or expressed opinions on the same ideas, each from his own point of view.

Research underlying the interviews has been conducted principally in the University libraries at Berkeley and Davis, the California State Library, and in the library of the Wine Institute, which has made its collection of in many cases unique materials readily available for the purpose.

Three master indices for the entire series are being prepared, one of general subjects, one of wines, one of grapes by variety. These will be available to researchers at the conclusion of the series in the Regional Oral History Office and at the library of the Wine Institute.

The Regional Oral History Office was established to tape record autobiographical interviews with persons who have contributed significantly to recent California history. The office is headed by Willa K. Baum and is under the administrative supervision of James D. Hart, the Director of The Bancroft Library.

Ruth Teiser
Project Director
California Wine Industry
Oral History Series

1 March 1971
Regional Oral History Office
486 The Bancroft Library
University of California, Berkeley

INTRODUCTION

The general contributions of Jefferson E. Peyser to the California wine industry are succinctly given in this interview. He helped organize the Wine Institute, an organization which has done much to stabilize the industry. Although the details often are not clear, it is obvious that Mr. Peyser has given it wise counsel from 1934 to the present. It is likely that the details are omitted because of the privileged character of the relations of a lawyer with his client.

The secret of his success probably lies in his pragmatic approach to the industry problems. The Repeal of Prohibition left the alcoholic beverage industries with a labyrinth of regulations. Rather than challenge these he chose the more subtle approach of their historical interpretation, in the process of which he usually gained his principal objective. Doubtless his experience as a legislator and as a careful lawyer led to this methodology.

He does, however, admit that changes in the law, particularly in interpretation of the Twenty-first Amendment would simplify his task. And he indicates that he is working on that problem.

He gives credit to the founders of the Wine Institute for their idealistic view of the industry. Something of their philosophy has survived and doubtless influenced Peyser's relation to the industry. It is quite clear that he views his relation to the industry in a philosophic sense. His temperance attitude in his public representation of the industry is quite clear. Much of his success in representing the California wine industry in Sacramento may well stem from this.

The origin of the Wine Advisory Board is clearly stated. He, again probably for lawyer-client reasons, does not go into details of the opposition to this organization, nor how this opposition was won over to the near-unanimous support which it now enjoys.

Whether large areas in California would now vote dry is debatable, but his view that the all-wet or all-dry California law is wise can hardly be challenged.

Also, whether it is wise for a trade association to contribute campaign funds for members of the legislature could be questioned. Here again he apparently justifies this on a pragmatic basis--it was for the best interests of the industry and the state.

The California fair-trade law is considered in some detail. Peyser admits that it is "a very close question." In times of surplus one can see the point, but....

The over-all impression one gets is that Peyser has been an astute and successful counsel for the industry. He admits that nine-tenths of the industry legal positions originated within the wine industry, not only in California but throughout the country. Probably the area where his personal interests have influenced his activities most has been in trade barriers--both interstate and international. Here we can applaud his activities wholeheartedly, and wish for them success. His fights on this score reveal that much of the disagreement is basically economic.

I can personally testify to Peyser's 24-hour a day endeavors. He obviously enjoys the day-to-day challenges and has sacrificed a great deal of his personal time to his position.

Maynard A. Amerine
Professor, Viticulture and Enology

January 1974
101 Wickson Hall
University of California at Davis

INTERVIEW HISTORY

Jefferson E. Peyser was born in San Francisco one year before the turn of this century. He was educated at the University of California, Berkeley, and received the Doctor of Jurisprudence degree from Boalt Hall in 1923. Shortly after, he began the practice of law in San Francisco, and in 1929 was elected to the city Board of Supervisors, serving until 1933. From 1935 through 1939 he served in the California State Assembly.

Mr. Peyser's first association with the wine industry came, as he recounted in his interview, in 1934, when he was asked to draw up incorporation papers for the Wine Institute. He became the trade association's first general counsel, a position he continued to fill and whose duties he continues to perform vigorously. He held primary responsibility for California state legislative activities until 1966, when he added to that the direction of the Wine Institute's national legislative and other state relations programs. A member of numerous service organizations, he has won honors and awards from many including the California Exchange Club and the B'nai B'rith; in 1969 he was awarded the George Washington Medal of the American Freedom Foundation of Valley Forge.

On July 11, 1972, arrangements were made with Mr. Peyser to be interviewed on the afternoons of August 3 and 4, at his office in the Mills Tower. On July 29 an outline of suggested subjects for discussion was sent to him. The interview actually took place on only one afternoon, that of August 3, 1972; he decided to complete it then so that he could schedule other activities the following afternoon.

Accustomed to addressing groups, agencies and courts, Mr. Peyser spoke in the interview graciously, clearly, directly and expeditiously. The transcript required little editing by the interviewer. It was sent to Mr. Peyser on March 5, 1973. He returned it on March 20 with a few changes and a few passages amplified through the addition of words and phrases. In his accompanying letter, he wrote:

"I have hastily reviewed the script. I say hastily because I just did not have the time to go over it too

carefully. I made some changes. There are many others that should be made but I think it can be satisfactory as it is."

In spite of Mr. Peyser's concern for its shortcomings, the interview gives an over-all view of the post-Prohibition wine industry from the point of view of the man who knows most about the law in relation to the post-Prohibition California wine industry.

Ruth Teiser
Interviewer

7 January 1974
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University of California at Berkeley

REPRESENTING THE WINE INDUSTRY

Teiser: When we were talking several days ago, you explained your principle as a representative of the wine industry. Would you explain it again now?

Peyser: Well, as a lawyer, naturally, you have clients who come in and ask questions about what they should do. The easiest thing is to say, "No, you can't do it." In my philosophy, the purpose of the lawyer is to try to accomplish the client's objectives. My principle has always been never to say, "No," but to try to evolve a legal way of accomplishing the objective, and I must say it's been rather effective.

For example, if you want permission to do something from a bureaucrat, if you just write, "Can we do that?" the easiest answer is, "No, you can't do it." But, if you say, "I have come to the conclusion that this would be perfectly proper under section so-and-so; I merely would like your confirmation," the easiest thing for him to say is, "Yes, I think it is perfectly O.K." You usually get a favorable answer. So this is the principle that I've applied in the wine industry with all our numerous problems. Many, many times there's a way of accomplishing the objective by interpretation of the law or regulation, by pointing out the historical background to establish the fact that the regulation didn't mean what they apparently believed it means, but practically it must mean something else, because it would be foolish to have it on the books if it didn't.

Teiser: The other way, then, would be to change the regulation?

Peyser: Well, that's, of course, the last resort, to have to change the law--or attempt to change the law. A typical example of that is a bill I have in the Congress to change the interpretation the Supreme Court has given to the Twenty-first Amendment. Congressional debates on the Twenty-first amendment, which was to repeal Prohibition, are completely void of any discussion concerning one state's right to discriminate against the products of another state, or any of these kinds of things. All they were concerned about is that Prohibition was to be repealed, and the saloon was not to return.

Now, the states always had state's rights, and there was no attempt to interfere with state's rights, but when the first case came up--and this was right here in California, Young's Market v. State Board of Equalization, 1935, if my memory serves me right, or '36--the case was assigned to Justice [Louis D.] Brandeis who happened to be a dry. I mean, his philosophy was in opposition to the use of alcoholic beverages. Well, he came out with the decision that the state had a right to discriminate or legislate in any manner that it wished to in connection with alcoholic beverages. Now, those decisions have been carried all through the Warren court, so that now a state can do just about anything it wants to. And, as I say, it has no foundation on an historical basis of the debates of the Congress, nor does it have any historical support from the law as it was before Prohibition. So the only thing we have to do is to try to change the law, and that's pending in the Congress now. In fact, I was hoping that by this time the President might have signed it, but it hasn't even been heard yet.

EDUCATION, THE LAW AND POLITICS

Teiser: To go back to the beginning of your activities--
I sent you an outline*--

Peyser: It'll take us quite a while to go through that!

Teiser: Well, I can begin by asking where and when you were born.

Peyser: San Francisco, California, 1899.

Teiser: Were you educated here in the city?

Peyser: Fremont Grammar School, Lowell High School, and I went to the University of California and received my bachelor's degree, and received my juris doctor degree at Boalt Hall.

Teiser: Did you intend to be an attorney when you were a youngster?

Peyser: [Laughter] Well, no! I wanted to be a doctor, but I'm very squeamish about being able to see blood or anything like this. I tried. Many of my friends were doctors. I'd even go in the operating room, but I'd faint, and I just couldn't stand it. My dear mother, when she told me to do something I'd give her an argument all the time, and finally she said, "I think you should be a lawyer. You're always arguing about something."

So I don't know whether that caused it or not. But I used to like debating in high school, and I won the Block L from Lowell, and I won the Block C in Cal. And so I guess it's just natural to jabber [laughter], and I guess that's how I became a lawyer.

Teiser: Were you in World War I?

*of suggested subjects to be discussed in the interview.

Peyser: Yes, I was. I was at the University of California in--I forget what they called it--not the ROTC. I mean, I was in the Army, and was assigned to Camp Fremont, and just as I was about to go to Camp Fremont the Armistice was declared, so I saw about six months of duty but that's all. But I became a reserve officer and held my reserve until about five or six years ago. Then I couldn't keep it up on account of my professional commitments. So now I'm back a civilian again.

Teiser: So it interrupted your education?

Peyser: No, it really didn't, you see. At the time they made provision that you could take your Army training and be in college at the same time. We'd have, oh, I forget how many hours, two or three hours of military, you know, Army training. Then we'd go take classes. Then we'd go back to Army training. So that I really didn't lose any time. I was very fortunate.

Teiser: Then did you go right into the practice of law?

Peyser: Yes, after I received my degree I was admitted to the bar and my first employer was an attorney by the name of Henry Ach who was probably one of the greatest criminal lawyers in the world. He is the lawyer who defended Abe Ruef in the days of the Abe Ruef trials. This goes back fifty years, almost. (I'll be practicing--next year it will be fifty years.) In those days he had retainers of \$150,000 a year. He represented, oh, Rosenthal shoe company,* General Cigar Company, the Richfield Oil Company. He just represented about everyone. If this man had given a young man a chance, I would have had fourteen floors of this building by now. But he would not give a young man a chance at all. He kept you in the background. He was a very sick man; he had angina. Died of it, I think. But he was a brilliant man, and I received a training from him that really stood me in good stead. He was a very thorough lawyer, very astute lawyer. He did a lot

*Rosenthal's Inc., San Francisco.

Peyser: himself, but I did much of his book work, and I'd go to court with him.

Teiser: You did your first court work with him?

Peyser: Yes, that's right. So it was a very interesting experience. When he died I left. I couldn't afford to take over his practice. He had two floors in the Sharon Building. I couldn't hold onto those clients. I was just a young chap, you know.

Teiser: When was it that he died?

Peyser: He died around '25. So then I went out for myself right here in this [Mills] building. Took a room and used a stenographer along with seven other lawyers, and started struggling. Things just happen. Then I went into politics; I ran for the legislature.

Teiser: And you went to the legislature before you became a member of the Board of Supervisors?

Peyser: No, no. I was a candidate for the Assembly when I was twenty-three years old.

Teiser: My word!

Peyser: And I lost by 66 votes. Some of it due to the fact that I couldn't campaign toward the end. My mother was desperately ill, and I quit campaigning, really. And there were other political complications due to my inexperience. Nevertheless, I lost it.

Then in 1927 I became a supervisor, and I was the youngest supervisor ever elected in the City at that time. (Since then there have been younger.) I served there, and in 1935 I became a member of the California legislature and served there until 1939. I couldn't afford to stay there any more. They paid us \$100 a month, and we had to pay our own expenses.

Teiser: You did?

Peyser: That was a little different than about the \$35,000 or \$40,000 they make now. I couldn't afford to give

Peyser: up the time, and so I resigned from the legislature.

Teiser: What were your main interests in the legislature?
Did you have any special field?

Peyser: Well, it was in the depths of the Depression, you know, and a fairly good amount of my practice was contractors' work and things of this nature, and I began seeing that some of these people were foreclosing on peoples' homes. So I was an author of one bill and a co-author of another bill, both of which were known as mortgage moratorium acts, and which kept them from foreclosing mortgages, you know. So that was one of my interests. My big interest was to get the San Francisco port back to the city of San Francisco, and the strange thing-- Governor Rolph* was a San Franciscan; in fact he was mayor for two years while I was on the Board of Supervisors. I got the bill through the legislature, and he vetoed it. And the reason was that in those days it was a source of a great deal of political patronage--hundreds of jobs--and so it was important to maintain jurisdiction in the state. I really fought for that.

FORMATIVE YEARS OF THE WINE INSTITUTE

Teiser: Did you have any special interest in the wine industry, or did you just happen to become interested in it?

Peyser: Just stumbled into it--was a lawyer, and a client walked in, that's all. As a matter of fact, it was a fortuitous circumstance. A public relations chap by the name of Bob Smith, Robert Smith, was my campaign manager when I ran for supervisor, and he was very friendly with Leon Adams and some of those people. So one day he called me up and said, "Jeff, a grape growers' association wants to incorporate. Would you handle it?" I said, "Sure," and so he sent Leon and Harry Cadow over. [It was] just like a client wanting to incorporate any other organization. It didn't have any particular significance. First

*James Rolph

Peyser: of all, there wasn't any wine industry at the time, in the sense that Repeal had just been effected. Let's see, Repeal was the end of '33.

They asked me what my fee would be, and I told them \$500, and they said they wouldn't pay that. I said, "Well, I can't help it." And Bob Smith said, "I think you ought to take it. It's a nice account." So, I took it, and here I am.

Teiser: That's the Wine Institute?

Peyser: We incorporated under the name of Wine Institute, as a non-profit corporation in 1934.

Teiser: And that was your introduction to the industry?

Peyser: Never knew anything about a grape except what I saw in the grocery store, and we of course never drank wine. That's one of the problems the wine industry had for many years, you see. My generation was the Prohibition era, so all we drank was bootleg whiskey and bathtub gin and things of this nature. That's what took so long, to educate our generation to the use of wines, because our generation had completely escaped that.

Teiser: Someone said that you had come into the wine industry at a time when its public image was rather poor, and that you had presented a very dignified front and created a dignified image for it.

Peyser: I don't know that it had any poor image. I don't even know that it had an image.

Teiser: Well, wasn't it an image of bootleggers--I mean, hadn't some people in it been bootleggers?

Peyser: I really don't know that to be a fact. In fact, I would question that. I think where this image, if there was an image, came from is that during Prohibition there was a law that permitted wineries to make wine for sacramental purposes, and then they could make grape juice, unfermented grape juice. Well, what did happen was--as usual there are always a few who take advantage. They'd go around and sell

Peyser: unfermented grape juice to people in their homes. They'd peddle it, and then they'd have a verbal understanding that they'd come around and make wine out of it--ferment it and see that it became wine. So maybe that cast a shadow on the industry, but other than that I really don't know. I had never heard of any allusions to anyone's character. If I had, I don't think I would have taken it [the position of General Counsel of the Wine Institute]. I was--still am--a little bit idealistic. I don't like to associate myself in practice with anything that's.... For example, I was offered representation of the liquor industry as distinguished from wine, and I wouldn't take it. When I say I was offered this, I was asked to represent the liquor dealers, and I just didn't care to be associated with the liquor industry. Not that there's anything wrong about it, but 'way back there--I don't know, wine just always sounded different to me. And believe me, as far as I'm concerned, today, I think the liquor industry is a very clean and respectable industry.

Teiser: Then you weren't in the wine industry when the California Vineyardists Association and Donald Conn were active, just before Prohibition?

Peyser: No, no, I really know nothing that happened before 1934. I have no knowledge. Donald Conn was in the industry afterwards, too, for many years after Repeal. He was one of these promotional fellows, you know. He worked out deals with the Bank of America. I might add if it wasn't for the Bank of America, we might have no industry today. They were tremendous in extensions of credits and everything. A. P. [Giannini] himself was tremendously interested, and Mario,* afterwards (that's his son). They probably are more responsible for the success of the wine industry than any one thing insofar as outside assistance is concerned.

Teiser: I gather that Caddow had been associated with Conn.

Peyser: Well, Caddow, you see, was involved in the grape deal before, and he knew all these people. I think Harry was a secretary of the grape organization that subsequently became the Wine Institute. The same

*L.M. Giannini

Peyser: personalities, practically, with not too many changes, differences. As I remember, the original founders of the Wine Institute were [Sophus] Federspiel, L.K. Marshall, Horace Lanza, A.R. Morrow, [A.] Setrakian, [Antonio] Perelli-Minetti, Herman Wente, I think Louis Martini, Lee Jones (that's where the name "Lejon" vermouth comes from, Lee Jones' name) and those other chaps down there, Bisceglia, and others I could look up.*

Teiser: You were named general counsel, and did you immediately start sitting in on the Wine Institute meetings then?

Peyser: Board meetings, yes, like any other lawyer--come to board meetings and answer questions. But I didn't do anything in the sense of participating in the activities as I do now. That didn't come about until maybe a year later. My first assignment was in 1935 when they asked me to go to Texas to write the first wine law in the state of Texas, which I did.

Teiser: That was the first time you acted in that capacity?

Peyser: That's right.

Teiser: The men who founded the Wine Institute, can you characterize them in any way?

Peyser: Yes, I think I can. Herman Wente used the expression that I think best characterized the majority of them: they were good old dirt farmers who were interested in grapes and were idealists. And I think this was absolutely true, fellows like Herman Wente, L.K. Marshall, and A.R. Morrow. Oh, by the way, Walter Taylor was another founder of the Wine Institute. He was in Fruit Industries. To these men, really, quality was the important thing. They were not interested in short cuts. They were interested in growing fine grapes and making fine

*For additional accounts of the men instrumental in founding the Wine Institute, see other interviews in this series.

Peyser: wine, and this is what impressed me about the majority of the men at that time on the board. In other words, they weren't quite as commercial as you might say farmers are today--or, farmers aren't as commercial as entrepreneurs in the market today. Of course, they wanted to make a living. As a matter of fact, Herman Wente and L.K. Marshall--and probably L.K. Marshall more than Herman--are the men responsible for [the wine industry order under] the marketing act of 1937.*

L.K. Marshall called me up one day and he said, "Jeff, I think we could have a marketing order under the marketing act of 1937--'35, as amended in '37." In fact, I was not a co-author of the bill but I was in the legislature when it passed. I had something to do with it. I said, "I don't see how you could, Lawrence." He said, "Well, you look at it. You check that law."

So I did check the law, and the act did say that agricultural commodities were covered. Well, the question was: was wine an agricultural commodity? To make a very long, long story short, we contended that it was an agricultural commodity, and we petitioned the Director of Agriculture for a marketing order. His name was A.A. Brock, if my memory serves me, and he was a lawyer. And with his jaundiced eye he looked at that [state code] book and said, "You fellows aren't qualified." Well, we argued around, had a hearing, and--well, we got the order. Then it was challenged, and the matter went to Earl Warren who was attorney general. And he labored hard and long, and finally supported our position.

Well, then I changed the law, and in the agricultural code today it says that "agricultural commodities" includes wines, specifically. I put that amendment in the law. And incidentally the language that we now use, "wine grower," I must be immodest enough to say that I'm the one who created that. And again only by accident.

*The order creating the Wine Advisory Board in 1938.

Peyser: I was checking the cases on another matter altogether, nothing to do with wine. I was looking up the law on another case and I came across a case in the 1800's decided in the Supreme Court of California wherein a grape grower was suing for the right to have some benefits under a manufacturers' act. And the court said, "You're not the manufacturer, you're a grape grower." So I thought that was kind of a cute idea, and at our next board meeting, being young and ambitious, and idealistic, under new business I said, "Gentlemen, I have a great idea." I said, "I don't think we should be called wine manufacturers, I think we should be called wine growers." Well, you could have heard the laughter all the way to Los Angeles. Here's a young chap, you know.... I said, "Gentlemen, I can support the name with a Supreme Court decision. And, I think it's much nicer to be called a wine grower than manufacturer." So, in a jocular mood, they said, "OK, if you want to change the law go ahead and change the law."

It took me about six months of work changing it. Wherever the word manufacturer occurred, the whole code had to be changed to conform. [Laughter] And that's the way "wine growers" started, and they say it's been a very effective thing for us, particularly during the days of O.P.A., where manufacturers were distinguished from growers, and where agricultural commodities were distinguished from other commodities. And it's been a very effective, valuable esthetic thing for us as well, if you want to call it that. But the name "wine grower" is used now practically all over.

Teiser: Does that mean that someone who actually buys ninety per cent of his grapes still is a "wine grower"?

Peyser: If he produces wine.

Teiser: Suppose he doesn't grow any of his grapes?

Peyser: Well, that's the way they jibed me. They said, "I never saw any of this wine growing out of the ground." I said, "You don't look hard enough."

Teiser: [Laughter] It applies to any--

Peyser: Well, that's the name of our license. We have a wine grower's license, and that's a person who produces wine or blends wine, and [it] has nothing to do with his grape growing.

Teiser: When Prohibition ended, what would have happened if the group hadn't formed here, to try to set about orderly--

Peyser: Oh, this is probably conjectural. I'm only giving you my opinion on it. There would have been a wine industry. I mean after all, the Wine Institute is only a trade association. We have nothing to do with running anybody's business.

Teiser: No, but what kind of legislation would have ensued without an organized--

Peyser: It probably would have been difficult, maybe almost impossible, except that individuals can go to Sacramento, and if they have legislation that's meritorious, they can get bills passed.

Teiser: Who would have been able to afford it then?

Peyser: Well, theoretically it's not supposed to cost money, you know. That's why we elect our members of the legislature, who are supposed to carry that legislation for people--which they do as a matter of fact. Gosh, I had bills given to me by people--if I thought they were all right I fought to get them through. Sometimes I did, sometimes I didn't, but no compensation or anything. That was my job. I represented my constituents. Of course, in an industry, that presents a little different problem. My problem, assuming I'm a wine grower, could or could not be synonymous with or the same as everybody else's problem; or fifty per cent may have the same type of philosophy. So, that's the real effectiveness of a trade organization, that they represent a composite view. They fight it out in the board meeting and battle it out and compromise, but when they go to the legislative halls, they present a united front. Now that hasn't always been. There have been occasions when I've been

Peyser: opposed by some of my own people. In fact in Washington recently I testified on behalf of the Wine Institute, and a member present from the Wine Institute testified the other way, and so a good friend of mine came up and said, "Just who do you represent?" [Laughter]

That doesn't mean that when the vote's taken there aren't negative votes, but then the majority rules, and that's the way it goes. And that's the effectiveness of a trade association, plus the fact that the legislators recognize that it's an industry and it's important. In California, the grape industry is probably the second largest agricultural commodity in the state. Sometimes it even ranks first, depending. This effectiveness in that sense of the word was true more before reapportionment than now. See, the Senate represented the country in the main, the cow counties so to speak, whereas the house--the Assembly--the majority represented the urban areas. So the senators were always attuned to the needs of [all] agriculture, not only of wines, grapes. But now it's different. Poor agriculture! It doesn't have much--but, they still listen and they are fair-minded people, and we haven't had any problem.

LEGISLATION AND CONTROLS

Teiser: When you were starting to work out wine legislation, I suppose a lot of suggestions originated with the industry.

Peyser: I would say nine tenths.

Teiser: I think you've said in speeches that at least nationally the wine industry was looked upon as slightly illegal. But in this state was that true?

Peyser: No, that was not true in California. Some of those federal people could never understand. They never got quite over the fact that Prohibition had been repealed, and they did treat the industry for a

Peyser: number of years just like bootleggers. If you wanted to change a screen in the winery you had to file plots and descriptions, and if you wanted to change a screw from one size, to put extra screws in, you had to get permission. Oh, yes, this pertained for quite a number of years afterwards.

Now whether it continued in order to create jobs for people I don't know, but oh yes, we had a lot of that, and it was very distressing. Gaugers went around and put all kinds of padlocks on doors and everything else. Of course, that was necessary, but, as I say, everything you wanted to do, you had to get permission, and they checked you very carefully. The federal people absolutely, in my opinion at least, for ten years after Repeal, still treated the industry as though they were a bunch of bootleggers.

Teiser: But in California, it was understood.

Peyser: Oh, in California we had no problem. The state officials were always responsive.

Teiser: Wine and beer are classed together in a good deal of legislation because of their low alcoholic content. Is that to the detriment of the wine industry?

Peyser: I don't think so. As a matter of fact, now [laughter] we like to stay by ourselves, because we have received so much acceptance.

One of the jobs I had always--more particularly since I assumed some of this responsibility--was to distinguish wine from other alcoholic beverages because of its alcoholic content, because of its purpose. Even more so than beer, because you can go into a saloon or tavern, you know--it might be a lounge--and you see people sitting there drinking beer. I don't think you'll see one in five hundred drinking wine. Wine is consumed in the home, or restaurants, with food. And that's one of the big emphases that we put on this, and I think we sold it pretty well to the legislative community, that we're entitled to different treatment. Well, not

Peyser: different treatment, but a relaxed law like we have in California. In other words, beer and distilled spirits have the same privileges that we have, but not in every state. There are all kinds of crazy-quilt laws.*

Teiser: I remember once trying to buy one can of beer in Missouri. They said it was illegal; you had to buy at least a half dozen. [Laughter]

Peyser: Oh, or Kansas! Problems in Kansas! As a matter of fact, one of my members was telling me that in Kansas they're going to stop airplanes from serving alcoholic beverages while flying over the state. I don't know how they're going to do this. [Laughter] But I do remember in the old days when I used to have to go east, when we were flying over dry territory they wouldn't serve drinks.

Teiser: And as I remember, California used to have a law that liquor could not be sold except in eating establishments.

Peyser: Restaurants, yes. Well, the history of that is very interesting.

Many people don't know this, but geographically, (that is, in the amount of acreage) California is dry. If you would have a wet-dry election today, you'd be surprised at Los Angeles County, Fresno County of all places, Kingsburg, that would go dry. This is a fact! As a matter of fact, whenever there was a question of wet or dry, geographically, there was more territory dry than wet. Well, anyhow, not to belabor that--when we started drafting the constitutional amendment for the state of California, we recognized we'd have to do something to keep the dries from screaming too loudly, so we (I say "we," a group representing the whole industry) thought one way to do this is not to have bars, that alcoholic beverages could only be served in connection with the sale of food. And that's historically where

*See Peyser, Jefferson E., "The Crazy Quilt of Laws on Wine," Wines and Vines, June 1971.

Peyser: that started.

Teiser: I see. And I suppose that was associated with the signs on places that served liquor that read "Bee Garden" and things like that.

Peyser: That's right--you'd see "Cavern" but never "Tavern."

Teiser: I remember. [Laughter]

Peyser: And then, we went through all kinds of stages on those things. What is a restaurant, and what is a meal? They used to have what we called "rubber sandwiches," you know. [Laughter] But, I think things are pretty well straightened out now as far as California is concerned.

Teiser: What was the basic state law?

Peyser: There was a constitutional amendment enacted which is the basic law for this state. One of the things that we had to concern ourselves with was that there wouldn't be local option. Now, in many states to this day, even cities are divided. Half a city will be dry and half a city will be wet.

So the group that was meeting on this thing wisely, I think, determined that as far as California is concerned, there should never be local option; either it be all wet or it be all dry. Otherwise all you're doing is bootlegging from one county to another or from one city to another. So the basic laws give the state of California the sole and exclusive right to license the sale and manufacture and distribution of alcoholic beverages. No local option. There shall never be saloons, and it must be sold in bonafide eating places, and things of that nature.

Teiser: How did the control happen to be given to the Board of Equalization?

Peyser: Well, everybody wanted to work so fast--to get things going, get back into the liquor business--so they drew up the law and said, "Well, who's going to enforce this thing?"

Peyser: "I don't know, who do you suggest?" and everybody's talking.

"Well, let's give it to the Board of Equalization. They don't have anything else to do."

That's literally the way they got it. There was no rhyme or reason. They just looked around for some agency and said, "Oh, let's give it to the Board of Equalization." It was that simple.

Teiser: Was there anything inherently wrong with it being in the hands of the Board of Equalization?

Peyser: Not at the outset, but it became a very bad political mess. Mr. Bonelli,* as you know, was indicted, and a couple of other fellows got in trouble. Most of the members of the board were not crooked, but the operation of the board was crooked. It was a bad situation, and that's why, very fortunately, it was taken away from the Board of Equalization.

Teiser: Does the industry today contribute to political campaigns?

Peyser: What we do to a very, very, very minor degree: we will contribute to campaign funds for certain members of the legislature. It's perfectly legal in California. We don't concern ourselves outside California, and if a senator or assemblyman needs some money, if we can help them with a little bit of money (and believe me, it's very small), we do that. It took me almost ten years to get them to do it. [Laughter] I don't know how we did get by [before that] to be very honest about it. Sometimes I just look back and get goosepimples figuring out how it happened, but I maintained my contacts, and once you're a member of a legislative body there's a certain comraderie. They try to be helpful to a fellow if your cause is just.

We have never to my knowledge, and I can truthfully say this, ever asked a legislative body to do something that would benefit a few or one. It was always a broad industry thing that was necessary to enhance the industry's benefits. And so very frankly, in one sense of the word, there shouldn't

*William G. Bonelli

Peyser: be any objection. After all, if we needed some legislation to make the industry grow, and not help an individual, why shouldn't it be done if it's in the best interest of California? After all, our people pay taxes, and the larger the industry grows, the more property taxes, the more income taxes, the more everything. And this I don't say Pollyanishly at all. I can truthfully say that we never have asked for a piece of legislation that I would be ashamed to tell the world about.

Teiser: Maybe that was what was meant by your keeping the industry image dignified.

Peyser: Well, we did, and my personal conduct--for example, in all my years in Sacramento, I never had a drop of liquor; I never had a drink. When I was a member I drank, but when I assumed the responsibility of representing the industry as an advocate, I never took a drop of liquor. To this day, when I go to Sacramento, I'll take the fellows out to dinner, and they can have anything they want, but I never touch a drop of liquor.

And I never went into a bar. I never took a bunch of fellows to a bar or night clubs. I figured that it was important that representation should be high class, dignified, and not this rough-and-tumble stuff. First of all, I don't enjoy it personally, and secondly, I wasn't going to ruin my life for the wine industry. So I did create that, and we still maintain it. My men are instructed that they are not to go to night clubs, they are not to go to bars. We have a suite of rooms with our offices. If they want to entertain up there and have dinner that's fine, or go to some legitimate restaurant, one of the top restaurants, that's fine. Never had a woman except the wife of a legislator with him in my rooms. And I think we did establish a very high plane, if I say it myself, of representation.

We do that everywhere. All of my men are instructed the same way. I'm thousands of miles away. I assume they heed my admonition. I've never heard any criticism. And I always told them, and that rule is still in effect, there's never a

Peyser: second chance if a man is reported drunk. One of my men has been with me 38 years. Tomorrow morning, if somebody said to me Henry was drunk last night, he'd be through. And I think it's important. Not only from a social point of view, but you know, you learn an awful lot from listening, not by doing all the talking.

When I was very young, I went to Sacramento one time. I was on the Board of Supervisors and I was chairman of the judiciary committee. I was sent to Sacramento in connection with the Bay Bridge. We couldn't get the Bay Bridge legislation through. Nobody knew what was holding it up. So they sent me up there. In those days I didn't even know where Sacramento was.

Anyhow, I went to Sacramento, and I had some very good college friends there. One was a senator who invited me up to one of those famous rooms, you know, and they were drinking and having a big time. All of a sudden I heard something in the talking, and I listened, and we finally got the bill through. So, I always said I would never drink or allow anybody to drink, because you never know; too much drink, too much talk. As a matter of fact, the newspapers credited me with getting the vote that passed the bill to build the San Francisco Bay bridge. One vote we needed, and my good friend, Senator [Harold J., "Butch"] Powers gave me the vote, and that's how the bridge got built. (He had nothing to do with the drinking. In fact he wasn't even in the room.) But I found out what was wrong, and what the mix was, and then I went to Butch (he was lieutenant governor later), and I told him--just for old times' sake--I wanted the vote. I said, "You live up in the cow counties. It doesn't matter to you if there is a bridge or isn't a bridge, so why don't you give me your vote?" And, he gave me the vote that was necessary.

So I do give myself a little credit that we have represented the industry in a dignified manner. I think we have the respect of legislators. We never mis-state things to legislators. We tell them the facts, good or bad, and then try to convince them. But there's no coloration.

FAIR TRADE LAWS

Teiser: I'm amazed that an industry that includes small companies, large companies, and medium-size companies can co-operate to the extent that the wine industry does here.

Peyser: Well, it's to their mutual advantage. I don't know, maybe you can't explain it. Most of the things we do--for example, if there's a production process for which we want a regulation, it helps the little fellows as much as it helps the big fellows. If it's a new method of doing something, or the use of a certain herb (see, we can't use anything unless it's permitted to be used) in the matter of cellar treatment, well, if it's improving wine, it helps the little fellow as well as the big fellow.

Teiser: I'm thinking perhaps more in terms of regulation of merchandising.

Peyser: We have no regulations for merchandising. Well, we have what we call fair-trade, minimum prices, and as a matter of fact I was just interviewed the other day by someone from the State of California, in Alan Post's office, on the matter of my views on fair trade. I told him I couldn't give him my views on fair trade because I don't know our industry's view of fair trade at this moment. The law is there, but my personal, my purely personal view is that it's a very complicated matter. It isn't as simple as people think it is. For example, I can go to Texas and I can go to Washington, and I can get a bottle of liquor \$2.00 cheaper than I can in California, or any fair trade state.

Well, I've never been able to resolve it really. If I had to vote I don't really know what I'd do if I was still a member of the legislature. It is a question of are we going to protect free enterprise and protect small businessmen, or are we going to say, oh, to hell with them, the so-called consumer is entitled to protection. The consumer is entitled to protection, but I don't know of that

Peyser: \$2.00 difference in the bottle of liquor, how much the consumer would actually get, or where this \$2.00 might end up. But, assuming that the consumer would get it, the papa-mama shop fellow is a consumer too. He's trying to send kids through college, too. He pays taxes, too. Now, what are we going to do? Let the devil take the hindmost and say, "OK, shift for yourself?"

We had an example right out here. I don't know if you're familiar with San Francisco, but right across from the Marina Safeway was a grocery store. I'll bet it was there fifty years. Fine little grocery store. One year after Safeway went in, it went out of business. So it becomes a matter of personal philosophy. As I said to the grocer, "I don't know. What is the state supposed to protect? Is it supposed to protect the consumer to the exclusion of everybody else? Are we supposed to protect the mama-papa store to the exclusion of everybody else?" This is where this comes in, and that's where fair trade comes in. And I'm not speaking for the industry, I have no authority. This is my hangup, so to speak.

Well, anyway, the point is today you can walk into any little drug store, any little grocery store, and you pay the same price for alcoholic beverages as you do at Safeway, Walgreens, or any of these places. Now just the other day my housekeeper told me she went in a drug store and the man asked her who she worked for and she said, "Jeff Peyser." He said, "Oh, Jeff, I've known him for twenty years, tell Jeff--" well anyway, to make a long story short, I needed some drugs later, and so instead of telling her to go buy them I called up and I gave him an order to be delivered. I said, "How are things going?" (I'll tell you who it is, the drug store right there on California and Polk, the Rexall.) "Well," he said, "I'm getting beat to death. Right across the street is that big Walgreens," he said. "I just can't compete with them, Jeff. They're underselling me on everything. Prescriptions are a joke. They sell them for about two per cent or five per cent above cost. So the best I can do is give people good service and try to do the best I can."

Peyser: So if he goes out of business, what happens to him, his family? These are the conflicting philosophies.

Teiser: Has the industry--

Peyser: Well, at one time they took a position, because we put it on the books. We have fair trade laws in California.

Teiser: When did the laws go in?

Peyser: Oh, a long time ago.

Teiser: Not immediately after Repeal?

Peyser: No, they went in I'd say maybe ten years or fifteen years later.

Teiser: When you say "a group of us" sponsored legislation, do you mean...

Peyser: Oh, people representing the various branches of the industry--the wholesalers, the retailers, the beer people, the distilled spirit people--

Teiser: All the liquor industries.

Peyser: Yes.

Teiser: Are fair trade laws connected with price posting?

Peyser: Yes.

Teiser: That's part of them?

Peyser: Yes, price posting and fair trade. In other words, I'm a brand owner, and I fix the price which you, the wholesaler must sell to the retailer, and I post that price. In other words you must understand (which you do, I'm sure) no one tells me what price I must post, but whatever price I determine, that's the price at which the wholesaler and retailer have to sell.

Teiser: Every now and again someone challenges that.

Peyser: Oh, it's been challenged many times.

Teiser: Is there any chance anyone will succeed in challenging it finally?

Peyser: Well, speaking as a lawyer, it's a very close question. The Supreme Court, however, has always sustained it--last time by one vote, five to four.

THE WINE ADVISORY BOARD

Teiser: You mentioned the marketing order that created the Wine Advisory Board.* Do you have a technical or a formal relationship to the Wine Advisory Board?

Peyser: Do I, personally?

Teiser: Yes.

Peyser: No. At one time when it first started, I was also attorney for the Wine Advisory Board and retained by them. Even though the law says that the Board may retain their own counsel, somebody, not in our industry, but somebody raised the question that the [state] attorney general should represent the Wine Advisory Board, it being a semi-state agency. The then director, Mr. [A.A.] Brock got a little scared and said, "No more private attorneys."

Of course, they call me up and ask me questions, and I answer without any charge, but I really have nothing to do with them.

Teiser: But you are aware of them...

Peyser: They have some control over my budget so I like them.
[Laughter]

Teiser: What about the suits against Arakelian and Martini and...

Peyser: Gallo.

Teiser: The state brought suit against them.

Peyser: Well, the state brought it, sure, because it was the Wine Advisory Board. See, it has to be brought in the name of the state.* Gallo just refused to pay his assessments, challenged the legality of the law.

Teiser: What was he challenging?

Peyser: The concept; the idea. You know, some people are not going to be told what to do. I handled the suits. I was attorney for the board at the time.

As a matter of fact, the real challenge was Gallo, but even that didn't go to trial. They finally settled that.

Teiser: It didn't seem to cause any unhealed wounds.

Peyser: No, no. As a matter of fact, Mr. Gallo** has been one of the most positive forces on our board for many things such as the medical research program, and many things that are very fine. He's a perfectionist himself. I call him a genius, myself, because he really is. Of course, he has definite views. He has been a fine force for the industry. I think he has done a tremendous amount for the industry in his foresight.

Teiser: Were there any other challenges?

Peyser: No, not after that.

*A number of suits were filed against wineries for non-payment of the assessments required by the marketing order. The most prominent were the three mentioned (K. Arakelian, Louis M. Martini Grape Products Company, and the E. and J. Gallo winery), and they were settled by agreement out of court.

**Ernest Gallo

Teiser: I remember there was one time when there was a disagreement about taxes.

Peyser: Oh, yes, when it came to the renewal of the order, we had a big battle one time, and that's where on one side of the fence was Schenley and Setrakian, and some others. And on the other side were the "good boys." [Laughter] The "good boys" and the "bad boys." We had quite a contest on the renewal of the order, but it was finally renewed.

Teiser: Was it a split between people representing heavy interests in dessert wines against others?

Peyser: No, that really wasn't it. Schenley at the time had a very individualist approach to everything. Even in the liquor business they drew out of the trade association, and they were moaning and groaning about something. I don't know, it may have been that we were spending too much money for something that they didn't approve of, and they thought something could be done cheaper. It had nothing to do with me. I'm talking about the whole program.

And, I think Perelli-Minetti was on that side, if my memory serves me.

Teiser: Of the bad boys?

Peyser: Of the bad boys, yes.

Teiser: Were they people with heavy interests in the valley?

Peyser: Well, the Lodi people didn't object to it, and they were heavy in dessert wines, and Gallo didn't object, and he certainly was heavy in dessert wines. I don't think that was the line of demarcation. I think it was just the ins and the outs.

Always in an organization somebody is out and somebody is in. I mean, in the sense that they feel they are. In the Wine Advisory Board, everybody has the same vote--one vote--and that's it. So the way the majority goes determines things. And, of course, the Wine Advisory Board has no authority to do anything. All they have authority to do is to make recommendations to the Director of Agriculture. The director

Peyser: is the one who finally has to make the decisions. But if he feels that the board is a competent board, and is operating in the best interests of the industry, he customarily goes along with their recommendations.

PROBLEMS AND SOLUTIONS

Teiser: Were you involved in any way in the brandy prorate?

Peyser: No, not in the mechanics of it. I was involved a little bit in the legal end of it. That's the famous Parker v. Brown, where they challenged the prorate act. It was held constitutional. That was my only connection with it.

Teiser: Do you recall the organization known as Central California Wineries?

Peyser: I don't remember much about them. Didn't Mount K. Wild represent them?

Teiser: I believe so.

Peyser: All these moves were supposed to shorten the market. There were terrible surpluses in those days. That's where your brandy pool came around, and raisin deals and all these things were purposely shorting the market so they could do something with those grapes. But they couldn't be charged with price fixing because of any pools. If my memory serves me, legally there was nothing wrong with the organization, Central California Wineries.

Teiser: I didn't mean to imply there was. Do you remember the workings of that threatened suit for price fixing--why it was called off?

Peyser: Oh, that was the one where there were hearings held, and all kinds of things happened.

- Peyser: I wasn't really active in it. I know what went on. I rendered my opinions and things like that, but I didn't do the negotiating.
- Teiser: Was it Emanuel Cellar who held the hearings?
- Peyser: Yes, Emanuel Cellar, chairman of the House Judiciary Committee. He was just defeated by a thirty-one year old girl.
- Teiser: He apparently had been a good friend of the California wine industry from way back.
- Peyser: Yes, sure, he knew the challenge, you see, in New York. He had a long association with it. The man, himself, was a wine peddler. He worked his way through school, I understand, selling wine. He was very friendly and has been all these years. Not that we needed him particularly, because we haven't had any federal legislation of any significance. Oh, we have legislation all the time but it's only routine matters.
- Teiser: So he continued to understand the wine industry problems all the way through?
- Peyser: Oh, yes. There is a very good wine industry in New York, too, you know.
- Teiser: Yes.
- Peyser: And between that and his relationship with the Cellas,* just generally, we've always been friendly with him. I go to Washington once in a while and see him just to maintain a friendly relationship.
- Teiser: Does the California wine industry cooperate frequently with the New York and Ohio industries?
- Peyser: Oh, yes. Yes, we do. In all legislation involving production matters, where we're changing things. For example, right now we have a bill involving CO₂ (that's carbon dioxide), we clear those things with other states' industries.
- Teiser: I guess those are the three main states.

*John Battista Cella and Lorenzo Cella

Peyser: Unless you put in Michigan, Ohio, Washington state. We used to have what we called the Wine Conference of America. We set that up. I say "we"; I mean California set it up for just this purpose, sort of a clearing house. Well, just recently we allowed it to die. Other people were infiltrating-- the wholesalers and the importers, and it just got to be something that wasn't what we wanted it to be and so--it's still a name, but we just don't use it any more. What we do, for example, if we have a problem I'll call up the New York people, and I'll call up the Ohio people, and--well, last year we even had a meeting, I mean in my room, and discussed the matters. We rarely have conflicts.

There's only one big issue between the East and West, and that's the use of sugar. You see, California does not permit the use of sugar in wine making, and the American industry can, under federal law, use sugar. That is not an issue any longer. They use sugar, we don't use sugar; everybody's happy. That was a very sore point for a number of years, but it was the only one.

Teiser: [Laughter] I see. Maybe you'd like to stop and continue tomorrow.

Peyser: I'd rather go through and get it over with, because I don't have time tomorrow.

Teiser: That's fine.

CO₂ AND TAXES

Teiser: Well, CO₂ brings up the problem of champagne taxes.

Peyser: Oh, champagne taxes. There is pretty much of a split on that. Some people think that champagne taxes should be the same as wine taxes, that bubbles shouldn't be taxed, and others think they should. I have a personal view that's different than all of them. I think champagne sells because of the snob

Peyser: appeal, "Oh, we're going to have champagne tonight!" Or a wedding. If the price is the same as wine, what would be the difference? That's successfully contradicted in Europe, of course, where champagne is sold in profusion and yet there is no special tax--so, I don't know. As I say, I don't know what we're going to do about it.

There's a very strong sentiment, and very powerful forces in California who think the tax should be reduced. And there are strong and powerful forces who think it should not be reduced.

Teiser: Why wouldn't everyone in the industry want it reduced?

Peyser: Because as I say, today champagnes sell to all kinds of people--people who normally can't drink champagne, but if they are going to have a party or somebody's getting married, or they want to celebrate, they splurge. Now, if champagne is the same as beer or any other wine, why would they necessarily drink champagne?

It happens to be off the record and my personal opinion, but as I say, this is negated by the statistics in Europe, where the champagne taxes are not higher, and where champagne, of course, sells very well, and holds its share of the market very well. So, that's the champagne issue.

Teiser: The CO₂ issue came up again with the pop wines?

Peyser: That's right. Well, CO₂, carbon dioxide, is what gives the wine that little fizzle, you know. It's not a bubble, it's just that tantalizing little something. Emerald Dry Riesling is the best example. And we have a bill in congress now to increase the use of CO₂ just to the point where it gives the wine (for whoever wishes to make it that way--it's not mandatory) that little--we don't know what to call it--that little fizzle. There's no opposition to the bill, and it will go through.

GOVERNMENT AGENCIES

Teiser: Are there some other regulating bodies in this state that are concerned with the wine industry?

Peyser: The State Board of Agriculture, but that doesn't have anything to do with the wine industry per se.

Teiser: How about the Health...

Peyser: Well, the State Board of Health has direct control. They promulgate regulations concerning the production and standards of identity for wine, and if we want changes in our California law we have to petition them and hold hearings, and then they have general supervisory powers over health and sanitation, things of this nature.

Teiser: Have you worked with the industry on quality standards?

Peyser: Oh, yes. All of our quality standards have to go through them. You've seen the rules and regulations of the State Board. Should be right here. Oh, here it is. This describes all the wines and the standards.

Teiser: I'll put the title on the record. State of California Regulations Establishing Standards of Identity, Quality and Purity, Sanitation and Advertising of Wine. California Department of Public Health. Did most of the provisions originate in the Wine Institute?

Peyser: Most of the things in there, yes.

Teiser: Do other industries work toward quality control the same way?

Peyser: Oh, yes, every beverage industry really more or less works that way.

Teiser: That was, I think, one of the stated goals of the Wine Institute when it started.

Peyser: That's right, quality standards and promotion. These are our objectives. And again, to ward off the evils of discriminatory legislation, things of that nature. Those are the objectives.

Teiser: The federal regulating bodies, are they...

Peyser: The Alcohol--well, they just changed its name-- it was called the Alcohol and Tobacco Tax Division of the Bureau of the Internal Revenue Service. It has just been by executive order changed. It's now under Treasury instead of Internal Revenue Service. It's called the Bureau of Alcohol, Tobacco and Firearms. They passed firearms legislation, and again they didn't know what to do with it, so they threw it in with alcohol, and it is the worst thing that ever happened, but there it is, and there's nothing to do about it.

So, that's the federal body that regulates it.

Teiser: Is it essentially the same people as in the previous agency?

Peyser: Yes, exactly the same.

Teiser: Has that been always an easy body to work with?

Peyser: Yes. They've had different names, but basically they have been the same.

Teiser: The agency was created at the time--

Peyser: --at the time Prohibition was repealed. Under the F.A.A. Act, the Federal Alcohol Administration Act.

Teiser: Did the wine industry have any part in creating it particularly?

Peyser: I would say no. I would say no. Unless Judge [Marion] De Vries* may have had something to do with it.

*Counsel for the Wine Institute in Washington, in the 1930's.

Teiser: Are there other federal bodies...

Peyser: Health, Education and Welfare. Food and Drug; they, of course, have the same regulation over us that our local [agency] does. And they vary. Now these consumers' agencies, of course, are on top of everything. You see, there are certain things that are permitted, have been permitted in the production of wine over the years by proving that they are safe. I mean different herbs and components. Well, there's a list of those. It's called the GRAS List. It means "generally recognized as safe." All of a sudden the Food--we still call them the Food and Drug--Health, Education and Welfare have decided they're going to review this list. And they put it to us to prove that these items still are safe.

Now there's a great deal of hazard in all this. You recall the cyclamates they said were no good. I had a client that lost two million dollars because they had to destroy all products with cyclamates. Now there's a bill in to compensate [people like that]. If you recall, they said it was safe, and later not safe. They go off half-cocked half the time (and I say that very advisedly). I've had much to do with them at recent date. I'm in very serious contention with them, particularly now with the consumers. The Nader groups are hounding them all the time, and they're sensitive to this and they're afraid, and so on the slightest provocation they succumb to pressure.

For example, we had a certain situation where there was an article in a Swedish magazine. Some guy writes an article that something isn't safe--causes cancer when combined with certain acids and things. So, what do they do? They're going to stop the use of it right now. Nobody has ever said it was bad. It was on the GRAS List. We have plenty of evidence to the contrary, but nevertheless they have gone ahead and forced us to discontinue the use.

Teiser: Discontinue it, not even to prove it?

Peyser: Discontinue it. So, anyhow, they are quite a police dog.

They haven't moved too fast on reviewing the list, frankly. Maybe they are reconsidering. It's a Herculean task. It would take them years. And it would cost them a fortune. It would cost industry a fortune!

Teiser: The wine industry has all the problems of the food industry plus all the problems of...

Peyser: --of alcoholic beverages. We have all the problems of everybody. We have consumers' problems, ecology problems, Food and Drug problems, alcohol problems, tax problems, foreign import problems. You just name it and we have it. [Laughter] Weather problems, nature's problems such as the growing of grapes. So, there's nothing we don't have. We're all-inclusive.

NATIONAL LEGISLATION AND STATE RELATIONS

Teiser: [Laughter] When--going on in this outline--when you took over responsibility for all legislative work at the Wine Institute in 1966, I gather that you'd been consulted on problems for a long time before that.

Peyser: I'd been consulted, but I never had the responsibility of supervising it and being definitely responsible for it. I was always responsible for California. And they would naturally talk to me about a situation here or there, but I had no responsibility. I didn't really know what was going on. Like today, I know in every state, every day, what's happening. I think I do, anyhow [laughter]. In those days, somebody would say there was a problem in Ohio--but today it's my responsibility for the whole thing.

Teiser: You had a staff of two, or was it only yourself and one other?

- Peyser: Oh, the old days, two of us. Now we have four, six, eight, nine.
- Teiser: Does the Wine Institute itself have representatives in other states?
- Peyser: Oh yes. I have offices in Detroit--I call them my offices--Wine Institute offices--Detroit and Atlanta and Washington and Sacramento. Two men are stationed in Detroit. They fan out from Detroit. A man covers the southern states from Atlanta. Then there's the Washington office with Mr. [Arthur] Silverman. I do a very substantial part of the Washington work myself, but this man is there all the time and he maintains liaison with the departments and the Congress. I work primarily with the State Department, Commerce Department, Food and Drug, and the key legislators.
- Teiser: Heavens! How can you keep up with both Washington and Sacramento?
- Peyser: I don't know. Don't ask me. [Laughter] I really, regretfully, have given up some of my personal life. I don't have much of a social life any more. This morning before six-thirty I'd made three calls to the east already. And Sunday I have to get up--Mr. [Eugene T.] Rossides, the assistant secretary of the treasury,* is coming out and called me. I can't turn him over to one of the men. Frankly, it's a very herculean task. The only thing is--I think I told you the other day--I'm stupid enough to enjoy a challenge. Being a young man, I still enjoy challenge. And it's one of my interests--not to the exclusion of things--but I want to get that bill through the Congress. I want to succeed on an international level if at all possible. And then I may decide to retire.
- Teiser: Attorneys never retire, do they?
- Peyser: No, I don't think I would retire. I'm too active. I mean, I wouldn't know what to do. I like to play

*Assistant Secretary for Enforcement, Tariff and Trade Affairs.

Peyser: golf and I like to play bridge. I like everything everybody else likes, and I belong to a million clubs, but I go up there every once in a while to lunch and see these fellows sitting around, and I say to myself, "This is not for me. I just couldn't do this every day, sit around and play cards." And I love the law, I love the challenge of the work I'm doing. I think I do too much, to be very honest about it. It's been difficult.

Just recently I've delegated more. I used to take all the calls from all the men every day. I don't do that any more, for example. I take key calls from them. But, you see, we have to be in touch every day. It's just like the President has to know what's going on all over the world with his armies. And we have to be sensitive to any moves that are made in any state. So it's plenty to do. Plus the fact that we have legal problems aside from those, you see. I mean just purely legal matters.

Teiser: You mean the Wine Institute as an organization has the purely legal matters?

Peyser: Yes.

Teiser: Are they great?

Peyser: No, they're just the normal corporate problems. A person will call up--is this one eligible for membership? The by-laws say this--can we do this? You know, there are all kinds of opinions, and some members will call me up or call my staff up and ask, "Well, what do you think about this?" Technically I don't have to answer those, because I'm not supposed to answer individual problems for members, but if a member calls up and it's easy for me to answer (or, even if it isn't so easy sometimes) we will usually do it.

Teiser: Does your office handle labor matters?

Peyser: It used to. I used to negotiate the labor contracts, but I gave it up for two reasons. First of all, I just couldn't take it. I couldn't do any more.

Peyser: But primarily, it isn't consistent. Because, our organization has to work with people who are pro-labor, anti-labor, or neutral. If we had disagreements with labor and I stood before a legislator, he might say, "Well, you were not with me on such-and-such a labor matter, so I'm not going to give you a vote." So it doesn't work, you see. So we are completely neutral on labor issues. Now, what the members want to do on their own is one thing, but Institute has nothing to do with it.

Teiser: When a winery wants to apply for a new label--

Peyser: We do that.

Teiser: You do that, too?

Peyser: Yes, the Washington office does that. If you want to see how much work we do, read my last report to the board of directors. It shows how many thousand telephone calls this office took, and how many thousand label approvals.*

TRADE BARRIERS

Teiser: You've spoken about trade barriers.

Peyser: Well, what we call a "trade barrier" is anything that impedes or is an obstacle to the free flow of wine between the states or internationally. Now there are internationally two kinds of trade barriers. There is what we call the tariff trade barrier and non-tariff trade barriers. Tariff, of course, speaks for itself. It's the barrier put up by tariff. The other is barriers [resulting from] landing charges, and internal excise charges, and marketing restrictions, and all kinds of things--not tariffs but restrictive as far as

*More than 8,000 telephone calls, and 3,600 label approvals. Annual Report of General Counsel, 1972.

Peyser: marketing is concerned. So we just broadly called the whole program the trade barrier program.

Teiser: The internal problems, the national ones, you've been working on for many years?

Peyser: That's right. That's the bill I have in Congress. As a matter of fact I was going to bring another suit in the federal court, but it's useless. You see, there's been so much precedent by the Supreme Court that I was fearful of doing that lest they should adopt the former opinions. That's why I feel if the Congress will enact this bill, first of all, it gives a dignity to the statute-- Congressional statute--and then it's up to the court to newly consider that particular statute in light of the constitution.

When it's passed it will be challenged. It will be challenged as being unconstitutional, but by virtue of the fact that Congress has re-enacted a law, in my opinion the court will give greater dignity to it, and review it maybe with more care and a fresh point of view.

Teiser: You've never considered attacking it through a constitutional amendment?

Peyser: Yes, I did. As a matter of fact, that was my first thought. But we don't have enough money. It has to be ratified by three-fourths of the states, and when you figure about seventeen states discriminate, you don't have much chance of getting a constitutional amendment through. That's why I decided to go this route.

Teiser: Now, the main barriers (you've written a lot about this)...

Peyser: And we have a summary.

Teiser: Yes, I've seen that, and so I don't want to ask you to go into a lot of detail, but in general--

Peyser: Well, primarily it's taxes, license fees, restricting outlets--requirements that we should only sell in the liquor stores. We believe that wine should be

- Peyser: sold in the grocery stores. And that's the type of thing we're talking about in the main.
- Teiser: I notice in reports that certain states want tax stamps on their bottles. Is that just a nuisance?
- Peyser: Well originally it had validity because they were bootlegging, and--here, I just happened to have this report on states that have removed stamps and seals during the past ten years.
- Teiser: Oh, there are quite a few.
- Peyser: There are only five states left as far as wine is concerned: Mississippi, Wisconsin (which we think will be off very shortly), Indiana, Kansas and South Carolina, I think those are the five.
- Teiser: Somebody just gave me some old whiskey bottles with California tax stamps on them.
- Peyser: Well, this only applies to wine.
- Teiser: Yes, but California had whiskey stamps and I suppose that was because of bootlegging?
- Peyser: Well, sure. That state had no way of knowing which was tax paid and which was not. But now, today, we have reporting systems and things--no problem. As far as wine is concerned--it doesn't pay to bootleg wine. It's too cheap. I mean why should anybody want to go to jail for a \$15 or a \$20 case of wine? Now, if you're talking about a \$75 or \$80 case of whiskey, then you're talking about something else.
- Teiser: Washington state is mentioned frequently as having been a landmark victory. How did that go?
- Peyser: Well, in Washington state, wine as well as distilled spirits were sold through state stores. It became so bad there, the discrimination against our product, California wine in particular, that we decided we were going to make a fight to take wine out of state stores and permit them to be sold in grocery stores. We had a legislative contest, and we were successful.

Peyser: The store could still sell wine, but it's also sold by private wholesalers to grocery stores and so forth. I just received word that there is a possibility that the members of the Washington control board themselves will urge that the state discontinue the sale of wine completely because after all, they're losing money right now on wine. And so, that's the history of that.

Teiser: Was it such a large market or--

Peyser: Well--I really didn't put these papers out at all for you, I just happen to have them on my desk for some other purpose. But this report indicates that after the change of the law in Washington, there was an increase of 53.5 per cent in the sales of wine. Now, this was more spectacular in the state of Maine. In the state of Maine, in the year 1970, the total table wine sales by state stores was 135,000 gallons. In the calendar year 1971, after the transfer of table wine to private licensees, Maine collected excise taxes on 1,795,609 gallons--an increase of 971.4 per cent. And Idaho--this just happened in '71 there, and there's been an increase of 409.5 per cent in the state of Idaho.

Teiser: And all of those have been table wines?

Peyser: Table wines. Except in the state of Washington where it's both.

Teiser: So far as the international trade barriers are concerned, I have a copy of your speech in Italy* that tells, I think--

Peyser: Well, it tells the story in the main. There's a worse side to it than even that. We [the United States] have (as that speech also indicated) practically no barriers. Table wines pay duty of 37-1/2 cents per gallon to come in. But you take

*"Remarks of Jefferson E. Peyser...at the meeting of the Federation Internationale, Bolzano, Italy," May 11-14, 1972. Appendix II.

Peyser: Spain! We don't know anything about their quality standards, their labeling. Half the stuff that comes in here is mis-labeled. They talk about Spanish Zinfandel. I think I told you the other day that we've never been able to find a Zindandel grape in Spain. [Laughter] So the result is that Spain is one of the countries that has been flooding the market here, and their sales have increased 126 per cent in the last six months. In the last five years, imports have increased from five per cent of the total American market to over eleven per cent.

Well, our problem with Spanish imports is we have to do something to straighten out this labeling situation. We have to do something to stop this unreasonable flow of wine in the sense that we just can't maintain a sound wine industry producing quality wines, nor can we maintain a standard of living for our people where we pay three and four times the hourly wage rate, without equalization of some kind. Either they're going to have to agree to quotas or something is going to have to happen. I don't know what it is at this moment, but this matter will come up next year at the GATT* negotiations and I have my economists preparing all kinds of research data for me so that I'll be able to be in a position to present economic facts that will justify some type of action on the part of our government.

Teiser: Can the United States require quality standards on imports?

Peyser: Oh, yes. Oh, yes.

Teiser: Is that one way to handle it?

Peyser: Yes, but that isn't the entire solution. That's only a very small part of the solution, because if they label properly--I don't want to cast aspersions on the fine wines of France or any other country;

*General Agreement on Tariffs and Trade, an agency of the United Nations.

Peyser: I'm satisfied that most of those are all right, and most of the fine wines of other countries are all right--it's just these competitive wines, the cheaper wines that we have the problems with. Our government today requires certain standards, but I'm going to insist that they require higher standards. I think that the standards of cleanliness and sanitation should be at least equal to ours. I don't know how we're going to police that, but that's one thing. I think also that the labeling standards should be such that they are supervised or policed by some responsible authority, and not just somebody putting a stamp on what goes out of Jerez or wherever.

This is a big international problem, as you can see.

Teiser: Back to national affairs, were you involved with the federal wine law of 1954?

Peyser: Well, I was involved only to a degree. I didn't handle the Washington situation. Out here I was involved to the extent that I sat in on the meetings of the Technical Advisory Committee when they were formulating and discussing them [the provisions] and so forth.

Teiser: The Wine Institute's own committees on federal legislation and national legislation--do you sit in on those meetings?

Peyser: Oh yes. In fact those are the committees to which I address myself and get my authority. In other words, if I have policy questions, I'll ask the chairman to call a meeting to discuss them, just as I did recently. We had a whole meeting all day long on the matter of international trade barriers from my position. In other words, they are the ones who give me the authority that I have.

Teiser: Are there industry members who have been particularly active in legislation in the Wine Institute?

Peyser: Well, the industry members aren't supposed to be.

Teiser: I mean in giving you information.

Peyser: Well, it doesn't work that way. We have what we call the trade barriers committee, and I would submit my problems to them. Then they would submit their recommendations to the executive committee. That got kind of cumbersome, so at the last annual meeting we changed it, and all my problems go to the executive committee, that has authority to act. And as far as all these members are concerned, they are all faithful members of the committee, and they would give me their best judgment on all matters. We have a fairly large committee. Well, the members have been active in this way: I may have a problem in the state of Missouri. So I'll call one of my members who I know does a lot of business in the state of Missouri and ask, "Can you help me?" They'll give me all the information they have. But beyond that, there's nothing.

Teiser: I see.

TAXES, NOMENCLATURE AND BOTTLE SIZES

Teiser: On the subject of taxes, someone said that you'd managed to keep the state tax at the same figures over the years.

Peyser: One cent and two cents.*

Teiser: With inflation and everything!

Peyser: As a matter of fact at one time they wanted to take the tax off and I wouldn't let them.

Teiser: Why?

Peyser: [Laughter] Well, I was just satisfied to leave

*One cent per gallon on table wine, two cents per gallon on dessert wine.

Peyser: it where it is. Last year we had a little threat. A bill went in to increase it to a dollar a gallon, but I convinced [Assemblyman] Willie Brown that that would be rather unsound.

Teiser: How about federal taxes?

Peyser: Those have remained static since '48.

Teiser: Have they gone up on distilled spirits?

Peyser: No.

Teiser: That takes constant vigilance, I suppose, doesn't it?

Peyser: Oh, not federally. Statewide it does. We have new tax bills practically every year in every state. Not every state, but most of the states. But federally, no. They don't bother us much on taxes.

Teiser: I know the Wine Institute, with your help I presume, has prepared material on nomenclature of California wines.

Peyser: Well, one of my men did that. Yes, we helped do that.

Teiser: Defending California's use of European regional terms?

Peyser: Yes. And that cold duck issue. We're being challenged on that all over the world. All of a sudden I don't know how many countries--Spain, the Netherlands, West Germany, Bahamas, France--wanted to register the name "cold duck." Now, this wouldn't be so bad except that most of these countries are parties to what is called an international registration agreement. And let's say a Spaniard is successful in registering the name cold duck in Spain, he can file that registration in Geneva, and that would stop us from shipping cold duck to any country that is a member of that agreement. We've been successful in knocking it out in West Germany, and Bahamas (which isn't very important), but we're still having a big fight,

Peyser: and will have to fight it to the finish in the courts in France.

Teiser: On the other hand, you defend the right of the California industry to use "burgundy" and "champagne" and...

Peyser: That's right. But this is a little different in this sense. First of all, we have been using these names 75 years. There appears to be no sound reason why at this late stage in the game anybody should come forward and say you can't use them. "Estoppel" is what you call it in the law.

But more importantly I would look at it like this (I think I said it in my speech at Bolzano*); first of all, our grapes. You take our grape, Gamay. It is the identical, same grape that is produced in Beaujolais. And technically, too, there is a grape grown in California that has been identified by the authorities as a Gamay Beaujolais grape, not a Gamay grown in Beaujolais. So, for example, my position is that if it's the same grape, what's the difference where it's grown so long as the consumer is not fooled? We advocate that in large letters there be required to be placed the name California. So if a person wants to try California Gamay Beaujolais or Gamay, why shouldn't he have the privilege to do this? No one is being deceived. They take the position that these names are of a region. This applies, of course, to Burgundy, Chablis, to Champagne. So I don't think it's an inconsistent position, because our grape is the identical grape.

Now, cold duck has nothing to do with the particular type of grape. It's a name that has caught on, so to speak. All it is, is fifty per cent champagne and fifty per cent sparkling burgundy. You can make it yourself. So it's a little bit different, you see. I'll never convince the Frenchmen, I know, but I still think I'm right.

*Appendix II.

Teiser: One of the things I have heard about imported wines is that their containers have all different amounts in them. It's hard for a consumer to tell--

Peyser: Yes, they have a million sizes. The one that causes us the most trouble is their twenty-four ounce which is so similar to our twenty-five point six ounce, or fifth, that you can't tell the difference. As a matter of fact, we had hearings in Washington and I produced pictures and labels and actual bottles, and put them before the commission. You can't tell them apart, and we're convinced that the consumer is fooled. You might say, "Oh, what's an ounce?" Well, an ounce is this much; in a case of wine you're gypped out of a bottle. In other words, if you bought twelve 24 ounce bottles, you're shorted one bottle.

Well, there's a big to-do about this. It's still going on. I've had a lot of fun with it. I don't know what is going to happen. I have an idea, but--

Transcriber: Gloria Dolan
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APPENDIX I

ON THE LEGAL SIDE

A Talk by
Jefferson E. Peyser, General Counsel
before the
28th Annual Membership Meeting of
The Wine Institute

May 29, 1962

San Francisco

California

It has been my purpose annually at our membership meetings to discuss problems I believed to be of significance to the wine industry at the given time. This year I have been requested to relate the activities of the office of General Counsel with the development of the wine industry. I hasten ~~to~~ add that when I speak of the office of General Counsel, I include my very able and industrious colleagues Max Kahn and Dick Lazarus.

Although lawyers by reputation are generally described to be extroverts and given to self-praise, I must confess that I find it difficult to discuss this subject in relation to the personal pronoun. I shall, therefore, hereafter refer to the Legal Department and the place of the law and the activities of the Legal Department in the development of the wine industry.

Justice Holmes once said:

"The law embodies the story of a nation's development through many centuries..."

I believe it can be truly said that the activities of the Legal Department of Wine Institute are synonymous with the California wine industry's development through the years.

With the advent of Repeal of the 21st Amendment to the Constitution of the United States in 1932 after approximately a decade and a half of the "noble experiment" known as Prohibition, legal processes were necessary to meet the requirements of a new industry and also conform them, if possible, with the conflicting demands of society. It was necessary to enact federal and state laws which would without undue restriction permit the orderly production, sale and consumption of wine. Conflicts as to the extent and manner of dealing with alcoholic

beverages arose between groups of society by reason of moral or religious beliefs; there also was the attitude of government seeking to protect its revenues; there were differences even between members of the industry who sought a competitive advantage.

In this atmosphere we proceeded to Washington in order to obtain practical laws and regulations relating to the production of wine and brandy. It was a difficult task because the government viewed the subject of alcoholic beverages as though it were still an illegal product and looked upon those about to engage in the production and sale of alcoholic beverages as though they were anything but legitimate businessmen. All laws are compromises and law fulfills its main function by being a formula of compromise. As a result of necessary compromises a very burdensome and impractical set of laws and regulations pertaining to the construction and maintenance of bonded wineries emerged. Most of you will recall the hypertechnical approach of gaugers in construing the regulations with regard to the production of wine and brandies and the conduct of wineries. The government in its zeal to protect the revenue enacted a fortification tax which required the payment of taxes long before the product was finished or sold. This was repealed after a long struggle by the industry.

At or about this same time the first general and special sessions of the various state legislatures after Repeal took place. To endeavor to describe the confusion in the minds of state officials and legislators would be impossible. Many saw an opportunity of substantially increasing the revenues for their state irrespective of the practical effects of such inequitable taxes and burdensome regulations. Some states determined that they could engage in the business of the sale and distribution of alcoholic beverages.

From the beginning the purpose and objective of the wine industry was to distinguish wine from other alcoholic beverages, not only by reason of the alcoholic content, but because of the nature of the product and the use to which it is put. Wine was to be the symbol of relaxed and gracious living and not a product to be used solely for its alcoholic effects. This necessitated the education of legislators in the various states.

I shall always remember one of our first Board of Directors meetings when suddenly the chairman said "Jeff, will you go to Texas for a few days in order to see that a proper wine law is passed by that legislature." I said, "When do I leave?" He said "Tomorrow morning." Well, I left on schedule but return on schedule I did not. A few days extended into approximately four months. The problems there were symbolic of the problems everywhere. Legislators and officials generally did not and would not distinguish between wine and hard liquor. One senator said to me if you want to sell wine in this state put it in whiskey bottles. Establishing a reasonable rate of tax for wines was also difficult. We had the opposition of the liquor industry and others who were interested in imposing a high tax of California wines. They insisted that wines be taxed on the percentage of alcoholic content. After much educational work I believe that the first Texas wine law was a good one. The California legislature was in special session at about the same time. It was important that a model law be adopted in our home state. We contended that the home state taxes should be at a minimum and that there must be a complete freedom of distribution and consumption, as an example for other states to follow. At the close of the first legislative session in California, there had been enacted the most liberal wine law in the United States. Here, vintners could sell and distribute vertically, that is to wholesalers, retailers and consumers. As a matter of fact, the

present taxes on wine, 2¢ for dessert wine and 1¢ on table wine, are the same as written into the law twenty-nine years ago.

Many other problems, however, confronted the industry. A struggling California wine industry was now faced with attaining national distribution. How was it going to advertise and develop a market? The members of Wine Institute should support such a program. After casting about for a method, it was decided that the California Marketing Act might be the vehicle. Consultations were had with the Department of Agriculture and with its cooperation, in 1938, the first Marketing Order for Wine was drafted, Hearings were held and in face of strong opposition the Marketing Order for Wine became a reality. Those in opposition immediately raised the legal question as to whether wine was an "agricultural commodity" within the purview of the California Marketing Act. We submitted briefs to the Attorney General and after much persuasion an opinion was issued that wine was an agricultural commodity within the scope of the California Marketing Act. In order that there would be no doubt about this, representations to the legislature in 1941 resulted in an amendment to the California Marketing Act which specifically provides that wine is an agricultural commodity within the meaning of that act. This amendment proved later to be of extreme value in other fields and for other purposes.

Now that a method for developing a national market for wines had been devised, it was decided that high standards for the purity of California wines and in the labeling thereof should be established. After many conferences with the California Department of Public Health a public hearing was held and regulations providing for standards of identity, quality, labeling and advertising were adopted in May, 1942. These

regulations have had a salutary effect in providing for the production of wholesome wines and the elimination of false and misleading labeling.

Shortly after the program of advertising and sales promotion was commenced, it was realized that the laws and regulations of many states made it impossible to effectively develop a market for wines in those states. A legal question arose whether moneys derived from the Marketing Order assessments could be used to eliminate these trade barriers. Conferences were had with the Department of Agriculture and the Attorney General. Although they were cooperative, in order to be safe it was necessary to again make representations to the legislature and in 1945 the California Marketing Act was amended to provide that assessment funds could be used for activities for the removal of trade barriers.

In spite of the program for the promotion of wine sales, prices in California had fallen to as low as 6¢ for table wine and 9¢ for dessert wine. Consternation prevailed in the California industry. Counsel was directed to do something about this. It was determined that the Unfair Practices Act might be helpful in eliminating this unwholesome condition. Meetings were held with district attorneys and with industry members and wholesalers in major counties urging them to discontinue sales below cost and advising them that if they did continue to sell below cost, legal action would be taken. Several suits were actually instituted. After approximately four months of constant effort prices rose to 11¢ for table wine and 21¢ for dessert wine. Suddenly our country was engaged in war. Prices and distribution were no longer problems; but there were new concerns. OPA, wage controls and the like. We began commuting to Washington to protect the interests of our industry. The varied methods of operation of members of the industry added to the many legal problems which required attention.

After the war the normal problems of merchandising again developed. Again we were confronted with the task of correlating supply and demand, Counsel was directed to find some legal method if possible to accomplish this. A marketing order for wine processors was drafted, and after a hearing, was issued by the Department of Agriculture in 1949. This order provided that processors could restrict the movement of wine to market to conform to demand. This, however, did not work as had been anticipated; the price problem was still with us. Industry leaders were of the opinion that if wine were sold pursuant to fair trade contracts and if price posting were required it would help to stabilize prices. After months of conferences with industry members, representations were again made to the legislature and the Wine Fair Trade Act and Price Posting Law was enacted.

In 1951 a proposal was made to the Congress to increase the federal tax on dessert wine from 67¢ to \$4.20 a gallon and table wine from 17¢ to \$2.94 a gallon. The Legal Department compiled information and data in opposition and Counsel made direct representations to the members of the Congress in Washington. This and other activities of Wine Institute and its many friends resulted in defeat of the proposal.

In 1954 revisions to the Internal Revenue Code were being considered. The Legal Department prepared all the information, reviewed drafts of amendments and presented industry's recommendations. Again, in 1958, the same procedures took place to secure further liberalization of federal law and regulations relating to wine and brandy. Information and data were also prepared to secure amendments to the Federal Trade Agreements Extension Act to protect and safeguard the wine industry.

By reason of our position that wine is an agricultural commodity, that it is a healthful beverage and that its use should be unrestricted,

we also have maintained that knowledge concerning the production and use of wine should be available to all. Many things have been done to further this objective. Counsel recommended and the legislature changed the legal name of wine manufacturers to wine growers; funds were obtained for the erection of a building to house the study of viticulture and enology. Legislation was enacted to permit the use of wine on college and university campuses for experimentation in viticulture, enology and domestic science. Laws and regulations have been enacted to permit wine tastings which have given many thousands the opportunity to taste wine; many of these tastings are now important social events. California laws and regulations have been liberalized to increase on-sale licenses for the sale of wine in restaurants, and with regard to retailer advertising and promotion. Just as many laws have been enacted for the benefit of the industry so over the years many objectionable legislative proposals as well as many annoying regulations which would have impeded the progress of the wine industry have been defeated.

Now, again, a major threat faces the industry, the Trade Expansion Act of 1962 and the European Economic Community known as the Common Market. The Legal Department has expended limitless time in compiling data and information which it is hoped will aid in protecting the industry.

The Treaty establishing the European Economic Community has tremendous legal implications for the California wine industry. Limitation on time does not permit a discussion of this subject today. Just a comment or two. The treaty is a law and there are many separate laws within the treaty. For example, the provision which is so much in the forefront

of public interest concerning the establishment of an agricultural common policy is nothing but an agricultural adjustment act. In Articles 85 and 86, the provisions cover what we have provided for on a federal level in the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. The treaty also provides rules of procedure, which in a sense are a combination of a judiciary code and the federal rules of judicial procedure. They actually set up the jurisdiction which the court of the community is to have and the procedure by which this jurisdiction is to be exercised. There will be super national legal activities by the Commission, by the Council of Ministers, and so forth. One example is the provision in the treaty which in effect is an anti-trust law providing in very general terms that arrangements, agreements and activities of trade associations, etc., which have the effect or may have the effect of restricting competition within the Common Market, are null and void. They start with an outright prohibition but then, of course, set up a provision whereby these agreements nevertheless may be authorized. The effect of this will be that companies operating within the Common Market, including American subsidiaries, will be primarily administered in this sensitive field not by the national but instead by the Commission authorities. In other words, there has been set up a supernational federal trade commission, the powers of which go much beyond our Federal Trade Commission. The interpretation and application of all these and many other provisions will be important to the expansion and development of the California wine industry and will add to the responsibilities and work of the Legal Department.

In my opening remarks I stated that law is the aggregate of inter-related rules and principles for the regulation of the individual and of business. It is necessary, therefore, to constantly be in contact with

those in charge of government in order to impart the industry's views and educate them in regard to the overall problems of the industry so that the laws and regulations enacted will be good for the conduct and expansion of our business. The time required for contact with the executive, legislative and legal branches of government is ever increasing. Many conferences are held with the Chief Executive; meetings with the Attorney General are required frequently. Attendance is necessary for six months at each regular legislative session and approximately for six weeks during the so-called budget session. Attendance is also required at interim committee meetings held when the legislature is not in session for it is at these meetings that policies for future legislation are discussed. Considerable time is also required for contact with administrative agencies such as the Alcoholic Beverage Control Department, Department of Agriculture, Department of Industrial Relations, Department of Food and Drug, and others.

In this report I have endeavored to cover merely some of the major subjects which engage the attention of the Legal Department. I could go on and relate the work done in connection with the Food Additive Amendments; the work done in assisting the trade barrier activities so ably performed and headed by our Henry Gage, but I do not wish to lengthen this presentation. I must, however, direct attention to the fact that in addition to the matters to which I have referred, the Legal Department advises on all Wine Institute's corporate and tax matters, issues and revises for distribution to members summaries on the laws of the various states, advertising and tax summaries when called for; General Counsel attends all Board and Executive Committee meetings and, with the Legal Department, answers inquiries literally into the thousands in a given year. The Legal Department likewise counsels with all departments of Wine Institute and cares for

the day to day problems of our members. I would continue but I am reminded of the story of a rather loquacious attorney who was arguing a very technical case before a Superior Judge. He had rambled on in such a way that it became difficult to follow his line of thought. The Judge had yawned rather suggestively. The attorney ventured to observe "I sincerely trust that I am not unduly trespassing upon the time of the court." "Counsel," returned His Honor, "there is considerable difference ^abetween trespassing on time and encroaching upon eternity." I, of course, do not wish to encroach upon eternity, but at the same time I did not want to find myself in the position of the young attorney who, when told by the Appellate Court to get down to the meat of the case and assume that the court knew the law, said "I assumed that, Your Honor, in the Lower Court." Therefore, this brief summary of our activities to demonstrate the complete involvement of law and the Legal Department in the progress and development of the wine industry.

In conclusion, I again wish to pay tribute to my dedicated colleagues, Max Kahn and Dick Lazarus, without whom the related record of accomplishment would have been impossible. I derive much pleasure from my association with President Don McColly who is an able and conscientious executive, as well as a most cooperative and understanding associate and friend. To him I extend my warm appreciation. To the officers, members of the Board of Directors and members of Wine Institute I express my continued gratitude for the privilege of serving as your General Counsel.

APPENDIX II

REMARKS
OF
JEFFERSON E. PEYSER
GENERAL COUNSEL WINE INSTITUTE
AT THE
MEETING OF THE FEDERATION INTERNATIONALE
BOLZANO, ITALY
May 11 - 14, 1972

FOR THE GENERAL INFORMATION OF MEMBERS, THERE IS ENCLOSED
IN THIS MAILING A COPY OF THE REMARKS MADE BY INSTITUTE'S
GENERAL COUNSEL, SPEAKING FOR THE CALIFORNIA WINE INDUSTRY,
AT A RECENT MEETING OF THE FEDERATION INTERNATIONALE IN
BOLZANO, ITALY, IN WHICH HE PROTESTS THE BARRIERS IMPOSED
BY VARIOUS COUNTRIES AGAINST THE IMPORTATION OF OUR PRODUCTS.

Mr. Chairman, and Representatives to the Federation
Internationale des Vines et Spirit:

I am pleased to have this opportunity, for the first time, of addressing a meeting of the Federation Internationale on behalf of Wine Institute.

I am General Counsel of Wine Institute, a trade association composed of the vinters of California and I should like briefly to describe the California wine and grape industry and its relationship to the total United States industry.

Grapes are the second largest fruit crop in the United States and the products of grapes (wine, raisins, grape juice, grape juice concentrate, brandy and wine vinegar) are packaged and marketed throughout the United States. California is the largest agricultural State in the Union and the vineyards represent within the State the largest single crop.

Due to certain beneficial qualities of climate and soil, production of grapes and wine making are centered in California. There are approximately one-half million bearing and nonbearing acres of vineyards within the State. These furnish the livelihood for an estimated 15,000 grape growers and 100,000 other Californians engaged in the cultivation, processing and distribution of grapes and grape products. It also partially contributes to the livelihood of secondary processors, packagers, and distributors throughout the United States. The annual retail value of California wines is estimated to be in the neighborhood of one billion dollars. California grows approximately 90 per cent of all the grapes grown in the United States. This

includes 100 per cent of all the raisins grown in the United States and about 95% of all grapes used in wineries and fruit distilleries.

The California wine industry accounts for approximately 83 per cent of all wine produced in the United States and virtually all of the brandy produced in the United States. In the past few years the industry has been fortunate in experiencing a healthy growth rate. In 1970, California winegrowers produced 211 million gallons of wine and 229 million gallons in 1971. Thirty-eight years ago, when I first became General Counsel for the Wine Institute, the California wine industry produced only 26 million gallons of wine. We are proud of this growth record which attests to the high quality of our wines and the dedication of the vintners within the industry.

In 1970 and 1971, some 48 thousand new acres of wine grapes were planted in California. These plantings are expected to yield a crop of approximately 350 thousand tons of grapes in 1973 or 1974. This grape tonnage would produce about 60 million gallons of table wine. The 1970 and 1971 plantings will almost double the industry's capacity to produce table wine.

Additionally, in 1972, it is expected that an even greater acreage of new wine grapes will be planted in the State. Unless markets are developed for the wine produced from these new plantings, a surplus could develop which might result in economic difficulty for the industry. It is obvious that our wine markets must continue to expand if the industry is to remain healthy. This market expansion is in jeopardy due to

trade barriers and barriers to trade erected by various countries against California and other wines.

Wines from other countries entering the United States are not subject to trade barriers and do not suffer from any discrimination. A modest duty is levied -- the rate for wine under 14% alcohol by volume, in bottles, is 37.5¢ per gallon; the rate for wine over 14% alcohol by volume, in bottles, is \$1.00 per gallon. Aside from duty rates, wines from other countries are subject only to the identical laws and regulations as California wines. At the last Kennedy Round of GATT negotiations, the United States' duty on Champagne and sparkling wine was lowered from \$1.50 per gallon to \$1.17 per gallon; the duty on Marsala was lowered from 42¢ per gallon to 31.5¢ per gallon; and on Vermouth, from 26.5¢ per gallon to 21¢ per gallon. We believe that the United States has been more than fair to the wine industries of other wine producing countries. This is supported by the fact that sales of wines imported into the United States have increased from a 5.2% share of the market in 1956 to an 11.8% share in 1971. However, a review of the laws of most countries as they apply to the importation and sale of California wines demonstrates a most restrictive and protective policy. May I cite just a few examples of the trade barriers against California wine.

A serious non-tariff barrier exists in the form of bilateral or multi-lateral agreements between a group of countries, including the wine producing countries of Western

Europe. These agreements -- principally the Madrid and Lisbon Agreements -- provide for the international registration of wine appellations by place of origin in producing countries. They further provide that wine entering commerce in signatory countries will be labeled in accordance with the international registered appellations of origin. In granting registry of appellation, the wine is identified with respect to geography of origin and certain qualities or characteristics. The net result of the agreement is to provide for exclusive labels to signatory countries in the marketing of designated wines.

As you are aware under these agreements the name, "Port", is reserved to wines produced in Portugal; the name, "Chianti", for wines produced in the Province of Tuscany, Italy; the names, "Sauterne", and "Champagne", to wines produced in the Bordeaux and Champagne districts of France, respectively; and the name, "Sherry", to wines produced in Spain. We were advised that if we use varietal labeling, in other words, name the wine after the grape, that our wines could be exported to Europe. In California, we have a grape variety called Johannesburger Riesling; yet wines labeled under this name were refused entrance into Germany; the same is true of Gamay Beaujolais which is a grape variety in California.

Yet recently, I visited my wine shop in San Francisco, and noticed a Burgundy and a Chablis from Spain. I also saw a Zinfandel from Spain, which is most surprising since Zinfandel grapes are not grown in Spain. It is also interesting to note

that Champagne is being produced in Argentina under a licensing arrangement with one of France's leading Champagne manufacturers.

The American wine industry continues to maintain that the laws of the United States relating to the labeling of American-produced wines provide ample protection to the foreign consuming public and to the foreign producer. A label bearing the designation, "California", "New York", or "American", is easily understood and cannot possibly be construed as being the product of a foreign producer. We most respectfully submit that if "Spanish Burgundy" can be sold in the United States, it would appear only fair that "California Sherry" should be sold in Spain.

But labeling barriers are not the only barriers which face the American vintners. You are aware, I am certain, that countries have tariff barriers. In Japan, for example, the tariff rate on table wine is 400 yen per liter or approximately \$4.80 per gallon. On an American case of 2.4 gallons, the duty is \$11.52. In addition, if the landed cost of the wine exceeds \$7.60 per case, an additional duty of 50% of the value of the wine plus duty is levied. This means that an \$8.00 case of California wine landed in Japan costs approximately \$34.00. The trade consequences are obvious.

Another country having a very high tariff rate is the United Kingdom. According to the latest information available to us, a case of United States table wine bears a duty of \$8.34, while a case of American wine over 14% alcohol by volume bears a rate of \$13.61 per case. Commonwealth countries are

given a preference -- table wines from the Commonwealth bear a tariff rate of \$7.61 per case, while dessert wines bear a tariff of \$10.97 per case. It is extremely difficult to market American wines under these duty rates, especially in view of freight factors.

Other trade barriers are numerous. Chile, by law, has a prohibition against the importation of American wines as does Peru. Yet, wines from Peru and Chile are freely available in the United States.

Italy, we are informed, a major exporter of wines to the United States, imposes a quota on American wines as does New Zealand. We understand that France has abolished its quota system, which we applaud, but we still are unable to export any significant quantities of wines to France.

The major wine producing countries of the world, as well as the major exporters of wine, are the nations comprising the European Economic Community, and yet the Community has enacted a series of regulations which tend to further restrict free trade in wine.

In 1970, the European Common Market (France, Germany, Italy, Belgium, Netherlands, Luxembourg) adopted a "Common Agricultural Policy For Wine", a system of uniform regulations governing the sale, distribution, production and importation of wine into the member countries. This policy as written is highly protectionist in nature.

In May, 1970, the EEC adopted council regulation No. 957/70 which provides for subsidies on exports of wine outside

the Community. In essence, the subsidies shall be fixed at regular intervals in amounts large enough to cover the difference between Community and third country prices.

In determining subsidies, the regulation provides in essence:

The prices in international trade shall be established by taking account of the following factors:

- (a) The quotations noted on the markets of third countries;
- (b) The most favorable import prices in the third countries of destination as regards imports from third countries;
- (c) The producer prices in the exporting third countries taking into account, if necessary, subsidies granted by these countries;
- (d) The c.i.f. price at the Community frontier.

Subsidies for a given product may vary according to country of destination and the peculiarities of its market condition. It is most respectfully submitted that provisions for subsidies do not lead to free world trade or fair competition.

Regulation 816/70 provides for aids to private storage of table wines. This is in effect another form of EEC subsidy. Government support (payments for wine storage) is required if the wine inventory in the EEC exceeds 5 months' supply, as determined yearly. Also, support may be granted in specific areas in the EEC where inventory is expected to exceed outlets.

Further, if the weekly price of table wine falls below

a "trigger price", a price set by the Commission, Government aid to wine producers is obligatory. The "trigger price" varies from wine to wine within the EEC.

The Common Market Wine Regulations which deals with "reference price" is extremely detrimental to free trade.

Council Regulation 816/70 adopted April 28, 1970, is the principal regulation relating to wine and its importation. Article 9 of the Regulation provides that, each year, the EEC shall set a "reference price" for red wine, white wine and other wines. If the c.i.f. (landed) price of imported wine, plus the applicable duty, is below the "reference price", a compensatory charge or tax shall be imposed equal to the difference. In other words, the Regulation allows the EEC to determine the price at which foreign wine is not a competitive threat to their domestic wines. If an imported wine sells below this determined price, a charge (really an additional duty) must be paid to ensure that the wine cannot be imported at less than the specified price. Therefore, prices at which wine imported into the Community is sold are regulated. Several imported wines are exempt from compensatory taxes when accompanied by a certificate of origin -- Port, Madeira, Sherry, Tokay, Samos Muscatel, Setubal Muscatel. These exemptions would not apply to American wines. This ability to regulate prices at which wines are imported gives the EEC countries the effective power to prohibit or limit imports.

The most protectionist measure adopted by the Community is contained in Council Regulation 958/70, adopted May 26, 1970.

This regulation deals with threats from imports or exports and provides for the following measures:

- "(a) the total or partial cessation of the issuance of import certificates, including the refusal to receive new requests;
- (b) the total or partial rejection of requests for issuance of certificates which are at hand;
- (c) the total suspension of exports;
- (d) the collection of export taxes."

If import certificates are not granted, wine cannot be imported from third countries.

The regulation further provides that the above mentioned measures may be taken by the EEC Commission "upon summary examination". Also, "they may concern only products coming from or destined for third countries. They may be limited as to certain countries of shipment, origin, destination, qualities or forms of commercial presentation. They may be limited to imports intended for or exports coming from certain regions of the Community." The language may not be clear, but the intent is certain. Imports can be suspended.

Should an individual member state feel threatened by imports from third countries, after a "profound appraisal" it may cease issuance of import certificates for wine destined for its territory. It must notify the Commission. The cessation of imports by an individual country will stay in effect until the EEC makes a decision on the matter.

We believe that such provisions cannot be justified in light of the opportunities afforded by the United States to these countries. If the United States were to adopt a similar regulation, I respectfully submit the wine exporting nations of Europe would voice strenuous objections. It requires substantial sums of money and much effort to establish a market in another country. What American wine producer could afford to expend the resources necessary to establish a substantial trade in the Community if it could be terminated at any time?

I would earnestly hope that my remarks be received not as critical of any country or group of countries. My purpose is to direct the attention of the wine producing countries of the world to the trade barriers and barriers to trade which exist with particular reference to California and other American wines.

We would hope that an enlightened assembly such as this gathered for the specific purpose of, among other things, concerning itself with non-tariff barriers to International Trade would re-evaluate some of the barriers to which I have addressed myself so that there may be a reasonable opportunity for all countries to enjoy trade with each other.

Trade is a two-way street -- at least it should be. In 1971, the United States exported 377 thousand gallons of wine. During that same year, we imported 35 million gallons. We believe that an adjustment of the causes of this result should be made.

Wine is sold on the basis of taste and quality. We earnestly request that the consumers of the world be given an opportunity to sample our product by removing the presently existing trade barriers. Let the consumer make the decision as to which wine he wishes to drink. Only through free trade can prosperity for the nations and their peoples be achieved.

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Ruth Teiser

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