



## How Members of the Industry Can Safely Talk about Wine & Health

**JOHN HINMAN**

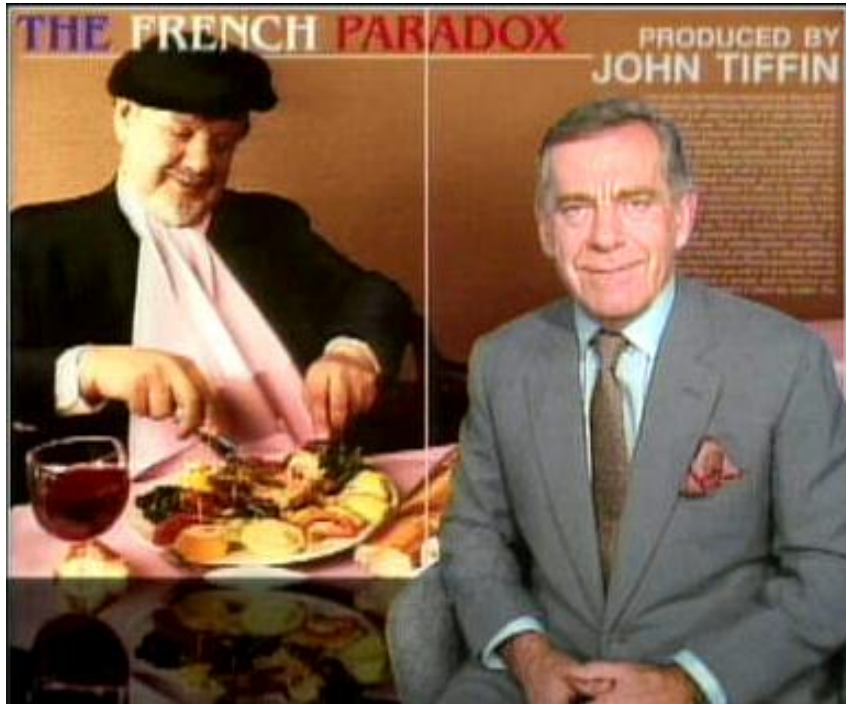
Founder Hinman & Carmichael

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**BLAKE GRAY**

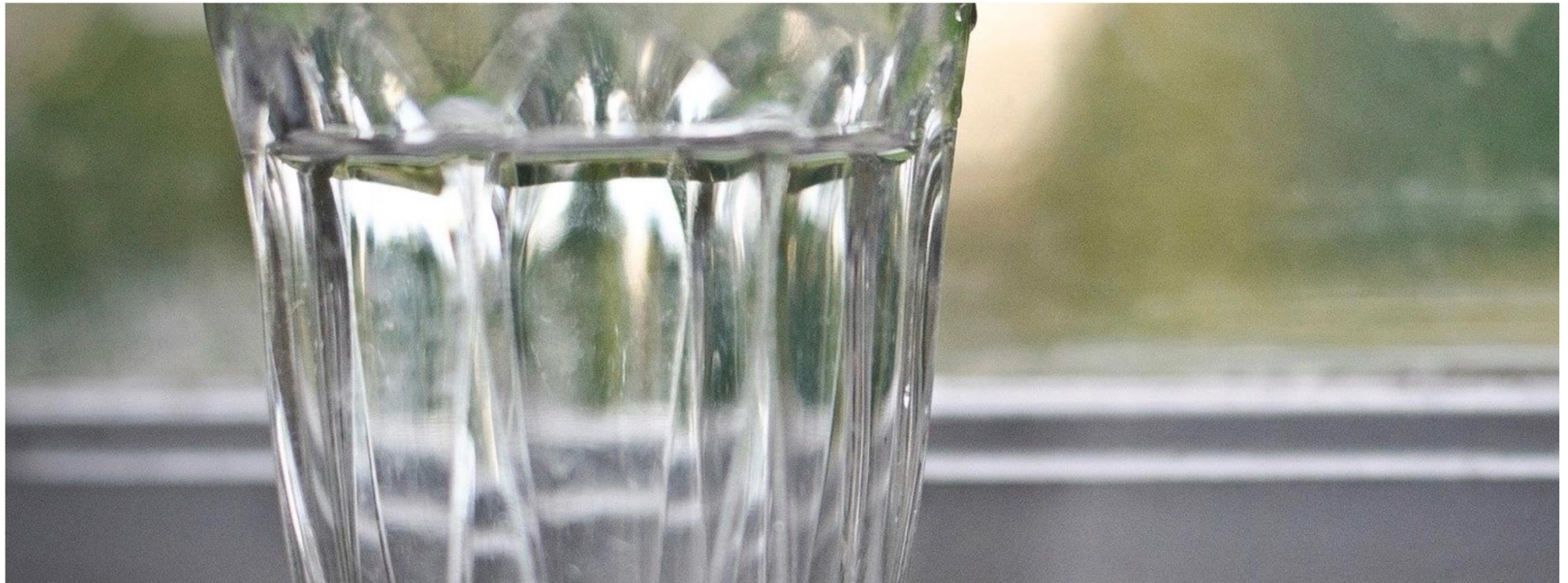
U.S. Editor, Wine-Searcher

# THE FRENCH PARADOX



**Despite consuming a diet rich in saturated fats, the French have relatively low rates of coronary heart disease, which some researchers initially attributed to their high red wine consumption.**

**“60 Minutes” – November 1991**

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# No level of alcohol consumption is safe for our health

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# Alcohol and Cancer Risk

2025

The U.S. Surgeon General's Advisory



**U.S. Surgeon General Releases  
Advisory on Alcohol and Cancer  
Risk...Calls for cancer warning labels  
on alcohol — January 2025**

THE VIEW

**SURGEON GENERAL  
CALLS FOR CANCER  
WARNINGS ON  
ALCOHOL**



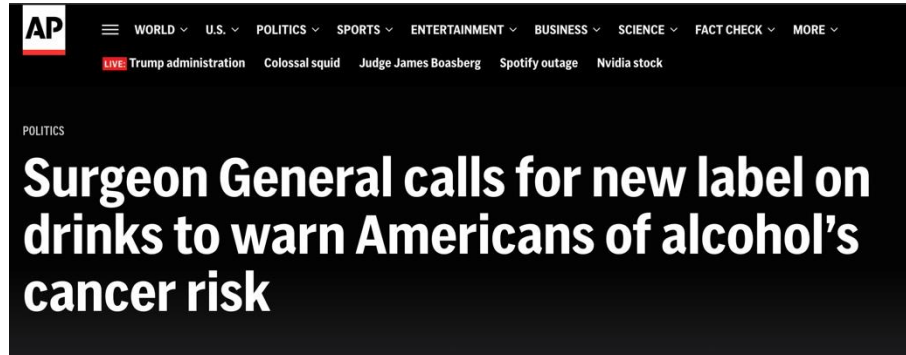
# The Media Responds to Surgeon General Advisory

# TIME

HEALTH • PUBLIC HEALTH

## Even Small Amounts of Alcohol Can Cause Cancer, Surgeon General Says

8 MINUTE READ



# npr

HEALTH

## The U.S. surgeon general wants cancer warnings on alcohol. Here's why

UPDATED JANUARY 3, 2025 • 12:03 PM ET ⓘ



## The New York Times *Surgeon General Calls for Cancer Warnings on Alcohol*

Dr. Vivek Murthy's report cites studies linking alcoholic beverages to at least seven malignancies, including breast cancer. But to add warning labels, Congress would have to act.

Health Life, But Better Fitness Food Sleep Mindfulness Relationships

## US surgeon general sounds alarm about link between alcohol and cancer

By Ben Tinker, Meg Tirrell and Brenda Goodman, CNN  
8 minute read · Updated 8:02 PM EST, Fri January 3, 2025

# AXIOS

Jan 3, 2025 - Health

## Surgeon general calls for cancer warnings on alcoholic beverages



Ivana Saric

# **JOHN HINMAN**

**Partner, Hinman & Carmichael**



*The viewpoints expressed in this presentation are provided for educational and informational use only and are not to be construed as legal advice. If you need legal advice, please consult with your counsel.*

# COMMUNICATION DISCIPLINE

## BASIC PRINCIPLES



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# WHY THE CONCERN?

- THE FEAR OF LITIGATION PREMEATES THE WINE INDUSTRY TODAY.
- THREATS OF THE ANTI-ALCOHOL ADVOCATES TO PUNISH DISCUSSIONS OF ALCOHOL AND HEALTH RESEARCH
- PLAINTIFF'S LAWYERS JUMPING ON OPPORTUNITIES TO FILE CLASS ACTION LAWSUITS OVER MISREPRESENTATIONS.
- BY USING EXISTING TOOLS OF COMMUNICATION DISCIPLINE INDUSTRY MEMBERS CAN EXPRESS THEMSELVES AND MARKET PRODUCTS CONFIDENTLY AND RESPONSIBLY.
- I STARTED IN THE WINE BUSINESS IN 1978 AS THE GC OF A PUBLIC COMPANY AND ONE OF MY JOBS WAS TO KEEP THE BOARD AND OFFICER COMMUNICATIONS PROTECTED AND MANAGE LITIGATION. I TOLD THEM WHAT I'M TELLING YOU.

# WHAT COMMUNICATIONS ARE

- Internal Communication – Basic Rule: Attorney/client privilege to discuss sensitive information within organization (board/management communications)
- External communication (including to organization members)– Basic Rule: Avoid opinions unless it's within your area of expertise but permitted to carefully communicate published material with commentary from experts/scientists.

# WHO IS BEING PROTECTED?

- Individual member companies (wineries, retailers, etc.).
- Individual officers, directors, and shareholders.

# WHY PROTECT COMMUNICATIONS?

- Avoid discovery in litigation.
- Protect trade and corporate secrets.
- Avoid disclosure to Press.
- Create safe space to discuss strategic responses to potential liability matters.

# PRINCIPAL POTENTIAL LIABILITY SITUATIONS

Product Liability Claims – On behalf of persons who use dangerous products and claim either that they were not warned of the danger and were harmed, or that they were harmed because of reckless/intentional conduct on behalf of the product producer/seller. This could be individual, or on behalf of a class.



# PRINCIPAL POTENTIAL LIABILITY SITUATIONS

Unfair Practice Act and Misrepresentation Actions – Many states (for example, CA, ILL, and FL) have versions of the Unfair Practice Act (UPA). These statutes permit lawsuits brought on behalf of an individual or a class for misrepresentations in advertising (quality, source of product, unsafe ingredients, health effects from use, etc.) or violations of statutory duties (such as failure to include government warnings in material that could be construed as advertising). The claims include recovery for attorney's fees by the plaintiff's lawyers (which are often the only motivation for the lawsuits in the first place). These are the claims of most concern in the current international debate about alcohol and health.

# PRINCIPAL POTENTIAL LIABILITY SITUATIONS

Other Claims: There is no limit on the type of claims where discovery of corporate communications may be relevant – personal injury, family law, shareholder litigation, distribution litigation, and state and local government investigations of all sorts have been subject to discovery of communication information subject to claims of privilege.

Regardless, a claim of privilege is difficult to sustain after the fact unless the communication at the time is properly protected.

Note: These cases may be brought in either state or federal court depending on the issue, the plaintiff, the amount in controversy, the relief sought and the size of the class. The attorney/client communication privilege applies equally even if the case is in state or federal court.

# MEETINGS AND USING EMAILS, TEXT MESSAGES, SOCIAL MEDIA AND POST MEETING MINUTES.

- If matters being discussed are confidential and/or strategic include your attorneys and title all communications as “confidential attorney/client communications.”
- *IF THIS TITLE IS BEING USED, MAKE SURE YOUR LAWYER IS COPIED ON THE COMMUNICATION.*
- Include your corporate attorney in your Board Meetings and record his or her attendance.
- Identify confidential/sensitive matters as separate agenda items and record in separate board minutes under a “confidential attorney client communication” heading.
- Please be aware that all messages (including mail, email, texts, social media posts, etc.) in whatever form are discoverable in litigation. This means that phones and databases can be subpoenaed and searched, public and/or private databases searched, and messages pulled and indexed.

# MEETINGS AND USING EMAILS, TEXT MESSAGES, SOCIAL MEDIA AND POST MEETING MINUTES.

The only protection in litigation is identification of the communication as privileged and confidential when it was made. If in litigation such messages are subject to being furnished by counsel in a protected log for ruling by the court regarding the application of the privilege to the communication. This is why discipline at the outset is critical. A request for litigation discovery may go back several years depending on the claims made in the complaint, the statute of limitations pertaining to the claim and the difficulty of locating relevant information for response.

# PRESENTING MATTERS OF SCIENTIFIC INTEREST TO YOUR MEMBERS AND THE PUBLIC.

Communications to members and public about matters of scientific interest (disputed or not) should always be phrased as “educational,” should include mandatory government disclaimers, and should link to subject matter experts and expert reports without editorializing (subject matter headings are not editorializing).

Use educational disclaimers in information releases that includes new studies or republication of important articles, such as: *“[organization] regularly invites presentations from experts in different economic, social, and scientific fields whose opinions are their own and not necessarily reflective of the opinions of the organization or of any member of the organization.”*



# MARKETING AND ADVERTISING MATERIAL

- Product marketing material of any sort must be vetted for compliance with Unfair Practice Act and FTC disclosure standards. This is important when approving posts by influencers and employees on social media.
- Follow the FTC disclosure Guidelines (attached as an exhibit to the outline): [https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508\\_1.pdf](https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf)

# KEEPING RECORDS AND THE ATTORNEY/CLIENT PRIVILEGE

- Minutes of meetings are discoverable in litigation unless protected by the attorney/client privilege, but the attorney must be present at the meeting to protect the minutes and the discussion.
- Waiver of Privilege: The Attorney/client privilege may be waived by knowing disclosure of privileged information. However, because the privilege belongs to the organization rather than the individual members, only the corporation itself can waive the privilege on behalf of the corporation.
- Crime/Fraud exception: The privilege does NOT apply to discussions about actively committing crime or fraud (this is called the “crime/fraud exception” to the attorney client privilege). However, discussions about responding to charges of criminal or fraudulent conduct are privileged. This is why you can talk to your lawyer after an arrest for a crime and the lawyer may not be forced to tell law enforcement what you told him or her.
- There is an entire body of law dealing with the nuances of the attorney/client privilege.

# Recommendation

Engage your own counsel and follow his or her advice regarding protecting communications and discussing sensitive matters.

While we all live in a dangerous and litigious world, the tools of communication discipline can be used to provide the best protection possible to enable private discussions of sensitive matters, and to enable public communications about those matters that could affect corporate and personal liability. However, nothing can prevent claims from being made, and nothing can prevent having to defend against a plaintiff's attorney's efforts to file an action against any corporation or individual. Therefore, prudence in discussing sensitive matters, scientific or otherwise, is dictated at all times.

LET'S BE CAREFUL OUT THERE

QUESTIONS?

D.C. 48

# CLOSED

FOR VIOLATION OF  
**NATIONAL PROHIBITION ACT**

BY ORDER OF  
**UNITED STATES DISTRICT COURT**

\_\_\_\_\_  
**DISTRICT OF** \_\_\_\_\_  
\_\_\_\_\_

**All persons are forbidden to enter premises without  
order from the UNITED STATES MARSHAL**

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U. S. MARSHAL