The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States, submitting nominations were communicated to the Senate by Mr. Geisler, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

RECESS UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order, that the Senate stand in recess, in executive session, until 11 a.m. tomorrow.

The motion was agreed to; and (at 5 o'clock and 30 minutes p.m.) the Senate took a recess, in executive session, until tomorrow, Thursday, January 23, 1969, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate January 22 (legislative day of January 10), 1969:

DEPARTMENT OF JUSTICE

Richard G. Kleindienst, of Arizona, to be Deputy Attorney General vice Warren Christopher, resigned.

Jerris Leonard, of Wisconsin, to be an Assistant Attorney General vice Stephen J. Pollak.

Richard W. McLaren, of Illinois, to be an Assistant Attorney General vice Edwin M. Zimmerman, resigned.

William H. Rehnquist, of Arizona, to be an Assistant Attorney General vice Frank M. Wozencraft.

William D. Ruckelshaus, of Indiana, to be an Assistant Attorney General vice Edwin L. Weisl, Jr.

Johnnie M. Walters, of South Carolina, to be an Assistant Attorney General vice Mitchell Rogovin.

Will Wilson, of Texas, to be an Assistant Attorney General vice Fred M. Vinson.

DEPARTMENT OF LABOR

Willie J. Usery, Jr., of Georgia, to be an Assistant Secretary of Labor.

COUNCIL OF ECONOMIC ADVISERS

Hendrik S. Houthakker, of Massachusetts, to be a member of the Council of Economic Advisers.

Herbert Stein, of Maryland, to be a member of the Council of Economic Advisers.

COMMODITY CREDIT CORPORATION

The following-named persons to be members of the Board of Directors of the Commodity Credit Corporation:

J. Phil Campbell, of Georgia.

Clarence D. Palmby, of Virginia.

CONFIRMATIONS

Executive nominations confirmed by the Senate, January 22 (legislative day of January 10), 1969:

DEPARTMENT OF AGRICULTURE

J. Phil Campbell, of Georgia, to be Under Secretary of Agriculture.

Clarence D. Palmby, of Virginia, to be an Assistant Secretary of Agriculture.

EXTENSIONS OF REMARKS

DEDICATED TO BEAUTIFICATION

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1969

Mr. DULSKI. Mr. Speaker, the Post Office Department has issued a beautiful block of four stamps dedicated to the theme of beautification, a program whose prime backer has been our former First Lady, Mrs. Lyndon B. Johnson.

On the first day of sale of the new stamps there was a very heartwarming ceremony at the White House which was attended by the Citizens' Stamp Advisory Committee and a large number of the Nation's leading philatelists.

In an aside during his remarks, Postmaster General Watson acknowledged my own interest in philately and called special attention to the cufflinks which I was wearing containing two of the four new beautification stamps. Mrs. Johnson later asked to see the unusual cufflinks into which any new stamp can be inserted for display.

Following is Mr. Watson's prepared test:

REMARKS BY POSTMASTER GENERAL W. MARVIN WATSON AT THE BEAUTIFICATION STAMPS CEREMONY, THE WHITE HOUSE

This is a very happy occasion for me.

It is a happy occasion because it involves a subject near and dear to the heart of our wonderful First Lady . . . beautification.

It is also a happy occasion because I have the opportunity to thank her for all her efforts in behalf of beautification. And this new series of commemorative stamps is just one more evidence of those efforts.

I believe America will never forget what Mrs. Johnson has done to restore to our country its heritage of beauty.

She has planted seeds in our hearts that will bloom for many years to come.

There is one element of her devotion to beauty that I would like to see reflected in the record.

And that is the enormous amount of energy and work expended by our First Lady in behalf of beautification.

As with anything else worthwhile in America, when you want something, even if you are the First Lady and your office is in the White House, you have to get out and work.

Fortunately, Mrs. Johnson has enormous stores of energy and dedication. She has certainly had to call upon them often during her campaign for beauty.

In pursuance of her goal, she has travelled well over a hundred thousand miles . . . taken care of some 400 letters a day and countless telephone calls.

By her actions she has helped the American public know of new national parks, as well as reminding them of how precious those parks are to all of us.

She is generally given credit for inspiring the landmark Highway Beautification Act of 1965, a law that has helped make driving more enjoyable and less dangerous.

Major oil companies have met with her about beautifying their service stations.

As the result of her example, beautification citizens' committees have been formed all over the country.

Local beautification groups have bloomed everywhere.

Typical was the reaction of a lady in San Jose, California. After seeing the First Lady on television, this lady picked up a trowel, and marched right out and planted a 30-foot bed of iris next to the bus stop.

Her Committee for a More Beautiful Capitol has transformed from disaster areas into urban oases those mini-deserts that we call traffic circles and triangles. They may still confuse drivers, but now at least they don't insult the eye as well.

Mrs. Johnson has always understood the close relationship between beauty of environment and beauty of spirit and action. Great thoughts do not grow well in ugly soil. Twisted are the dreams that root in the asphalt jungle.

I know that the one thing the First Lady does not wish from her efforts is personal praise. I know that her philosophy is one that emphasizes the maximum amount of personal involvement by all our people. She seeks not gratitude but action. And the best way any of us can respond to her vision of a better land is by rolling up our sleeves and doing something to move that vision a little closer to reality.

I take this risk of going against her wish to avoid any credit for herself because I would like her to know how important we all believe her work to be, and how very much we appreciate it.

Planting for the future is one of man's most unselfish acts. And future generations of Americans will thank this great lady for reminding us that we are the caretakers of God's earthly estate, and we must tend it well.

Mrs. Johnson—for all that you have been to us—we thank you.

AWARD TO EDGAR W. HEYL, OF SHARON SPRINGS, KANS.

HON. JAMES B. PEARSON

OF KANSAS

IN THE SENATE OF THE UNITED STATES

Wednesday, January 22, 1969

Mr. PEARSON. Mr. President, Edgar W. Heyl, of Sharon Springs, Kans., has just received one of the 27 Benjamin Franklin Quality Dealer Awards for 1969.

This award given by Mr. Heyl's industry is a manifestation not only of his business ability but is made on the basis of his integrity, industry, and willingness to serve his entire community. His record for civic service includes political offices, youth activities, and safety organizations. This is a significant award made to an outstanding Kansan, and I ask unanimous consent that an article of the Hutchinson News of Sunday, Jan-

uary 12, 1969, be placed in the Extensions of Remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FOR CIVIC AND PROFESSIONAL SERVICE: KANSAS AUTOMOBILE DEALER RECEIVES NATIONAL AWARD

SHARON SPRINGS.—Edgar W. Heyl of Sharon Springs was named one of 27 national winners of the Benjamin Franklin Quality Dealer Awards for 1969.

The Franklin Awards, which annually honor outstanding automobile dealers, were established in 1960 with the cooperation of the National Automobile Dealers Association and sponsored by The Saturday Evening Post Company.

Heyl, president of Heyl Motor Company, was chosen for the award because of his record as both an automobile dealer and as a leader in civil affairs.

He will be honored at the 1969 national convention of the National Automobile Dealers Association in Houston next month.

DEALER OF YEAR

Heyl was selected Kansas Dealer of the Year and nominated for the national award by the Kansas Motor Car Dealers Association from eight nominees from the association's districts in the state.

Heyl's record of civic service includes political offices, youth activities and safety organizations.

He has served as precinct committeeman, councilman, mayor and sheriff. He sponsored a town basketball and baseball team for many years and provides transportation for students of Sharon Springs High School.

Founder and scout master for the first Boy Scout troop in Sharon Springs, he has participated in the President's Council on Youth Opportunity.

He is a past president of the Kansas Motor Car Dealers Association and of the state Highway 40 Association.

Heyl entered the automobile business in 1922 at the age of 18 as the Overland dealer in Wallace. He was a salesman and later wholesale manager for Roy M. Heath Company from 1937 until the start of World War Two.

He purchased his present dealership late in 1946 and started business Jan. 1, 1947. Heyl sold only Chevrolet until 1949, when he added Oldsmobile. In 1959 he added the American Motors line.

THE URBAN CRISIS—ADDRESS BY HAROLD M. WISELY, PH. D.

HON. MARK HATFIELD

OF OREGON

IN THE SENATE OF THE UNITED STATES

Wednesday, January 22, 1969

Mr. HATFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD remarks recently made by Dr. Harold M. Wisely, of the Eli Lilly Co., concerning "The Urban Crisis." The Lilly Co. has made a fine contribution toward easing the urban crisis, and I would like to share a report of the company's accomplishment with readers of the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

THE URBAN CRISIS

(Address by Harold M. Wisely, Ph. D., Vice-President, Industrial Relations, Annual Shareholders' Meeting, Eli Lilly and Co.)

Ladies and Gentlemen: I need not tell any of you that our nation, and its major cities in particular, are experiencing deep and challenging problems directly related to the equities in human relations and to the fuller involvement in our economy of all available manpower.

I welcome the opportunity to discuss with you the urban crisis which faces this nation, the challenge it presents to all parts of our society, and the progress that Eli Lilly and Company is making both as an employer and as a part of the community.

The summer of 1967 and the spring of 1968 will perhaps be seen in the future as the beginning time of crisis for the American city and the Negro American. Riots in several of our cities have stirred the emotions and the thoughts of all our people. It has been a time of prosperity, but it has also been a time of frustration, a time of confusion, and a time of violence. The events of the past months have "proven" to the white racists that the civil rights advances of the past decade are wrong. They have "proven" to the black racists that violence and insurrection can be incited among the poor of our cities. These times have left many of the white liberals confused and frustrated by the failures of programs aimed toward helping the people of the ghettos. In like fashion, many of the leaders of the Negro people have been saddened and frustrated.

In this confusion and frustration, one hears views that the way out depends on massive programs aimed at housing, education, and employment. Other people contend that the answer is stricter law enforcement and better riot-control measures. Indeed, all of the social institutions of our society face challenges in these areas if the decay of our cities is to be stopped.

It would appear, however, that the challenge of the urban crisis must take into account the confluence of at least three major problems, particularly as they intertwine and impinge on the Negro in urban society. These three tributaries of urban decay are (1) the problem of the migrant poor, (2) the problem of racial prejudice, and (3) the problem of specialization of the social institutions and depersonalization of human relationships in the urban environment.

Industry, as a key institution of the urban community, is learning that it no longer can say, "We have little concern with education—the schools will take care of that." It no longer can say, "We have little concern for housing, health, and welfare—local government will take care of that." It no longer can say, "We have little concern for the moral tone of the community—that is the job of the church and the courts." The challenge of the city will require leaders and members of all institutions to draw plans and for the opportunities and welfare of all individuals in the community.

THE GREATEST CHALLENGE

This thought leads me to the single greatest challenge—the challenge of recognizing in every person, regardless of station in life, or color, or creed, the need for respect for the individual. From all levels of Negro society, I hear these words: "I want to be seen as a person." "I want to be dealt with as an individual, not as a second-class citizen because of my color or race."

Industry can respond to this challenge—and is doing so. Your company, Eli Lilly and Company, is particularly well situated to respond to this challenge because of its foundation stones, established by the Lilly family and embedded in our ways, is a respect for the individual employee, for the dignity of work, and a concern for the development of people.

This respect has evidenced itself in many ways throughout the history of the company. It was expressed by the adoption of liberal retirement plans and vacation policies for *all* employees (production and office) years ahead of the rest of the industrial community. It was expressed by the removal of time clocks from the plant. It has been expressed through practices of stable employment. It is expressed by a compensation program which provides that a part of each person's pay is related to the overall productivity of the company. It is expressed in the company's Educational Assistance Program, which allows our employees to receive 100-percent reimbursement of tuition in furthering their educational goals, either at the high school or college level, while they are with Lilly.

And, most importantly, we believe that it is expressed by the actions and practices of supervision in recognizing the needs, aspirations, and capabilities of employees and by mutually working together toward achievement of the company's aims.

WHAT HAS LILLY DONE?

You may ask: What has the company done specifically in developing employment opportunities for the Negro? Our attack on this problem has many different dimensions.

Ours is a technically oriented company. Fully one-third of our personnel in the United States fall in the category of the professionally trained, by which we mean chemists, engineers, accountants, pharmacists, librarians, and so forth. We are, therefore, aiming a major effort toward reaching professionally trained Negroes at the college and advanced levels.

This coming school year Lilly recruiters will interview on the campuses of some fifty colleges. Included in these are nineteen colleges and universities predominantly Negro in student attendance. We are also utilizing five professional recruitment groups which specialize in placing professionally educated Negroes.

Eli Lilly and Company was among the first companies to contribute to the College Placement Services in establishing placement offices at Negro schools, so that the Negro college student might be better informed of his opportunities in business and industry. And we will be taking part again this year in a national conference on Negro college placement services. Our participation in the improving of recruitment and placement facilities at colleges and universities will continue.

Additional activities in the area of college relations have included visits of Negro college placement directors to our Indianapolis facilities. Also, we have increased the number of Negro college students participating in our Summer Intern Program, and about 20 percent of the participants in the 1968 program will be Negroes.

The company has contributed financially to a program geared to educating Negro students at the graduate level toward business careers. This program presently includes three Midwestern universities—Indiana University, the University of Wisconsin, and Washington University in St. Louis.

WORKING WITH HIGH SCHOOLS

At the high school level, Lilly people work closely with school authorities in conducting employment-orientation conferences.

Our work at the high school level also involves the company's participation in what is known as the Industrial Cooperative Training Program. Under this program, students who are learning trades or secretarial skills work part-time and go to school part-time. Over the last four years we have hired, at the completion of their schooling, approximately one-half of the students who participated in the program with our company.

Another high school project is the Occupational Information Exchange Program, in which we are presently participating with Crispus Attucks High School, and we are establishing a similar program with Harry E. Wood High School. Our representatives in the crafts, shops, and production areas are visiting these schools to discuss job career opportunities. We are assisting the school counselors in a personal development and informational exchange program.

Several high school teachers and counselors will spend a week or two with our company this summer to learn more in the em-

ployment area as it relates to high school students.

A substantial part of the problem involving job opportunities of Negroes centers about those who have not been graduated from high school. The company is presently working with a number of community groups toward the employment of non-high school graduates and the so-called "multiproblem disadvantaged." These community groups include the Board for Fundamental Education, the Voluntary Adviser Corps of the Indianapolis Chamber of Commerce, Martindale Center, the Indianapolis Urban League, Fletcher Place Community Center, the Marion County Welfare Department, and others.

We have made a commitment to the National Alliance of Businessmen to employ seventy-five disadvantaged persons on full-time jobs within the next twelve months.

Promotion from within has long been one of the fundamental strengths of the company's employee relations program. Reinforcement and broadening of our policy and practice in this area have been part of the company's continuing approach to employee development.

Increasing numbers of opportunities are being made available to employees to assist them in furthering their education and gaining new skills. One recent development is the company's utilization of the basic adult education program provided by the Board for Fundamental Education, in which fifty-seven Lilly employees are enrolled.

As the term "fundamental education" implies, the courses are intended to enable individuals to complete grade school, high school, and general study on an accelerated basis while they continue working for the company. This educational improvement serves to increase their potential for increased job responsibilities as well as to develop their personal resources. The B.F.E. program can certainly be of special importance to those members of minority groups and the so-called "disadvantaged" persons who, for some reason, did not go as far as they desired in their formal education.

PROGRAMS PRODUCE RESULTS

You may ask the question, "Are these efforts paying off in providing opportunities?" The answer is "Yes." To give you a statistical analysis would not be possible in the brief period of this report, but perhaps two or three indications would be of value.

Five years ago, more than one-half of the company's Negro employees were in service types of work. Today, with a substantial growth in the number of Negro employees, fewer than one-quarter are in service types of work. Another view of this question can be seen by looking at the increase of personnel who are managers, professionals, salesmen, technicians, craftsmen, and office and clerical personnel. The number of Negroes in these jobs has more than doubled in the last five years.

I mentioned earlier that your management does not believe responsibility stops at the boundary of its plants. Moves have been made to broaden and reinforce our participation in community affairs. Our involvement ranges from the ban of manpower to serve government and civic agencies to financial contributions designed to provide neighborhood improvements and facilities. On the national level, we support the United Negro College Fund, the N.A.A.C.P., and the Urban League.

A Negro employee has been detached from his professional duties in the Lilly personnel department to serve full-time with Mayor Lugar's Greater Indianapolis Progress Committee. Among his duties is chairmanship of this Committee's Task Force to find employment for Negroes in the community. A number of other Lilly associates are working with the Mayor's Task Force, the Indianapolis Urban League, the Chamber of Commerce, and other agencies within the community to facilitate progress in the areas of minority and urban affairs.

During this summer, Lilly will cooperate with Harry E. Wood High School and other public schools in the general vicinity of its McCarty Street and Kentucky Avenue plants to keep school facilities open seven days a week for community recreational activities. Lilly will provide ten employees for this project.

In a very real sense, the company is working toward improvement of a 15-square-block area south of the McCarty Street laboratories. Our plant of the 1970's will cover more than 54 acres and will include several new buildings. I think you can see that Lilly is in the city to stay. Other neighborhood improvement projects are under way near company offices at Meridian and 28th streets and at the Creative Packaging plant on North Capitol Avenue.

THE HOPE FOR TOMORROW

I hope this progress report has conveyed to you the understanding that your company is proceeding with a deep sense of community responsibility and diligence on many fronts.

Recently, a Negro friend of mine talked about his own personal sense of hope in facing the frustrations of today. He said, "Someday, the yesterdays of race relations must end; and someday, the tomorrows of race relations must begin." I can report to you, for the management of Eli Lilly and Company: We have made a real beginning toward tomorrow. With all humility, we shall pursue every course at our command to bring about this fruition of tomorrow so that there will abide among all of us a respect for all individuals, with equal opportunity at work and in the community.

Thank you.

PRESIDENT LYNDON B. JOHNSON

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 16, 1969

Mr. DULSKI. Mr. Speaker, the mark in history which will be given to Lyndon B. Johnson as President of the United States will not be known for some years. The perspective of time is needed to properly evaluate his term in the Nation's highest office.

Those of us who have had the honor and the privilege to work with him while he was at the White House have many pleasant memories. His record is one of accomplishment in many areas.

He was not able to do everything that he would have liked from time to time—but that is only to be expected. His task was enormous, his responsibilities were overwhelming.

President Johnson was a friend of the people of my home city of Buffalo, N.Y. And Buffalonians were friends of his.

He always received a warm welcome during his several visits both as Vice President and as President, and I know from being with him on these occasions that our people held him in high esteem and respected him.

He was very helpful in accomplishing many things for my area.

A major Federal project which he helped me to bring into realization is just now getting underway. That is the much-needed Federal office building in downtown Buffalo. When this building is completed, most of the Federal agencies in Buffalo—except those which have their own specialized facilities—will be under one roof for the first time in many years.

In the work of my Committee on Post Office and Civil Service, which I have had the honor to chair for the past 2 years, President Johnson has always been very generous and considerate with his time and attention, for which I am truly appreciative. With his help and his leadership, we have achieved landmark legislative accomplishments benefiting both the postal service and Federal employees.

Lyndon Johnson leaves behind him an enviable record of public service in the House, in the Senate, and in the White House.

As Mr. Johnson said in closing his state of the Union message to Congress last week:

I hope it may be said, a hundred years from now, that by working together we helped to make our country more just, more just for all its people—as well as to insure and guarantee the blessings of liberty for all of our posterity.

That is what I hope, but I believe that it will be said that we tried.

As Kenneth Crawford said in his column in Newsweek magazine this week:

Nothing less than this can be said.

I am confident that Lyndon Johnson will rank high in our Nation's history when future historians cast their verdict.

Mr. Crawford has taken a contemporary look at Mr. Johnson and his critics in his January 27 column in Newsweek. Following is the text:

L. B. J. AND HIS CRITICS

(By Kenneth Crawford)

Lyndon B. Johnson hopes that it will be said of him 100 years from now that he was a President who tried. Nothing less than this can be said. What more can be said and will be said is now disputatious speculation.

History is almost always kinder to a President than his contemporaries have been. In the case of LBJ, it can't possibly be less kind. For his contemporaries, at least those who are most persistently vocal, have been unusually venomous. Former courtiers scorned, like Barbara Howar and Eric Goldman, have marketed kiss-and-tell memoirs. Would-be advisers scorned, like Arthur Schlesinger and Hans Morgenthau, have become a sort of campus clan fighting a blood feud with the man who rejected their line on Vietnam. Journalistic guns have lent them support.

The exertions of Johnson's detractors have been prodigious. Where there is a public discussion, there is Schlesinger exuding distaste for LBJ and putting him down as a politician incapable of understanding the subtleties of foreign affairs. Goldman has gone to the lengths of inventing the "Metro-American," a type nobody from Texas could understand. Richard Goodwin, the political mercenary, has gone Goldman one better. He has invented a whole America that Johnson, among many others, fails to understand. It is a curious place, unhappy with prosperity and desperately in need of more participatory McCarthy campaigns, local autonomy, clubhouses for suburban housewives and a curtailed military establishment. One may wade through this dismal swamp in the Jan. 4 New Yorker.

POISON IVY

Under the influence of these and other heavy thinkers, the ivy-coated citadels of

Eastern learning have become poison ivy to Johnsonites, especially those who are known to have supported his Vietnam commitment. Thus Walt Rostow, LBJ's adviser on national-security affairs, was pointedly not invited to resume his professorial post at the Massachusetts Institute of Technology when his Washington job expired. In fact, intellectualism in some of its more conspicuous precincts has taken on the quality of tolerant spirit one would expect to find only in the John Birch Society.

The thinking of Johnson's severest critics, if it is thought rather than furious prejudice, seems to proceed from two premises: (1) that the cold war is long since over and that the Communists, who have just subjugated Czechoslovakia, rearmed the Arabs and who persist in their effort to club South Vietnam into surrender, are a figment of antique imaginations, and (2) that the U.S. has outgrown its preoccupation with such crass material things as jobs, food, housing, transportation and health.

NEW PERSPECTIVE

If these premises are accepted, Johnson's domestic achievements can be seen in a new perspective—the perspective one gets by looking through the big end of a telescope. They are nice, as far as they go, but they can be taken for granted. Such presumed advances as medical care for the aged, subsidized education, a better deal for the Negro, progress toward elimination of poverty and improvement of environment by decontamination of air and water are seen only as reforms that don't go as far as they should because the war has drained off funding they needed. Anyway, government should address itself to the inner serenity of citizens, not just to such vulgar externals as prosperity, security and comfort.

As for the war, the case for and against seeing it through to an acceptable termination is no longer argued. The critics merely assume that there is no case for. They quite shamelessly employ the demagogic device of calling it, whenever it is mentioned, "senseless, tragic, idiotic," and suggesting that it was started by LBJ to prove his manhood. That he sacrificed his career to bring it to an end is conveniently passed over.

How much impression Johnson's vituperative critics will have on history is problematical, probably not much. How much LBJ will be remembered as the President who pulled his dog's ears and showed off his abdominal scar in public is questionable, too. Historian James MacGregor Burns suggests that "history has a way of siphoning into oblivion the petty and the irrelevant and measuring up the real stature of the man." Some historians, he thinks, will remember Johnson as a man who "suffered criticism because he stuck to the course he believed was right, a man who endured attacks with . . . patience and tolerance." LBJ deserves that much.

THE CONSUMER AND THE FEDERAL TRADE COMMISSION

HON. GAYLORD NELSON

OF WISCONSIN

IN THE SENATE OF THE UNITED STATES

Wednesday, January 22, 1969

Mr. NELSON. Mr. President, last summer some ambitious and dedicated law students conducted an extensive investigation of the Federal Trade Commission. Recently, they issued a report detailing the results of their inquiry.

Shortly thereafter, Paul Rand Dixon, Chairman of the Federal Trade Commission, issued a reply to the allegations contained in this report.

Needless to say, a great deal of curiosity has been generated because of the widespread publicity given to the study and to Mr. Dixon's reply. Many people have asked to examine this report. Since there is such a widespread interest in this subject, I believe it would be in the public interest to reprint these materials in the RECORD.

Accordingly, I ask unanimous consent that the report entitled "The Consumer and the Federal Trade Commission," along with the statement of the Chairman of the FTC be printed in the Extensions of Remarks of the RECORD.

There being no objection, the report and statement were ordered to be printed in the RECORD, as follows:

THE CONSUMER AND THE FEDERAL TRADE COMMISSION—A CRITIQUE OF THE CONSUMER PROTECTION RECORD OF THE FTC

(By Edward Cox, Robert Fellmeth, John Schulz)

This report is the product of a three-month empirical investigation of the Federal Trade Commission conducted during the summer of 1968 with the assistance of Ralph Nader.

Project members: John Schulz, Director; Judy Areen; Peter Bradford; Edward Cox; Andrew Egendorf; Robert Fellmeth; William Taft, IV.

BIOGRAPHIES OF PROJECT MEMBERS

Judy Areen: AB, 1966, Cornell University. Third-year student at Yale Law School.

Peter Bradford: AB, 1964, LL.B., 1968, Yale University. Special Assistant to Governor of Maine.

Edward Cox: AB, 1968, Princeton University. Pre-architecture and law student at Yale University.

Andrew Egendorf: AB, 1967, Massachusetts Institute of Technology. First-year student, Harvard Law School.

Robert Fellmeth: AB, 1967, Stanford University. Second-year student at Harvard Law School.

John Schulz: AB, 1961, Princeton University, LL.B., 1968, Yale Law School. Assistant Professor of Law, University of Southern California.

William Taft, IV: AB, 1966, Yale University, Third-year student at Harvard Law School.

INTRODUCTION

1. Background

As the representative of the American consumer in Washington, Mr. Ralph Nader has recognized the benefits which might accrue to the consumer from a Federal Trade Commission which lived up to its full potential.

In order to determine what this potential is and how the FTC is fulfilling it, Mr. Nader brought together a group of law students to commence a unique study.

Providing their services without pay, seven students worked on the project at varying tasks during last summer. Their personal motivations covered a wide spectrum, but to a certain degree they were all convinced of the need for peaceful change, based on a rigorous and thoughtful examination of our existing institutions in the light of present realities. This they saw as an alternative to the violent means of change advocated by certain of their contemporaries.

They came to Washington at the start of June, 1968, having read the small number of previous reports and featured articles on the Commission. They conducted interviews of selected high-level personnel, simultaneously noting and requesting all possible written reports, memoranda, data sheets, computer programs, and other materials at the FTC useful to such a study. While the limited materials made available by the Commission were being assimilated, other personnel in the Commission were singled out for in-depth interviews. Outside people who had an intimate knowledge of the Commission, either from having been there previously or from daily contact in line with their work were also interviewed. The students made a total of forty internal and twenty-five external interviews. In addition, an undetermined number of informal conversations were held with persons both inside and outside the Commission.

By the end of the summer the vast amount of information collected had been roughly assimilated and categorized. At this point the students recognized that their report in its final form would have to be unlike any report done previously on a government agency. The paradigm of all previous reports had been the law review article which usually ended a longwinded and tiresome discussion of the law and organization of an agency with a recommendation for reshuffling the organization chart. Over the summer the students had come to know the TFC too intimately to ignore the obvious fact that the Commission's troubles stem in great part from specific weaknesses in personnel. The report therefor searches thoroughly into personalities and attitudes of high staff members, since substantive reforms in Commission performance will be impossible to achieve without imaginative top- and middle-leevl leadership.

This report is exclusively the product of the students efforts and its conclusions are entirely their own As such, it is a possible prototype for similar studies of other governmental agencies. It is by no means a final document, but rather should be considered an interim report in a continuing study.

2. The FTC and the consumer: Scope of report

An early section of this report analyzes developments in American society which seem to threaten the already precarious position of the consumer.

The Federal Trade Commission is the major federal government agency for consumer protection.* It is the only agency with a potential for effectively policing business frauds in many parts of the United States where state and local laws are inadequate, and it alone has the potential resources to control the practices of nationwide business empires.

The FTC does not and cannot, however, fulfill its potential at the present time, as the remainder of this report will demonstrate. The toll in consumer abuses which continue to flourish due to the inactivity of the Commission is impossible to calculate. The agency must be reformed immediately.

Because of the pressing need for reform of the FTC in the consumer-protection sphere, this report is devoted entirely to that subject. It does not deal with the equally large and important topic of the FTC's antitrust duties.

3. A brief overview of the FTC and its consumer-protection legislation, and its procedures

The Federal Trade Commission is an independent regulatory agency created in 1914. Its regulatory duties are divided between direct consumer protection and antitrust.

The agency's consumer-protection duties are defined by the Federal Trade Commission Act (FTC Act) and several specialized statutes. The former generally empowers the Commission to prevent "unfair and deceptive acts and practices", § 5, and deals more specifically with such acts and practices in the sale of drugs and other products affecting health. § 12 *et seq.*

The FTC's specific Statutes include the Flammable Fabrics Act (which is important for it deals with practices dangerous to life

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and health) and three statutes[1] regulating the labeling of textiles and furs (much more trivial than the Flammable Fabrics Act).[2]

The Commission's method of regulation is basically preventive; it seeks to discover, stop and generally prevent practices which violate its laws. Paradoxically, while its powers of discovery are broad, its preventive powers are limited.

The FTC's information-gathering powers are set forth in Section 6 of the FTC Act, which empowers the Commission:

"(a) To gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in (interstate) commerce, except banks and common carriers . . . and its relation to other corporations and to individuals, associations, and partnerships.

"(b) To require, by general or specific orders corporations . . . or any class of them . . . to file with the Commission in such form as the Commission may prescribe annual or special, or both . . ., reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organizations, business, conduct, practices, management . . . of the respective corporations. . . ."

And Sections 9 and 10 compel compliance with Commission demands for information by providing for civil court enforcement under threat of contempt and for criminal sanctions for failure to respond or false responses.

The only coercive legal enforcement tool generally available[3] to the FTC is the "cease and desist order," which imposes no retroactive sanctions, but merely prohibits future repetition of the sort of conduct against which it is aimed. Once a cease and desist order becomes final (after 60 days or appeal to U.S. Courts of Appeals and Supreme Court), it remains in effect permanently, and any violation may be punished by an action in the Courts of Appeals on behalf of the United States for recovery of "civil penalties" of up to $5,000 per day of violation. FTC Act, Sec. 5(1).

Formal adjudicative proceedings leading to the issuance of cease and desist orders are prescribed by Section 5 of the FTC Act and the Commission's "Rules of Practice for Adjudicative Proceedings." They are begun by the Commission's filing a "complaint"; Section 5(b) directs the Commission to file a complaint "Whenever the Commission shall have reason to believe that any . . . person, partnership or corporation (subject to the FTC Act) has been or is using any . . . unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be *to the interest of the public . . .*"

The "public interest" requirement was written into the statute to enable the Commission to plan its enforcement program free of the requirement that all citizen and merchant complaints be acted upon.

FTC Rules also provide procedures for securing "consent" (non-contested) cease and desist orders without going through the adjudicatory process (hearing, initial decision, appeal, Commission decision) involved in regular cease and desist order cases.

The Federal Trade Commission presently uses several additional enforcement techniques which do not lead to issuance of cease and desist orders (and thus cannot draw on the coercive powers underlying enforcement of cease and desist orders). Two of them are methods for dealing on an "industry-wide" rather than individual basis with practices found upon investigation to be widespread; these are proceedings leading to issuance of "Industry Guides" and "Trade Regulation Rules." Two others are designed to deal with individual merchants: (1) a means by which businessmen can solicit and receive "Advisory Opinions" on proposed courses of business action. (2) procedure for acceptance by FTC of informal "assurances of voluntary compliance" in lieu of cease and desist orders.

The FTC presently employs some 1230 persons, including 473 attorneys and 464 secretarial and clerical employees. These employees are divided between the agency's principal office, located on Pennsylvania Avenue in Washington, D.C., and eleven field offices in Atlanta, Boston, Chicago, Cleveland, Falls Church, Va., (serving Washington, D.C.) Kansas City, Los Angeles, New Orleans, New York, San Francisco and Seattle.

The FTC staff at the principal office is divided into administrative offices and operating bureaus; the latter are structured primarily along "program" rather than "functional" lines, that is, according to statutes or programs administered rather than the kinds of tasks performed by employees (*e.g.*, investigation, litigation, etc.) The major operating Bureaus are those of Deceptive Practices, Economics, Field Operations, Industry Guidance, Restraint of Trade and Textiles and Furs. This report deals with Deceptive Practices, Industry Guidance, and Textiles and Furs, for the most part.

The major administrative offices are those of the Secretary, Program Review Officer, General Counsel, Hearing Examiners and Executive Director (including Office of Administration). This study focuses on the General Counsel Office.

The Commission itself is composed of five members appointed for staggered seven-year terms. It has delegated some of its statutory authority to the Chiefs of various operating bureaus; however, the overall decision-making process of the Commission remains highly centralized, for no powers have been delegated to personnel beyond Assistant Bureau Directors, all of whom are located in the central office.

The Chairman has extensive powers and responsibility in the management of the FTC, for he is its top Administrative Officer. He is thus responsible for hiring and promoting persons on the staff.

THE CRISIS

Throughout the history of our country, the American people have presumptively relied on the forces of the marketplace to determine their economic destiny. American business has traditionally modified its practices in order to take advantage of new technology and new opportunity. But another force in American society—a force of conscience—has opposed the unmoderated exercise of economic power and has sought to keep the new mechanisms and forms of economic power from bypassing the theoretical market checks to deceive, injure or exploit. This force has acted in several ways, including self-regulation by ethical businessmen, the formation of consumer groups exerting power in the marketplace, consumer education movements, and public pressure on government for legal regulation.

Traditionally, the most serious threats to the American public, the most dangerous economic crises, have occurred when changing business practices bypass market pressure and subvert the legitimate operating principles of free enterprise, sometimes becoming in themselves reified symbols of worship. In such a case the resultant system can resemble in practice the monolithic structure of a communist economic system—the economy allied with the state in an impregnable combination. Only by keeping government separate and strong in relation to economic forces, and vice versa, can a balance of power be sustained that will promote a democratic government and a desirable economic system.

As for the worship of the forms of free enterprise, it is always important to prevent an association of specific business practices with the genuine operating principles of free enterprise such that their mere utterance, like magical incantations, dispels legitimate worries and assuages justifiable fears. Such results pose a constant threat to rational analysis and viable adjustments.

Many times in the past America has paid a heavy price before recognizing the futility of worshipping the forms and not the substance of the free market. The growth of trusts in the last century, the impure drug and adulterated food abuses early this century, the Great Depression, these are all examples of dangers which required the intervention of forces outside the market for correction. But many paid the heavy price of injury, poverty or loss before partial corrective action was taken. There is no reason why America should have to pay that kind of price now, and indeed one of the putative characteristics of rational man is an ability to predict the effects of present trends on existing institutions in such a way as to meet change without sacrificing valued elements of those institutions.

Past experience suggests that healthy business competition helps preserve a successful free enterprise economic system. In this age of growing economic concentration, however, it is no longer wise nor efficient for government to rely solely on fostering competition to do the job. Government must now begin to direct its energies towards direct protection of legitimate consumer interests as well. Minimally, this means guaranteeing that consumers obtain adequate and accurate information about products available in the market; it should probably also include some control of types of sales approaches which constitute overpowering appeals to strongly irrational elements of human psychology. And in addition, government must make certain that all consumer products are safe for consumption when reasonably used.

The chief destructive trends in the economy which must be taken into account in planning for consumer protection are the following:

1. The rise of the corporate economy and its accompanying phenomena such as intracorporate tyranny over executives, price leadership, oligopoly or shared monopolies, conglomerate empires, tacit agreements precluding challenge to mutual vested interests, corporate domination of regulator agencies, product fixing, manipulation of credit, and other subtle forms of coercion block new competitiors and new ideas.

Where industries have very low cross-elasticity of demand, and where competitors within each industry manufacture products of a similar nature, the consumer will not learn the negative aspects of such products. No manufacturer will advertise against his own product type and no one will advertise against a product that is not competing with his own. This oligopolistic model is a rapidly growing characteristic of the new economy.[4] The result has been a glut of information regarding what are in reality contrived distinctions between identical products, but a dearth on the drawbacks of any particular product type. Cigarette ads have long been the paradigm example. But one rarely ever hears about the disadvantages of mouthwashes (which many dentists say irritate the mucous membranes of the mouth), detergents (most of which now add particles to your clothes rather than remove them, many of which can irritate the skin), cars of all types, drugs of almost every variety, deodorants (which now clog pores to promote the magic of "dryness"), "brightening" toothpastes (which contain abrasives, see appendix 10), diet soft drinks (some of which can harm internal organs), and so on.

2. The communications revolution, including increasing use of nationwide television and the rising cost of access to this public forum. This development has made it possible for businessmen to perpetrate fairly blatant frauds or deceptions, bilking large numbers of people of a small amount in a

Footnotes at end of speech.

short time without feeling any significant market check. A recent example of this is the chinchilla ads on TV last year (see appendix 14). Another example is the extremely efficient TV chopping and grinding demonstrations by a number of products which are purchased by mail and almost invariably perform in a manner vastly inferior to what is represented. It is indisputable that it is now easier than ever before to reach large numbers of people with more subtle forms of influence.

3. The information explosion, including increasing use of mass data-handling techniques to attack the privacy and autonomy of the consumer. This trend has made possible social-psychological analysis of the various potential markets. Market researchers have divided and subdivided the market along various lines to make possible special appeals to different social groups. Most of these appeals are based on distinctions which have nothing or very little to do with the products themselves, but are associated with them to produce "empathy." Virginia Slims are marketed to appeal to feminists, Camel cigarettes to appeal to he-men. Lark to the suburban set, and so on.

4. The growing sophistication of the science of applied psychology, involving influence by suggestion, subtle deception through image manipulation, and the creation of demand through associations with sex, fear and power fantasies. These advances facilitate subtly effective appeals and unapparent deceptions. Some of these seem ridiculous when directly explained, but nothing testifies more to their effectiveness than their consistent success. Not only do businessmen attempt to utilize the most accomplished psychologists in the academic world to appeal via symbolic ties to the public's fears and frustrations in almost psychotic association attempts, but they experiment increasingly in more direct forms of forced persuasion, as in the micro-second flashes of Aqua Velva lotion or in the hypnotic waving of keys in front of the screen in Washington, D.C. during the Fairfax Plymouth ads with the accompanying deep voice intoning over and over, "you *will* buy a Plymouth at Fairfax motors."

There have traditionally been three major arguments against government entry into the field of advertising. First, is the argument by business interests that the "perfect" or all wise consumer can not be deceived. Second, there are appeals to free speech and subsidiary interests (the desire for imaginative ads, etc.). Third, there is a general feeling by some that the problems are unimportant, unreal, or will go away.

The answer to the first argument is contained in the analysis above of the consumer's plight given contemporary trends. It is worth adding, however, that although corporate giants justify the system and their activities by constant reference to the omniscient consumer, their ads reveal their true estimation of him. Briefly, he is an insecure, sex and attention starved, paranoid neurotic with an attention span of 10 seconds. Even if today's consumer is capable of understanding the complexities of, say, comparative reliability characteristics of standard automotive engines—which industry moguls pretend he is—these moguls will not give him that information. Instead, they prefer to sell sex and power in relation to various phallic symbols, undulating women and potent wild animals.

The second argument is admittedly a valid consideration. There is a competing interest in favor of the free exercise of communications capacity and indeed in favor of diverse and clever ads. But this does not mean that the trends now evolving within our economy do not present questions of the greatest importance. Sadistic appeals by Silva Thins or paranoid appeals by Listerine are not symptoms of a past era, they are precursors of a new one. Further, certain issues presented by the trends above are capable of easier determination. When the question is not irrelevance but deception, that is, the deliberate creation by advertisement of an impression which is actual fact does not represent the performance of the product, there is no substantial claim of competing value. Larceny by deception has been a crime for many years at common law. There is little free speech interest in the right to say "your money or your life," nor is there much in the right to say "if you give me x dollars I'll give you y object," fully intending and subsequently delivering, inferior z object.

The third approach to the problem of deceptive practices is to minimize its importance or duration. But given the evolution of modern society this problem must not be underestimated. It is easy to dismiss the matter because many deceptions are hard to detect. If a false claim is apparent it is ignored and fails. If it is successful it is often not recognized at all. Even when the product is deficient it is often not easy to trace to a specific deception. This is particularly true when the deceptive claim is relative to the products of other competitors with direct comparisons unlikely. How many, for instance, will buy two sets of tires to see if one stops faster as claimed. Finally, it is easy to make small lies of omission or implication which generate great market advantage and attract little attention. It is foolhardy to minimize the effect of these processes, for they can eventually threaten general promotional credibility to the detriment of everyone (but particularly the honest businessman and the consumer).

The increase in deceptive practices in advertising is manifest throughout the trade. It is clearly a rising phenomenon with more current abuses than any single person or group could document fully.

The longstanding practice of relabeling susbtantially old products as "new" with every successive ad campaign has made the term meaningless. Detergents are particularly guilty of this transgression, but so called "new" cars, appliances and other product types are all guilty.

During the first *quarter* of 1968 ten specific products (not corporations) spent over thirty million dollars on TV advertising alone (see appendix 3). Deceptions are widespread among those products most advertised on TV. For example, Salem, Winston and Kool were among the top advertisers over this period, spending almost 10 million between them on TV over three months trying to convince millions of people that death and disease dealing smoke is actually analogous to fresh air, spring, and cool mountain brooks. The current Newport ad repeats the word "refreshing" five times. Another three of the top ten for the first quarter of 1968 were analgesic companies, with Anacin leading the pack with expenditures of over four and one half million. All three ads are blatantly and persistently deceptive: Anacin claiming that two of its magical pills "contain as much of this (unnamed) pain reliever as four of the other (unnamed) extra strength tablets," pointing out, of course, that one shouldn't take four of the other; Bayer advises that "Doctors and public health officials" recommend aspirin when flu strikes as one of three recuperative steps, and that since Bayer is pure aspirin . . .; Bufferin claims to go to work "in half the time" (see appendix 9).

Other ads currently flooding the TV networks which are deserving at least of inquiry are the Dyno dollars, Esso gas station and other game gimmicks implying advantageous odds of winning substantial prizes, the Firestone Tire claim that its wide oval tires are "guaranteed to go through ice, mud and snow or we pay the tow," the Shetland vacuum cleaner test with the machine's suction supposedly drawing a resistant bowling ball up a plastic tube, the mock Ken-L Ration butchers who can't tell the difference between Ken-L Ration and real beef,[5] the Colgate toothpaste claim that it is "unsurpassed" implying superiority, the assertions of Crest ads, the use of government tar statistics by Pall Mall, the Johnson lemon wax demonstration with unnoticeably disparate rags, the new Geritol ads (in open defiance of a rare standing FTC cease and desist order, see section on compliance, p. 49), the Coldpower claim to "germproof," the Bravo wax representation that detergents absolutely can not dull the surface, the Mrs. Filbert's Diet Safe Margarine ad implying that if you can pull 1'' of flesh off the tricep of hubby he is too fat and will therefore die prematurely (unless saved by Mrs. Filbert's of course),[6] the Ultra-Brite sex appeal (brightness) claims and the MacCleans whiteness test (see appendix 10 for ADA preliminary warning), the Goodyear tire "up to double the mileage" polyglas tire ad, and on and on.

THE FAILURES

The statues in front of the FTC building in Washington, D.C. represent the purpose of the agency in the eyes of the sculptor. Their symbolic message is accurate with regard to the founding statute of the Commission, but stands in stark contrast to the recent history of the agency—both in philosophy and in practice. The statues depict an unruly and powerful horse—American business, a danger and a menace unharnessed, being restrained by a strong and determined young man—the FTC. Such a juxtaposition does not in any way represent the performance or the attitude of the prevalent powers in the FTC. The FTC is not young or young thinking, it is not strong nor does it seek to be strong, and it has no desire to restrain. It would rather give the horse its head, only occasionally throwing a small stone at it. Indeed, the Commission does not view American industry as a wild horse at all, but rather as a docile beast who now and then needs guidance, and every so often a mild "whoa."

The responsibilities of the FTC demand that it see business for what it is—a sometimes unruly animal. The lack of such a posture is evident through the attitudes of its present Chairman. In a typical address before a business audience in North Carolina, Mr. Dixon opened his remarks as follows:

"I've come here with the high hope that I can persuade you that the Federal Trade Commission is not socialistic, bureaucratic, damyankee, tool of the devil that may have been pictured to you. Instead, I'd like to convince you that you've got a friend in the FTC—a real friend . . ." "Needed: A Combined Attack," Before Joint Meeting of the Better Business Bureau and Advertising Club, Winston-Salem, North Carolina, Jan. 8, 1968, p. 1.

It is worth noting that even if the FTC vision were a correct one, and even if it were appropriate for the agency, it would still have one difficulty. For if a businessman were to encounter a competitor's practice of any kind that he would rather not engage in, he must either lower himself and engage in it or commit economic suicide. If he complains to the FTC he is going to have to survive in virtuous poverty for years while the case is being litigated and his competitors rake in their fortunes. Such a businessman would not only have to be pure to fit into the FTC mold—but he would have to be either dumb or suicidal. Most American businessmen are neither. They are no more pure, concerned, dumb or suicidal than the FTC is a young, strong force restraining the economy for the public welfare. The statute lies.

This attitude of the Commission, spawned through connections, backscratching arrangements and cronyism, pervades every aspect of FTC activity. When viewed after a cursory examination of FTC public relations, the failures of the FTC reveal one outstanding feature of its operation—its continual

Footnotes at end of speech.

and consistent violation of its own statute with regard to deceptive practices. The FTC itself is one of the most serious and blatant perpetrators of deceptive advertising in America. It has avoided congressional or other investigation or review for a decade by consistently responding to the vector theory of power—feeding and serving those who would or do threaten it. Substantially, this means feeding and serving big business and congressional interests attached thereto.

For the FTC to work with any effectiveness it is going to have to: (1) detect violations, (2) establish priorities for the most efficient expenditure of enforcement energy, (3) enforce the given laws with energy and speed, (4) acquire effective statutory authority where present authority is insufficient, (5) remain independent from illegitimate interests which could distort, blunt or block enforcement.

1. Failure to detect violations

The assumption discussed above concerning competitor notice of deceptive practices is one of the two more or less exclusive means relied upon by the FTC for the detection of violations. The second is not much more useful, given present economic structure, than the first. The second assumption relied upon by the FTC is "mailbag notice" [7]—reliance for detection primarily on complaints (called by the FTC "applications for complaint") from the aggrieved consumer. These complaints from the public do not provide notice of many problems. Because of product fixing and product complexity, the consumer often doesn't even know he is being deceived. The FTC is not going to receive complaints from a person who is not seriously injured,[8] or who can not trace the difficulty to a particular product, or who does not know of other alternatives, or who does not know what is happening to him either before or after making a purchase, or who perceives the historic futility of appealing to the FTC.

Another fallacy in the mailbag approach can be found in America's ghetto problems. There, as finally shown by the Commission's own study of consumer deception in Washington, D.C. (at the insistence of Senator Magnuson), the system contradicts the Commission's assumptions about deceptive practices. The victims here do not care about the the flood of inferior goods, they are numb through the lack of any higher expectation. If they were to complain they would not know how. They don't have lawyers and they don't know a thing about the FTC.

The mailbag source of complaints is certainly useful, relevant, and can often be indicative of certain types of outright fraud (as in the chinchilla cases). But this source is not sufficient. The FTC must establish vast new means of detection. It must initiate aggressive and intensive investigations, particularly into ghetto areas. It must monitor TV and radio carefully in a general surveillance effort. It must, perhaps, establish FTC investigative teams in every trouble spot, particularly in ghetto areas. It must, perhaps, require pre-submission of certain categories of advertising.[9]

At present, the FTC monitors haphazardly [10] and occasionally, and several sources have confided that the one TV monitoring operation extant (which consisted of several matrons watching the set) was discontinued because they "paid too much attention to the programs" (mostly soap operas) and would leave for snacks, etc. during commercials. It is obvious that there must be alert and extensive monitoring operations with pre-screening by expert engineers, doctors, and other professionals.

It is also obvious that one ghetto investigation, which was rather forced down the Commission's throat will not suffice to remedy ghetto practices. The aluminum siding scandals, magazine sales and cookery rackets, the myriads of get-rich-quick schemes which victimize this group with particular viciousness will not be discovered through talks before trade associations, Washington hearings or mail bag receipts. Distributorship and sales rackets with alleged pyramiding returns, classified sections in magazines filled with lucrative traps and the continuous barrage of false claims and enticements will not be ended without truly aggressive FTC action.

2. Failure to establish priorities

A geographical analysis of the non-textile and fur, non-country of origin cases reveals an interesting territorial aspect in the detection pattern. The survey, a summary of which is reproduced on the next page, was made from all of the FTC's News Summaries from July 1964 to July 1968. Most of the cases are in the suburban vicinity around Washington, with only a few of them relevant to the ghetto area of the capitol.[11] The study shows conclusively that Washington, D.C. receives more than its share of attention. In fact, if the FTC were to spread its activity around by population, Washington, D.C. and vicinity would have to include over 24,000,000 people to justify present concentration. The fact that Washington is so treated is a reflection of two things: the inadequacy of detection measures outside Washington, D.C.[12] and the response to personal problems of Congressmen living in the District or in surrounding suburbs (see discussion of personnel). It is worth noting in this regard that there are several cities in Tennessee which approach Washington in terms of inordinate concentration of attention.

Washington, D.C., vicinity [1]

	Orders [2]
Last half 1964	2
1965	2
1966	6
1967	9
First half 1968	11
Total	30

NOTE.—Sample Size=248. Total % from D.C. vicinity=12.1%.

[1] "Vicinity" is defined as within approximately a thirty mile radius.

[2] Cases are classified according to business location of violator.

Ideally, priorities must be carefully set to help those who need help most. Deceptions and other practices which endanger health and physical safety must come first. The number of persons affected must also be a factor. Practices affecting the poor must be given priority because the poor can afford to lose less. Unconscionable practices engaged in by large corporations must be given great weight, for they have greater potential for harm if unchecked. Most important, the Commission should not proceed in purely random fashion on the basis of complaints received, or on the basis of extraneous motivations—political, geographical, or personal—which distort the criteria of maximum efficiency appropriate to an enforcement policy.

While conducting one of the first studies of the FTC in 1924, Gerard Henderson found a general lack of any system of priorities for case selection: "the Commission is handling too many cases, and it should exercise a greater discretion in selecting those cases which involve questions of public importance. Henderson, *The Federal Trade Commission*, p. 337 (1924). There has never been any argument that the FTC should handle these lesser cases if it could obtain the resources to do so in addition to more momentous problems. But since limited resources are imposed upon it by Congress, it should deal with more important issues. The FTC has not tried vigorously to expand its resources (see section on seeking authority) but, moreover, it has not established an explicit real system of priorities. In addition to its fear of big corporations, its decline in activity and its ineffective enforcement, it is allocating what dwindling energies it has left to the prosecution of the most trivial cases. Its system of priorities, if there is one, is according to the origin of the application for complaint, not according to the importance of the problem. If the source is a favored Congressman (see discussion of personnel) some action is assured. Otherwise, one relies on chance or a personal contact with the agency.

Twenty-five years after the Henderson report, the Task Force of the Hoover Commission made its study. The situation was unchanged: "As the years have progressed, the Commission has become immersed in a multitude of petty problems . . . The Commission has largely become a passive judicial agency, waiting for cases to come up on the docket . . . In the selection of cases for its formal dockets, the Commission has long been guilty of prosecuting trivial and technical offenses and of failing to confine these dockets to cases of public importance." *Hoover Commission Report*, pp. 125, 128 (1949).

More recently, Professor Carl Auerbach conducted an intensive study of the FTC on behalf of the Administrative Conference of the United States. He too observed that "the important question is whether the Commission has a system of priorities by which it is guided in discharging all the tasks entrusted to it by Congress. To date, the answer is no." Auerbach, "The Federal Trade Commission," 48 Minnesota Law Review (1965).

And according to the statistics and all available evidence the answer is still no. Just this year the Commission reconsidered for the third time a case which had occupied over four years of Commission and staff time on the issue of whether or not a watchband chain representing less than 1% of the value of the finished watchband should be explicitly labelled as originating in a foreign country or not. They eventually decided that it should.

What is particularly frustrating about these recurring criticisms is the fact of their persistence for some forty-four years. Still, nothing has been done. In fact, despite numerous specific suggestions, nothing has even been attempted which might improve the situation.

The fact of the present preoccupation with the trivial is reflected in statistics and examples *ad infinitum*. A recent and rather typical reflection of FTC priority failure is found in the 1968 Senate Hearings on appropriations. For some five years the Commission has been mentioning imminent studies of the food market situation. Meanwhile the problem has become more and more critical. Several reports were compiled, none of which seemed to have had any effect. Senator McGee suggested the necessity for a continuous examination or study of the food industry from which concrete and effective action might be taken to correct dangerous trends and rampant practices. The importance the FTC attaches to such an effort relative to its other activities is revealing:

"I agree with you, the Federal Trade Commission was created by Congress to carry on this type of study, but this is something that if we are to carry on, the necessary money should be supplied. For you to say, well, why do you not do it out of what you have—you are going to give us a terrible management problem. At the present time we are receiving some 9,000 complaints per year and we have not as yet dared to say to anyone, 'we are not going to look at your matter, because it is not as important as some of the rest.' We are having difficulty in handling our increasing workload with our available staff.

"I hope you will restore the $225,000 and that you do not overlook our new program to do something about nearly $400 million worth of wool imports into this land." Chairman Dixon before Senate Subcommittee on Independent Offices, pp. 430 (1968).

Footnotes at end of speech.

The fact that Mr. Dixon's statement carries numerous and quite typical misrepresentations, such as the implication that the Congress has failed to supply the money when it really has never been actively sought or requested, the fact that although the applications for complaint are many and increasing, the workload of the Commission, as performance records show clearly, has been decreasing, are matters that will be treated later. What is noteworthy here is the priority allocation given an investigation into a multi-billion dollar industry of necessities which is reaching a crisis stage versus the FTC's favored on-going operation of wool and textile "inspections." [13]

But this is not the only example of wool and textile fixation. FTC preoccupation with these specific laws reflects a theme which ran throughout our study, that is the great importance attached to anything which involves the protection of American business interests. This is not a situation which deserves only condemnation—certainly many of the FTC's legitimate activities, at least theoretically, benefit honest businessmen as well as consumers. But these laws are an ideal "out" for the Commission. They can spend great energy on their enforcement—offending mostly Japanese and other foreign producers, while spending relatively little on deceptive practice transgressions or for that matter restraint of trade activity which offend American big business interests.

The FTC pretense is that Congress specifically requested enforcement in these matters. Of course this is true, just as Congress has called for the enforcement of deceptive practices and restraint of trade. Because these latter issues are more complex and required a more general statute, does not imply that they are less important. Indeed, it is up to the FTC, not Congress, to allocate its own resources in the enforcement of the full panopoly of its legal obligations according to some sensible criteria. This does not mean automatic deference to one particular law over another solely on the basis of the timing of the law or on the basis of political or economic friends who might be alienated.

Further, an examination of FTC priority determinations within the textile and fur category reveals a final myopia.

TEXTILE AND FUR BREAKDOWN [1]

	1963		1964		1965		1966		1967	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Wool, fur, and textile	208	90.8	218	70	189	87.7	201	94.4	179	94.2
Flammable fabrics	21	9.2	94	30	54	22.3	12	5.6	11	5.8
Total textile and fur cases	229	.....	312	.....	243	.....	213	.....	190	.....

[1] For FTC presentation of this breakdown, see 1967 FTC Annual Report, p. 32.

The flammable fabric cases within the Bureau of Textiles and Furs represent the most important category of violation because the protection of life is involved. The statistics above could reflect merely a smaller number of violators in the flammable fabrics area. There are several other factors, however, which give the statistics greater significance. First, there is the small number of civil penalties invoked against flammable fabric violators, despite the potential danger involved. Although the act was passed in *1953*, the first civil penalty action was not brought until *1966* (FTC News Summary, Aug. 8, 1966) and there have been altogether only three civil penalty actions in the field (see section on civil penalties). In addition to this, interviews and conversations with staff and Commission members reveal a lack of concern or a lack of awareness about the need for a higher priority for flammable fabric enforcement *vis-a-vis* wool, fur or textile.[14]

A more explicit example of myopia in this sphere (which also involves collusion and secrecy) is a recent episode concerning a shipment of flammable Japanese rayon. Chairman Dixon cited the assurance of voluntary compliance obtained with regard to this shipment as an example of the advantages of "persuasion" and industry "guidance" before the 1965 House Appropriation Hearings. And indeed the FTC had barred future shipments of the dangerous materials into the country. But the Chairman failed to mention that most of the shipment had already been distributed to clothes manufacturers, and that the staff had strongly recommended to the Commission that the rayon then in the hands of the manufacturers be seized. In fact, the enforcement order or agreement which was the subject of the Chairman's boasting represented a gross and mysterious concession to defense attorney Peyton Ford. Not only is this episode indicative of the callous lack of concern for a matter affecting the fundamental health and safety of the American consumer, but it is an example of the lengths the Chairman will go to protect those interests more dear to his heart, and the brashness with which he will cloak his activities. That rayon is right now on the backs of American men, women and children who are unaware that it is dangerously flammable.

Apart from the failure to attack important problems, the FTC has failed on every aspect of the reasonable priority test described above. It has not focussed on matters which involve physical health and safety, as shown by the above chart and as demonstrated by such failures as the avoidance of any significant action in the area of medical devices. The FTC has not favored the poor or the elderly except for the recent Washington D.C. report. It has not given appropriate attention to the largest companies.

FTC claims of priority planning for the benefit of "those most in need" is a typical example of Commission empty rhetoric. Indeed, the only example the agency can come up with in the annual report of 1967 is that attorneys assigned to the field offices sought out opportunities to address meetings of business and consumer groups to give them a clearer understanding "of the FTC's purpose." 1967 FTC Annual Report, p. 67. The idea is to alert these people of trickery, which the FTC points out hurts the low income people the most. But poverty lawyers in Boston, for example, report virtually no such activity in the ghetto areas. In any case, lower class people are generally not organized into consumer groups. An analysis of the groups addressed by the Commission's Chairman (see section on business collusion) indicates the more likely audiences.

Aside from the wool and textile concentration and the watch chain country-of-origin identification examples above, there are a large number of specific examples of FTC passivity. For while the Commission either ignores or delays requisite enforcement activity against Geritol, analgesics, Firestone, the home improvement frauds, auto warranties, medical devices, the ads mentioned in the first section, and so on, it has spent great sums of manpower and money on the following trivial matters which have been extracted from FTC News Summaries over the past four years:

1. From *News Summary* No. 34, July 3, 1964: "The Federal Trade Commission has ordered Korber Hats Inc., Fall River, Mass., to stop using the word 'Milan' to describe the material of men's straw hats not manufactured in Italy of wheat straw."

2. From *News Summary* No. 25, Nov. 4, 1965: "Parfumerie Lido, Inc., 115 W. 30th St., New York City, is charged in a Federal Trade Commission complaint announced today, with misleading and deceiving the public as to the identity of its toilet preparation." (resemblance to French names).

3. From *News Summary* No. 2, January 26, 1966: "Ogus, Rabinovich & Ogus, Inc., 304 E. 45th St., New York City, has consented to an order forbidding it to falsely invoice and advertise fur products. . . .

"The Commission's complaint charges that the concern has omitted and abbreviated required information on invoices covering various fur products."

4. From *News Summary* No. 19, June 17, 1967: "The Federal Trade Commission has issued a consent order forbidding Adrian Thal, Inc., 345 7th Ave, New York City, a retail furrier. . . .

"They are charged in the FTC's complaint with: omitting and abbreviating required information and setting it forth in improper sequence on labels. Making fictitious pricing and savings claims and omitting required information in newspaper advertisements."

5. From *News Summary* No. 6, Feb. 8, 1968:

"The Federal Trade Commission has issued its consent order forbidding Alex Kirschner, a paint and varnish brush manufacturer trading as Kirschner Brush Co., at 58 W. 15th St., New York City. . . .

"The Complaint charges that, contrary to these representations:

"(1) The brushing part of the brushes marked 'Pure Chinese Bristle' is not made entirely of hog bristle imported from China, but is in fact composed of a mixture of bristle and some other material; and

"(2) The brushing part of the brushes marked 'All Pure Bristle' is not made entirely of hog bristle. . . ."

These examples are not extreme but are quite typical of FTC priorities. They were selected almost at random from a larger sample. A study was made based on this sample, a summary of which is reproduced below. The sample consisted of *all* cease and desist orders from July 3, 1964 to June of 1968. These orders were divided into two categories: (1) textile and fur cases (except for flammable fabrics) plus cases which involved country of origin misrepresentations and (2) all other misrepresentations. It is worth noting that the all other misrepresentations category is not in the least devoid of trivia itself, but the first category generally includes only those matters which are unimportant to the American consumer relative to many things happening in American ghettos or, for another example, on nationwide TV.

The "all other deceptive practices" category is already less than half of the total number of orders issued over this four-year period, but the category can be broken down further. The first chart below presents the number and progression of the first two categories and the second chart below attempts to analyze further the "all other" grouping. When dismissals, the selling of re-used golf balls and oil, the use of fake prizes to entice people and mislabeled soldering irons are subtracted, there are only some 188 cases left from the total of 562 formal enforcement actions over these four years. Of these 188, 30, or almost ⅙, are in the Washington D.C. area. The rest of the nation accounts for the other 158. Of the 158 all but about 40 fall into one of six categories.[15] Five of these categories represent real and important, although very specific, deceptive practice problems. The sixth is the rather primitive bait and switch tactic which is of some importance.

Footnotes at end of speech.

ENFORCEMENT ANALYSIS [1]

	Consent orders	C. & D. orders [2]	Textile and fur case or matter involving country-of-origin protection for business interests [3]	All other deceptive practices
Last half of—				
1964	77	28	60	45
1965	75	27	49	53
1966	108	22	58	72
1967	106	32	78	60
Last half of 1968	72	15	41	46
Total	438	124	286	276

[1] Source is all FTC news summaries over the period indicated.
[2] Normally computed from initial decision stage.
[3] Does not include flammable fabrics.

Further analysis of "others" [1]

Total "others"	276
Minus dismissals	31
Minus reused oil and golf balls	11
Minus fake prizes, fake "regular" price tags, mislabeled soldering irons, etc	46
Subtotal	188

[1] Source is all FTC News Summaries from July 1964 to July 1968.

Of the 188 left of potential importance, 30 are in the vicinity of Washington, D.C.

Of the 158 potentially important matters outside Washington, D.C.:

Flammable fabrics	28
Bait and switch	25
Collection agencies	22
Aluminum siding	19
Chinchillas and insurance	17

But even the statistics regarding these five areas are illusory. The most important category, for example, is probably the home improvement frauds. But the 20 or so cases treated by impotent enforcement procedures have not even scratched the surface. These frauds are so widespread [16] and so severe in their effects that people (usually those who are poor and trying to raise the standard of their home and neighborhood) are virtually robbed of everything they own. Often their house is taken, their wages garnisheed. A number of them commit suicide every year. The effect of the racket on the victim is similar to the impact of the chinchilla frauds (see appendix 14 for sample letters from complainants), but it is much more extensive and the abuses are particularly aggravated throughout America's ghettos. Further, the situation has been getting progressively worse for a number of years. The Commission response to this need, aside from the five or six scattered and toothless [17] orders issued each year as a gesture is contained in the Chairman's response to Senator Magnuson's appeal for action:

"Due to major manpower commitments to the packaging and cigarette programs, the District of Columbia Consumer Protection Project, the automobile warranty and softwood lumber inquiries, bait and switch practices in the sale of frozen food and other promotions, the insurance investigation, and many other efforts reflecting a high degree of public interest, I can give you no assurance that additional personnel can be assigned to attack this swelling workload promptly." Letter from Chairman Dixon to Senator Warren Magnuson, Nov. 28, 1967.

Bait and switch tactics in the sale of frozen foods?

Chairman Dixon's attitude is further amplified later in his response both to the problem and to the suggestions by Commissioner Jones and others that the FTC intensify its enforcement powers for cases of this sort involving personal fraud. Dixon wrote to Senator Magnuson:

"One important factor, constantly on my mind, is that while much of our effort is in the interest of the consumer, the great majority of honest, reliable home contractors in the country are equally deserving of this protection." Letter from Chairman Dixon to Senator Warren Magnuson, Nov. 28, 1967.

The Commission gives much lip service to the final factor in a rational priority system, the size of the company involved in the transgression (see section on misrepresentations). Yet in actual fact the FTC does very little when violations involve larger companies unless those violations are extremely trivial in nature.

The many examples of deceptive ads or at least marginal ads listed in the first section of this report primarily originate with larger companies. A cursory examination of FTC actions reveals the extent of its fear or friendship with big business.

Appendix 4 analyzes the size of all companies on the FTC docket for the first quarter of 1968 in terms of sales, 29 of the 33 companies involved are so small that they are not listed in any major financial directory, which means that their total *assets* are below $500 thousand. Only one company had sales of over $500 million.

The reluctance to go after big companies is often caused by a fear of their vast staffs of brilliant legal manpower. This fear is particularly strong when formal action is envisaged. But there are, in addition, instances of outright pressure from various corporate or legal contacts, often exercised through the Congress.

In a letter dated October 25, 1968 to John Schulz, Chairman Dixon answered a question asking for the size of all deceptive practice respondents in terms of annual sales by admitting that "annual sales are not maintained as general information in deceptive practice matters. This is simply because sales volume is frequently only one of many considerations in assessing the impact of a particular practice." In other words, since this is only one of several elements in a rational priority system, it is not computed at all.

3. Failure to enforce with present authority

The Federal Trade Commission's failure to perform its enforcement duties properly under existing law has several aspects. For one thing, there has been a general decline of formal enforcement activity and an unwise shift towards greater reliance on "voluntary" enforcement tools. Even worse, compliance practices have also become almost entirely voluntary. Finally, all enforcement programs are vitiated by excessive delays.

A. Decline of Formal Enforcement Activity

The decline in formal FTC enforcement activity can be traced back to the early 1960's. Since that time, formal activity has not only declined relative to such indicators of need as the GNP, the growth of the advertising industry, and the increase in the number of applications of complaints received, but has declined in absolute numbers. Except for a brief resurgence in 1967, the number of complaints issued by the Bureau of Deceptive Practices has been steadily declining since 1963 (see chart below). This is in the face of unprecedented economic and advertising growth. Such decline is not indicative of increasing compliance with the Commission's laws, for the applications for complaint have been steadily rising.

COMPLAINTS ISSUED BY THE COMMISSION

	Fiscal year					
	1963	1964	1965	1966	1967	Through 3d quarter 1968
Restraint of trade	230	95	26	94	124	11
Deceptive practices	129	129	66	48	108	27
Textiles and furs	72	85	69	52	89	44
Total	431	309	161	194	221	82

Source: FTC annual reports, passim.

Another indication of the increasing passivity of the FTC in the face of increasing consumer, ghetto and advertising problems, is the trend of investigative activity. The number of investigations completed has steadily and sharply declined from 1964 to the present. This is illustrated by the following chart:

COMPLETED INVESTIGATION CASELOAD

	Fiscal year				
	1964	1965	1966	1967	[1] 1968
Restraint of trade	467	729	492	321	139
Deceptive practices	1,090	981	981	737	422
Total	1,557	1,710	1,473	1,058	561

[1] Through 3d quarter.

Source: FTC annual reports, passim.

Finally, FTC passivity is reflected in the increasing scoping effect in its enforcement efforts. The intense and increasing scoping phenomenon can be seen in the chart below. The applications for complaint are now in the thousands in the deceptive practices area, (6,399 in 1966 and now approaching 9,000). Yet investigations now cover only one in every *eight or nine* applications for complaint. After subtracting Congressional applications which are rarely ignored, this leaves an even lower ratio for response to applications from the public. Note that this application figure does not include every crank letter but is pre-screened to include only those with apparent relevance and ap-

Footnotes at end of speech.

propriate jurisdiction. After this elimination not even one in *ten* of the *investigations* results in a cease and desist order. One out of four, however, does result in an assurance of voluntary compliance (see next part of this section for description). Altogether then, about one of every thirty five applications for complaint results in an assurance of voluntary compliance, and approximately one out of every one hundred twenty five applications for complaint results in formal action of any sort.

The chart below also demonstrates the trend of this scoping pattern over time. The direction is self apparent.

DECEPTIVE PRACTICE CASES

	Fiscal year						
	1961	1962	1963	1964	1965	1966	1967
Percent of avowed applications for complaint that are investigated	30	19	25	23	19	14	11
Percent of avowed applications for complaint that result in the issuance or approval of a complaint [1]	8	4	4	6	4	2	3

Source: FTC annual reports, passim.

[1] Not all of these complaints result in the issuance of formal orders.

One qualifying point concerning the scoping trend deserves comment. For the existence of some scoping can indicate a coherent and rational screening system of priorities. Even the existence of such a system, however, would not alter the fact that less was being done relative to apparent need in terms of numbers. In any event, the section above on priorities demonstrates that this explanation is not available to the FTC.

It is true that the numbers referred to in the preceding charts are not in themselves conclusively condemnatory. It is only in combination with the rising need for action, the lack of a priority system, and other factors treated in this report that they reveal the FTC's administrative failure. Chairman Dixon's increasingly frequent criticisms of the "numbers game" are justified in so far as they apply to the fallacy that more prosecutions of insignificant cases represents significant activity. But this does not work in favor of the Commission in light of overall decreasing trends and in light of the other findings of this study.

In 1965 Civil Service Report's evaluation of the Commission's work load substantiates our findings.

"The traditional measure at the Federal Trade Commission has been casework expressed in such terms as numbers of 7 digit investigations initiated (this is a code identification of cases designated for formal investigation), complaints issued, and cases docketed for litigation. *By all of these measures caseload has been declining. Several managers expressed the fear of running out of work.*

"With the changing mission orientation since 1960 there has been a decline in formal cases from 1,931 that year to 1,421 in fiscal year 1964. During this same period, the number of cases docketed for litigation also decreased: from 503 to 49. (Using the same years, employment increased from approximately 700 to 1,150.)

"Despite these caseload and employment trends, the agency expresses itself in dire need of more employees while giving repeated assurances that the employees in the enforcement bureaus are fully occupied, if not with casework, with providing advice and counsel within the framework of the "new approach." Beyond these assurances of management we must also consider the following, in concert with the workload data above, in making a judgment as to whether the Federal Trade Commission has enough, or perhaps too many employees to accomplish its mission:

"(1) On the basis of widespread comments *there appears to be less than full utilization of Hearing Examiners*

"(2) *High officials spoke openly of the rapidly approaching time when there would be no more case work to occupy the staff*

"(3) *Trial Attorneys, as a reflection of this, expressed concern that they would soon be out of work*

"(4) *It has been suggested, in consideration of the above, to abolish the Bureau of Industry Guidance.* This suggestion is perhaps motivated by the apparent paradox that this Bureau was established to provide the kind of advice to industry that the Federal Trade Commission claims is accounting for that part of the time of the staff in the enforcement bureaus not devoted to cases." (emphasis added) *Civil Service Commission Report*, p. 26 (1965).

Since 1965, when this Report was issued, the situation has deteriorated even more (see above and agency's own statistics in appendix 2), even though the strong language of the Report above indicated an already extreme limit had been reached. All of the suggestions of the CSC were ignored.

B. Shift to Voluntary Enforcement

The general decline in formal enforcement activity at the FTC is matched by a shift in emphasis to greater reliance on "voluntary" enforcement tools. This shift is usually rationalized as being the most efficient means of enforcing the law. Nothing could be further from the truth.

The Commission's major individual voluntary enforcement tool, the assurance of voluntary compliance, lacks any sort of formal sanction. A businessman who gives an assurance merely promises (not even under oath) that he will not repeat the specific deceptive practice challenged by the Commission. A new violation generally brings about another assurance . . .

The so-called industry-wide approaches, guides and trade regulation rules, do to some extent reduce the incentive for a number of competing businessmen to engage in common in a particular deceptive practice. But guides and rules themselves are sanctionless making their effectiveness seriously questionable. (For an unscrupulous businessman has an incentive to deceive consumers *even when* his competitors are dealing honestly.) In other words, the use of such methods of enforcement permits commercial wolves to take not only one "free bite" (as is the case even with normal cease and desist orders since even they do not inflict penalties for past offenses) but two or three.

As *actually* administered, the voluntary enforcement tools are even more inadequate. Trade regulation rules and assurances are often poorly drafted, the former sometimes being too broad (nothing more than restatements of the statutory provisions they are supposed to elucidate), the latter too narrow (forbidding only the *specific* deceptive activity found to have occurred, rather than other likely tactics as well). Advisory opinions are frequently based on inadequate background information and tend to share with trade regulation rules the fault of being mere paraphrases of vague statutory language.

The Commission's methods of checking compliance with outstanding guides, rules, assurances and advisory opinions are abysmal. Under the latter (individual) methods, compliance checks are done by requiring compliance reports, thus sharing the flaws of the cease and desist order compliance program to be discussed later in this section.

Compliance with guides and trade regulation rules is policed by broad-gauged (industry-wide) compliance surveys conducted by the smallish staff of the Bureau of Industry Guidance. The problem is that these surveys tend to be interminable and nothing is done about individual violations discovered until a survey is completed.

For example, the Commission promulgated Tire Advertising and Labeling Guides which became effective in July, 1967. Ever since, according to Mr. Thomas Egan, the (single?) FTC staffman handling it, a broad survey has been going on into the advertising claims of some 200 tire brands. Interview, August, 1968. Said Mr. Egan, "no efforts to secure compliance with these Guides will be made until the survey is complete," and he would not dare to venture a guess as to that far distant date.

Mr. Egan made this statement, surprisingly, in response to a project member's queries about a recent Firestone ad claiming that Wide Oval Tires stop "25% quicker." Mr. Egan himself had strongly suggested (although he wouldn't say it explicitly) that such an incomplete comparison is a clear violation of Section 5(b) of the Tire Advertising Guides, which reads in part "Dangling comparatives should not be used."

The FTC's inadequate handling even of its favored voluntary enforcement tools suggests that the Commission's major reason for adopting them was to enable the Commission to take *some* action in areas in which spiralling demands have made it impossible to hold the fire under the relatively more vigorous cease and desist order procedure. It probably also reflects the sort of solicitude towards business interests discovered throughout this study.

C. Inadequate Use of Formal Enforcement Tools

Even Chairman Dixon realizes that a voluntary enforcement program will not work unless backed up by some strict, binding enforcement techniques, for he stated in the 1967 Senate Appropriation Hearings: "Now the follow-through comes. If most accept this (rule or guide), but if one, two or three or four (or . . .?) do not, we must get tough here, because there is no reason to expect the majority to stay in line long if others do not comply."—1967 Senate Appropriations Hearings, p. 476.

The problem is, the Commission does not get tough with those who violate rules and guides. For example, the normal way of dealing with these violations is to ask their perpetrators to submit assurances of voluntary compliance (not even simple cease and desist orders)! Interview with Chief of Compliance Division, Bureau of Industry Guidance, July, 1968. This is completely unjustifiable, since even on the Commission's own terms one major reason for using voluntary enforcement tools is that they inform otherwise innocently ignorant businessmen about the requirements of law.

If a businessman is on notice about the law, his violation should not be dealt with as though it were essentially innocent (which is what the use of an assurance of voluntary compliance implies).

More important is the fact that the Commission's relatively powerful enforcement tools and sanctions are under-used and ill-applied. The remainder of this section will show (1) that the FTC's program of insuring compliance with outstanding cease and desist orders is grossly inadequate; (2) that the Commission makes insufficient use of its maximum enforcement powers—to seek preliminary injunctions and criminal penalties; and (3) that the Commission's explicit en-

forcement philosophy, exemplified by the above-named patterns of regulation, is erroneous.

The Federal Trade Commission does not have a viable program of checking compliance with cease and desist orders. To begin with, compliance checks are made only of a relatively small number of recent orders. Yet, since cease and desist orders remain valid permanently, they could provide the basis for growing enforcement effectiveness at the FTC. All that would be needed is for the Commission to decide to expand its compliance check program to cover *all* outstanding orders.

As a matter of fact, the FTC recently considered doing just this—and decided against it. In its Budget Justifications for Fiscal 1969, it states that:

"The initiation of a continuing and comprehensive survey of existing orders is *essential to the effective operation of the Commission's compliance program* (!). . .

"(But) despite the value of such a program, funds to initiate it are not being requested at this time, and it will be deferred in favor of projects considered of higher priority (!)" (Emphasis supplied)—FTC Justification of Estimates of Appropriations, Fiscal Year 1969, pp. 95–96.

The second problem with the compliance program is the method of *checking* compliance with outstanding orders, which relies exclusively on requiring respondents to file "compliance reports," reciting that their objectionable practices have been abandoned and that effective steps have been taken to preclude recurrence. Since the accuracy of reports is not independently verified by the FTC and no penalty is threatened or imposed for false reports *per se*, this policing device is so inadequate as to be a sham.

The FTC's methods of dealing with cases of non-compliance are also grossly inadequate, as revealed by analysis of available statistics and by a candid interview with Mr. Barry W. Stanley, Chief of the Division of Compliance of the Bureau of Deceptive Practices. The statutory penalty provided for non-compliance with cease and desist orders is the exaction of "civil penalties" of up to $5,000 per day, FTC Act Sec. 5(1). The Commission invokes this sanction so seldom, however, that it has negligable impact, as the following chart indicates; it also shows that most penalties exacted in the few suits that are brought are relatively small and that there is a strong trend over the last two years against bringing them in any but the textile and fur area.

TOTAL CIVIL PENALTIES, JULY 1964–JULY 1968

News release reference	Area or company	Money damages
Oct. 1, 1964	Vitasafe	$18,000
Oct. 9, 1964	Davidson Vending	5,000
Oct. 14, 1964	Time, Inc	30,030
Feb. 23, 1965	W. B. Saunders	20,000
Apr. 5, 1965	American Candle Co	1,500
Apr. 28, 1965	McFadden-Bartell	35,500
Nov. 4, 1965	Chun King	70,000
Dec. 14, 1965	Americana	100,000
Mar. 2, 1966	Wool	30,000
June 4, 1966	Fur	5,000
Aug 8, 1966	Wool	20,000
Do	Flammable fabrics	35,000
Dec. 16, 1966	do	10,000
Feb. 2, 1967	do	12,000
May 6, 1967	Wool	500
May 22, 1968	do	15,000
	Total (16 cases)	416,530

This record must be evaluated in the context of a large number of violations (more or less serious)—Mr. Stanley stated that "hundreds of notations each year" were detected (usually by complaints from the public or competitors) but dealt with "informally." Informal handling, he explained, means approximately, "Go and sin no more"—thus giving the commercial wolf another free bite.

The most blatant current example of this general sort of compliance activity is the much-publicized *Geritol* case, in 1967 after years of "investigation" and litigation, the FTC had ordered the manufacturer of Geritol to stop misrepresenting the product as a generally effective remedy for tiredness. In spite of this order, later affirmed by the Court of Appeals, Geritol's T.V. advertisements have changed little in emphasis, as most viewers will attest. In an unusual departure from normal procedure—based possibly on impatience with the lethargy of compliance division staff, the Commission itself recently held "a public hearing to hear oral argument to determine whether T.V. commercials for Geritol violate its order to 'cease and desist.'" FTC News Release, Oct. 29, 1968. After the hearings, the Commission issued a finding that the Geritol commercials since the order "not only *failed to comply with the order*, but . . . are no less objectionable than the commercials denounced by the Commission when it issued its original order herein." (Emphasis supplied.) FTC News Release, Dec. 13, 1968.

Having discovered a clear violation of an outstanding cease and desist order, did the Commission announce that it would seek "civil penalties" against Geritol's makers? No, it merely warned them to stop "flouting" the order and to file by Jan. 31, 1969 a report showing what steps were being taken to tone down the commercials; the Commission also threatened [sic] to take steps to assure that its orders "do not continue to be flouted by respondents" in case the report is inadequate. One may well ask what lesson other concerns under FTC orders will learn from the highly visible *Geritol* case—no doubt, that they can feel relatively free to violate those orders without fear of strict FTC response.

The administrative picture shows that the enforcement philosophy of the staff chief in charge of compliance with cease and desist orders is seriously misguided. In fact, in interview, Mr. Stanley gave the impression that he conceives of cease and desist orders merely as administrative directives: violations are not a serious matter in themselves; rather all that has to be done is to seek to secure future compliance by gentle persuasion through time.

This view is just plain wrong, for at least two reasons. For one thing, cease and desist orders represent authoritative judgments of the Commission (and often the courts) that a particular practice constitutes a violation of law. As such, they must be viewed as binding proscriptions on repetitions of the same sorts of conduct. To permit respondents to play fast and loose with such orders is to dissipate whatever authority and integrity the Commission possesses as a Governmental agency.

Even more important is the fact that cease and desist orders presently represent the FTC's most potent generally available enforcement tool. For this weapon to be at all effective, however, there must be a belief in respondents and potential respondents that violations will be severely dealt with. The permissive philosophy and practices of the compliance staff produce the opposite belief, and as a result render the Commission's overall enforcement program even more impotent than it might otherwise be.

It is difficult to avoid drawing a pessimistic conclusion from the enforcement attitudes expressed and implied by the actions of the staff leadership in the compliance division—to wit, that these personnel are overly solicitous of the interest of the businessmen at the expense of those of the consumer. This sort of attitude is found elsewhere in Commission enforcement programs, as is discussed in detail above. It suggests that changes in top staff personnel will have to be made if the Commission is to begin to perform its consumer protection tasks properly.

The second flaw in the FTC's formal enforcement program is its serious underutilization of the strongest enforcement weapons it does possess in the especially important areas of food and drug products and flammable fabrics. First, its record is abysmal as far as seeking criminal penalties is concerned: it makes use of this weapon about as frequently as it seeks civil penalties. Thus in fiscal 1967, no criminal cases were brought, one (involving the fur act!) was filed in fiscal 1966 and none in 1965. FTC Annual Reports, 1967, p. 91, 1966, p. 81, 1965, p. 63.

Second, it almost never seeks preliminary injunctions, although empowered to do so under all textile and fur acts as well as the food and drug provisions of the FTC Act.

Section 5(c) of the latter law gives the Commission an additional power analogous to that of seeking preliminary injunctions, which can be invoked when a respondent seeks court reviews of cease and desist orders, to terminate its challenged activities pending the outcome of judicial review. To our knowledge, the Commission has not invoked this power at all in the last several years.

An earlier part of this section suggests that at least one high FTC staff man (the Chief of the Division of Compliance, Bureau of Deceptive Practices) has a seriously misguided enforcement philosophy. Interviews with other Division and Bureau Chiefs reveal that this philosophy positively permeates the top echelons of the Bureaus of Deceptive Practices, Industry Guidance and Textiles and Furs. This poses a serious threat to reform within the agency, and is thus a grave matter.

Even more grave is the fact that a similar view is shared by a majority of the Commissioners themselves. This is indicated by their interview statements, and by innumerable speeches (especially those of the Chairman).

It is further expressed in the following exchange between the majority and Commissioner Elman over his recommendation that the Commission make a legislative proposal to the 90th Congress to centralize the prosecution of consumer fraud in a single federal agency (not the FTC).

Mr. Elman had been concerned with the fact that presently a particular fraud might simultaneously be susceptible to prosecution by the Justice Department, administrative proceedings by the FTC, action by the Post Office, etc. The majority, in purported response (their discussion was actually mostly beside the point), engaged in a general discussion of the relative effectiveness of criminal penalties and Commission's industry-wide and "voluntary" approaches as enforcement tools. In that discussion, the following amazing statement appears:

"One of the great advantages of the FTC's administrative responsibilities to protect the consumer is that the Commission is *not* limited to action involving 'prosecution for consumer frauds' as Commissioner Elman proposes. The needs of consumers go far beyond protection from fraud. Thus the Commission has power to investigate, hold public hearings, issue guides, prepare informational material and take other informal measures to solve a problem confronting consumers. *These powers are far more efficacious than the single power to prosecute after the problem has taken its toll of consumers* even though this power is also an essential element of law enforcement." (Emphasis supplied.) Commission Statement at 3.

This statement contains a tangled mass of misstatements, distortions and half-truths which cannot all be discussed here. What can and must be commented on is the Commission majority's apparent belief that such enforcement efforts as issuing industry guides are more effective than criminal penalties in protecting consumers.

This is simply not true. Properly viewed, the problem is one of general deterrence, that is, of keeping businessmen from perpetrating their first set of frauds. In discussing general deterrence, it is irrelevant to focus on those

who have already broken the law at a specific point in time; a regulator's major concern must be to hold the line against those who have not yet broken the rules. It thus misses the point for the Commission to criticize criminal prosecutions because they always take place *after* someone has broken the law. Rather, it should focus on the extent to which such a prosecution will keep other potential violators in line.

This is best demonstrated by a hypothetical example. Assume that businessman A violates the FTC Act. In case I, he is prosecuted and convicted of consumer deception (under an as-yet unwritten amendment to the Act). In case II, the FTC tells him to stop, requiring him only to write a letter saying "I've stopped and won't do it again (= an assurance of voluntary compliance)." Now compare the likely impact of these differential ways of treating A on businessmen B, C, D, etc., who all may be considering a little consumer deception themselves. There is little doubt that the enforcement method used in case I is more effective in keeping the maximum number of businessmen in line.

It thus seems clear that since tough enforcement is much more efficient in its broad impact than a mild, voluntary approach, it is highly irresponsible of the Commission to neglect the former in favor of the latter, while at the same time complaining of inadequate resources. This is especially true since all criminal prosecutions sought by the FTC would actually be carried out by the Justice Department, thus permitting the Commission to tap some of the Justice Department's resources.

In addition to all this, the Commission majority's above statement seems to imply that FTC voluntary enforcement methods, unlike criminal prosecutions, are able to stop deceptive practices before they have a chance to harm consumers.[18] This entire report demonstrates how far such an implication would be from the truth, because of the prevalence of inadequate means of detecting violations and compliance, inordinate delays in acting and lack of publicity.

D. Failure to Enforce Promptly

In deceptive practice cases it is absolutely necessary, due to the enforcement mechanisms of the FTC, to process claims with the utmost speed. The FTC is empowered to enforce its mandate through the issuance of cease and desist orders. The cease and desist orders are not of themselves punitive measures. They are merely notices to advertisers to cease and desist from stated practices. Thus, the FTC enforces its mandate by bringing civil suit against violations of standing cease and desist orders for penalties as specified in the FTC Act. What this means is that if an advertiser engages in a given practice he is subject to FTC action through procedures which give him adequate notice of imminent punitive measures. If the process of seeking cease and desist orders and checking compliance with them is delayed for several years it becomes seriously ineffective. A cease and desist order accompanied by enforcement which takes 3 or 4 years to effect is not going to deter in the slightest a typical ad campaign which by that time has been over for two or three years. Only longstanding practices like the perennial Geritol ad are subject to effective enforcement by this method. Geritol's maker is now flouting a standing cease and desist order and is not being sued under the penalty provisions (see sections of Business Collusion and voluntary assurances).

Following is a chart revealing the average delay factor for deceptive practice cases on the docket in the first quarter of 1968. Note that these cases are minimally contested by the companies. The average number of years from investigation to complaint issuance in deceptive practice cases appears below. This figure alone is over two years. And these are not cases which involve the kind of research and preparation demanded in, say, a restraint of trade case.

DECEPTIVE PRACTICES TIME ANALYSIS

Code:
Violation 1=General.
Violation 2=Insecticide.
Violation 3=Trade mark.
Violation 4=Wool Act.
Violation 6=Fur Act.
Violation 7=Flammable Fabrics Act.
Violation 8=Insurance.
Violation 9=Sec. 12 of FTC Act.
Violation 10=Textile Act.

Time code:
A=Average in years from investigation to complaint issuance.
B=Average in years from the complaint to the start of hearings.
C=Average in years from the start of hearings to the conclusion of evidence.
D=Average in years from the conclusion of evidence to the initial decision.
Total=Average time in years from the investigation to the initial decision.

CHART INCLUDES ALL CASES IN PROCESS DURING THE FIRST 4 MONTHS OF 1968

Violation	Number	Number dismissed	A	B	C	D	Total
1	38	7	2.26	1.56	0.14	0.31	[1] 4.37
2							
3							
4							
5							
6							
7							
8							
9	5	0	3.5	1.3	.17	.33	5.20
10	1	0	4.1				
Total	[2] 38	7	2.26	1.56	.14	.31	4.37

[1] Not sum because some are in stages A, B, C, or D now.
[2] 9's and 10's are also classed as 1's.

The total delay factor averages over 4 years, and this includes only the time from the investigation to the initial decision of the Commission on the issuance of a cease and desist order. There are still further measures available to the company, and some have stretched out litigation over 20 years and more.[19] Until the end of that four year or more stretch, the company can flaunt the FTC. There is no punitive power until after the establishment of the order and very few are going to take seriously the enforcement power of the agency until actual sanctions are imminent.

Even in those areas where deceptive practices are of long standing or where companies are too small to oppose the Commission legally, there are other delay factors built into the Commission's present operation which dull enforcement effectiveness. For after the cease and desist order is established, or the consent order, etc., there is a need to check compliance. Failure to comply beyond this point should result in a civil suit by the Justice Department for statutory penalties. (See section on civil penalties, p. 48, for failure to act in this area.) But here too there are delays in the process of seeking and verifying compliance. Technically, there is a requirement that compliance reports be filed within sixty days by the company demonstrating adherence to the order. But many cases in FTC docket files indicate that long periods of time—often a year or more—elapse between the effective date of cease and desist orders and the date of acceptance of a "satisfactory" compliance report. In a substantial fraction of the cases studied, no compliance report is apparently ever filed.

One of the Commission's indirect enforcement weapons is the power to inquire and investigate. To this end, Congress has granted the Commission broader investigatory powers (See Section 6(b) of the FTC Act) than any other regulatory agency. But here, as with the direct enforcement means, delay minimizes much of this power. The reasons behind this delay are less likely to be sloth, inefficiency or bad law than the delay problems above. They are more likely to involve direct business collusion, with delay serving as a weapon to cloak an issue or problem in secrecy and to avoid action on it. The use of the excuse that something is "under study" for years and years allows the Commission to keep the matter from public scrutiny under an exemption in the Freedom of Information Act while at the same time giving the impression that something is being done or will shortly be done.

The Commission's behavior with regard to automobile advertising, drugs, auto warranties, food and gasoline games, tires, medical devices, and many other problem areas can be traced to purposeful delay to protect certain interests. Some of the delays are necessary, but a clear pattern emerges from an overall examination of the data in conjunction with other findings to be discussed in the section on personnel. There is an announcement of a study into a given area with a target date specified. This is all accompanied by great fanfare and solemn expression of concern. When the due date approaches it is quietly extended and extended again.

An investigation of the deceptive claims of analgesic companies commenced over a decade ago. Appendix 9 traces the history and disposition of the various investigations which have resulted, primarily, in four dismissed complaints after years of tests and years of still continuing deceptive ads (see FTC News Summary of 4–13–65).[20]

The deliberate suppression of the report on auto warranties (see sections on secrecy and on personnel) is another example of delay for political purposes. The report was initiated in 1965 and was only released in late 1968 because Ralph Nader acquired a copy and pre-released it at that time. No one can or would dispute that a report should be divulged to everyone only after it has been completed. But the FTC first submitted the report, confidentially, to industry interests so that they could check the accuracy of certain data without giving consumer groups (e.g. the Consumer's Union) the same opportunity, and then delayed release although the report was in fact in final form.[21] The real reason for the proposed plan for suppression lay in the contents of the report, which was highly critical of GM, Ford and Chrysler. Whether release would have eventually occurred is academic now, but there is little doubt based upon our interviews that Chairman Dixon was determined to suppress the report at least until after the election to avoid alienating Henry Ford II and other business interests who were contributing heavily to Hubert Humphrey's campaign.

The delay and secrecy manipulations with regard to Firestone, in the face of blatant deceptions, are revealed in an exchange of letters concerning two specific ad campaigns.

The first ad campaign by Firestone commenced in the fourth quarter of 1967. It was composed of massive circulation media advertisements headlined by the message: "Raymond C. Firestone Talks About the Safe Tire." The copy went on to say that "On November 10, 1967, the Federal Department of Transportation issued a new set of tire safety standards. Firestone tires already meet or exceed these new tire testing requirements and they have for some time. . . . All Firestone tires have met or exceeded the new testing requirements for years."

A request to Mr. Firestone for substantiation of this statement went unanswered. Letter from Ralph Nader to Raymond C. Firestone, January 1, 1968. Since the advertisement appeared first in most major news magazines in the latter part of 1967, the FTC must have known about it. In case its surveillance was wanting, the Commission

Footnotes at end of speech.

was notified and a request was made of the Commission to obtain substantiating data from Firestone. Letter from Ralph Nader to Mr. Paul Rand Dixon, February 13, 1968. The argument was made that any company soliciting a customer's trust with such safety claims ought to be ready to back these claims up, especially since a reference to surpassing a specific government standard of safety increases the credibility of the claim. Refusal to produce documentation make such an ad presumptively deceptive. In reply the FTC asked the writer for information showing the ad to be deceptive, instead of using its unique legal powers to obtain substantiation directly from Firestone. Letter from Mr. Paul Rand Dixon to Ralph Nader, February 19, 1968. This is a typical illustration of passivity by the Commission when it is asked to confront a large corporation. Chairman Dixon did say that the Commission had opened an investigational file, but not an inquiry under Sec. 68; the question of an inquiry could not be decided "until an investigation is completed," according to Mr. Dixon. Letter from Mr. Paul Rand Dixon to Ralph Nader, March 26, 1968. An investigational file is automatically opened on receiving a letter of complaint—a classification that permits all such materials to be confidential under the FTC's interpretation of the Freedom of Information Act. The nominalism here is shown conclusively by the total lack of interest by the Commission in pursuing three highly promising avenues: (a) a large number of complaints, regarding Wide Oval Tires, in the possession of Senator Gaylord Nelson; (b) failure of tests by Firestone tires conducted by Electrical Testing Laboratories for the National Bureau of Standards in January 1966; and (c) disclosure that the National Highway Safety Bureau had received results of its safety testing program that showed 8 Firestone tires failing one or more federal safety standards. (New York Times, November 30, 1968). Although knowing of these developments, the FTC *did not even make an inquiry* of any of these sources. The investigation was a fraud.

The second Firestone advertising campaign of deception also began in 1967 and continues to the present time. The ad touts the Wide Oval tire by saying that it "grips better. Starts faster. Corners easier. Runs cooler. Stops 25% quicker." [22] This is a deceptive advertising practice *per se* according to S 5(b) of the FTC's own Tire Advertising Guides, discussed on p. 45.

No investigation is necessary; no substantial allocation of time or funds are required. These ads comprise a national campaign on the part of a very large tire manufacturer via the mass media. The deception is serious, simple and clearly communicated to millions of readers and is effective in inducing purchases of this type of tire. The Commission, therefore, did nothing.

In August, the Commission was urged to act, however belatedly, against this deceptive advertising. Letter from Ralph Nader to Chairman Paul Rand Dixon, August 6, 1968. On August 15, 1968, Chairman Paul Rand Dixon replied that the matter "is receiving consideration. You may be assured that such action as may be found warranted by the facts will be taken in the public interest." Letter from Chairman Paul Rand Dixon to Ralph Nader, August 15, 1968. On September 20, 1968, Mr. Nader wrote to Chairman Dixon notifying him that a Ford Motor Co. representative had told the National Highway Safety Bureau (recorded in a transcript) that "The braking capability of the Wide Oval Tire is no greater than that of the standard tire."

Despite years of investigations and industry guides, stretching back to 1936 and extending up to 1966, the Chairman's response to a literal and specified violation is to refer to yet another investigation, thereby excusing the concealment of Firestone's answer to a legitimate citizen inquiry.

It is common to discover that a still pending investigation was used five or six years *ago* to justify inaction then. For instance, there is much activity now about food and gas station gimmick games. They are rather commonly deceptive in several respects, and there are often restraint of trade questions involved as well. Pressure has been building up recently and earlier this year, Rufus Wilson, Chief of the Division of General Trade Restraints, found it necessary to make the standard cooing about another investigation of promotional games in the food and oil industries. Rufus Wilson, memo. on non-agenda matter (Petroleum Report), Feb. 20, 1968. Now, in December, 1968, it appears that a staff report on this subject will finally be made public—a member of the press having secured a copy and reported on it. *Advertising Age*, Dec. 30, 1968, p. 1.

That article reports that the Commission is also finally considering promulgating a trade regulation rule covering these games. Of course, this means it will hold additional hearings, delaying regulation for another substantial period of time. But this is not the first time this has happened. Back in 1963 Joseph Shea, Secretary to the Commission, wrote with regard to file No. 643 7007:

"By letter to William J. Jeffrey, President, Merchandising Marketeers, dated Nov. 15, 1963, the Commission granted an advisory opinion concerning a retail food promotion scheme.

" 'This is to advise that the advisory opinion is rescinded. This course is required in the public interest because the subject matter of that advisory opinion is *currently under investigation* by the Commission.' "

The Federal Trade Commission has always considered lottery type inducements, particularly when deception was involved, as violative of the deceptive practice laws. Michael J. Vitale, Chief of the Division of General Practices of the Bureau of Deceptive Practices has written ". . . the element of consideration need not be present in order for a scheme to be illegal." "The Commission found it sufficient to establish the illegality of the scheme that (the participant's) return would vary greatly with his willingness to take a chance." [23] How then does the Commission rationalize the need to launch continuous and never-ending investigations when the only meaningful obstacle to enforcement (the legal argument that consideration is lacking or that people have to pay directly for a chance) is not at issue? Perhaps the answer can be found in the size of the companies involved in these deceptions. Some of the corporations deceiving via this means include Texas and Esso Oil and large supermarket chains.

Not only have investigations been launched in 1963 and 1968, but when pressure continued to mount from complaining consumers after the 1963 effort faded into an empty void, another investigation was launched in 1966 to fill the gap. (See FTC News Release of Oct. 29, 1966.) In 1967 the Bureau of Economics requested and received authority to use S. 6(b) subpoena power to gather information from the game operations. In March of 1968 the Bureau issued a *preliminary* report which in itself contains enough information to bring immediate action against a dozen game operators.

For quite apart from the fact that almost all the games seem to be deceptive, there are specific games which are patently deceptive even given the legality of any and all gambling. The big promotion "Let's Go to the Races" is a typical example. Quoting from a consumer's letter in the Bureau of Economics as yet unreleased report of March 1968: ". . . which is broadcast over television through all States and in our opinion is a rigged and deception scheme in which the main factor of success exclusively depends upon creation of atmosphere of a false illusion . . . 'Let's Go to the Races' were filmed long time ago in Sunshine Race Track in Florida (which is not even now in existence) . . . Public is unaware also that on tickets which they are getting, the winning horses were already prearranged by the promoters with a chance to win five dollars being about 2,000 to 1." [24]

The facts in this letter have been substantiated through the investigation of this group and the report contains literally hundreds of complaining letters which outline blatant and fraudulent deceptions in nearly every part of the country.

A final note is that Congress has helped the Commission to investigate this problem—Rep. Dingell has held hearings on the use of gasoline promotional games, and in the agency's possible forthcoming staff report, most of this discussion of these games (as opposed to retail grocery store promotions) is based not on FTC data but on Rep. Dingell's hearings. *Advertising Age*, Dec. 30, 1968, p. 8, col. 1.

The story behind the issuance just this year of the FTC report on the misgrading of softwood lumber is yet another indication of the typical delay factors. The Commission admits in its introduction:

"The question of possible misgrading of softwood lumber has confronted the Commission almost continuously since July of 1962. On March 13–15, 1967 (emphasis added), a hearing was held on the subject before the full Commission." *FTC Report on Misgrading of Softwood Lumber*, May 6, 1968, p. 1.

The report here referred to details the administrative history and is a revealing picture of the profound and endless paper shuffling which must precede even the most elementary reports:

"See File No. 632 3104, opened July 24, 1962. This matter led to the establishment of a general file, File No. 652 3319 captioned 'Lumber Grading Agencies and Distributors, Unnamed,' investigations under which resulted in the establishment of two additional files (File Nos. 662 3151 and 662 3154). On October 12, 1966, the Commission approved a proposal by the Bureaus of Industry Guidance and Deceptive Practices to hold a hearing . . ." *Id.* p. 50.

The extensive delays occurring during "investigations" in the matters discussed above involve the Commission's so-called "voluntary" and "industry-wide" enforcement tools (advisory opinions, industry guides, trade regulation rules). Taken together, they indicate that these methods of handling violations are not more effective than the traditional "formal" approach by cease and desist orders. In fact, they may be worse, since the fact of asserted violation is at least made *public* (by issuance of a complaint or consent agreement) when the cease and desist order track is chosen.

4. Failure to seek effective resources and authority

A. The Need

During the last decade, the Federal Trade Commission has done too little too late to improve its enforcement capacity. This section documents its relative failure to seek adequate funds and manpower as well as statutory authority—to carry out its "deceptive practices" enforcement role successfully.

There is little doubt that the Commission needs to multiply its staff and budget many times in order to enforce its consumer-protection statutes adequately. There should be no need to demonstrate, for example, that an agency devoting perhaps half [25] of its total of 1200 staff members and annual budget of a little more than $14,000,000 to consumer protection cannot hope to adequately police the merchandising activities of hundreds of thousands of United States businesses. To take a relatively trivial example, Charles A. Sweeny, until his recent death Program Re-

Footnotes at end of speech.

view Officer at the FTC, said in an interview that home improvement frauds alone are so widespread that to stop them the FTC would have to spend an amount equal to its *entire* present "deceptive-practices" budget.

Another random statistic which is suggestive of the magnitude of consumer problems is the following figure relating to the incidence of mail fraud in the United States. Speaking at a Seminar on Consumer Protection sponsored by the Los Angeles Federal Executive Board, 17–19 October 1967, p. 58, Mr. C. J. Lerable, a postal inspector from Hollywood stated that "in 1966 the Postal Inspectors conducted investigations which led to 13,000 arrests . . ." (emphasis supplied)

B. Failure To Seek Adequate Manpower and Money

The FTC has failed in two respects to gain the leverage on Congress that would enable it to acquire additional powers and to acquire needed manpower. The first failure is self evident from the findings presented in this report. The FTC has not performed in such a way as to justify a further investment. Too much is likely to be wasted in misplaced priority determinations, and in ineffective enforcement procedures. The second failure is in the FTC's failure to crusade directly with the requisite imagination and vigor for expanded authority and appropriations. The fact that the Commission is quite content to let itself slowly whither into meaningless pontifications, with an occasional grandstand play, is revealed through the appropriations requested over the past decade and through the hearings incident to these requests.

For example, in the 1965 Senate Appropriations Hearings for the FTC, Chairman Dixon analysed the Agency's requests for budget increases as follows:

"This calls for an increase of $1,055,250 over the 1964 appropriations, but more than 80% of this increase will be required by costs over which our agency has only limited control—including $250,000 for a half-year cost of the January 5, 1964 pay raise . . ." 1965 Senate Appropriations Hearings, p. 388.

In other words, although the FTC requested new funds, they were not funds to be applied to expanded enforcement.

Likewise, the Commission's request for 27 new personnel that year did not imply imminent general expansion of consumer-protection—since 25 of the 27 were for the relatively unimportant Bureau of Textiles and Furs. *Id.*

When Senator Magnuson asked Chairman Dixon whether he could get along in the other bureaus without additional manpower, the Chairman replied:

"Well, we would be in the same position we are in on anti-trust, and our workload increases, and we know all we can do is promise we will do the best we can." *Id.*, p. 415.

(Of course, such posturing is not all that the FTC can do—see Recommendations).

The Chairman's passive attitude is consistent. In the 1967 Senate Appropriations Hearings he stated heroically that—

"Although fiscal 1967 is certain to confront the Federal Trade Commission with the heaviest workload in its history, the Commission is determined to tackle it with no increase in staff. . . . Not only are we not asking for additional personnel but we will be required to absorb $80,000 for mandatory within-grade promotions." 1967 Senate Appropriations Hearings, p. 474.

And in 1968, more than one-third of the Agency's requested budget increases was for 26 new employees to carry out new enforcement duties under the Fair Packaging Act (1968 Senate Appropriations Hearings, p. 419), meaning no addition to important existing programs.

It is also necessary to take into account an additional factor when measuring the significance of the FTC requests. A large increase in personnel, say 6% or so every year, would just keep the FTC *even* relative to the GNP, even assuming no new enforcement duties. Actual increases do not even match this low standard, as the following chart illustrates.

Year	Actual appropriation	Actual personnel	Approximate personnel necessary to keep even with GNP (from 1962) [1]
1962	$10,345,000	1,126	
1963	11,472,500	1,178	1,281
1964	12,214,000	1,144	1,351
1965	13,459,107	1,175	1,426
1966	13,500,000	1,145	1,506
1967	14,403,000	1,170	1,581
1968	15,281,000	1,230	1,671

[1] Note that other indexes of appropriate FTC growth, including the merger incidence rate, the growth of advertising, and the receipt of applications from the public for complaint, generally far outstrip the GNP in expansion over this 6-year period.

C. Failure To Seek Adequate Legislative Authority

The preceding discussion to some extent foreshadows the final FTC failure discovered in our project: that it has done much too little to seek the expanded statutory powers necessary to run a proper enforcement program in the contemporary economy.

Two basic additional enforcement powers seem to be needed—the power to seek criminal penalties for certain violations and to seek preliminary injunctions in appropriate cases. The former is required because it is necessary to compel widespread compliance with the FTC's consumer-protection statutes. In other words, the threat of criminal penalties multiplies the efficiency of an enforcement agency by what is known in criminal law theory as general deterrence. There are some problems in applying criminal statutes effectively to corporate behavior, but these are not insuperable (for example, a duty can be imposed on corporate officers to learn of and control the activities of their employees). In any case, the level of need is so great, as to require this *sine qua non* of effective enforcement. In fact, the more limited an enforcement agency's resources are, the stronger the argument for criminal penalties, since these produce maximum general deterrence, that is, are the most effective in inducing the greatest number of potential law violators to behave. (This is especially true of highly rational entities like corporations.)

It is particularly important to apply criminal sanctions to dishonest corporate behavior, for it is far more damaging in contemporary America than all the depredations of street crime. Law and order must not stop at the doorstep of these massive and influential institutions.

The fact is, however, that the Commission has failed to press Congress vigorously for broader powers to seek the imposition of criminal penalties for violations of the deceptive practices language of the FTC Act. In fact, the Chairman has recently gone on record specifically as *opposing* such powers, according to testimony given this year on a Senate consumer deception bill sponsored by Senator Magnuson.

The Commission also requires the power to seek preliminary injunctions in appropriate cases. This power is necessary to a respectable enforcement program for two reasons. First, and most important, it is the *only* available means of protecting the interests of the consuming public pending the disposition of a case—which, as will be seen, is likely to be a lengthy affair. Preliminary injunctions, which would be sought in cases in which violations of the FTC Act were relatively blatant, would operate to require any respondent charged with such violations to *terminate* the objectionable practices pending disposition of the case.

The second reason for preliminary injunction power involves delay itself: it is reasonable to assume that fewer respondents will "waste" commission resources by litigational delaying tactics where their major incentive to delay (continued lucrative returns from a challenged practice) is cut off by injunction. Thus, the net effect of a properly administered preliminary injunction power will be to decrease some of the extreme delays of the FTC's present enforcement procedure and at the same time to decrease the Commission's expenses in connection therewith.

Once again, over the last seven years, the Commission has done little to expand its preliminary injunction powers. Its "Legislative Proposals" (published each year in the agency's Annual Report) including no reference at all to such powers in 1961 or 1962, 1963, 1964, 1965 or 1966.[26] Only in 1967, with the winds of consumerism blowing hard, and with goading by the Senate Commerce Committee does the Commission propose legislation which would empower them to "bring suit . . . to enjoin . . . acts or practices [which violate "any law administered by the Commission"]. 1967 Annual Report 75 (Legis. Proposal # 3.) This proposal, and a similar proposal (# 6) of its 1968 Legislative Proposals (FTC, Proposed Legislative Program for the First Session of the 91st Congress, 7) parallel a bill, S. 3065 ("Deceptive Sales Act") introduced by Senator Magnuson in the 90th Congress which would amend the FTC Act to provide power to seek temporary injunctions against the dissemination in commerce of any act or practice which is unfair or deceptive to *consumers*. In other words the FTC was not the moving force behind this legislation. It merely stepped into line where someone else had taken the lead.

The FTC consistently plays the same weak role in pressing for legislation and this is an additional serious flaw in its performace of its duties. To show the inadequacy of the Commission's legislative record over the past seven years, it is sufficient to list the few legislative proposals it *has* made. Additional proof is provided by the infrequency with which Congress has acted on the agency's proposals. The following chart provides this information.

FTC legislative proposals, 1961–68

A. Number of proposals made by year: 1961, 4(2); 1962, 2(1); 1963, 3(1); 1964, 4(1); 1965, 4(1); 1966, 4(1); 1967, 5(3); 1968, 4(4).[27 28]

B. Nature of Deceptive Practice Proposals and Action Thereon:

Brief description of proposed legislation	Year(s) in which made	Legislation enacted?
1. To empower FTC to issue temporary cease and desist orders (or "temporary restraining orders").	1961, 1962, and 1963	No.
2. To provide for certain disclosures in prescription-drug advertising	1961	No (?)
3. To include flammable blankets within Flammable Fabrics Act [1]	1964, 1965, and 1966	Yes.
4. To empower the FTC to seek preliminary injunctions in case of violation of any law administered by the Commission.	1967, and 1968	No.
5. To provide criminal penalties for violation of FTC Act by "hard core" rackets (later repudiated in testimony by chairman and not recommended in 1968).	1967	No.
6. To amend Cigarette Labeling Act in various ways (including in 1967 a recommendation to ban all cigarette advertising).	1967, and 1968	
7. To support the "Truth in Lending Bill"	1967	Yes.
8. To amend McCarran Insurance Act to give FTC broader jurisdiction over the insurance industry.	1968	
9. To support "cooling off period" legislation covering door-to-door sales	1968	

[1] The Commission itself had earlier interpreted this act not to cover blankets. See discussion below on this incident in the context of interest-group pressure on the agency.

Footnotes at end of speech.

Given the FTC's mandate and massive statutory power to gather information on consumer problems, its petty legislative record is inexcusable. It tends to emphasize minor matters (thus, a recurrent proposal in the middle 60's was to amend the Wool Products Labeling Act to cover productions made from reclaimed wool, e.g., 1966 Annual Report at 43) and to ignore or take no stand on recurrent, pressing problems. Thus, in 1967, the Commission refused to follow Commissioner Elman who would have recommended legislation to deal with problems of drug brands and prices, product warranties, consumer representation and hazardous household products. Separate Statement of Commissioner Elman, 1–5. The Commissioners' reasons for refusing to adopt Commissioner Elman's suggestions were varied, but prominent was one which mimics (probably expresses) top staff excuses for constantly deferred enforcement action (See section on delay)—the claim that much more time is needed to investigate these problems thoroughly. Said the Commissioners of Elman's suggestions:

(1) On drug legislation:

"The Commission is aware that the problems of drug pricing are currently under consideration by Congress. . . . The Commission has not had any opportunity to study the question[s]. . . .

"The Commission cannot at this time reasonably propose to Congress the adoption of legislation on the subjects . . . without accompanying such proposals with careful memorandum analyzing in depth the need for such measures . . . ." Statement by the Commission on its Legislative Proposals 1. (hereinafter "Commission Statement".)

(2) On statutory product warranties:

"The Commission has not included a proposal for legislation on the question of statutory warranties since it is of the view that a specific legislative proposal cannot and should not be put forward until the feasibility of such a statute has been thoroughly considered, . . . The Commission does not have the kind of precise information as to the dimension [sic] of the problem which it needs in order to propose solutions, legislative or otherwise." *Id.* at 2.

Now, in these two cases it is obvious that the Commission's excuses are more transparent than usual, for the Commission *has* been studying these questions! It has had various problems of the drug industry under investigation (at the insistence of Congress) since as early as 1960, as disclosed by Appropriations Hearings, for example, House Independent Office Appropriations, 1960, pp. 301–2; 1963 *Id.* at 956. And as for warranties, at least as far as automobiles are concerned (by far the most significant problem area at the moment), the Commission has been carrying on an investigation since 1965 (FTC News Summary, 1965) and has just issued a 250 page staff report on this problem. While more "precise information" *may* be needed, the Commission's position seems rather disingenuous, to say the least.

(3) Hazardous Household Products:

"On May 31, 1967, the Commission . . . directed its staff to undertake an investigation of electric shock hazards in household electric appliances . . .

"On October 3, 1967 the Commission . . . directed the staff to complete its overall investigation . . . and to report its recommendations to the Commission.

"It would be irresponsible for the Commission, therefore, at this time to make any recommendations. . . .

"The Commission['s] . . . own studies have not yet been completed."

Here, the Commission writing in mid-1968, is obviously right to say that it cannot propose legislation, but it must take responsibility for the failure of its staff promptly to complete important investigations (dangerous electric shocks). This sort of rationalization for Commission non-action, which is a frequent occurrence, is particularly objectionable for it constitutes an attempt to rationalize later failure to act on the basis of *earlier* failures—a sort of puling oneself down by one's own shirt-tails.

TECHNIQUES OF MASKING FAILURE

I. Commission misrepresentations

Given what the project has discovered about dimensions of the Federal Trade Commission's failures, the question arises how the agency has been able to maintain a relatively good public reputation for so long.

The success of the FTC in the obfuscation of its failures can be traced to three factors: (1) the great energy devoted to public relations activity, (2) the use of secrecy, (3) the collusive relations of the FTC with the business and government forces capable of challenge or inquiry.

That a continual torrent of false and misleading public relations emanates from the Commission is a theme which runs throughout the study. This output extends from false claims about detection efficacy, and gross deception about priority policies to misleading statistics about enforcement effectiveness. It is disseminated through various channels, including the numerous speeches made by the Chairman, his testimony at appropriation hearings before Congress (and the budget justifications submitted in connection therewith), Annual Reports, News Summaries and News Releases, and special reports.

The standard devices include declaring all potential problem areas "under study" for years, taking action against a few easy and visible targets in a given problem area, making overly optimistic estimates or "projections" of work to be accomplished in the future, the creation and removal of differing categories of statistical analysis as the need for an improving image requires, and the failure, with certain exceptions, to face facts which might call attention to what is happening in ghetto America or in the advertising offices of corporate giants.

The Annual Reports are a prime example. They outline a glib little world which simply does not exist, discussing certain (generally unimportant) problems which are impliedly the only ones extant, and listing the countermeasures taken to deal with them. They are filled with colorful, and mostly meaningless, pictures and charts, such as a picture of the Better Business Bureau of Orange County (see 1967 Report, p. 69), or a chart from the *Pit and Quarry Handbook* showing "Capacity Concentration in the Portland Cement Industry, 1950 and 1964" (see 1966 Report, p. 49). The 1967 Annual Report devoted 25 pages to printing a list of ancient (mainly pre-World War Two) FTC investigations, but only four pages to consumer deception.

The image put forward by the Commission, and many other facts of its operation, is systematically false. It is, as one official put it, "all puff." The Annual Reports, and indeed all FTC public relations, gloat over the murmuring of such noble phrases as:

"In selecting matters for attention, a high priority is accorded those matters which relate to the basic necessities of life, and to situations in which the impact of false and misleading advertising, or other unfair and deceptive practices, falls with cruelest impact upon those least able to survive the consequences—the elderly and the poor." 1967 FTC Annual Report, p. 17.

And we are assured by the Chairman's testimony in the hearings of the Senate Subcommittee of Independent Offices for 1967 that "with our limited staff I can say to you that we are paying more attention to perhaps the 200 largest corporations in America that control in our basic economy a substantial share of the sales in the various industries." The absurdity of these representations should be clear from the sections above on priorities.

Another misrepresentation involves the FTC compliance monitoring program for advertisements. In a 1962 Advertising Alert (No. 2, Feb. 12, 1962) the FTC states that "The review of written continuities is supplemented by some direct monitoring of broadcasts . . . Attorneys determine whether the Commission Orders to Cease and Desist, and Stipulations, are being violated. Other commercials are analyzed to determine the effectiveness of Trade Practice Rules and the Guides program." The discussion of detection and compliance above reveal the falsity of these representations.

In a typical speech before the Division of Food, Drug and Cosmetic Law of the ABA ("Guidance and Enforcement," Before Division of Food, Drug and Cosmetic Law of the American Bar Association, Montreal, Canada, Aug. 10, 1966, p. 7), Chairman Dixon outlines a rather simplistic picture of the theoretical advantages of the FTC's voluntary enforcement measures. He categorically states that "the Federal Trade Commission has faced up to the realities of its law enforcement job to an extent unprecedented in its 51 years of existence." The Chairman probably knows how ironically true his statement is: The new precedent is not one of dizzy heights but of abysmal depths. The voluntary measures have failed entirely because of a number of fallacious calculations previously discussed in this report, and the formal enforcement measures are declining in number. In addition, the Commission has made more specific claims concerning, for example, its quick dispatch of cases in contrast to the findings herein (see section on delay).

Another representation made by the FTC through Chairman Dixon is its adherance to the principles behind the recent Freedom of Information Act. In a recent letter Chairman Dixon quoted from President Johnson's statement upon signing the Freedom of Information Act on July 4, 1966:

"This legislation springs from one of our most essential principles. A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest." Letter from Mr. Dixon to Ralph Nader, Sept. 27, 1968.

These sentiments, however, do not seem altogether consistent with subsequent (and prior) FTC behavior, or even with the FTC regulations adopted under the Act. The Moss Congressional Subcommittee on Foreign Operations and Government Information findings, referred to in the section on secrecy as well as other materials contained therein, reveal the hypocrisy of the Commission.

The final misrepresentation indulged in by the Commission through its Chairman concerns the characterization of the Nation's modest organized consumer protection groups and interests. Mr. Dixon loves to view them as wild-eyed zealots threatening the values of federalism and free enterprise. Meanwhile, he sees himself as the chief protector against their nefarious schemes for government control and tyranny.

After listening to one of Mr. Dixon's speeches to a trade association, Sidney Margolius, a respected author and columnist on consumer subjects and a member of the President's National Commission for Product Safety, wrote the following letter which indicates the tenor of the Chairman's attitude toward the groups which should be its allies:

APRIL 5, 1966.

MR. PAUL RAND DIXON,
Federal Trade Commission,
Washington, D.C.

DEAR MR. DIXON: I am dismayed by the speech you gave before the Kansas City Ad Club. I am concerned about your effort to minimize high pressure selling, and to refer to people seeking legal protection against abuses in the marketplace as "zealots", and

your claim that it is only a few businessmen who engage in high pressure methods.

In my experience as a reporter on consumer affairs, I don't think it is just the fringe who charge higher prices than necessary and are responsible for many of our problems. In the credit field, very often the high pressure credit sellers are financed by big respectable banks and finance companies. Nor is it the fringe sellers who are charging 18 to 22 percent for revolving credit accounts, and fighting fiercely against the true-interest bill. It is the biggest retailers in the country.

As for deceptive and exaggerated packaging, some of it is practiced by some of the most "reputable" big companies in the country, whatever your word "reputable" means or is worth.

In case you have forgotten your own experience, it is the biggest and best known drug manufacturers who are forcing the public to pay many times the manufacturing cost for vital medicines, and still are despite the Kefauver Drug Amendments. And it is practically all the drug manufacturers, isn't it? Not just a few? And what about the tire jungle? Are all the exaggerated claims and deceptive qualities, etc., just a few manufacturers, or is it practically all the "reputable" ones?

When you speak of "zealots" seeking legislation, do you include Senators Kefauver, Hart, Douglas, Neuberger, Nelson and the dozens of other fine Congressmen trying to help the consumer? Or about whom are you speaking?

I could go on, about whether it's "few" as you maintain, or many. But it seems to me that you could have made your points about "self restraint" without exaggerating about "zealots" for more and bigger government trumpeting the misdeeds of the few as an argument for more central authority".

Sincerely,

SIDNEY MARGOLIUS.

But it is the ghetto dweller whose home has just been lost to a fraudulent aluminum siding swindle who knows what real tyranny is. And it is the American housewife exploitted by games, gimmicks and deception who is in need of protection.

The Chairman cannot honestly believe that economic forces are incapable of tyranny, and he undoubtedly realizes that government is the consumer's only viable resort for redress or for relief. Further, it is hard to believe that he is not aware, despite indications to the contrary, that the chief responsibility for these crimes must ultimately be placed on big business, not on the occasional fly-by-night operation attended to by the FTC and the Better Business Bureaus. Drugs, fake promotional games, automobiles, buses, oil depletion allowances and special tax privileges, pollution, pipelines, radiation, contaminated meat and fish, false packaging, dishonest lending practices and many other crucial problem areas of the recent past and of the present involve primarily big corporations.

A more accurate description of the Chairman's motivation is that it is a form of indolence. It is simply easier to ride with the tides of power and to dismiss those who question or suggest action, than to take action against the economic forces so well represented in Washington, D.C. (see section on collusion).

2. Secrecy

The members of the FTC investigatory team had a three month opportunity to observe at first hand the operation of the Commission's information policies. They were dealt with as members of the general public—not as litigants, businessmen, members of Congress or representatives of the White House. This section will demonstrate that where such "average citizens" seek information relevant to consumer problems and/or FTC performance of it regulatory duties, the normal agency response is either total secrecy or subtle forms of minimal disclosure.

To begin with, the FTC's official policy regarding confidentiality, set forth in its Rules of Procedure, is in blatant conflict with the recently passed Freedom of Information Act (hereinafter FOI Act). That statute, as members of the press well know, constitutes a clear Congressional command to federal regulatory agencies to disclose to the public *all* but a limited number of kinds of information.[29] Or, as stated in *The Freedom of Information Act, Compilation and Analysis of Departmental Regulations Implementing 5 U.S.C. 552*, 90th Congress, 2nd Session, Committee on Govt. Operations, 1–2 (1968) (hereinafter cited as *Analysis*).

"Through the act the Congress has adopted a philosophy that *'any person'* should have clear access to agency records without having to state a reason for wanting the information . . . the burden of proving withholding to be necessary is placed on the Government agency." (emphasis supplied).

The FOI Act requires all affected agencies to publish in the *Federal Register* regulations implementing the new act and its policy—spelling out each agency's organizational structure and procedures, including specific procedures by which persons can gain access to information.

The *Analysis* evaluates the implementing regulations of the various agencies required to publish them, focusing on "the degree to which they implement the law in accordance with the intent of the Congress." (Analysis 2). It concluded that—

"Most [agencies'] regulations . . . meet the letter and spirit of the law. A few, however, contain languauge showing that arrogant public-information policies still endure in agencies." (Analysis 4).

It found that the FTC regulations are among the latter—and that the agency has given no indication that it is in the process of revising the regulations. Says the *Analysis:*

"In a section entitled 'Released Confidential Information,' the FTC flouts the law by resurrecting from the prior law[30] the phrase 'for good cause shown.' It directs that the requester state in writing and under oath the nature of his interest and the purpose for which the information will be used if the application is granted. The section concludes: 'Upon receipt of such an application the Commission will take action thereon, having due regard to statutory restrictions, its rules and the public interest.' The FTC obviously fails to recognize that the [FOI] act specifically provides that persons requesting information no longer are required to state why they want it. Any information not falling under any of the law's nine categories of exemptions is deemed public information and is to be released without qualification."

This official opinion is supported by the views of competent individuals in the private sector. For example, Mr. Sam Archibald of the Missouri School of Journalism, who has done his own survey of agency regulations under the FOI Act, says those of the FTC are the worst.

Because of their complexity, the Commission's information policies and practices will be analysed in sections.

(a) Public documents. Sec. 4.9 of the Commission's Rules of Practice designates specific documents as "public.", including annual report, descriptions of FTC organization, etc., cease and desist orders, industry guides, *"texts or digests of selected* advisory opinions" (emphasis supplied), rules, reports of FTC decisions in adjudicative proceedings (including "initial decisions" of hearing examiners) a record of votes of Commission members on every proceeding, pleadings, motions, orders, transcripts of hearings, exhibits, etc., in adjudicative and court proceedings, *published* staff and Commission reports, agreements containing consent cease and desist orders, news releases, copies of laws, *approved* compliance reports and assurances of voluntary compliance (except where, upon an application showing proper justification, the party filing a compliance report or assurance may have granted his request that it be classified as confidential).

The project found several of the above categories of documents to be less public in practice than on paper. Advisory opinions are never printed in full text, for example. Only digests are made public, with no identifying details or background information. This policy is objectionable, for it precludes effective public criticism of important Commission decisions for under the agency's rules, Sec. 1.3, Advisory Opinions are binding on the Commission until revoked. The Commission keeps secret the identity of applicants for advisory opinions because, it says, guaranteed confidentiality is necessary to "attract" businessmen into the program. Now, there are several responses to this. One is that government must not be allowed to engage in secret lawmaking, especially where, as here, it is possible to take financial or political advantage of secret dealings. And to compound the problem, secrecy prevents members of the public who might seek revocation of an advisory opinion because of its background, contents or lack of compliance there-with from knowing about it. This is particularly serious since the checking on such matters. See section on compliance.

Another response is that no evidence exists that businessmen would make less use of this program if the secrecy were removed. In fact the available evidence points the other way: in the last couple of years, the contents of consent cease and desist orders have for the first time been made public; yet, according to staff interviews, this change in policy had no discernible adverse effect on the number of businessmen electing to proceed by this route. In any case, relatively few advisory opinions[31] are sought by businessmen, and this is for a reason which has nothing to do with secrecy. According to interviews with lawyers who deal frequently with the FTC, most businessmen avoid seeking advisory opinions mainly because they know that the Commission is likely to advise them conservatively.

The FTC frequently explains its reasons for refusing to divulge the identity of and information about applicants in terms of protecting trade secrets, etc. If this were really the case then information should be withheld *only* in cases in which individual business entities seek advice, not where industry-wide trade associations apply for opinions—since presumably trade associations, generally interested in self-regulation, have little need to keep information secret. Project requests, however, for access to full texts of advisory opinions given to trade associations were consistently denied, except that one opinion—given to the National Association of Retail Druggists—was finally made available to us, but only "because we [the Commission] have been informed that the requesting party published [the opinion] in its Journal at the time of issuance." (Letter from Chairman Dixon to John Schulz, October 25, 1968).[32]

The fate of that opinion is instructive of an additional disadvantage of advisory opinion secrecy. Not only was it published in a trade journal, as the Commission stated, but the attorney who obtained it—former FTC Chairman Earl Kintner—shared in the publicity. This experience suggests that FTC advisory opinion secrecy permits recipient attorneys to publicize them selectively as they choose, thus in effect marketing their dealings with government.

Finally, if protection of trade secrets is a central concern of advisory opinion con-

Footnotes at end of speech.

fidentiality, there should be some sort of statute of limitations on secrecy. There is none, as we were informed by staff in the Division of Advisory Opinions as well as by Washington, D.C.

Assurances of voluntary compliance and compliance reports, while generally available to the public in some sense of the word (we were assured by staff interviewed that very few of these documents are held confidential), in fact provide minimal disclosure of information. The agency achieves minimal disclosure-in-fact of these documents in two ways. First, the only text it permits to be made public is extremely general and conclusory—public assurances of voluntary compliance and compliance reports both contain only language like "X.Y.Z. has ceased to carry on its business in the manner disapproved of and will not do so again." All *detailed* communications from challenged businessmen—the real meat of such cases—are held absolutely confidential (we requested and were refused them by everyone up to and including the Chairman). Second, to say that these texts are made "public" is to stretch the word: a single copy of each is placed in ring-binders in the docket room of the agency's central office building in the Chairman himself.

But no copies are made or distributed to anyone and no news releases on them are issued.[33] In other words, there is little likelihood that the public will ever learn of a businessman's transgression. The handling of these records provides an example of partial secrecy at the FTC. As such, it permits the agency to proclaim (when challenged) that such information is public while effectively keeping it from the general public.

Other examples of partial secrecy at the FTC include consent orders and news releases. Proposed consent orders are made "public" without publicity—a single copy is placed at the central office; they remain public for thirty days. As for News Releases, even where they are issued about deceptive practice cases, for example, they are typically so laced with opaque legalisms that (even in the opinion of members of the trade press in Washington D.C.) it is difficult to extract any usable information from them. If reporters trained in the field can't get the message, how can consumers?

A final example of limited publicity is the Commission's handling of the transcripts of such important "public hearings" as those held earlier this fall on consumer protection. The normal practice (which will be followed in this case too, according to Chairman Dixon) is for the Commission to purchase *one* copy of a hearing transcript and place it in the Docket Room of its central office in Washington D.C.[34] Of course, any interested (affluent) citizen can purchase his own copy of any hearing transcript from Ward & Paul, stenographers, at only 50¢ a page.

(b) Confidential Information, § 4.10 specifies certain rather broad categories of matters specifically deemed confidential by the Commission. These categories are roughly those defined as exemptions in the FOI Act, thus—

"§ 4.11 Confidential Information

"(a) The records of the Commission which are exempt from availability for public inspection . . . include

"(1) Records related solely to the internal personnel rules and practices of the Commission

"(2) Trade secrets and names of customers and commercial or financial information obtained from any person which is customarily privileged or which is expressly received by the Commission in confidence, including . . . reports of compliance and assurances of voluntary compliance classified as confidential pursuant to § 4.9(f);[35]

"(3) Official minutes of Commission meetings;

"(4) Interagency or intra-agency memorandums which would not be available by law to a private party in litigation with the Commission;

"(5) Personnel and medical files and similar files which would constitute a clearly unwarranted invasion of privacy;

"(b) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party . . .; . . .

"(c) . . . All other records and information of the Commission not clearly identifiable not listed in the current index of the public records of the Commission also constitute a part of its confidential records . . ."

We found that in practice the Commission appeals broadly and woodenly to most of these categories to support non-disclosure of various kinds of documentary information, and that it uses other tactics to avoid disclosure of agency records.

Trade secrets, commercial and financial information, etc.

One example of the use of this category of exemption is discussed above (advisory opinions). A more significant example is the unsuccessful series of attempts made over the last year by Professor Kenneth Culp Davis to secure Commission disclosure of samples of pre-merger clearances issued by the FTC.

Professor Davis' ordeal began in August 1966, when he visited Chairman Dixon and requested "to examine Commission files showing clearances for mergers. . . ." (Letter to Chairman Dixon, Nov. 14, 1966). Mr. Dixon refused, suggesting a request by letter, which Professor Davis obligingly made in November. *Id.* In December, he made a revised request, limited to the files of *"the three latest cases* in which the Commission has granted clearance for merger." (Davis' letter to Dixon, Dec. 22, 1966). On Jan. 13, 1967, Chairman Dixon responded, agreeing to make public only *digests* of pre-merger matters, on the specific analogy of advisory opinions. (Dixon's letter to Davis, Jan. 13, 1967). Professor Davis wrote back immediately expressing his dissatisfaction as a scholar with digests:

"[I]t [publication of digests] does not meet my need to examine the files. You are quite right in saying that I want to know the law and policy of the Commission with respect to such clearances, but such digests clearly will not suffice." Davis letter to Dixon, Jan. 19, 1968.

He then repeated his request, stressing the scholarly nature of his interests: [36]

"My purpose is wholly scholarly. I have absolutely no interest in the kind of business facts a corporation typically wants kept confidential . . .; such facts can be taken out of the files I examine. My lifetime project is to try to understand the administrative process. . . ."

This letter was apparently ignored, and Professor Davis sent two follow-ups in October and one in November, 1967, requesting "permission to examine Commission files showing interpretations made in pre-merger clearances during 1966 and 1967." Davis' letter to Dixon, Oct. 13, 1967. Finally, on Nov. 27, 1967, came the Commission's single-spaced three-page response—denying Professor Davis' request.[37] In this letter, pre-merger clearances have been fully conceptualized as advisory opinions, and the agency goes on record as exceptionally solicitous of information handed over to the agency by persons who approach it voluntarily, thus:

"[P]arties who approach the agency in this posture [*voluntarily*] are entitled to an even greater degree of protection than those against whom it has been necessary to invoke mandatory procedures for no law compels them to come in and make the disclosures they make. Instead they do so of their own free will in order to avail themselves of the services which the agency affords, secure in the knowledge that the secrets which they voluntarily unfold will be held in strictest confidence by the public agency. . . ." Commission letter to Davis, Nov. 27, 1967, 1-z.

But Commissioner Elman disagreed, convincingly, in a separate statement:

"In my view, there is no substantial interest which would be harmed by letting Professor Davis examine these materials. Professor Davis is not asking to see any correspondence or records which the Commission secured under a pledge that they would be kept secret." *Id.*, p. 4.

Professor Davis answered on Nov. 29, 1967, citing relevant provisions of the FOI Act and commenting that he intended to bring the matter to the attention of various other governmental agencies if not satisfied with the Commission's handling of the matter. This produced a bristling Commission response dated Dec. 15, 1967, in which Professor Davis' view of the FOI Act was hotly rejected and the following statement appeared:

"In closing, the Commission wishes to add one or two other observations. While it feels that there must somewhere be an end to this dialogue, you may be assured that it is also our desire to have you work with us rather than against us and that the Commission has here evidenced a wish to cooperate with you in every way it properly can. A great number of our top level personnel has spent a great deal of time in making available to you all the information which could be released and the Commission itself has spent an unusual amount of time in considering this individual request because it considered the matter to be important and because it wished to cooperate with you in the work you are doing. But it is evident that cooperation involves considerable give and take on both sides and not the complete capitulation of one side to the other. Certainly, this Commission will not be forced into that sort of cooperation by undisguised threats that request will be made for Congressional action, which are not to be expected from one of your outstanding reputation and which the Commission cannot believe were intended in the manner stated." Commission letter to Davis at 2, Dec. 15, 1967.

Once again, Commissioner Elman disagreed, stating that he "does not regard Professor Davis' letter . . . as carrying any 'threats.' A citizen has the right to bring matters of public concern to the attention of interested committees of Congress. No government agency should feel threatened by such a proposed course of action." *Id.* 3.

Not yet discouraged, Professor Davis sent yet another letter Jan. 2, 1968, focusing on merger files containing no confidential information, and making a new, more limited request:

"I request access to the Commission's pre-merger files to the extent of examining the names of corporations involved in applications for pre-merger clearances, and only to that extent." Davis letter to Dixon, Jan. 2, 1968.

The Chairman's response, Jan. 18, 1968, was another denial, stating, *inter alia:*

"Certainly, the question of disclosure of the names of corporations involved . . . is undoubtedly the most confidential information of all and would be the very last thing the Commission would make public." Dixon letter to Davis, Jan. 18, 1968, at 1.

On February 20, 1968, Professor Davis wrote again, this time appealing to the whole Commission from the Chairman's letter of Jan. 18, 1968, arguing his case in terms of the FOI Act, and requesting only "those papers in the clearance files that are not within one of the nine exemptions to the Information Act."

This approach was equally unsuccessful—on April 30, 1968, the Commission informed the Professor that it had once more denied his request (Commissioner Elman dissenting), emphasizing once again the need to extend confidential treatment of voluntary submissions by businessmen.

Footnotes at end of speech.

At this point, Professor Davis gave up, at least for this year, sadder but wiser about the realities of the administrative process.

INTERAGENCY MEMORANDA

During the course of the summer the project learned that a series of staff memoranda existed providing a rather complete breakdown of applications for complaint received by the FTC (containing such figures as total numbers of complaints received, numbers from various sources [White House, Congress, Federal Agencies, direct submissions to the Commission, etc.], numbers from various categories of applicants [general public, competitors, consumer groups, members of Congress, etc.], numbers by state, by industry sector, by economic region).

Copies of these memos were requested from the administrative officer (Monroe Day) who prepares them; he stated that he had been told not to give us any information. We then approached the Chairman, who denied our request, reciting the "inter-agency memorandum" exemption to the FOI Act. The interviewer responded that these particular memoranda did not seem to contain the sort of information which justifies that exemption (e.g., critical, evaluative comments; notes of plans, tactics, etc.—information which agency personnel would be loathe to include in memos if they were public); these memos, in contrast, contain only objective factual data. The Chairman was unimpressed; woodenly applying the phrase "interagency memoranda" he repeated his refusal.

Copies of these memoranda were eventually made available by Commission action upon the formal request discussed earlier.

The project encountered two other information problems which involve agency memoranda. One was a single case of refusal by the FTC staff and the Chairman to *identify* certain specific documents in the Commission's possession sufficiently to permit a subsequent request for access to them. This sort of ploy is a problem since the FOI Act and FTC rules, above, require disclosure only of "identifiable records." The Attorney General's Memorandum analysing the Act, however, makes it crystal clear that agencies should not try to avoid disclosing documents by refusing to identify them where the requesting party gives a reasonably specific description of what he wants. Says the Memorandum: "This requirement of identification is not to be used as a method of withholding records." *Attorney General's Memorandum, p. 23.* (Quoting Senate Report on the Act, p. 8).

The requirement was so used in this case: since the project could not identify the records in question (certain compliance files the exact form of which was not known), it was not possible to include them in the formal request to the Commission for data, and they have never been disclosed.

The other problem, somewhat related, is really as much a matter of information policy. Briefly, it is that the FTC fails to keep accurate records of its performance. It is thus able to turn down requests for relevant information for the unique reason that it *has no* information on the topics of interest and that to process basic data to produce such information would be either impossible or prohibitively expensive. The project encountered this phenomenon several times, but the clearest example was the Commission's response to certain demands for information made in the formal request submitted to the agency under § 4.11 of its Rules. This request, made September 30, 1968 by letter under oath from Professor John Schulz to Chairman Dixon included the following questions[35] about enforcement costs in the Bureau of Deceptive Practices:

"Question 6: What are the total expenditures which have been allocated to the prosecution (and/or handling) of these matters [deceptive practice matters in litigation, consent settlement, informal disposition, under investigation for guides, etc.] up to the present time?

"Question 7: What is the present status of each of these matters [above] and what additional funds does the Commission anticipate will be required to resolve each of these cases, assuming respondents (participants) exhaust all administrative and judicial remedies?" Letter to Dixon, Sept. 30, 1968, p. 3.

Previous answers indicate that the total number of matters in each category is very small; *e.g.*, 24 cases in litigation, 23 pending consent settlement, 29 pending informal settlement, etc. Yet the Commission's response to questions 6 and 7 was:

"Question 6: The basic information is available from the Commission's Time and Action data. . . . However, in order to compile the information requested, the Commission staff would be required to write at least four computer programs. Several days [!] of machine time would also be required. This would require at least ten man days of work.

"Question 7: The basic information is *not presently available*. Because of the many variables involved, the Commission has not been successful in the past in accurately anticipating total costs." Dixon letter to Schulz, Oct. 25, 1968, pp. 5–6.

It seems that this sort of information should have a high priority because of its usefulness for cost-benefit analysis. Its absence from FTC files is one indication of that agency's failure to utilize cost-benefit techniques.

An even more egregious FTC failure to gather relevant information was disclosed by the Commission's response to Question 5 of our formal request:

"Question 5: What is the size in terms of annual sales of each of the respondents (participants) involved in the matters [listed above]?"

The Commission's response was:

"Annual sales are not maintained as general information in deceptive practice matters. This is simply because sales volume is frequently only one of the many considerations in assessing the impact of a particular practice." Dixon's letter at 5.

Of course, if *no* information is kept, sales would seem to be not one of many factors, but no factor actually. The implications of this have been discussed in the section of this report dealing with FTC failure to establish priorities.

Needless to say, failure to keep adequate files and records is more the responsibility of the staff heads than the Commissioners. In fact, the latter occasionally discover that information in which *they* are interested does not exist or cannot be retrieved due to inadequate record-keeping. For example, in April, 1967, the Commission directed its staff to submit a report on the agency's experience with insurance cases over the last five years setting *inter alia*, "the number of complaints received." Responded the intrepid staff:

"NUMBER OF COMPLAINTS RECEIVED

"The basic information for this item is contained primarily in the closed preliminary correspondence files in the Division of Legal Records. These files are not indexed as to subject matter and include anti-trust as well as deceptive practice matters, general inquiries and other types of letters as well as complaints. Thus, to extract the letters containing complaints regarding insurance would require an individual examination of the entire number filed over the last five years. Figures from the Records Division show that the total number of all closed preliminary files have averaged about 5,000 per year, which amounts to a total of some 25,000 files since January 1, 1962. In addition, there are complaints on insurance, much fewer in number, which are contained in the closed files of the Bureau of Industry Guidance." Memorandum to Commission from William S. Hill, Att'y, Bureau of Deceptive Practices, June 21, 1967, p. 1.

(3) Investigatory Files for Law Enforcement Purposes.

This exemption from the FOI Act is used most by the FTC to cloak its activities in secrecy, for the agency treats *every* kind of investigation as being within the exemption. Thus, for example, whether members of our project requested information concerning matters under preliminary investigation (which are carried on between the time an application for complaint is received from a member of the public and the Commission issues a complaint), under investigation for compliance with outstanding orders, or under investigation leading to issuance of industry guides, etc., the perennial response of the staff and Chairman was, "no disclosure—investigatory files." Now, this interpretation of the FOI Act is so broad as to permit the agency nearly to evade the Act entirely. In addition, since the Commission is free to disclose *even* information exempted from mandatory disclosure, its policy with respect to investigatory files represents a consistent slighting of consumer interests in favor of business interests. When coupled with the fact that some of the longest delays in FTC administrative action occur at the "investigation" stage [See section on delay], the agency's confidential handling of all investigations is highly damaging to thousands of ignorant persons.

3. Collusion with business interests

It would be unrealistic to presume active conspiracy between the FTC and business interests. First, it would be inappropriate because the FTC, unlike the ICC, FPC or FCC, does not have a specific and defined business constituency. Second, such a picture does not conform to the complexities of modern life. It is possible, however, to infer certain conditioning patterns from the sociological facts of Commission and staff life. Commissioners and staff do not live, generally, in university or ghetto environments, but in middle class suburban areas. They associate with other government bureaucrats and come into contact most and are most interested in people who have common concerns and related occupations. This almost necessarily means a great deal of contact with and a great number of friendships with businessmen, other government workers, attorneys and Congressmen. The Commissioners have very little personal contact with the aggrieved consumer. His complaint, if it is expressed at all, takes the form of an impersonal letter.

To some extent their acquaintances among businessmen are responsible for FTC members' reliance on the businessman's presumptive honesty, even in situations where an honest man might falter.

Not only is there close communications and contact among these groups, but there is actual interchange of jobs. Indeed, many of the young attorneys in the Commission staff view their experience as training for later corporate work. Their acquaintances among the staff and Commission serve them well in this capacity and multiply the contact and communications effect discussed above. Recently two other agencies saw their top political officials leave to take high positions in the industries they previously regulated. This is a common phenomenon in Washington and is especially prevalent in the case of the FTC because of the potential power of the Commission in the regulation of business generally.

The attorney plays a crucial role in the acculturation process in Washington. He is the middleman, the cover.[39] Washington law firms specialize in regulatory work and carefully nurture friendships with Commission and staff personnel. Their advantages in accomplishing their mission are immense. They are highly paid and better trained than the FTC attorneys with whom they will deal. They have the attorney-client privilege, in-

Footnotes at end of speech.

addition to a pervasive tradition of secrecy. They have the advantage of numerous congressional and White House contacts, which they can use by implication to deter or intimidate staff members. They have the advantage, finally, of holding a covey of IOU's which they can call in as the interests of their clients require.

The acculturation process as applied to the FTC is particularly intense. It is common procedure for trade associations to wine and dine influential staff personnel. The Commissioners themselves and particularly the Chairman are not free from the process. The most frightening thing about this situation is the fact that the people involved do not seem to know what is happening, that they do not even know that they are out of touch and even blind to certain elements of society. Chairman Dixon, for example, gives many speeches and is invited to numerous banquets. At one of them recently he opened his speech with a remark that—

"Sometimes I think that Washington is too far from anyplace. That's why I think it's a good idea to get out into the rest of the country to find out first hand what is worrying people, or what they are shrugging off as unimportant." "Help Defend the Advertising Dollar," an address before the Advertising Club of New Orleans, New Orleans, Louisiana, May 16, 1967, p. 1.

But what does "rest of the country" consist of? And what does he learn there that he accepts as "unimportant" and "shrugged off?" The above remark was contained in a speech to an advertising club in New Orleans. Over the past seven years Mr. Dixon has traveled outside Washington a great deal, delivering some 109 formal speeches outside the capitol, but the great majority were delivered to trade associations.[40] Mr. Dixon has carried his culture with him. He has spoken almost *exclusively* to those he associates with generally, businessmen and related legal interests. One doesn't have to ponder much to envision the "unimportant" matters Chairman Dixon has been learning to "shrug off."

In a sense, what happens to the Commissioners and staff is not collusion. Long exposure to an intense process has simply given them a certain perspective based on the inevitable integration of experience with self over time. The FTC, in effect, becomes the very thing it is designed to regulate. The evolution of Commission personality is particularly marked in an agency whose Chairman and core staff have been under constant influence by the regulatory subculture for over seven years. This is two years longer than anyone else has ever served and it is worth noting that Mr. Dixon's appointment does not expire until 1974.

Given this state of affairs, it is not surprising that business interests do not show much respect for the threat of FTC enforcement. Edward Wimmer, Vice President of the National Federation of Independent Business, submitted an affidavit to the Federal Trade Commission [41] on behalf of a gas station owner who had been threatened and heavily pressured by S&H Trading Stamp representatives. Mr. Wimmer wrote: "I know your files are packed with affidavits and other findings similar to this testimony, but it keeps going on and on. Every time I run into a stamp man, he gives us the laugh when we mention that the Federal Trade Commission is going to do something about this 'business'." [42]

The FTC's so-called industry-wide enforcement tools, Industry Guides and Trade Regulation Rules, constitute yet another example in practice of the agency's excessive solicitude for business interests. This is shown both by the theoretical justifications given by the Commission for their use and by its actual enforcement record with them. The theoretical justification given by the FTC staff [43] for preferring to rely on these enforcement tools focuses on "fairness" to businessmen charged with violations of the agency's laws: it would not be fair, so the argument runs, to challenge only one of many businessmen engaging in a particular widespread deception; therefore, an industry-wide approach should be used to stop all violators at the same time. Of course, this view is not without plausibility, but it fails to consider fairness to *consumers* for actual FTC handling of these enforcement tools indicates that they produce poorer results than the agency's "individual" tools, and that therefore in concerning itself with the welfare of a single hypothetical law-breaking businessman the FTC permits him and others to continue to cause damage to thousands of innocent consumers.

The poor performance recorded by the FTC in administering guides and trade regulation rules are documented elsewhere in this report. It includes secrecy and excessive Commission delays in taking action during lengthy investigations and compliance surveys (see section on secrecy and delay).

A final example of FTC "business collusion" again involves its handling of voluntary enforcement techniques. Here, collusion is shown strikingly by the fact that the Commission is sometimes more lenient in regulating businessmen than their own industry self-regulatory groups.

One major case of this startling differential treatment involves the broadcast industry, advertising aspects of which are simultaneously under the jurisdiction of the FTC Act and the Codes of the National Association of Broadcasters (NAB). An official of NAB interviewed on August 21, 1968, informed the project that media advertisers frequently seek advisory opinions from the Commission in order to avoid more stringent NAB Code provisions, arguing that "if the FTC says we can do it, the NAB can't stop us." Other advertisers apply to the FTC for promulgation of industry guides or trade regulation rules, knowing that significant delays will occur before promulgation (during which they resist the NAB Codes on the grounds that the FTC has "taken jurisdiction") and that the ultimate rule or guide will be easier to live with than the industry code.

THE CORE OF THE PROBLEM: PERSONNEL

1. Partisan political activity

The official image of the Federal Trade Commission is, as it should be, that of a non-political agency regulating interstate commerce against anti-competitive and unfair practices in the public interest. In order to insulate the agency from party politics, the original law provided that no more than three Commissioners could be from the same political party. For the same reason the Commissioners' tenures run for seven years at staggered intervals. On the staff level the Hatch Act, 18 U.S.C. Sec. 602 (1964), prohibits the soliciting of political funds by government employees. In addition, the Civil Service Commission forbids party discrimination in hiring policy.

Yet in the case of the present regime at the FTC, the Hatch Act and the Civil Service Law are regarded as mere rhetoric to which lip service is paid publicly, but which are in reality either ignored or circumvented. Most attorneys at the FTC are labelled as either Democrat or Republican and their party affiliation has a definite impact on the positions they are offered. All staff attorneys at the FTC from Bureau Chief [44] to Executive Director hold their positions on appointment from Chairman Dixon who, in effect, may replace them whenever he desires and reduce them from a supergrade to a GS–15. Ideally then, the Chairman rotates the FTC staff in order to place the best men at the top of each operating bureau. When Mr. Dixon became Chairman in 1960, it seems that the "best men" were all Democrats and so any Republican in a high position was offered the choice of either becoming a trial lawyer at the bottom of the organization chart or, of course, resigning from the Commission.

As a result of this extremely partisan policy, fourteen highly experienced career FTC men left the Commission almost immediately. In November of 1961, Advertising Age claimed partisan politics as the major consideration in a reorganization of the FTC and that, as a result the quality of key personnel "ha(d) deteriorated". *Advertising Age*, Nov. 20, 1961, p. 13. In time, most of the other Republicans found it hard to swallow their pride and left. A few able Republicans such as the former Assistant Executive Director, Basil Mezines, and attorney John Walker have stuck it out. For eight years, however, their position as being "out" men, has grown increasingly uncomfortable.

Of the nearly five hundred lawyers working for the Commission only about forty are now Republicans with approximately twenty of these being located in the central office. At the present time only one Republican holds a position of any prominence in the operating bureaus of the FTC: Mr. Charles Moore, who has recently succeeded Sam Williams as Chief of the Bureau of Field Operations. Mr. Moore is a Republican, but in his case there is the extenuating factor of his coming from Johnson City, Tennessee. See p. 110, below. The extreme partisanship of the higher staff combined with the control they wield over the selection and promotion process has made these results inevitable. See p. 120, below.

In addition to permitting his staff to violate both the spirit and the letter of the Civil Service Law in promotion and hiring practices, Chairman Dixon, himself, has violated the Hatch Act. Highly reliable sources at the FTC revealed to this project that until recently Mr. Dixon was notorious for dunning the agency's personnel down to the GS–14 level for political contributions. This group includes approximately one quarter of the more than 450 lawyers working in the central office in Washington. The chief collector of dues used to be Fletcher Cohn who holds the title of Assistant General Counsel for Legislation with a salary of $24,477 per year. Mr. Dixon's reputation with the Democratic fund raisers is reported to be excellent. It is also known in the high echelons of the Commission that Chairman Dixon is openly proud of his fund raising, and well he might be. His methods would make any chairman of an alumni fund raising committee jealous. Members of the staff have testified to receiving solicitation cards from the Democratic National Committee with a code number in the corner which everyone involved knew would indicate to Chairman Dixon who gave and who did not. This outrageous method of solicitation was not well received by those who were being coerced to give against their will. Eventually, the threat of action by the Justice Department under the Hatch Act forced Chairman Dixon to give up this political exploitation of his employees. He now uses more discreet methods to do his political fund raising inside the FTC. Now, for example, he personally asks his subordinates to buy $100-a-plate tickets to Democratic fund raising dinners. Thus Chairman Dixon persists in playing partisan politics, while neglecting his responsibilities as a public servant.

2. The FTC and Congress

Even more destructive for the Commission's sense of purpose and for its non-political image are the Congressional politics which permeate the FTC. Response to Congressional pressures has had a telling effect on possible priorities for action, theoretically set according to the importance of the social issue involved.

Accordingly to Joseph W. Shea, Secretary of the FTC, any letter which comes in to the Commission from a Congressman's office is marked specially with a sticker saying "expedite". The sticker gives the letter a spe-

Footnotes at end of speech.

cial priority and assures the Congressman of an answer within five days. No distinction is made between letters from complaining constituents which Congressmen routinely "buck" over to the FTC and those from the Congressmen. Approximately 110 letters are received from Congressmen each month with only a few of these originating in the Congressman's office (see appendix 12). Yet all these letters are answered in detail by younger members of the staff for whom this type of busywork is a constant annoyance. As one attorney complained, "A letter comes in from a Congressman and everyone drops whatever they are doing and takes care of it. . . . Great importance is attached by the higher staff to answering these letters fully and properly. . . . How can you do a job with that kind of continual interruption?"

The irony of this situation is, of course, that all matters which the Congressmen deem important are handled by telephone or in person. Such personal contacts are not very difficult to arrange for, as one lawyer in the Bureau of Deceptive Practices stated, "Everyone who wants to go anywhere at the FTC has a political connection," and then quite forthrightly named the Congressman who was his sponsor.

The personal influence of Congressmen begins at the top of the agency. Chairman Dixon was appointed by President Kennedy under heavy pressure from the late Senator Kefauver. The runner-up for the chairmanship, A. Everette MacIntyre, was sponsored by Rep. Wright Patman of Texas. He was given the next available Commissioner's post as a consolation prize. Casual scrutiny of the FTC reveals a number of other political sponsors. One day late last summer this project was fortunate enough to find Mr. William Jibb in his office. (According to reporters who deal with the Office of Information regularly, Mr. Jibb, the Office's Director, is rarely there. From my own experience I have found this to be true. Mr. Wilbur Weaver, Mr. Jibb's assistant, seems to be able to run the office quite capably without apparent aid from Mr. Jibb.) Mr. Jibb insisted on telling me that he had been an old college roommate and political aid to Senator Smathers of Florida.

Other members of the Commission's staff are less talkative about their political connections, which are none the less well known. Take Mr. Joseph W. Shea, for example. He comes from Boston and his official title as stated on his biography reads, "Secretary and Congressional Liaison Officer", although in the Commission telephone book and budget control reports that he is listed simply as "Secretary". His biography also notes that he "came to Washington, D.C., April 19, 1934, under sponsorship of Speaker John W. McCormack as a clerk at $1,000 per annum and attended evening law school." Around the Federal Trade Commission he is known "to be like a son" to the speaker of the House. His biography also notes mysteriously that he "has accrued sick leave of 2,211 hours and maximum annual leave", a piece of information not normally placed in FTC biographies. The 1965 Civil Service Commission study of FTC management practices seemed disturbed by this fact and the unusually high supergrade of GS–16 with a salary of $25,875 occupied by Mr. Shea. Their report stated:

"The Secretary's position was placed in grade GS–16 upon the statements of the Chairman regarding the personal contributions the Secretary has made to the Commission through his highly successful personal contacts outside the Commission. Personal contributions of this nature do not permit their delegation to subordinates in the principal's absence. The other responsibilities of the Secretary—i.e., the preparation of the Minutes and maintaining the official records of the Commission—were not factors influencing the classification of this position." p. 48.

Other officers in high positions at the FTC have political contacts or relations similar to Mr. Shea's. John W. Brookfield, (GS–15, $22,695) the Chief of the Division of Food and Drug Advertising in the Bureau of Deceptive Practices, is the nephew of the former Chairman of the House Rules Committee, Rep. Howard W. Smith. Fletcher Cohn (GS–16, $24,477) is a product of the old Memphis political machine of Boss Crump and was retired to the FTC after failing to win a third term to the Tennessee legislature. According to Richard Harwood of *The Washington Post*, Mr. Cohn is "the FTC's lobbyist and Ambassador to Capitol Hill". *Washington Post*, March 27, 1966, p. E1. Cecil G. Miles (GS–17, $26,960) is a close acquaintance of his fellow Arkansan, Representative Wilbur D. Mills and also Bureau Chief of the Bureau of Restraint of Trade. Michael J. Vitale (GS–16, $24,477) from Newark, N.J. is sponsored by his Congressman, Rep. Rodino, and at the present time is a Division Chief in the Bureau of Deceptive Practices. And the list goes on.

Perhaps the Congressman with the most influence in the decisions of the FTC is Rep. Joe Evins of Tennessee, who is also Chairman of the House Appropriations subcommittee which approves the FTC's budget. As one staff member of the FTC put it, "Ambitious staff attorneys at the FTC who are from Tennessee have to know Joe Evins." Thus, when a political friend, Judge Casto C. Geer, desired a job in Tennessee near his home town, the FTC was obliging and set up an office in Oak Ridge, Tennessee, although the Commission doesn't have offices in such urban areas as Detroit and Philadelphia.

When the FTC wanted an economist for its Division of Economic Evidence, it selected Harrison F. Houghton, the chief economist from Joe Evins' Select Committee on Small Business. Mr. Houghton has subsequently been made Acting Director of the Bureau of Economics.

It would be wrong to say that all congressional pressure is bad. The FTC has reacted to the demands of such men from the Hill as Senator Warren Magnuson and Representative Benjamin Rosenthal, the results being investigations into insurance frauds, home improvement frauds, deceptive auto warranties and deleterious frozen foods. In all these cases, however, the issues were important, pressure was applied openly for the public good, and the FTC should indeed have acted on its own.

Unseen influences from other Congressmen, however, have had other effects. Sometimes they amount simply to the misallocation of scarce resources for a small investigation in a Congressman's home district. In other cases, such as the quiet opening of the Oak Ridge Office to accommodate Rep. Evins' political crony, we have a gross misallocation of public funds. Most horrifying of all, however, were those cases when the influence of a Congressman actually presents a danger to human life. Such was the case with flammable baby blankets when, in the 1950's, Rep. Albert Thomas of Texas was occupying Rep. Joe Evins' present Chairmanship of the House Subcommittee on Appropriations for Independent Agencies. Representative Thomas, on behalf of Texas cotton interests, influenced the Commission to rule that baby blankets were not covered by the flammable fabrics law. Baby blankets, the Commission said, did not qualify as "clothing".

In short the situation has not changed since Richard Harwood writing for the *Washington Post* in 1966 stated:

"The ties between Congressmen and commissioners and between staff members and their political sponsors to Dixon, are proper—including political contributions and other forms of political activity. . . . 'When a man comes to Washington,' (Dixon) says, he doesn't disfranchise himself'."

3. The collective background of the FTC

Party politics and congressional ties have vitiated to a great extent the work which the FTC should be doing. For the most part, however, these problems are only symptomatic of the collective personality of the FTC hierarchy.

During the probusiness days of the Republican administration of the twenties, the FTC, for lack of any other use, became a dumping ground for political patronage. President Roosevelt, recognizing the potential of the FTC tried to reform the Commission's personnel and use it to spearhead his New Deal program. When, however, his attempts to remove the worst of the commissioners was rebuffed by the Supreme Court in the case of *U.S.* v. *Humphrey's Executor*, 55 U.S. 869 (1935), on the ground that a commissioner's position was quasi-judicial, Roosevelt gave up on the FTC and used it to his political advantage by granting it as a political fiefdom to Senator Kenneth McKellar of Tennessee. The fiefdom was managed for McKellar and "Boss" Crump's Memphis political machine by another Tennessean, Commissioner Edwin C. Davis, from 1933 to 1949.[45] Positions were openly given throughout this period on the basis of personal connections and political patronage with Southern Democrats receiving the lion's share.

The Republican years from 1952 to 1960, were lean years for this group at the FTC, but they managed to survive, and, with a Democratic administration and Mr. Dixon's appointment, things were back to normal. Most of the top staff now at the Commission either came during the period of the "Tennessee gang" or are club house friends. As one disgruntled observer stated to a Wall Street Journal reporter five years ago, "The atmosphere of the agency was like a southern county courthouse, and it is again." July 23, 1963, p. 20. From the project's observations the situation has not changed since 1963.

As a result the men who control the FTC are simply incapable of understanding the complex problems and processes of our urban society. A symptomatic problem indicative of this point was revealed by a singularly capable GS–15 at the Commission. He was amazed by his colleagues lack of knowledge of record keeping procedures in large corporations. In addition, interviews with personnel in the records division has revealed that none of the staff has yet recognized the worth of the computer. The 1965 Civil Service Report on the FTC indicated that this problem also existed three years ago. The report suggested that Chairman Dixon's administration "provide for a comprehensive study of the use of the computer in order that it may be brought into full productive use in providing:

"1. Management data essential to manpower control, utilization, and planning.

"2. Program resource data which will result in either increased productivity or reduced manpower requirements." Evaluation of Personnel Management, 1965, p. 9, (Civil Service Report).

Since 1965 no comprehensive study of the sort called for by the Civil Service Commission Report has been instituted by Chairman Dixon.

Priority planning, selection of cases to investigate issuance of complaints, and the tactics and legal weaponry to be used in each case is essentially decided by the staff. Chairman Dixon (Nashville, Tennessee, pop. 170,874) is given by law general responsibility for overseeing and planning the work of the staff. His chief-of-staff is the Executive Director, John Wheelock (Spring City, Tennessee, pop. under 2,500), but the assistant to the Chairman, John Buffington (Castleberry, Alabama, pop. under 2,500) acts as Chairman Dixon's liaison man and watchdog

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for the work of the Executive Director. Beneath Wheelock are the six Bureau Chiefs. The Bureau of Economics is the only operating bureau which does not hire lawyers for substantially all its staff. It is presently headed by Harrison F. Houghton (Des Moines, Iowa, pop. 283,902) whose appointment has already been discussed. See p. 108. The following is a list of the other five bureau chiefs and their native towns:

Cecil G. Miles (Prairie County, Arkansas, pop. of county 10,515) Bureau of Restraint of Trade.

Frank Hale (Madisonville, Texas, pop. under 2,500) Bureau of Deceptive Practices.

Chalmers B. Yarley (Waterloo, South Carolina, pop. 5,417) Bureau of Industry Guidance.

Charles R. Moore (Johnson City, Tennessee, pop. under 2,500) Bureau of Field Offices.

Henry D. Stringer (Winfield, Texas, pop. under 2,500) Bureau of Textiles and Furs.

In addition to the operating bureaus there are two offices consisting entirely of lawyers which are influential in the Commission's policy making process. The Office of the General Counsel is headed by James McI. Henderson (Daingerfield, Texas, pop. 3,133) and the Director of the Office of Hearing Examiners is Luther Edward Creel (Albertville, Alabama, pop. 8,251). Of the thirty-five Assistant Bureau Chiefs and Division Chiefs, only fifteen biographies were available from the Office of Information. Of those fifteen, nine were from a small town southern background. In the field offices a reverse carpetbagger effect has taken place. The Attorney-in-Charge of the Kansas City Office comes from Bowdon, Ga. (pop. under 2,500). The Attorney-in-Charge of the Los Angeles Office transferred there from the Atlanta Office and the Attorney-in-Charge of the San Francisco Office comes from Virginia.

Protection of the Poor Consumer

This common background of policy making personnel perhaps explains why the Commission did not start to police the exploitation of the ghetto poor of the D.C. area until late 1965, and then only because of constant prodding by Sen. Warren Magnuson (Seattle, Washington) and Commissioner Mary Jones (New York, New York). Even the FTC's efforts since 1965 in the D.C. project have been so small and half-hearted that it can only be called a showcase for publicity purposes. One finds in this case another example of what this report labels "scoping", see p. 41. The D.C. Project opened 98 investigations over a period of three years. From these, 27 formal complaints were issued with only 19 final orders being entered. Of the final orders only seven were accepted as adequate with the others still "under investigation" *FTC Report on District of Columbia Consumer Protection Program* P. 1 (1968).

The D.C. project is also an outstanding example of the reluctance of the FTC to use rigorous enforcement penalties. The Commission has the right to penalize up to $5,000 per day for each violation of its final order. Moreover, according to the D.C. report:

"Of the 15 final orders for which compliance orders have become due, seven reports of compliance have been accepted by the Commission. Four respondents did not submit any compliance reports and three respondents submitted inadequate reports. All seven cases were accordingly sent into the field for investigation. . . .

"The Commission has put itself in a position whereby it can state unequivocally . . . that if violations are going on they are known to the Commission and are under active investigations." *D.C. Report*, p. 12.

However, despite the Commission's knowledge of these violations, it has still failed to issue a single penalty. If the Commission's resources are so limited that it cannot afford to divert more funds to the vital D.C. project, it might at least consider making more effective use of the legal resources it does have.

One major point stressed by the Kerner Commission Report on Civil Disorders was that the ghetto poor justifiably felt that they had been unfairly exploited by local white merchants. (*Report of the National Advisory Commission on Civil Disorders*, Chap. 8; see III, "Exploitation of Disadvantaged Consumers by Retail Merchants." See also *The Dark Side of the Market Place* by Sen. Warren Magnuson and *The Poor Pay More* by David Caplovitz.) This exploitation was also documented by a 1968 report prepared by the FTC's Bureau of Economics.

Sen. Magnuson states the plight of the poor consumer most movingly:

"Entrapped by devious clauses in contracts and duped by the lies of fast-talking salesmen, many of the victimized poor do not have the faintest notion of what has happened to them; they know only that they have been badgered by bill collectors, lost their jobs, seen their furniture or homes swept away, and that the law is somehow implicated. Worst of all, these poor people are nearly helpless to fight back, for they do not know their rights nor how to exercise them." *The Dark Side of the Market Place*, p. 53.

In the American tradition of despairing debtors, which dates back to Shay's Rebellion in 1787, the ghetto dwellers used violence to attack the source of their frustrations. Thus, during the D.C. riots there were selective firebombings of local merchants and finance companies.[46]

If the FTC had started a vigorous consumer protection program for the D.C. area in 1960 instead of the weak program started in 1965, perhaps a major cause of the D.C. riots would have been removed. Such action, however, would have required social concern, imagination and foresight—the very qualities which are inhibited by limited groups of people suffering from a lack of diversity. A small clique of attorneys with an identical background far removed from the important issues of the day should not have control over an institution with the important responsibilities of the Federal Trade Commission.

The unique common background of the Commission's line personnel in combination with the political nature of the Commission has produced a reluctance on their part to disturb their political friends on the Hill by radical action. Thus both Commissioner Dixon and Commissioner MacIntyre objected to a proposal that the Commission publicize discrimination in housing by investigating deceptive newspaper advertising that covered up discriminatory practices.

Hiring From Minority Groups

Chairman Dixon's attitude in the above case is paralleled by his stance *vis-a-vis* the hiring of minorities. The following data on minority group employment in the FTC comes from the *Study of Minority Group Employment in the Federal Government* which is prepared annually by the Civil Service Commission.

PROPORTION OF NEGROES TO ALL EMPLOYEES—FEDERAL TRADE COMMISSION

[In percent]

	GS 9–18	GS 5–8	GS 1–4
June 1965	0.98 (6/611)	11.0 (33/299)	24.6 (51/207)
June 1966	1.28 (7/547)	9.5 (25/263)	34.5 (69/200)
November 1967	.78 (5/638)	12.0 (33/274)	42.6 (104/244)

Note: Figures in parentheses show number of Negroes out of total of all employees.

As these figures show, the FTC has not been averse to hiring Negroes, but only "in their place," i.e. the lowest GS 1–4 positions. The absence of changes since mid-1965 in the proportion of Negroes in the GS 5–8 levels indicates that Chairman Dixon has not encouraged the promotion of Negroes to supervisory positions. Those in the GS 5–8 grades are trained clerical help, and it would be reasonable to expect hiring on the basis of equal opportunity to produce a proportion of Negroes somewhat higher than one-sixth the proportion of Negroes in the Washington population. The 1965 Civil Service Report on the FTC noted in its summary that one of the conditions in the Commission was that: "The program for equal employment opportunity has not been effectively implemented throughout the agency." *Civil Service Report*, p. 7.

In the same report, the Civil Service Commission argued:

"Much greater effort must be made to seek out minority group candidates for professional positions. The system of almost total reliance on walk-ins must be replaced with a program of aggressive search if the Federal Trade Commission is to be assured that it is getting its fair share of top quality minority group candidates." *Civil Service Report*, pp. 9–10.

There are currently five Negroes in the GS 9–18 grades for professional employees. One is a librarian, three are attorneys and one is a textile investigator. According to a member of the Office of Personnel who is in a position to know about the FTC's recruiting effort, Chairman Dixon has effectually disobeyed this Civil Service Commission directive. According to this source, Chairman Dixon has no desire to encourage Negroes to join the FTC and as a result no change in recruitment policies *vis-a-vis* minority groups has taken place since 1965. Two years ago an attorney was going to be sent to Howard Law School to do special recruiting, but because of minor disturbances on the campus, decided not to go. Since that attempt the personnel office has justified not visiting Howard Law School by invoking the general rule that they don't send interviewers to any of the D.C. law schools. A major problem is that the FTC has no young Negro attorneys who can be sent to interview Negro law students, but this problem would solve itself if the Commission were to follow the edict of the Civil Service Commission and make a vigorous effort to hire competent Negro lawyers.

The final suggestions of the Civil Service Report are two-fold:

The FTC should provide:

(a) An intensive educational program to assure full understanding of the equal opportunity program by all personnel.

(b) A positive recruiting program to utilize vacancies which are occurring, in the field in particular, to place qualified clerical and professional candidates in offices which have few or no minority group members on the rolls. p. 11.

As of last fall, three years after the issuance of this report, the FTC had acted on neither provision.

Problems of the Higher Staff

In an article entitled "The Dim Light of Paul Rand Dixon," Milton Viorst concludes about Mr. Dixon:

"Paul Rand Dixon's chief failure . . . seems to be that he's been with the Federal Trade Commission far too long. Dixon is so accustomed to doing what he's always done that he finds it difficult to conceive of doing anything very different. . . .

Footnotes at end of speech.

"He simply lacks the clarity of conception necessary to give the FTC broad new objectives, as well as the tenacity of spirit needed to build a staff equal to achieving them." *Washingtonian*, Oct. 1968, p. 82.

With this kind of leadership it is not surprising that a large number of the "old timers" have lapsed into a state of lethargy. The Office of the General Counsel epitomizes this problem. Including the General Counsel, there are thirty-two attorneys in the Office. Of these thirty-two, twenty-two hold a GS rank of 15 or higher, which carries a salary of $20,000 to $25,000, primarily because of their long tenure at the Commission. GS–15 is as high as one can go without getting into supergrades. Another five are GS–14's, three are GS–13's, one is a GS–11, and one is a GS–9. The progression, then, is the exact opposite of a normal hierarchy.

The General Counsel, who is in charge of the Office, is James McI. Henderson. He is a Johnson man from Texas, who started his political career clerking for the late Senator Marvin Sheppard of Texas. In better days he occupied a number of significant governmental positions. Now as General Counsel to the FTC, he is frequently absent from his office. In two separate attempts to interview him made by the project, he was not in his office, and his embarrassed secretary could not say when he would be back or whether he was on extended leave, vacation or what. At other times during the summer telephone calls were made to his office producing similar results.

Most young attorneys at the Commission, and a few in high GS levels, are critical of the personnel in the General Counsel's Office. "It is the office of sinecures," one remarked. And another commented, "there is a lot of 'deadwood' on the fifth floor." [47]

Some of the men in the General Counsel's Office are desperately in need of face-saving. One of these is Charles Grandey. When two members of the project went to interview Mr. Grandey in his office, they found him fast asleep on a couch with the sports section of the *Washington Post* covering his head. They woke him up, and he walked to his desk where he propped his chin up with his hands on top of a pile of books. Asked what his work entailed, Mr. Grandey gave a very vague reply. Further inquiries with other FTC attorneys established that he really did very little, his chief occupation being to abstract cases which are pertinent to the Commission's work. His yearly salary is $22,695. He is officially listed in the Commission telephone book as the Assistant General Counsel for Voluntary Compliance, along with the other Assistant General Counsels who head divisions. He is also listed on organization charts in the same manner, but in the confidential Budget Control Reports, he is simply placed along with the Assistants to the General Counsel. And just exactly what the Division of Voluntary Compliance does is a mystery which is not solved even by the FTC's *Justification of Estimates of Appropriations for Fiscal Year*, 1968 and 1969, which are presented to Congress. In these tomes the Division of Voluntary Compliance mysteriously disappears and remains unjustified.

The Office of the General Counsel with all its inefficiencies resulting from too many high-ranking staff attorneys is representative of the whole central office of the Commission. Of the 297 attorneys in the central office (there are 156 attorneys in field offices), 34% are GS–15's or higher, 22% are GS–14's, 15% are GS–13's 6% are GS–12's, 10% are GS–11's, 13% are GS–9's.[48] These percentages do not include the Commissioners, the Executive Director, or the Hearing Examiners, all of whom are located in the central office and hold supergrades above GS–15. In short, the FTC is suffering from a bad case of too many chiefs. A constant complaint heard from younger attorneys concerned interference from higher-ups due to overlapping jurisdictions and "their desire to direct, not work."

Here again we find a situation which was vigorously brought to Chairman Dixon's attention by the 1965 Civil Service Report. In the "Summary Evaluation of the Report," the following points are made:

"A number of key positions have overlapping, duplicative, conflicting assignments of duties and responsibilities.

"Positions are assigned grade-influencing duties that are not being performed.

"Attorneys are not assigned work commensurate with their grade level.

"The head of the agency is not meeting those responsibilities placed upon him by the Classification Act of 1949." *Civil Service Report*, p. 7.

Our investigations have shown that in the three years since the Civil Service Report was issued, Chairman Dixon's style of running the FTC has continued to clog the gears of an agency which should be streamlining itself to deal with a growing and complex economy.

4. Hiring of new attorneys

The myth concerning hiring at the Federal Trade Commission is that the best young attorneys are sought and offered appointments. Confidential interviews told a different story. Young attorneys are accepted for various reasons. Some on the merits of their case—grades, extracurricular activities and LSAT scores; but many others are accepted because the interviewers "liked" them, or for old school ties, regional background, or a political endorsement.

The major hurdle for a graduating law student who wishes an appointment is the interview with either the Bureau Chief or an assistant in the bureau he wishes to join. He is, in addition, required to fill out a formal application which asks for school, grades, academic honors, LSAT scores, home state, and pertinent courses he might have taken in law school. But, according to all those concerned in the administration of the admission process, it is the interview which makes or breaks the applicant. From 1958 to 1959 a "rating sheet for attorney applications" was instituted. The rating sheet based offers of appointments on a point system which minimized the effect of the interview. The Bureau Chiefs, however, became very dissatisfied with this system and it was discontinued.[49]

The myth of going after the best available legal talent has been dispelled by Chairman Dixon who has been quoted as saying: "Given a choice between a really bright man, and one who is merely good, take the good man. He'll stay longer." *Advertising Age*, Nov. 20, 1961, p. 113. Chairman Dixon's well-known prejudice against "Ivy League lawyers" is deeply rooted in southern populist tradition, which is the background of the Commission's ruling clique.[50] As a result, graduates of prestigious law schools such as Harvard and Pennsylvania, which have very capable anti-trust professors, do badly at the FTC when compared to law schools such as Kentucky and Tennessee. Over the past two years eleven Harvard graduates from the classes of '67 and '68 applied to the FTC and only four were offered appointments.

From the University of Pennsylvania, only three of nine applicants were given offers, while at Kentucky it was nine out of eleven and at Tennessee six out of sixteen. It is possible, of course, that on an individual basis the applicants from the latter schools were better than those of the former. The fact is, however, that the system is geared to exclude able young law students who are in the middle of their class at high grade law schools. Although LSAT scores, the only common denominator available, are asked for, they are generally ignored in the admission process. This leaves interviews and law school grades as the basis for choosing attorneys.

The attitude of the Bureau Chiefs is such that they prefer attorneys who will not underscore their mediocrity or disturb the work patterns of their bureau. It is easy to eliminate the bright young fellows from national law schools by objecting to them on the basis of their interview and, for a clincher, pointing to their class standing. A typical applicant from a prestigious eastern law school will have a lower class standing than one from the mediocre state law schools, though the former person may be much brighter and better trained. The desire to perpetuate mediocrity goes beyond a phobia of the East. Thus a graduate of Virginia Law School, which has a reputation as a good national law school, is as badly treated as the graduate of the good eastern schools. Of the thirteen Virginia graduates from the '67 and '68 classes who applied to the FTC, only two were accepted.

Sectionalism and school ties do, however, also play an important role in the acceptance policy of the FTC, as the charts and discussion in Appendix 13 (p. 168) demonstrate. These charts were distilled from computerized lists of applicants and offiers of appointment which give home state, law school, LSAT score, and, for 1968 graduates, an honors code number which indicates a combination of class standing and extracurricular activities.

The conclusion drawn from Appendix 13 may be summarized as follows: Despite equal abilities as far as class ranking in law school and law aptitude scores are concerned, graduates from the South have a two to one acceptance rate over graduates from the North and this figure increases to three to one for offers to join one of the bureaus in the Central Washington office. Certain southern states for political reasons have an advantage over other states. Tennessee has an acceptance rate of 52%, while Texas has an acceptance rate of 53%. In addition, a detailed comparison of LSAT scores and honor code numbers (ranks in class) between those applying and those being accepted by the commission, further demonstrates the point made before—that the FTC tends to accept less capable students from inferior schools. School ties also make a big difference in an applicant's chances for success, with George Washington University and the University of Texas fairing unusually well for good law schools.

Situation of the Lower Staff

Thus we find that for the most part the FTC Bureau Chiefs, either consciously or unconsciously, seek their own image among young lawyers. The process of absorption into the hierarchy, however, only begins here. Within four years 80% of the new lawyers leave the FTC. Their reasons for leaving vary from a better paying job to complete disgust with the agency. Altogether the project talked with five young attorneys who had either left or were about to leave the Commission. Three were working for law firms in Washington, one was at the Justice Department and one was getting ready to leave the Commission. A brief conversation was held with a sixth, but he subsequently balked at a full interview fearing recriminations in the form of bad recommendations from the FTC. He too was in the process of quitting the FTC.

All of these attorneys were unanimous in the opinion that the FTC was a discouraging place to work for a young attorney. Most stayed on for the amount of time they did only to finish their "graduate on-the-job training" in anti-trust law and to qualify for good recommendations.

A lawyer who had been at the FTC in the late 1950's and early 1960's stated that the aggressive trial approach of Chairman Kintner was ideal for young lawyers who wanted to take responsibility. He calculated that he had tried 19 cases in his first two and a half years because his boss was a lazy man who liked nothing better than to shift his

Footnotes at end of speech.

workload onto willing young attorneys. After those exciting first years, however, things slowed down under Dixon's voluntary compliance approach. The younger lawyers "got upset," he said, when the higher-ups started to let cases they had prepared for trial sit around for months without any action. This lawyer stated that he had once prepared a memorandum recommending complaint and that 18 months later it had not left his boss' office.

Another lawyer who had been at the FTC during the same period of transition said that there had been a lot of "espirit de corps" in his bureau (restraint of trade), but that it had diminished by 1963 because so few cases were being tried. He explained that the young trial lawyers love to fight big companies, but that the hierarchy of the FTC normally ends up going after the little guy at the request of Congressmen. Another frequent complaint—the existence of too many chiefs interfering with the real work being done by the young attorneys—has already been mentioned (see p. 119).

An old hand at the Federal Trade Commission stated that there were two kinds of people among the lawyers that decided to make a career of the FTC:

(a) the intelligent, idealistic public servants who also desire a certain degree of security, or

(b) the not so smart lawyers who need the security of the FTC. Most of the career men at the FTC fall into the second category.[21]

An interview with one of the few in the first category showed him to be a frustrated man, working under comparatively inept superiors, and doing his work, now, with more professional pride than idealism.

In the last analysis, the major problem at the FTC is a motivational one. The men who lead the Commission desire only to do the work they have always done in a manner which recalls Samuel Beckett's existential tragedy *Waiting for Godot*. In the meantime, the young attorneys at the bottom languish for want of direction and remind themselves they are there only for a short while to receive a practical legal education.

5. Need for professional personnel other than attoneys

An additional personnel problem at the Commission is its excessive reliance on attorneys to do all the agency's jobs, or, more accurately, its consequent lack of technical competence in other relevant fields.

This problem manifests itself in several ways, only two of which will be discussed here. A prime example involves the Division of Food and Drug Advertising in the Bureau of Deceptive Practices. This division is responsible, *inter alia* for detecting and preventing deception in the advertisement of drug products, yet it is staffed *entirely* by lawyers and has no doctors or scientists to advise it, according to Dr. Barbara Moulton [22] of the Division of Scientific Opinions (the latter division only evaluates claims *referred to it* by the Division of Food and Drug Advertising—it does no monitoring on its own). With such a set-up, it is not surprising that the Division of Food and Drug Advertising is presently operating at a low-level of energy (6 of 21 staff attorneys having left between June, 1966, and June, 1968, according to Division Chief John W. Brookfield) or that it presently does *nothing at all* to enforce the agency's laws in the area of therapeutic *devices* (the statute includes "foods, drugs and *devices*". FTC Act c 12).

A second example of lack of technical expertise and its consequences is the well known "odometer" case, referred to earlier in our discussion of excessive delay. Briefly, the salient feature of the case is that for some thirty years the FTC failed to act, although it knew that automobile odometers (mileage-registering devices) consistently over-registered to the benefit of auto companies (and car rental concerns) and detriment of car owners. It turns out that the major reason for this delay was that the FTC was duped by an excuse perennially put forth by the auto manfacturers: they claimed they *had* to make odometers register high because state highway officials demanded that they make *speed*ometers register high (to diminish actual driving speeds) and that the two were inseparably *connected*. Well, the fact of the matter is that odometer and speedometer are *not* connected, as any mechanical engineer would have known. (Since they work by different mechanisms, the odometer by gears, the speedometer by magnetic induction, it is perfectly feasible to adjust one without affecting the other).

Unfortunately, the FTC did not then have any engineers on its staff, nor does it now. And now, as the complexity of consumer products increases, this sort of technical expertise is needed more than ever. Who on the FTC knows about the complex features of modern automobiles or their accessories? Who about household appliances and their qualities? Who about new construction materials and their properties? Who about electronic computers and their capabilities?

FINDINGS AND RECOMMENDATIONS

1. As disclosed by the preliminary sections of this report, a growing problem faced by the American consumer is industry's increasing use of subtle but extremely powerful psychological appeals in advertisements. It may be that such appeals to strongly irrational forces in the human personality, when coupled with the broad and pervasive impact of modern media of communication, will require some governmental intervention to protect and preserve "rational" consumer choices.

We understand that this is a very difficult subject and that little is known about it. For that very reason, as well as because of its growing importance, the Federal Trade Commission should begin to consider whether sophisticated motivational—research advertising may violate the FTC Act. In doing so, it must grapple with the question whether such advertisements can be classified as either "deceptive" or "unfair" practices.

2. The FTC's present methods of becoming aware of consumer problems are woefully inadequate. It relies almost exclusively on letters of complaint from the public to detect possible violations of its laws, yet cannot obtain monetary satisfaction for injured individuals. As a result, there is little incentive to report deceptions to the Commission. Moreover, since many contemporary deceptive business practices are extremely subtle, victims of them may never know clearly that they have been deceived.

To remedy this situation, the Commission must begin to investigate consumer problems as such, making maximum use of its compulsory information gathering powers. It should, for example, focus its attacks on specific pressing problems by mobilizing task-force-scale efforts similar to the recent "Special Project" in Washington, D.C. In connection therewith, it should hold frequent public hearings, publishing reports based on them, and pressure other government agencies, such as the Departments of Defense and Agriculture, to divulge information of interest to consumers.

The Commission's attorneys must make contact with the people and the problems of the ghetto. Either through the roving task-force approach suggested above, or through the establishment of storefront offices in ghetto areas, the FTC must become visible to disenfranchised America. Commissioners and staff down to the lowest levels must establish contact with the burgeoning grassroots self-help organizations forming in every large city. Talks before trade associations must be deferred in favor of meetings with the poor and exploited where meaningful two way communication can be initiated. Field offices must be relocated, particularly the one in Oak Ridge, Tennessee, and must become centers for aggressive investigations.

The FTC should consider requiring manufacturers, advertisers, and so on of major and/or potentially harmful products to file reports on their products containing data to substantiate claims made about them. This would shift the burden of proving such matters to the businssman—as is already done by the FDA in regulating new drugs.

Simultaneously, the public complaint system itself should be beefed up, perhaps by passing legislation to let injured consumers sue for treble damages using FTC cease and desist orders to establish a *prima facie* case. Massive and pointed consumer education can also help.

3. The FTC still fails to select only important cases for prosecution, exhausting its limited resources in handling trivial cases as it has for more than fifty years. Little can be recommended except that it finally begin to make decisions according to the criteria it claims to use (size of company, seriousness of deception, class and number of consumers affected). Practically, a good start would be to find a hard-hitting replacement for Mr. Charles Sweeney, Program Review Officer, who recently died. The new Program Review Officer should have solid grounding in cost-benefit analysis, computer operation, and should be provided with thorough, honest and intelligently shaped performance statistics (which do not now exist).

4. The Commission fails woefully to enforce its laws properly in the context of its present powers. It relies much too heavily—nearly exclusively—on "voluntary," nonbinding enforcement tools. These cannot be expected to work at all unless backed up by stricter coercive measures, which are almost completely lacking now.

The agency also permits flagrant delays to sap its enforcement program. Both in the administrative handling of formal orders and in the investigative reports, the Commission fails to press forward with dispatch. This means toothless enforcement activity and long periods of inaction with regard to the most pressing problems.

Finally, the FTC fails to perceive and take advantage of the enforcement potential of its most extensive authority—the power to require disclosure of information and publish it in the public interest.

To improve its enforcement program, the Commission must begin by jettisoning its excessive reliance on voluntary means of securing law enforcement. Where these means *are* used, compliance with them must be checked more carefully and enforced more stringently. The coercive enforcement methods available must receive greater emphasis. At present, these powerful tools are almost entirely unused. The Commission must institute more frequent use of civil penalty and suits for preliminary injunctions and criminal penalties under the Flammable Fabrics Act and the food and drug provisions of the FTC Act.

The Commission must begin a program of periodic compliance checks on the entire number of outstanding cease and desist orders and begin to punish non-compliers harshly.

Delays must be routed by marshaling sufficient legal and monetary resources to prosecute cases smartly and by enjoining practices pending disposition of cases. Every matter taken up should be brought to a prompt and clean conclusion; never should announced investigations be allowed to vanish without a murmur.

The threat of prompt, effective and widespread publicity about objectionable corporate behavior must finally be recognized and made use of as a potent enforcement tool. Paradoxically, large corporations are remarkably thin-skinned.

5. The Commission has not vigorously pressed for increased statutory authority either across the board or in specific consumer problem areas. In general, it needs au-

Footnotes at end of speech.

thority to seek preliminary injunctions and criminal penalties in cases involving S 5 of the FTC Act. It should also seek changes in the Act's language regulating its jurisdiction to make it clear that it has power to deal with intrastate matters. In areas of specific problems the Commission should seek various appropriate enforcement tools on the analogy of the SEC's power to stop stock brokers from trading and the FDA's authority to seize offending drugs in condemnation proceedings.

On a different plane, the FTC should begin to lobby vigorously for the passage of "baby FTC Acts" by individual states in order to increase the total of law enforcement activity for consumer protection.

In pushing for all this necessary new legislation, the Commission should be prepared to utilize its publicity and informational powers to mobilize maximum political support among consumers. And it should not fail to press for the necessary appropriations and manpower to carry out its proper role. An appropriations increase of from eight to nine times the agency's present allotment would constitute a minimum initial target.

6. The FTC makes a fetish of secrecy. It masks from public view much of its regulation of business, preventing evaluation of its performance as well as of business practices involved.

The solutions to this problem must be sought on all levels. The agency's policies regarding confidentially should be changed to conform to the requirements of the Freedom of Information Act. Public logs should be kept of all conferences between businessmen and Commission staff in order to minimize behind-the-scene whitewashing of agency reports and unwholesome coziness between private attorneys and agency staff members.

Public information must be made truly public by general publication and dissemination; news releases must be made more concrete and informative.

In cases of decisons not to take action, the FTC should publish reasons therefor rather than merely quietly shelving possibly important inquiries.

Briefly, the FTC must change its philosophy so as to understand that citizens have as much right to important information as members of Congress and officers of large corporations.

7. There is little doubt as to where the leadership of the Federal Trade Commission resides—it is with Chairman Paul Rand Dixon. Professor Kenneth C. Davis, after surveying the regulatory agencies in person, observed that no other regulatory agency has witnessed such a concentration of *de jure* and *de facto* authority and power as that possessed by Chairman Dixon.

With greater centralization of agency power and authority go commensurately higher levels of responsibility. As the tenure of Mr. Dixon's chairmanship enters its ninth year, more and more of the Commission's problems and defaults are attributable to his failures of leadership and not to the legacy of his predecessors. Unlike his predecessors, Mr. Dixon could have been the beneficiary of the recent upsurge in the consumer movement with its growing constituency at many levels of society, from community organizations in the slums to Congress. Not only has he failed to take advantage of the growing concern for the consumer, but he has chosen to view it skeptically and with not a little disdain. While even the White House has passed him by in delineating new consumer protection horizons, Mr. Dixon has trundled along and institutionalized mediocrity, rationalized a theory of endemic inaction, delay and secrecy, and transformed the agency into the Government's Better Business Bureau. He has managed the not inconsiderable feat of turning the Federal Trade Commission into a patterned and intricate deceptive practice unto itself.

Such accomplishments could not be mismanaged without lieutenants. One of Mr. Dixon's undoubted skills is the alacrity with which he filled the Commission with his cronies. One of the most dismaying attributes of cronyism—especially when it comes from the boss—is that there is no structure of internal criticism that can evaluate the costs. This is not the time to engage in a case by case evaluation of Bureau Chiefs and other high Commission staff. But it is highly appropriate to note that alcoholism, spectacular lassitude and office absenteeism, incompetence by the most modest standards, and lack of commitment to their regulatory missions are rampant at these staff levels. They are well known to the Chairman, who somehow has found that they add to the congenial environment and unquestioned loyalties that surround his office. Even high officials of the Commission, who despair and depict in detail these staff liabilities, shy away from further action out of deference to the Chairman's power. Thus, the FTC is witness to a phenomenon of government that can be described at best as sinecures and at worst as $27,000 a year welfare cases. Thus, at the higher staff levels, where policy direction, courage, and new ideas should proliferate, unproductive overhead and featherbedding prevail as major demoralizing influences that filter down to the fledgling FTC recruit who soon realizes that life's potential is better tapped in other fields.

The public arena for the FTC's flexing of its consumer protection muscle has been growing larger with every passing month—such is the ambience that has flourished in recent years. Yet the Chairman has chosen to dance on the head of a pin and use its perilous perch as the pretext for non-performance. Most of the Commission's weaknesses and misdirection can be laid at the doorstep of the Chairman as the primary "responsible." Seen in the detailed study of his record since 1961 and his rigid and complacent view of his post, Mr. Dixon's chief and perhaps only contribution to the Commission's improvement would be to resign from the agency that he has so degraded and ossified.

His resignation will indicate to the American consumer, who has been deceived, defrauded and ignored for profit by corporations both large and small, that the FTC is prepared to protect his interest as demanded by law.

8. The new Chairman should undertake the formidable task of uprooting the political and regional cronyism which has for years prevented the FTC from achieving its mandate to defend the hapless consumer. The present bureau chiefs must be judged not on the strength of political friends, but in the light of personal abilities and motivations. Those who do not measure up must be replaced without regard for seniority. Concurrently, junior attorneys must be granted easy access to the commissioners in order to prevent the normal channels of communication through the division and bureau chiefs from stifling innovative ideas and vigorous action.

9. To obtain the best available legal talent, changes must be made in the present hiring system. Institutionalized discrimination against the nation's top law schools can be eliminated by a sophisticated system relating class standings with aptitude scores to grade various law schools. In addition, evaluations of anti-trust and consumer law programs should be considered. Middle grade attorneys from at least below the division chief level should conduct all interviews and take an active role in the acceptance process. This will prevent the current major problem—an upper management out of touch with the times seeking its own image and perpetuating its outmoded values. If gradual change is not built into our institutions, violent change will be the inevitable result.

10. The FTC should hire a limited number of engineers, doctors and product experts on a full time basis to supply continual advice to attorneys investigating the complex products and drugs which are the hallmark of modern society. This should be done even if it means reducing the number of attorneys.

11. At a minimum, the FTC must react to the mild criticisms of the Civil Service Commission.[23] As the project report has shown, Chairman Dixon has completely ignored the mandatory provisions of the Civil Service Commission 1965 Report. He has not instituted computer education for his staff. He has not aggressively sought attorneys from minority groups. And he has increased, not decreased, the number of high level attorneys whose jobs do not justify their civil service ranks.

12. This report reveals that the Federal Trade Commission's performance of its regulatory duties has been shockingly poor for the last seven years. Due to the Commission's fetish for secrecy, however, what was discovered is only the visible fraction of what is probably a veritable iceberg of incompetence and mismanagement.

The Federal Trade Commission is much more open to scrutiny by its congressional watch dog committees than by mere citizens. These committees, the Senate Commerce Committee and the House Interstate and Foreign Commerce Committee, should undertake a full scale study of the consumer protection activities of the Commission. Such an investigation should determine in greater depth what can be done to reorient the agency towards its proper role as protector of the American consumer, and to prevent future deviations from that role.

APPENDIX 1

BUDGET ANALYSIS

	1965 actual	1966 actual	1967 actual	1968 requested
Antimonopoly:				
Investigation and litigation	$6,246,000	$5,937,000	$6,258,000	$6,468,000
Economic reports	850,000	955,000	992,000	1,052,000
Trade-practice conferences	170,000	244,000	282,000	297,000
Deceptive practices:				
Investigation and litigation	3,373,000	3,633,000	3,813,000	4,232,000
Conferences	341,000	490,000	564,000	593,000
Textile and fur enforcement	1,209,000	1,272,000	1,283,000	1,375,000
Executive direction	299,000	325,000	338,000	344,000
Administration	779,000	815,000	848,000	864,000
Total	13,410,000	13,671,000	14,378,000	15,225,000
Personnel	11,362,000	11,705,000	12,376,000	13,026,000
Permanent personnel	11,288,000	11,642,000	12,329,000	12,972,000

Footnotes at end of speech.

APPENDIX 2

Informal corrective actions [1]

Fiscal year 1966	3,394
Fiscal year 1967	3,121
Fiscal year 1968 (3d quarter)	2,938

[1] Includes figures in Chart V plus preliminary matters.

Assurances of voluntary compliance accepted in 7-digit cases

Fiscal year 1966	422
Fiscal year 1967	559
Fiscal year 1968 (3d quarter)	360

Cases [1] *disposed of by orders to cease and desist—Contest and consent*

Fiscal year 1966 (3 quarters):	
Consent (C. & D. series)	143
Contest	16
Admissive answers and defaults	2
Total	161

Cases [1] *disposed of by orders to cease and desist—Contest and consent*—Continued

Fiscal year 1967 (3 quarters):	
Consent (C. & D. series)	118
Contest	16
Admissive answers and defaults	5
Total	139
Fiscal year 1968 (3 quarters):	
Consent (C. & D. series)	68
Contest	16
Admissive answers and defaults	2
Total	86

[1] Partial orders excluded accordingly. Also excludes dismissals, declaratory and withdrawals, etc.

Completed investigations—7 digit [1]

Fiscal year 1966:	
Bureau of Restraint of Trade (433) [2]	492
Bureau of Deceptive Practices (636) [2]	795
Bureau of Textiles and Furs (124) [2]	186
Total	1,473
Fiscal year 1967:	
Bureau of Restraint of Trade (254) [2]	321
Bureau of Deceptive Practices (395) [2]	546
Bureau of Textiles and Furs (135) [2]	191
Total	1,058
Fiscal year 1968 (3 quarters):	
Bureau of Restraint of Trade	139
Bureau of Deceptive Practices	318
Bureau of Textiles and Furs	104
Total	561

[1] Also includes investigations completed by Commission approval for complaint but pending consent order negotiation.
[2] Figures in parentheses indicate number of cases for 3 quarters.

FEDERAL TRADE COMMISSION WORKLOAD AND PRODUCTION, BUREAU OF DECEPTIVE PRACTICES (1ST 3 QUARTERS, FISCAL YEAR 1968)

INVESTIGATIONS

Division	Input: On hand beginning fiscal year	Input: Initiated during 3 quarters [1] fiscal year 1968	Input: Other [2] Plus	Input: Other [2] Minus	Input: Total workload	Input: (+) or (−) from 3 quarters last fiscal year	Output: Investigations approved for complaint action	Output: Closed: Voluntary compliance	Output: Closed: Other	Output: Total investigations	Output: (+) or (−) from 3 quarters last fiscal year	On hand March 31, 1968
Food and drug advertising	258	64	+3	−31	294	−78	8	[3] 23	47	78	−16	216
General practices	895	207	+34	−47	1,089	−94	21	[3] 65	124	210	−79	879
Special projects	57	47	+40	−5	139	+84	13	4	13	30	+27	109
Total	1,210	318	+77	−83	1,522	−95	42	92	184	[4] 318	−75	[5] 1,204

[1] Source for initiating investigation:

Applications for complaint	221
Advertisement—monitoring program	7
Field office reports (28 with letters of complaint, 41 without letters of complaint)	69
Other	21
Total	318

[2] Transfers, reopenings, etc., affecting workload prior to completion.
[3] Excludes 1 voluntary compliance in case having multiple disposition.
[4] Excludes 9 auxiliary.
[5] Excludes 18 auxiliary.

COMPLAINTS ISSUED (INCLUDING C-SERIES ORDERS)

Division	Input: Pending consent negotiation beginning of fiscal year	Input: Approved for negotiation 3 quarters of fiscal year 1968	Input: Total workload	Input: (+) or (−) from 3 quarters of last fiscal year	Output: Withdrawn	Output: Volume compliance	Output: Issued: Consent settled (C-series)	Output: Issued: Docketed	Output: Total Output	Output: (+) or (−) from 3 quarters of last fiscal year	Pending consent negotiation, Mar. 31, 1968
Food and drug advertising	3	7	10	−6	1	------	2	2	4	−9	5
General practices	13	21	34	−51	1	------	9	7	16	−60	17
Special projects	3	13	16	+15	------	------	2	5	7	+7	9
Total	19	41	60	−42	2	------	13	14	27	−62	31

DOCKETED ORDERS ISSUED (SEE WMR 9 FOR C-SERIES ORDERS)

Division	Input: Docketed complaints pending beginning of fiscal year [1]	Input: Complaints docketed 3 quarters of fiscal year 1968	Input: Reopened	Input: Total workload	Input: (+) or (−) from 3 quarters of last fiscal year	Output: Orders to cease and desist: Consent	Contest	Other [2]	Total	Output: Dismissal orders	Output: Closed	Output: Total docketed orders issued	Output: (+) or (−) from 3 quarters of last fiscal year	Complaints, pending litigation Mar. 31 1968
Food and drug advertising	9	2	------	11	−9	------	2	------	2	------	------	2	−4	9
General practices	23	7	------	30	−15	2	8	2	12	2	------	14	−2	16
Special projects	2	5	------	7	+7	------	1	------	1	------	------	1	+1	6
Total	34	14	------	48	−17	[3] 2	11	2	[3] 15	2	------	17	−5	31

[1] Includes complaints, pending litigation, and cases formally reopened by vacating the order.
[2] Includes admissive answers, defaults, etc.
[3] Excludes 2 partial OCD's.

APPENDIX 3

WHO ADVERTISES WHAT

In the first quarter of 1968 sponsors of the following brands spent the most money on TV commercials in the U.S.A.:

1. Anacin tablets	$4,618,500
2. Alka-Seltzer	3,993,400
3. Salem menthol filters	3,552,700
4. Winston filters	3,321,600
5. American Telephone & Telegraph	3,295,200
6. Bayer aspirin	3,110,500
7. Bufferin	2,929,500
8. Listerine antiseptic	2,401,000
9. Miracle white cleaner	2,273,800
10. Kool menthol filters	2,103,000

APPENDIX 4

SIZE ANALYSIS—LITIGATED CASES ON DOCKET 1ST 4 MONTHS OF 1968

	Restraint of trade	Deceptive practices	Total
1967 sales over $1,000,000,000	2	0	2
1967 sales, $500,000,000 to $1,000,000,000	3	1	4
1967 sales, $100,000,000 to $500,000,000	8	3	11
1967 sales, $500,000 to $100,000,000	8	0	8
Unlisted or net worth below $500,000	5	33	38

Note: That since this list includes only those companies able to delay enforcement through expensive litigation, it would consist of the largest companies. Those who submit to voluntary compliance, etc. are almost unanimously small.

APPENDIX 5

AGE OF COMPLAINTS PENDING LITIGATION [1] [2]

June 30, 1966, 62 complaints:

Bureau of Restraint of Trade:	
Less than 2 years (47) [3]	16
2 to 4 years (26)	9
4 to 6 years (12)	4
Over 6 years (15)	5
Bureau of Deceptive Practices:	
Less than 2 years (68) [3]	17
2 to 4 years (24)	6
4 to 6 years (4)	1
Over 6 years (4)	1
Bureau of Textiles and Furs: Less than 2 years (100) [3]	3

June 30, 1967, 63 complaints:

Bureau of Restraint of Trade:	
Less than 2 years (62) [3]	16
2 to 4 years (19)	5
4 to 6 years (8)	2
Over 6 years (11)	3
Bureau of Deceptive Practices:	
Less than 2 years (82) [3]	28
2 to 4 years (6)	2
4 to 6 years (6)	2
Over 6 years (6)	2
Bureau of Textiles and Furs:	
Less than 2 years (67) [3]	2
2 to 4 years (33)	1

March 31, 1968, 55 complaints:

Bureau of Restraint of Trade:	
Less than 2 years (52) [3]	12
2 to 4 years (30)	7
4 to 6 years (9)	2
Over 6 years (9)	2

March 31, 1968, 55 complaints—Continued

Bureau of Deceptive Practices:	
Less than 2 years (97) [3]	30
2 to 4 years (3)	1
Bureau of Textiles and Furs: Less than 2 years (100) [3]	1

[1] Age is from date Complaint issued or reopened.

[2] Includes Complaints pending litigation and cases formally reopened by vacating the order. (Excludes cases referred for supplemental work.)

[3] Figures in parentheses indicate percent of cases.

AGE OF PENDING 7-DIGIT INVESTIGATIONS [1]

June 30, 1966, 1,978 investigations:

Bureau of Restraint of Trade:	
Less than 6 months (20) [2]	138
6 months to 1 year (14)	98
1 to 2 years (22)	148
Over 2 years (44)	305
Bureau of Deceptive Practices:	
Less than 6 months (37) [2]	407
6 months to 1 year (23)	248
1 to 2 years (17)	181
Over 2 years (23)	251
Breau of Textiles and Furs:	
Less than 6 months (31) [2]	63
6 months to 1 year (27)	55
1 to 2 years (21)	42
Over 2 years (21)	42

June 30, 1967, 2,120 investigations:

Bureau of Restraint of Trade:	
Less than 6 months (25) [2]	179
6 months to 1 year (15)	106
1 to 2 years (25)	184
Over 2 years (35)	256
Bureau of Deceptive Practices:	
Less than 6 months (23) [2]	283
6 months to 1 year (25)	306
1 to 2 years (31)	373
Over 2 years (21)	248
Bureau of Textiles and Furs:	
Less than 6 months (42) [2]	77
6 months to 1 year (27)	50
1 to 2 years (22)	41
Over 2 years (9)	17

March 31, 1968, 2,158 investigations:

Bureau of Restraint of Trade:	
Less than 6 months (13) [2]	94
6 months to 1 year (15)	111
1 to 2 years (33)	251
Over 2 years (39)	296
Bureau of Deceptive Practices:	
Less than 6 months (17) [2]	200
6 months to 1 year (16)	199
1 to 2 years (36)	436
Over 2 years (31)	369
Bureau of Textiles and Furs:	
Less than 6 months (35) [2]	70
6 months to 1 year (28)	57
1 to 2 years (30)	61
Over 2 years (7)	14

[1] Age is from date investigation was scheduled. Excludes the following 7-digit matters: 4 Trade Mark, 1 Export Trade, 93 Industry Guides, 37 Advisory Opinions, 18 Trade Reg. Rules, 37 Auxiliary Matters.

[2] Figures in parentheses indicate percent of cases.

APPENDIX 6

RESTRAINT OF TRADE TIME ANALYSIS—TURNOVER

[Turnover analysis for 4 months of 1968]

	Number disposed of			Number acquired		
	February–March	April	May	February–March	April	May
Violation:						
2	0	0	1 (4.5)	0	0	0
3	0	0	0	0	0	0
5	0	1 (3.0)	1 ([1] 3.2)	0	1	0
7	0	1 (3.3)	0	0	2	0
8	0	0	0	0	0	0
Total	0	2	2	0	[2] 2	0

[1] Before withdrawn.

[2] Actually only 2 were acquired as above because one was designated under both violations 5 and 7.

Note: Numbers in parentheses indicate average age.

DECEPTIVE PRACTICES TIME ANALYSIS—TURNOVER

[Turnover analysis for 4 months of 1968]

Violation	Number disposed of			Number acquired		
	February–March	April	May	February–March	April	May
1	1 (8.5)	3 (3.2)	3 (2.5)	1	1	1
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	0	0	0	0	0	0
6	0	0	0	0	0	0
7	0	0	0	0	0	0
8	0	0	0	0	0	0
9	0	0	0	0	0	0
10	0	0	0	0	0	0
Total	1	3	3	1	1	1

Note: Numbers in parentheses indicate average age.

APPENDIX 7

STATISTICS ON SIZE OF BUREAUS

	June 1968	June 1966	June 1964
DECEPTIVE PRACTICES			
(1) Office of Director (attorneys)	8	2	3
(2) Division of Special Projects (attorneys)	19	0	----
(3) Division of Food and Drug Adv. (attorneys)	15	21	20
(4) Division of General Practices:			
Attorneys	28	29	----
General adv	----	----	19
General practices	----	----	17
(5) Division of Compliance (attorneys)	10	13	10
(6) Division of Scientific Operations:			
Scientific	10	8	8
Medical officers	4	----	----
TEXTILES AND FURS			
(1) Director (attorneys)	2	2	2
(2) Division of Enforcement:			
Attorneys	14	14	14
Textile technologists	2	----	----
(3) Division of Regulation:			
Attorneys	11	9	9
Investigators	2	1	2
Field investigators	42	36	37

	June 1968	June 1966	June 1964
FIELD OPERATIONS			
(1) Office of Director	3	3	3
(2) Atlanta office	10	8	9
(3) Boston office	10	10	10
(4) Chicago office	22	22	24
(5) Cleveland office	6	7	9
(6) Kansas City office	7	6	6
(7) Los Angeles office	9	6	3
(8) New Orleans office	15	15	17
(9) New York office	39	39	42
(10) San Francisco office	7	9	9
(11) Seattle office	8	11	11
(12) Washington, D.C., office	20	17	22
INDUSTRY GUIDANCE			
(1) Office of Director	2	2	2
(2) Industry guides	18	16	17
(3) Advisory opinions	5	6	6
(4) Trade regulation rules	8	10	6
CHIEF, BUREAU OF ECONOMICS			
(1) Office of Director (economists)	9	----	----
(2) Division of Economic Evidence (economists)	18	----	----
(3) Division of Industry Analysis (economists)	22	----	----
(4) Financial statistics (mostly accountants)	15	----	----

APPENDIX 8

DETROIT AGREES: IT'S A WIDE OVAL WORLD

Times have changed since Columbus said the world was round.

It's 1968, and America is fast discovering that the world is oval. Wide Oval. The Wide Oval of Firestone.

Perhaps you've noticed it, too. On the cars coming out of Detroit. How tires are getting wider, lower.

We started it all when we introduced the original Super Sports Wide Oval tire. A totally new kind of tire. Nearly two inches wider than conventional tires. It grips better. Corners easier. Runs cooler. Stops 25% quicker. And it gives your car an all-out look of driving excitement.

It's built with Nylon cord, too. And that gives it maximum strength and safety at sustained high-speed driving.

Sure, others may look like it, but none perform like it.

There's really only one original Wide Oval tire. And Firestone builds it.

The Super Sports Wide Oval tire. Anything less is less.

Nearly two inches wider than your present tire.

Firestone—the safe tire.

APPENDIX 9

FTC INITIATES TRADE REGULATION RULE PROCEEDING COVERING ADVERTISING OF ANALGESICS

The Federal Trade Commission today announced it has initiated a proceeding for the establishment of a trade regulation rule to prevent deceptive advertising of non-prescription analgesic drugs.

Targets of the proposed rule are the following unfair and deceptive advertising practices which the Commission has reason to believe are being used by marketers of these over-the-counter analgesics:

Making effectiveness or safety claims which contradict or exceed statements or directions for use on labels.

Making false claims of comparative speed, strength and duration of relief. ("It appears," the FTC said, "that each of the various analgesic products now offered to the consuming public is effective to essentially the same degree as all other competing products supplying an equivalent quantity of an analgesic ingredient or combination of ingredients").

Attributing beneficial effects to specified ingredients without substantiation or without identifying them by their common or usual names.

In initiating this proceeding, the Commission pointed out that one of its prime duties is protecting "the consuming public from false, misleading, deceptive, or unfair advertising of products, particularly those that may endanger human health or safety."

All interested parties, including the consuming public, are invited to file written views on the proposed rule with the Secretary, Federal Trade Commission, Sixth Street at Pennsylvania Ave., N.W., Washington, D.C. 20580, not later than September 15, 1967. To the extent practicable, 20 copies should be filed of written presentations in excess of two pages.

Following is the text of the proposed rule:

"In connection with the sale or offering for sale of non-prescription systemic analgesic drug preparations, subject to jurisdictional requirements of Section 5 and 12 of the Federal Trade Commission Act, it is an unfair method of competition and/or an unfair or deceptive act or practice to disseminate any advertisement which:

"(1) contains any representation with respect to efficacy or safety which contradicts, or in any manner exceeds, the warnings, statements or directions for use appearing on the label or in the labeling of such product; or

"(2) represents that any analgesic effects resulting from the use of such product are faster, stronger, or longer lasting than those achieved by the use of a competitive product unless the advertiser has established and can demonstrate that a significant difference in such effects exists due to an increased total quantity of analgesic ingredient(s) in the recommended dosage, and this fact is clearly and conspicuously disclosed in the advertisement; or

"(3) represents that any benefit will be derived from the action of any specified ingredient or combination of ingredients unless

"(a) the identity of such ingredient or combination of ingredients is clearly and conspicuously disclosed by its common or usual name(s), and,

"(b) the adevrtiser has established and can demonstrate that each such ingredient or combination of ingredients is efficacious as represented for the purpose for which it is offered when the product is taken in accordance with directions for use."

ANALGESICS INVESTIGATION

The essential questions under study in this investigation are whether there are any significant differences between competitive analgesic pills in the rapidity with which they will provide relief of pain, the degree of such relief they provide and the duration thereof, whether they relieve tension and depression, and whether they cause no gastric upset. The last point is, from a public health standpoint, the most important of all because of strong indications that aspirin, which is the sole ingredient in some, and the major ingredient in all, of these preparations, may so irritate the lining of the stomach as to cause internal bleeding with possible serious consequences.

The Div. of Scientific Opinions began a study around 1958 and it was decided that opinions could not be relied upon in litigation and so a scientific study would have to be made.

Much difficulty was encountered in obtaining the desired clinical studies. Informally, the D of S O tried to make arrangements at high staff levels with the National Institutes of Health whereby that agency would make the clinical studies in their hospitals. The attempt failed for reasons I do not know. The V.A. also declined saying that the questions would have to be brought to a policy level, whatever that means. (In 58 Gwynne lost at the Nat. Inst. of H.; in 59 Kintner lost with the VA) Four university studies were undertaken—Johns Hopkins, B.U., Oklahoma U., Dartmouth.

As of the end of fiscal 64, litigation stood as follows:

7 special orders had been filed, and replies received to all. These included BC Headache Powder & Tablets; Saleto; Nebs; Watkins Acotin Tablets; Bromo-Seltzer; Micrainin; Sal-Fayne

5 orders were prepared but not forwarded pending further discussions with General Counsel. These include Anacin, Duplexin, Painquellizer; Bayer Aspirin & B. A. for Children; Aspergum; Buffered Aspirin formula; 451; Methalgen, Gelpirin

6 cases in which orders will be prepared. Including Bufferin, Excedrin; St. Joseph's; Defencin; SPF; Counterpain; Rexall Buffered Aspirin

In 1961 the Commission issued complaints against the four largest producers of analgesics. The products and dates of complaints were:

March 14—Anacin.

July 25—Bufferin & Excedrin.

March 14—St. Joseph's Aspirin.

March 14—Bayer Aspirin & B. A. for Children.

Answers were filed in each case. On June 25, 1962 the Comm. suspended all cases as no medical evidence was available to substantiate the complaints. Subsequently, and pursuant to a Commission Resolution dated

March 27, 1962 and one dated September 9, 1964, the Division of Food and Drug Advertising, in conjunction with the Div. of Sci. Op. prepared Section 6(b) interrogatories which were served on the above 4 among others. On April 7, 1965 the orders were rescinded and the complaints withdrawn again.

During the entire period 1961–1965 there was substantially no change in the nature of analgesic advertising.

The Johns Hopkins research showed all preparations about equal, except that Anacin & Excedrin produced more gastrointestinal ill effects than Bayer, Bufferin or St. Joseph's. This report was published in the AMA Journal, and Bayer seized upon the results for advertising purposes. (AMAJ of 12/29/62)

Dartmouth study showed all products tested were of equal non-gentleness to the stomach (Bayer, Anacin, Bufferin, B.C. Powder).

B.U. study showed that aspirin and phenacetin had virtually no effect on tension (these are the two ingredients in all of the analgesics; some have only aspirin; perhaps one or two have a third ingredient, I'm not sure).

Oklahoma Study showed no difference among Anacin, Bayer, Bufferin as to speed of relief.

About the end of fiscal 1965 (July 30, 65), a new form of analgesic—the time capsule—hit the market. Studies made by some of the manufacturers showed that this form of the drug was no better than ordinary stuff; it was marketed anyway.

HISTORY OF FAIR PACKAGING AND LABELING ACT

February 3, 1965, S. 985 introduced.

May 25, 1966, Reported w/amendments as S.R. 1186.

June 9, 1966, Passed by Senate 72–9.

October 3, 1966, Passed by House 300–8.

October 6, 1966, Conference asked by Senate.

October 12, 1966, Conference agreed to by House.

October 17, 1966, Conference Report agreed to by House.

October 19, 1966, Conference Report agreed to by Senate.

Executive date: July 1, 1967.

Section 6 of Act describes the required implementation which states that regulations promulgated under sections 4 or 5 of the Act shall be so done pursuant to the provisions of subsections e, f, g of section 701 of the Food, Drug, & Cosmetic Act. There are several differences between the procedure described there and the FTC procedure. On 6/13/67, only two weeks before the Act was to take effect, the FTC published its amended Rules of Practice. (16 CFR 1.1–1.64)

June 27, 1967: Commission published its Section 4 implementation regulations.

During the month allowed for comment, 130 industry letters were received, mostly unfavorable. It was decided to revise.

March 19, 1968: Revised Section 4 implementation published. Also, new division within Decep. Prac. formed to handle FP&LA work.

Extension beyond 30 day minimum denied; these proposals adopted.

An effective date of January 1, 1969 for new label orders.

An effective date of July 1, 1969 for all commodities in commerce.

Both times that orders and complaints were suspended or withdrawn the reason cited was that the field was too large to progress on a case by case basis, and industry guidance must be undertaken. One of the major considerations against case by case litigation was the impracticality of calling the same expert witnesses over and over again. Also it was deemed that since the industry is highly competitive and the trends of it would shift as a whole (e.g., time capsules and the associated bandwagon), industry guidance was more ideally suited to cope with the problem.

In preparation for a TRR hearing, Section 6(b) orders were made which would require all respondents to submit all of the evidence which they would present at a hearing as well as that which they would not—e.g., the Stendin report, unfortunately published in the Journal of New Drugs, Nov-Dec 1964 because such data would better support the Commission's side of things. Such Orders were sent out about Feb. 1966.

This was too much for Bristol-Myers who issued a civil suit against the FTC on Nov. 14, 1967. They had responded to the order as had all the others, but they tried to prevent the TRR proposed on July 6, 1967 from occurring by seeking court relief. They lost of course, but delayed the FTC for another twelve months. The case was settled on June 11, 1968. A copy of the News Release of July 6, 1967 is appended.

APPENDIX 10

[From the Washington (D.C.) Post, Dec. 5, 1968]

ABRASIVE TOOTHPASTE CITED: DENTAL GROUP ISSUES "WHITENER" WARNING

(By Morton Mintz)

The American Dental Association is concerned with the possibility—neither proved nor disproved—that certain "whitener" toothpastes are too abrasive and increase the susceptibility of users to decay.

If there is a risk, it is mainly to persons over 35. That is largely because, in one adult out of four, the gums tend to recede and expose part of the root—the cementum—which is more readily eroded than the enamel.

The new edition of "Accepted Dental Therapeutics," an Association guide that its Council on Dental Therapeutics plans to publish Jan. 1, will advise:

"Highly abrasive products should not be used regularly by individuals having exposed cementum or dentin [the major part of a tooth], or possibly by individuals with restored tooth surfaces of the softer synthetic materials."

WHITEN OR BRIGHTEN BASIS

This caution will appear following a recognition of the "recent tendency to promote dentifrices on the basis of their ability to whiten or brighten teeth. . . .

"Such claims," the Council will say, "appear to relate almost exclusively to the incorporation . . . of harsher abrasive agents. . . ."

The possibility that the "whitener" toothpastes pose "some degree of danger" was raised last summer with publication of a study partially financed by Procter & Gamble in which 43 commercial dentifrices were mechanically brushed on freshly extracted teeth.

The researchers, Drs. George K. Stookey and Joseph G. Muhler of the Indiana University School of Dentistry, rated the following toothpaste brands excessively abrasive: Iodent No. 2, Ipana, Macleans, Plus White, Fact and Ammi-dent Fluoride.

The products were purchased in the year ending in January 1966. Since then, the abrasiveness of Plus White has been reduced, and Ultra-Brite which has garnered nearly 10 per cent of a $350 million market was put on sale.

THOROUGH TESTS URGED

Replying to questions from The Washington Post, the Council said that "one study can never be conclusive" and urged thorough clinical tests.

The Council also said that "no definitive findings are available" as to whether the products in question "are, in fact, harmful" (the makers deny they are), and that dental literature has no adverse reports on one of the brands widely sold in England for almost 40 years.

But, the Council said, it sees "no valid reason" for using a high abrasive dentifrice.

Meanwhile, it is asking the manufacturers for data on abrasiveness.

APPENDIX 11

Last half	Dismissals	Flammable fabrics	Bait and switch
1964	9	0	2
1965	8	5	3
1966	2	6	4
1967	6	9	6
First half: 1968	6	8	10
Total	31	28	25

Last half	Collection agencies	Aluminum siding	Reused oil and golf balls
1964	4	1	5
1965	6	6	1
1966	5	6	2
1967	4	4	1
First half: 1968	3	2	2
Total	22	19	11

APPENDIX 12

APPLICATIONS FOR COMPLAINT FOR THE MONTH OF MAY 1967—TYPE AND SOURCE OF APPLICANT

	March	April	May
Letters of complaint forwarded to Commission by—			
The White House	62	41	27
Members of Congress	117	111	99
Another Federal agency	105	68	56
State agency	63	31	35
Consumer groups	35	12	32
Total	382	263	249
Sent direct to Commission	[1]972	[1]671	[1]533
Total letters	1,354	934	782
Type of applicant:			
General public	1,143	768	602
Competitor	135	105	136
Consumer group	27	21	18
State agency	18	12	9
Commission personnel	15	14	12
Another Federal agency	10	2	3
Members of Congress	6	12	2
Total	1,354	934	782
Letters of complaint	1,168	807	686
Inquiry	186	127	96
Total	1,354	934	782

[1] 186 of March letters, 118 of April letters, and 99 of May were originally received in a field office.

APPLICATIONS FOR COMPLAINT FOR THE MONTHS OF JULY AND AUGUST 1967—TYPE AND SOURCE OF APPLICANT

	July	August
Letters of complaint forwarded to the Commission by:		
The White House	12	35
Members of Congress	90	123
Federal agencies	37	68
State agencies	28	42
Consumer groups	20	41
Sent direct to the Commission	475	566
Total	662	875
Type of applicant:		
General public	503	664
Competitors	122	163
Consumer groups	13	22
State agencies	12	11
Commission personnel	6	6
Federal agencies	2	6
Members of Congress	4	3
White House		
Total	662	875
Letters of complaint	592	772
Inquiry	70	103
	662	875
Letters forwarded from field offices	50	98

APPLICATIONS FOR COMPLAINT FOR THE MONTHS OF FEBRUARY, MARCH, AND APRIL 1968—TYPE AND SOURCE OF APPLICANT

	February	March	April
Letters of complaint forwarded to the Commission by—			
The White House	39	80	67
Members of Congress	82	129	103
Another Federal agency	51	75	86
State agency	39	86	54
Consumer groups	26	36	35
Sent direct to the Commission	533	851	663
Total	770	1,257	1,008
Type of applicant:			
General public	608	1,047	831
Competitors	124	134	121
Consumer groups	16	26	21
State agencies	8	21	13
Commission personnel	10	15	9
Federal agencies	2	4	5
Members of Congress	2	10	5
White House			3
Total	770	1,257	1,008
Letters forwarded from field offices	95	157	141

APPLICATIONS FOR COMPLAINT FOR THE MONTHS OF JULY AND AUGUST 1968—TYPE AND SOURCE OF APPLICANT

	July	August
Letters of complaint forwarded to the Commission by:		
The White House	76	66
Members of Congress	128	96
Federal agencies	43	45
State agencies	38	58
Consumer groups	34	31
Sent direct to Commission	559	615
Total	878	911
Type of applicant:		
General public	750	764
Competitors	90	110
Consumer groups	18	18
State agencies	10	9
Commission personnel	2	2
Federal agencies	4	4
Members of Congress	3	4
White House	1	0
Total	878	911
Letters forwarded from field offices	109	84

PERCENTAGE OF CONSUMER, COMPETITOR, AND OTHER APPLICANTS

July	85.4	12.5	2.1
August	83.9	9.9	6.3

APPENDIX 13

From the aggregate law school class of '68, 454 students applied to the FTC and 105 were given offers of appointment. In the '67 class, 354 applied and 113 offers were tendered. Chart A gives by class for each of four regions—North, South, Midwest, and Far West [54]—three pieces of data. The first column gives the percentage of total applicants applying from that region. The second gives the percentage of total applicants offered appointments and the third the percentage of regional applicants offered appointments. The third column is the most important for it indicates that almost half of the applicants from the South are offered appointments as compared to the less than one quarter of the Northern applicants.

This discrimination is repeated on the level of appointments of older attorneys. In 1967 and 1968, despite criticism from the 1965 Civil Service Report for being too top heavy, the FTC hired 37 attorneys at the GS–12 rank or better [55] and another 68 at the GS–9 and 11 levels. All of these 105 appointments were made from law school classes previous to 1967. Of the 105, 37 were from the North, 40 from the South, 21 from the Midwest, and 7 from the Far West. Chart B further amplifies the accusation inherent in Chart A by showing that more than half of those offers made to Northerners were by field offices, mostly in the North. In contrast, two-thirds of the offers made to Southerners were from the central office in Washington, D.C., where the southern Democrats are firmly in control. Chart C shows for a select state the percentage of applications *from that state* which were given offers. A high acceptance rate of Tennessee applicants is not remarkable considering Joe Evin's influence at the FTC, and the fact that Chairman Dixon and Executive Director Wheelock (who are both from Tennessee) are the final authorities on offers granted. According to sources in the FTC close to the selection process these two men have misused their powers by hiring attorneys who have not gone through the normal application process of submitting law school grades and other pertinent data.

Chart D demonstrates that no significant difference in legal and law school standing exists between northern and southern applicants. For the class of '68, the honors number indicates that both the southern and northern applicants on the average were in the second 25% of their class. While offers were given to men from both sections who on the average ran in the top 25% of the class. Considering that more than twice as many Northeners as Southerners applied to the FTC and, making the safe assumption that the distribution from the mean honor code number to the extremes of the scale was the same for both groups, one would expect twice as many well qualified Northerners applying to the Commission and, consequently, an offer rate approximately equal to the percentage of total applicants applying from that region, i.e., twice as many northerners receiving offers of appointment. These honor figures can be used for comparative purposes only if the law schools from which they apply are equal. The common denominator of LSAT scores, which according to the Educational Testing Service is a good predictor of performance in law school, places the average applicant from both the North and the South together well within the ±30 point margin of error which the Educational Testing Service assigns to its LSAT figures.[56] This reinforces what the honor code number demonstrated by showing an equality of legal aptitude between applicants from both regions.

These mean LSAT scores also prove the point that mediocrity in the FTC tends to seek its own image among applicants. The fact that in three of the four cases ('68 LSAT South, '67 LSAT South, '67 LSAT North) the average LSAT score of the students to whom appointments were offered was lower than the entire applicant group, while the honor number in both cases ('68 honor number South, '68 honor number North) improved substantially from average applicant to the average offered appointment, demonstrates again that less capable students are being accepted from inferior schools. Graduating law students offered appointments have a higher rank in class, but a lower basic aptitude for law because they come from mediocre law schools.

Chart E is indicative of this point. Using eight schools which were selected because they have either a high application rate or a high rate of offers at the FTC, one discovers that those schools whose applicants have the higher LSAT scores, also have the lower honor code numbers, i.e. N.Y.U. (1–7), Georgetown (2–6), and Texas (3–5). Neither is it coincidental that N.Y.U.—a top quality, northern city school with no representatives in the FTC hierarchy—should also have the lowest acceptance rate of 9%, despite the fact that its applicants' high LSAT scores demonstrate more legal talent than the other schools.

Georgetown, because of its proximity to the central bureau and the number of its alumni in the FTC hierarchy, has fared somewhat better with an acceptance rate of 27%. The University of Texas has also done unusually well for a good law school; but here political factors outside the agency explain its success. George Washington University's high rate of 42%, which makes it second only to Kentucky (82%), is explained by the fact that two bureau chiefs, the General Counsel, the assistant to the chairman and a number of division chiefs and assistant bureau chiefs went there. The success of Kentucky (82%) and Tennessee (38%) is explained both by regional ties and their mediocre standing as law schools.

HONORS CODE

(1) Top 10% plus activities.
(2) top 10%.
(3) top 25% plus activities.
(4) top 25%.
(5) top 50% plus activities.
(6) top 50%.
(7) lower 50% plus activities.
(8) lower 50%.
(9) standing-not indicated.
(0) previous graduate.

CHART A

	Percent of total applicants	Percent of total applicants offered appointment	Percent of regional applicants offered appointment
Class of 1967:			
North	43	29	22
South	18	26	47
Midwest	25	30	38
Far West	15	15	33
Total	[1] 101	100	
Class of 1968:			
North	49	35	17
South	17	28	37
Midwest	26	29	25
Far West	8	9	26
Total	100	[1] 101	

[1] Figures do not add to 100 percent due to rounding.

CHART B.—*Classes of 1967 and 1968 combined*

Percent of Applicants Offered Appointments in Field Offices:

North	56
South	33
Midwest	36
Far West	72

CHART C.—*All applicants applying in 1967 and 1968*

Percent of Applicants Offered Appointments for Selected States:

New York	22
Massachusetts	31
Tennessee	52
Texas	53

CHART D

South	Average honor code No.	Size of sample
1968, all applicants	4.2	(49)
1968, offered appointments	3.6	(28)

South	Average LSAT score	Size of sample
1968, all applicants	597	(47)
1968, offered appointments	571	(16)
1967, all applicants	550	(34)
1967, offered appointments	541	(14)

Footnotes at end of speech.

North	Average honor code No.	Size of Sample
1968, all applicants	4.6	(203)
1968, offered appointments	3.5	(35)

North	Average LSAT score	Size of sample
1968, all applicants	574	(143)
1968, offered appointments	596	(22)
1967, all applicants	569	(90)
1967, offered appointments	534	(14)

CHART E

Law schools	Offered appointment	Refused appointment	Total	Percent offered appointment	2-year combined LSAT average of applicants	Size of sample	1968 average honor code number of applicants	Size of sample
(1) New York University	3	31	34	9	612	(19)	4.9	(20)
(2) Georgetown	4	11	15	27	591	(14)	4.7	(6)
(3) Texas	5	9	14	36	588	(3)	4.7	(10)
(4) George Washington University	14	19	33	42	569	(12)	3.9	(18)
(5) St. John's	6	40	46	13	565	(37)	5.8	(28)
(6) Kentucky	9	2	11	82	558	(5)	3.1	(7)
(7) Brooklyn	6	38	44	14	554	(24)	4.0	(17)
(8) University of Tennessee	6	10	16	38	525	(7)	3.9	(13)

APPENDIX 14

ALBANY, N.Y.,
September 5, 1967.

Dr. L. L. HUNTINGTON,
Division West Chinchilla Corp.
Omaha, Nebr.

DEAR DOCTOR: My freezer now contains 9 dead animals. This is discouraging as I am working so hard to eliminate the cause of their deaths. I am averaging 2 deaths a week. The druggist gave me a dog fungus spray to spray around the ranch on a breezy day. I stopped giving the one rack a dust bath because of passing the can from animal to animal. The other rack has individual cans and they still die.

Immunity from mother to baby does not seem to happen either. One mother died and her baby died about 3 weeks later. It forms no pattern that I can pin down. It jumps from tier to tier; from rack to rack. The only statement I can make with positiveness is that the male may be a carrier. He goes from cage to cage but he does not go from tier to tier.

Some of the animals lose a terrific amount of weight; some none at all. Some lose a lot of fur and some none at all.

Some linger for hours; some drop right off. They all appear to eat and enjoy their food; but lose weight nevertheless. All have one thing in common towards the end; an inability to swallow. They will be very limp but conscious; some try to cuddle close to me. All die with their mouths open and the dead ones are usually found trying to get water.

They also have diarrhea.

Sincerely,

_____.

WATERVLIET, N.Y.,
April 5, 1968.

FEDERAL TRADE COMMISSION,
30 Church St.,
New York, N.Y.

DEAR MR. SEIDMAN: Information and purchase of my chinchillas was from the telecast by Division West shown on WAST, channel 13. Their representative assured me with 1 male and seven females that I could easily earn up to $6,000 a year; their offspring producing well, right in my cellar. Transactions took place April 6, 1966. After two years of hard work on my part I have received $26 from my investment. With no end of red tape, commissions, etc. too numerous to mention.

Never did they mention fur chewing which laboratory testing from many parts of the world have yet to find any reason. The only solution was they must be destroyed. No medicine or knowledge at Midland Laboratory has aided after many months of testing. Fur chewing, disease and breeding problems is a great loss to chinchilla ranches. All information plainly shows it is impossible to bring in monetary returns to even pay for feed in these circumstances.

Division West stated in the purchase contract of April 1966 that they would prime, pelt and market our animals. The above promise is a serious one as without that service the rancher does not have the facilities or the know how for priming, especially as it requires refrigeration as no persons home can be kept at a temperature of 38–40.

Pelting service of that kind would be $3.95 each by the corporation. October 1967 notices were sent out stating that they could no longer prime the animals as they had no facilities with large and numerous buildings they claim they have. The Central Avenue branch opened for 2 years, just long enough to help the salesmen. All ranchers were left high and dry without a supply depot. Another fact is that the rancher has no way of knowing the value of the pelts. We were told the market price for pelts was $17 to $40. On 8 pelts I have received a return of only $26. The price of the string was $2145.00.

Sincerely,

_____.

ILION, N.Y.,
April 19, 1968.

Re Division West Chinchilla Corp., 7230 N. Pershing Drive, Omaha, Nebr.

FEDERAL TRADE COMMISSION,
Washington, D.C.

DEAR SIRS: I have read your announced provisional acceptance of a consent order prohibiting the above company from making misrepresentations in connection with their sale of Chinchillas to the public generally for use in breeding and raising Chinchillas.

I feel that a consent order of this type which is for settlement purposes only, and does not convict the respondents of the violation of the law, is very unfair to the average citizen like myself who has incurred great loss because of this misrepresentation.

I saw the advertisements of this company on television and relying on the statements concerning the quality of the animals sold by them, the breeding rate of the animals and the feasibility of raising them in small quarters at my home, I invested the sum of $2,250.00 which I paid to the above company.

In one year the breeding rate has been half of that represented by the company, and it appears to me that I will sustain a considerable loss.

I believe that for the protection of citizens like myself who have relied on this television advertising, this matter should be prosecuted and conviction obtained.

Very truly yours,

_____.

APRIL 20, 1968.

FEDERAL TRADE COMMISSION,
Washington, D.C.

DEAR SIR: I am writing this letter in regards to Consent Order (File No. 662 3377) Concerning Division West Chinchilla Corp. of 7230 N. Pershing Drive, Omaha, Nebraska.

I am a very interested party in this Consent Order. In Sept., 1966, I received my animals from Division West. Not knowing anything about the Chinchilla Industry, I accepted what I was told by the salesman. Everything I was told appears in this Consent Order. In addition to all the false claims that you mentioned, all the animals were supposed to be young virgin animals in the 7–8 month old category. Tattoos in the ears of two of the animals I received put their age at 3 and 5 years old when they were delivered.

Also, the Herd Improvement Males that I have received have been of such poor quality that qualified animal judges have advised strongly against using animals of this poor quality for Herd Improvement.

I would appreciate to hear of any further developments against this Corp. Thank you very much for your time in this matter.

Sincerely yours,

_____ _____.

APPENDIX 15

JUDGE GEER'S JOB—A PECULIAR TALE

(By Jerry Landauer)

WASHINGTON.—The Federal Government doesn't care to tell how Judge Casto C. Geer, a courtly gentleman who speaks in the soft accents of his native Tennessee, earns the $17,511 a year it pays him. But his situation symbolizes one of President-elect Nixon's problems in coping with a Democratic Congress come Jan. 20.

Until late 1966 Mr. Geer was the county judge of White County in east middle Tennessee. He handled probates, dealt with juvenile offenders, acted as fiscal agent and presided over the county council—all for $9,100. It was, as successor David Snodgrass remarks, a tough, full-time job more suitable for a younger man; Judge Geer is in his early 60s and he didn't relish the rigors of running for a second eight-year term.

Instead, the judge went looking for other work, and his Congressman and good friend, Joe Evins, learned of his need. Rep. Evins is chairman of the House Appropriations subcommittee that scrutinizes spending plans of all the independent Federal agencies; along with other senior Democrats he will resume the subcommittee chairmanship in the 91st Congress because Mr. Nixon's coattails weren't long enough to pull in a Republican majority.

Among the agencies for which Rep. Evins appropriates salaries is the Federal Trade Commission headed by Paul Rand Dixon, another Tennessean who not only depends on the Evins subcommittee for money but also enjoys the Congressman's friendship. Not surprisingly, Judge Geer soon wound up on the payroll of the FTC's Atlanta office. He began on July 9, 1967, just a few days after the start of a new fiscal year. The $16,946 starting salary was considerably better than White County could afford, and after an automatic Federal civil service raise the judge was earning $17,511.

But Atlanta is uncomfortably far from Judge Geer's native Sparta (pop. 4,510). So, responding to an Evins request for a survey to determine whether the FTC needed a new branch office, Chairman Dixon weighed in with a helpful decision last spring: The agency ought to have a branch office in Oak Ridge (though in cities as big as Philadelphia and Detroit the agency is represented only by investigators for the Bureau of Textiles and Furs). Acting swiftly, the Government leased 380 square feet on North Purdue Avenue for an annual rent of $1,320 and on April 15 Judge Geer moved in as a "trial attorney."

Despite Chairman Dixon's determination of need, there's little chance that work will overwhelm Judge Geer's tiny outpost. For one thing, the agency neglected to announce that it was opening the Oak Ridge branch, so aggrieved consumers presumably will continue directing complaints to the Atlanta regional office or to headquarters in Washington. Indeed, certain Dixon colleagues on the five-member Trade Commission are still unaware of the Oak Ridge branch, and the agency's information specialists didn't know until word trickled up from the supply room.

Nor is it likely that Trial Lawyer Geer will argue many cases in court. Federal judges for the eastern district of Tennessee hold court in Knoxville, Chattanooga, Greeneville and Winchester—but not in Oak Ridge.

Nonetheless, the judge does enjoy a distinction of sorts. He's the only FTC attorney working outside Washington who doesn't come under the agency's Bureau of Field Operations. Or, looking at it another way, he's the only field operative anywhere in the nation for the agency's Bureau of Deceptive Practices.

Superiors find it difficult to define his chores. Bureau Director Frank C. Hale, for one, says he's not quite sure what keeps the judge busy. Could it be an unannounced investigation, or the preparation of a complaint against some consumer-bilking scheme? "Not that I know of," says Mr. Hale, "but I understand there's a good deal of work down there."

Mr. Hale's assessment of the workload may be correct, for it does seem that Judge Geer is constantly on the go; 17 phone calls to Oak Ridge over three days failed to rouse a response either from the judge or from his office mate, Ernest A. Ball, an investigator for the Bureau of Textiles and Furs who went on the FTC payroll three weeks after the branch office opened. (Just as director Hale sounds unsure of Judge Geer's duties, so director Henry D. Stringer of the Bureau of Textiles and Furs seems uncertain about investigator Ball's; "I wouldn't know about that," Mr. Stringer says.)

Still, the episode permits certain conclusions:

Rep. Evins' success as an employment agent may arouse the envy but not the anger even of economy-minded Congressional colleagues. "Remember," says one insider, "Houston didn't have a space center before Albert Thomas' day." Mr. Thomas, predecessor of Mr. Evins as chairman of the House Appropriations subcommittee, steered the $200 million manned spacecraft center to hometown Houston; by comparison, the Oak Ridge office seems trivial.

The so-called Tennessee gang dominates the FTC today no less than in the heyday of Tennessee Democrat Kenneth McKellar, chairman of the Senate Appropriations subcommittee who constantly pestered President Franklin Roosevelt for jobs. FDR obligingly let the Senator install friends at the FTC, presumably because the damage would be minimal. After Estes Kefauver succeeded Mr. McKellar in the Senate, Tennessee's hold hardened; the big favor Tennessean Kefauver wrangled from President Kennedy was Tennessean Dixon's appointment as FTC chairman.

Judge Geer's job and dozens like it in other agencies will likely remain secure in the coming Republican Administration, so long as the jobholders enjoy the benevolent protection of Democratic committee chairmen. In any case, the Oak Ridge outpost seems unlikely to be closed soon, for the Government has farsightedly taken two one-year options to renew the lease.

APPENDIX 16

The project's criticism of the quality of the FTC's performance in the consumer protection area is based on certain assumptions about the agency's proper role in that area demonstrates that for the last quarter century and more Congress has conceived of the FTC primarily as an enforcement agency rather than (as some scholars and one present Commission member have contended) as an information-gathering or advice-giving agency. We will further show that Congress has over the same period laid growing emphasis on protection of *consumer* interests in prescribing the Commission's duties.

The first of the above claims is best established by a review of the history of the agency and its organic statutes.

At the time of its creation in 1914, the FTC was designed primarily to deal with *antitrust* problems—the Federal Trade Commission Act (FTC Act) and the Clayton Act were considered together by Congress as extensive to Sherman Antitrust Act.

And under the FTC Act, Congress intended the FTC to perform *several* functions in connection with antitrust problems. These included data-gathering (with a view to further legislation), informing businessmen (it was thought that the antitrust laws lacked "certainty" and that the FTC could remedy this situation by advising businessmen on the legality of proposed business activities), as well as enforcement. Regarding enforcement, the Act provided specifically that—

"The Commission is hereby empowered and directed to prevent persons, partnerships or corporations . . . from using unfair methods of competition in commerce." Act, § 5(a)(6).

It went on to prescribe a form of procedure for establishing violations, halting them through the issuance of "cease and desist orders" (Act § 5(b).), and enforcing such orders by civil penalties. (Act, § 5(b).)

The structure of the original FTC Act suggests that even at the outset; Congress intended the FTC's *major* responsibility to be that of enforcement, for that power is the first to be mentioned in the Act in Section 5. (Sections 1 through 4 of the Act deal with establishment and staffing of the Commission, definitions, etc.) Other agency powers and functions are enumerated in later sections.

On the basis of the Act's legislative history, however, some commentators have argued that Congress' original intent was to minimize the FTC's enforcement duties in favor of its legislative-investigative and business-advising roles. Some have jumped from that position to an assumption that the agency's *contemporary* enforcement responsibilities should likewise be subordinated to the other functions. Such a view is erroneous as applied to the area of "direct consumer-protection," for it ignores the history of important later amendments to the FTC Act and more recent legislation involving this area. As used in this report, "direct consumer-protection" refers to the responsibility and authority to prevent consumer deception conferred on the FTC by certain key amendments to the Act made in 1938 and expanded by later specialized statutes.

The background and legislative history of the relevant provisions of Wheeler-Lea Act (the 1938 amendments to the FTC Act) demonstrate clearly that Congress intended by it both to involve the FTC in direct consumer protection and to give the agency an important *enforcement* role in that area. In earlier years, the agency had occasionally taken halting steps towards involvement in direct consumer-protection enforcement by treating deception of consumers as one species of the "unfair methods of competition" proscribed in Section 5 of the FTC Act. In the *Raladam* case, however, the Supreme Court had held that evidence of consumer deception *alone* was insufficient to show a violation of the Act. Congressional dissatisfaction with this holding coupled with outrage over and concern with the widespread and dangerous forms of consumer deception practiced during the Great Depression led to the passage of the Wheeler-Lea Act. This background alone suggests that Congress was thereby primarily interested in bringing a new *enforcement* agency—the FTC—into the consumer-protection sphere.

Such a conclusion is reinforced both by the specific provisions added to the FTC Act by the Wheeler-Lea Amendments and by the legislative history of those amendments.

Thus, besides specifying that "deceptive acts and practices" were now outlawed, the Amendments gave the FTC several new *enforcement* powers over certain kinds of deceptions.[67] Likewise, the range of comments made by members of Congress on the bill containing the amendments (and predecessors) make it clear that in this area at least, they intend to place emphasis on enforcement rather than aid to businessmen, etc.

Congress' conception of the FTC as an enforcement agency has continued down to the present day, and is expressed in a series of specialized consumer-protection statutes intended to be enforced by the Flammable Fabrics Act of 1953 provide that the manufacture for sale, sale, importation or transportation in commerce of articles of wearing apparel and fabrics which are "so highly flammable as to be dangerous when worn by individuals" is an "unfair and deceptive act or practice" under the FTC Act. (Flammable Fabrics Act, § 3.) Then, Section 5 of the Flammable Fabrics Act states that it "shall be enforced by the (Federal Trade) Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act," and specifically confers on the FTC the same "jurisdiction, powers and duties" to enforce this act as it has to enforce the FTC Act. (Flammable Fabrics Act, § 5(b).)

The inescapable conclusion to be drawn from an evaluation of legislation affecting the FTC passed in the last 30 years is that Congress has brought its enforcement role to the fore, thus necessarily diminishing its other responsibilities in the context of limited resources.

The very contents of the recent statutes suggests that the Commission's main concern in enforcing them should be the protection of consumers.

The Commission should also focus on consumer interests in the enforcement of the deceptive practice language of the FTC Act, as amended by the Wheeler-Lea Act, for Congress passed the latter law to protect consumers. As stated by Senator Burton K. Wheeler, co-author of the Wheeler-Lea amendments:

"Broadly speaking, this legislation is designed to give the Federal Trade Commission jurisdiction over unfair methods of competition for the protection of competitors. (Emphasis supplied.) Quoted in Testimony of Mr. Leslie V. Dix, Director for Legislative Affairs of the President's Committee on Consumer Interests, before Federal Trade Commission, November 12, 1968, p. 1.

FOOTNOTES

*See Appendix 16 for legal and historical arguments in favor of the propositions that the FTC has important consumer protection responsibilities and that Congress intended it to be a vigorous enforcement agency.

[1] These are the Wool Products Labeling Act, the Fur Products Labeling Act and the Textile Fiber Products Identification Act.

[2] The FTC also enforces the Truth in Packaging Act, the Insurance Act, etc. The former is not yet fully in effect; the latter, unimportant. Therefore, these statutes will not be considered here.

[3] In food and drug cases and under the textile and fur statutes, the Commission has the additional powers, in theory, to seek preliminary injunctions and even criminal penalties.

[4] Concentration is increasing the most rapidly in the consumer goods industry.

[5] This group, with no butchers among us in any form, had no trouble differentiating.

[6] It is worth noting that at 6'1" and 165 lbs. this author can easily pull 1" and more of flesh from his tricep (underside of upper arm).

[7] See the 1967 Senate Hearings of the Independent Offices Subcommittee, p. 464 for a discussion of this practice.

[8] A consumer will not be motivated to complain about petty frauds (even if on a massive scale) since the FTC has no refund power, and no private civil suit can be based on an FTC order.

[9] According to *Advertising Alert* No. 2, Feb. 12, 1962, the FTC monitored 50,000 scripts from TV and radio pre-submissions. Investigation has revealed this claim to be doubtful at best, but even if true, such monitoring would do little toward the detection of visual deceptions, nor do experts pre-screen copy.

[10] Monitoring brings in only 10% of the investigatory targets of the FTC according to the 1967 Senate Hearings before the Independent Offices Subcommittee, p. 464.

[11] The FTC does have plenary jurisdiction within Washington, D.C. itself, but this does not extend to suburban Virginia or Maryland. Further, those cases in the District generally involve interstate commerce and are thus in the Commission's jurisdiction on that basis.

[12] The 250 staff members at the central office are asked to monitor deceptive practices themselves as they watch TV at home, etc.

[13] These inspections are part of the program of enforcement of specialized textile statutes. With one exception, they prohibit such trivial deceptions as the mislabeling of wool or furs.

[14] "Commissioner MACINTYRE: I wish you could tell us in a letter just what you think we ought to tell Congress in a situation like that about these consumer protection laws such as the Wool Products Labelling Act, the Textile Fiber Identification Act, the Fur Labelling Act, the Flammable Fabrics Act.

"Mr. SCHULZ: I didn't mention that one. I think that is an important one.

"Commissioner MACINTYRE: How do you distinguish it?

"Mr. SCHULZ: Because that deals with physical health.

"Commissioner MACINTYRE: But consumer information you don't care about?

"Mr. SCHULZ: No, I care about it, but I think it is more important in some areas than in others.

"Commissioner MACINTYRE: I thought maybe there was some reason for distinguishing it."

FTC Consumer Hearings, Nov. 12, 1968, Afternoon Session, transcript pages 137–138.

[15] See appendix 11 for breakdown and pattern over time.

[16] "An official of a large lending institution has estimated that there are over 50,000 firms engaged in the sale and installation of residential siding and storm windows." Letter from Chairman Dixon to Senator Warren Magnuson, Nov. 28, 1967. "The Consumer Council's Report lists home improvement fraud as one of the biggest areas of consumer deception today." Commissioner Mary Jones, Non-Agenda Matter Re: Home Improvement Cases, Feb. 8, 1967.

[17] "The home improvement situation is one of these in which the ultimate enjoining of fraudulent practices is not an adequate deterrent to the unethical operator." Letter from Chairman Dixon to Senator Magnuson, Nov. 28, 1967.

[18] To the extent that the statement intends rather to make the different point that fraud laws do not cover all harmful anti-consumer practices, it is of course correct. The answer, however, is not to oppose criminal penalties, but to advocate expanded categories of consumer crime.

[19] Section 5(c) of the FTC Act gives the court power to: "make and enter a decree affirming, modifying or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writing as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*." Thus, the Commission has the power to petition for an ameliorative order to take effect immediately pending further long drawn appeals. To our knowledge it has made no use of this power in recent years.

[20] For other maneuvering, see FTC News Summaries of 7-7-67 and 11-30-67 as well as appendix 9.

[21] The report, in complete form, was pre-released by Mr. Ralph Nader in an action unrelated to the activities of this investigative group.

[22] See Appendix 8 for illustrative advertising copy placed in the September 2, 1968 issue of Newsweek and many other national news and business magazines over a two-year period.

[23] The source is a memorandum written October 11, 1967 to the Commissioners. The full statement of the Commission's view can be found in Advisory Opinion, Digest No. 45, May 18, 1966, in File No. 663 7049.

[24] From a letter which was susbtantiated by the Bureau's other evidence and published in the "Preliminary Economic Report on the Use of Games of Chance," by the Division of Economic Evidence of the Bureau of Economics, March 1968, p. 20.

[25] For purposes of this comparison, it is interesting to note that one of the FTC's traditional concerns in the area of deceptive practices has been retail *lotteries*. Cf., later discussion of its present endless, actionless study of grocery store and gas station prize games.

[26] The 1961, 1962 and 1963 Reports do include a related but greatly inferior proposal to enact a law giving the Commission power to issue temporary cease and desist orders pending the determination of agency proceedings. Even this proposal is lacking in the next three years' Reports. On the Chairman's wavering support of the 1962 proposal, consider the following statement about it made by him in the 1963 Senate Appropriations Hearings at p. 972. (In answer to a question about delay and consequent harm to business competitors . . .):

"You recall the President endorsed this piece of legislation, not once but twice . . . It is controversial, sir. I think any time any agency or any arm of the Government is cloaked with any kind of temporary injunction powers, it should only be used in the most extraordinary circumstances and with assurance that due process and safeguards are in the law."

[27] Six proposals are claimed in 1968, but two involve statements to the effect that the FTC has "no specific proposals" on a particular topic.

[28] The numbers in parentheses designate proposals involving consumer interests, not including textile and fur matters, with the exception of Flammable Fabrics.

[29] Information which may—but need not—be withheld under the act must fall within one of nine specific exemptions are paralleled in the section of the FTC's Rules covering confidential information. See discussion below.

[30] Technically, the FOI Act is an amendment to Section 30 of the Administrative Procedure Act, which formerly read, in pertinent part (e) . . . matters of official record shall . . . be made available to persons properly and directly concerned except information held confidential *for good cause shown*. (Emphasis supplied)

[31] A grand total of 260 Advisory Opinions were issued between Aug. 1964 and June 25, 1968—or about 65 per year.

[32] This constituted the Commission's reply to the project's formal request for information under Sec. 4.11 of the Commission's Rules. For more on the fate of this request see discussion below.

[33] Except that, in the case of assurances, a release appears every few months which summarizes *very* briefly all assurances accepted in the previous few months. These summaries typically tell only how many assurances have been received—usually 80–90—then give about three very brief examples of problems involved, without identifying any respondent.

[34] In one earlier case, the tire hearings of Jan. 1965, a single additional copy was made available by the agency because of extreme public pressure at its Chicago field office. Chairman Dixon refused to print the hearing record, saying that the FTC's contract with Ward & Paul precluded it. This illustrates the Chairman's talent in turning consensual contracts, entered into at his direction, into immutable *force majeure*.

[35] See discussion of these above.

[36] Professor Davis is a foremost authority on administrative law, the author of a four-volume treatise on the subject.

[37] But making available a larger sample of digests and some statistics.

[38] Questions modeled, by the way, on identical questions asked in 1964 of the Commission by Senator Allott about the Bureau of Restraint of Trade; Senator Allott's questions were answered, suggesting both that the Commission's response to our request overstates things a bit and that the FTC does not treat citizens and scholars the same way it treats members of the Senate Committee on Commerce.

[39] See the section above on priorities discussing the attorney role of Peyton Ford, esq. as an example.

[40] Of 109 speeches: trade associations or advertisers=62; antitrust sections of bar associations (pro bus.)=21; universities=8; consumer groups=2; miscellaneous (BBB's, etc.)=16.

[41] This letter, or portions thereof, is reproduced in a recent issue of the *NARD Journal*, in a column entitled "Facts, News, Views."

[42] Interviews with Acting Bureau Chief, Bureau of Industry Guidance, *August*, 1968. This Bureau is responsible for administering the various "voluntary" enforcement tools.

[43] Division chiefs were removed under the cover of a general reorganization of the Commission. A similar reorganization took place in 1952 when the Republican came in, but was initiated and planned from outside the agency. Chairman Dixon, however, was the chief architect of the 1961 reorganization.

[44] Commissioner Davis distinguished himself by his annual gift to Congress of appropriated funds which had not been utilized. This parsimonious spirit and desire to please Congress with economy is a dubious tradition which continues to manifest itself in Chairman Dixon's testimony to Congress for annual appropriations, see p. 66.

[45] This practice was not an exclusive feature of the D.C. riots. According to Sen. Magnuson, "A number of witnesses called before the Governor's Committee investigating the Watts riots did testify that . . . the prime targets of violence . . . were the establishments of merchants who engaged in sharp selling practices." And again, "During the catastrophic Detroit riots in June 1967, arsonists . . . systematically burned stores known to engage in sharp selling and credit practices." *The Dark Side of the Market Place*, p. 57.

[46] The fifth floor houses the entire Office of the General Counsel, Chairman Dixon's office, Commissioner MacIntyre's office, and the office of the Executive Director.

[47] GS–10 rank is not applicable to attorneys.

[48] Much to his credit, the Director of Personnel is again attempting to minimize the effect of the Bureau Chiefs by using mid-level attorneys instead of Bureau Chiefs for a number of the interviews. The Bureau

Chiefs, of course, still have a veto over the offers made for their bureaus, but now it is more difficult for them to raise objections to particular applicants on the basis of an interview. Already, however, a number of the higher-ups at the FTC have objected to this innovation and it will probably go the way of the rating sheet.

[50] The "eastern conspiracy" of bankers and lawyers has played a prominent role in populist demonology. It is unfortunate that the present lethargy of the Commission has drained from its members the intense hatred of monopoly which is one of the good characteristics of southern populism.

[51] According to Robert Sherwood, the Director of Personnel, one of the most important factors in the number of applications to the FTC is the state of the economy. More attorneys apply to the FTC in hard times than in boom times, apparently because of the economic security offered by a government job.

[52] Dr. Moulton's statement is substantiated by FTC Budget Control Records, June 30, 1968, which show all professional personnel in the Division of Food and Drug Advertising (15) to be attorneys, see appendix 15.

[53] Disclosed in this report for the first time publically. See pp. 43, 48, 111, 115, 116, 119 for Civil Service Commission criticisms ignored by Chairman Dixon and his staff.

[54] States included in each category are North: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, Maryland; South: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington, D.C.; Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin; Far West: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming. This breakdown of states into regions was picked arbitrarily from a Newsweek regionalization of states for the purposes of indicating possible delegate votes before the National Convention last year.

[55] 19 GS–12's, 9 GS–13's, 5 GS–14's, and 4 GS–15's. This inordinate degree of hiring in senior grades proves that the FTC is not top heavy for the purpose of satisfying the demands of internal ambitious attorneys.

[56] Telephone interview with LSAT Program Director, Oct. 15, 1968.

[57] Thus, the Commission was authorized to seek both criminal penalties and temporary injunctions to prevent deceptive advertising of foods, drugs, and cosmetics. FTC Act, Sections 12, 14, and 15.

STATEMENT OF CHAIRMAN PAUL RAND DIXON

The protection of the consuming public of the United States from fraud and deception is vital to free enterprise and the public interest. I believe strongly in that principle. Most of my adult and professional life, both at the Federal Trade Commission and as a member of the staff of the United States Senate, has been devoted to the study and elimination of trade and consumer abuses.

When I was made Chairman of the Federal Trade Commission in 1961, I found the staff of the Commission to consist of approximately the same number of personnel that comprised the staff in 1938, the year that I joined the Federal Trade Commission as a $2,000 P–1 attorney. Today the Commission has a staff of less than 1,200 members, including professional and clerical personnel. Our mandate from Congress is the widest and most inclusive of all of the independent regulatory bodies. We need the best advice and techniques available to carry out this broad mandate from Congress.

On June 17, 1968, Ralph Nader called on me at my office and informed me that a group of students and recent law school graduates wished to study the activities of the Commission. I welcomed the idea. After some discussion, I informed Mr. Nader that I had no objection to members of the staff being contacted and interviewed so long as it was done on a reasonable basis and that I had no objection to furnishing the group information in our files that was in the public domain. I hoped, and based on what I was told I had every reason to believe, that the result would be a serious, intelligent and impartial survey resulting in informed, conclusive suggestions for improvement. Instead, the study resulted in a hysterical anti-business, diatribe and a scurrilous, untruthful attack on the career personnel of the Commission and an arrogant demand for my resignation. This report emanates from a group with a self-granted license to criticize a respected government agency by the use of a type of invective and "smear technique" that newspapermen inform me is unusual even for Washington.

This Nader group chose the Federal Trade Commission as its target for its 1968 summer vacation "smear" project. As stated in the comment in *The Wall Street Journal* of July 10, 1968, on page 14, if this group is successful in undermining the Federal Trade Commission this year, then other groups of students may make similar raids on other agencies in the future. Mr. Nader is so quoted in this article as follows:

The crusader has recruited five other students from leading universities, including William Howard Taft IV, great grandson of the Republican president, mainly to investigate what Mr. Nader terms the failure of the Federal Trade Commission to move boldly enough against deceptive business practices. "If this works, man, next summer, more students, more agencies . . ." Mr. Nader vows.

The feel of destructive power gained from vicious attacks is self-stimulating.

On the afternoon of January 2, 1969, I began to receive phone calls from the press and other media requesting my comments on the "Nader report," which obviously had been distributed to them. By letter of the same date, I was requested by the Public Broadcast Laboratory to appear on a half-hour program the night of Sunday, January 5, to reply to the statements in the report. I informed all requesting parties that I had not received a copy of the report and was unable to comment on it until I had been afforded the opportunity of at least reading it. Later that afternoon, I was called by Mr. John Schulz, who stated that a copy of the report had been mailed to me that day and that I should receive it soon.

I made it a point to watch the half-hour program by the Public Broadcast Laboratory, which appeared on TV station WETA at 9:30 p.m. on Sunday night, January 5. At one point the producer saw fit to dub in a previously taped interview with me, which made it appear that I was a part of the program dealing with the report itself. This was not true. At the time of this program I had not as yet even seen the report. When I reached my office on January 6, the promised report had not arrived and as of today, January 7, it still has not arrived. The copy on the basis of which I am now commenting was borrowed for me by the Commission's Information Officer from a member of the news media.

As I see it, ordinary courtesy would require the authors of such a document as this to provide me and the other members of the Commission with a copy of it before releasing it to the press. Since this was not done, I can only conclude that the preparation of this report was not the result of a serious, unbiased study of a group seeking to aid this agency in the performance of its public responsibilities, but was, on the other hand, a deliberate effort to undermine it.

Let's turn to the report itself. Laying aside the monotonous accusatory adverbs and adjectives in the critique, the primary difference between the fundamental position of the Nader group and that of myself is that I believe that the American businessman is basically honest and they believe he is basically dishonest, trying consistently to defraud the American consumer. The group contends that American business, particularly the larger corporations selling directly or indirectly to consumers and using extensive advertising, are engaged in what are, or should be, criminal activities and that the officers of these corporations should be sentenced to terms in federal penitentiaries. On page 68 of the critique, for example, it is stated: "It is particularly important to apply criminal sanctions to dishonest corporate behavior, for it is far more damaging in contemporary America than all the depredations of street crime." In other words, corporation executives are engaged in much more reprehensible conduct than rapist, robbers, muggers, etc. In light of this extreme anti-business bias of these young zealots, it is not surprising that the equitable and reasonable enforcement policies of the Commission would be so enthusiastically and unjustifiably criticized.

Shortly after I became Chairman of the Federal Trade Commission, the Commission turned from its general policy of emphasizing case-by-case adjudication to one seeking broader compliance with the law through new procedures. Experience had taught me that the case-by-case approach standing alone was not appropriate in the 1960's. The problems of regulatory lag and trial by convenience had been noted by the Landis Report and referred to by President Kennedy in his State of the Union message shortly after he assumed office.

The Commission's new procedures contemplated the broad use of guidelines, statements, trade regulation rules and advisory opinions. Also, where warranted, the Commission began to accept assurances of voluntary compliance under the many statutes which it administers. The Commission turned to these new procedures with a belief that by their use justice could be administered more equitably by government. This technique has proved successful. With its limited personnel, the Commission realized that it had to reserve its litigation procedures for use against that small percentage of businessmen in the business community that refused to follow advice.

Running throughout the Nader group report is the repeated reference to the failure of this program and that the Commission is in error in believing that any worthwhile compliance with its laws can result from any procedure other than formal adjudicative trials. In other words, the promise of a businessman cannot be trusted. In a people's government no law is any better than the will of the people to abide by it. I have great faith in the honest businessman of America. I do not think he loves his country any less than do these young zealots.

On pages 58 and 59 of the report, reference is made to the fact that Ralph Nader acquired a copy of a report dealing with automobile warranties and made it public. It is charged that the report was deliberately suppressed. On page 59, the following appears:

The real reason for the proposed plan for suppression lay in the contents of the report, which was highly critical of GM, Ford and Chrysler. Whether release would have eventually occurred is academic now, but there is little doubt based upon our interviews that Chairman Dixon was determined to suppress the report at least until after the election to avoid alienating Henry Ford II and other business interests who were contributing heavily to Hubert Humphrey's campaign.

This is a false charge and a blatant lie. Such unfounded charges as this would ap-

pear to me to be beneath the dignity of Ralph Nader. I think it is high time that the press confront Mr. Nader with this statement and inquire expressly if he agrees with it. If he does, I think somebody in America had better start worrying about Mr. Nader.

The Nader group vigorously contend that because many of the key staff members of the Commission were born in small communities they cannot understand or appreciate the consumer problems of urban America and, therefore, should be replaced. This novel qualification test for those public officials having responsibility for considering the problems of urban America would have disqualified most of the Presidents of the United States, the vast majority of the Members of Congress and at least some of the Justices of the Supreme Court. The suggestion springs both from ignorance and arrogance. In addition, the students overlooked the fact that practically all of these key members of our staff, as well as the Chairman, have been living in urban metropolitan Washington, D.C., since before the students were born.

Nothing galls me more than that section of the Nader group report which accuses me of hiring only high-ranking law students from "mediocre" law schools. For a number of years I have sent to the Deans of all the major law schools and most, if not all, accredited law schools throughout the United States, letters requesting them to encourage their graduating seniors to apply for employment at the Federal Trade Commission. I am proud to say that my efforts in soliciting the many Deans have proved quite successful. The Federal Trade Commission has always had many more applicants than positions available. With rare exception, offers of employment have been made to applicants who graduated in the upper 50% of their class or had other outstanding attributes that made them attractive to the Federal Trade Commission. I have consistently believed any federal establishment is a better agency when its staff membership comes from various sections of the country. The Nader group infers strongly that the hiring practices of the Commission discriminates against "prestigious" law schools. Indirectly, I read in this charge that if a graduating student did not attend one of these schools he is adjudged a second-class lawyer coming from a mediocre school. What arrogance!

The lowest of all blows in the report is the charge on page 114 that "The FTC has not been averse to hiring Negroes, but 'only in their place,' i.e. the lowest GS 1–4 positions." Here are the facts. Since assuming my office as Chairman, I have made a positive effort to attract and hire qualified Negroes for attorney positions and other professional positions. In 1961, I found that there was not one Negro lawyer on the Commission staff. Starting in 1961, I was able, as a result of an internship program at the Commission, to persuade the top-ranking law student at Howard University to accept an appointment as a staff member. Since that time, by the adoption of more aggressive recruitment measurements, I have been able to persuade nine other Negroes to join the staff as attorneys. Five are still so employed. (The Nader report states that the Commission has only three Negro lawyers.) Many other Negroes have been offered appointments, but have generally declined the offers for the stated reason that they had offers which involved working in the civil rights area.

In short, contrary to allegations made in the report, the Federal Trade Commission has been engaged in a continuing positive effort to recruit high quality personnel, including minority group candidates. To those involved in developing and promoting this effort, it is disheartening to read the unfounded allegations made in the Nader group report. The report paints a completely false picture of the Federal Trade Commission's efforts and accomplishments in the areas of recruitment and equal opportunity. This false picture will do untold damage to the Commission's continuing effort in this regard. What a shame to be faced with this problem at this time in the life of America.

The Nader group report contains unfounded false accusations with respect to political influences at the Federal Trade Commission. For instance, the report says that of the nearly 500 attorneys on the staff of the Commission that only about 40 are Republicans. Since assuming office on March 21, 1961, I have borne the responsibility of hiring new attorneys on the Commission's staff. The great majority of the attorneys that have been hired over the period 1961 to date have been graduating seniors from law schools. Under no condition and at no time was anyone connected with this program authorized to inquire into the party affiliation of an applicant. How the Nader group arrives at this mystical figure of 40 Republicans, I do not know. There is nothing in the Federal Trade Commission records to reveal it. It appears to me that this is another charge grossly unfounded.

Throughout the report reference is made to a report of the Civil Service Commission dated June 1965. This report was made by the Civil Service Commission as a part of its regular program of inspecting personnel management in Federal agencies and is considered a part of the internal housekeeping process in the Federal government. Repeatedly in referring to this report, the Nader group charges that the recommendations in the report have been ignored. However, this is absolutely not true. Contrary to the false statements respecting action recommended by the Civil Service Commission, I, in fact, adopted virtually all of the recommendations.

How any group could profess or claim to have made an empirical study of the activities of the Federal Trade Commission and make no mention of at least a single accomplishment by the Commission is beyond me. I shall mention a few.

The Commission's issuance of a Trade Regulation Rule in regard to disclosures of health hazards of cigarette smoking stimulated the enactment of the *Federal Cigarette Labeling and Advertising Act*, P.L. 89–92.

The Commission's proposal to issue guides relating to retail installment selling in the District of Columbia and in interstate commerce, and testimony furnished by the Commission with respect to abuses in credit selling, contributed in large measure to enactment of the *Consumer Credit Protection Act*, sometimes known as the *Truth-in-Lending Act*, P.L. 90–321.

The Commission played a major role in bringing about an enactment of the *Amendments to the Flammable Fabrics Act*, P.L. 90–189, to give the public more adequate protection against flammability of household fabrics.

The Commission was a prime mover in proposing the bill known as the *Deceptive Sales Act of 1968*, S. 3065, which passed the Senate in July 1968. This bill would enable the Commission to obtain a temporary injunction in a United States District Court to halt violations affecting the consumer, pending completion of the administrative proceedings. In 1962, President Kennedy had endorsed passage of legislation which would have permitted the Commission on a proper showing of irreparable harm and injury to have sought temporary injunctions in a United States District Court on all facets of its work.

In consultation with Senator Magnuson, the Commission conducted a pilot project in the District of Columbia to identify the types of deceptive and unfair trade practices that might be preying upon poor people. The results were published in the June 1968 *Report on District of Columbia Consumer Protection Program*. To characterize this effort on the Commission's part as "so small and half-hearted that it could be called a showcase for publicity purposes" is both vain and unrealistic. This very effort at one point required approximately one-third of the appropriations available to the total Deceptive Practices program.

In making this study, the Commission was fully aware that it had many responsibilities for actions in the District of Columbia. It was believed then, and it still is my belief, that the lessons learned from this study are applicable to the various states of the nation which have the responsibility for unfair and deceptive acts occurring in "intrastate" commerce. Even the Nader group recognized the need for changes in the jurisdiction of the Commission if the Commission is to create offices in Detroit and Philadelphia and other cities to assume dual responsibility with the States.

The Commission's economic study of *Installment Credit and Retail Sales Practices of District of Columbia Retailers*, published in 1968, illuminated the problems of retailing in low-income areas. This study gave great impetus to the need for the *Truth-in-Packaging* legislation.

The Commission's economic studies on *Milk and Bread Prices* in 1966, the *Baking Industry* in 1967, and *Games of Chance in Supermarket and Gasoline Retailing* in 1969, as well as earlier reports on *Organization and Competition in Food Retailing*, *The Structure of Food Manufacturing*, and *Anticompetitive Practices in Gasoline Marketing*, contribute to the general fund of knowledge needed by the Commission, the Congress and interested members of the public in carrying forward and developing an effective trade regulatory program.

The *Economic Revort on Webb-Pomerene Associations* in 1967, will undoubtedly have a significant effect on foreign trade policy.

The report on *Cents-Off Promotions in the Coffee Industry* in 1966, serves as a basis for consideration of regulations which may be issued under the "cents-off" provisions of the *Fair Packaging and Labeling Act*.

The staff report on *Automobile Warranties* forms the basis for public hearings soon to be held wherein the Commission will be determining the need, if any, for a trade regulation rule in this area.

I have felt compelled to mention these few actions on the part of the Commission because I think the public is entitled to know the important role the Commission has played and is playing in the area of consumer protection.

Most of us are producers and sell in some manner our talents and efforts, and all of us are consumers. The one should be in balance with the other. The Commission's role is to guide and advise the producer and, if necessary, to curb deception and to aid in informing the consumer.

I intend to remain at the Commission, consistently seeking better ideas and better techniques and increased efficiency in the operation of the Commission in fulfilling its very important role in protecting the consumer public. I intend to use my efforts to prevent, if I can, the extreme anti-business bias as exemplified by the views of these energetic, but misguided, students from poisoning the operation of the Federal Trade Commission to which I have given so much of my life.

AMBASSADOR W. AVERELL HARRIMAN

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1969

Mr. DULSKI. Mr. Speaker, a great American quietly concluded a long period

of public service this past weekend. He is W. Averell Harriman, retiring from his final assignment as President Johnson's Ambassador to the peace talks in Paris.

Ambassador Harriman has served his country in many ways over the years and has had many troubleshooting assignments for the White House.

He also has served his State well—4 years as an able Governor of our great State of New York.

In troubleshooting and in secondary government roles in general, the average person often does not realize the great dedication and loyalty which is required and which is given by our public servants.

It was indeed gratifying to all of us—and, I am sure, in particular to Ambassador Harriman—that he was able to surmount preliminary obstacles at Paris before he turned over the responsibilities of the negotiations to President Nixon's Ambassador, Henry Cabot Lodge.

As Ambassador Harriman told Ambassador Lodge: "The stage has been set for new and serious talks for a peaceful settlement of the war in Vietnam."

In his report to President Johnson, Ambassador Harriman said:

I'm happy we were able to keep the train on the track in your administration and are now turning it over to the new administration in a manner in which they can move ahead.

I know that I speak for a host of Americans when I say to Ambassador Harriman: "Thank you, sir, sincerely, for a job well done."

IN TERMS OF 1968 RETURNS: HOW U.S. VOTE PROPOSALS ADD UP

HON. AL ULLMAN

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 22, 1969

Mr. ULLMAN. Mr. Speaker, today I would like to insert in the CONGRESSIONAL RECORD an article which the Associated Press wrote for the Christian Science Monitor on November 26, 1968. Although I think that the argument against a direct popular election of the President is rather weak, I believe this article presents a good analysis of the different approaches being offered as alternatives to our present electoral system. I would like to call these comments to the attention of my colleagues as we begin to seriously consider the numerous proposals which have been made to update our method of electing the President. The article follows:

IN TERMS OF 1968 RETURNS: HOW U.S. VOTE PROPOSALS ADD UP

WASHINGTON.—Richard M. Nixon would have failed to get an Electoral College majority if the presidential election had been held under one of the electoral-reform plans most often suggested.

The President-Elect would have narrowly led Hubert H. Humphrey—but would not have had a majority—if each state's Electoral College votes had been divided proportionately rather than going to one candidate on a winner-take-all basis.

Under some versions of this proposed reform, that plurality would have been sufficient to elect Mr. Nixon. But under others, lack of a majority would have thrown the election to the House of Representatives—an eventuality that most reform plans aim at avoiding.

Mr. Nixon would have won a slight majority if electoral votes had been allocated on a congressional-district basis, another suggested alternative to the Electoral College. But his margin would have been smaller than the majority he actually got under the present system.

These theoretical results were compiled from virtually complete but unofficial election returns.

The other major reform plan would abolish the Electoral College, which has been in use since 1804, and elect the president by direct popular vote. Mr. Nixon also would have won under this system.

Proposals for election reform traditionally spring up in the wake of close elections. Reformers argue that the existing machinery may one day elect a president who is not the popular choice—or may break down entirely and produce no president except after prolonged wheeling and dealing.

With a third major candidate in the field—was George C. Wallace this time—the chances for an indecisive verdict appear to multiply.

AMENDMENT INVOLVED

Hearings are planned by the Senate constitutional revision subcommittee on how to improve the election procedure and eliminate the chance of constitutional crisis. The subcommittee chairman, Sen. Birch Bayh (D) of Indiana, is a leading advocate of direct popular election of the president.

If the present system is to be changed, the Constitution must be amended. That means the Senate and House must each, by two-thirds' vote of its membership, settle on a single reform plan. Then it must be ratified by the legislatures of 38 states.

There are numerous arguments for and against the present Electoral College and each suggested substitute. Even within each broad reform plan there are arguments over how the fine print should read.

Here's a look at each principal system, the characteristics that stir debate about it, and how it would work when the 1968 election results are plugged in.

The existing system: Each state has as many votes in the Electoral College as it has representatives and senators in Congress. The District of Columbia has three. All of a state's votes are cast by electors announced as favorable to the candidate who wins the most popular votes in the state, though only 16 states and the District require their electors to follow the voters' choice. A majority of the electoral votes—270 of 538 this year—is required for election. If there is no majority, the House of Representatives elects the president.

HOW RETURNS WENT

Mr. Nixon won the popular vote in 32 states, giving him 302 electoral votes—a majority. Mr. Humphrey won 13 states and the District of Columbia for 191 electoral votes. Mr. Wallace won five states worth 45 votes.

Despite a better than 3-to-2 electoral edge over Mr. Humphrey, Mr. Nixon won the popular balloting by less than 350,000 votes out of 72 million cast. His 44 percent of the popular vote was good for about 56 percent of the electoral vote; Mr. Humphrey got 43 percent of the popular vote but less than 36 percent of the electoral; Mr. Wallace won 13 percent popular, about 8 percent electoral.

One minor reform plan would require that electoral votes be cast automatically for each state's winner, thus eliminating the chance of a candidate being victimized by electors who refused to go along with the popular choice.

Proportional electoral voting: This proposal would allocate electoral votes in proportion to the popular vote received by each candidate in each state.

Under this plan, Mr. Nixon would have received 234 electoral votes to 224 for Mr. Humphrey and 80 for Mr. Wallace, almost exactly matching his percentage of popular vote and 36 short of an electoral majority.

IMPRECISION NOTED

Proportional distribution lacks precision, particularly in smaller states, if only whole electoral votes—not fractions—are allocated. The mathematics is such that in a two-man race in a state with four electoral votes, one candidate would need nearly 63 percent of the popular vote for the electoral votes to do anything but split 2–2. In Arkansas this year, for example, each candidate would have received 2 of the state's electoral votes even though Mr. Wallace polled 39 percent of the popular vote to 31 percent for Mr. Nixon and 30 percent for Mr. Humphrey.

District electoral voting: The most common form of this proposal would give 1 electoral vote to the popular-vote winner in each congressional district, with a bonus of 2 votes to the statewide winner. The bonus votes preserve the same degree of overweighted representation for small states already contained in the present system.

Mr. Nixon would have carried 225 congressional districts; Mr. Humphrey, 163 plus the District of Columbia; and Mr. Wallace, 47. Adding in the bonus electors for states won would have given Mr. Nixon 289 votes, a majority; Mr. Humphrey, 192; and Mr. Wallace, 57. That is 13 fewer than Mr. Nixon got under the existing system. Mr. Humphrey would have gained 1, Mr. Wallace, 12.

The district system would make little difference from the present method in most small states, where congressional districts cover large areas. In larger and more diversified states, the district plan would more closely recognize these differences, but like the present winner-take-all system the margin of victory would make no difference. A congressional district carried by 1 vote would be worth the same electorally as one carried by 100,000 votes.

Popular voting: Under this plan, the candidate with the most votes would win. The number of states carried would become irrelevant. Some proposals include a runoff election between the top two candidates if no candidate in a field of three or more gets some minimum percentage, such as 40 percent. Mr. Nixon would have won under this plan, since he polled more than 40 percent despite the third-party candidacy of Mr. Wallace.

Some persons suggest that one suspect city or county could swing the entire national vote in an extremely close election, while under any of the Electoral College proposals, one fraud-ridden area can affect only one state. The counterargument is, of course, that an electoral election could hinge on that state.

ILLINOIS STEAL IN 1960

On the other hand, the 8,000 votes some Republicans contend were stolen from Mr. Nixon in the 1960 election in Illinois were enough to give John F. Kennedy that state, but were nowhere nearly enough to swing the entire national popular vote, although Mr. Kennedy's edge of 119,000 votes was one of history's closest.

The biggest problem facing electoral reformers is to agree on one plan. Even with unity, they face a rugged struggle in state legislatures; without unity, it is unlikely any plan could muster enough support to get through Congress.