

C O M M I S S I O N   M E E T I N G

before

ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

Discussion on Legislation recommended  
by the Compliance-Inspection Subcommittee;  
the impact of consolidation on the retail and  
wholesale level; and the impact of wine selling clubs

October 18, 1989  
Royal Swan Ballroom  
TropWorld Casino and  
Entertainment Resort  
Brighton Avenue and the  
Boardwalk  
Atlantic City, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Catherine A. Costa, Chairman  
Leo Bromley, Vice Chairman  
Milton Barnett  
J. Ross Bevis  
Joseph A. DeMarco  
Anthony N. Frattini  
John J. Garrity  
Gary W. Holsten  
James Lewandowski  
Anthony J. Napodano  
Charles D. Sapienza  
Captain Olindo Teza  
John F. Vassallo, Jr.

ALSO PRESENT:

Anne M. Stefane  
Office of Legislative Services  
Aide, Alcoholic Beverage  
Control Study Commission

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Meeting Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625



COMMISSION MEETING

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SENATOR CATHERINE A. COSTA  
*Chairman*

LEO BROMLEY  
*Vice-Chairman*

ASSEMBLYMAN JOHN T. HENDRICKSON

ASSEMBLYMAN JIMMY ZANGARI

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JAMES LEWANDOWSKI

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ANTHONY J. NAPONDANO

CHARLES D. SAPIENZA

COLONEL CLINTON L. PAGANO, SR.

EX OFFICIO

JOHN F. VASSALLO, JR.

EX OFFICIO



## New Jersey State Legislature

### ALCOHOLIC BEVERAGE CONTROL STUDY COMMISSION

STATE HOUSE ANNEX, CN-068

TRENTON, NEW JERSEY 08625

TELEPHONE: (609) 984-0231

## MEMORANDUM

TO: Members of the Alcoholic Beverage  
Control Study Commission

FROM: Senator Catherine A. Costa  
Chairman

DATE: October 6, 1989

SUBJECT: NEXT MEETING OF THE COMMISSION

The Alcoholic Beverage Control Study Commission will meet on October 18, 1989 at 10:00 a.m. in the TropWorld Casino and Entertainment Resort, Brighton Ave. and the Boardwalk, Atlantic City. The commission will meet in Salon 4 of the Royal Swan Ballroom. This meeting is open to the public.

Discussion will center on the following subjects:

1. Mr. William Jerlat will lead the discussion concerning legislation recommended by the Compliance-Inspection subcommittee. The proposed legislation would require knowing sale of alcoholic beverages to an underage person for the criminal prosecution of an alcoholic beverage licensee.

2. Mr. Charles Sapienza will lead the discussion concerning the impact of consolidation on the retail and wholesale level.

3. Mr. William Jerlat will lead the discussion concerning the impact of wine selling clubs.

For further information, please contact Anne M. Stefane, Commission Aide, at (609) 984-0231.

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D A V I D D W O R K: Good morning. I would like to welcome everyone to our annual convention. If everyone could sit down now. We are quite pleased and honored again, to have the Alcoholic Beverage Control Study Commission meeting held here at our convention in Atlantic City.

At this time, I would like to introduce the Chairperson of the Study Commission, Senator Catherine Costa.

Senator Costa? (applause)

SENATOR CATHERINE A. COSTA (Chairman): Thank you very much. I want to thank all of you for having us here each year. I understand this Commission has been coming now for the full eight years that we have been in existence.

I've been on this Commission six years now. I've enjoyed it tremendously; coming down and meeting with you and listening to you -- this give and take we have after we're finished, showing you just exactly, well, some things that we do as a Commission.

At this time, I'd like to introduce the Commissioners. To my extreme left is Commissioner Bevis -- wave; next is Commissioner Frattini; Commissioner Barnett; Commissioner Holsten; Commissioner Bromley; and our staff aide, Anne Stefane, Esq. (applause)

To my extreme right we have Commissioner DeMarco; Director-- On our Commission also is Director Vassallo; Commissioner Lewandowski; Commissioner Napodano; Commissioner Teza; and Commissioner Sapienza. (applause)

With us today we expected to have Commissioner Jerlat, who's been with the Commission the full eight years. Unfortunately, he has a 104 temperature; he has the flu. Looking about, I'm sure we don't want to get the flu, so we're glad that he's staying home and taking care of himself.

But we've put the task of the work that he was going to do today in leading us in various discussions, to Commissioner Sapienza. Now I'd like to turn over that part of the program to Commissioner Sapienza. Thank you, Charlie.

MR. SAPIENZA: Thank you, Chairlady. It's nice to be here, and be able to pick up the gauntlet for Bill Jerlat. In past days he's picked up the gauntlet for me. It's been weeks before I was able to get out of the rut that he dug for me. So anything I say, Bill, wherever you are, I want you to know I mean it. (laughter)

One of Bill's primary topics was to alert the Commission and the people in the audience here, about the threat that he saw from wine selling clubs. These are clubs that through direct marketing techniques, sell wine -- and they could sell distilled spirits if they chose to -- directly to New Jersey consumers.

In order to comply with Director Vassallo's regulations, the clubs deal through one favored retailer and one favored wholesaler. But they offer exclusive distribution for many labels of wine. It's legal, it's proper, it's big business in other states. It's bigger business in other countries.

But Bill thought that this particular type of marketing device posed a problem for us in New Jersey. Specifically -- and you may be familiar with wine-selling clubs and you may not. But they will come into New Jersey, form an alliance with another large direct marketing operation such as American Express. The particular wine selling club that Bill was thinking of, Wine Sales of America, has formed such an alliance. They will offer to all American Express customers to directly sell wine. If a customer takes them up on it, the actual sale is consummated by only one retailer in the State of New Jersey, through one wholesaler -- whoever that wholesaler is -- clearing these products. The wines that the customers buy can only be bought from that retailer. They can't be purchased from any other retailer. You can't get it from any other wholesaler or from any wholesaler.

So Bill felt that this was potentially a threat to all of our businesses and to the State of New Jersey in the direct sale of wines. He was very interested to know whether there was anyone here who felt the same way about this problem, or who had any recommendations concerning direct sales of alcoholic beverages -- wine clubs in particular.

So on behalf of Bill, let me ask this audience: Has anyone had any feedback from their customers or received any other information concerning wine selling clubs? (no response) Director, have you?

MR. VASSALLO: As a matter of fact, yes. I joined one. That's how we monitored the first one. The facts that you've given are not accurate.

MR. SAPIENZA: They're Bill's facts, not mine.

MR. VASSALLO: Those facts are not accurate. They do not necessarily deal through one retailer. The American Express one was dealing primarily with one retailer -- a large retailer. It is not one wholesaler. The wines are available to any other retailer who wants to purchase them from the wholesaler that happens to handle them. It's been made clear to them, and they have agreed that's the way it is. That's the law; that those wines are available.

MR. SAPIENZA: Well, perhaps Bill was referring to the WSA's marketing literature, where they say that they have exclusive distribution rights for most labels, and they only deal through one retailer and one wholesaler.

MR. VASSALLO: I think that's what they said. They have exclusive distribution rights for these labels, but once they get to the wholesaler, the wholesaler in this State has to offer them for sale nondiscriminatorily to any retailer that wants to buy them.

SENATOR COSTA: I have a question for you, Director Vassallo.



If we're so careful about age when purchasing liquor or wines, how can we be sure that the person receiving the wine is of adult age?

MR. VASSALLO: They require their delivery services to get a signature of a person over 21 years of age.

Frankly, Madam Chairman, I'm not too concerned about that because what's the difference if it's delivered to an adult and then it's available to someone else in the house? We can only police it so far.

SENATOR COSTA: Well, you can say the same thing for anyone going to a liquor store.

MR. VASSALLO: Right.

SENATOR COSTA: I can send my grandson to the liquor store to buy me some liquor. What's the difference?

MR. VASSALLO: I didn't say send the grandson. You could go though and bring it home, then leave the house and it's available to your grandson.

We can only police it so far. They are required to obtain a signature from a person 21 years of age or older.

MR. SAPIENZA: I think Bill's point -- and we're going to get right to that, gentlemen -- but I think Bill's point was that historically everybody in this room invested in their license at a time and at an age when they were the sole seller of alcoholic beverages to consumers. Those were the ground rules. That was what the market was like at that time. Now slowly this market of ours in New Jersey is changing, and this is just one of the changes.

Yes sir? Why don't you step up to our microphone so it can be recorded?

RICHARD KNIGHT: (speaking from audience) I was solicited by a stock firm to purchase stock in a company in California that was doing this through mail order. There was no wholesaler involved because I wrote for specifics about it. And there was no wholesaler.



SENATOR COSTA: We would appreciate you coming up to the mike.

MR. KNIGHT: Okay.

SENATOR COSTA: We're having it recorded. I didn't even introduce them. We have Diane and Demery, who are recording for us.

MR. SAPIENZA: Could you identify yourself, please?

MR. KNIGHT: Richard Knight, Oceanport Wines and Liquors.

I was solicited by a stockbroker to purchase stock in a company in California that was having direct mail order wine sales. I got the information from the stockbroker regarding it. This wine is purchased from the vineyard and was mailed directly to anybody who was a member of this club. There was no wholesaler involved. It could be delivered to a minor or whatever.

MR. VASSALLO: If that was coming in in New Jersey, you should have told us about it, or tell us about it--

MR. KNIGHT: I did.

MR. VASSALLO: --because it's illegal for them to ship into this State.

MR. KNIGHT: I did. I've discussed it with you.

MR. VASSALLO: That was-- And we couldn't-- If that's the one you discussed with us, it was checked and there was no indication, or any proof of them coming into New Jersey. They denied they were shipping in New Jersey.

MR. KNIGHT: Okay, well--

MR. SAPIENZA: I think that was probably the one that Bill was referring to, the Wine Society of America, which is traded on the NASDAQ Exchange.

Yes, Mr. Dwork?

MR. DWORK: My name is David Dwork from Lori Liquors in West New York.

If I knew this item would be on the agenda this morning, I would have come more prepared. I had a personal incident from one of my customers who did, in fact, join a wine club. They related to me the following:

They sent away for literature which they did receive. They called a toll-free number. They were informed through the organization, through their toll-free number that the wine could be purchased at a certain location only. In fact, the consumer did go to this location and did purchase the wine.

The mere fact that they call the toll-free number, it seems that the club is pushing and siphoning customers to a specific location, regardless of the fact that the merchandise is readily available to all licensees in the State of New Jersey. The same merchandise could, or could not, have been purchased in my store.

Because again, I did not know this was on the agenda this morning, I would have brought the brochure with me as well as the name of the firm and the toll-free number. But I can't believe that my customer is the only one who, in fact, has been solicited or, in fact, did purchase wine.

MR. VASSALLO: There's nothing illegal about that.

MR. DWORK: Well there's nothing illegal, but the fact of the matter remains that this seems to be a thought of exclusivity insofar as these wines are not available, perhaps, in any other way. It makes smaller licensees-- They're trying to make a living and being put at an unfair disadvantage, perhaps.

MR. VASSALLO: Somebody's got to change the laws for us to do something about it.

MR. DWORK: Again, I'm sorry I didn't know this was on the agenda; otherwise there would have been more documentation about this.

MR. SAPIENZA: I think Bill's point was that direct sales of wine in other countries is very big business. This

particular club that we received literature from -- The Wine Society of America -- has over 60,000 customers in England. It's one of the fastest growing sales of wine in Australia, and through it's association with American Express in the United States, it's bound to be a significant force.

In effect, what Bill felt we had here was a club, unlicensed, in an affiliation with American Express and all of the power that implies; directly advertising and contacting our customers -- consumers in the State of New Jersey -- offering them a product that we couldn't offer them because we had no practical access to that product; receiving orders through toll-free numbers; and then essentially filling the orders through a procedural mechanism of identifying a particular favorite retailer where you could get it. In effect, it's the wine selling club -- the wine itself -- that is acting as the retailer for this merchandise, although technically according to law, they may be skipping between the raindrops.

That was the danger Bill saw for everybody here who has invested a significant amount of their money into their licenses, and thought what they were getting was the right -- exclusive right -- with other licensees, to sell to consumers in the State of New Jersey. Yes?

MR. NAPODANO: Charlie?

MR. SAPIENZA: Yes?

MR. NAPODANO: I'm relatively ignorant about the practice. What I'm learning of it, I'm learning this morning. But I have two concerns:

My first concern is if we're talking about a toll-free number, then I assume the order, the actual purchase and sale of alcoholic beverages, is occurring at the time of that phone call, because I assume, if we're also dealing with AMEX the payment is being charged as a result of that phone call. What we simply have in the way of a New Jersey retailer, so designated, if you will, is a delivery agent. We do not have

the sale occurring on a licensed premises, nor do we have the sale being made by a licensee. Now, if I'm incorrect upon any of those points, you know, I wish someone would tell me, but that's what I'm hearing.

I also hear that at least we have an indirect sale of alcoholic beverages being made by the club acting through, perhaps, a licensee in the State, directly making the delivery. But once again, we have a person who is not licensed to engage in the sale of alcoholic beverages in the State of New Jersey, indeed, selling alcoholic beverages.

Now if that's incorrect, Jack, help me out, because I really don't know anything more than I've heard about this.

MR. VASSALLO: We tried to put the facts into that. The best you can get are the sales are being made on the licensed premises very much the same way any ordered and delivered merchandise is being made at any retailer. They fit under the existing law. I can't do anything about it -- their merchandising techniques -- because they comply with-- They may be dancing between the raindrops, but you know how that's done, Tony.

SENATOR COSTA: Mr. Sapienza?

MR. NAPODANO: No, I generally get wet, Jack.  
(laughter)

SENATOR COSTA: Mr. Sapienza, I would like to put something into the record.

MR. SAPIENZA: Please do.

SENATOR COSTA: I have a letter before me. It's from Pop's Wine and Spirits, Specialists in Fine Wine. It's dated September 14, 1988:

"Dear New Jersey Winelover: As you may be aware, Pop's ran into difficulty making deliveries in the State of New Jersey last November. We have researched the matter carefully, and we have determined that there exists a legal and feasible means to again begin deliveries.



"Our delivery arm, N.G.P. Package Delivery, Inc., has applied to the Alcoholic Beverage Control Board of the State of New Jersey for a Liquor Transportation License. Approval is currently pending.

"We have determined that an individual may bring alcoholic beverages into the State of New Jersey if two things are done: First, the New Jersey tax on wine must be paid. Currently this amounts to only 70 cents per case. Second, a permit to import alcoholic beverages for personal consumption must be obtained. The fee is \$5. Our delivery arm proposes to perform these two requirements on our customer's behalf, passing along the appropriate costs. It would cost a person in New Jersey \$8.50 to legally import five cases of wine; \$12 for 10 cases, etc.

"It is our intention to resume deliveries upon approval of the Liquor Transportation License, not before. To facilitate the paperwork with the individual permits, we are suggesting that our customers sign the enclosed form -- there is certainly no obligation -- so that we may have it on file when an order is placed. The form certifies that you are not engaged in the business of selling, producing, etc. of alcoholic beverages, and that these wines are intended for personal consumption. We will take care of all the details and add the appropriate charges to your bill.

"We would like to stress that we will resume deliveries only upon the approval of all the appropriate forms. Please, please, do not ask us to bend the rules. We paid dearly when we did.

"We're very excited and happy about this turn of events, and if you have any questions, please feel free to call or write. Yours truly, Nicholas Poulos, President and Anthony Carrollo, Vice President." This is from Island Park, New York. With it is attached an application for a special permit to import for personal consumption.

MR. SAPIENZA: Director Vassallo.

MR. VASSALLO: I can give the rest of that story. That came about-- They paid dearly. They did. They had \$15,000 of fine wines confiscated, which were enjoyed by the charitable institutions of this State.

They applied for a Transportation License and were denied issuance of the Transportation License because of what they intended to do with it. They were soliciting the retail sales in this State -- direct retail sales -- not through a New Jersey licensed retailer. They were turned down because the permit can only be issued for personal consumption. That's for somebody that goes overseas or something and wants to bring back a few cases of wines, something like that.

They didn't appeal the denial either. This happened several months ago.

MR. SAPIENZA: This really is not a session where we're going to jab at the Director and his regulations as to what he's permitted or not. Everything that he's permitted has been within the letter of the law. He's really had no choice.

But still, it is a fact that everyone who has an American Express card got this in the mail, together with lots of other literature with a toll-free number. It's an order card. You check off how many bottles and what you want, then they'll see to it that it's delivered. You may have to go to one particular retailer to buy it or because of the recent changes in the transportation regs, that retailer may arrange through a common carrier -- such as Federal Express -- to deliver the products the consumer has ordered directly to his home.

And again, what we have is a legal fiction, one that Director Vassallo was required to pay respect to, where you have a retailer in New Jersey actually making the sale and the legal fiction is actually buying it from a wholesaler. It's all true.

But the real fact of the matter is, your customers are solicited by American Express and the Wine Society of America. They're buying directly from that marketing group. They're buying alcoholic beverages -- fine wines -- which I'm sure you would like to have an opportunity to sell them. Is this wrong? Not at all.

It is a new way that business is done. It is a future trend that you should be aware of. If you feel that it is important enough, you may want to organize yourselves and seek some regulatory legislative help. That, I think, was Bill Jerlat's point.

There being no further discussion on that point--

SENATOR COSTA: Is there any more discussion on that point?

MR. SAPIENZA: Does anyone wish to say anything?

SENATOR COSTA: Commissioner Bromley would like to say something.

MR. BROMLEY: It seems from what I've heard, that this is something that if we possibly can, in the next meeting of the Committee, be able to review and recommend some legislation to make it even less possible than it is today.

While it is legal to do this, it certainly offends my own view of what is proper because it appears to me that we are having interstate selling going on, and I think that as many barriers as possible are in the interest of New Jersey people. I think that's the reason our laws were written this way. If we have written a loophole in, I think that it would be very well for the Study Commission to recommend to the Law and Public Safety Committees of the Senate and the Assembly changes to prohibit the practice.

SENATOR COSTA: Commissioner Barnett.

MR. BARNETT: Charlie says that this was a new form of marketing wines and alcoholic beverages. Some of you may know that in my previous life I was a retailer. I remember at least

30 years ago, wineries in California soliciting, even selling personalized wines to consumers in New Jersey. So this is not a new method of marketing. It's been tried for many, many years.

It's been unsuccessful. In my opinion it will continue to be unsuccessful for one reason: Most people, and-- There is a very, very small number, maybe, who will go to the trouble of ordering this way. The vast majority of consumers in New Jersey won't buy this way because there is no need to buy this way. There are so many good, well run, well stocked outlets selling wines and liquors in New Jersey at low, low prices, that it's ridiculous to think that any large segment of consumers would want to buy this way. The number who want to buy this way is so insignificant that I don't think that it's any threat to your business.

I don't say it shouldn't be watched. We should watch it and if it gets more important or more significant then, perhaps, some legal action needs to be taken. But in my experience of over 40 years in this business, I see no prospect of success in the near future for this type of operation.

SENATOR COSTA: There's a gentleman here--

MR. SAPIENZA: Thank you Mr. Barnett -- Commissioner Barnett. Yes, sir?

R I C H A R D L A N D E S B E R G: Richard Landesberg, Alvin's Wine and Liquor in Hoboken. Good morning.

My impression or my recollection of the laws in reference to the transportation of alcoholic beverages interstate-- That is prohibited by Federal law because of the taxes under Interstate Commerce. I don't understand how these clubs can ship and have shipments accepted by the shipper -- by the transporters -- of this merchandise legally? I feel that matter should be addressed on whatever level is necessary.

MR. SAPIENZA: Thank you, Richard. Your point is well taken.



For the purposes of our discussion, we're assuming that what the wine selling -- direct wine selling club -- is doing is legal; that is, they carefully researched it and know that their interstate transportation is done pursuant to proper licenses or permits -- Federal permits or State licenses -- and that the distribution in-state complies with the license requirements.

Yes, sir?

D A V I D W. S H O E M A C K E R: My name is Dave Shoemaker, Executive Secretary of the New Jersey Liquor Stores Association.

I believe that there are some new trends in merchandising and retailing. I know that our mailboxes at home are absolutely full of catalogs. I think that Macys and John Wanamakers and other established stores in neighborhoods are definitely suffering, and are going to suffer more. So therefore, I feel that this is a concept, as Leo Bromley indicated, that could be very injurious to our liquor stores and our members.

MR. SAPIENZA: Thank you. I'm sure Bill Jerlat would agree with you. He felt strongly that the combination of the wine selling clubs' advertisements to consumers through the aegis of American Express -- which is now selling more and more merchandise directly to consumers -- of a product, wine, which most consumers don't have a great deal of knowledge about and are very reticent about displaying their ignorance about, could result in substantial sales. The catalogs are numerous. They're very well done. They tell the consumer, essentially, what to order. They make him an expert. They give him the order blank and they say, "Just check the box."

But it may be that Milt, whose experience transcends mine and many others, has the correct insight in this. Only time will tell. Any other comments.

MR. DeMARCO: Charlie?

MR. SAPIENZA: Yes, Commissioner DeMarco?

MR. DeMARCO: Charlie, I think it's quite obvious today that the mail order business in the United States is growing by leaps and bounds. They're a commercial entity in the United States that has come up with some very experienced ways in how to do business. I think it's definitely a threat to our State; it's definitely a threat to our customers; it's definitely a threat to our business in general.

I think today with the atmosphere we have within our State, as many other states, the fact that our business -- the total business-- The pie is getting smaller and smaller. The pressure on our industry-- I think if there's any time that we can now make a change, today would be that time. As I see it, I think the ears of the legislators would be very well taken by a situation such as this because there are a lot of reasons, and there are a lot of problems involved in mail order business.

We are a specific type of an industry. We are a licensed industry. We have a privilege to operate. Since we have that privilege, that privilege should be protected. The only way we can protect it is by changing the laws. I think that's what we should be about our business doing.

MR. SAPIENZA: Thank you, Commissioner. Yes, sir. Good morning.

M E Y E R T R A C H T E N B E R G: Good morning. Meyer Trachtenberg, Harvest Wines and Spirits in Edison.

I feel there's also another aspect of it. There's a complete possibility of a price discriminatory thing between their purchasing and our purchasing. It's conceivable that they could buy merchandise far cheaper than we could get it. By the amount of quantity they could possibly go to the wineries and work out some sort of a deal. We can't even find where we can get it here in the State of New Jersey. That competitive advantage alone might create a problem because they

could conceivably sell at our wholesale cost, which we couldn't sell at to begin with.

That creates another problem on our merchandising effect in our stores. We have perfectly available people who are really knowledgeable in our industry who spend the time with our customers to give them the background information, and they take it away as a price competitive thing that we can't control. That's something in our industry that probably may be prevalent in the future. You may find the erosion among the wholesalers too.

You know, I'm not a bleeding heart for anybody, but I'm just saying that it can affect all levels of industry. Primarily, we get squeezed at the end. Anything that comes out in our margins are shrinking immeasurably. We cannot continue on this basis. Too many people are going out of business. People don't even want to come in the business half the time. I think we're not getting all the elements that make the industry desirable to be in. So, you know, that's another point I feel that we could lose a great deal. And people say they can't-- But where there's a big price competitive situation, even though there are people who sell a nickel above or a penny above at times, or 50 cents above, they could just go right underneath us. They make their own deals. Thank you.

MR. SAPIENZA: Meyer, I think your point is well taken. I remember speaking with Bill Jerlat. His greatest fear was that although these wines might not be less costly to a consumer than if he were to try and find the same wine at a retailer, that a consumer couldn't find the same wine at another retailer, because retailers simply didn't have access to these exclusive labels that the wine selling club has. And secondly, that what was being marketed here, as I think Joe DeMarco was pointing out, was a method of purchasing that appeals to consumers these days, irrespective of the price.

David Dwork indicated that he had another comment or question.

MR. DWORK: Just a comment: I find it very strange and very uncomfortable to take exception to Commissioner Barnett. We are in the retail industry and as Commissioner DeMarco pointed out, we have a number of people--

SENATOR COSTA: Can we get you to speak directly in the recorder? We appreciate it.

MR. DWORK: I'm sorry. We have a number of people in our own industry that are licensed to do business in the State of New Jersey. I, for one, as a small retail liquor owner, do want to watch my back and be competitive or try and be competitive with mail order firms that seem to be doing a lot more business nationwide, including in the State of New Jersey.

Clearly there seems to be some expression or indication from the consumers within the State of New Jersey to join these clubs -- to obtain wine from these clubs. I think this would be an item that should be discussed further, and if, in fact, the Commission does wish to go through, perhaps, a recommendation to the State Legislature, I think the small retailers in the State of New Jersey would welcome it. Thank you.

SENATOR COSTA: We'll put that on the agenda for next month for the discussion.

MR. SAPIENZA: Absent further discussion, Meyer Trachtenberg's comments were the great segue into the next topic that we have on our agenda, which is the potential concentration in our industry at the retail and wholesale levels.

In New York, recently -- I guess not so recently, over the past five years -- there has been a tremendous concentration on the retail and wholesale level. Fewer wholesalers and fewer retailers in the metro area of New York-- We're down to three wholesalers where there used to be



10 or 12, and there are literally hundreds less retailers in the State of New York now than there were just a few years ago.

Same story in California. If I heard it once, I've heard it a hundred times: How California and New York go, so will go the rest of the nation eventually. And that means New Jersey.

The statistics which we have been fortunate to be able to have, indicate that in 19-- Let's take January of 1985 as a base year and compare it to November of 1988. There are 250 less on-premise retailers in the State of New Jersey -- 250 less in November of 1988 than there were in January of 1985. There are approximately 50 less package stores in the same time period.

But these statistics -- they're not alarming on their face -- don't indicate how many people no longer operate their business. Their license is held in the pocket so to speak -- quite legally -- but they just don't operate. We have no way of knowing, for sure, how many that is, but it's clear that in New Jersey there will be a concentration at both of these levels. That concentration could be greatly accelerated if changes occur in the way New Jersey regulates the industry. But whether they are accelerated by governmental changes or not, it will occur.

So, we felt that this was an area where we'd like your input. Knowing, looking around here, looking next to you-- Seeing that perhaps the person on your left may not be here next year or the person on your right may not be here next year, that has a meaning for all of us. We'd like your input into whether or not you think that is a desirable thing to happen in New Jersey. Do you think it's desirable that there be less retailers next year than there are this year and that the trend continue? Does anybody have any feelings on that? (no response) I take it that everybody thinks it's a good idea as long as it's not them. David?

MR. DWORK: (from audience) I wish somebody else would get up and talk.

SENATOR COSTA: Sit up front Dave, close to the mike.

MR. DWORK: The question is sort of a loaded question, of course. I know that in the northern part of New Jersey in the past, perhaps, 20 days, there has been a major change within the beer industry. A beer distributor has been consolidated or sold to another beer distributor. So immediately, my choice of a selection of beer distributors seems to be narrowed.

In addition to that, a Hiram Walker distributor has been merged with another distributor within the State of New Jersey, and again, my choice of purchasing alcoholic beverages is narrowed. I find this not to be to the advantage of the retail industry nor to the advantage of the general public because the prices seem to be getting dovetailed to the same degree, which means that the competition between wholesalers -- if it existed at all -- now, all of a sudden, diminishes somewhat. I don't feel that it's good, again, for the retail part of the industry, nor do I feel it's good for the general public at large, because we're here to serve the public; to get alcoholic beverages at the lowest possible price for ourselves as well as the general public that wishes to purchase the alcoholic beverages.

You are quite correct that as California goes and New York goes, New Jersey shall go. It happened in the past 10 years, and I see it happening within the last 30 days itself.

MR. SAPIENZA: Thanks, David. I couldn't agree with you more. One of my members, Gold Star Liquors, recently went out of business. I lost dealers, the third Hiram Walker distributor about a year and a half ago. So now we're down to one Hiram Walker distributor in the State of New Jersey -- an excellent distributor -- Skip Hutchinson of Royal Distributors; still the only one for that particular product line.

Yes, Mr. Landesberg?

MR. LANDESBURG: Richard Landesberg, Alvin's Liquor, again.

A number of years ago the ABC had hearings as to whether beer distributors should have exclusive territorial rights and not have to compete with other beer distributors selling the same product. We do not have that situation with the spirits and wine people.

I feel one way to help competition, and therefore help the public and help us, is to do away with exclusive distribution rights within a specific territory by beer people. Their big argument was they would be able to better serve the public and the retailers because they would be able to control the quality of their product, because their product is a perishable product.

I feel in most instances, very few of the producers of beer actually go out and see that their distributors check the quality of the product in the wholesalers' or in the retail stores. I feel that argument and that reason was a very specious one and should not be listened to. I feel that if they would eliminate exclusivity, at least some degree of competitiveness would be restored to the marketplace.

MR. SAPIENZA: Well, thank you. Does anyone else have an opposing comment?

MR. DeMARCO: Charlie, I guess--

MR. SAPIENZA: Why don't we-- Fred, did you have a comment?

MR. DeMARCO: I guess I'd better answer that one.

FRED GUARNIEVI: If I could.

MR. SAPIENZA: We'll listen to Fred, then we'll go back.

UNIDENTIFIED MEMBER OF COMMISSION: It's always best to go last in situations like this.

MR. DeMARCO: I think maybe this time it's better not to go at all. (laughter)

MR. GUARNIEVI: My name is Fred Guarnievi. I have Freddie's Liquor Shop and Deptford Liquor Mart. I'm also in a position of leadership in the State organization.

I cannot agree with Richard's position. I would only want to comment that-- The examples you have pointed out in New York and in California have not happened in New Jersey because, I think, of the people sitting right here today. I think New Jersey has shown the other two states that we can run an alcoholic beverage industry.

We can have five wholesalers distributing Seagrams products with a degree of competition. We all know the alleged abuses, but we still have a fairly clean market compared to what I hear the marketplace in New York and in California is. And I hear from the national boards, the marketplace in Illinois is supposed to be extremely dirty. The marketplace in Florida-- I think we should stand up and say, "We've done a good job."

I'm proud to be in the liquor industry in the State of New Jersey. I am proud of the retailers, and I am proud of the wholesalers. I believe the exclusivity rights -- there are pros and cons to that-- I will not get into that argument right now.

I will say that we have had good service from our distributors -- our beer distributors. I think we have had excellent service from our liquor wholesalers and from our wine wholesalers.

I'd like to say that we have got a good industry. We have had tremendous success by coming to the forums that we have and expressing the disagreements -- and our agreements to disagree. I, you know, am proud. I think we've done a good job. I'd like to thank all of you on the Commission, and the retailers and the wholesalers for the good job because in eight years we've gone through tremendous turmoil. We've gone through tremendous turmoil in competition. We've gone through



the deregulation period. You tell me that 50 licenses -- 50 packages stores from 1985 to 1988-- I don't know what it was from 1979 to 1988, which would give you a better barometer.

I'm certain there have been less in-licenses, but we don't have everything bad. We've got a lot that's good. That's the only point I would like to dwell on; that we've got more good in New Jersey than we have bad.

MR. SAPIENZA: Well, thank you Fred. We appreciate it -- everyone here.

Look, we've done pretty good. I guess the point of this topic is that times are going to change. There's a suit pending, challenging the two license limitation law in the State of New Jersey. That's the law that says that one person may not own any more than two licenses. If that suit is successful and that statute is thrown out, that may accelerate a change.

But clearly the driving force behind a lot of change are the consumption statistics in the State of New Jersey that show that we are going -- except for beer which is holding fairly steady -- down, down, down, in the amount of liquor, wine, and sparkling wine that New Jersey consumes. To a certain extent, beer-- I'm going to put beer into that category although I think it's been relatively stable. You know, we're down over 1.1 million gallons of liquor sold in the State of New Jersey between 1986 and 1988. I can tell you because I have the statistics, 1989 is the same.

A driving force behind change is a shrinking consumption base. We all ought to be alert and know that this change is coming and figure out what we can do to be winners in times of change.

Any other comments on this kind of esoteric topic of change and concentration?

SENATOR COSTA: Commissioner DeMarco--

MR. BROMLEY: Charlie, may I comment?

MR. SAPIENZA: Please do.

MR. BROMLEY: I would like to say that I think everyone in this room realizes that there has been something troubling in the consumption of alcoholic beverages to all of us. There's been a decline. I don't think that it takes a great genius to discover the reason for it.

This industry, for about the last 10 years, has been subject to a barrage of attack and misinformation and made to be the butt of every kind of social problem there is. Apparently when we get up around 1989, 1990, all these chickens are coming home to roost. We now are beginning to have people just terrified. They won't go and drink socially because they think if they left the establishment where they had it, they may be stopped at a roadblock or they might be blamed for an accident because they had a drink. As a result, they pass it up. They gradually are changing a social pattern.

You couldn't have done this by just prohibiting alcoholic beverages because we know prohibition doesn't work, but you can do it by constant attack, attack, attack.

I'm going to say that I have advocated, as an individual for about the last 10 years, that the industry jointly do something regarding this problem. I have felt like Cassandra hollering in the wind. No one listened very much or seemed at all interested. But I think Charlie is in the possession of some information; other people who get "Market Watch" might know about it. I think the industry has taken a very, very huge step to begin to attack this problem.

And so, I'm going to bounce that ball back to Charlie and ask if he'll tell you a little bit about the events in Washington that the major portion of the industry took.

MR. SAPIENZA: Leo has really outlined it. The industry finally has realized that it must join together to counterattack the very bad publicity it's received concerning the product itself.

That counterattack is always foundered on the disunity that exists between the various segments of the industry; not the distribution segments, but the type segments at the top of the "T" and money. Now it appears that at the top a significant amount of funds, and a combination of resources will be fashioned to have this counterattack.

There's not much more I can say. You've all been waiting for this kind of thing. Leo has been advocating it as a prophet years before it happened. I think we've got to wait and see how far it goes; how far the industry at the top is going to help us overcome the despicable smearing of our product and our industry that has occurred over the past 10 years.

I say despicable because I get these latest issues of "Alcohol Insights," journals that are favorable to us. They tell me that a Gallup Poll found that 44% of Americans abstained from alcohol in 1989. Forty-four percent of Americans. That's up from 37% in 1987, and it's the highest level of abstainers since before World War I.

So, fewer and fewer people are drinking, and they're drinking less and less. It's happening. It's the result of a concerted effort by people who have a bias, in part, against our industry and efforts otherwise.

People who write good things about us -- the author of "Why Drinking Can Be Good For You" -- a tremendous book about us and our product, dispelling many myths-- It came out and flatly said alcohol is going out of fashion. Is it going out of fashion? Is your business going out of fashion? Are you fading slowly from that mirror that you look into every morning? I don't think so, but it's a trend. You've got to be aware that it's a trend that people are focusing on.

Any other comments?

MR. DeMARCO: Charlie?

MR. SAPIENZA: Yes, Mr. DeMarco?

MR. DeMARCO: I don't want to get into the question that David brought up, but I would like to make just a few comments.

Number one, the industry is based on health. If you want to compare yourself to New York -- and I happen to be a wholesaler in both New Jersey and New York -- there is no true comparison between New Jersey and New York. Thank God for you, there isn't.

To be a retailer in New York is quite a bit different than being a retailer in New Jersey. But I would bet my bottom stars that nobody in this room would give up the right to be a retailer in New Jersey as compared to New York.

Now, as far as competition is concerned among the beer industry, not too many years ago, before March of 1980-- I believe that's the date that we started deregulation. Whether that's the cause or the effect, I can't tell you. I certainly have my opinions. But I can only tell you there are less than 50% of the amount in numbers of beer wholesalers today than there were just some eight years ago. We're now down to 23 true beer wholesalers.

As far as competition is concerned, I'm not quite sure how Warren Distributors feels, or how Shore Point feels, or how Peerless feels, but they certainly feel damned competitive to me every day of the week, so I don't know why there isn't any competition.

Now as far as health of the product or quality of the product, not to disagree any more than I know as the wholesaler of the situation, I could only tell you that every wholesaler in the beer industry has certain basic restrictions that they operate on the quality of the product. As far as cost, just yesterday I received a bill for \$1950 for picking up product from a customer who allowed the product, in one way, shape, or form, not to maintain the code date. So yes, there is a tremendous restriction on a beer wholesaler as far as code dates are concerned.

And to the last point that Charlie was bringing up-- Commissioner Bromley, let me just give you another example of where the restriction of alcoholic beverages are in our good area of Washington, D.C. October 5, somewhere around nine o'clock at night, a week ago Friday, there was a Senate bill passed, Senate 1711. That is the cornflake -- the apple pie bill that President Bush has put forth as far as drugs are concerned. The industry, in general, is totally in favor of that particular bill -- the contents of the bill. They're also in favor of the method of funding the bill. There have been many theories brought up about having drug bonds rather than different types of bonds to go ahead and actually fund that situation.

You and I both know that the alcoholic beverage industry is tied totally, whether it's aspirins or alcoholic beverages, to the drug situation and the drug scene. For whatever reason, we in the industry are going to have to pay for the other problems.

But just to go a little further to show you to what limits they'll go in Washington. This bill-- There was an amendment put on it by a Senator out of Delaware. The amendment -- and I'm not going to go verbatim-- But what it says, very simply, is there will be no Federal funding for any college in the United States that allows or permits any backing, any sponsorship of any collegiate athletic games whether it be football or basketball, any music programs, any social programs, any educational programs that are backed by the liquor industry.

Now in essence, that's more than a slap in the face. In essence, that says that those that are in college-- Better than 55% of the students in the United States in college are over the age 21. I believe, not too many years ago-- I was born in the City of Philadelphia, and I thought there was something called the Constitution that gave us the free right

of speech. But boy, along those lines, we're losing all of that because we're in this industry.

Now that also means that on Saturdays when I like to watch a few football games, I'm going to be watching Mickey Mouse. Then comes basketball season. I'm going to be watching Donald Duck. Because there's over \$400 million spent by our industry sponsoring one form of educational situations for the universities throughout the school year. So what we're saying is, we're doing good. I'm not quite sure how the Federal government will fund all of these procedures because without the football backing, without the basketball backing, there would be no other athletic programs in any college. That's what supports it. So we do have some definite problems. The only thing I can suggest, if you want to hear yourself loud and clear, get to your Congress before it's too late, or you're going to lose another major part of the industry business as well as another part; that we are American citizens. Thank you.

MR. SAPIENZA: Thank you, Joe. Joe's comments are well taken. It's not practical to think of each of you contacting your Congressman. I think the way to do that is an organized effort through your association. That's the only way it can be done.

I think the problem is we may be losing the war in terms of convincing our customers that moderate use of alcoholic beverages within perfectly legal ways is proper, reasonable, and a good thing to do. If we lose that war, we would have a problem.

I'm going to give up this microphone now to our Chairperson, Senator Costa, so we can proceed with the rest of the agenda.

SENATOR COSTA: Gary Holsten is going to lead our discussion now, concerning legislation recommended by the Compliance Inspection Subcommittee.



The proposed legislation requires the knowing sale of alcoholic beverages to an underaged person for criminal prosecution of an alcoholic beverage licensee. Gary-- Sorry, it's Commissioner Holsten.

MR. HOLSTEN: Good morning. I'm not going to try to build myself up as a speaker.

This statute, 33:1-77, is a disorderly statute and the Commission has gone over it numerous times. Basically what they've done, they've placed a word in the statute which changed the whole statute. That one word is "knowingly sells" -- "knowingly."

Under statute 33:1-77, any licensee who sells alcoholic beverages to a person under the legal age for purchasing alcoholic beverages is a disorderly person. The statute also lists defenses available to a licensee who sells alcoholic beverages to an underaged person. Under the provisions of this bill, the licensee would not be subject to prosecution unless he knowingly sold the alcoholic beverages to the underaged person. Because the defenses would not be applicable when alcoholic beverages are knowingly sold to such person, the bill removes them in this situation.

The bill also provides that any licensee who personally, or through his agents or employees, sells or serves any alcoholic beverage to a person under the legal age for purchasing alcoholic beverages, may be subject to administrative charges by the Director or other issuing authority.

The bill makes the current statutory defenses available to the licensee during an administrative hearing. The Director of the Division of Alcoholic Beverage Control currently permits the licensee to use these defenses against administrative charges. The bill incorporates this practice into the statute.

Basically, it comes down to the word "knowingly." Evidently, the industry has had problems with people working in their establishment. Many of them are part-time employees that hold other positions and other jobs. It was felt by Bill, that changing this statute would help the people in obtaining part-time help such as school teachers that work over the summertime and so forth.

Right now the statute-- If a person is charged under that statute, he's charged with a disorderly offense. It's a criminal statute and goes on their record. It would reflect that, no matter what other job they hold.

This Commission went over it. The Subcommittee had met, and they inserted that word into the statute. It was brought up before the whole Commission. They voted on it and brought it forth today as a rough draft. If there are any questions, we'll be glad to try to help you.

SENATOR COSTA: Thank you, Gary. But, Commissioner Holsten, we have not voted on that. We voted on the preliminary draft. Now we're going to take a vote on this bill for preparation for introduction. May I have a motion to do so?

MR. BROMLEY: I move that the Commission approve the introduction of the preliminary draft of this bill.

SENATOR COSTA: A motion has been made. Do I hear a second?

MR. VASSALLO: I'll second it.

SENATOR COSTA: Motion has been made and seconded. Any other questions? (no response) Let's vote. Anne will you please call the roll?

MS. STEFANE (Committee Aide): Chairman Costa?

SENATOR COSTA: Yes.

MS STEFANE: Commissioner Barnett?

MR. BARNETT: Yes.

MS. STEFANE: Commissioner Bevis? (no response)

SENATOR COSTA: Where did he go?

MS. STEFANE: Commissioner Bromley?

MR. BROMLEY: Yes.

MS. STEFANE: Commissioner DeMarco?

MR. DeMARCO: Yes.

MS. STEFANE: Commissioner Frattini?

MR. FRATTINI: Yes.

MS. STEFANE: Commissioner Holsten?

MR. HOLSTEN: Yes.

MS. STEFANE: Commissioner Lewandowski?

MR. LEWANDOWSKI: Yes.

MS. STEFANE: Commissioner Napadano?

MR. NAPODANO: Yes.

MS. STEFANE: Commissioner Sapienza?

MR. SAPIENZA: Yes.

MS. STEFANE: Commissioner Teza?

MR. TEZA: No.

MS. STEFANE: Director Vassallo?

MR. VASSALLO: Yes.

SENATOR COSTA: All in the affirmative with the exception of one. It's passed, and we will introduce this bill.

I'd like to make a statement at this time. As you know or may not know, the Commission expires at the end of this year or the beginning of January. I'd like to thank everyone who has given so much of themselves on this Commission.

The Commission members have been faithful. They've come to meetings and have done just-- I can't say enough about them. They're just great. I'd like to mention, also, those who are not here: Commissioner Zangari -- Assemblyman Zangari, James Butler, Mr. Guttag -- Robert Guttag, and Nancy Kelly -- she has resigned at this time, but she has been on the Commission -- Mr. McCaffrey -- Commissioner McCaffrey who--

Let me tell you about the ones who are here from the very beginning, eight years ago. That's Director Vassallo who has been on for eight years, Charles Sapienza, Anthony Napadano, John McCaffrey, William Jerlat, John Garrity, Leo Bromley, and Ross Bevis. We really appreciate their work so much. Those who are no longer with us, such as Norman Feldman, who contributed so much. He was a walking encyclopedia for us as far as the liquor industry is concerned. Assemblyman Hendrickson who left for another position and Senator Garibaldi who was not reelected but who served admirably on the Commission. Also, for two years, Senator Herman Costello was Chair of this Commission.

I've been on for six years, and as I said, I came on knowing very little about the liquor industry, and I've learned so much. It's just been a pleasure to be with everyone and to meet with you. Maybe you'll invite us next year again. We're hoping maybe we can reactivate this Commission.

I'd like to give you a few of the achievements that we feel we've done during the time that we've been a Commission. The Commission has articulated in a statement the legislative policy and purpose underlining Title 33 of the New Jersey Statutes, which was signed into law by Governor Kean in 1985.

The statement defines the objectives for alcoholic beverages control pursuant to which the statutes and administrative regulations are updated, amended, and drafted. We think that is one of the prime initiatives that we took.

We also drafted an initial legislative proposal for dealing with the liability dilemma and insurance crisis facing the alcoholic beverage licensees. The proposal was eventually introduced in the Legislature and signed into law in 1987 as the New Jersey Licensed Alcoholic Beverage Server Fair Liability Act. We presented draft legislation for dealing with the liability dilemma faced by social hosts who serve alcoholic beverages, in response to the New Jersey Supreme Court decision

of Kelly v. Grinnell. In 1986 the Social Host Liability statute was signed into law by the Governor.

We conducted a comprehensive study of the issue of warning labels and their effect on the problem of birth defects due to women's consumption of alcohol during pregnancy. There I must thank Charles Sapienza for the intensive work he did in bringing everything to our attention. We recommended draft legislation, which became law that modernized tide-house restrictions in Title 33 of the New Jersey Statutes. We presented recommendations which the Attorney General's Office incorporated in its creation of new policies toward the enforcement of new policies of alcoholic beverage regulations, including the schedule of presumptive penalties which have been disseminated to the alcoholic beverage industry and local issuing authorities.

We examined the taxation of cooler beverages and drafted legislation to reduce the tax on distilled spirit coolers. We recommended legislation to create a special alcoholic beverage license for nonresident suppliers and manufacturers of alcoholic beverages.

On an ongoing basis, the Commission has provided a unique forum for interaction between members of the alcoholic beverage industry, the Division of Alcoholic Beverage Control, and the public. We've examined numerous bills concerning alcoholic beverages pending before both houses of the Legislature and made recommendations regarding passage and amendments, where appropriate.

We reviewed and commented on many administrative regulations promulgated by the Division of Alcoholic Beverage Control.

We appreciate, very much, your invitation to us each year, coming here to Atlantic City to meet with you and put on a show for you. I hope you've enjoyed it, too. Thank you so much. (applause)

I'd like to give the Commission an opportunity for any comments they'd like to make before we close. We'll go down the line. Would anybody like to make any comments? Mr. Bromley?

MR. BROMLEY: I would like to commend our Chair who, in dealing with the diverse group -- this Commission, is -- with our economic interests many times completely opposed -- for, I think, at least six of the last years, has brought us together once a month and kept us together even when it seemed that we were going to walk out of the door, we never did. We always came back and found enough good in her wisdom, to keep working. Because of that, we have solved a good many of the problems which the Chair indicated in her address to you. I believe, speaking for all of the members of the Commission, that our Chair deserves our great commendation for her wonderful patience and knowledge of the events and knowledge of people. So if you join me-- (applause)

SENATOR COSTA: Thank you so much. I greatly appreciate it.

MR. BROMLEY: I surprised you.

SENATOR COSTA: Yes, you sure did. With that, are there any other speakers? Yes?

MR. GUARNIEVI: I just have one more request: That maybe the Commission recommends to the Legislature that this become a permanent body and become a permanent Commission to oversee the industry.

SENATOR COSTA: There is a bill right now to do just that. We're hoping that it will go through. Thank you.

Any other comments? (no response) With that we'll adjourn. Thank you so much. (applause)

(MEETING CONCLUDED)



