

CAROL ROBERTSON

THE LITTLE
RED BOOK

of
WINE LAW

A Case of Legal Issues



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Dedication

*This book is dedicated to my children,
Elisabeth Rochelle, Stephan, and Caelin,
all sharing their mother's enthusiasm
for good wine, good food, and exploring
the wine regions of California,
France, Germany, and Italy.*

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Preface

When I was a young, impressionable college student, I received a scholarship from the Rotary Foundation to travel from Idaho, my home state, to Bordeaux, France, to study for a year. I tasted my first wines there and, understandably, thought all wines were of the same quality as a fine Bordeaux. It was, therefore, a surprise to return to do graduate work in California and realize that, on my student budget, the best wines I could afford were jugs of Gallo Hearty Burgundy and Italian Swiss Colony California Chianti. However there were also many opportunities to drive up to Napa Valley and beyond into Mendocino County and the Russian River region to taste at the new wineries that seemed to open every day. And there were those special occasions that commanded a special wine: celebratory dinners with Puligny Montrachet, Château d'Yquem (yes, it was expensive but still affordable in those days), and toasts at weddings and graduation ceremonies with California sparkling wine or, when it was truly a grand event, a flute of Veuve Cliquot. Like many Americans at the time, I was initially untutored but learning to appreciate and value the wonderful world of wine, and eventually becoming passionate about all things connected with wine.

Americans have had a love/hate relationship with wine and other alcoholic beverages from colonial days. This passion is evidenced in the early laws and regulations, and in the cases interpreting the respective rights and responsibilities of those involved in the production and sale of wine in this country over the past century. This book loosely describes some of the milestones in wine history through the perspective of legal cases covering disputes among those involved in the wine industry from its early days at the turn of the nineteenth century through Prohibition and the rebuilding of this country after World War II to the increasing liberalization, deregulation, and globalization of the early twenty-first century.

One hundred years of wine making and sales are told through legal cases dating from 1910 to 2008. These 12 cases cover and interpret diverse subjects such as trademark law, antitrust law, criminal law, constitutional law, and even international treaties, but they all have one subject: wine production and sale. The emphasis of these cases is not entirely on California wineries; one case arises out of Washington state, another out of Illinois, and one each out of Michigan and New York state. However, it is not surprising that California wineries should be parties to more than one dispute, given that California today accounts for a large percentage of the wine production market in the United States, as it has for the past century. This has been a natu-

ral result of that state's climate and soils, its immigrant population, and also the vagaries of history, as we shall see. It is a fact that California-based wineries—E. & J. Gallo Winery, Kendall-Jackson Winery, and the Bronco Wine Company—happen to be the largest wine producers in the United States and have the substantial wealth necessary to endure lengthy litigation.

Interspersed through the book are short vignettes, summaries, or descriptions of topics mentioned in the cases, putting greater detail, for example, around trademark law as it pertains to wine, federal wine-labeling law, and state regulation of wine distribution. Some of the vignettes simply describe other legal disputes that provide a counterpoint to the cases, present a comparable dilemma, or simply tell a good wine-law story. And some provide useful information to those who desire a greater understanding of the wine industry and the legal framework for wine regulation.

The extensive migration of European immigrants to the United States in the latter part of the nineteenth century had a profound effect on the history of wine production. Some had been winemakers in their home countries of Germany, France, and Italy. And several eventually made their way to California to establish wineries. We count among these a German, whose winery, the Charles Krug Winery (the subject of [Case 4](#) on labor issues), founded in 1861, was successful during its founder's lifetime, then fell into disrepair after his death but was rescued in 1943 by another famous immigrant family, this time Italian—Cesare Mondavi and his sons, Peter and Robert. A group of Italian immigrants joined with several Swiss to form the first successful large wine enterprise at the turn of the twentieth century, Italian Swiss Colony (a brand that exists to this day), which is the subject of [Case 1](#) involving a trademark dispute with yet another Italian-American-owned wine production company. Likewise, [Case 3](#), an estate/family business ownership dispute, involves a family of three Italian immigrant brothers.

One of the most important events in the twentieth century for the alcoholic beverage industry was, of course, Prohibition. [Case 2](#) involves a sting operation against a legally permitted winery (yes, they did exist, but only to produce “non-beverage” wine, which admittedly seems like an oxymoron) in New York City during the 1920s. And several cases, including the much-discussed U.S. Supreme Court decision in *Granholm v. Heald* ([Case 9](#)), involve the three-tier regulatory system for wine distribution that was put in place in many states when Prohibition was repealed in 1933, providing a window into the impacts of Prohibition and its permanent effect on the wine industry.

[Case 4](#), involving labor troubles at the Charles Krug Winery, shows a different side of wine production and the history of California—the lives of the laborers who pick the grapes. In the 1970s, newspapers were filled with stories involving the legendary Cesar Chavez and the United Farm Workers (UFW) and their nationwide

boycott of certain grape growers in California's Central Valley, including the E & J. Gallo Winery. The UFW's battle with the Charles Krug Winery was perhaps less discussed but was (and remains) longer-lasting and more illustrative of the ebb and flow of organized labor's influence. Rising union power in the 1970s led to the passage of the historic Agricultural Labor Relations Act in California in 1978; lessening influence has led to recent cancellations of union contracts in both Napa and Sonoma counties in the 2000s.

As the wine industry has grown in the last 30 years, change has been inevitable. The impact of this change is seen in three very different cases. First, the Napa Valley has become an international destination and is a far different place than it was in 1966, when Robert Mondavi established his historic winery along the St. Helena Highway. The impact of this growth on this bucolic valley is shown in [Case 8](#), involving a road easement dispute. Second, the branding of wine is critical to the success of all wineries, and enormous sums are now paid to acquire, build, and protect a valued trademark. This impact is seen in [Case 6](#), involving the brothers who founded the famous E. & J. Gallo Winery and their lawsuit to prevent the use of the Gallo trademark by their younger brother; in [Case 7](#), involving a dispute between the E & J. Gallo Winery and Kendall-Jackson Winery over similar trade dress; and in [Case 11](#), involving the use of the word "Napa" in wine labels. And third, related to the importance and value of a name, wine is now very much a global business, and the impact of this is seen in [Case 12](#), where the United States was pitted against the European Union over the use of the EU's famous geographic names on wine (and beer) labels and the United States' protection of long-time trademarks that may have "borrowed" those place names.

A glass of champagne, anyone? Or would you prefer sparkling wine?

Introduction

A Brief History of U.S. Wine (in America)—A Methuselah¹ of Factoids About Wine (and Law)

From the early days of the founding of the colonies that would become the United States, wine has been a part of the history of America, and the fate of the wine industry has been heavily influenced by the cultural, political, and legal history of this country, as well as its international relations.

To better appreciate some of the nuances of the cases in this book, in a few pages, 200 years of wine history are summarized—blended, if you wish—into assorted factoids about wine, wine law, and the people who make wine.

Year 1000

When he landed in North America in 1001, Leif Erikson was so impressed by its many grapevines that he named the newly discovered land “Vinland.”

Year 1600

It is believed that among the first settlers to land in present-day Virginia and to found the Jamestown Colony was at least one winemaker. Some wine was likely produced using native vine hedge grapes, probably without much success, during the first year of the Colony’s existence.²

One of the first local wines drunk by American colonists was made from the Scuppernong grape, a native grape.³ This grape is still made into wine in North Carolina.⁴

The British hoped that its colonies in America would provide England with a new source for wine so that they would not have to continue to buy claret from the condescending French. In the early 1600s British Parliament en-

*acted laws requiring that wine grapes be cultivated in the Virginia Colony and making the theft of grapes a capital crime.*⁵

Year 1700

*Thomas Jefferson, while ambassador to France, took a great interest in wines from Bordeaux, and especially the wine from the Chateau d'Yquem. He planted vineyards at his estate in Monticello upon his return but was never able to produce a palatable bottle of wine from his own vineyard.*⁶

*President Washington favored wine from Europe, particularly Madeira wine from Portugal, which was the most popular imported wine in the new United States at that time.*⁷

*The native grapes used in early colonial wine production came to be known as "fox grapes," because of their decidedly "foxy" (musky) odor and flavor, which made the wine made from them undrinkable.*⁸

European wines were produced from a species known as vitis vinifera; American grapes were of a different species, vitis labrusca. American grapes grow in the wild; European grapes are cultivated and do poorly when not properly cared for.

Attempts to grow European vinifera grape varieties in the United States were not successful in the early nineteenth century due to extremes of climate in most parts of the eastern United States (freezing temperatures in the winter followed by hot and humid summers); the prevalence of downy mildew and black rot; and the dreaded phylloxera.

In 1769, Franciscan missionary Father Junipero Serra planted the first California vineyard at Mission San Diego de Alcalá, using a vinifera grape variety probably imported by Spanish settlers to Mexico, which became known as the "Mission" grape.

*The most successful wine from the California missions, using the Mission grape, was produced at Mission San Gabriel, a few miles east of what is now Los Angeles. Wine was also produced at the Sonoma Mission, the last and most northern of the chain of California missions. Because the Mission grape produced a flat-flavored, low-acid wine with high sugar content, it was fortified with brandy to maintain its residual sugar and named "angelica," after City of Angels.*⁹

Year 1800

Winemaking in Los Angeles was first commercialized by a Frenchman appropriately named Jean Louis Vignes (French for “vines”), originally from Cadillac, in the Bordeaux region. In 1833, he imported and planted European varieties from France in California.¹⁰ However, the Mission grape continued to be the dominant variety in Los Angeles vineyards until after World War II.

A retired military man, Major John Adlum, using certain American vines, developed native hybrids in Maryland in the early 1800s and had particular success with the Catawba grape, which grew well in the Ohio Valley and in Missouri, two early wine-producing areas.¹¹

The Catawba grape was popularized by Nicholas Longworth, a wealthy real estate investor in Cincinnati, Ohio, before the Civil War, who used it in the production of the first commercially successful sparkling wine. The beverage sold well on the East Coast and was memorialized by Longfellow in his “Ode to Catawba Wine.” The grape was a light purplish red color, yielding a white wine somewhat reminiscent of white zinfandel, but very dry. Catawba is featured today by some wineries in the Ohio Valley.

Longworth was a believer in temperance who experimented in grape cultivation and wine production hoping that wine with a lower alcohol content would replace whisky at American dinner tables.¹²

The Civil War introduced the Special Occupation Tax (SOT), a tax on wine enacted to pay off war debt.¹³ The tax was only repealed in 2005.¹⁴

Year 1850

During the 1850s, Ohio was the undisputed national leader in grape production, representing approximately 35 percent of the national total, followed by California with 15 percent. By 1860, black rot and mildew had destroyed most Ohio vineyards.¹⁵

In 1851, Maine enacted the first statewide “prohibition” law, forbidding the manufacture and sale of alcoholic beverages within the state.¹⁶

Year 1860

*Phylloxera, a tiny, aphid-like insect that attacks the roots of grapevines, was indigenous to the eastern United States but unknown outside North America until 1863, when some cuttings of American grapevines were taken to Europe. Phylloxera sucks nutrients from the roots of the vine, gradually starving it. By 1865, the insect had spread to vines in Provence, and over the next 20 years it nearly destroyed all European vineyards.*¹⁷

*The phylloxera blight in Europe resulted in shortages of wine for many years. This created an opportunity for California wines. Thirty-five medals were awarded to California wines at the Paris Exposition Universelle in 1889.*¹⁸

In the 1860s, several immigrants to Northern California imported large quantities of European varietals to replace the Mission grape. One of the most important of these was Colonel Agostan Haraszthy, a Hungarian soldier, who founded the Buena Vista Winery in Sonoma. (In 1946, the state of California dedicated a memorial to him as the “Father of California Viticulture.” The plaque is located in the main plaza in the town of Sonoma in Northern California.)

Fraud and adulteration were growing problems in the 19th Century, and sloppy practices in the California wine industry prevented California from developing the reputation necessary to replace the French wineries as having the best wines.

Year 1880

*In 1881, Andrea Sbarboro, a native of Genoa, launched a large grape-growing business as a cooperative experiment. It became known as The Italian Swiss Colony. Preference in the organization was given to Italians or Swiss who had become U.S. citizens or who had declared their intention of becoming citizens. By 1887, it had become a joint stock company and constructed a 300,000-gallon winery.*¹⁹

*By 1890, California produced most of the wine grown and made in the United States (60 percent).*²⁰ *New York was another important wine-producing state.*

A native eastern United States grapevine resistant to phylloxera was used as root stock in grafting European varietal vines; by the mid-1890s, the European wine industry had begun to reestablish itself.

Year 1900

In 1915, California winemakers displayed their wares at the Panama-Pacific Exposition in San Francisco.

In 1915, the federal government increased the excise tax on brandy and other fortified wines from 3 cents a gallon to 55 cents.²¹

In 1919, the Volstead Act instituted National Prohibition in the United States, through the Eighteenth Amendment to the United States Constitution. The Amendment was repealed by the Twenty-first Amendment in 1933.

In December 1933, after Repeal, the E. & J. Gallo Winery made its first shipments of Gallo-branded wine.

In 1943, Cesare Mondavi purchased the defunct Charles Krug Winery in the Napa Valley, where his sons, Robert and Peter, began to produce quality varietal wines.

Year 1950

In the 1950s, the Charles Krug Winery was one of the first Napa Valley wineries to open a visitors' center where people could taste samples of Charles Krug-branded wines.

In 1965, Jack and Jamie Davies purchased the Schramsberg Estate and began producing quality sparkling wine, using the méthode champenoise, the traditional method for making Champagne, developed in the Champagne region of northern France.

In 1966, Robert Mondavi, following a dispute with his mother and brother over the management of the Charles Krug Winery, founded the Robert Mondavi Winery down the road in Oakville, California.

In 1973, Moët-Hennessy (Moët et Chandon) acquired land near Yountville and founded Domaine Chandon; its first California sparkling wine using the méthode champenoise was released in 1976, and its visitors' center and famed restaurant opened in 1977.

In 1976, at a blind tasting in Paris, the 1973 Stag's Leap Winery Cabernet Sauvignon took first place over the top Bordeaux red wines.

In 1977, the Gallo family began acquiring land in Sonoma County and began producing wines there in the early 1990s; Gallo of Sonoma was officially established in 1993, when its first wines were released.

In 1982, Jess Jackson, a San Francisco attorney, founded the Kendall-Jackson Winery, with a goal of producing quality wine at affordable prices.

Year 2000

In 2004, Constellation Brands, one of the largest wine producers in the United States, based in New York State, acquired the renowned Robert Mondavi Winery.

1. A “Methuselah” is a bottle size, sometimes used in wine circles, from the French; a very large wine bottle comprising 6 liters or 8 standard Champagne bottles.

2. Gordon W. Murchie, *Virginia First in Wine*, GRAPEVINE MAGAZINE, Sept./Oct. 2005, reprinted in www.virginiawinefestival.org/downloads/Virginia%20First%20in%wine.pdf, at 1.

3. PAUL LUKACS, *AMERICAN VINTAGE: THE RISE OF AMERICAN WINE* 34 (Houghton Mifflin Co. 2000).

4. The Scuppernong grape produces a sweet dessert wine. The Scuppernong is the official state fruit of North Carolina. It is claimed to be the first grape actually cultivated in the United States. “Official State Symbols of North Carolina,” available at <http://statelibrary.dcr.nc.us/nc/symbols/symbols.htm>.

5. Murchie, *supra* note 2 at 1.

6. LUKACS, *supra* note 3 at 15-17.

7. Murchie, *supra* note 2 at 2.

8. LUKACS, *supra* note 3 at 17; see also THOMAS PINNEY, *A HISTORY OF WINE IN AMERICA: FROM THE BEGINNINGS TO PROHIBITION*, Appx. 1, at 443-45 (Univ. of Cal. Pr. 1980), available at <http://ark.cdlib.org.ark:/13030/ft967nb63q/>.

9. PINNEY, *id.* at 240-41.

10. LUKACS, *supra* note 3 at 61.

11. *Id.* at 21-22.

12. LUKACS, *supra* note 3 at 14.

13. GAO, U.S. General Accounting Office Report to the Joint Committee on Taxation, U.S. Congress, Sept. 1990, *Alcohol Excise Taxes: Simplifying Rate Can Enhance Economic and Administrative Efficiency*, available at <http://archive.gao.gov/f0102/142457.pdf>. The excise tax remained in effect until 2005, when it was sus-

pended for three years (from July 1, 2005, until June 30, 2008) by Act of Congress. The American Jobs Creation Act of 2004 (P.L. 108-357).

14. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59), effective July 1, 2008.

15. Lake Erie Enology Research Center, Research: Introduction, *available at* <http://www.us.ysu.edu/~enology/research.htm>.

16. PINNEY, *supra* note 8 at 431.

17. LUKACS, *supra* note 3 at 36.

18. Paul Lukacs, *The Rise of American Wine*, AMERICANHERITAGE.COM, Dec. 1996, Vol. 47, Issue 8, *available at* http://www.americanheritage.com/articles/magazine/ah/1996/8/1996_8_84.shtml.

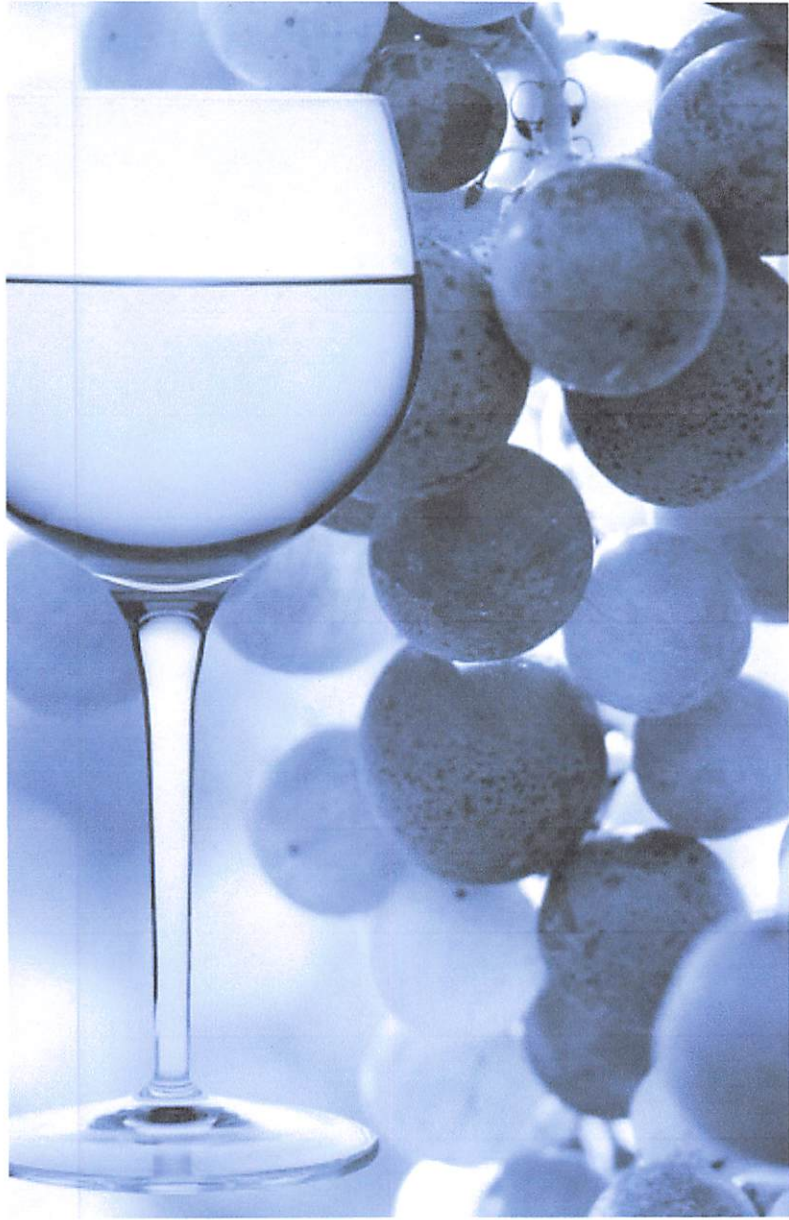
19. WILLIAM SEABROOK, AMERICANS ALL: A HUMAN STUDY OF AMERICAN CITIZENS FROM EUROPE 136 n.1 (George G. Harrap & Co., Ltd. 1938).

20. PINNEY, *supra* note 8 at 315-17.

21. GAO Report to the Joint Committee on Taxation, U.S. Congress.

THE LITTLE
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Case 1



“Tipo Chianti”: Can a Type of Red Be Trademarked?

Italian Swiss Colony v. Italian Vineyard Company, 158 Cal. 252 (1910)

In 1938, William Seabrook, who was writing a book about the European immigrant experience in America, traveled to California.¹ The purpose of the trip was to interview members of first-and second-generation Italian-American families who had migrated to the United States at the turn of the twentieth century. One of his more interesting discoveries was the then-dominant positions that families of Italian origin had achieved in the production of California wine. By then, of course, Ernest and Julio Gallo were on their way to building their wine empire. Cesare Mondavi had settled in Lodi, where he was a well-known grape grower. Seabrook was particularly struck by the fact that most wine at the time was produced as either a generic red or white, with the red wine aged not in traditional oak but rather in huge redwood “vats, the gigantic barrels, which are sometimes as tall as a house,” holding 50,000 or more gallons of wine.² This wine was then shipped across the country in railroad tanks to be bottled in metropolitan cities such as Chicago and New York, where it was sold, usually under European-style place names, such as “California Burgundy” or “California Chablis.”



In the early 1970s, Italian Swiss Colony was a major brand of wine in the United States. Its television ads featured “the little old winemaker, me,” a quaint old man in a Swiss national costume holding a glass of red wine, being kissed by a charming young Swiss maid. At that time, Americans were more likely to drink inexpensive jug wines than premium bottled wine. By then Italian Swiss Colony was an American institution. Its distinctive, straw-covered bottle graced many a college student’s desk as a candle holder.

Italian Swiss Colony was a large winemaking cooperative that then dominated the California market. It was formed in 1881 when a group of Italian grape growers (with a few Swiss partners) collected \$10,000 and bought vineyard land in the Sonoma Valley, north of San Francisco, that they named Asti. They gradually expanded their holdings along the north coastal region and into the Central Valley to the southeast and became one of the biggest wine producers in California, making approximately four million gallons per year by 1935.³ In a large production warehouse that Italian Swiss Colony owned in San Francisco, it blended and bottled red and white wines from the various vineyards under its own label.⁴

Already in 1900, Italian Swiss Colony had gained market dominance as one of the largest sources of table wine in the United States⁵ and had significant brand recognition. The company was particularly well known for producing a red wine that was commonly found in Italian homes and in family-style restaurants. This wine was sold in Italian Swiss Colony’s now famous distinctive bottle—bulbous at the bottom, tapering to a narrow neck, and wrapped in a straw jacket similar to Italian Chianti

bottles. It was called “Tipo Chianti.” Over time, the wine gained popularity and was known to the public simply as “Tipo.” According to Italian Swiss Colony’s trademark application for Tipo, registered under the provisions of the federal Trademark Act of 1905 (which was the federal trademark statute in the United States at the time), the word “tipo” had never before been used by anyone in connection with the manufacture or sale of wine.

The Italian Vineyard Company was founded in 1900 by Secondo Guasti, an immigrant from the Piedmont region of Italy. By 1910, the company had become one of the largest wine producers in San Bernardino County, east of Los Angeles.⁶ The Italian Vineyard Company labeled barrels and bottles of its red wine as “Tipo Barbera” and “Tipo Puglia.” Its intent, the company claimed, was to let the consumer (who more than likely would have been a first-generation Italian immigrant buying dry wine for dinner) know that these red wines would have characteristics of the Barbera or Puglia regional wines of Italy. Italian Swiss Colony sued, alleging that the Italian Vineyard Company was using the word “Tipo,” which was Italian Swiss Colony’s exclusive trademark, in an effort to foist its wine on the unsuspecting public as the wine of Italian Swiss Colony and, thus, to benefit from Italian Swiss Colony’s goodwill and reputation.

When he landed in North America in 1001, Leif Erikson was so impressed by its many grapevines that he named the newly discovered land “Vinland.”

The court utilized two separate lines of analysis of the issues. The first related to the behavior of the defendant under common law—what was the Italian Vineyard Company’s intent in using the word “Tipo” to identify its red wine? Did this constitute “unfair competition”? The second line questioned whether the Italian Vineyard Company had infringed on a trademark right of Italian Swiss Colony under the Trademark Act of 1905. In other words, was the use of the word “Tipo” on the Italian Vineyard Company’s bottles of Barbera wine prohibited because of Italian Swiss Colony’s registration of the word for use on wine?

If the Italian Vineyard Company were guilty of unfair competition in using the word “Tipo” on its wine labels, then the interpretation of the nature and extent of Italian Swiss Colony’s trademark—or even whether it had a trademark—was not necessary. And Italian Swiss Colony pushed this argument: that in using the word “Tipo,” which was so closely identified with Italian Swiss Colony’s distinctive Chianti-style red wine, on its labels, the Italian Vineyard Company was attempting to deceive the public into believing that the defendant’s red wine was the same as that sold under

Italian Swiss Colony's label. The law, even at that time, was well settled that a person who seeks, by imitating a label or package, to induce consumers to buy from him in the belief that they are dealing with another, better-known producer has engaged in unfair competition. Although one dissenting judge thought Italian Swiss Colony had proved its argument, the majority could not find evidence of any intent to deceive on the part of the defendant. They noted that the Italian Vineyard Company had made no attempt to imitate Italian Swiss Colony's distinctive straw basket-encased bottle; its bottle was instead an "ordinary, straight-sided" (i.e., Bordeaux-style) claret bottle. The court also noted that the labels for the two wines were "totally different in size, shape, [and] color." The only point of resemblance was in the use of the word "Tipo."

Absent a claim of unfair competition, Italian Swiss Colony then had to demonstrate infringement under the 1905 Trademark Act. At that time, the requirement for proving infringement was to show that the defendant had made a colorable imitation of a trademark affixed to a product of substantially the same descriptive properties as those of the trademark owner. This was a very narrow test. If the Italian Vineyard Company had imitated Italian Swiss Colony's bottles and other trade dress, Italian Swiss Colony could have prevented the defendant from using that same mark on that type of bottle. But the law did not offer much more protection than that. Italian Swiss Colony could prevent the Italian Vineyard Company from using "Tipo" on its labels only if Italian Swiss Colony had the exclusive right to the word as a name for a wine. And it could claim such an exclusive right only if it owned "Tipo" as a valid trademark.

Therefore, the court considered whether the trademark "Tipo" that Italian Swiss Colony had registered under the 1905 Act was a distinctive mark, so that purchasers of wine sold under the "Tipo" label recognized that wine as being produced by Italian Swiss Colony. If that were the case, then under the 1905 Act, the Italian Vineyard Company would be prevented from applying the word "Tipo" to wine of the same description. The amount of protection afforded a claimed trademark depended upon how distinctive it was compared to the mark used by the trademark claimant's competitor—today, whether it would be classified as a so-called "strong mark." A strong mark generally is one that is so fanciful or unique that it has come to symbolize the maker of the product, while weak marks include those that are generic or describe the usual and the not so fanciful qualities of the product. The Trademark Act of 1905 was limited in the protection it offered, and marks that were not descriptive enough did not merit protection at all, no matter how closely they were identified with the product.

The court had to decide whether calling a wine "Tipo" involved employing a word in common usage, or whether Italian Swiss Colony's use of the word to iden-

tify its wine was unique and distinctive. In other words, did using the Italian word in an English-speaking market make it more like an invented term?

In Italian, the word, *tipo* means “type” or “kind.” In the United States, if one were to use the English equivalent on a wine label, such as a “Bordeaux-type” wine, no one would consider it to be distinctive enough to merit trademark protection. It is too generic. So the majority in this case wondered, should Italian Swiss Colony be able to claim the exclusive right to use a term that basically means “Chianti-type wine”? In other words, should it have trademark protection for a word that in English would only be descriptive and nothing more? But the word used was not *type* but rather *tipo*, and, Italian Swiss Colony argued, that should make all the difference. This was particularly the case where, it claimed, its Chianti-style wine had become known to customers as “Tipo Red” and where they actually associated the word “Tipo” with wine produced by Italian Swiss Colony. The court, however, was not ready to accept this argument.

Instead it accepted the defendant’s contrary argument that Italian Swiss Colony was only using “Tipo” in connection with its Chianti as a descriptive term to appeal to its typical customers—Italian-American immigrants, who in 1910 constituted the vast majority of dry red wine drinkers in the United States. These customers, upon seeing a bottle of Italian Swiss Colony red wine with a label describing it as “Tipo Chianti” on a shelf, would understand its Italian meaning perhaps even better than any English words and would equate it with a type of well-known Chianti wine produced in Italy. And, as the Italian Vineyard Company further argued, it was not imitating a Chianti-type wine but rather was producing red wines that had the characteristics of other Italian vintages, such as Barbera, and was simply marketing its wines to appeal to those same Italian-speaking consumers who might choose a wine of a type (*tipo*) that was reminiscent of their home country. In other words, there was no likelihood of confusion for consumers, because the wines produced by the two competing companies were not of the same descriptive quality.

Accordingly, the court ruled that Italian Swiss Colony did not have any trademark right to protect in the word “Tipo” on its “Tipo Chianti” label and that the Italian Vineyard Company was free to sell its own Italian-type red wines as long as it did not do so in a way—such as by copying the packaging—that would lead the purchaser to believe that he was buying an Italian Swiss Colony wine.

At the time, the court elected not to address the issue of whether Italian Swiss Colony could claim a valid trademark right based upon the word “Tipo” standing alone. (By 1910, the wine was commonly referred to simply as “Tipo,” but the label still tied the word “tipo” to “Chianti.”) Today, the concept of dilution and the protection of a brand that had come to be associated with its original and more famous user

are much more accepted, and Italian Swiss Colony may have been able to use this argument, but in 1910 these were still unfamiliar concepts, and the court did not pursue that avenue.

The question of when a wine label should receive special protection has not gone away, as we will see in [Case 7](#)—a recent case involving the use of grapevines on a wine label. There are only so many ways to identify a wine and still inform the buyer of the nature and quality of the product in the bottle. Of course, Italian Swiss Colony ultimately won out in the competitive war, growing to become for a time one of the largest producers of bulk wines in the United States, while the Italian Vineyard Company is now only a name from an earlier period in California’s wine history.⁷

Vignette

California Wine in 1908



“As I was tasting the so-called ports, sherries, tokays, Angelicas, burgundies or sauternes, I made a comment about the ‘sherry’ which would have been equally apropos to them all. I said, ‘Look, this is a good wine, fine body, fine flavour—but it doesn’t taste anything like sherry.’”¹

If you were to travel to a California winery in the 1870s, or for that matter before the 1970s, you would have thought yourself in a different place from today’s California wine milieu. It was definitely a different time. Few people drank quality wine, and those who did generally imported theirs from France. California wine was known to many as an inferior drink favored by poor immigrants and winos. As a general rule, the wines were blended from different vari-

eties of grapes from a range of vineyards, and to combat the astringency of the wine and to add an alcohol “kick,” brandy was not infrequently added to increase the alcohol content. Many wines were made from the common Mission grape, one of the first of the European varieties to thrive in California, brought there originally in the 1700s by the Franciscan friars as they established their chain of missions from San Diego in the south to as far north as Sonoma County. The Mission grape thrived in the dry, sunny climate of Los Angeles and San Bernardino County, and The Old Mission Winery, owned by Antonio Moramarco,² produced a typical wine of the era, which is described in the quotation that introduced this vignette. It was a sweet wine, frequently fortified to produce a California Port or a California Brandy.

A correspondent for *The New York Times*, on a visit to San Francisco in 1876 to celebrate the United States Centennial, commented, on tasting some wines produced at the time in California’s Central Valley, that these were

“atrocious—absolutely unequaled in villainy by the worst efforts that have been made in the same direction in New Jersey or Nebraska. In both of these States I have tasted wine that was excruciating, that left a memory upon the palate like a great sorrow. But.... I have never been swindled into swallowing anything half as vile as some claret made by a Frenchman in the old mission of San Jose....”³

The problem for California wines then, which would continue for almost a century, was that good wines were being made even as early as the 1870s in California, but the market was dominated by large bulk wine producers, such as Italian Swiss Colony and later the Gallo brothers, who favored a blended wine that was consistent, an average wine, better than many “*vins ordinaires*” produced at the time in France as an everyday table wine, but also a wine that was not intended to nor destined to be great. This was a wine that sought to appeal to the palates of Americans, who favored drinks with a high alcohol content, such as whiskey and, later, gin and vodka. When Americans selected an alcoholic beverage, they sought not subtlety but strong flavor, with a kick.⁴ Many wines from the time, particularly those made with the easy-to-grow and easy-to-ship Mission grape, were fortified to give Americans what they wanted.

In another article in *The New York Times* from June 1874, the correspondent in San Francisco noted:

“There is an increasing demand in our Eastern cities for California wine, but it is not a healthy or encouraging demand. The wine is used a great deal in making other wines, or sold in poor restaurants. One seldom sees a California wine on gentlemen’s tables. It has not a good name. It is considered heady and liable to be ‘doctored.’”⁵

At the time that this correspondent visited Northern California, there were actually some good California wines even though, as a general rule, they were not exported, perhaps because they did not have a high enough alcohol content to survive the rough treatment in travel. Those that were sent abroad were well regarded and frequently won prizes. But the general reputation of the wines as something of poor quality and adulterated was reinforced by East Coast critics, who tended to view the wines as second-rate to the European wines that they were more likely to consume. Good wine makers could be found in Northern California particularly—for example, Charles Krug—but what was needed was for the larger of these wineries to use better quality control not only in the production of their wines but also in their distribution to ensure that when they were exported to other parts of the country, through trustworthy and respected agents, they arrived in a condition to be appreciated. Until that happened, the *Times* correspondent foretold, California wines would continue to be distrusted and subject to criticism.⁶



These early critiques of California wine production could just as easily have been published a century later, in the early 1970s: most California wine in 1870 (and in 1970) was blended, at best bland, and at worst too doctored to be good. Too much mediocre wine was converted into brandy or other fortified wine, such as a port or a sherry. But it was also the case in 1870 (and in 1970) that there were some winemakers who were honest in their craft, experimenting with varieties of grapes other than the Mission grape, and who were successful in producing good, subtle, prize-winning wines—as good as any at the time in France or Italy. The writer of the 1877 *New York Times* article who had encountered the “vile” wine in San Jose located another vintner nearby who served him a glass of Zinfandel that he described as a “generous, full-bodied red wine.” During that same visit to Northern California in December 1876, he also tasted some of the sparkling wines that had been bottled a few years before by Agoston Haraszthy, the founder of Buena Vista Winery. (It is thought that the Buena Vista Winery under Haraszthy produced the first sparkling wine in California, called Eclipse.)⁷

The wine was “faultless,” the writer said, “good in flavor, exceedingly full-bodied, very sparkling, very dry...” Over a century ago, adjectives were used to

describe the flavor of a contemporary wine that could be used to describe a fine California sparkling wine today. But something caused time to stop in the near century between the publication of this article in *The New York Times* in 1876 and the beginning of the new Renaissance in California wines that began in the early 1970s and continued through the last three decades of the twentieth century. That “something” was national Prohibition.

1. SEABROOK, AMERICANS ALL 135.

2. The subject of Case 3: “Breaking Up Is Hard to Do: Wine as a Family Business.”

3. *California's Vintage: The Golden Wine of the Pacific Coast*, N.Y. TIMES, Jan. 7, 1877 [available at *The New York Times Archive*] <http://query.nytimes.com/gst/abstract.html?res=9B04ESD6133AE63BBC4F53DFB766838C669FDE>.

4. Ironically, this is a critique that has been leveled at Robert Parker, the influential wine critic, justly or unjustly—that he favors big, bold wines, such as robust Zinfandels and heady Cabernet Sauvignons, with a higher alcohol level than has traditionally been the case for red wine, so-called “fruit bombs.”

5. *Winemaking in California*, N.Y. TIMES, June 29, 1874 [available at *The New York Times Archive*].

6. *Id.*

7. Released in 1860. Heidi Cusick-Dickerson, Richard Gillette, Rodney Strong, “Buena Vista Winery,” *SONOMA: THE ULTIMATE WINERY GUIDE*, Revised and Updated, 2nd Ed., Chronicle Books 2005, 36-37. Unfortunately, Haraszthy did not live long enough to see the success of his wines. He was lost and is presumed to have died, perhaps eaten by an alligator in the Brazilian jungle, where he traveled after leaving the California wine business.

1. SEABROOK, WILLIAM, *AMERICANS ALL: A HUMAN STUDY OF AMERICAN CITIZENS FROM EUROPE* (London: George G. Harrap & Co., Ltd., 1938).

2. *Id.* at 137.

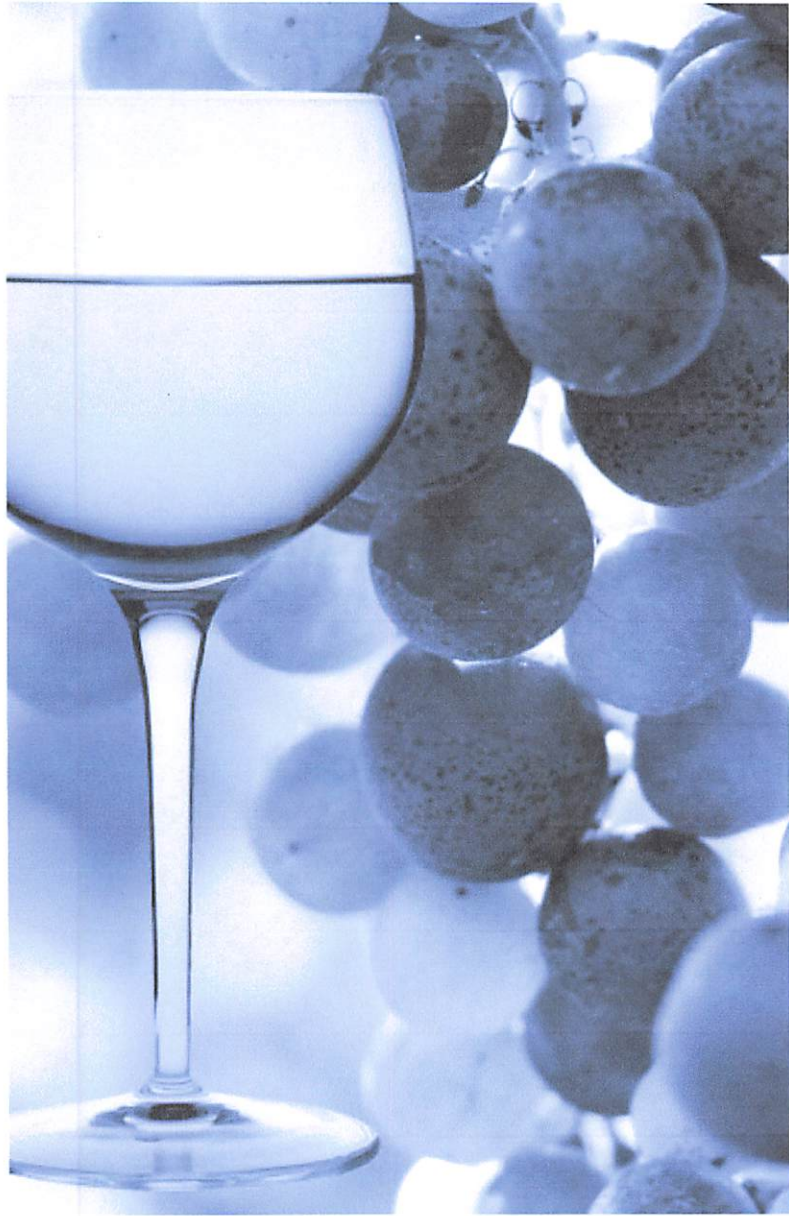
3. *Id.* at 136, n.1.

4. *Biggest on the Vine*, TIME, Monday, April 27, 1953, <http://www.time.com/magazine/article/0,9171,818339,00.html?promoid=googlep>.

5. LUKACS, *AMERICAN VINTAGE*, p. 84.

6. *Id.* at 86.

7. Italian Swiss Colony is best known today as a souvenir of the past, as much as the “little old winemaker” from its ads, and as one of the many brands now owned by Constellation Brands, which in 2004 also acquired The Robert Mondavi Corp. in an acrimonious takeover opposed by the Mondavi family. See JULIA FLYNN SILER, *THE HOUSE OF MONDAVI: THE RISE AND FALL OF AN AMERICAN WINE DYNASTY* 356-57 (Gotham Books 2007).





When Is Wine Not a Beverage?

Dumbra v. United States, 268 U.S. 435 (1925)

The Catawba grape was popularized by Nicholas Longworth, a wealthy real estate investor in Cincinnati, Ohio, before the Civil War, who used it in the production of the first commercially successful sparkling wine. The beverage sold well on the East Coast and was memorialized by Longfellow in his “Ode to Catawba Wine.” The grape was a light purplish red color, yielding a white wine somewhat reminiscent of white zinfandel, but very dry. Catawba is featured today by some wineries in the Ohio Valley.

Longworth was a believer in temperance who experimented in grape cultivation and wine production hoping that wine with a lower alcohol content would replace whisky at American dinner tables.¹

When the Volstead Act—the Eighteenth Amendment to the United States Constitution—was ratified and became effective on January 1, 1920, the United States entered into a “dark age” of wine history. This Amendment—which brought in national Prohibition—temporarily halted the development of the U.S. wine industry and completely changed the business of the production and sale of wine in this country. Prohibition was not a sudden event. For many years before 1919 there had been a groundswell across the country against “demon alcohol,” and wine (and wine making) was in a sense a victim in the battle against a much greater evil: high-alcohol-content beverages such as whiskey.

It is important to understand that throughout the nineteenth century, most Americans were not wine drinkers, but many drank other alcoholic beverages heavily. When Thomas Jefferson attempted to import European vines into Virginia to create an American-based wine agriculture, and when Nicholas Longworth spent millions of dollars establishing a short-lived wine industry in Ohio,² these men did not do so merely because they appreciated fine wines (although Jefferson in particular had developed a taste for good Bordeaux vintages during his years as ambassador to

France), but largely because they saw wine as something more natural, purer, and with a much lower alcohol content than the whiskey and rum that were the daily beverages of many Americans at the time.³ What else could they drink? They had no access to fruit juices (which would have spoiled quickly with no refrigeration), their water was disease-ridden, and milk also would have spoiled quickly. By all accounts, Americans in the nineteenth century spent their days in a semi-drunken stupor, and the Eighteenth Amendment was seen as a means to bring America back to sobriety.

Although the prohibition of the Eighteenth Amendment seems absolute, there were several loopholes in the law. For example, each home was allowed to make 200 gallons of “non-intoxicating cider and fruit juice” per year.⁴ (Growers in California shipped grapes and so-called “grape juice bricks” throughout the United States to home producers, who made their own wine by adding yeast and allowing their “-juice” to ferment.) Another loophole allowed the production of sacramental and medicinal wines under license from the federal government.⁵ This was the loophole under which the Dumbras operated their winery in 1925.

The *Dumbra* case involved a classic sting operation. The Dumbras operated two separate businesses out of adjoining buildings on East 16th Street in New York City in the 1920s. In one, No. 514, they maintained a grocery store from which they sold dry goods, fruits, and vegetables. Next door, at No. 512, they operated a winery for the production of sacramental wine, under a permit from the government. This permit allowed them to manufacture and sell wines for non-alcoholic beverage purposes, and to keep on hand no more than 100,000 gallons of wine.

Under a search warrant, federal agents raided both of the Dumbras’s businesses and hauled off 74 bottles of wine from the grocery store at No. 514 and 50 barrels of wine from the winery at No. 512. The Dumbras claimed that this was an unreasonable search and seizure without probable cause and, therefore, in violation of the Fourth Amendment to the U.S. Constitution. They asked the court to overturn the warrant as to the 50 barrels of wine. They argued that the warrant had been issued under false evidence given by an undercover federal agent. They also claimed that it had been issued in error because they held a permit to legally produce and sell the wine. This case made its way to the United States Supreme Court.

Acting on an anonymous tip that anyone could buy wine for the asking at the Dumbras’s grocery store, undercover agents pretended to be customers. Once, an agent went into the grocery store and asked Mrs. Dumbra for two gallons of wine. She sent her son to the back of the store. The agent claimed in his affidavit that he saw Mrs. Dumbra’s son turn right, in the direction of the winery, and soon he returned with the two gallons of wine. The Dumbras claimed there was no evidence that the wine had come from the winery. (The Dumbras did not challenge the sei-

zure of the bottles of wine from the store.) However, on another occasion, the agent again visited the store and asked for one gallon of wine. This time, Mrs. Dumbra's son told the agent to wait outside. Soon after, the son came out the winery door and sold the wine to the agent in the street, outside the winery, and not in the grocery store. The son did not ask the agent to provide any documents showing that he was authorized to buy the wine for religious purposes.⁶

The Court considered the legitimacy of the affidavit on which the warrant was based. Because the Dumbras had a permit to make and sell wine legally for *non-beverage* purposes, the Court wondered if this allowed them to avoid a search and seizure. The agent had failed to tell the judge who issued the warrant for the search that the Dumbras had this permit. This failure did not please Justice Stone, who delivered the majority opinion in the case. However, he also noted that the Dumbras's permit did not authorize them to possess or sell intoxicating liquors for *beverage* purposes. If that was their intent, then the fact that they had a permit to sell wine for non-beverage purposes was irrelevant.

And in the end, the Dumbras's very well-known readiness to sell wine to casual purchasers without inquiry as to the right of the buyer to purchase sacramental wine proved to be their downfall. The fact that an actual sale from the winery premises had taken place under suspicious circumstances would have been sufficient grounds for the judge to issue the warrant, according to the Court, even if he had known about the existence of the permit. It was true, the Court conceded, that the federal agent should have been more forthcoming with the judge, but the Dumbras's actual unlawful sales overrode any niceties as to how the warrant was issued. The sale to the agent in itself was sufficient to show probable cause, and the warrant was therefore allowed to stand. The Dumbras did not get back their 50 gallons of wine and likely suffered other consequences as well.⁷

As this case demonstrates, there were both short-and long-term consequences of Prohibition. One of the most serious short-term effects was the growing willingness of otherwise law-abiding citizens, such as the Dumbra family, to casually engage in illegal acts. It is likely that large quantities of so-called sacramental wines made for non-beverage purposes were ultimately consumed as beverages in places other than churches. Little boys were sent to drugstores to buy medicinal champagne and brandy for their aunts and grandmothers. People bought concentrated "grape juice" bricks and "wine loaves" that carried warnings on their labels to not add water or the ingredients were likely to ferment into wine.⁸

The father of Robert Mondavi first saw California when he went there on behalf of his fellow Italian compatriots back in Minnesota to buy grapes for them to make their 200-gallon annual allotment of home-fermented fruit juice.⁹ And there is little

doubt that organized crime gained entry into the liquor business because legitimate sources were outlawed under Prohibition. As more and more people came to disregard the law, public opinion turned against it. Nevertheless, not everyone was pleased when, in 1933, through the Twenty-first Amendment to the U.S. Constitution, the Eighteenth Amendment was repealed and the federal experiment in Prohibition ended.

Long-term consequences remain. It is likely that the fine-wine industry in the United States would have continued to develop, and with robust wineries in more states, if the American view of wine had not solidified during Prohibition as something dangerous, exciting, and illicit. In addition, Prohibition and its repeal led to a myriad of local and state laws regulating the manufacture, distribution, and sale of alcoholic beverages, which have had a long-lasting impact on wine consumption, the cost of wine in many parts of the country, the choices of wines available for purchase in different states, and, some would argue, the imposing market share that the California wine industry enjoys over other wine-producing regions in the United States.

Vignette

National Prohibition and Its Aftermath



On January 1, 1920, national Prohibition became effective through the Eighteenth Amendment to the U.S. Constitution. Section 1 of the Amendment provided:

[T]he manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Prohibition remained in effect until the Amendment was repealed in December 1933. Despite its purpose of combating alcoholism (and the consumption of alcoholic beverages) in the United States, the law had a contrary effect. In fact, during this period wine consumption in the United States continued and may have actually increased.¹

This did not mean that Prohibition had a minimal effect on the wine industry. Many wineries did not survive Prohibition. And the interruption in the development of wine production had nefarious effects that continue to be felt and that are reflected in recent legal battles among large and small wine producers, distributors, and state government regulators.

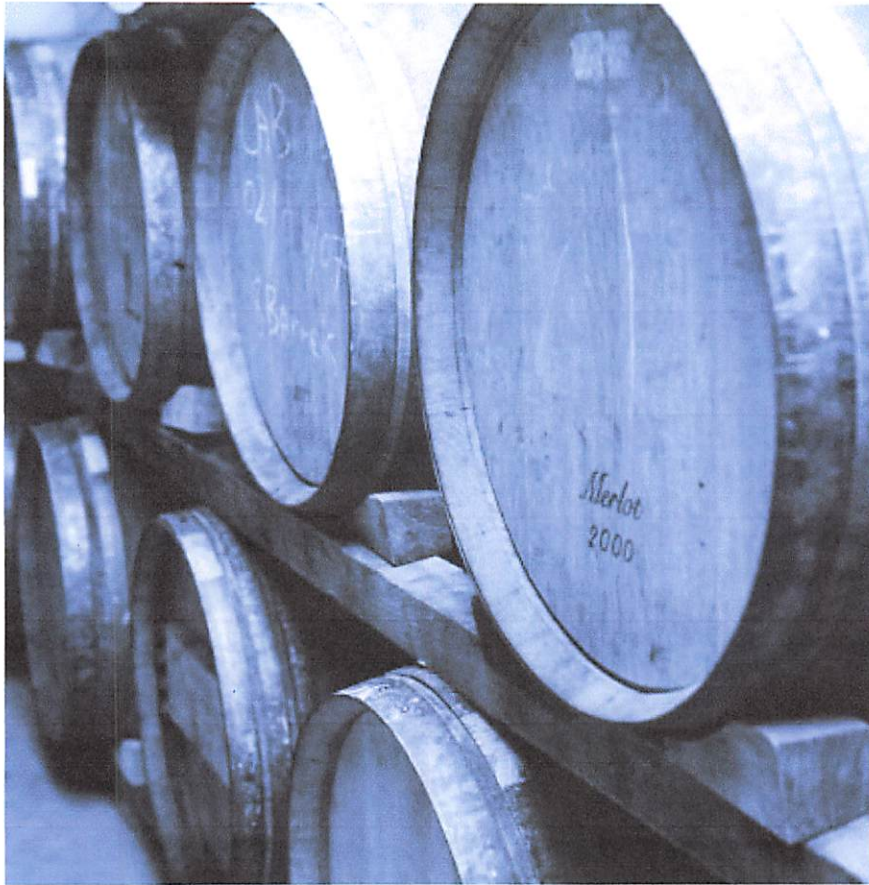
Prohibition didn't just happen. Although the dislocations and changes in the country during World War I may have had some effect, the success of the temperance movement was the result of a progressive movement that grew in strength during the nineteenth century. It also was not, as many believed, the natural impact of Puritanism on American life. The Puritans in fact were not abstainers: the first arrivals in Massachusetts Bay planted vineyards for wine.² Total abstinence was not in question. But temperance was the ideal. Both Thomas Jefferson and Nicholas Longworth promoted wine and wine production; they were part of a growing number of influential people in the early nineteenth century who saw increased wine consumption as an antidote to the stronger alcoholic beverages—rum and whiskey—that were staples in many American homes. Whiskey was cheap and available; water quality was poor. And these beverages were largely untaxed. Americans drank heavily almost daily, and there was strong evidence of the destructive effect of heavy spirit drinking.³

What had started as a relatively disorganized temperance movement gained momentum by the end of the nineteenth century. Cities enacted the first “dry” laws even before the Civil War. In 1851, Maine was the first state to pass a law prohibiting all intoxicating liquors.⁴ Other states followed within the next few years. Even in California, dry communities were formed, such as Compton and Long Beach, right in the heart of the Los Angeles wine industry.

⁵ By 1917, momentum had grown sufficiently to enable the enactment of a national prohibition act. It was easily ratified as a constitutional amendment.

Once national Prohibition was achieved, however, only rudimentary enforcement took place. Policing the law was left not to the Justice Department but rather to the Internal Revenue Service. The Commissioner was empowered to appoint regional inspectors who had search and seizure powers, and courts levied fines. But generally, enforcement was lax. It seemed that proponents naively believed that once the law was passed, it would be obeyed. This was not the case. Once the law was enacted, it seemed that a large majority of Americans set about breaking it.

Prohibition had a disastrous effect on most wineries within the United States. Many wine producers had thought themselves to be different from distillers and breweries and took a wait-and-see approach to the prohibition movement until it was too late to develop a cohesive opposition. Believing that wine was a drink of temperance, not intoxication, many hoped that an exception would be created in the law for wine production. This did not happen. But because of these assumptions, winemakers were caught in the middle of the battle, unwilling to ally themselves with the “demon” rum distillers and not wanting to join the cause of the prohibitionists in campaigning for the law (with an exception for their industry). As a result of Prohibition, regular wine trade was shut down, but what grew out of Prohibition were “back door” means of obtaining wine.



Exceptions to the Volstead Act allowed the production of sacramental wine under permit, and a few wineries were able to continue in operation on a limited basis under this guise. Wine could also be produced for other non-beverage purposes, such as for medicine or vinegar production. Section 29 of the Act allowed individuals to make non-alcoholic wine—in effect, grape juice.⁶ Some enterprising winemakers produced juice concentrate and so-called “wine bricks” that were sold with yeast and a warning against illegal fermentation. Ironically, this allowance led to a large increase in vineyard planting, as a demand for fresh grapes for juice production opened up. Ultimately, the increased supply of vineyards led to negative consequences for the future wine industry, as wineries converted from high-quality wine grapes to varieties, such as Alicante Bouschet, which could survive shipment to home winemakers in other parts of the country. Alicante Bouschet is an intensely colored but essentially flat-flavored grape that was cultivated mainly to add color to wines. By itself, however, it made a decidedly mediocre wine, loaded with color and very little flavor.

The Twenty-first Amendment to the Constitution was ratified and became effective on December 5, 1933. Section 1 states simply: “The eighteenth article of amendment to the Constitution of the United States is hereby repealed.” In

United States v. Chambers,⁷ the Supreme Court held that the National Prohibition Act, insofar as it relied on the Eighteenth Amendment, had become inoperative, with the result that prosecutions for violations of the Act, including proceedings on appeal, had to be dismissed.

By the time Prohibition ended in 1933, there were far too many grapes on the market, and the bottom fell out in prices. Furthermore, the push to plant vineyards with grapes such as Alicante Bouschet or the Thompson seedless grape meant that once Prohibition ended, grapes available for wine production in California were of poor quality, leading to an influx of ordinary blended wines that further damaged the reputation of California wines. The entire industry had to be rebuilt over the next decades.

^{1.} PINNEY, A HISTORY OF WINE IN AMERICA 436.

^{2.} *Id.* at 29-30, 426.

^{3.} *Id.* at 427.

^{4.} *Id.* at 431.

^{5.} *Id.* at 432-33.

^{6.} “Allowed” meant that penalties were not imposed on home production, Volstead Act, 27 U.S.C. §46.

^{7.} 291 U.S. 217, 222-26 (1934).

^{1.} LUKACS, *supra* note 3 at 14.

^{2.} Nicholas Longworth was an early promoter of wine as an aid to temperance. See, Timothy O. Rice, *Nicholas Longworth: Father of the American Wine Industry*, W INERY INSIGHT, July 2003, <http://www.weekendwinery.com/wineryinsight/Article.Jul03.htm>.

^{3.} PINNEY, A HISTORY OF WINE IN AMERICA 435.

^{4.} Volstead Act, 27 U.S.C. §46.

^{5.} *Id.*

^{6.} Under Section 6 of the Volstead Act, the seller had to retain a copy of the buyer’s authorization to purchase.

^{7.} The penalties under the Volstead Act were small fines and, at worst, six months imprisonment, until 1929, when penalties were stiffened substantially under the Jones Act.

^{8.} Called “Vine-Glo,” see PINNEY, A HISTORY OF WINE IN AMERICA, 28-30.

9. SILER, THE HOUSE OF MONDAVI 12.





Breaking Up Is Hard to Do: Wine as a Family Business

The Estate of Antonio Moramarco v. J. Moramarco, 86 Cal. App. 2d 326 (2d Dist. 1948)

He is a Spartan bachelor who does not go in for luxuries or frivolities. His office is crude, simple, carpetless as it was forty years ago, and he makes his rich, elegant [emphasis added] young nephews and nieces work in the wineries so they will know what they are inheriting when he dies.¹

Two brothers, grown men, argue to the point of a fistfight in their mother's front yard. After the murder-suicide of their parents, two brothers go on to develop one of the largest wineries in the world, but fail to include their little brother in the venture.

A younger brother allows his older sibling, the true owner of the family wine chateau, to live in a two-bedroom apartment in Paris while he lives the luxurious life as a Count in Bordeaux.

A son sues his dying mother, accusing her of cheating him out of his shares in the family business.

Dysfunctional families can be found in any business, but the wine business seems to have more than its share. Although family wineries' glowing histories on their Web sites often describe the family's simple immigrant roots—ordinary people engaged in a family agricultural business—there is something not so simple about wine. Wine is romantic, passionate. Winemakers function as an aristocracy, whether in France or Italy or in the democratic United States.² And it seems nothing stirs the passions more than the battle for control in one of these businesses. It is particularly the hand-down of the business from the patriarch to the second generation that is hard. Usually these men are strong personalities who dominate the business and retain control much longer than they should. This creates significant transition issues.

In 1965, Robert Mondavi, then general manager of the Charles Krug Winery, had an argument with his younger brother, Peter, which led to the famously documented fistfight. As a result, Robert's mother, Rosa, threw Robert out of the business founded by Robert's father, Cesare Mondavi, forcing him in his fifties to strike out on his own and to found what became the world-famous Robert Mondavi Winery. He sued his mother and brother and ultimately obtained a multimillion-dollar settlement.³

In 1986, Ernest and Julio Gallo sued their younger brother, Joseph, for trademark infringement in a case described by the court as "sibling rivalry" of untold bitterness.

4

In Bordeaux, a dispute among some 40 heirs to the famous Château d'Yquem led to the breakup and sale of a winery that had been in the same family since before the French revolution to a large corporate conglomerate.⁵

John Davies, son of Jack and Jamie Davies, the founders of the Schramsberg Estate (makers of the renowned California sparkling wine), sued his mother in California Superior Court, claiming that she had cheated him out of his interest in the winery business. Jamie Davies died before the legal dispute could settle.⁶

There is a reason that *Falcon Crest*, a television soap opera in the 1980s, had such a large following. These disputes make a good story, particularly when they involve the division of properties upon the death of the patriarch. It seems that, with wine estates in particular, there is a reluctance to give up control, to pass along the responsibility to the younger generation; there is the sense that only the father (or mother) is able to run the business as it ought to be run.⁷ And sometimes it is simply because the patriarch does not expect to die.

This reluctance was evident in the case of Antonio Moramarco, patriarch of an Italian-American wine-making family in the early part of the twentieth century. He died of natural causes—unfortunately, without leaving his will in a safe place. The Moramarco family, by all descriptions, seemed more unified than some other Italian-American wine-making families (such as the Mondavis), but there was sufficient dissension to spark a lawsuit after Antonio's death that went as far as the California appellate courts for resolution of the question of which family members would be entitled to share in the significant estate that Antonio had left behind.

The most successful wine from the California missions, using the Mission grape, was produced at Mission San Gabriel, a few miles east of what is now Los Angeles. Wine was also produced at the Sonoma Mission, the last and most northern of the chain of California missions. Because the Mission grape produced a flat-flavored, low-acid

wine with high sugar content, it was fortified with brandy to maintain its residual sugar and named “angelica,” after City of Angels.⁸

The facts disclosed in *The Estate of Antonio Moramarco* leave much to the imagination over the causes of the dispute. Details of the Moramarco brothers’ life are available through a family history posted on the Internet,⁹ and these give the reader an insight into the nature of the relationship among Antonio and his other brothers, and the second generation’s expectations. One must read between the lines and guess at some facts, but the story is that of a poverty-stricken Italian family that sent three of its four sons to seek a better fortune across the Atlantic at the turn of the twentieth century. In the corners of this case lurks an untold story—that of the one son who stayed behind with his parents, and the suffering of his children in Mussolini’s war-torn Italy.

There were four Moramarco brothers, born into a poor farming family in eastern Italy, inland from the Adriatic Sea, in the Altamura region. Antonio Moramarco, the eldest son, came to the United States in 1905. Once settled and employed, he sent for his brothers to help him establish his business in America. His brother Giuseppe (Joe) came over in 1906, and their brother Nicola (Nick) arrived shortly after. The three brothers migrated to Southern California and worked to establish a new business. They became United States citizens. They lived together at first, all in a small house where Antonio Moramarco’s winery was located. Joe and Nick married and had children who worked in the family business when they were old enough. Antonio never married.

The fourth Moramarco brother, Francesco (Frank), did not join his brothers in California, but rather stayed behind in Italy. The court noted that he never came to the United States to see his brothers. (Is that fact so surprising in an era when steamship passage, even in steerage, would have been prohibitively expensive for a poor Italian man?) Frank never sent any money to invest in the winery. (Again, this is not surprising, given the impoverished conditions in which the Italian side of the family had lived in the early part of the twentieth century. It is unlikely that Frank Moramarco would have been in a position to make such an investment. But this fact was important to the outcome of the case.)

Over time, the brothers built a profitable fruit wholesale business. They bought a ranch property in Van Nuys and planted fruit trees, and other land where they grew cash crops, including grapes, and they owned a small winery, the Moramarco Brothers Winery. The farming and winery operations were a family affair, but without much formal accounting. In its description of the facts, the Court was careful to

point out that all three brothers devoted their time to the winery and agricultural business and invested their money in it. For the most part, none of the Moramarco children received salaries for their work in the family business. It was just expected that they would help out. The three brothers combined their efforts and reinvested their earnings. Business was conducted as if a partnership existed among the brothers, but Antonio Moramarco, as the elder brother, was the acknowledged head of the family enterprise—the patriarch—and no written partnership agreement was created. For the most part, all the family assets were held in his name.

Winemaking in Los Angeles was first commercialized by a Frenchman appropriately named Jean Louis Vignes (French for “vines”), originally from Cadillac, in the Bordeaux region. In 1833, he imported and planted European varietals from France in California. However, the Mission grape continued to be the dominant variety in Los Angeles vineyards until after World War II.

In the 1920s, during Prohibition, the brothers purchased the Old Mission Winery for what they considered “a good price.”¹⁰ It seems surprising that anyone would have thought it a sound business idea to buy a winery in the middle of Prohibition. It was certainly a contrarian decision. Many winery businesses in California and elsewhere were forced to shut their doors after the Eighteenth Amendment was ratified. But, as in most things that Antonio Moramarco invested in, the winery purchase seems to have worked out very well. The Old Mission Winery produced sacramental wines and wines for medicinal purposes, both of which were legal under Prohibition. And the winery thrived once Prohibition was repealed in 1933. Antonio Moramarco proved himself to be an astute businessman.¹¹

The three Moramarco brothers in Los Angeles lost contact with their brother who had stayed behind in Italy. As the court noted, Frank Moramarco never came to see Antonio or the other family members in California. Antonio visited Italy in 1922, but after that visit, he heard nothing more from Frank or his family, nor did he communicate further with them. Frank died sometime after that visit, and none of his children wrote to Antonio to let him know. This fact was important to the court’s decision.

Antonio had made a will that was witnessed by his business manager, a Mr. Pollack, and Mr. Pollack’s wife, Olga. Mr. Pollack testified at the trial that Antonio had intended to leave everything to his two brothers and did not want to leave anything to his brother Frank, who at the time was still alive in Italy, “Because,” he alleg-

edly said, "Mussolini is going to take it away from him." Mr. Pollack also testified that when Antonio's brother Nick died, Antonio expressed concern that Nick's children might not inherit Nick's half of Antonio's property at his own death and wondered if he should rewrite his will. But apparently he did nothing further, and there was no further acknowledgment of the existence of the Moramarco family members in Italy.

In November 1944, as Antonio was heading back to Los Angeles from a visit to the family vineyards, he suffered a fatal heart attack. Unfortunately, after his death, his will could not be found. However, when sorting through some business papers that had been shoved into a box when Antonio had moved his offices at some point, Mr. Pollack discovered a carbon copy of the will that he had witnessed years before. Although it was unusual, the court allowed the Moramarco estate to be probated on the basis of this copy, and the assets of Antonio Moramarco were distributed to his surviving California family members in accordance with its provisions. Because the will did not account for Antonio's nieces and nephews who were living in Italy (Frank's children), they received nothing. Somehow, despite the great distance between Italy and California and the silence between the two branches of the family for more than a decade, and during a World War in which the two countries had been on opposite sides, Frank's children learned of the will, and they sued to have the copy put aside. They argued that allowing the probate of a carbon copy of a will (where an alleged original had gone missing) was not in accordance with California Probate Law.¹² The result was a bitter battle that went to the California appellate courts. Frank's children had an incentive to put aside the will because, if it were shown that Antonio Moramarco had died intestate, as his heirs, they would have inherited one-third of his substantial estate.

One can imagine these survivors of a terrible World War arriving in California to claim a better life from their wealthier California cousins. One imagines also, however, the anger that Antonio's sole surviving brother felt at these children who had not deigned during Antonio's life to write or to contribute to the family enterprise and who only appeared after Antonio's death to claim a share of all they (he and his children and Nick's children) had worked for during Antonio's life. Where were these cousins when Joe and his children were spending their weekends and summers working in Uncle Tony's fields and wine cellars?¹³ And it must be questioned whether they, even though Italian-Americans, possibly felt a small part of anti-Italian bias against their cousins, so soon after World War II. The Moramarcos had pointed out in their family history that the entire family had worked in the war effort and that several of Antonio's nephews had fought in Europe during the War.¹⁴ Such a bias against Mussolini and Italy, the country that had been an enemy of the United States, is an undercurrent in this case, decided so soon after the end of the war. In any event,

the court demonstrated little sympathy toward these newfound Italian relations and gave their arguments against probating the copy short shrift.

The court ruled that the copy of the will could be probated because it was proved by the requisite two witnesses required by the statute—Mr. Pollack and his wife—although she admitted in her testimony that she had never looked at the document she witnessed and had no idea of its contents. Their testimony, with the copy at hand, was sufficient to clearly express Antonio's wishes with respect to the division of his property. Moreover, the terms of this will, according to the court, "recognized a moral, if not legal, obligation" on the part of Antonio "to leave to his two brothers the shares of the estate which they had earned by their labor and other contributions. It was most natural that they should be preferred to the relatives in Italy."

The *Moramarco* case is a sad story when one thinks about the two families divided by economic conditions and a war. And it is evidence of the importance of having a transition in a family business. It states clearly the moral duty that the person controlling the family business has toward members of the family who contribute to that business. When a family member becomes angry with his son or brother, or with her daughter, it is an easy enough matter, although not always advisable, to slam the door or walk out, to cease corresponding, or to cut off an inheritance. There is no legal requirement that one be best friends with one's son, or that one must leave one's property to one's nephews. But when that father or uncle is managing a family business and the son or nephews are minority partners, then a larger duty is owed—a fiduciary duty. Simply put, fiduciaries must exhibit the highest form of trust, fidelity, and confidence, and are expected to act in the best interests of those on whose behalf they are acting, at all times. This was what the court emphasized in the *Moramarco* case: Antonio kept the property in his name, but his brothers and their children had worked hard to help him amass that property and contribute to his success, and he owed a fiduciary duty to the silent and patient partners in his—no, his family's—wine business. This duty took precedence over any formalities that the Italian family members might claim to gain what the court perceived was an undeserved inheritance.

Vignette 3

A Noble Battle—The Fight for Control of the Château d'Yquem*



One of the most famous and impressive wines from the French Bordeaux region is the sweet, sultry white wine from the Sauternes region produced by the Château d'Yquem. When the wines of Bordeaux were first classified in 1855 into their historic rankings, the Château d'Yquem was given its own special place, a higher ranking than even the highest-rated wines of the Médoc, a "Premium Grand Cru," not just great but a first great.

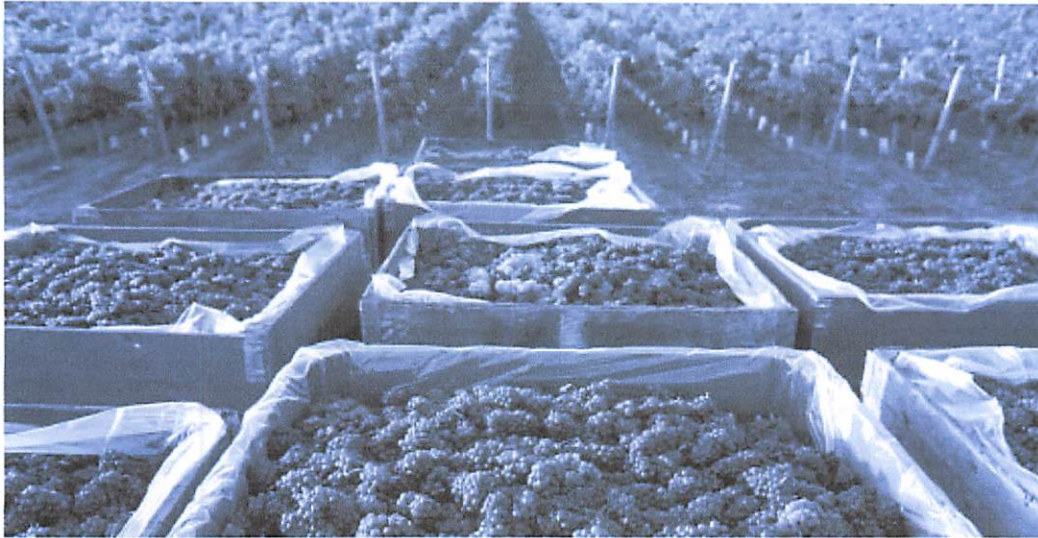
In good vintages and under the right climatic conditions, the grapes at Château d'Yquem are held on the vines until the very end of the growing season in late October, when they reach a state of perfection—in fact, until they become moldy. But this is no ordinary mold; this is the *botrytis cinerea*, a "noble rot." This mold, when it occurs, causes the grapes to shrivel, leaving sugar-laden fruit with intense, concentrated flavor. The grapes are then hand-picked, selected one-by-one when they have reached their desired ripeness. When the noble rot does not form as needed, however, a nasty fungus may grow instead, something more base, a so-called "*pourriture grise*"—gray rot—and the entire vintage is lost. But in successful years, the resulting wine has been variously described as honeyed, unctuous, nectar-like, liquid gold in a bottle. It is a very expensive wine, selling sometimes for thousands of dollars per bottle—truly a luxurious beverage for a lover of "*produits de luxe*." Which is why Bernard Arnault, the president of the luxury brand conglomerate LVMH (as in Louis Vuitton leather goods, Moët et Chandon Champagne, and Hennessy Cognac, as well as Veuve Cliquot Champagne, Dior couture, and Guerlain perfume), jumped when the chance was offered to acquire this mythic brand.

For almost 400 years, only two families had owned Château d'Yquem. The Sauvage family received it as a feudal grant in 1593, and the Lur Saluces family gained the rights to it through marriage with a Sauvage daughter in 1785. (The name "Lur Saluces" has been on the bottle's label ever since.)¹ The family and

its ownership of Château d'Yquem survived the French Revolution in 1789, the phylloxera epidemic of the nineteenth century, the Nazi occupation during World War II, and all the recent changes in the Bordeaux wine region, including the entree of Robert Parker and the globalization of the wine industry in the latter part of the twentieth century. But it did not survive the familial dispute that led to its transfer in the beginning of the twenty-first century.

The roots of the breakup go back to 1968 and the contested will of the then-proprietor of the Château d'Yquem, the Marquis Bertrand de Lur Saluces. When the Marquis died unmarried and without children (much like Antonio Moramarco, but on a grander scale), his nieces and nephews became the heirs to his estate. In the Marquis's will, the largest holding, approximately 47 percent of the Château d'Yquem, as well as his title, passed to Eugène de Lur Saluces, the eldest son of the Marquis's brother. Much smaller holdings had been or were allocated among some 40 other family members. Shortly before his death, the Marquis had indicated in correspondence a possible intention of changing his will to make Eugène's younger brother, Count Alexandre de Lur Saluces, his heir. But he never did so.²

For complicated reasons, Eugène did not take over the management of the winery upon his uncle's death, and his younger brother, Alexandre, assumed the role of general manager. Nine days after their uncle's funeral, the two brothers formalized their arrangement in a secret agreement, in which Alexandre conceded that his brother, Eugène, was the legitimate heir to their uncle's 47 percent share of the family business but Eugène recognized Alexandre as the representative of the Château d'Yquem, with a power of attorney to make all decisions related to its operation. They also apparently agreed to set up a "jointly owned company, with each brother holding a 50 percent interest, to control the various properties held in the family business, including the Château d'Yquem. The company was never established, but the brothers behaved as if it had been."³ Eugène retreated to a small apartment in Paris, where he lived a somewhat reclusive life, and Alexandre became the face of the Château d'Yquem, even though he owned outright only a small 7 percent interest (and controlled another 2.2 percent through his son, Bertrand).



For the next 30 years, Alexandre de Lur Saluces lived the good life at d'Yquem, rarely seeing or entertaining the other shareholders (including his brother, Eugène, who never visited the Château), and apparently never treating his cousins or other relatives to the famed wine from the Château in which they shared ownership. He entertained others, however, treating them to lavish fêtes at the Château, dispensing glasses of the delicate wine, served with exquisite foie gras from the region on crisp toast. He was a well-known figure—a true aristocrat—among the Bordeaux wine nobility, and few suspected that the true owner of this family business lived elsewhere. He spent freely on improvements to the property, apparently without consulting other family members, who from time to time raised questions about the appropriateness of certain expenditures or complained about the lack of dividends. As the years went on, these minority owners became more and more vocal in their complaints.⁴

Younger members of the family, who had earned business degrees and who worked in investment houses and for other big companies and therefore knew something about finance, began to voice their displeasure about the lack of transparency in the family business and the dictatorial way in which the winery's affairs were being managed. This eventually broke out into open revolt at a 1992 family meeting at which Alexandre announced a reorganization of the business to create a limited partnership over which he would have absolute control, essentially freezing out the minority shareholders. When they thought they had the votes to block this takeover, Alexandre trumped them, voting Eugène's 47 percent interest under the power of attorney, which, when combined with the 9.2 percent that Alexandre owned or controlled, gave him a majority vote. (Eugène did not attend family business meetings.)

In 1996, Bertrand Hainguerlot, Alexandre's nephew and one of the more dissatisfied shareholders of the younger generation of owners, persuaded the other minority family owners to sell their 37 percent share of the Château d'Yquem to LVMH. They also sought out Eugène de Lur Saluces and eventually convinced him to add some of his shares to the percentage to be acquired by LVMH to increase the acquired interest to more than 50 percent (thereby entitling them to a control premium in the sale). The purchase price paid by LVMH was approximately \$100,000 million.⁵ Alexandre de Lur Saluces sued.

Under a restraining order issued by the courts in Bordeaux,⁶ the family members were prevented from touching any of their newfound wealth gained through the sale until the dispute was resolved, and they also were prevented from visiting the winery. For more than three years Alexandre and LVMH battled in court, first locally in Bordeaux, where public opinion supported Alexandre in what locals viewed as his David-versus-Goliath fight, and then, when Alexandre eventually lost, in the appellate courts in Paris. Finally, in the spring of 1999, worn out by the struggle and possibly realizing that defeat was imminent, Alexandre de Lur Saluces agreed to settle with Bernard Arnault. (He continued his lawsuit against his brother, Eugène, however, seeking to enforce the 1968 agreement to set up a 50 percent partnership.)

Through the settlement, LVMH acquired a 64 percent interest in the Château d'Yquem, but agreed to bar the other family members from access to the Château and to retain the same management of the winery, with Alexandre as chair of the Board of Directors. The other family owners finally received their millions but could no longer claim any stake in the venerable winery that had been part of their family for so many generations. Alexandre de Lur Saluces remained as the voice and face of the famed Château d'Yquem.

* The details in this vignette is extrapolated largely from three sources: WILLIAM ECHIKSON, *NOBLE ROT: A BORDEAUX WINE REVOLUTION*, W.W. Norton & Co., New York, 2004; contemporary newspaper accounts from both American and French sources, including *THE NEW YORK TIMES* and *SUD-OUEST*; and accounts from acquaintances of the author in Bordeaux and Paris who were familiar with the story.

1. Official website, Chateau d'Yquem, <http://www.yquem.fr/sitehtml/uk/histoire.html>.

2. Roger Cohen, *A Chateau Divided: Famed Yquem Riven by Family Feud*, THE NEW YORK TIMES, Jul. 12, 1997, <http://www.query.nytimes.com/gst/full-page.html?res+9EODD1F39F93F931A25754COA901958260&sec=&spon-&pagewanted=all>.

3. Roger Cohen, *A Chateau Divided: Famed Yquem Riven by Family Feud*, THE NEW YORK TIMES, Jul. 12, 1997, <http://www.query.nytimes.com/gst/full-page.html?res+9EODD1F39F93F931A25754COA901958260&sec=&spon-&pagewanted=all>.

4. Roger Cohen, *A Chateau Divided: Famed Yquem Riven by Family Feud*, THE NEW YORK TIMES, Jul. 12, 1997, <http://www.query.nytimes.com/gst/full-page.html?res+9EODD1F39F93F931A25754COA901958260&sec=&spon-&pagewanted=all>.

5. The price was 550 millions of French francs in November 1996 for a 55% interest in the Chateau d'Yquem, *Guide des vins de France: Yquem*, <http://www.terroirs-france.com/vin/yquem.html>.

6. Les Echos no. 17775 du 17 novembre 1999, p. 11, <http://archives.lesechos.fr/archives/1998/LesEchos/17775-37-ECH.htm>.

7. See, Roger Cohen, *A Chateau Divided: Famed Yquem Riven by Family Feud*, THE NEW YORK TIMES, Jul. 12, 1997, <http://www.query.nytimes.com/gst/fullpage.html?res+9EODD1F39F93F931A25754COA901958260&sec=&spon-&pagewanted=all>.

8. See, Dominique Richard, *LVMH entre dans le capital*, SUD-OUEST, 15-12-1998, and Didier Ters, *Une si longue attente*, SUD-OUEST, 02-12-1998, <http://sudouest.com/archives/v2/archtete.html>.

1. SEABROOK, *AMERICANS ALL*, p. 135, describing his meeting with Antonio Moramarco.

2. In her history of the Robert Mondavi family, whose parents had been simple Italian peasants, Julia Flynn Siler describes the pleasure that Robert Mondavi and his son, Michael, derived from being invited to be members of the Primum Familiae Vini (First Families of Wine) as the sole American members—a society that included noble Italian and French families (namely, the Antinoris and the Rothschilds) who considered themselves an exclusive wine aristocracy. *THE HOUSE OF MONDAVI*, p. 228.

3. Siler, *HOUSE OF MONDAVI*, 123-124.

4. See [Case 6](#): “Blood Is Not Thicker than Wine—The Gallo Family Feud.”

5. See Vignette: “A Noble Battle—The Fight for Control of the Chateau d'Yquem.”

6. Stacy Finz, *Jamie Davies Dies—Schramsberg Owner*, THE SAN FRANCISCO CHRONICLE, Thurs., Feb. 14, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/14/BAFQVIPMG.DTL&hw=Schramsberg&sn=002&sc=691>.

7. Witness Robert Mondavi, who, after having had such a bitter dispute with his own brother for control of the family winery, engaged in behavior comparable to that of his father, retaining actual control of the Robert Mondavi Winery long after his two sons had taken on positions of apparent authority in the business. SILER, THE HOUSE OF MONDAVI.

8. PINNEY, *id.* at 240-41.

9. *Our Moramarco Family History*, <http://www.moramarco.net>.

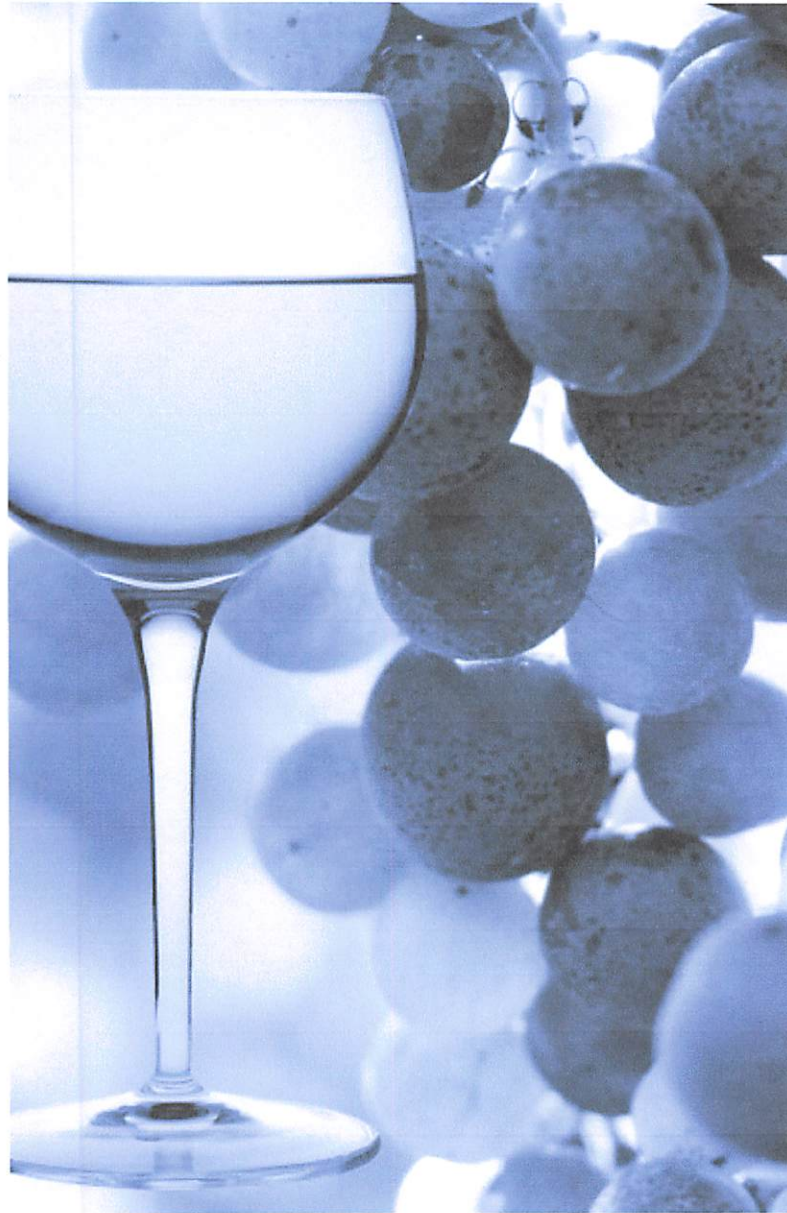
10. *Id.*

11. SEABROOK, AMERICANS ALL, pp. 135-36.

12. Then, California Probate Code § 350 read as follows: “[no] will shall be proven as a lost or destroyed will unless proved to have been in existence at the time of... death..., or shown to have been destroyed fraudulently or by public calamity in the lifetime of the [deceased]... unless its provisions are clearly or distinctly proved by at least two credible witnesses.”

13. The family members who put together *Our Moramarco Family History* emphasized that everyone pitched in on weekends and holidays without pay to work in the family business.

14. *Our Moramarco Family History*, *supra* note 4.





Trouble in the Vineyards—Labor Unrest at the Charles Krug Winery

California Agricultural Labor Relations Board v. C. Mondavi & Sons dba Charles Krug Winery, and United Farm Workers of America, AFL-CIO, Charging Party, Case No. 77-CE-21-S, 4 ALRB No. 52 (1977); *C. Mondavi & Sons dba Charles Krug Winery v. California Agricultural Labor Relations Board*, 1 Civ. No. 44867 (1980)

The Charles Krug Winery is one of the oldest wineries in the Napa Valley. It was founded by Charles Krug, a Prussian immigrant, in 1861, and was renowned at the time for the production of quality varietals in a Germanic style. After Krug's death in 1892, the winery fell into disrepair, but was rescued when it was purchased in 1943 by Cesare Mondavi at the urging of his older son, Robert Mondavi. Robert and his younger brother, Peter, ran the winery together from 1943 until Robert was forced out of the business in 1966. (He subsequently established the Robert Mondavi Winery.) The Charles Krug Winery has been under the ownership and management of Peter Mondavi and his sons, through the family partnership C. Mondavi & Sons, since that time. The winery has been successful, but from the late 1960s and through the 1980s it struggled financially, partly because of the multimillion-dollar payment the business was required to make to Robert Mondavi in settlement of his lawsuit against his mother, Rosa, and brother, Peter, for the value of his share of the Charles Krug Winery.¹

In the 1950s, the Charles Krug Winery was one of the first Napa Valley wineries to open a visitors' center where people could taste samples of Charles Krug-branded wines.

The last thing that the Krug Winery needed in the 1970s and 1980s was a costly and protracted labor battle with its workforce just as it was trying to get back on its feet after the lawsuit was settled. And yet that is what it got.

During the initial growth of family wineries in California, the vineyards were tended by the owners and their families, Mexican laborers, and other immigrants. After the United States government instituted the Bracero program in response to labor shortages during and after World War II,² vineyards in California were farmed by workers who migrated north from Mexico. Work conditions were hard and pay was kept low. The entry of these low-wage workers into the wine industry led to years of increasing conflict in the vineyards between workers and winery owners.

Seeing the benefits that workers in other industries seemed to enjoy through affiliations with labor unions, and opposed to the Bracero program, Cesar Chavez, a young man from Arizona working in the Delano area of Central California, set about organizing workers in agricultural industries, including the vineyards owned by the large corporate wineries. In 1965, when workers organized under the AFL-CIO walked out in a strike against grape growers in Delano, Chavez and his organization joined in to support them.³ The two groups eventually merged to form the United Farm Workers under the umbrella of the AFL-CIO. The strike in Delano lasted for five years, but eventually the union was successful in obtaining contracts with a number of growers, and over time its membership grew.

In 1973, when the E. & J. Gallo Winery signed labor contracts with a rival union, the Teamsters, the UFW workers went out on strike. In addition, they called for a boycott against Gallo products, which eventually gained national recognition.⁴ Activist college students of the time, who had first learned to drink wine at concerts and at the beach by passing around gallon jugs of Gallo Hearty Burgundy[®], stopped buying wine sold under the Gallo brand name in a sign of solidarity with Chavez and the UFW. It is uncertain what, if any, impact the boycott had. In any event, whether or not as a result of the boycott, the E. & J. Gallo Winery eventually came to the negotiating table with the UFW, and the UFW claimed success.⁵

With the passage of the landmark California Agricultural Labor Relations Act⁶ in 1975, the UFW set its sights on organizing workers in the Napa Valley and Sonoma County vineyards. One of the first wineries to be targeted by the union was the Charles Krug Winery. Immediately after passage of the law, the Napa Valley-based workers at Krug voted to be represented by the UFW. However, numerous complaints and cross-complaints and hearings before administrative law judges ensued before a contract was finally signed in 1980. After the initial union vote, Krug immediately filed objections (most of which were eventually dismissed) with the newly formed Agri-

cultural Labor Relations Board (ALRB). After hearing and dismissing Krug's charges that the vote had not been properly noticed and that Krug had not been given sufficient time to present an alternative to the union, the ALRB certified the UFW as the exclusive collective bargaining representative of the Krug workers in August, 1977. But Krug refused to bargain with the union and filed further objections with the ALRB, including continued challenges to the certification election. And the UFW filed cross-charges related to Krug's refusal to bargain and alleged mistreatment and discrimination against Krug workers who were UFW representatives, including unlawful dismissal. The administrative law judge ruled in the UFW's favor on many of these complaints, ordering Krug to hire back the affected employees and to bargain in good faith.

But there was still no contract. Krug filed another set of objections and more hearings were held in 1978, 1979, and again in 1980. Each time, Krug's objections—which, according to the ALRB, closely resembled objections that already had been rejected—were dismissed once more. These all related to the validity of the union vote, the lack of notice, and the lack of fair procedures.

In 1980, in light of the “insubstantial nature” of Krug's objections, and considering the UFW's wide margin of victory in the initial representation election, the administrative law judge had concluded, and the ALRB had agreed, that there was no way that Krug could have expected to ever prevail on any of them. After five years of fighting the election, a less tenacious winery might have given up and sat down at the bargaining table with the union. But Krug did not give up. It filed a petition for another review before the ALRB and when this was denied, it appealed the administrative law judge's opinion in the California courts. The California appellate courts refused to hear Krug's challenge, and Krug finally entered into negotiations with the union. A contract with the UFW was signed in 1980.

However, the relationship between the union both during and after the negotiations remained acrimonious, and both the UFW and Krug filed additional petitions before the ALRB. In 1983, a full eight years after the initial union vote, the Board upheld a “make whole” remedy that had been approved by the administrative law judge. This required Krug to reimburse the workers for any loss in pay or other benefits that they had suffered as a result of the long delay from September 1977, when the ALRB first certified the UFW as the exclusive bargaining agent for the Krug workers' contract, and 1980, when the parties finally sat down together to bargain in good faith for a collective bargaining agreement. Because of the newness of all the procedures involving the Agricultural Labor Relations Act, this “make whole” remedy was novel at the time, and Krug was unwilling to accede to it without trying yet one more appeal. Accordingly, it filed a number of challenges in continued proceedings before the ALRB, all of which were heard and eventually dismissed.

In the ensuing years, peace and quiet did not come to the Charles Krug Winery. There were reports of confrontations, pickets, and other unrest, including a labor lockout in the early 2000s, which created an angry and hostile environment.⁷

Life has not been easy for the unions, either. In the early years of the twenty-first century, there has been a backlash against the UFW and its presence in the Napa Valley and Sonoma County, not just by the winery owners but by the union members themselves. For some years between the time of its early successes in the 1970s and 1980s, contracts with the UFW were renewed as their expiration dates approached. And in 1994, the UFW successfully unionized the farm workers at the Gallo Winery in Sonoma County.⁸ But the balance has recently shifted. In June 2007, Gallo of Sonoma vineyard workers, who had been unionized only a decade before, voted to oust the UFW.⁹ And in July 2007, workers at Kunde Winery in Sonoma County also voted to reject the union.¹⁰

This shift has affected once again the tenuous relationship between the UFW and management at the Charles Krug Winery. In late 2005, the UFW notified Krug that it intended to extend the existing contract with Krug, as the parties had not yet come to terms on the most recent renewal and the contract was set to expire on December 31 of that year. Krug rejected the contract extension and, in January 2006, notified the UFW that it was going out of the vineyard management business and was turning its winery and vineyard operations over to a “land manager,” an independent company that would not be using any union labor.¹¹ The union protested this move as a subterfuge to kick out the union, in violation of the Agricultural Labor Relations Act.¹² In July 2006, in accordance with its earlier announcement, the Charles Krug Winery made its move, firing the 36 unionized workers in its winery and severing its ties with the union.¹³ The UFW then challenged the firings with the ALRB, and, in the summer of 2006, it also announced a boycott of the Charles Krug and C. K. Mondavi labeled wines. In June, 2007, the ALRB announced that it would bring formal charges against the Charles Krug Winery for violations of the Agricultural Labor Relations Act; and in April 2008, the workers were reinstated with back pay.¹⁴

The Napa Valley has always seemed such a bucolic place, but underneath the surface, not all is well. It seems that peace remains elusive in the Valley, at least on the labor front, particularly for the Charles Krug Winery.

Vignette

The Vineyard Workers



The history of immigration into the United States is reflected in the history of wine production, especially in California. The earliest vineyard workers were the Native Americans who lived and worked at the missions established by the Franciscan friars, from San Diego in the South to Sonoma in the North. Among their duties would have been the care of the Mission grapes planted by the friars and the making of the wine. As wine production expanded in California in the nineteenth century, the mission labor was augmented by that of workers resident in California and those migrating north from Mexico. (Initially, California was part of the Spanish land holdings from southern Mexico to an area north of Sonoma and the Napa Valley.)

From the time of their first immigration in the 1850s to work on the railroads and in the gold mines, Chinese laborers also worked in the wine industry. For example, the famous caves at Sonoma's Buena Vista Winery were carved out of the hills by Chinese workers.¹ Several hundred thousand had arrived and worked in the fields until the passage of the Oriental Exclusion Act of 1882.² Then the Chinese workers were replaced by Italian immigrants, newly arrived from East Coast cities, who found the California semi-desert landscape to be reminiscent of their homeland. Many of these workers were able to gradually build their own businesses, as saloon owners, as grape growers, and as winemakers. It is no surprise that some of the most famous names in the California wine industry today, such as Gallo and Mondavi, are descendants of Italian immigrants.

As a result of the Mexican Revolution in 1910, Mexican workers continued to migrate into the United States, seeking work in the fields. They freely went back and forth across the border, performing the seasonal work required in the vineyards until 1924, when the Border Patrol was established by Act of Con-

gress.³ This changed the immigration status of many immigrants by limiting the numbers of persons of different nationalities who could legally immigrate to the United States.



During Prohibition, even though many wineries shut down, the grape industry thrived (as large quantities of fruit were sent East for home winemakers), and Italian and Mexican laborers worked long hours for relatively low wages. With the onset of the Great Depression and the crash of the grape market at Repeal in 1933, jobs became scarce. The problem for workers was exacerbated by the arrival in California of migrant workers from the Oklahoma and Texas dust bowls, those epitomized in John Steinbeck's novel of the period, *The Grapes of Wrath*. This situation changed dramatically with World War II; suddenly, just as the wine industry was attempting to revitalize itself after the dual blows of Prohibition and the Depression, it was faced with a manpower shortage.

The United States, in need of migrant workers not just for the vineyards but for its entire agricultural industry, negotiated a labor agreement with Mexico in the summer of 1942, giving rise to the first Bracero program, which allowed Mexican farmworkers to enter the country on a short-term basis to perform agricultural work.⁴ Under the Bracero Agreement, Mexicans entering the United States enjoyed guarantees of transportation, living expenses, and repatriation established under Mexican Federal Labor Law.⁵ The Agreement also established that Mexicans entering the United States under its terms would not suffer discriminatory acts of any kind.⁶ The Bracero program ended in 1947, but

was revived in 1951 and continued until 1964. Growers liked the program because it assured them of a pool of legal, inexpensive labor to meet seasonal harvesting and vineyard maintenance demands. But organized labor leaders hated the program because they believed that it depressed wages for all winery workers. One reason that Cesar Chavez gained early success in organizing workers in California and Arizona was a general dislike among workers of the Bracero Agreement. Once the program was ended in 1964, Chavez launched his first strike against the Delano Vineyards in California's Central Valley.⁷

1. PINNEY, A HISTORY OF WINE IN AMERICA 243.

2. An Act to Execute Certain Treaty Stipulations Relating to Chinese, Acts of 1882 (47th Congress), ch. 126.

3. Immigration Act of 1924, also known as the Johnson-Reed Act, Act of May 26, 1924, *as amended* 45 STAT. 1009 (May 29, 1928).

4. The Agreement was finalized on April 26, 1943.

5. Article 29.

6. Agreement General Provision 21, in accordance with Executive Order No. 8802, June 25, 1941.

7. United Farm Workers official website, <http://www.ufw.org>.

1. SILER, THE HOUSE OF MONDAVI 287-89.

2. See Vignette: "The Vineyard Workers."

3. United Farm Workers official website: History, <http://www.ufw.org>.

4. *Id.*

5. *Id.*

6. CAL. LABOR CODE §§ 1140-1166.3.

7. SILER, *supra* note 2 at 288-89.

8. Gallo, *Heat, Unions*, RURAL MIGRATION NEWS, July, 2005, Vol. II No. 3, http://migration.ucdavis.edu/rmn/more.php?id=1041_0_3_0.

9. Kevin McCallum and Angelica Marin, *Gallo Workers Toss Out UFW*, SANTA ROSA PRESS DEMOCRAT, Tues., June 26, 2007, http://www1.pressdemocrat.com/article/2007_0626/NEWS/706260333/1033/NEWS01.

10. Kevin McCallum and Angelica Marin, *UFW Loses Second Local Vineyard*, SANTA ROSA PRESS DEMOCRAT, Fri., July 27, 2007, <http://www1.pressdemocrat.com/article/>

[20070727/NEWS/707270409.](http://www.sthelenastar.com/articles/2006/06/08/news/local/iq-3465413)

11. Julissa McKinnon, *Krug Workers Want New Contract*, ST. HELENA STAR, Thurs., June 8, 2006, <http://www.sthelenastar.com/articles/2006/06/08/news/local/iq-3465413>. txt.

12. CAL. LABOR CODE §§ 1153(e).

13. Carlos Villatoro, *Krug Defends Decision, Says Union has not Responded to Bargaining Efforts*, NAPA VALLEY REGISTER, Sun., July 9, 2006, <http://www.napavalley-register.com/articles/2006/07/09/news/local/iq-3491856.txt>.

14. United Farm Workers official website, *Charles Krug Mondavi Wine Boycott is Over*, <http://www.ufw.org/page.php?menu=research&inc=history/01.html> See, Kerana Todorov, *UFW Workers Return to Krug*, NAPA VALLEY REGISTER, Sat., April 5, 2008, <http://www.napavalleyregister.com/articles/2008/04/05/news/local/doc47fe84e867d941601317.txt>.

