Y 4
. G 74/6
R 26/3/974/ PT. 1
1037
REGULATORY REFORM—1974
GOVERNMENT
Storage
CUMENTS
APR 1 4 1975
THE LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 704, S. 770, S. 3604, S. 4155, S. 4167, and S.J. Res. 256

NOVEMBER 21, 22, AND 25, 1974

PART 1





Printed for the use of the Committee on Government Operations

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

REGULATORY REFORM—1974

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 704, S. 770, S. 3604, S. 4155, S. 4167, and S.J. Res. 256

NOVEMBER 21, 22, AND 25, 1974

PART 1



Printed for the use of the Committee on Government Operations

U.S. GOVERNMENT PRINTING OFFICE

43-262 WASHINGTON : 1974

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $4.60

COMMITTEE ON GOVERNMENT OPERATIONS

SAM J. ERVIN, JR., North Carolina, *Chairman*

JOHN L. McCLELLAN, Arkansas
HENRY M. JACKSON, Washington
EDMUND S. MUSKIE, Maine
ABRAHAM RIBICOFF, Connecticut
LEE METCALF, Montana
JAMES B. ALLEN, Alabama
LAWTON CHILES, Florida
SAM NUNN, Georgia
WALTER D. HUDDLESTON, Kentucky

CHARLES H. PERCY, Illinois
JACOB K. JAVITS, New York
EDWARD J. GURNEY, Florida
WILLIAM V. ROTH, JR., Delaware
BILL BROCK, Tennessee

ROBERT BLAND SMITH, JR., *Chief Counsel and Staff Director*
ELIZABETH A. PREAST, *Chief Clerk*
ELI E. NOBLEMAN, *Counsel*
W. P. GOODWIN, JR., *Counsel*
J. ROBERT VASTINE, *Counsel to the Minority*
BRIAN CONBOY, *Special Counsel to the Minority*
W. THOMAS FOXWELL, *Staff Editor*

CONTENTS

OPENING STATEMENTS

	Page
Senator Ribicoff	1
Senator Allen	9
Senator Brock	10
Senator Metcalf	55

WITNESSES

THURSDAY, NOVEMBER 21, 1974

Ash, Roy L., Director, Office of Management and Budget	3
Engman, Lewis A., Chairman, Federal Trade Commission	30
Kirkpatrick, Miles W., former Chairman, Federal Trade Commission	47

FRIDAY, NOVEMBER 22, 1974

Garrett, Ray, Jr., Chairman, Securities and Exchange Commission	61
Nassikas, John N., Chairman, Federal Power Commission	74
Simpson, Richard O., Chairman, U.S. Consumer Product Safety Commission	84
Wiley, Richard E., Chairman, Federal Communications Commission	91
Houthakker, Hendrik S., professor of economics, Harvard University	124
Rouse, Andrew M., senior vice president, Insurance Company of North America Corp	137

MONDAY, NOVEMBER 25, 1974

Kauper, Thomas E., Assistant Attorney General, Department of Justice, Antitrust Division, accompanied by Joe Sims, special assistant	229
Turner, James, attorney, Washington, D.C., author of "Chemical Feast"	254
Melody, Dr. William H., associate professor of communications economics, Annenberg School of Communications, University of Pennsylvania	272
Godown, Richard D., senior vice president and general counsel of the National Association of Manufacturers	290

STATEMENTS

Ash, Roy L., Director, Office of Management and Budget	3
Brock, Hon. Bill, a U.S. Senator from the State of Tennessee, prepared statement	11
Engman, Lewis A., Chairman, Federal Trade Commission	30
Prepared statement	33
Garrett, Ray, Jr., Chairman, Securities and Exchange Commission	61
Prepared statement	67
Godown, Richard D., senior vice president and general counsel of the National Association of Manufacturers	290
Prepared statement	292
Houthakker, Hendrik S., professor of economics, Harvard University	124
Kauper, Thomas E., Assistant Attorney General, Department of Justice, Antitrust Division, accompanied by Joe Sims, special assistant	229
Kirkpatrick, Miles W., former Chairman, Federal Trade Commission	47
Melody, Dr. William H., associate professor of communications economics, Annenberg School of Communications, University of Pennsylvania	272
Prepared statement	282
Nassikas, John N., Chairman, Federal Power Commission	74
Prepared statement	79

Page

Rouse, Andrew M., senior vice president, Insurance Company of North America Corp. 137
Prepared statement 142
Simpson, Richard O., Chairman, U.S. Consumer Product Safety Commission 84
Prepared statement (with attachments) 89
Attachments to statement:
1. Proposed procedural policy on meetings, prior public notice, and records of proceedings 170
2. Proposed procesures for disclosure or production of information under Freedom of Information Act 176
3. Proposed statement of policy on the use of sampling plans 182
4. Proposed statement of policy regarding employee membership and participation in voluntary standards organizations 184
5. Proposed recordkeeping requirements for consumer product safety complaints 186
6. Consumer safety standards—requirements and procedures 190
7. Substantial product hazard notifications—submission of information by manufacturers, distributors, and retailers 211
8. April 22, 1974, letter from Chairman Richard O. Simpson to Senator Metcalf regarding S. 704 225
9. Statement of Richard P. Simpson, Chairman, U.S. Consumer Product Safety Commission, before the Committee on Commerce and the Committee on Government Operations, U.S. Senate, April 3, 1974 226
Turner, James, attorney, Washington, D.C., author of "Chemical Feast" 254
Prepared statement 255
Wiley, Richard E., Chairman, Federal Communications Commission 91
Prepared statement 96
Wood, Arthur M., chairman of the board, Sears, Roebuck & Co., prepared statement 286

ADDITIONAL INFORMATION

ARTICLES AND PUBLICATIONS

Address by Lewis A. Engman, Chairman, Federal Trade Commission, before the 1974 Fall Conference of the Financial Analysts Federation, Detroit, Mich., October 7, 1974 42, 548
"FTC Finds Competition in Milk Industry Failing," by Baily Morris, from the Washington Star, November 11, 1974 37

COMMUNICATIONS

Letters to:
Ervin, Hon. Sam J., Jr., chairman, Committee on Government Operations, U.S. Senate, from: Vincent W. Rakestraw, Assistant Attorney General, Department of Justice, dated July 24, 1974, reviews of the Department of Justice on S. 704, a bill proposing Regulatory Agencies Independence Act 240
Metcalf, Hon. Lee, chairman, Subcommittee on Budgeting, Management Expenditures, Committee on Government Operations, from:
Congressional Research Service, Economics Division, Washington, D.C., dated April 23, 1974, attention Vic Reinemer; re data supporting Federal intervention into intrastate regulatory body proceedings 59
Johnson, Nicholas, former Commissioner, Federal Communications Commission, re antitrust policy to pursue with Assistant Attorney General Kauper and Federal Trade Commission Chairman Engman 245
Kurylo, Walter, Secretary, National Association of Regulatory Utility Commissioners, Washington, D.C., November 21, 1974, re NARUC Survey of State Freedom of Information (Sunshine) Statutes and Regulations 157
Ribicoff, Hon. Abraham, a U.S. Senator from the State of Connecticut from Bruce B. Wilson, Acting Assistant Attorney General, Antitrust Division, Department of Justice, February 27, 1975, re list of Justice Department's filings and appearances with various regulatory agencies, as requested from Thomas E. Kauper, Assistant Attorney General 524

Letters to:—Continued Page
Statler, Stuart M., chief minority counsel, Government Operations Committee, from Richard D. Godown, senior vice president and general counsel of the National Association of Manufacturers, December 18, 1974, re comments of S. 4145 and S. 4167 ---- 301

TABLE

NARUC survey of State freedom of information (sunshine) statutes, with footnotes reflecting information the NARUC obtained from its member State agencies ---- 158

APPENDIX

APPENDIX 1

Antitrust cases initiated by the Department of Justice since January 1, 1963 ---- 305
Antitrust cases terminated since January 1, 1963:
Part 1 (1963–1965) ---- 415
Part 2 (1966–1967) ---- 445
Part 3 (1968) ---- 456
Part 4 (1968) ---- 464
Part 5 (1968–1969) ---- 469
Part 6 (1969) ---- 473
Part 7 (1970) ---- 478
Part 8 (1970) ---- 488
Part 9 (1971) ---- 492
Part 10 (1972) ---- 496
Part 11 (1973) ---- 505
Part 12 (1973) ---- 511
Part 13 (1974) ---- 516

APPENDIX 2

Letter to:
Ribicoff, Hon. Abraham, a U.S. Senator from the State of Connecticut from Bruce B. Wilson, Acting Assistant Attorney General, Antitrust Division, Department of Justice, February 27, 1975, with enclosed list of Justice Department's filings and appearances with various regulatory agencies, as requested from Thomas E. Kauper, Assistant Attorney General ---- 524

APPENDIX 3

Questions submitted by Senator Ribicoff to Lewis A. Engman, Chairman, Federal Trade Commission, with response and attachment ---- 574

REGULATORY REFORM—1974

THURSDAY, NOVEMBER 21, 1974

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice at 10 a.m., in room 3302, Dirksen Senate Office Building, Senator Abraham Ribicoff, presiding.

Present: Senators Ribicoff, Allen, Chiles, Brock, Javits, and Roth.

Also present: Eli Nobleman, counsel, and Elizabeth A. Preast, chief clerk, Committee on Government Operations; Vic Reinemer, staff director, E. Winslow Turner, chief counsel, and Alan Chvotkin, professional staff member, Jack Chesson, counsel, Subcommittee on Budgeting, Management, and Expenditures; Richard Wegman, chief counsel and staff director, and Marilyn Harris, chief clerk, Subcommittee on Reorganization, Research, and International Organizations.

Senator RIBICOFF. The committee will be in order.

Today the Committee on Government Operations begins hearings on bills proposing reform of regulatory agencies of the Federal Government, and examination of State and local governmental regulatory agencies which interact with the Federal system; namely S. 704, S. 770, S. 3604, S. 4155, S. 4167, and S.J. Res. 256. We will place the text of this legislation in the record at the appropriate place.[1]

OPENING STATEMENT OF SENATOR RIBICOFF

President Ford, in his October 8 economic address to the Congress, called for a "total reexamination of the independent regulatory agencies," and for a study to "identify and eliminate existing Federal rules and regulations that increase costs to the consumer without any good reason in today's economic climate." We meet today to begin hearings into the necessity for and scope of such a study and to consider other legislation relating to regulatory reform.

Hearings on the need for regulatory reform are long overdue. Federal regulation isn't doing the job. There are bright spots to be sure, but the overall situation is dismal.

Since the Interstate Commerce Commission, the first regulatory agency, was created in 1887, the Nation has experienced an enormous proliferation of Government regulation. Today, there are over 20 Federal independent regulatory agencies, a host of other Federal instrumentalities with vast regulatory responsibilities and hundreds of State and local regulatory bodies. Taken together, the action and inaction of these bodies have enormous impact on the lives of all Americans.

[1] See Part 2, Appendix 1.

It is impossible to estimate the total cost of poor regulation, but available statistics are shocking.

Assistant Attorney General Thomas Kauper, who will be testifying at these hearings on Monday, recently noted that price-fixing and other anticompetitive actions raise price levels by $80 billion each year. A study by Prof. Thomas Gales of the Hoover Institution states that outmoded ICC regulations cause yearly loss of from $4 to $10 billion in farms and all other trucking operations. Transportation economists estimate that price-fixing and waste allowed under CAB, FMC and ICC regulations cost the consumer between $8 to $16 billion yearly.

These figures are merely the tip of the iceberg and the American consumer is rightfully demanding relief.

Consider the following:

Agencies often labor under inconsistent, nonexistent, unclear, or conflicting policy goals.

More than one agency is often charged with the same function—or conflicting functions.

A particular industry often dominates the agency responsible for its regulation.

Agencies charged with encouraging competition often end up protecting monopolies.

Potential conflicts of interest involving present and former regulators are commonplace.

There is an abysmal lack of coordination between Federal and State and local regulatory agencies causing confusion, conflict and inefficiency.

The administrative process is plagued with long delays.

The interests of the public are too often inadequately represented in agency proceedings.

Agencies find it increasingly difficult to attract top talent to serve as commissioners and staff assistants.

Structural and organizational problems hinder agency performance.

In some instances, the rationale for an agency no longer exists.

The list of problems goes on and each has been well-documented by journalists, academicians, and others who have studied regulatory problems. Literally hundreds of law review articles, books and studies comprise an enormous body of literature on the subject. Moreover, during the past four decades, there have been five major Government financed studies which have identified and analyzed major regulatory problems.

Beginning in 1937, the President's Committee on Administrative Management took a first look at the situation. This effort was followed by the First Hoover Commission in 1948, the Second Hoover Commission in 1955, the Landis Report in 1960 and most recently by the President's Advisory Council on Executive Organization. I am pleased that Mr. Ash who headed this latest effort is with us today. These studies sought to come to grips with the enormous complexity of Government regulation. They analyzed many problems and proposed solutions. Moreover, they stimulated others to study regulatory problems.

The point is that the time has come for action to consider the massive body of literature on the subject and to choose from those many solutions which already have been offered.

It is not productive to seek to place blame for the degeneration of our Federal regulatory system; indeed, all branches of government are culpable. The important thing now is for Congress, encouraged by the President's obvious interest in regulatory reform, to act.

The administration bill would establish a new commission to study regulatory problems and make recommendations. If Congress decides that a new commission should be established, the commission should move to complete its work expeditiously at a minimal cost to the public. It should be mandated to consider and evaluate specific important proposals for reform. After the commission has completed its work, the appropriate congressional committees should give prompt consideration to the commission's recommendations for reform.

In the meantime, however, it is imperative that the Congress not delay in its consideration of vital legislation in this area. Specifically, it would be tragic if Congress used the commission as an excuse to delay action on the Consumer Protection Agency. Indeed, a Consumer Protection Agency is needed more than ever to deal with the growing regulatory mess.

It would be wrong for regulatory agencies to forebear from self-examination leading to a change which could be accomplished without legislation. Likewise, I hope, that the Justice Department will continue to step up its antitrust enforcement activities.

Over 4 days of hearings, the committee will hear testimony from experts with a broad range of experience in the regulatory arena. At the completion of these hearings, it is my hope that the committee will act without delay in reporting to the Senate a bill which will enable us to reform our regulatory system to respond to the awesome challenges which America faces today.

I am delighted to have as our first witness, Mr. Roy Ash, Director of the Office of Management and Budget.

Mr. Ash?

STATEMENT OF ROY L. ASH, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. Ash. Thank you, Mr. Chairman.

I appreciate this opportunity to testify before you today on the subject of reforming our system of governmental regulation. The purpose of the committee's inquiry, as I understand it, is to consider the role of governmental regulation as a cause or substantial contributor to the economic problems facing this country today and to discuss alternative ways of addressing the problems which exist.

The President has already expressed the view that the time has come to review regulatory activity from a broader perspective than has been done in the past. Increasingly, Federal, State, and local regulation, as administered by various kinds of Government agencies, has come under attack.

Complaints about the effects of regulation have come from all elements of our society and from all political perspectives—both from business and labor, consumer and industry, Congress and the Executive. We have heard stories of arcane 19th century rules being carried over into the last quarter of the 20th century, resulting in major costs to the consumer while restricting industries from competition on the

one hand and from modernization on the other. We have heard that regulation adds billions of dollars to costs that must be borne by the consumer that might otherwise go into more productive investment. Most importantly, however, the debate over whether we as a Nation are willing to pay these costs has never really been surfaced. Instead, the issue has been submerged in complicated agency procedures that often appear to confuse as much as to inform. In my testimony today I will attempt first to highlight what the President is asking be done to address these issues on several different and simultaneous fronts. I will then focus more directly on S. 4145, regarding the need to undertake a joint congressional-Executive review of a particular element of the problem; that is, the actions of the Federal independent regulatory agencies and their effects on the economy. It is the President's belief that such an examination will help to move us toward an understanding of how these agencies can best serve America's future economic and social needs.

Although this committee has raised a number of questions regarding the organizational structure and accountability of our regulatory agencies, I do not believe that reorganization or realinement is enough. In addition to the administration's bill, the committee also has before it legislation that would improve the standing of consumers in their dealings with Federal and State regulatory agencies. While such measures to improve the availability and dissemination of regulatory information to the public would be useful, they are not enough. The elimination of certain regulatory agencies such as has been suggested or the discontinuance of some specific individual regulatory practices are not in and of themselves the answer.

Clearly, while there is increasing recognition that there is a problem—we simply have never had a comprehensive program to address our system of regulation as administered by the Federal independent regulatory agencies, the Cabinet departments and other executive branch agencies, and State and local governments. I believe such a comprehensive program is now essential if we are to properly define the problems and achieve an effective remedy that will bring Government action in keeping with our country's present and future needs.

In his economic address of October 8, 1974, the President set in motion a program of regulatory reform comprised of several elements. First, he directed the consideration of the inflation impact of all major legislative proposals, rules, and regulations proposed by Federal agencies. This requirement will increase the awareness of Federal managers as to the full economic impact of their proposed programs and will help to assure that the economic effects of prospective Government actions are fully analyzed before they are put into effect.

In this regard, I am pleased to note that Congress is moving to institute such a requirement in its own internal procedures and that there is considerable interest at the State and local level to undertake similar efforts. The intent of this initiative is to insure that we do not add to our problems by insufficiently considered actions in the future.

Second, for rules and regulations that the executive departments already have in effect, such as marketing orders and environmental regulations, the President has directed the Council on Wage and Price Stability to identify, review, and recommend appropriate modifica-

tions to those programs whose costs appear to outweigh the public benefits or which unnecessarily restrict productivity or competition. As a result of the Council's efforts, recommendations for modifying specific regulations can and will be made in the near future in those areas where the need to do so has been studied and clearly established.

Third, the President has asked State and local governments to undertake similar reviews of their laws such as building codes and zoning requirements to insure that they do not have detrimental economic effects.

Fourth, the President has invited Congress to join with him in sponsoring a comprehensive review of the future role, practices, and procedures of the Federal independent regulatory agencies. To achieve this end, he has requested the creation of a jointly sponsored Commission, comprised of congressional, executive, and private sector representatives to undertake an impartial examination of the purposes and objectives for which the regulatories were established, to assess past performance in meeting those objectives, and to recommend to the President and to Congress, appropriate measures to assure that these agencies function to serve the public interest. The Commission would also address the relationships between our federal system of regulation and State and local regulatory activities.

In pursuing this program, we must continue to reform those aspects of regulation where we have completed our study and the case can be documented on the need for change and the effects of transition. It is important that we do not allow the Commission to become an excuse for inaction—either on the part of the Executive in proposing appropriate reforms or on the part of Congress in enacting them. For example, legislation proposing changes in rail regulation is already before the Congress and should be enacted promptly. Legislation reforming motor carrier regulations is now being developed by the Department of Transportation which is the result of lengthy reviews and studies and therefore will soon be submitted for the Congress consideration.

This four-part program would be a substantial step forward in comprehensively addressing many of the questions that this committee has raised and that others in Congress, the executive, and the public at large have been raising with increasing concern. To summarize, it would insure the examination of new legislation and regulations as well as existing ones, and it would encourage all units of Government to review their activities in a similar light. By establishing a regulatory reform commission, it would provide a means to thoroughly examine the independent regulatory agencies which have been the subject of at times both rational and irrational blame and praise. It is this latter aspect of the Presidential program that I would like now to turn to and discuss in more detail.

The annual expenditures of the independent regulatory agencies are minimal, approximately one-tenth of 1 percent of the Federal budget. However, their regulations impose a hidden cost of Government that is many times greater but much less visible to the public. Too often in the past we have deluded ourselves that regulation is an inexpensive way to achieve certain national objectives—that through this form of intervention, Government could provide the public a particular service or benefit at little or no real cost. In the bureaucratic attempt

to help, we have created a whole system of hidden taxes or costs to pay for many protections that may not be worth those costs and in many instances are inherently unfair.

For example, should airline passengers on some heavily traveled routes be required to pay higher prices so that the airlines can afford to maintain services on less popular routes or should the cost be borne by the taxpaying public through the use of direct Federal subsidies? In debating this question in the past, we have not viewed the issue as a tradeoff between regulation or subsidy. Perhaps we should.

We hear countless accusations that regulation is inherently bad; that the costs imposed by complex regulations controlling such activities as route structures and market entry are unnecessary. But do we really know the economic and social impact of eliminating regulations that maintain vital services to our smaller cities? Is there a case to be made for subsidy if one considers the tradeoff between regulation and subsidy? The point is that regulation, like subsidies, tariffs, or tax preferences, can be a useful tool in achieving our national goals. However, we must insure that its complexities and effects are fully understood and appreciated if we are to know how and when to employ the right tool.

Accordingly, I suggest that we must undertake an impartial examination of those agencies in which we have concentrated much of our regulatory activities—the independent regulatory commissions. While over the years, national objectives and economic conditions have changed dramatically, in many instances the objectives of our regulatory agencies have tended to remain unchanged. A good example of this situation may be seen in the regulater rate structure of our railroads. At the time the Interstate Commerce Commission was created, this country was in a period of rapid and expanding national growth.

It was essential that critical commodities and supplies move quickly and easily to those areas where development was occurring. As a consequence, various differential pricing structures were developed to assure that such movement took place. Price discrimination among various commodities would bear higher rates based on product weight, bulk, and the consumers' willingness to pay. As a result, a system of rate regulation called "value of service pricing" was developed by the railroads to serve their particular needs. Later as regulation was expanded to cover other modes of transportation, the ICC, in order to prevent any one mode from gaining an unfair advantage, extended this pricing concept to motor and inland water carriers. Today there are 40 trillion rates on the books and something over 400,000 new tariff schedules each containing many different rate proposals that are being submitted annually for approval. This tendency for old regulation to breed new regulation is perhaps one of the most disturbing aspects of our current regulatory system.

In many cases, new regulation, once imposed upon an industry, breeds even more pervasive forms of protectionism. For some years, the international air travel market has been subjected to inefficiencies that not only impose excessive costs on the consumer, but slowly weaken the industry. This has resulted in rapidly rising prices coupled with increasing pressures for governmental subsidies and further regulation designed to wall off the industry from competition. For example, U.S.

airlines participate with foreign airlines in the International Air Transportation Association, IATA, in order to consider and act upon all traffic matters of concern, including rate-fixing. IATA's cartel pricing and the CAB's continued acceptance of this practice, by some estimates, has cost the traveling American consumer millions of dollars annually. The CAB apparently nurtured cartel pricing in order to promote the well-being of the U.S. international carriers. However, like our domestic economy, the international situation has changed and the time has come to reevaluate our willingness to maintain the current U.S. position in the aviation community, considering the actual cost of doing so. In the meantime, these rules have prevented Americans from traveling abroad at economical prices and, at the same time, they have damaged the competitive strength of the U.S. carriers; and in the case of Pan Am, may have contributed to its current difficulties.

Price regulation is only one of the regulatory policies or objectives which warrant reevaluation. Another major function of the regulatory agencies is the awarding of franchises or licensing of industries in order to control market entry and exit of regulated firms. Examples of this type of regulation include the granting of permits for the construction of hydroelectric power facilities by the FPC, and the allocation of electromagnetic frequencies between competing claimants for nongovernmental broadcasting and communications by the FCC. Here again, the critics have suggested that the regulatory agencies have not kept pace with the changing needs of society. For example, the Federal Power Commission was established to protect the public against the monopolistic power of the large public utility companies. Today, however, the importance of such protection is equaled or perhaps surpassed by the recognition of our current need to develop coordinated, long-range governmental planning to assure that the future energy needs of this country are met. At present, there are serious obstacles preventing the achievement of such planning; and, as usual, the regulatory agency, in this case the FPC, takes the blame. Rather than taking an across-the-board look at the industry in terms of current and future demand, the Commission continues to do business on a case-by-case basis, reviewing each application for a certificate to build additional power facilities, no matter how small or time consuming the individual request might be. In most cases, their individual decisions do not appear to demonstrate a consistent policy designed to move the industry toward clearly articulated goals. Perhaps a different approach to the regulatory function would permit the FPC to use more effectively the expertise it has developed over the years.

The validity of the original mandate of the various independent regulatory agencies is only one of the issues to be addressed by the proposed Regulatory Reform Commission. Equally as serious and similarly controversial is the contention that the administrative practices and bureaucratic procedures of these agencies are effectively preventing the efficient functioning of these organizations. Repeatedly, the accusation is made that the Federal regulatory agencies have become so bogged down in detailed paperwork and "administrative" that they have become masters of delay and are no longer able to serve the national interest. A recent article in the Wall Street Journal recounted an example of this problem where the Federal Communica-

tions Commission, which has been in existence for 40 years, has been trying for 33 of those years to settle a single dispute between two radio stations. In this case, the jurisdictional dispute over broadcasting frequencies between the two stations has been decided several times by the FCC, only to be overruled by a court decision.

Regulatory proceedings such as this one are not only inefficient; they also tend to produce huge litigation costs for the regulated industries and often may result in the imposition of higher rates and prices on the consuming public. Therefore, the practices and procedures of these agencies must also be reviewed to determine who interests are being served and how best to serve the public interest.

A final task of the Regulatory Reform Commission will be to examine State and local regulatory activities as they relate to the Federal system of regulation. As at the Federal level, it is important that State and local governments begin to look more carefully at the goals of regulation and whether they are being achieved in the public interest. As Senator Metcalf has so accurately pointed out, most of the costs of regulating our public utilities which in turn affect the pocketbooks of most Americans are imposed not by the Federal agencies, but by State and local regulatory activities. Thus, we cannot ignore this segment of the regulatory system. The question that the Commission should address is: How best can Federal, State, and local governments use regulation to effectively equate private and public costs and resolve complex and interrelated problems which arise in the context of transportation, land use, energy, and other important sectors?

I think we should acknowledge that the pathway to regulatory reform will not be an easy one, that we will face a number of painful steps if we are to take a serious and unbiased look at our regulatory system.

We will need to confront squarely the possibility that some sacred social and institutional cows may have to be modified or eliminated. We must be prepared to recognize that transition costs must be identified and paid in the process of modernizing our regulatory system to meet our needs. We will have to develop a better public understanding of the complexities of our regulatory system if we are to achieve the desired reforms.

As we begin this effort, I would like to echo the President's theme when he called for a collective effort on the part of both individuals and governments to fight our public enemy No. 1—inflation. Winning this battle requires that we recognize that nearly all aspects of American life are changing faster than ever before but not with equal speed. Technical and economic factors are shifting much more rapidly than our legal and social institutions. The traditional patterns of behavior in these institutions must be changed if we have any hope of winning the fight ahead. More so than in perhaps any other area of American life, the reform of Government regulation requires a collective responsibility. Perhaps Pogo's remark best captures the attitude we must adopt, if, together, we are to be successful in this undertaking: "We have met the enemy and he is us."

The Commission, once it is established, faces an arduous task—one that will bring it face to face with many entrenched interests that like the system as it is. Therefore, it is particularly important that the

Congress and the Executive adopt a spirit of cooperation in reviewing the recommendations of the Commission and pursuing needed reforms.

As Boss Kettering once said, "We should be thankful we don't get all the government we pay for." Today, we must make sure we do not get more government than we pay for and more than we can afford.

Thank you, Mr. Chairman.

Senator RIBICOFF. Thank you, Mr. Ash.

Before I ask you any questions, Senator Allen has an opening statement he would like to make. Senator Allen?

OPENING STATEMENT OF SENATOR ALLEN

Senator ALLEN. Thank you, Mr. Chairman.

I have another commitment that I had to pay my respects to before coming to this hearing.

President Ford's request that we create a national commission on regulatory reform has met with an immediate and comprehensive response from Congress.

As I look at the number of bills to be considered by us here today and during the remainder of these hearings, I wonder if the President might consider the response too good.

But I suppose coming to Congress with a request that we look into the problems of the executive branch is like walking into a pigeon-infested park with a handful of peanuts.

This is one subject upon which there can be a broad spectrum of support in the Congress. In fact, I would not be surprised to see some agencies start to take serious reform steps voluntarily now that they know we are serious. That, of course, could be too little, too late.

There are three bills before us which would directly establish a reform commission. S. 4145, S. 4167, and S.J. Res. 256, introduced by me. There are also three bills which apparently parallel in intent much of what is contained in the reform commission bills, S. 3604, S. 704, and S. 770.

Finally, there is a printed amendment by me to S. 4145, the original reform commission bill, which would assure that the major differences between my bill and that bill are overcome.

The major differences between the Allen bill and the original bill go to the commission's structure, jurisdiction, and consumer representation determinations. And I note that Senator Percy's new bill concentrates on some of these areas as well.

First, as to structure, my bill would specifically stipulate that the commission members from the executive branch not be chosen from regulatory agencies, but come from nonregulatory agencies which the commission will not be studying, such as the Office of Management and Budget or the Administrative Conference.

The Allen bill would also stipulate that consumer, labor, and business expertise be represented among the private sector members on the committee, rather than leave such appointments to chance.

Senator Percy's bill would stipulate that consumers, at least, be represented.

As to jurisdiction, the Allen bill would allow the commission to study agencies which are not independent, as well as those which are independent. Senator Percy's bill does this also.

Finally, as to consumer representation, the Allen bill would mandate that the commission evaluate the adequacy of consumer representation in the decisionmaking process of other agencies and to report to us and the President on ways to improve this.

Specifically, as one of the alternatives for improving consumer representation, the Allen bill would require the commission to report on the viability of establishing an agency for consumer advocacy. I do not feel that there would be a need for an agency for consumer advocacy, because I think the deficiencies in the agencies gave rise to some of support and some of the demand for an agency for consumer advocacy. I believe that if reforms are broad enough, and this is certainly an area that we are in common agreement on, if they are broad enough, if the agencies are required to function and function properly, then there will be no need for an agency for consumer protection to point out to the agency the decision that it should make.

I notice that Senator Percy's new bill also mandates that the commission study some possible other areas for improving the consumer's lot in agency decisionmaking. Some of these areas chosen by him appear to look very promising.

I hope that we can set an example for the regulatory agencies by handling this complex subject expeditiously.

Senator RIBICOFF. Senator Brock, did you want to make a statement?

Senator BROCK. I will just summarize my statement, if I may.

Senator RIBICOFF. Without objection, your entire statement will go in the record.

OPENING STATEMENT OF SENATOR BROCK

Senator BROCK. I would like to express my gratitude for the chairman for calling these hearings. They are not only necessary, but I think they are long overdue. One of the biggest middlemen in the world is the Federal Government, whose regulatory policies too often reduce competition and increase costs to the consumer without offsetting advantages. Ten percent of our industry is regulated by some agency of Government. Certainly, many of them are major concerns, which hardly need to be protected from competition. On the contrary, there is considerable abuse in the regulatory process. All too often, it is small business which is effectively denied the opportunity to compete.

Business is having to operate under an umbrella with so many holes in it that it neither protects the consumer nor allows for free and open competition, the backbone of our progress for 200 years. Nineteen out of twenty businesses fall into the category of small business, but they are unable to compete because of the stifling regulatory policies. I am afraid they will be ultimately driven out of business or swallowed up by big business, which has the money to operate under these circumstances.

Our economy at this moment is entirely suspect. We have inflation and declining productivity. It is time for us to remove the impediments of overlapping regulations and outdated congressional mandates for a free market and effective competition. These hearings can create a new era to take the shackles off business, and increase our productivity. I hope we can move effectively and quickly in establishing this commission.

[The prepared statement of Senator Brock follows:]

PREPARED STATEMENT OF HON. BILL BROCK, A U.S. SENATOR FROM THE STATE OF TENNESSEE

I am very pleased to see these hearings begin. They have been much too long in coming. I hope that we have not already passed the point of no return where our private enterprise system has not been too severely weakened to be able to right itself.

One of the biggest middle men in the world is the Federal Government, whose regulatory policies too often reduce competition and increase costs to the consumer without offsetting advantages. We keep hearing of the Federal Government socking it to the "fat cats" but ultimately, the one who gets hurt the most is the consumer. The consumer is really where the buck stops—and starts.

There is an urgent need for this study. I cannot visualize how the Federal Government can possibly continue to control and regulate portions of the business world when it can't even balance its own budget. I simply don't think the Government is capable of making decisions for the marketplace. It is my sincere hope that this study will eventually lead to extensive deregulation of the stringent controls which have been placed on business. We must make our economy competitive again.

Ten percent of all American industry is regulated by some agency of Government. Certainly many of them are major concerns which hardly need to be protected from competition. On the contrary, there is considerable abuse in the regulatory process. All too often it is small business which is effectively denied the opportunity to compete. Business is having to operate under an umbrella with so many holes in it that it neither protects the consumer nor allows for free, open competition which has been the backbone of our progress as a nation for 200 years.

Nineteen out of twenty businesses fall into the category of small business, yet they are unable to compete because of stifling regulatory policies. Thus, they will eventually be driven out of business, or boggled up by "big business" which has the money and personnel to operate under such circumstances.

Our economy at this moment is entirely suspect. We have inflation and we also now have declining productivity. We need to find solutions to these problems, but it seems that every time I turn around and hear what appears to be a good solution, there are already some sort of regulations pumping out more problems faster than we can solve those we already have. The covering has become so thick that what used to be a simple solution now won't work at all.

These hearings can create a new and vigorous attitude toward freeing all business of shackles which actually do no good, but in reality harm our ability to produce and purchase. I hope that we can move swiftly and effectively in seeing this commission enacted.

Senator RIBICOFF. Thank you, Senator Brock.

Mr. Ash, many, including the President and yourself, have emphasized current practices of regulatory agencies that may be contributing to inflation. Do you have any estimate as to how much current regulatory practices cost the American consumer through unnecessary price hikes?

Mr. Ash. There have been a number of estimates made over the years. Regardless of whose estimates you take, we do know that there are billions and billions of dollars in the transportation regulatory agencies alone. The estimates have been as high as $15 or $16 billion a year and as low as $8 billion. Whatever the number is, it is a tremendous cost to impose on the American consumer.

Senator Ribicoff. In other words, it does go into the billions of dollars, although you do not have the exact figures. From your experience, you do feel it is very substantial?

Mr. Ash. A sufficient number of billions of dollars to require a special concentration by this committee and all of us in dealing with those problems.

Senator Ribicoff. If you feel this way, in listening to the statements of Senator Allen, Senator Brock, and myself—if this is so, why should Congress and the executive branch wait for the Commission's final report? Is there not much that we can do now in specific regulatory agencies, and save time?

Mr. Ash. Yes, sir. That is a point that I intended to make quite clearly in my statement; that we should not allow a new Commission to be an excuse for inaction. In fact, Congress is already considering regulatory changes regarding railroads. The Department of Transportation will soon put before the Congress its thoughts about motor carriers. All other work should go on. As these targets of opportunity are identified and worked on, we also believe the time has come for a comprehensive review of all regulation, to help identify, and discover problems that might not otherwise come before us.

Senator Ribicoff. Could we expect that while this review is taking place, that OMB would be sending up to this committee or other pertinent committees suggestions for immediate reform and change, so we can start accomplishing results?

Mr. Ash. The Commission on Regulatory Reform need not wait until its whole term is over and produce a single, comprehensive report. It might well decide that the best way to proceed would be to work on an issue, get that before the Congress, and work on another and get that before the Congress, and so forth. As you know, the President has also established within the executive branch mechanisms to deal with those aspects of regulation that are carried out within the executive branch. Here again, we are not looking for a massive report at the end of a year; we are looking for action. For that matter, I think we have quite an advantage.

A lot of study has been done. In some instances we lack only a little study—to bring things up to date; we have a tremendous amount of materials available to work from. I would hope that this Commission would not feel that its job was to restudy everything, but that it would take the benefit of so much work that has been done over the years, bring it up to date, and translate it as quickly as possible into proposed action so that the Congress can deal with the kinds of legislative changes that are necessary. The study is the means; we have much more important ends that we must pursue.

Senator Ribicoff. You talk about the independent regulatory agencies. Are there not other activities at the executive branch, such as in FDA, EPA, or USDA, for people that affect the economy and infla-

tion, and should these activities not also be considered with the regulatory agencies?

Mr. Ash. I absolutely agree. There are a number of these activities. The President has charged the Council on Wage and Price Stability to make one of its most important tasks the similar investigation of regulatory functions that are scattered throughout the executive branch in order to identify changes that might be needed.

Senator Ribicoff. The Brookings Institute analysis of the Ash Council report criticized the Council for basing its conclusion on ad hoc judgments. For example, the Ash Council had concluded that putting certain agencies under control of the executive branch would increase our sensitivity to the needs of the general public. How did the Council reach this conclusion?

Mr. Ash. I do not think that is a statement of the conclusion we reached. We reached conceptually quite a different conclusion, and that conclusion dealt primarily with the structure of the independent regulatory agencies. It was not to make them departments or agencies of the executive branch, but instead to restructure them in ways we believe would be more effective. We certainly did believe and did recommend that changes might be made to improve the effectiveness of regulation. In that case, as we explained at the beginning of our report, we limited our inquiry to structural impediments to effective regulation rather than policy impediments. That was the scope of our work.

We now believe the time has come to deal with policy impediments, not just structural impediments.

Senator Ribicoff. One of the practices of regulatory agencies that has been criticized is the fact that commissioners and staff employees of an agency leave the Government, then go to work for the industry that they have been regulating. It is believed that the prospect of such a job and such a role affects the person's impartiality while in the agency. Is this a problem that the Commission should look at?

Mr. Ash. I certainly think it should. It is a fair question. There may or may not be changes needed, but we have seen one example—the Defense Department—that has some of the same potential problems. In this instance, the Defense Department has adopted policies that seem to have worked well in dealing with employees leaving the defense area. Working in certain defense activities that relate closely to industry, there are limitations as to what an employee can do there after for some period of time. I do not have any answers, and did not propose to have answers to these many questions. We think that this Commission should ask those kinds of questions, ask them seriously, and do the thinking necessary to have good, sound answers.

Senator Ribicoff. Could not the various regulatory agencies start making rules and procedures governing their own employees now, without waiting for Congress to act? Could they not do it on their own?

Mr. Ash. I know of no reason why they cannot. Maybe it is a technical matter as to whether they have the right. I would presume they have the right.

Senator Ribicoff. How about Senator Proxmire's suggestion that an employee or commissioner should be barred for a period of 2 years after he leaves an agency from going to work for an industry that had been regulated by that agency?

Mr. Ash. The question is how broad or narrow that is, because we have come in this country to the place where everybody is regulated by an agency in some way or another.

Senator Ribicoff. The specific industry that they regulate. In other words, if a person were regulating the airlines, he would not go to work for an airline. Or, if one regulated railroads or trucking, he would not go to work for a railroad or a trucking concern.

Mr. Ash. It has to do with function. I am assuming that if they were a member of the CAB, and they were also a qualified pilot, I would think he might not be barred from being a pilot on an airline. But I would think that there is much to be said for not having him go into an operation that would immediately deal with the very regulatory process in which he himself had been involved.

Senator Ribicoff. Senator Brock?

Senator Brock. Mr. Ash, I appreciate your statement. I particularly appreciate your statement that in some areas, we need to act now, and not wait for further studies. We have studied this matter for a long time, and I must admit to a certain frustration with the administration's rather limited bills in this area.

You mentioned that we have before the Congress the administration's Service Transportation Act. That is just like sticking your big toe in the water and pulling it back. That is not a comprehensive, or even the beginning of a comprehensive attack on the need for deregulation improvement. We have had rate bureaus, minimum charges, limited access to competition in that entire field. Yet the administration's bill, in my opinion, is utterly inadequate, and I would like to know why.

Mr. Ash. There is a long way to go. The particular issue in that case was to identify and pick out a particular need that was separable from so many other kinds of things that might go on, and get that in front of the Congress. I would surely agree with you that we could have had, and can have, a flow of proposals, much more than there have been so far. The Financial Institutions Act, as an example, is one that has been put forth to deal with regulation as it applies to financial institutions. The commitment the President has made is to go across the whole of the Government and pick out for action, not for long study, but for action, those matters we can now identify that have prospective good payoff. We have to be discriminating, because there is so much to be done. We ought to pick out the big, important, and most-likely-to-be-changed ones.

Senator Brock. The Financial Institutions Act is comprehensive. It covers mortgages, bankers, savings and loans, and all the rest, and it is first rate, in my opinion. I do not think the Service Transportation Act is. For example, you offered a much stronger bill for reform 2 years ago than you introduced this year.

Mr. Ash. Mr. Scott, Associate Director for OMB, would like to comment.

Mr. Scott. As you suggested, the legislation that the administration proposed several years ago was, in fact, much broader, much more fundamental in terms of changing the character of regulation. However, at that time, as you are aware, the bill floundered and did not move anywhere. The Transportation Improvement Act that the ad-

ministration sent up a number of months ago would go much further in some areas than the surface transportation bill that has been marked up in the House. We would suggest, however, a willingness to explore further areas of broadening that legislation. However, the bill itself, we felt, dealt with key areas of removing the burdens of regulation where we felt there was sufficient knowledge and research available to support the changes that we felt were necessary.

We certainly do not mean to suggest that it is the final restructuring of the ICC or transportation regulations that should take place. In fact, the administration will propose in greater detail improvements in the motor carrier area early next year.

Senator BROCK. I am waiting for them with a great deal of anticipation. The thing that has bothered me—it is two things. First of all, when you do introduce fundamental reform, it may have been 3 years ago—whenever it was—and the Congress does not act, then you come back with a much lighter approach. I think what I am criticizing is the lack of selling to the American people. They have been had; you know it, I know it, most Members of the Congress are becoming aware of it, and nobody is making that statement by telling the people what it costs to the people for us not to act. I am talking about pulling back from the cause of reform and going to another commission, and I am all for the commission—if it will help, I am for it. I just do not see that it is adequate to the need.

Second, it seems to me when you come in with rail legislation at one point, and then the motor carrier legislation at another, and hopefully some day we may deal with aviation too, then 5 or 10 years from now, we may get to pipelines. There is no effort to come in with a comprehensive policy. We are nickel-and-diming this thing. We simply do not have now a national transportation policy.

Mr. ASH. I certainly agree, Senator, with that. In 1971, I engaged in an effort to look at transportation regulation from the structural point of view. One of the great impediments I saw to developing an integrated transportation policy was that we had three quite independent regulatory agencies, and that nobody was thinking of an integrated transportation policy or integrated transportation regulatory program. It is a very important need that we have in this country, and it may well be worth reconsidering the structure of our regulatory activities in transportation, because they, to a great extent, make it difficult, maybe impossible, to have the kind of an integrated transportation policy that we would all want.

Senator BROCK. I could not agree more. I do not think we are being honest with the American people. I think your point with regard to the international carriers, for example, we may have justification for supporting international carriers. But it is a fraud for us, by regulation, to require massive prices that have no basis in economic fact or in terms of competition, simply because we do not want to deal with the problem overtly from a political stance. I think that is what you are doing now. I appreciate your support of all of the reform effort.

The only thing I would like to conclude with is one more specific part of the legislation itself—I did not see it in your testimony—a specific endorsement of a particular approach. Maybe you are just endorsing the concept?

Mr. Ash. Senator, we particularly were endorsing the administration's proposed Commission on Regulatory Reform, S. 4145.

Senator Brock. As opposed to the others?

Mr. Ash. As opposed to the others, and if you wish, we can comment on the differences between them. But we certainly would support the one we submitted.

Senator Brock. I am a cosponsor of the bill that you say you sponsor. I am sorry I missed it. Thank you for your testimony.

Senator Ribicoff. Senator Allen?

Senator Allen. Thank you, Mr. Chairman.

Mr. Ash, I am delighted to see the administration moving in this area, and I am delighted to see that the President is suggesting a Commission and some reform of the Federal regulatory agencies. I believe it is certainly an idea whose time has come.

How long has this trend been going on of inadequacies in our regulatory agencies, and possibly conflicts of interest by those connected with the regulatory agencies, and possible undue influence on the part of the business elements regulated by the agencies? This is not something that is new, is it?

Mr. Ash. Senator, I was not around at the time. But my guess would be, starting in 1887 when we created the ICC, we probably soon thereafter began to create some of the practices that you have identified. I cannot testify to my knowledge that that is a fact, but I would suggest the possibility.

Senator Allen. The administrations or previous administrations have been somewhat negligent in not taking some action in this area before, have they not?

Mr. Ash. I believe there is a responsibility that need be shared all around on this. The independent regulatory agencies are very unusual kinds of organizations because they are to a degree separate from the Congress, to a degree separate from the executive, but not totally so. In each case maybe just enough so they do not get the attention that they need. One of the problems that must be dealt with, is what should be the relationship of regulatory agencies to the Congress and to the executive.

We realize that they are a special kind, but my guess and my assertion is that perhaps we have all taken undue comfort from the fact that we have only had a partial responsibility; that each of us, the Congress and the executive, did not fulfill our total responsibilities to get into the kinds of activities that they carry out on behalf of the Government.

We probably all walked away a little bit more than we should have, from a thorough look at what should be done to improve them.

Senator Allen. I have not been a very strong supporter of the Consumer Protection Agency bill or the Agency for Consumer Advocacy. In fact, one of the arguments I made on the Senate floor against the creation of this added layer of bureaucracy was, I thought that the approach was wrong, that regulatory agencies are charged with the duty of protecting all interests, the consumer interest, the public interest, the business interest, and all interests, and if the regulatory agencies were doing their job, then it would be no need of a so called consumer protection agency representing just one aspect of the whole

problem. I am delighted that an effort is being made to, shall we say, clean up the regulatory agencies and provide that they shall in fact, work in the public interest as legislatively mandated and that they shall protect the rights of both the consumer and the general public. I believe that if the work of this Commission is carried on in a proper fashion and far-reaching recommendations were made by it, and if the Congress followed up on these recommendations, we would greatly streamline the Federal regulatory agencies enabling them to do a better job for all those involved and would insure that the public interest is protected.

I note too—and I certainly believe this—that your suggestion for setting up a Commission is not for the purpose of delaying action where needed. It would provide for study and recommendation in the various areas involved, and looking at the whole problem comprehensively. Would it be your thought that the Commission would move simultaneously as to all regulatory agencies, or would it pick out the agencies possibly doing the poorest job or the less effective job, or would you proceed against all?

Mr. Ash. Senator Allen, I could say how I would approach it, but I do not want to suggest how the Commission itself would.

I could suggest, but we probably should leave it up to them to determine how they approach it. Drawing from my own experience dealing with agencies, I feel that an approach they might take is, first, to identify without evaluation of all the issues that seem to be on people's minds regarding the problems of regulation—merely identify them so they encompass them all.

Then they could use their discriminating judgment to select out the most important because we would get a list of 1,000 problems. If they work on all 1,000, they probably would not be productive. Therefore they should select out the issues that have the greatest potential payoff, the greatest chance of realization that can in turn be a bellwether for resolving others and concentrate on those. The work of the regulatory commission should not be thought in terms of a report to see how big and thick it can be and how well it is written. The Commission should be mentally attuned to results as their purpose.

If they can be discriminating and use good judgment and keep themselves mentally alined to results as the end product, I think that they can be very productive in a year. Obviously they will be unable to do everything that needs be done, but as we see so often in any array of problems, sometimes 10 percent of the problems by number account for 80 percent of the value involved in dealing with them.

That is how I would do it if I were in their place; but we should leave it up to the executive, congressional, and public members of the Commission to determine for themselves how they can best perform.

Senator Allen. Would the administration bill confine the investigation and recommendations to agencies which are not independent, or confined to those which are?

Mr. Ash. Senator Allen, our view would be this: The Commission on Regulatory Reform, made up of Members of the Congress, the Executive, and the public should focus on the so-called independent regulatory agencies for a number of reasons.

First, they are a little different in their relationship to the various other branches of Government, and there is needed a closely cooperative congressional and executive effort. Other regulatory activities that go on in the executive branch fall within the President's Chief Executive responsibility to improve the executive branch, and he is undertaking a job of doing so. Also I think there is another advantage of separating out the independent regulatory agencies.

This is for focus. Regulation in its broadest sense, involves virtually everything in Government. If we bit off a big amorphous package that is too big, we would probably be lost in our study and get nothing done. Our thought here was to focus on the independent regulatory agencies by one specially composed group that is best fitted to do so. We would work on the others simultaneously but by other mechanisms so that the focus and concentration and makeup of the investigating organizations fit the structure of the Government.

Senator ALLEN. What harm would there be in including the regulatory agencies or bureaus that are not independent, then, as you say, leave it to the discretion of the members of the Commission?

Mr. ASH. I think it is the converse of what I said. If we do not focus, we are liable to get lost in an amorphous mass of things. The processes of analyses or writing proposed changes as they relate to a regulatory function in the Executive Office or the executive branch probably can be effectively done separately.

Our proposal was designed to take a special approach to fit the special kind of regulation. In addition, we wanted to have a number of focused activities occur simultaneously across Government.

Senator ALLEN. I notice the bill speaks of four senior officials of the executive branch appointed by the President. Should that not rule out members of agencies being investigated or being studied?

Mr. ASH. I would not want to foreclose any thoughts the President might have. I would like to put forth some reasons why that might not be a good idea.

That is, they would have a somewhat vested interest. Certainly they would have the knowledge. However, all of their knowledge and insight and understanding can be brought before the Commission without the necessity of their being members of the Commission.

Senator ALLEN. Why should we not preclude them being appointed then?

Mr. ASH. If the Congress would want to so define it, we would not consider that a major departure from what we proposed. At this stage, we left open the possibility. I would join with you in making some of the arguments why this might not be a good idea.

Senator ALLEN. I note four members from the private sector with no definition or statement where they should come from. Of course, we would certainly expect the President to have a well-rounded membership. Still, under the wording of the bill which you support, should we not insist on a well-rounded approach there and well-rounded membership and not have all businessmen or not all from the colleges or the labor unions? We should have some stipulation as to the areas of expertise they come from, should we not?

Mr. ASH. I have the greatest confidence that the President, who has committed himself to this effort, would be very mindful of the points

that you have just discussed and would make judgments with which I am sure that we would all agree.

Second, as he does determine these appointments, he will do it in consultation with the Congress. I think between his commitment to do this job and do it right and the consultation that he will have, that we can be assured that the membership from the private sector will be totally suitable to the task.

Senator ALLEN. I do want to comment that I believe the Commission more-or-less sponsored or appointed jointly by Congress and the executive is the right way to handle it, rather than the President to merely set up a commission. It is well to have Congress as a partner in the venture. The Congress should have some say in the matter.

Some of the presidential commissions have not come back with proposals that Congress has been willing to implement, and if the Commission is composed and properly set up and jointly sponsored by Congress, I feel that would better succeed in this respect.

Mr. ASH. We certainly agree in this particular case because of the unusual status of the independent regulatory agencies, that it would be exceedingly desirable and essential to have congressional membership. I am sure the Congress would put its very best people on this subject to work on such a Commission if one were created.

Senator ALLEN. Do you have an estimate or, for that matter, an actual figure on the number of agencies whose activities and work is to be studied under the Commission?

Mr. ASH. Yes, sir. We would suggest that its activities embrace the Federal Communications Commission, the Federal Power Commission, the Federal Trade Commission, Interstate Commerce Commission, CAB, the Federal Maritime Commission, the SEC, Consumer Product Safety Commission, and the Nuclear Regulatory Commission, which will be activated as a result of recent legislation creating the Energy Research and Development Administration and the Nuclear Regulatory Commission.

Senator ALLEN. Those are the agencies that the administration would suggest be studied?

Mr. ASH. Yes; by the Regulatory Reform Commission. I must make very clear that other regulatory activities are already under study. That is, the Food and Drug Administration, just to pick one in the executive branch, also the EPA, and OSHA, are already under study within the executive branch. We have not waited for this Commission; we are going right ahead with the examination of these other regulatory activities.

Senator ALLEN. By the Executive?

Mr. ASH. By the Executive. In this particular case, we have charged the new Council on Wage and Price Stability, just created by the Congress, with the task of looking across the executive branch for all regulatory activities that they believe are worthy of change, or at least worthy of consideration for possible change to see how they may be improved.

Similarly, our own office is providing a similar effort to ferret out the opportunities for improvement in executive branch regulation. If it requires legislation, we would immediately want to come to the Congress with our proposals. We do not want to wait until the end

of the Commission's year. When we feel that we have something that requires change, we will come immediately with the proposed legislation to do so.

If it does not require legislation, then we can administratively move right ahead with some of those changes.

Senator ALLEN. How many agencies were you suggesting?

Mr. ASH. There would be nine agencies that the Commission on Regulatory Reform would look at.

Senator ALLEN. The wording of the proposed act would not limit it to that number, would it?

Mr. ASH. The specific act does not identify the individual agencies, I believe, but it does describe them in a way that we would interpret to mean basically these nine. I would think that a concentration on those, where much of the regulatory activity of the Government is concentrated, and where so much of the prospective payoff in regulatory change can be found would be an appropriate task for the Commission.

Senator ALLEN. Are we not deciding outside of the bill what the scope of the investigation shall be?

Mr. ASH. We could if you wish, Senator, include a definition. We have defined them internally to be those U.S. Government administrative organizations which regulate certain business activities through the setting of rates, the awarding of franchises, and so forth. They are agencies which require special expertise in carrying out their functions and usually have some adjudicatory function.

Also, the Commission members receive term appointments, rather than serve at the pleasure of the President. Accordingly, I would exclude such things as the FEA, the NLRB, the Tariff Commission, the EEOC, the FDA, and EPA. They do not meet that standard.

If you wish, we could amend the legislation to put in a definition. This is the one we have been working with internally.

Senator ALLEN. I am not so much worried about that. As a matter of fact, I hate to see this limitation. I have the opposite idea from you, to impose a limitation on what they shall do.

It looks to me like a whole range of Federal regulatory agencies should be included for study by the Commission. I thought we were going to set up a Commission that would have some discretion and investigate and study all the regulatory agencies, independent and otherwise. Those might be the agencies that you think are important, but there are dozens of others, I assume, that touch and concern the average citizen, and it looks like these agencies and bureaus should be studied as well.

Mr. ASH. There certainly are others, and those others already are being studied. We have not waited for the Commission.

Senator ALLEN. Why set up a Commission if we are going to study it on the side?

Mr. ASH. For the following reason, Senator. The other agencies are an integral part of the executive branch. The President is charged with the responsibility of taking care to see that the laws are faithfully executed, in effect, presiding over them to make sure that they are doing their work as it should be done.

The independent regulatory agencies are not related to the President in that same way. Therefore, we felt that this structure of Com-

mission should be especially designed to take into account the quite different relationship of the independent regulatory agencies that I have named, to the executive branch and the President.

The other work is already going on. As legislation is required we will naturally come before the Congress. If the Congress itself wants to initiate actions where it has insight and a desire to change, obviously it can.

The thought here was to take a type of agency that is unique, and have it examined by a regulatory commission especially fitted in its composition to recognize the uniqueness of that type of agency and to concentrate on that. Review of other regulatory activity is going on, but we concluded that there is plenty to do in the area of the independent regulatory agencies.

Second, if we were to take the same process that we are using in the executive branch and apply it to the independent regulatory agencies, our results would have little impact because we need a very strong congressional participation due to the nature of these agencies. The Commission structure was formed to fit the special nature of those agencies. The other work is going on already, and in no way will there be a slack.

Senator ALLEN. You are not making any study, though, of the independent agencies not embraced in your laundry list of nine?

Mr. ASH. These are the independent regulatory agencies. I suppose there is one other that you could say was not included. That was the Federal Reserve Board, and for this moment——

Senator ALLEN. Do you think that should be studied?

Mr. ASH. I think that is an open question. I really have not thought about it enough to have a position. It probably is the only one that on the one hand would be considered independent and on the other hand not proposed for study by the Commission.

The rest fall fairly clearly into one of two categories: the independents, according to the criteria I have established, and the ones for which the President has responsibility.

Senator ALLEN. How many independent agencies would be exempt more or less from the study?

Mr. ASH. Probably only the Federal Reserve Board. The rest tend to be part of either the executive branch or an independent regulatory agency. We have pretty well encompassed everything except for the Federal Reserve Board. There are some that are in the shadow one way or the other. I would say the Commodity Futures Trading Commission, the Farm Credit Administration——

Senator ALLEN. I believe you said the FEA was not covered and the EPA?

Mr. ASH. We would consider examining, besides the nine I have mentioned, these others—the Federal Home Loan Bank Board, the Commodity Futures Trading Corporation. This is plenty of work to do.

Senator ALLEN. I am looking for the legislation history to indicate that the Commission will investigate nine agencies. What we need to do is study and investigate every single agency, not only independent, but those under the President only.

Mr. ASH. Those others are under study.

Senator ALLEN. I understood that.

Mr. ASH. But it would not be a part of this Commission's work.

Senator ALLEN. If they are under study, if the executive branch is studying them, what is the use? If that is adequate, what is the use of setting up a Commission?

Mr. ASH. The purpose of this Commission is to deal especially with that very big body and most important body of regulation that is carried out by the independent regulatory agencies. It is our belief that if the executive branch itself undertook such a study, it would be very ineffective and useless.

Senator ALLEN. I would hate to see, though, the legislative history to indicate only nine independent agencies are going to be studied and investigated.

Mr. ASH. This Commission should consider, when it takes up business, the prospect of dealing with some of these others that I have mentioned. Again, if it attempts to be discriminating and picks out the important from the unimportant——

Senator ALLEN. They are all important.

Mr. ASH. They would probably find the biggest part in those nine.

Senator ALLEN. If they are not important, they ought to be abolished.

Mr. ASH. Important in terms of the kind of changes that might be made and the benefits that could come from changes. I did not mean the importance or the unimportance of the agency, but the importance and desirability of considering change.

For instance, the new Nuclear Regulatory Commission will be in business at the beginning of January. It might be interesting right in the beginning to have a discussion of the policies they might be considering before they are cemented.

Senator ALLEN. You would not be willing then to stipulate that it will have power to investigate and study all independent agencies, or do you want to freeze into it the concept that only the nine shall be investigated?

Mr. ASH. The language of the proposed legislation does not freeze into it those nine.

Senator ALLEN. I understand, but you state that it is contemplated that only nine will be investigated.

Mr. ASH. It starts out by saying that the Commission shall identify regulatory activities of the independent regulatory agencies for detailed review. I have in turn identified the nine major independent regulatory agencies, but they certainly should consider which other independent regulatory agencies that they feel they can deal with effectively.

Senator ALLEN. Yes; I am glad to hear you say that because I would like to state specifically that under the language of the bill, I would feel that the intent is that the Commission shall have authority to investigate any regulatory agency, and I would like to put in the concept that it shall have the right to investigate or study all agencies, whether exclusively under the executive or not.

Mr. ASH. The language is clearly independent regulatory agencies. While it does not list the nine I identified, those are the main ones.

Senator ALLEN. That is the fly in the ointment. Having identified them as being contemplated, it might influence their action once it is set up.

Thank you very much.

Senator RIBICOFF. Senator Roth?

Senator ROTH. Yes: I would like to ask a couple of questions along the same line. It seems to me that one important difference between the study that the executive branch is already making and the Commission is the fact that you have the executive making the study itself of its own regulatory action whereas the Commission will have, I think, in all three proposals before us, Members of the Congress as well as members of the private sector.

Do you not think that it is important that even these regulatory activities within the executive departments be reviewed by a commission that includes people who are not members of the executive branch?

Mr. ASH. Senator Roth, I earlier discussed the reason for making the independent regulatory agencies separate from those within the executive branch. It takes off from the reality that the President is the Chief Excutive of the executive branch and is charged with operating the executive branch in the best possible way. He has commissioned the Council on Wage and Price Stability, not one of the regulators, within the executive branch, as an independent activity, to look into regulation throughout the executive branch.

So, even though we are talking about an action taken within the executive branch to deal with other executive branch activities, we are doing it under the President's responsibility and his authority to do so. We believe it can be very effective in looking for and dealing with the changes to be made. To the extent that these improvements in regulatory activities require legislation—and I am sure some will, legislation will be proposed to the Congress. In the process of considering it, there would be very thorough Congressional involvement and consideration of any changes that might be recommended.

Senator ROTH. Along that point, I would want to say, for example, in the case of the Hoover Commission, which I felt did a fine job many years ago, of course, it looked into the actions of the whole executive branch, including those strictly under the President, and I think the purpose of any study is to have a certain amount of independence.

One of my concerns here is, and I would not care what administration it was, I still think there is great merit in having independence in this kind of study made.

The other question I have that concerns me some, is it my understanding that the Council on Prices and Wages is making a study?

Mr. ASH. They are identifying the areas for study and setting out or causing to be made the studies of each individual area they have identified. Obviously their staff size is not sufficient to make all of these studies themselves. They are primarily charged with identifying areas where studies should be made, and insuring in one way or another that action is taken.

Senator ROTH. As I recall, they have a rather small staff, 14, and it seems to me with all the problems that we are having in the area of price and wages, their time should be fully spent on that matter. These

are equally as important, but I just question whether they have the time.

Mr. Ash. That is a very interesting discussion. I know in hearings that I had before setting up that council, there was considerable congressional interest that they go beyond wage and price matters and look into the kinds of things that I am describing now.

I made one other point, Senator Roth, when you were not here, that there is so much regulation going on across this Government, whether it be independent agencies or in the executive branch, if we do not sufficiently focus the Commission's efforts we will be lost in a great big morass. Therefore, it would seem that it would be practical for the Commission on Regulatory Reform to pick out a manageable bite to work on and have others work on their manageable bites.

I have before me a listing of all the independent agencies. I must say while nine comprise probably 80 or 90 percent of the amount of regulation and regulatory effect, the total number of such agencies must be 50 or more. I would hope that we would not undertake this effort in a way that we embrace such a big, amorphous mass that we get lost in the process. If we could have the Commission on Regulatory Reform center on the ones that have high payout potential, have someone else work on the others, and all do it in parallel, we may well get farther down the road in reality than if we attempt to define the scope in detail for the purpose of establishing jurisdiction.

Senator Roth. Just a comment, and then I will go on to another question.

It would be my own reaction that if we are going to create a new commission for the very reasons mentioned by you, they ought to look at all the regulation. I think it is important that the independent commission which will be an arm of Congress and which will have congressional Members, have the opportunity to look at all aspects of regulation. I certainly agree wholeheartedly with you as to the breadth and depth of the problem. I, for one, agree with Senator Allen that it is very important in my judgment if we create the commission that the jurisdiction not be limited.

I had some other questions that I would like to ask. If they have been asked, just say so, and I will go back and read the record. I apologize for not being here earlier, but I notice, comparing the three bills, two propose a 1-year commission. I notice another, a 3-year commission.

I wonder if you would care to comment on that.

Mr. Ash. Yes, sir.

As to the life of these agencies, having an experience myself on one, I think that there is a lot to be said for a one rather than a 3-year commission. There is an urgency. We do need action. The membership, I think, would be much more motivated to the kind of action needed if they undertook the task with the knowledge that they have much to accomplish within the immediate year. If it were a 3-year study, it might well be that the first 2 years would be merely pushing the problem ahead, and the third one might get about the results that you have in the 1-year commission.

That is the wrong time to have it. Also, another experience I had—and maybe this is too practical to be considered—but if you want the best people to work on these things, one question they ask is how long

am I going to have to work on it. Good people will come in and work a year on the subject; but 3 years is a career. You might well chase off the best possible people if they think they are going to be stuck 3 years. Good people want to get the work done fast. I would think that a 1-year commission will get the best people to get at the job and get it done. Three years will just take longer than we need.

Senator ROTH. I agree with you. It seems to me the time has come for some action, not for a 3-year period of study.

In another area, I noticed that there is some differences in the makeup of the membership.

Do you think there should be any representation, for example, on the regulatories themselves?

Mr. ASH. I answered Senator Allen on that. I think we both pretty well agreed that there was good reason not to have such membership. I could elaborate on it again if you wish, but that was the conclusion I drew.

Senator ROTH. All right.

What are you expecting to get as output for the Commission's efforts?

Would you give us some more specific examples of the results you anticipate?

Mr. ASH. That is an important way to look at it, what to expect as output. To have it produce another report, considering all the reports we have, would be totally ineffective, and not what we have in mind. I think that those that work in this subject area should think of it in terms of accomplished result rather than just a report of what should be done whenever we can get around to it, which is often the case with reports.

An accomplished result means not only determining and recommending changes, but staying with it until those proposed changes are put before the Congress in terms of proposed legislation and working with the Congress in considering that legislation. We should not feel that our job is over until the results have been achieved. I think that is a key state of mind that participants in this activity should have.

Anything short of that will merely add to the pile of reports and studies and analyses that go on and on in this as in so many other subjects.

Senator ROTH. Do you anticipate changes in regulation that may have an impact on unemployment? If so, do you think we should consider a form of adjustment assistance?

Mr. ASH. There could well be effects on employment. My statement indicated that possibility, and I further indicated that some changes that may be recommended should be phased in a way that would mitigate the consequences of a too abrupt change. This is particularly true with a change dealing with employment. We ought to be prepared to think about phasing, in some cases.

Senator ROTH. One final question, Mr. Chairman.

It seems to me that whatever we come up with, we would see a Commission with an individual to head up a function. It is very important what type of person you appoint in these various positions.

Do you see any changes that should be made in the way that appointments to regulatory agencies are made?

Mr. Ash. Yes, I do. In 1970 and 1971, I was working on an analysis of the structure of regulatory agencies, not policy specifically. One thing we particularly observed was the process of appointments. I think in more than one case, not to identify anybody, there are occasions when the appointer says there are 11 men on that Commission. I can put in one more and it will not hurt. We have not necessarily had criteria for appointment that may best serve the functioning of those agencies. I do not want to identify anybody one way or another, but not every last person on every last regulatory agency was selected against the most stringent of criteria.

Senator Roth. That is all the questions I have.

Senator Ribicoff. I have one thought before I call on Senator Javits.

We got started on these regulatory agency hearings as a result of President Ford's economic address on October 8, and the increased impact of regulation on inflationary pressures. And in listening to Senator Allen and Senator Roth, they have a great deal to say. But we have not gotten down to the question of priorities.

Would your department present for the record your opinion, on which agencies have placed the greatest burden upon the cost of doing business and the cost to the consumer? Maybe then we can start looking at these agencies first.

Mr. Ash. I certainly agree, Mr. Chairman, with that as a way of approaching it. What we can do, in our best judgment, is give you our view at this time of the relative priorities that we might use in looking at these various agencies. I would suggest that the Commission itself as its first task verify or otherwise attempt to get additional information so that it can aline its priorities. If it does not aline priorities when it starts, it will be lost before it finishes.

Senator Ribicoff. That is right, and I think as a starting point, since we cannot wait for the Commission to come up with its priorities, it would be very helpful to all of us on the committee if we had an idea of which agencies incur the greatest burden upon the country, the consumer, and the cost of doing business.

Mr. Ash. Let us do the best we can, Mr. Chairman, realizing that we will not have completed the analysis that they will.

[The information referred to and subsequently supplied by Mr. Ash follows:]

With regard to suggesting Commission priorities, I would think it would want to devote primary attention to those independent regulatory agencies which most directly affect the prices paid by the American consumer. For example, because transportation affects the lives of nearly all Americans and contributes to the cost of so many goods, I would suggest that the ICC, the CAB, and the FMC would rank high on the list. Previous studies have estimated the cost of transportation regulation to be from 8 to 16 billion dollars annually. Similarly, the FPC and the FCC which regulate communications and our power supply deserve considerable attention. Both of these agencies, in addition to their affect on all our lives, also interact closely with counterpart regulatory agencies at the State and local level and therefore deserve priority attention. Following these, I would include the other independent regulatory agencies—the FTC, SEC, the CPSC, and the newly formed NRC so that we might get a complete picture of the impact of these organizations on the ecnonmy.

Senator Ribicoff. Senator Javits?

Senator Javits. Mr. Ash, I too like Senator Roth have not been here throughout the proceedings, so please stop me if I duplicate. We do not want to do that.

First, I would like to state that I consider the inquiry we are undertaking to be of most crucial importance. I hope we will not simply look at a procedural form, but will determine also whether individual regulatory agencies should proceed according to basic guidelines which they would announce and would also by regulation be subject to notice and debate.

This, I think, is a principal failing in the whole regulatory agency field, and I would like to call your attention from that point to a bill introduced yesterday by my colleague Senator Percy, ranking member of this committee. I would like the privilege of writing to you, as I have not yet reviewed in detail Senator Percy's ideas. I may wish to add to them or in some way comment, but I would like to write to you and encourage him to write to you so thoughtfully you might reflect to us whether that, too, is what the Commission ought to do.

The reason I mention that is because we are dealing with both strategy and tactics, using military terms. I see the tactics well handled by your bill, but I like the idea, the Hoover Commission parallel, but I do not see the strategy handled adequately by your bill.

For example, we have had Mr. Engman before the Joint Economic Committee, and the one question that we debated was the purposes of the antitrust laws we are administering. What are their purposes? He said, "it is to make for the most competition."

What does that mean? Do you make for the most competition by dismantling small business because big business is more efficient, and you might get lower prices and even better products? Is that the end of the antitrust laws? Obviously not. But it stumped him; at least I thought it stumped him. I think we have to deal with it here, and I hope very much our chairman will be sympathetic about it.

The second thing is I share the deep concern that we must not stall everything because the Commission is going to report. For example, I noticed with great interest in your statement that you think we are ready to act on rail regulation and motor carrier regulation, or will be very shortly and we do not have to wait for the Commission. But you say nothing about the Consumer Protection Agency, where we are not only ready, but where a majority of the Senate has decisively expressed itself time and time again, that it is ready to vote, except it is inhibited by one more or two more than one-third of its membership.

Again I would like to state my strong view, that we should not let the Commission's work block our progress, for example, in respect to an effective agency for consumer protection.

Finally, there are two other points I would like to ask you about. These are observations of my own. One relates to taxes and the other relates to preemption, that is, Federal preemption.

You, for example, on page 7 of your statement say, is there a case to be made for subsidy if one considers a tradeoff between regulation and subsidy? The point is that regulation, like subsidies, tariffs or tax preferences, can be a useful tool to achieve our national goals. According to the most current law, the Treasury will be obliged to report the amount of each particular tax indulgence which we grant, which is as much a subsidy as a ship subsidy or a plane subsidy, and again I ask you, to what extent do you expect this Commission to

43-362—75—pt. 1——3

zero in on that, even though it is not in the regulatory law; it is in the tax law, but it is just as effective?

Mr. Ash. Senator, there are many ways that we could define and extend the definition of regulation to all kinds of areas. I appreciate that and certainly that is one of the key areas in terms of the dollars reflected in one form or another of subsidy. As you have recognized, the new Congressional Budget Act does require that we report, as we will in this year's budget, the tax expenditures so they may be considered by the Congress in the same way that they consider other expenditures. I believe this is a process that can serve us all in understanding what improvements might be made there.

I think because of the breadth of these matters, and because regulation could be defined as just about everything in government, we will be most productive in this Commission if we narrow it down to exclude matters such as tariffs and tariff rates, taxes, tax expenditures, export quotas.

At least in the tax area, considering all of the complexities, I would think that this Commission would not be the best way to deal with the problems. Not that they are not important, but if we try to do everything, we wind up doing nothing. I think we ought to narrow the score down to a manageable task for this particular commission at this time, and and not deal with tax expenditures.

Senator Javits. My next question relates to preemption. I notice in the bill, item 4 under 3(a), it calls for examination of local intergovernmental activities that interact with the Federal independent regulatory system.

My question is should that not be expanded to include a Federal preemption? In other words, the power of the Federal Government to preempt local activities and how it is being exercised, pro or con?

For example, in the pension reform area, with which, as you know, I was so intimately connected, we have preempted State law. We preempted in varying degrees environmental regulation. We certainly preempted in respect to the Federal Power Commission's ruling, let's say, on natural gas.

On the other hand, the analysis of the bills before the committee indicates that one of our biggest problems raised by our colleague, Senator Metcalf, is the problem of what State regulatory commissioners do to us on the State level that apparently escapes Federal control.

In a recent decision of the U.S. Supreme Court, it was said that the only reason it escapes Federal control is that Congress has not acted. The Congress could act. Therefore, it seems to me that just as we have a big agitation to decentralize, the question is, does the new federalism call for us to see whether the Government should establish new guidelines for local regulation, which is an extremely potent and important question thus giving some consistency for the national scheme of the national economy?

For example, I am told in the trucking field that as a truck from California passes through 8 or 10 States to get to the eastern seaboard, it is confronted with extraordinary barriers. There are tax weights, every conceivable encumbrance on interstate commerce under the guise of State regulation.

Mr. Ash. I certainly agree, and it states in the proposed bill that this proposed commission would carefully examine the State and local government regulatory activities that interact with the Federal regulatory activities. I would not want to prejudge the results of that examination, but we clearly have identified that sector as one to which the Commission should give some attention.

Senator Javits. That would include the possibility of preemption or to repeal preemption where it exists.

Mr. Ash. The Commission would make its findings and judgments. I am sure they could range widely as to what they might be. We did identify Federal, State, and local regulatory subject deserving of considerable commission attention because there is a lot at stake, one way or the other. I do not have the answer as to what they should come up with.

Senator Javits. I am not trying to dictate an answer. I do not know. I think the other side of the coin needs to be considered by the Commission. There is a lot of talk about decentralizing, et cetera, but we have had some pretty disastrous decentralizations, too.

The last question I would like to ask you, could you state the case for a Hoover type commission as against a joint committee of the Congress to do exactly the same thing?

Mr. Ash. The makeup of the Commission that we have proposed in S. 4145 was proposed for some very specific reasons. First, its prime targets would be the independent regulatory agencies which are somewhat unique in nature and where it is essential that we have a very broad and balanced look. This approach suggesting to us that the composition of the Commission should be a combination of eminent Members of the Congress, knowledgeable ones of the administration, and ones outside. In arriving at this format, we patterned the Commission after some earlier congressional thinking that recently resulted in the creation of the Commission on Supplies and Shortages. This Commission will deal with a problem of a similar nature, that bears on the economy and inflation. In that case, the Congress took the initiative and created a Commission comprised in the same way that we have recommended for the Regulation Reform Commission.

So we feel that there is substantial agreement with this type of commission as expressed through a piece of legislation that already exists, and that the proposal we have made will be an effective way to deal with regulation. As I described earlier there is much other regulation going on in the Government outside of the so-called regulatory agencies elsewhere in the executive branch. We are moving ahead in that area by way of a Presidential charge to members of his own staff to look at regulation, and propose to the Congress changes that should be made.

It was our conclusion that taking the lead from the work of the Congress on the Commission on Supply and Shortages, and looking especially at the kinds of analysis and recommendations that we need here, the form we have proposed is probably the most suitable.

Senator Javits. If your proposal should prevail, would there be any opposition to having Senate confirmation of the four members of the commission?

Mr. ASH. We discussed that before. First, I think that all of us can have confidence that the President will be very discriminating as to who he chooses to carry out this important function. And he has said in the discussions we had with him that he will do so in consultation with the Congress.

We did not provide for formal approval. We think that the relationship that exists between the President and the Congress and his commitment to the success of this whole effort will assure that there will be a good interaction between him and the Congress in arriving at the commission membership.

Senator JAVITS. I realize you would be inhibited from taking any other position, but I am not. But I hope Senator Allen and I would join in moving with those four members, that we go this route and be confirmed by the Senate.

Thank you, Mr. Chairman.

Senator RIBICOFF. Thank you very much, Mr. Ash, for giving us the benefit of your background and knowledge.

Thank you very much.

Commissioner Engman, please. You may proceed, Mr. Engman.

STATEMENT OF LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. ENGMAN. Thank you, Mr. Chairman. I am very pleased to be here this morning to comment on behalf of the Federal Trade Commission on the need for studying possible reform of the regulatory process.

I would like to say at the outset that I have a prepared statement which I would like to have included in the record. With the permission of the Chair I will add only highlight portions.

Senator RIBICOFF. Without objection, the entire statement will go in the record as if read.

Mr. ENGMAN. At the outset, let me say that the FTC endorses, and endorses wholeheartedly, a thorough and systematic examination and evaluation of regulatory policy. The time is ripe—indeed, some would say overripe—for such an undertaking, and we are happy to note that this sentiment is shared by the President and many Members of Congress.

Unless I am mistaken, I sense a new receptivity to the suggestion that at least some aspects of the regulatory system may need overhauling rather than tinkering or fine-tuning. This happens to be my own view, but I believe it accords with the sentiments of a public now, more than ever, sensitized to costs, a public that is beginning to view the price of government with the same jaundiced eye with which it views prices in the marketplace.

I want to emphasize also that although we are not a regulatory agency in the normal sense of the word, the Federal Trade Commission does not believe that its policies and processes should be immune from scrutiny. That is why we welcome these hearings and that is why over the past few years we have directed a critical look inward in an effort to improve our decisionmaking process and to assure that the Commission continues to be a bargain for the American taxpayer as well as the American consumer.

Broadly stated, it is the essential mission of the FTC to assure that the marketplace is free from illegal restraints and uncontaminated by fraud or deceit. This mission derives from an understanding that free and open competition produces the maximum possible consumer benefits in terms of resource allocation, product choice, and lower prices. That is the aim of the antitrust laws.

I might add that although I did not have the impression when I had the pleasure of being with Senator Javits earlier this week, that he had stumped me, it was apparent that I had not expressed myself clearly. This illustrates that difficulty of translating that understanding of competition and the aims of competition policy into effective, practical results.

I would like to mention some of these difficulties to you and to explain the efforts we are making on our own to solve them, and I think this may help to demonstrate why we would welcome scrutiny of our activities by a study commission of the type you are contemplating.

I would like to start very briefly with our antitrust activities because in certain kinds of cases it is possible to measure the direct benefit to consumers resulting from antitrust enforcement. In 1964, for instance, the Commission brought proceedings against bakers in the Seattle area for price fixing.

The subsequent cease-and-desist order saved consumers in the Seattle area an estimated $3.5 million annually, an amount which represented the previous overcharge arising from the collusive activity. Similarly, in the same year, we instituted proceedings against the producers of the drug tetracycline. Following action by both the Commission and the Justice Department, the drug's price dropped by approximately 75 percent, producing a nationwide annual saving to consumers of at least $60 million.

These cases illustrate the potential that anticompetitive conduct and abuse of market power have to cause price increases. They also provide us with a benchmark by which we can measure and justify for ourselves and for the public the commitment of Commission resources.

Other benefits are less easy to discern, although they may be no less real or important. Deterrence may be the most important effect of vigorous antitrust enforcement, but how can this effect be measured? One can never know for sure because of the fear of prosecution how many contemplated mergers are not consummated, or how many anticompetitive schemes are not pursued or how many price-fixing conspiracies are not executed.

We face analogous problems with respect to our consumer protection activities. There is also difficulty at times to measure the impact of what we do. When there are questions of health or safety involved, one does not want to guess wrong. Nor does one want to guess wrong about economic impact. But how much benefit to whom at what cost to whom are questions that require answers if we are able to justify our actions to the consuming public and the American taxpayer.

Despite these difficulties in the consumer protection area, we need not proceed entirely on the basis of hunches. For example, the Commission's program to combat fraud in interstate land sales recently produced a consent agreement with one major company that benefited consumers to the tune of $17 million, an amount equal to half of our

total annual budget. Settlements of that magnitude, I suggest, provide their own self-evident justification.

As I suggested, not all cases produce such easily identifiable benefits. Questions of the sort raised here this morning are not easy ones to answer. In fact, sometimes it is hard to even identify the right questions to ask.

Until recently, the Commission did not feel it necessary to raise such questions, much less to answer them, and I want to say that happily, that view belongs to the past. We have just begun to implement a major overhaul of the Commission's management techniques designed to improve our efficiency. These new efforts, taken together, will provide the Commission for the first time in our history with a program budget and management information system designed to provide periodic reports on case progress in the financial management of individual cases, programs, and operating units.

We are also making an effort to apply cost/benefit analyses to the selection of programs and cases. This task will not be easy.

Recently, however, with the help of Congress, we have been moving to overcome at least part of the problem of data deficiency. I refer to our line of business reporting program. Under this program, large manufacturing firms will be required to report their sales and costs for their major activities in more than 200 product categories.

With line of business reporting, we will have for the first time some degree of assurance that anticompetitive practices leading to exorbitant profits are not being obscured by a rat's nest of meaningless economic data.

Mr. Chairman, I have tried to highlight some of the problems we are trying to solve at the Commission. We hope that this specific experience will be useful in your deliberations on the establishment of a regulatory agency study commission.

We also wish to pass along an additional thought. Good men equally dedicated to the public interest can and will disagree over the best means to reform the regulatory process. But the concern voiced on this subject by the President, by Members of Congress, and by the public at large in recent weeks and months, leads me to believe that disagreements will be over matters of form rather than the basic need for review. And I hope that these differences can be minimized.

It would be ironic, to say the least, if a commission set up to study the defects of other governmental bodies exhibited the symptoms of the very diseases it was created to cure.

There is a risk, however, that in attempting to reform the regulatory process with an eye toward providing a greater voice and lower costs for the consumer, we may end up knee-deep in new agencies and commissions, all more or less pointing in the same direction, all pouring over the same subject matter, all dedicated to the twin propositions that governmental fat can and ought to be trimmed and that the marketplace must be insulated against those who would abuse it for private gain.

Such a bureaucratic proliferation would be a disaster. The last thing the American people want or need at this time is for the Government to study this problem to death. Given some of the interests involved in this matter, such a course may be very tempting as the easy way out.

But that would be motion without progress, an activity usually known as running in place.

I would like to suggest, therefore, that every consideration be given to the idea of harmonizing the various proposals, and harmonizing not only rhetorically but substantively. In order to do this, it is necessary to have a clear and unambiguous declaration of what it is that we want to do. The Commission believes that that can be done in a fairly simple and straightforward manner, by reaffirming the fundamental principles that lie at the heart of our antitrust laws.

While we support the concept of the idea of the commission, we will be disappointed if its prospective creation is used as an excuse to stay the needed economic studies and ongoing efforts to improve the quality of economic data which are so badly needed. At the FTC, we intend to continue our efforts along these lines.

Thank you.

Senator RIBICOFF. Thank you.

[The full prepared statement of Mr. Engman follows:]

PREPARED STATEMENT OF LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. Chairman, I am happy to be here this morning to comment on the need for study and possible reform of the regulatory process. At the outset, let me say that the Federal Trade Commission endorses a thorough and systematic examination and evaluation of regulatory policy. The time is ripe—indeed, some would say overripe—for such an undertaking, and we are happy to note that this sentiment apparently is shared by the President and many Members of Congress.

Calls for study and reform of the regulatory process are, of course, nothing new, as those of you who have been in Washington far longer than I, will appreciate. There have been earlier reform efforts. The proposals before you now, however, if enacted, may prove more pervasive in their reach and more lasting in their results. Previous studies of the regulatory process have included the Hoover Commissions, the Landis Commission, and the Ash Council. They were useful, but broadly speaking, they took for granted that the substantive regulatory mechanisms as we know them were here to stay.

Unless I am mistaken, I sense a new receptivity to the suggestion that at least some aspects of the regulatory system may need overhauling rather than tinkering or fine tuning. This happens to be my own view; but I believe it accords with the sentiments of a public now, more than ever, sensitized to costs, a public that is beginning to view the price of government with the same jaundiced eye with which it views prices in the marketplace.

We are just beginning to reap the benefit of some rather rigorous and sophisticated analyses of the costs and benefits of governmental regulation. In recent years, as many of you are aware, economists have begun to develop and apply new methodologies for measuring the effects of government programs. While this work is by no means complete, it is far enough along to provide certain benchmarks for the kinds of studies anticipated by the legislative proposals now before the Committee. If we don't yet have all of the answers, at least we have greater assurance that the right questions are being asked.

Although the work that has been done to date has been of concern primarily to professionals in the field, it has not gone altogether unnoticed by the public at large. Much of the public is becoming aware that government regulations carries with it economic burdens which may not be justified.

Much has been made of a few bad examples. Such examples serve a useful purpose by drawing attention to a problem that might otherwise go unremarked, but a remedy for the ills of the regulatory process will not be found in repeated incantation of the symptoms.

Rather than repeat them, therefore, I would like to use this opportunity to underscore certain principles which I think ought to guide a study commission in its deliberations, and to discuss these principles in the light of our experience at the FTC.

I want to emphasize that, although we are not a regulatory agency in the normal sense of the word, the Federal Trade Commission does not believe that its policies and processes should be immune from scrutiny. That is why we welcome these hearings. And that is why, over the past few years, we have directed a critical look inward in an effort to improve our decision-making process and to assure that the Commission continues to be a bargain for the American taxpayer as well as the American consumer.

Broadly stated, it is the central mission of the FTC to ensure that the marketplace is free from illegal restraints and uncontaminated by fraud and deceit. This mission derives from an understanding that free and open competition produces the maximum possible consumer benefits in terms of resource allocation, product choice, and lower prices. In trying to translate that understanding into effective practical results, however, we confront a number of difficulties. I would like to mention some of these to you and to explain the efforts we are making on our own to solve them. I believe that this will help demonstrate why we would welcome scrutiny of our activities by a study commission of the sort you are contemplating.

Let me begin with our antitrust activities. In certain kinds of cases, it is possible to measure the direct benefit to consumers resulting from antitrust enforcement. In 1964, for instance, the Commission brought proceedings against bakers in the Seattle area for price-fixing. The subsequent cease-and-desist orders saved consumers in the Seattle area an estimated $3.5 million annually, an amount which represented the previous overcharge arising from the collusive activity. Similarly, in the same year, we instituted proceedings against the producers of the drug, tetracycline. Following action by both the Commission and the Justice Department, the drug's price dropped by approximately 75 percent, producing a nationwide annual saving to consumers of at least $60 million.

These cases illustrate the potential that anticompetitive conduct and abuse of market power have to cause price increases. They also provide us with a benchmark by which we can measure and justify for ourselves and for the public the commitment of Commission resources.

But other benefits are less easy to discern, although they may be no less real or important. Deterrence may be the most important effect of vigorous antitrust enforcement, but how can this effect be measured? One can never know for sure, because of the fear of prosecution, how many contemplated mergers are not consummated, or how many anticompetitive schemes are not pursued or how many price-fixing conspiracies are not executed.

Even so, I do not believe that it is necessary to proceed entirely in the dark. Let us consider a potential merger case, for example. Would the merger facilitate collusion and raise prices? Would it amass such market power that its abuse would be possible or likely? Alternatively, would the merger result in greater efficiencies and lower prices? Does vigorous competition characterize the relevant industries? What are the historic profit levels? And so on.

If our goal is not merely to enforce a law because it is there to be enforced, but to enforce it with an eye toward providing the consumer with the greatest benefit, then we must make a better effort than in the past to ask and try to answer such questions. We have over the past year or so made definite progress in this direction, and we intend to intensify our efforts in this regard.

We face analogous problems with respect to our consumer protection activities. There it is also difficult at times to measure the impact of what we do. Where questions of health or safety are involved, one doesn't want to guess wrong. Nor does one want to guess wrong about economic impact. But how much benefit to whom at what cost to whom are questions which require answers if we are to be able to justify our actions to the consuming public.

Let us consider a case involving false or misleading advertising. It would be highly beneficial if we could answer such questions as: What is the nature of the deception involved? Did it induce consumers to make a purchase they might not otherwise make but for the deception? Did they discover the deception before the purchase but still incur the costs of a wild goose chase? Did the deception induce them to pay more than they would otherwise have paid? Are these market forces at work that tend to minimize the effect of any attempted deception? In short, for the FTC to expend the taxpayer's money wisely, the identification of an illegal deception may not be sufficient. Clearly, we need to try to develop criteria to discover which false advertising claims deceived the most consumers, and which caused them to lose the most money.

Despite these difficulties in the consumer protection area, however, we need not proceed entirely on the basis of hunches. For example, the Commission's program to combat fraud in interstate land sales recently produced a consent agreement with one major company that benefited consumers to the estimated tune of $17 million, an amount equal to almost half of the Commission's total budget. Settlements of that magnitude provide their own self-evident justification.

But, as I have suggested, not all cases produce such easily identifiable benefits. Questions of the sort I have raised here this morning are not easy to answer. In fact, sometimes it is hard to identify the right questions to ask. Until recently, the Commission did not feel it necessary to raise such questions, much less to answer them. Happily, that view belongs to the past.

We have just begun to implement a major overhaul of the Commission's management techniques, designed to improve our efficiency. These new efforts, taken together, will provide the Commission, for the first time in its history, with a program budget and a management information system designed to provide periodic reports on case progress and the financial management of individual cases, programs, and operating units.

We are also making an effort to apply cost/benefit analyses to the selection of programs and cases. This task will not be easy. And it is important to remember that cost/benefit analysis is not an end in itself. It is a planning and management tool, a means, to an end. It will enable us to weigh alternatives only if we have accurate, relevant data at our disposal and if the costs of producing the data do not exceed reasonable limits. In the past, those data have been hard to come by.

Recently, however, with the help of Congress, we have been moving to overcome at least part of the problem of data deficiency. I refer to our Line of Business Reporting Program. Under this program, large manufacturing firms will be required to report their sales and costs for their major activities in more than 200 product categories.

Line of Business will not only help us to guide resources toward productive ends, it will also serve other important purposes.

You can't examine what you can't see, and you can't pass judgment on what you can't understand. Because present financial reporting requirements permit the aggregation of so many product lines and so many types of essentially dissimilar operations, it is hard either to see or to understand what goes on inside some industries.

This deficiency has serious consequences not just for antitrust enforcement but for economic policy formulation in its broadest sense. It is difficult, under the best of circumstances, to influence an economy as large and as complex as ours. The task becomes all but impossible if the economy's current position cannot be accurately ascertained.

With Line of Business Reporting, we will have for the first time some degree of assurance that anticompetitive practices leading to exorbitant profits are not being obscured by a rat's nest of meaningless economic data.

Mr. Chairman, I have tried to highlight some of the problems we are trying to solve at the Commission. We hope that this specific experience will be useful in your deliberations on the establishment of a regulatory agency study commission.

We also wish to pass along an additional thought. Good men equally dedicated to the public interest can and will disagree over the best means to reform the regulatory process. But the concern voiced on this subject by the President, by Members of Congress, and by the public at large in recent weeks and months, leads me to believe that disagreements will be over matters of form rather than the basic need for review. And I hope that these differences can be minimized.

It would be ironic, to say the least, if a commission set up to study the defects of other governmental bodies exhibited the symptoms of the very diseases it was created to cure.

As you know, several bills and resolutions have already been introduced. We suspect that, once the new Congress convenes, we shall see a number of other bills proposed. When the rhetoric is stripped away, it seems to us that all these legislative proposals will really be aimed at the same thing, namely, a greater voice in the governmental process for those who are ultimately affected by its decisions and who are stuck with having to foot the bill.

There is a risk, however, that in attempting to reform the regulatory process with an eye toward providing a greater voice and lower costs for the consumer, we may end up knee-deep in new agencies and commissions, all more or less

pointing in the same direction, all pouring over the same subject matter, all dedicated to the twin propositions that governmental fat can and ought to be trimmed and that the marketplace must be insulated against those who would abuse it for private gain.

Such a bureaucratic proliferation would be a disaster. The last thing the American people want or need at this time is for the government to "study" this problem to death. Given some of the interests involved in this matter, such a course may be very tempting as the easy way out. But that would be motion without progress, an activity usually known as "running in place."

I would like to suggest, therefore, that every consideration be given to the idea of harmonizing these various proposals, and harmonizing not only rhetorically but substantively. In order to do this, it is necessary to have a clear and unambiguous declaration of what it is that we want to do. The Commission believes that that can be done in a fairly simple and straightforward manner, by reaffirming the fundamental principles that lie at the heart of our antitrust laws.

For our part—and here we reflect the bias of those who believe strongly in the central mission of our own agency—we are much taken by the statement of policy contained in a bill that is not immediately before this Committee but whose letter and spirit we respectfully commend to your thoughtful consideration. I refer to S. 4118, sponsored by Senators Proxmire, Humphrey, Javits, and Percy. That bill proposes a study commission which would focus on barriers now impeding the operation of an efficient market economy.

Section 3(a) of S. 4118 states: "It shall be the duty of the Commission to conduct a study and investigation to determine the extent of, and to formulate recommendations for removing, all public and private barriers to an efficient market economy.'"

As a succinct statement of the ultimate goals of public policy in this whole area, we think that short sentence hard to beat. The incorporation of Section 3(a) as the central purpose of all the related legislative proposals I mentioned earlier would serve to harmonize activities that might otherwise go their separate ways, by providing a goal against which we can measure our progress.

We applaud its emphasis on all barriers. Much of our present discontent in the regulatory area, we believe, derives from the willingness in the past to tolerate particular barriers to market efficiency because of some particular felt need of the moment. But the needs of the '30's, of the '40's, and even of the '50's and '60's, are not necessarily the needs of today. By directing our focus against all barriers, including those imposed by the government itself, we force ourselves to re-examine assumptions which may have outlived their usefulness, or which, with the passage of time and the benefit of hindsight, we may even admit to ourselves had little justification at all.

We also endorse the emphasis on both *public* and *private* barriers. This forces us to recognize the full scope of the problem and will permit us to avoid those sharp-edged and counter-productive rhetorical exercises in which businessmen and public officials line up on opposite sides of the table yelling at the top of their lungs, "So's your old man." I think we ought candidly to acknowledge at the outset that both the public and private sectors have a good deal to learn about their own abuses, that both are as much sinners as sinned against. I think we ought candidly to admit at the outset that not everything done in the name of "free enterprise" actually advances that goal, and that not everything done in the name of the "public interest" is indeed in the best interests of all the people.

Finally, Mr. Chairman, while we support the idea of the commission, we will be disappointed if its prospective creation is used as an excuse to stay the needed economic studies and efforts to improve the quality of economic data which are so badly needed. At the FTC, we intend to continue these efforts.

Senator RIBICOFF. Mr. Engman, on November 11, the Washington Star reported that an FTC study had identified milk processing as an area where consumers may be paying higher prices than necessary because of antitrust violations by food chains and dairy cooperatives. This is just the type of issue that the FTC should be getting into.

Does the FTC have all the authority it needs to pursue this in a way that brings quick relief to the consumer?

Mr. ENGMAN. We believe we have adequate authority, Mr. Chairman, to deal with the particular issues that are raised by that particular subject matter.

We presently have underway a very broad investigation not only into that area but into other areas of the so-called food industries. Those matters are presently in process.

If it should come about that we need congressional assistance because of difficulties that we encounter in the course of these investigations, I will be the first that will come down here knocking on your door asking for help.

Senator RIBICOFF. Let me ask you, will the FTC studies concerning the high price of food be made public?

Mr. ENGMAN. The milk has been made public, Mr. Chairman.

Senator RIBICOFF. Your present ongoing investigations?

Mr. ENGMAN. The ongoing investigations will be made public at such time as we bring a complaint or at such time we close our inquiry. We have adopted a policy by which we make public announcement at that time.

At the present time, however, the proceedings are not public.

Senator RIBICOFF. Without objection, the article from the Washington Star will be put in the record at this point.

[The article referred to follows:]

[From the Washington Star, Nov. 11, 1974]

FTC FINDS COMPETITION IN MILK INDUSTRY FAILING

(By Bailey Morris)

As concern over the cause of high food prices grows, the Federal Trade Commission has completed a new study identifying milk processing as a trouble-spot industry prone to price-fixing and other anticompetitive practices.

The FTC study—which has not been made public—ranks milk and dairy products second in importance only to fresh meat on the average consumer's shopping list, but offers little hope that prices of milk products will become a better value any time soon.

In fact, the FTC study indicates, milk processing is now undergoing a reorganization which may dangerously reduce competition in the industry, and sustain or increase current prices.

Big supermarket chains and huge dairy cooperatives which control the supply of milk have moved into the middle-man, processing field with enough muscle to reduce the number of milk processors significantly.

"The most immediate threat to the independent processing industry is food chain integration (forward movement into the processing end of the business)," the FTC study says.

Perhaps more alarming to consumers is the finding of the FTC study that: "There is no evidence that the additional (economic) benefits chains may derive from actually integrating into processing plant operations have been passed on to customers."

In fact, the FTC study continues, "the widespread opinion of the industry is that food chains which operate their own plants often seek to stabilize and occasionally to raise prices."

Some independent processors even went so far as to say that in markets like Washington's, where a large number of chains have moved into processing, prices "are often stabilized at high levels," the study noted.

The effect on the over-all processing industry of the super milk cooperatives is still small, the FTC notes, but it is likely to grow and could present special problems.

"Cooperatives will need to reconcile the conflicting objectives of supplying . . . dairies with raw milk and competing with them at the processing level," the study says.

Even now, the study adds, some independent processors allege that coops use the premium they receive on raw milk to subsidize their processing operations, thus putting the independents at a cost disadvantage.

The FTC study is quick to note, however, that it has no current evidence to support such allegations.

Privately, one FTC observer said that staff members now have enough evidence to support price-fixing allegations and they will recommend to the commission that it undertake antitrust probes in some major areas of the country.

Senator RIBICOFF. You point out in your testimony, Mr. Engman, examples of how the FTC enforcement of the antitrust laws has helped fight inflation by reducing prices.

Can you estimate how much violation of the antitrust laws costs the American consumer in total each year?

Mr. ENGMAN. There have been many estimates that have been given by various individuals and I think I would not be acting responsibly if I endorsed one or another of them. They range, however, into the numbers of billions of dollars.

My concern in terms of endorsing one of these particular numbers is, that I personally do not think that we have sufficient meaningful economic data available to us at the present time to make as hard and firm estimates in this area as we should have before it would be appropriate for me as chairman of an agency to talk about such numbers. Part of the reason that we have been so concerned with our line of business reporting program is that it will improve the quality of data we have.

Suffice it to say that somewhere in the range of those billions of dollars is the appropriate answer.

Senator RIBICOFF. The Justice Department filed an antitrust suit against A.T. & T. yesterday seeking to break up A.T. & T. and restore competition to the telecommunications industry. John D. deButts, chairman of the A.T. & T., responded: "If that happens the telephone service would deteriorate and cost much more. The telephone network, to work efficiently, must be designed, built, and operated as a single entity."

Is Mr. deButts correct, that breaking up the A.T. & T. network would cost the users of the telephone more money?

Mr. ENGMAN. Mr. Chairman, you put me in a difficult position. Together with the Department of Justice, the Federal Trade Commission has concurrent responsibility for enforcement of the antitrust laws.

I frankly do not think it is appropriate for me, as a government law enforcement official, to comment on that particular question. If I may remove myself from the particulars of the A.T. & T. situation, I think it is important in any area to first address the question of whether there is competition. That, after all, is the underlying foundation of our economic system. Our free market system will not work if there are not a variety of sellers and buyers.

There ought to be a strong presumption in favor of that policy. There may be reasons why, in a given instance, that policy is not appropriate to pursue. Apparently, Mr. deButts is of the view that those exist here.

I frankly have not seen the evidence to indicate that that is the case, but I do not feel it is appropriate to talk specifically about it.

Senator RIBICOFF. Do you think you should take into account, putting the A.T. & T. case aside, the question of an antitrust suit as against higher prices for the consumer?

Is this a factor taken into account?

Mr. ENGMAN. The existence of antitrust policy and the existence of competition is likely to lead to lower prices for consumers across-the-board.

Senator RIBICOFF. One of the problems with relying on the antitrust laws to fight inflation is that antitrust litigation takes so long.

A recent article by the Wall Street Journal quoted FTC staffers saying that the suit that the FTC brought last year against eight major oil companies will not even come before a hearing examiner until 1978. A final decision will take many more years to complete.

Where do you think the study commission being advocated should look for ways to make antitrust enforcement a more immediate help in fighting inflation?

Mr. ENGMAN. Mr. Chairman, I think that antitrust enforcement can be an immediate help in fighting inflation.

First of all, let me indicate that antitrust enforcement can act as a deterrent. I view the Federal Trade Commission as being a cop on the economic beat, if you will. I think the mere presence of that cop, particularly if he is viewed by those others in the area as willing to take action, can be a deterrent to anticompetitive conduct.

Secondly, I would point out that the mere fact that an antitrust action is filed does not necessarily mean that it is going to drag on for years. In terms of numbers at least, the vast majority of cases that are filed are settled at some point.

We have recently put on the public record for comment the proposed settlement of the Commission's case against the Xerox Corp.

I suggest that one should not refuse to pursue violations of the antitrust laws merely because they may end up taking a long time. The deterrent impact and the fact that they may be settled are two factors running against that.

Finally, why do they take so long? These cases, by their very nature, raise very complex economic issues which are hard to resolve. Obviously, with such money and many resources at stake there is a great interest on the part of respondents in pursuing vigorous defenses. There are also the requirements of due process under our Constitution which must be safeguarded.

I think that we can work toward procedural reforms, and at the same time realize that some of these cases are going to take a long time. That does not mean that we should not pursue them. In many instances the immediate effect of bringing those cases should be of significant assistance in itself.

Senator RIBICOFF. In your speech dated October 7[1] before the Financial Analysts Federation, you charged that "much of today's regulatory machinery does little more than shelter producers from the normal competitive consequences of lassitude and inefficiency."

If this is so, what do you think the answer is?

Mr. ENGMAN. I think the initial answer, Mr. Chairman, is to have a reexamination of these regulatory policies, a reexamination which could be conducted by a study commission of the nature this committee

[1] See p. 42.

is considering. The purpose of this study would be to determine the reasons for the establishment of these policies 80 or 30 years ago, and then to decide if they make sense any more. The question is whether the economic cost of those regulations are justified by the social benefits which flow from that regulation.

I think that is the first step.

Senator RIBICOFF. Along that line, one of the agencies you specifically criticize is the ICC. Do you think the ICC should be abolished, and why?

Mr. ENGMAN. I raised questions relating to the ICC to illustrate the apparent anomaly of some of this regulation. I suggested that some of those regulations, by restricting entry or by regulating and establishing rates, in effect, had the result of increasing the cost to the American consumer of transportation in this country.

I do not know whether we should abolish a particular aency or not at this point. I think we have to make an assessment of the benefits. The ICC and others should come forward and identify the benefits as well as the costs and state their belief whether the benefits are worth the costs.

I suggest that if we have the facts out on the table, both as to the cost and the benefits, we may decide that some of these activities are not all that important. Or in the alternative, we may decide that there is an important social end that can be achieved through more direct subsidies.

I think the first step is to get the facts out. There are some obvious examples in the transportation regulatory agencies where there are hidden costs. Let us find out what the benefits are and how much we are really paying for some of these hidden subsidies, and let the Congress and the American people make a judgment as to whether it is worth it.

Senator RIBICOFF. You also specifically criticize the agricultural price support and the export subsidy program. Do you think a study commission should also review the effectiveness of the regulatory policies of the U.S. Department of Agriculture?

Mr. ENGMAN. I would think that regulatory activity, wherever it exists, should be examined. I am interested or noted with some interest the discussion between Senator Allen and Mr. Ash. As I read the administration bill, it does deal with regulatory activity, not with specific agencies. It is too important a question not to address it on an across-the-board basis.

Senator RIBICOFF. I do have a few more questions I will submit to you in writing.[1] It was my intention to recess these hearings at 12:15 to come back at 2.

Senator JAVITS. I have one question, Mr. Chairman, just one question.

I think, at the end of your statement, you said something about the precision of the antitrust laws as you understood them. Would you check that?

Mr. ENGMAN. I do not know specifically the reference you are making, Senator Javits.

Senator JAVITS. Perhaps you were speaking without reference to the written statement. Do you by any chance remember that?

[1] See p. 546.

Mr. ENGMAN. I did not say anything this morning.

Senator JAVITS. What I am trying to get again, Mr. Engman, because it was not really any forensic proposition that I was setting forth, I was interested and I thought we ought to have your concept of what the antitrust laws seek to accomplish within our economy today. What is their objective, what Eisenhower called the one-line directive?

Mr. ENGMAN. The antitrust laws are designed to maintain competition in the marketplace by removing those restrictions which would otherwise impede the free flow of goods and services between sellers and purchasers in this economy. Without that kind of competition, economists would expect prices to be higher than they would normally be and the quality and range of goods to be lower.

That does not mean that competition is the only answer. As I indicated, there may be other factors in given instances that must come into play. What I am saying is that deviations from the competitive norm need to be examined with special scrutiny both from the point of view of the ostensible benefits which flow from the regulatory process and because the economic or social costs of that regulation have been largely ignored to date.

Senator JAVITS. What I am getting at, the same question I asked you the other day, is, supposed you have an industry in which competition is an umbrella, not a factor of production, because the single biggest entity is well able to give the service or make the goods for a lot less than competition compels it to.

What, then, under the antitrust laws? Must we accept that and let it be?

Mr. ENGMAN. That would indicate to me that competition does not really exist in that industry. If competition is acting as an umbrella and for some reason there is something phony going on, so prices are higher than they would be under the true norm, there is something rotten in Denmark. That is what we should be addressing.

I do not accept your premise. In those kinds of situations if so called competition is acting as an umbrella, I think that is something that we should be investigating to find out whether there is something wrong.

Senator JAVITS. You and I cannot agree because the units of capital, and research and development today are so great that without in any way violating the antitrust laws, the competition may not be challenging enough in order to produce what you think competition produces for the public.

I suspect that is the case in many more industries, perhaps, than where competition is in the automobile business may be producing the best for the public.

Mr. ENGMAN. I am not saying that big business is bad or that there is any set miraculous number of sellers, producers or manufacturers in a given market who must exist before there is meaningful competition.

In my judgment, there may be meaningful competition, given economies of scale, among a small handful of companies. I am fully in accord with that view. I am suggesting, however, that in any situation where we characterize competition as providing an umbrella to provide higher costs or higher prices, in my judgment there may also be something fishy going on with respect to the rest of the market. I am

not necessarily in disagreement with all of your premises, only on that one question.

Senator JAVITS. We are passing each other in the dark of the night. What I am saying, it may not simply be economically feasible to provide that kind of competition to produce what you consider to be the classic result of competition.

The A.T. & T. case is likely to be the best proof of that, as the Government is in no position to put anybody in business. This is a private enterprise economy. We are not going to establish a new telephone company.

Is there not a big place that challenges our ingenuity if we are really going to expect of competition among the results you suggest?

Mr. ENGMAN. There is no question about that, Senator Javits. The point I have been trying to make is, although I think we have to view departures from the competitive norm with an especially critical eye, there may very well be instances in which we decide we do not want to build two Bonneville dams next to each other in order to have competition in power production in the Southwest.

There may very well be situations which require some kind of regulation so that everybody is towing the mark and not gouging the public.

I suggest that we have not gotten to that point yet where we know enough about the costs and the benefits and that is what I think we ought to do. I suspect that in a large number of instances we may find that their benefits do not outweigh the costs.

Senator JAVITS. Thank you, Mr. Chairman.

Senator RIBICOFF. There are a few questions that I have that we will submit to you in writing.

Senator Chiles?

Senator CHILES. I have no questions.

Senator RIBICOFF. Thank you very much. You are a very provocative and worthwhile addition to our Government, Mr. Engman. You are acting as a burr under the saddle of complacency, and I for one welcome you in that role.

I hope that you continue doing the job that you have been doing because it is most worthy for the benefit of this country.

Mr. ENGMAN. Thank you very much, Mr. Chairman. I want particularly to compliment this committee for having these hearings. I think the fact that we can air some of these issues is of crucial importance to the American people today.

Thank you.

[Additional material supplied by Mr. Engman follows:]

ADDRESS BY LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION, BEFORE THE 1974 FALL CONFERENCE OF THE FINANCIAL ANALYSTS FEDERATION, DETROIT HERITAGE HOTEL, DETROIT, MICH., OCTOBER 7, 1974

I imagine many of you followed with the same interest I did the summit and pre-summit economic conferences last month.

Probably you were not surprised at the fact that inflation—or perhaps, to put it more accurately, "stagflation"—was widely agreed to be the country's number one problem.

You should not have been surprised either that there was little agreement on how to deal with it. You get that many economists, businessmen and labor leaders together and you will be lucky if you can get them to agree on where to go to lunch.

Can you imagine acting as moderator for that group? I can think of less frustrating jobs. Like being the construction foreman on the Tower of Babel, for instance.

I don't want to be unfair to the summits. Although gatherings like that do not exactly produce an ideal decisionmaking environment, I believe it was worthwhile to get everyone's views out on the table. It also demonstrated that the present inflation is not a problem susceptible to a quick or easy "fix".

As for getting a consensus from that many independent minded people on a subject as complex as how to stop inflation, I suspect that anything resembling agreement would be most likely to be a sort of eclectic anthology of economic wisdom, and I'm not at all sure that is a good idea.

If we are going to make it up the long haul ahead of us, it is more assuredly not going to be in an economic policy vehicle that has John Kenneth Galbraith's engine block, Otto Eckstein's clutch, Dick Gerstenberg's drive shaft and Leonard Woodcock's transmission.

That kind of compromise approach reminds me of the husband and wife, one of whom wanted to paint the house red, and the other blue. Since neither would settle for the other's color, they mixed the two paints together and got purple, which was ugly but okay because neither one of them liked it.

In economic planning as in painting, the only thing to be said for that approach is that it is equitable.

Certainly there is no shortage of suggestions for how to deal with inflation.

On the front shelf is the traditional medicine, prescribed since time immemorial for the symptom of uppity prices: tight money and a balanced budget. There are those who doubt the effectiveness of this old cure in a cost-push world, but its proponents still outnumber its detractors.

In addition, there are some, myself among them, who also believe that inflation can be reduced by purging the economy of anti-competitive behavior. The FTC and the Justice Department's Antitrust Division are both looking with especial care for the types of trade restraints, collusion and unfair marketing practices which reduce competition and lead to higher prices for consumers.

Some have suggested that import duties and quotas be lifted to permit entry of more lower priced foreign goods.

Others cast their vote for the reimposition of controls or, at least, for some form of guidelines.

But the suggestion enjoying perhaps the greatest vogue at the moment is that inflation can be curbed by reducing the government's involvement in the economy; more specifically, by reducing its regulatory role.

It is not just the survival-of-the-fittest, every-man-for-himself free-marketeers who make this suggestion. It has the support of many people generally viewed as liberal and interventionist in their approach to the economy.

It has received the blessing of Ralph Nader.

And it is about to be endorsed by Lew Engman.

And here's the reason. Though most government regulation was enacted under the guise of protecting the consumer from abuse, much of today's regulatory machinery does little more than shelter producers from the normal competitive consequences of lassitude and inefficiency. In some cases, the world has changed reducing the original threat of abuse. In other cases, the regulatory machinery has simply become perverted. In still other cases, the machinery was a mistake from the start. In any case, the consumer, for whatever presumed abuse he is being spared, is paying plenty in the form of government-sanctioned price fixing.

Take the airline industry for instance. Under the Federal Aviation Act, the Civil Aeronautics Board controls the entry of new carriers to the market, controls the distribution of routes and has the power to disapprove or modify an airline's rate change proposal after hearing complaints from the so-called competition.

The result is that in the areas of rates and routes for all intents and purposes there is no competition at all. Competition, where it exists, is concentrated on the one unregulated aspect of airline activity, customer service. That is why the average airline commercial looks like an ad for a combination bawdy house and dinner theatre.

This may lead to some pleasing amenities. But it puts the customer in the position of captive buyer. Nobody asks him if he would rather have the money than the movie, or if he would like to brown bag it from New York to California

instead of having the steamship round of beef au jus on the little plastic plate. He is just asked to pay up.

If you have any doubt that one consequence of the CAB's control over rates and routes is higher prices, you need only look at what happened some years ago in California when Pacific Southwest Airlines, an intrastate carrier not subject to CAB rate regulation or entry restrictions, entered the San Francisco/Los Angeles market with rates less than half those being charged by the interstate CAB certified carriers TWA, Western and United. What happened? After attempting to ignore PSA's lower fares, the CAB carriers were forced to cut their rates to meet the competition. Even today, to fly from L.A. to San Francisco it costs only about half as much on a per-mile basis as it costs to fly from Washington to New York.

Of course, it is true that a major airline will try to make a fat profit on a high volume run like Los Angeles/San Francisco because it knows it is going to lose a bundle flying between Black Rock and Where-am-I City which the CAB, with the full support of concerned and interested members of Congress, requires it to do.

Except in those instances where it encounters competition from a PSA, it will succeed in this little book balancing act, charging one customer to pay for the flight of another so the CAB can perpetuate a network of routes which no longer and perhaps never did conform to the pattern of demand.

Certainly, no interstate carrier need be excessively concerned about new competition. The CAB has not approved entry of a new trunk carrier to the market since 1938. And just last month, the CAB rejected an application by Laker Airways, a privately-owned British airline, to fly regularly scheduled New York/London flights for $125 each way. That price, by the way, is little more than one-third of the economy fare charged now by Pan Am, TWA, and the other members of the international rate-fixing cartel.

As if that were not enough, the CAB also has been moving in directions which would raise prices in the heretofore unregulated charter market. Recently, it approved discussions between scheduled and charter carriers in hopes that a mutually satisfactory rate-floor for charter flights could be agreed to. I hardly need add that any such floor would be higher than current rates.

I would find it hard to imagine a more obvious instance of prices being pushed up by regulation than the case of airlines.

Unfortunately, I do not have to imagine such a case, for we have the Interstate Commerce Commission. That body, as you know, was created way back in 1887 supposedly to protect shippers against the monopolistic power of the railroads.

But by 1935, the nation had sprouted a network of highways, and the trucks which rolled over them were biting deeply into the market power of the railroads.

With the trucking field wide open to new entrants, this might logically have been the time to dismantle the ICC. The railroad monopoly was broken, competition could take its course.

Did that happen? No sir. Instead of freeing the railroads from regulation, Congress, in the Motor Carrier Act of 1935, just cast the regulatory net wider to include the interstate truckers as well.

As a result, today we have a situation in which market entry by new trucking firms is restricted by the ICC at the same time that rates are being fixed by the carriers who are given antitrust immunity to do so. Though the ICC has authority to investigate rate findings by the carriers, according to testimony given before a House Committee two years ago, the Commission was doing so in less than one percent of the cases.

And what is the result? Well, when the Supreme Court held some time ago that fresh dressed poultry was an agricultural commodity under the ICC Act and thus not subject to regulation, the average rate for shipping it fell by 33 percent. It is gratifying to note that the party who got the short end of the 5–4 decision was a certificated carrier who was trying to stamp out the competition of an uncertificated carrier who had the temerity to haul chickens without a license.

I have given you just a couple of examples. But, when you take all of the industries subject to direct federal regulation—that's air, rail and truck transport, power generation, television, radio, the securities industry and others—it works out to a substantial fraction of the economy.

In fact, it is estimated that these regulated industries account for 10 percent of everything made and sold in this country. What makes them even more important from the point of view of inflation is that they tend to be industries whose prices show up as costs buried in the prices of hundreds of other products.

Take transportation for example. When you change the price of hauling freight, that change is going to show up in a lot of other products. Moreover, it will show up not just once but again and again. By the time you get a piece of meat from the pasture to the plate, it carries with it numerous transportation charges.

And these industries subject to direct regulation are only part of the story.

There are, in addition, the dozens and dozens of federal and state regulations, prohibitions, proscriptions and requirements all of which subvert competition in the name of a greater objective—though sometimes it is hard to see exactly what that greater objective is or on whose judgment its greatness rests. I refer to things such as:

state laws against advertising the prices of eyeglasses or prescription drugs;

the Jones Act forbidding foreign competition in the shipping business between U.S. ports;

the Federal Government's own "buy American" procurement preferences which can allow domestic producers to charge as much as 50 percent more than foreign sellers for some items. I should add that many states have similar preferences;

an agricultural price support program which asks the consumer to buy with his tax dollars what he does not want, cannot use and will never eat;

an agricultural export subsidy program which asks the consumer to pay the farmer to sell his product to some foreign buyer at a price lower than that at which the consumer himself can get it.

The effect of some of this regulation may perhaps be seen in some recent events in California. This summer the California Milk Producers Association dumped 420,000 gallons of fresh milk into Los Angeles harbor. The dairy co-op said that it was necessary to dump the milk "because no market could be found for it."

At what price, I might ask. I suspect that more milk could be sold if it were not for the elaborate government programs designed to maintain higher than competitive prices on the producer, processor and on the retail levels.

I mention only a few. Former Council of Economic Advisers' member Hendrik Houthakker has compiled a list of 45 regulatory policies that contribute to inflation.

The list of noble goals advanced to support these regulatory subsidies is virtually without end. I'm as humane as the next guy. I am not criticizing these goals. A representative government must take action to address the demands of the people.

But mischievous means are not justified by noble ends.

To me, the most distressing development is the pervasive and well-accepted dishonesty that pervades the government's approach to regulation.

The existing crazy quilt of anti-consumer subsidies embodied in the intricately woven fabric of federal and state statutes and regulations is pernicious because:

The subsidies are deliberately hidden from public view.

The government has irresponsibly lost track of the actual cost of these subsidies.

In most, if not all, cases, we have adopted the least efficient form of subsidy with the purpose of hiding the subsidy from the public and obfuscating its true cost.

From time to time, proposals have been made to provide direct cash subsidies in lieu of the patchwork of regulatory subsidies that now pervade our economy. Opponents rise indignantly to object that hard-working individuals and businesses don't want handouts. Well, a rose by any other name . . . .

Our airlines, our truckers, our railroads, our electronic media, and countless others are on the dole. We get irate about welfare fraud. But, our complex systems of hidden regulatory subsidies make welfare fraud look like petty larcency.

I have no way of knowing what the numerous regulatory measures cost the consumer each year. I have seen private estimates indicating that the annual costs in the transportation area alone may exceed $16 billion.

I invite students of this kind of thing to come up with their own figures. Whatever they are, I think we can all agree on this: the costs are too high.

There are free market purists who are reveling in the growing disenchantment with heavy-handed regulation. They have contended all along that the market was the fairest and most rational allocator of resources; that you could no more improve its performance by regulation than you could improve the performance of a fine watch by poking around in its works with a paperclip.

It seems to me that these arguments—taken to the extreme—are both naive and destined to be ignored. They are naive because they stress only the virtues

of the long range adjustment facility of the market system. They ignore the short term dislocations that market forces produce and they discount legitimate social objectives that enlightened peoples choose to pursue. Voters do not live on bread alone. And to the extent they do live on bread, it is this year's bread, not next year's.

The market will not prevent bank failures or compensate their victims. It will not guarantee safe toys or unadulterated drugs. And it will not ensure a clean environment.

If we want to be assured of these things, we may need some regulation.

Regulation may also be needed to protect the consumer where natural monopolies exist, that is, where economies of scale argue strongly for a market being served by a single producer. Electric power and local phone service are good examples of this.

These are instances in which some would say that the benefits of regulation can be said to exceed its costs.

But the trade-off between benefits and costs is not always an easy determination to make. Moreover, neither the benefits nor the costs will remain constant over time. Some of the costs, such as direct expenditures, are obvious. Others, such as the costs the consumer pays for diminished competition, are not obvious.

The problem of weighing costs and benefits is made more complex because often it is necessary to compare unlike qualities. (How, for instance, do you give pain and suffering a monetary value?) Or because those who bear the costs may be far more numerous than those who reap the benefits. (In order to spare one person 100 units of discomfort, is it fair to assess 100 people more than one unit each?)

I don't know the answers to these questions. The point is that each and every regulation or regulatory policy that contributes to inflation should be re-examined to make sure that the trade-off between costs and benefits which presumably brought about its institution, is still valid. We may well find that some of the more costly ones look a lot less attractive in a world of 12 percent inflation than they did in a world of 3 percent inflation.

We should also re-examine them to see whether those imagined trade-offs were accurate in the first place. For instance in the case of the ICC, rates wasted no time in going up immediately after the agency's creation.

When truckers are permitted to fix prices and are subject to a panoply of regulations all because the transportation mode with which they compete once had excessive market power, one is hard pressed for a logical explanation. When airlines are going broke despite the fact that they charge twice as much as others are willing to fly for, something is seriously wrong.

The fact of the matter is that most reguated industries have become federal protectorates, living in the cozy world of cost-plus, safely protected from the ugly specters of competition, efficiency and innovation.

There are those who hold the businessman to be so unprincipled and greedy that they regard any governmental interference with his free movement as an addition to the social welfare.

Experience would seem to contradict that point of view. In point of fact, the effect of government interference frequently has been to remove the one thing that stood in the way of the anti-social exercise of greed; I am referring to competition. Meanwhile, the scheme of regulation has proven at least as susceptible to the lure of protectionism as the private interests it replaced.

As a political matter, we will not be able to pare away our excessive regulatory fat unless the public can be assured of adequate protection against the abuses that regulation was designed to curb.

We at the Federal Trade Commission can help provide that assurance. Through a vigorous antitrust policy, we can help prevent the aggregations of private market power which permit consumer abuse and create a need for regulation.

But there will still be cases in which regulation is necessary. For those cases, the advice I would offer is that the costs of the regulation—and I mean the direct costs, the indirect costs, the present costs and the future costs—be fully understood and consistent with what we hope to gain. The task won't be simple. Cost calculations of the type I propose are likely to be imperfect. We currently lack not only accepted calculation methodologies but also much of the raw data necessary to informed estimates. But unless susbstantial progress is made, our regula-

tors will continue to stumble around in an increasingly expensive game of blind man's bluff. Unless and until these facts are brought to light, I see little hope for assuming that public actions will match up to public expectations or the public interest.

Senator RIBICOFF. The committee will stand in recess until 2 o'clock.

[Whereupon, at 12:15 o'clock, the committee adjourned, to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

Senator BROCK [presiding]. The committee will come to order.

Mr. Miles Kirkpatrick is our next witness. If you will, I will ask you to proceed at your own leisure.

STATEMENT OF MILES W. KIRKPATRICK, FORMER CHAIRMAN, FEDERAL TRADE COMMISSION

Mr. KIRKPATRICK. I very much appreciate the opportunity being here to express my views in connection with these very timely and important hearings on regulatory reform. Because I am a lawyer who has had some experience with the enforcement of the antitrust laws, I may have several biases which I should probably make explicit at the outset of my statement.

First, I am a lawyer and have little formal economic training. Without more study than I have been able to devote in anticipation of these hearings, I am hesitant to deal with issues which, basically, involve complicated economic evaluations of the quality of economic regulation. Second, as an antitrust lawyer, I am biased in favor of the impersonal regulatory force of the competitive market rather than granting control over price, entry, and service to a Federal or State agency. Finally, as a former Chairman of the Federal Trade Commission, I am very much aware, I believe, of the limitations and problems of administrative agencies in attempting to deal with broad economic objectives.

Let me start with the observation, sir, that the antitrust laws of this country rest, in the words of the Supreme Court:

> On the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress.

In contrast, economic regulation by various agencies displaces competition and commits to public officials decisions involving price, quality, and entry. While both systems presumably seek the same goals, they clearly do so by quite divergent means. I think, however, the high water mark of the exclusivity of these two systems seems to have been passed, however, and antitrust concepts are increasingly infiltrating the process of economic regulation. Not only are the Federal courts mandating greater consideration of antitrust policy by regulatory agencies, but also the Antitrust Division is intervening in agency proceedings as an advocate of antitrust policies and solutions. As former professor, now Director of the FTC's Bureau of Economics, Dr. Scherer, has put it:

The Supreme Power who conceived gravity, supply and demand, and the double helix must have been absorbed elsewhere when public utility regulation was invented. The system is cumbersome, vulnerable to incompetence, and prone toward becoming ingrown and corrupted. In some respects it is directly conducive to inefficiency; in others, it may be merely ineffective in altering the behavior of the companies regulated.

In the last few years, more and more economists, scholars, and public officials have advocated reorientation of public administration away from direct regulation and toward more competition. Some regulatory agencies, in fact, have themselves started moving in this direction. I will start with the assumption, and leave to others better equipped than I the proofs thereof, that regulatory reform is in fact appropriate. My focus, accordingly, will be on how this objective can best be attained. In my comments this morning, I will first discuss generally my views on the vehicles for accomplishing administrative agency reform, and then turn to some of the more specific proposals before you as to which I have had some practical experience.

I start with the observation that the creation of the regulatory agencies was a response to real problems, and was based on the supposed inability of the competitive process to provide adequate levels of economic performance in certain industries. I have no doubt that there are broad areas where the regulatory process adequately serves the public interest. It is for this reason that I am less than comfortable with the wholesale use of the "deregulation" concept—deregulation is already a cliche and is being elevated to a panacea. Nor do I think we should be too quick to sacrifice unnecessarily the ideal which independent regulatory commisisons were created to attain; that is, expert bodies, insulated from political pressures, combining policy formulation with regulatory power, which could bring continuity and flexibility to the regulatory process.

I endorse the concept of a Commission to study regulatory reforms, up to and including all of those measures implied by the term "deregulation." I do not agree with any direct action in the nature of deregulation absent a thorough study of each agency, its particular problems, and the industry represented.

I believe that any study of the regulatory agencies should recognize the vast differences between most of the regulatory agencies. While there may well be some generic solutions equally applicable to all agencies, for the most part I doubt that this will be the case, and suggest each agency must be dealt with separately. The generic problems of delay, priorities, and timidity, for example, while undoubtedly common to most regulatory agencies, will not, in my opinion, be solved in the same fashion at each of the different agencies.

Nor should the focus of any study group, I believe, be limited to the performance of the independent regulatory agencies. Let me also suggest that the policies and programs of the executive branch are capable of an equal amount of competitive misdirection, and should also be studied. I disagree with Mr. Ash's statements this morning that this Commission should not study the executive establishment. I believe that, insofar as the Commission may be involved with procedure and structure, that there is a real difference between the agencies in the executive establishment and the independent agencies. But as I conceive this Commission, it is dealing with substance. It is dealing with

identifying those activities of Government which are anticompetitive, and which do not have any corresponding benefit to the public. So I would think that the Department of Agriculture and the FDA, and many other activities of the executive branch, are equally of interest to a study of that nature.

One subject, it seems to me, in need of the kind of study which is to be undertaken by the proposed Commission is the process of policy development and implementation by administrative agencies. Any answers to the question as to how to improve this process will, in my opinion, go a great distance toward achieving the desired reform. A common denominator in the many previous studies of the regulatory process has been the recommendation that the policymaking process be improved. Certainly, that was a key recommendation of the ABA Commission to study the FTC, of which I was Chairman in 1969, and was perhaps most recently reiterated by the Deputy Assistant Attorney General of the Antitrust Division, Donald Baker, who lamented:

> What is needed is a great deal more specific inquiry into what we are trying to achieve through the regulatory process in any particular industry. Only if this is done can we ever hope to have legal rules and institutions which serve those goals. Fuzzy goals will produce fuzzy legal rules.

In my time as Chairman of the FTC, we called this process "policy-planning"—and despite 3 years of hard and dedicated work to improve the process, only halting progress was made. I share the frustrations of those who have involved themselves in this effort, but I remain of the opinion that it is essential to any substantial and lasting improvement of the regulatory process.

While I believe a Commission to study regulatory reform would be a positive step which should be taken, I would like to suggest some procedural measures which could perhaps proceed independently of the proposed study Commission. One might be, for example, to require Federal agencies to prepare antitrust impact statements as part of major regulatory actions which significantly affect the economic performance of the regulated industry. This concept finds precedence in the environmental impact statement required of Federal agencies under the National Environmental Policy Act of 1969, and its extension to competitive considerations is not an idea original to me.

I note also that Senator Hart has recently cited the Bank Merger Acts of 1960 and 1966 as another precedent for this kind of procedure. These acts permit the Attorney General to challenge any bank merger approved by the Comptroller of the Currency, and to submit the matter for de novo consideration by the Federal court. The objectives to be accomplished by application of this or other like concepts to the arena of economic regulation are the following:

First, policy decisions with significant antitrust implications would proceed from a more eclectic base; that is, in the adversarial clash of conflicting ideas between the expert regulatory agency and the Antitrust Division—possibly the Federal Trade Commission—the most appropriate solution or accommodation would be arrived at.

Second, Congress should establish a serviceable and reviewable standard for accommodating antitrust considerations with other regulatory policies so that an adjudicatory body could resolve disputes in those instances where the regulatory agency and the Antitrust Division

could not agree. In addition to the other benefits it seems such a procedure might bring about would be the visibility of the resolution of the economic questions that are largely invisible now, but in our regulatory framework.

Now, those are my general remarks, sir, and I would like very briefly to deal, in a very summary form, with some observations that are in my statement that I filed. To summarize very briefly my views on some specific questions; one, I do support legislation which would require the simultaneous budget submissions of the Congress and to the Office of Management and Budget. Two, I believe that, at least in agencies such as the Federal Trade Commission, that the collegial form of agency process is appropriate. Third, I suggest that a realistic appraisal of the independent regulatory agency commissions leads to the conclusion that they are not as sheltered as one would expect by a reading of the statutory provisions designed to provide for their independence. Those matters are dealt with in greater detail in my written statement.

I appreciate the opportunity to be here, and am happy to answer any questions you might have.

Senator BROCK. Thank you very much.

I would like to start with the statement, when you talk about the term, on page 4, you endorse the concept of a commission study including deregulation. Did you not agree with the concept of deregulation, absent a commission study? But then you go on to say that you want the study to be almost on an agency-by-agency basis, that you have to study just the CAB in its context with such reforms that may be applicable to that agency.

I see what you are reaching for, but I have this problem that particularly applies to the Department of Transportation, where we have essentially three independent agencies, plus a major cabinet office, all regulating the field of transportation; and the obvious result is an absence of any coordination at all, and a total absence of any national transportation policy. It seems to me we might be better advised to look at the agencies first of all, to see whether they should fit into a broader context of regulatory reform, and then, if not, study them individually. If they do, perhaps try to start with an overview of the total policy by industry or subject matter.

Mr. KIRKPATRICK. I could not agree with you more, and I certainly would not have my remarks indicate otherwise. I think, if I could develop it for a moment, it is true that there have been many studies of the regulatory process—the Hoover report, the Ash Council, and others. There has been, however, to the best of my knowledge, very little done in evaluating, in an in-depth way, the precise anticompetitive consequences versus the public benefit that may derive from various regulatory mandates. It is that that I was concerned with, and feel it should be looked at very carefully. Most of us would agree—at least, most responsible, economists who have expressed themselves seem to agree—that in the trucking area, for example, there was never much reason, under any theory of monopoly or otherwise, to regulate it in the first instance. I do not think I dispute that. That, however, seems to be one of the rarely easy decisions that may be made in this very complicated area.

Senator BROCK. I am interested in your suggestion that we have an antitrust impact statement following on that part. I agree. I also agreed on the need for an environmental impact statement, and supported legislation of that. I also agree with the President that we need an inflationary impact statement.

Going back to one of my own biases, I am sure I would like to see a small business impact statement. I wonder, though—you know, where we draw the line, because what we are saying is, every regulatory agency, independent or executive, should analyze all of its policies with respect to its effect on all segments of the population.

Mr. KIRKPATRICK. If we are right, though, as to the importance of the impact of the regulatory process on competition, and if we are committed—as I believe we all are—to the free enterprise system, and the fact that it is competition which will bring about the best allocation of resources—it seems that there would be no more an important impact statement in those circumstances than one that would reflect the impact of the regulatory agencies on that process.

Senator BROCK. I agree. I am just wondering—and I guess we are trying to solve the problem before we have studied it—but I wonder if what you are saying really relates to a requirement of the agency to issue an impact statement, or whether or not you are actually suggesting that this study consider a change in the basic authorizing statute of the agency to require that that be a factor.

Mr. KIRKPATRICK. Yes, sir.

Senator BROCK. It is the same thing, almost, except one is a patch in the quilt, and the other is the quilt.

Mr. KIRKPATRICK. Yes, sir.

Senator BROCK. Let me go to another problem that has bothered me. We have had an awful lot of people testify—a lot of my colleagues have asked questions indicating their concern that you expressed on page 5, where you say, let me also suggest that the policies and programs of the executive branch are capable of an equal amount of competitive misdirection, and should be studied.

No one challenges that. We all agree. What is bothering me as one who is a technician, in a sense, who is going to have to have his say in drafting this legislation, is the question of how broad a mandate we give to this Commission, given the fact that I think we are all interested in seeing it done quickly? And maybe I should ask you this: would it not be equally feasible to have a Commission to study the independent agencies, and have a separate Commission to study the Executive agencies?

Mr. KIRKPATRICK. I think it would be. I think when you consider the breadth of a study to comprehend the entire governmental establishment, the independent agencies and the Executive establishment, one must conclude that it is an enormous undertaking. I suggest that the difficulty I would have with such a division is that I see no difference in principle upon which to divide the Executive study as against the independent agency study, as long as you are dealing with substance, and not procedure and the structure of the agency itself. The problem is the same. It may be an arbitrary way to subdivide the

problem, and I would not like to acknowledge, by subdividing it that way, there are any essential differences between the subjects of inquiry.

Senator BROCK. Maybe the best approach would be not to change the mandate. Maybe we should change the mandate, and broaden it to include the Executive agencies. But at the same time, provide for a rather sizable increase in staffing, so we can undertake the study under one umbrella.

Mr. KIRKPATRICK. It would seem to me that that would be desirable.

Senator BROCK. I do not argue for the need of reform in that particular area. Was it your experience that your own legislation in the Federal Trade Commission was too broadly drawn by Congress? What were the problems you experienced personally?

Mr. KIRKPATRICK. I would say that section 5 of the Federal Trade Commission Act is admirably drawn, with breadth, scope, and lack of specificity for the purposes of the Commission. It is a necessary tool for the Commission, with its breadth, and its wide scope. I think the problem that I had—if I may reminisce—when I speak here of policy planning in relation to the Federal Trade Commission, I think that was our difficulty. I think that is a difficulty that continues, and will always be there with a statutory mandate of such breadth. The difficulty is to sort out that which you should be doing, and that which is too trivial or counterproductive. We spent a great deal on—I think—a well-considered and very talented consideration of that matter. But it is elusive.

Senator BROCK. I do not know whether it was your testimony, I think it may have been Mr. Ash's, in which he mentioned the FCC has spent 33 years trying to resolve the differences between two radio stations.

Mr. KIRKPATRICK. On the matter of delays in procedure, Senator, they are there. I do not think they are unique to the regulatory process. I am sure you and I could identify some cases before the Federal courts that are just as antique and just as bogged down. The regulatory process does not have, I think, the advantage that its creators thought it would have in terms of efficiency of the adversary process. I do not think it is demonstrably any more inefficient than any other method of trying to try a case which is well staffed and well thought out. Those take time.

Senator BROCK. What that does go to is the policy planning process that you mentioned.

Mr. KIRKPATRICK. It does.

Senator BROCK. I wonder whether it is possible for us to write legislation which really can require good management on the part of any agency we create, independent or otherwise. It is very difficult to do.

Mr. KIRKPATRICK. I cannot conceive—there are structural changes in agencies some of us suggested. The Ash Council recommended the abandonment of the collegial form. I do not think that would make much difference. Breaking it up into separate parts—again. I do not really think you can legislate sensible procedures and efficiency in government.

Senator BROCK. One of the fascinations for me has been the ability—I think you referred to the rather short terms of most Commissioners—is the fact that despite the turnover, in the short tenure of a num-

ber of Commissioners, the agencies continue to publish massive amounts of regulation without any regard to change of personnel.

Is that the fact that the Commission has a life of its own?

Mr. KIRKPATRICK. I believe that what you say may somewhat be a surface reaction. I think you will find when there is a change of guard, in some instances, at least, the kind of activity and its direction may well change. I hope that is the case.

Senator BROCK. I am just not sure.

Mr. KIRKPATRICK. I am not sure either.

Senator BROCK. I gathered by your statement of the need to expand the study that you would not support the administration's proposal unless it were modified to do that, if it were so modified.

Mr. KIRKPATRICK. I would have no hesitation about it.

Senator BROCK. As it is drawn?

Mr. KIRKPATRICK. I may have some qualms with the draftsmanship, but in principle, I agree. I think it is worth doing, even if limited. But it is illogical to so limit it.

Senator BROCK. Thank you very much for your tesitmony.

The committee will stand adjourned until tomorrow morning at 9:30.

[Whereupon, at 2:55 p.m., the committee recessed, to reconvene at 9:30 a.m., November 22, 1974.]

REGULATORY REFORM—1974

FRIDAY, NOVEMBER 22, 1974

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 3302, Dirksen Senate Office Building, Senator Lee Metcalf, presiding.

Present: Senator Metcalf.

Also present: Vic Reinemer, staff director, E. Winslow Turner, chief counsel, and Jack Chesson, counsel, Subcommittee on Budgeting, Management, and Expenditures, and Stuart M. Statler, chief counsel to the minority, Permanent Subcommittee on Investigations.

Senator METCALF. The committee will be in order.

This is a continuation of hearings that began yesterday with witnesses who are testifying as to the creation of a new committee on the Commission of the Regulatory Agencies. I have a statement that I should have placed in the record yesterday but I was engaged in other activities.

OPENING STATEMENT OF SENATOR LEE METCALF

It seems that every time a new President comes on the scene, there is created, or recommended, yet another commission to study independent regulatory agencies. We have had the TNEC, two Hoover Commission reports, the Landis report, and indeed Mr. Ash's own Advisory Council's report entitled "A New Regulatory Framework," issued in January 1971.

Now, here we are again, being told that we need another commission to tell us what should be done. My inclination is we don't need it. Regulatory agencies are arms of Congress. Congressional committees already have the jurisdiction, the experience, and the information to deal with them.

What we need from the new White House is not yet another study, but some positive support for the reform ideas that are already working their way through the legislative process, however slowly.

There is an old saying around here: When you don't want to do anything, set up a study commission. Then, it looks like you are doing something. Well, I don't think we should be taken in by this route once again, unless the administration can give positive proof that something new and progressive can be forthcoming from this specific study.

The economy is going in all directions: inflation; unemployment; shortages; strikes; price gouging; extremes of wealth and poverty. These are all symptoms of a dangerous sickness which could lead to violent readjustments in our free and open democratic society.

Instead of looking around for scapegoats—and laying the blame on our regulatory agencies—we should be looking at the larger issue: That is, simply, is the free enterprise system in this country really free; and to what extent are those areas not presently under any real regulation—automobiles; steels; oil; coal; banking; insurance—the real culprits in the economy.

We have the incredible paradox of inflation and recession, with prices going up while demand is falling, a phenomenon due in large part to the concentration of economic power in these and other basic industries.

We seem to be mesmerized by this concept of deregulation—constantly being told by the administration and certain economic and regulatory experts that the economic goal should be toward a free market in major goods and services as a solution to our economic unbalances.

Rather than deregulation, perhaps we should be focusing our inquiry on more effective economic regulation of these concentrated basic industries. When a huge industry, such as the energy industry, can engineer a shortage and arbitrarily raise prices to take advantage of the public and make windfall profits through its concentrated power of the market, are we to stand by and shrug our shoulders and say, "Well, I guess that's the way the system operates"? Or should we look to new methods of economic regulation to restore competition, or at least curtail such abuses.

We are hearing over and over from witnesses that we can rely on the good old antitrust laws and the Federal Trade Commission to protect our free enterprise system from abuse. That is a myth, and it is time we recognized it. The record of the Department of Justice during the past three administrations has been abysmal in attacking and breaking up concentrated monopoly power. And even if the Department wanted to be effective, it couldn't by the very nature of its plodding case-by-case approach to problems of monopoly power. The *IBM* case is just now going to trial after 6 years, and it may take 4 more years to settle it. The *A.T. & T.-Western Electric* case, recently initiated by my good friend and former colleague, Attorney General Saxbe, could take a decade because of unending litigation maneuvers. The Federal Trade Commission's staff on the big oil company case has informed the Commission that it may take 10 years to unravel that one.

Neither the Department of Justice nor the FTC has the manpower, the money or the muscle to take on any broad scale program to solve the present problems of economic market imbalance in this country. If we are looking for a study commission, let's get one to investigate the future role of the antitrust laws as protectors of the people against big business.

The commission bills before us would seem to just dance around the periphery of the problem of economic regulation, not go to the jugular, and thus to establish just another commission as they envisage would in fact be inflationary—spending a few more millions to learn what we already know.

But there are other bills considered here which are ready for immediate action. Here are things we can do positively, and now—or next year. These bills have come up the legislative route: Hearings, mark-ups, redrafting.

S. 704

For example, S. 704 provides for concurrent submission of independent regulatory commissions' budget requests and legislative recommendations to the Congress and OMB. It also permits commissions, in their discretion, to conduct their own litigation.

The initial version of this legislation was introduced in the 91st Congress. We held extensive hearings, before the Intergovernmental Relations Subcommittee, in the 92d Congress. In this Congress the Subcommittee on Budgeting, Management, and Expenditures has published a compendium on S. 704 which includes detailed commission comments and suggestions. Committee Print No. 1 of S. 704 has been modified to accord with suggestions from commissions.

S. 770

Another bill, S. 770, has also been the subject of extensive hearings, in the 91st and 92d Congresses, and consequent revision. S. 770 would require regulated companies to report specified information regarding capitalization, control, management, and operations. It provides for matching grants to State and local governments for representation of the interests of consumers of regulated services. And it establishes an independent office to represent the public before Federal and State regulatory agencies. However, and I emphasize this, the commissions could without legislation, without a study, collect, and make conveniently and quickly available the information items mentioned in title II of S. 770.

STATE REGULATION

I want to stress the importance of Federal and federally assisted participation in State regulatory proceedings. The Federal Government has intervened in State proceedings for a quarter of a century. However, to the extent that it intervenes, through the General Services Administration and Department of Defense, it represents the Government as the largest consumer of electricity, gas and communications services. Therefore, it traditionally argues alongside large industries before State commissions for a rate structure that benefits industrial users and the Federal Government, at the expense of residential and small commercial users. Consequently the Federal Government appears in opposition to a more equal rate structure and the curbing of demand through increased unit costs to large customers.

When we look at the prices and rates subject to regulation which are part of the typical family budget, we find that most of these escalating costs are subject to State, rather than Federal regulation. I am talking about the insurance payment, the electric bill, the phone bill, the gas bill. A recent Library of Congress study, which I shall ask to have included in the hearing record, shows that the industries in the four categories I just mentioned, part of almost every family's budget, receive about $150 billion in revenue annually. Almost 90 percent of those revenues are subject to State, rather than Federal regulation. I emphasize this point because Congress, the regulatory study commissions, the academic community and the press tend to flock, scratch and cluck at the independent Federal regulatory commissions. Meanwhile the plucking goes on before the State commis-

sions, which are no match for the hundreds of huge companies they are supposed to regulate.

As we listen and talk with witnesses, and subsequently decide what to do after the hearings, I believe it would be helpful to consider two categories of regulatory reform, each of which I shall mention briefly.

First, I believe we should identify and act on legislation where we now have a consensus, and where further study would only delay reform. I put S. 704, the Regulatory Commissions' Independence Act, in that category. The ranking minority member of this Committee, Senator Percy, is a co-sponsor of this legislation. The ranking minority member of the Intergovernmental Relations Subcommittee, Senator Gurney, was of great assistance in developing the case for this legislation during our hearings on its predecessor, S. 448, in the 92d Congress.

Secondly, we should identify those regulatory shortcomings where neither legislation nor study is necessary, but where either may but provide further procastration by commissions in doing jobs assigned them long ago by the Congress. Then we should encourage the commissions to get going.

We had some good examples this year, before Senator Muskie's and my subcommittees, of commission use of existing powers to improve the regulatory process. This was during our hearings on corporate disclosure. The chairmen of commission after commission came up and said that after review of the statutes they administer, and the pursuant regulations, they could and would collect basic information which they had not been obtaining, regarding ownership and control of the corporations these commissions regulate.

On this point, let the record show that the only independent regulatory commission which would be abolished under S. 3604—the Interstate Commerce Commission—has significantly improved its information program in several important respects. Perhaps the improvement results from the suggested abolition of the agency. Whatever the stimulus, the ICC has done more this year to improve its collection of data on corporate ownership and control than any other commission. Furthermore, the ICC had 1973 financial data for railroads available on microfilm by the end of August. In contrast, at least one commission hasn't published 1972 statistical data yet.

Information is the currency of power in Washington, as Ralph Nader noted in testimony in this hearing room a few years ago. That is why it is so important that the commissions themselves, without more delaying study, without new statutes, use the vast powers which Congress gave them long ago—including as necessary sanctions and subpoena power—and forthwith improve the accuracy, timeliness and convenient availability of information which they collect from regulated firms.

As a corollary issue, I would hope that each commission will reconsider its own policy regarding advance public notice of its agenda, and public access to commission proceedings. Chairman Ervin pointed out when he announced these hearings that in too many cases the industry regulated the agency, rather than the other way around. If the commissions wish to reject that subservient image, I know of no better way than by opening doors, so the public can walk in and see and hear what is going on, as the public may now do at many congressional mark-up sessions and Senate-House conferences.

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., April 23, 1974.

To: The Honorable Lee Metcalf. Attention Vic Reinemer.
From: Economics Division.
Subject: Data supporting Federal intervention into intrastate regulatory body proceedings.

I. SUMMARY

Data have been collected herein delineating the magnitude of regulated industries' annual business. It was possible to make estimates of revenues jurisdictional to Federal regulatory organizations in the areas of electricity, natural gas and telecommunications. Insurance is regulated exclusively at the state level. Segmenting the inter/intra state revenues of ICC and CAB regulated firms has proved impossible. An extensive check has been made here and it appears that the required reporting of regulated firms is such that Federal jurisdictional and non-jurisdictional revenues are reported together in a non-separable manner. Not even a meaningful guess can be made on the size of revenues earned by motorcarriers, airlines, and railroads under tariffs authorized by Federal regulators. In short, the transport sectors' inter/intra state revenues continue to be irreparably aggregated, and Federal regulatory bodies seemingly have little interest in the gross revenue performance of firms under their tariffs vis-a-vis under the tariffs of various State PUC's.

The table below highlights the role of Federal regulation and suggests impact on national income.

TABLE 1.—SUMMARY STATISTICS DESCRIBING RELATIONSHIP BETWEEN RATE REGULATED INDUSTRIES AND GNP

Regulated sector	Revenue (billions)	Percent GNP	Percent under Federal rate regulations
Electricity	$27.9	2.4	7.0
Natural gas	12.5	1.1	58.4
Telephone/telegraph	23.7	2.1	28.7
Insurance	85.8	7.4	0
Transportation	38.5	3.3	(1)

[1] Unknown.

Source: Survey of Current Business; FCC; Gas Facts; FPC.

II. ELECTRICITY

Under the Federal Power Act, the Federal Power Commission regulates the rates of power sold in interstate commerce. This amounts to only 15 percent [1] of total power sold. Because consumers per kwh bill includes distribution and other costs in addition to simple power cost, this 15 percent figure translates into about 7 percent [1] of consumers' electric bills. Gross revenue from electric utilities sales to ultimate customers in 1972, the latest year for which data are available, amounted to $27.9) [2] billion and the portion thereof resulting from sales under FPC tariff was $1.95 billion.

III. NATURAL GAS

The FPC also regulates the price of gas sold in interstate commerce as well as the rates charged by interstate gas transmission pipelines. About 70 percent [1] of produced gas enters interstate commerce and this had a 1972 value of $2.9B.[3] Interstate gas transmission companies' revenues were $7.3 billion [4] during that year and these monies include receipts for the gas sold under FPC regulated prices above. Gross receipts of all gas utilities totaled $12.5 billion [5] for 1972, and the assumption can be made that 58.4 percent are the portion stemming from sales under FPC tariff.

[1] Statement of John N. Nassikas, Chairman FPC. Hearings Before the Subcommittee on Consumer Economics. JEC, March 28, 1974.
[2] Survey of Current Business
[3] *Gas Facts*, table 27.
[4] *Gas Facts*, table 104.
[5] Ibid., table 80.

IV. TELEPHONE AND TELEGRAPH

There are over 60 telephone operating companies in the United States, one domestic telegraph carrier, and several relatively small international record carriers. We can, therefore, make the following tabulation.

TABLE II.—COMMUNICATION SUBJECT TO FEDERAL REGULATION

Carrier type	1972 receipts [1] (billions)	Amount under Federal rate regulation	Percent Federally regulated
Telephone companies	$23.1	6.3	27.3
Telegraph company	.4	.3	75.0
International record carriers	.2	.2	0

[1] Survey of Current Business.

Source: FCC Survey of Current Business.

V. INSURANCE

Insurance is regulated at the State level exclusively. State insurance departments are, in general, primarily concerned with the financial well-being of regulated firms. It is widely felt that consumer interests are badly represented in an industry whose net premium income[6] in 1972 totaled $46.5 billion for life and health insurance companies and $39.3 billion for property and liability insurance companies. $85.8 billion in combined revenue is the equivalent of 7.4 percent of 1972 GNP.

VI. TRANSPORTATION COMMON CARRIERS

Motor carriers, airlines and railroads are rate regulated by both State and Federal organizations but no separation along the lines of State and Federal tariff derived revenue can be made. In 1972 these industries derived the following gross operating revenues,[7] all under rates set by various regulatory bodies.

Transportation sector revenues

	[*In billions*]
Air carrier, domestic	$7,753
International	2.292
Motor carriers	15.038
Class I railroads	13.411
Total transportation sector	38.494

Source. Survey of Current Business.
3.3 percent of 1972 GNP originated in this sector.

Senator METCALF. I am delighted to see such a formidable group of regulatory agencies represented here. Certainly today and yesterday we have the greatest group of experts on regulation that I think have ever appeared before the Congress; they are men of considerable wisdom and innovation.

So I am not here to make a speech. I am here to listen to your suggestions and your ideas. The first witness is Mr. Ray Garrett, Jr. Chairman of the Securities and Exchange Commission. We are delighted to have you here and pleased to hear about some of the reforms you are making at the Commission without additional legislation. You do have a prepared statement, Mr. Garrett, and we would like to hear from you first.

[6] A. M. Best and Company, phone call.
[7] Survey of Current Business.

STATEMENT OF HON. RAY GARRETT, JR., CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. GARRETT. Thank you, Senator Metcalf. I have prepared a written statement. It is much too long to read on this occasion. I hope the entire statement will be incorporated in the record.

Senator METCALF. Yes, I will make a ruling at this time in the interest of time. I will not make it again. All statements will be submitted in their entirety for the record, will be printed in the record as if read, and the summary of the statements will also be printed as presented and propounded in oral testimony.

Mr. GARRETT. Thank you, sir. At this time, I would like to read a few extracts from my prepared statement.

Senator METCALF. Please do.

Mr. GARRETT. I appreciate this opportunity to testify on behalf of the Securities and Exchange Commission before this Committee on the general subjects of the functioning, effectiveness and independence of regulatory agencies, and on the five specific bills before you today.

Nearly 40 years ago, a former chairman of the Securities and Exchange Commission, and now a member of the U.S. Supreme Court, Mr. Justice Douglas, recommended to President Roosevelt that the agencies Roosevelt created should be abolished after 10 years of service. Mr. Justice Douglas apparently believed that, after 10 years, such agencies become too close to the groups they regulate, and thus no longer would be competent to serve the public interests that originally motivated their creation.

Needless to say, I do not believe that such a generalization is applicable to the Securities and Exchange Commission, if it is applicable at all. But, Mr. Justice Douglas' comment and recommendation serves to underscore the fact that the Congress, members of the independent regulatory agencies, and the courts are under a continuing mandate to prevent any erosion of the quality of performance or efficiency of independent regulatory agencies. For this reason, the Securities and Exchange Commission supports the legislation before this committee that would establish a National Commission on Regulatory Reform.

In addition to seeking our comments and views on the bills pending before this committee, we also received a list of 11 questions covering, in some detail, the broad subjects with which the pending legislative proposals deal. The legislative proposals and 11 questions seem to us to lend themselves to three broad categories. With the committee's permission, I propose generally to express the Commission's views on these broad topics. To the extent that we perceive any problems with the specific language of the legislation before you, these are noted in the discussion of the three broad issues set forth in my prepared statement.

The issues posed both by the legislation and questions, I believe, can be broken down as follows:

First, the effectiveness of the functioning of independent regulatory agencies. This topic is raised by S. 4145, S. 4167, and all or portions of each of the questions posed.

Second, whether the independence of the independent regulatory agencies should be strengthened or diminished. This issue is raised by S. 704, and portions of questions Nos. 5, 7, and 9.

And third, whether a separate Federal agency should be established to represent the interests of consumers of regulated services. This issue is raised by S. 770 and portions of question No. 5.

The Commission is not affected by, and does not intend to offer any comments on S. 3604, a bill which, if enacted, would abolish a number of agencies and offices and which would curtail some of the functions of other agencies.

The first issue posed is the effectiveness of independent regulatory agencies.

Measuring agency effectiveness is not a simple task. While, as I previously have noted, we support the adoption of legislation creating a National Commission on Regulatory Reform, I hope the committee will bear in mind, and the legislative history of S. 4145 will so reflect, that it is not possible to put all independent regulatory or other agencies in a uniform mold. And the establishment of a Commission with as broad a mandate as both S. 4145 and S. 4167 would confer could result in a final report that, due to time constraints, manpower limitations, and budget shortages, might treat all agencies alike, even though different agencies perform different functions.

Thus, unlike some agencies, we do not grant subsidies of the sort referred to in question No. 4. Nor are we engaged in the kind of licensing functions—those typical of agencies such as the Federal Communications Commission or the Federal Power Commission—that appear to underlie question No. 1. We do, of course, register a number of entities, such as national securities exchanges, brokers and dealers in securities, investment companies and investment advisers; but, aside from statutory disqualifications, predicated generally upon prior wrongful conduct or lack of adequate financial protections for investors, almost any person may register with us. Much of our work is directed toward insuring that appropriate disclosures to investors are made by entities subject to our jurisdiction, and that dishonest, unfair, or otherwise improper market practices are prevented or corrected.

The large bulk of our work, however, at least currently, is to operate in a quasi-legislative capacity to prescribe rules governing the efficiency and future functioning of the marketplace for securities, and the professionals who operate in it.

In the performance of these functions, the collegial form of commission is, in our view, vastly superior to a single administrator. The diverse viewpoints and experiences of our five-member Commission certainly serve to insure that our decisions reflect consideration of all possible ramifications of proposed courses of action.

The benefits of this process are difficult to overstate. I suppose it is essentially similar to the situation this committee and all other congressional committees must face. One-man committees might, in some instances, produce legislation far more rapidly than now occurs, but the process would seriously destroy the fine balancing and careful consideration of all viewpoints that generally are reflected in final legislative decisions of the Congress.

Perhaps more importantly, the collegial commission in our case serves to insure appropriate independence. In 1971, this was the essential conclusion of the President's Advisory Council on Executive Organization, although that report suggests that such independence of the SEC from the President is unfortunate.

Indeed, it should be noted that over the last 3 years this Commission has been the subject of intensive scrutiny, in separate studies, by subcommittees in both the Senate and House charged with jurisdiction over our performance and the substantive laws we administer. While some conclusions reached as a result of those studies are similar to the ones upon which the legislation pending before this committee apparently is predicated, no suggestion was made by either subcommittee to transform the SEC into a single administrator agency.

Although our effectiveness, functioning, procedures, statutory mandate, and substantive jurisdiction recently have been the subject of two congressional studies by subcommittees familiar with the nature of our functions and mode of our operations, if this committee believes a further review of these matters is necessary or appropriate, we certainly can and do support appropriate legislation to that effect.

We are not aware, generally, of any significant deficiencies within our regulatory processes which end to lessen competition, adversely affect the public and regulated companies, or contribute to inflation. Indeed, in one significant area—the operation of our markets—we are currently taking steps to increase the effective operation of competition. It is true, as I have noted, that the two subcommittees on the Congress that have made an intensive study of this Commission and its substantive jurisdiction, have proposed some substantial revisions of our mandate and the standards pursuant to which we comply with that mandate, in order to give greater effect to competitive policies generally and in order to streamline some of the procedures pursuant to which we may take regulatory action.

While we are unaware of any adverse effects on inflation our regulatory processes may have had, there is no question that the reporting, disclosure, and other burdens imposed on various publicly held comapnies may result in greater costs of operations for those entities. Nevertheless, the Congress, starting in 1934 and continuing for the 40 years since then, has continued to reaffirm the basic conclusion that the benefits to the investing public from the disclosure and other requirements we have imposed upon these companies pursuant to the statutes we administer necessarily outweigh any costs associated with compliance with these requirements by the companies involved. We have not, however, been unmindful of the cost burden that some of our regulations may impose, and, to this effect, we have recently proposed regulations which would attempt to free smaller companies from some of the more costly and onrous reporting requirements without adversely affecting public investors, and we are continuing to explore whether other steps can be taken in this general direction.

There are, to be sure, certain areas within our substantive jurisdiction which may present overlapping jurisdiction or duplication of interests by this Commission and other agencies. On the whole, where such duplication has appeared to be unnecessary, Congress has generally acted to insure that some of this duplication is eliminated or curtailed.

Thus, for example, Congress recently enacted legislation providing for a new Commodity Futures Trading Commission, which would regulate certain interests in commodities that also may be considered to be securities and which, in the absence of effective regulation by some other entity, had been regulated to a limited extent by this Commission.

In another vein, the Commission and the Antitrust Division of the Depatment of Justice have frequently had differing views as to the best way of promoting meaningful competition within the securities industry. We have, as a general matter, tended to accomodate some of our actions to the views of the Antitrust Division when it does not appear that such an accommodation would conflict with regulatory goals embodied in the Securities Exchange Act of 1934 or the other acts we administer. Despite the fact that it might prove less costly if there were only one Government viewpoint on such matters, we believe the public interest has been furthered by the existence of these disparate views.

The second major issue posed is the extent of the independence of independent regulatory agencies.

At the outset, I should note that, as this committee is aware, on October 29 of this year, President Ford signed into law H.R. 11221. Section 111 of that bill effectively precludes any U.S. officer or agency from requiring certain agencies, including this Commission, to submit legislative recommendations, testimony or comments to any U.S. officer or agency, for approval, comments or review, prior to the submission of those legislative materials to the Congress. With respect to this agency, that provision of H.R. 11221 appears to accomplish all the purposes of section 3 of S. 704.

The extent of the independence of a regulatory agency, such as this Commission——

Mr. TURNER. Mr. Chairman, may I ask a question on that one point?

Senator METCALF. Would you mind?

Mr. GARRETT. Certainly not.

Senator METCALF. Mr. Turner wants to ask you a question on this specific point.

Mr. TURNER. Just so we do not forget it in the course of the following questions.

Was that specific legislative mandate that you read directed to the Securities and Exchange Commission or to certain identified commissions, or was that to be applied across-the-board?

Mr. GARRETT. It expressly includes the Securities and Exchange Commission and certain other federal agencies.

Mr. TURNER. Would it be your judgement that H.R. 11221 is as expansive as S. 704 in its mandate?

Mr. GARRETT. I cannot answer that question from my memory. I have the statute, and I can look it up while the others are talking.

Senator METCALF. As expansive as section 3 of 704, because 704 relates to some other matters, too?

Mr. GARRETT. On this matter, certainly with respect to our Commission, we construe H.R. 11221 as being as expansive.

The extent of the independence of a regulatory agency, such as this Commission, which serves by appointment and not by public election, is a matter requiring some careful balancing. Since the agency is part

of the "Federal Government", it shoudl not engage in conduct that may contravene established national policies or priorities, at least not without a full understanding of those policies or priorities and not without consulting with, or obtaining the views of, other interested agencies, where appropriate.

It does not necessarily compromise an agency's independence if it considers such diverse viewpoints and weighs other, competing or relevant national interests. Nor is a cooperative relationship with regulated entities necessarily indicative of a lack of independence, as question nine seems to suggest. The ability, speedily and, often, informally, to effect necessary programs in the public interest has long been recognized as the cornerstone of effective functioning by administrative agencies.

Of course, this Commission's specific mandate is to uphold the interest of investors. To that end, private interests cannot be exalted over the public interest and the policies of any administration cannot be given full effect if inconsistent with our statutory mandate.

Over the years, this Commission has enjoyed a fine and productive working relationship with both the executive and legislative branches of government. Changes in the extent and nature of congressional oversight of this agency, and the articulation of new statutory standards and policy guidelines are now embodied in the securities legislation pending before the Congress, which we strongly endorse. But, aside from these new legislative provisions, we do not see a need for any further expansion of the degree or extent of congressional oversight or the need for any enunciation of new policy guidelines.

S. 704, of course, proposes to curtail further the extent to which the executive branch of government may exercise a controlling influence over our budgetary requests and allocations. It would, if enacted, require us to submit our budget requests directly to the Congress, and concurrently to the President or the Office of Management and Budget.

As we have stated on prior occasions, in connection with other legislative proposals, we have no objection to such a provision. And, since section 111 of H.R. 11221, which I have already discussed briefly, refers to all legislative submissions by our agency, it may be that the current practice of submitting to the office of Management and Budget, prior to Congress, our budget request is now prohibited.

I should like to note, however, that the Office of Management and Budget has a significant and vital function to perform in reconciling individual agency budget requests with overall national economic concerns and administration fiscal policies. Its advice and assistance, both to the Congress and individual agencies, is, therefore, something that should be preserved and encouraged.

Senator METCALF. If you would pardon an interruption again, Mr. Garrett, some of this, of course, is taken care of by the new budget procedure that resulted from the enactment of the budget legislation. There is going to be, hopefully at least, a continuous parallel input into the Congress as well as to the OMB. With your agency as well as the others, we hope to work together so that the Congress, OMB and the new Congressional Office of the Budget receive the information from the various agencies at the same time.

So I think this is an important item to stress, that certainly OMB has a significant duty to perform in the overall problem, but certainly

the congressional quasi-legislative bodies, such as the regulatory commissions, should come up here with free and open ability to express their needs to the Congress. I hope that not only as a result of the legislation but as a result of the new Congressional Office of the Budget, you people will be able to come and tell your story without interference from OMB.

Mr. GARRETT. We are confident that it will work well, Senator. As a matter of fact, the subcommittees to which we report always have known what we requested from OMB anyway.

Senator METCALF. We are not trying to downgrade the importance or the significance of OMB in the overall management of our fiscal policy. We just want to know, too, when our agencies are involved.

Mr. GARRETT. We understand.

Senator METCALF. Thank you for letting me interrupt.

Mr. GARRETT. Finally, S. 704 would amend the Securities Exchange Act of 1934 to provide that this Commission may conduct, supervise and control any civil action in its own name. We already are authorized, of course, to bring civil enforcement actions in our own name and by our own attorneys in Federal district and appellate courts.

This provision of S. 704 also would, apparently, extend the Commission's conduct of civil litigation in its own name and by its own attorneys to Supreme Court civil litigation, litigation now supervised by the Solicitor General. We do not object to the provision giving us this authority, but this committee should be aware that a similar provision of law was stricken from the securities legislation now pending before the House of Representatives, H.R. 5050, and that the Solicitor General generally has been most helpful to us in the conduct of litigation in the Supreme Court.

Question 5, posed by this committee, inquires whether changes should be made in this Commission's authority to conduct court litigation now exclusively conducted by the Department of Justice. Aside from the matters I have just discussed, the only remaining area of law encompassed by this question is the prosecution of criminal actions for violations of the Federal securities laws. Although these criminal actions involve the same substantive sections of the Federal securities laws as are involved in the civil actions which the Commission supervises, the Justice Department has the exclusive right to determine when and whether criminal actions based upon securities violations will be brought; and, if brought, the Justice Department has full responsibility for prosecuting these actions.

Our attorneys have, however, on numerous occasions, actually litigated criminal proceedings with attorneys for the Department of Justice, and we have litigated, through our own attorneys, actions for criminal contempt. We do not seek any change in this basic relationship between the Commission and the Department of Justice. S. 704 would not change the present state of the law and we do not urge that it do so.

I will conclude my opening statement at this point, Senator Metcalf. The remainder of my written statement has to do with representation of the interests of consumers of regulated services in proceedings before independent regulatory agencies and the need for increased public access to information concerning the operations of such agencies.

[The prepared statement of Hon. Ray Garrett, Jr., follows:]

PREPARED STATEMENT OF RAY GARRETT, JR., CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. Chairman, members of the committee, I appreciate this opportunity to testify, on behalf of the Securities and Exchange Commission, before this Committee on the general subject of the functioning, effectiveness and independence of regulatory agencies, and on the five specific bills before you today.

Nearly forty years ago, a former Chairman of the Securities and Exchange Commission, and now a member of the United States Supreme Court, Mr. Justice Douglas, recommended to President Roosevelt that the agencies Roosevelt created should be abolished after ten years of service. Mr. Justice Douglas apparently believed that, after ten years, such agencies become too close to the groups they regulate, and thus no longer would be competent to serve the public interests that originally motivated their creation.[1]

Needless to say, I do not believe that such a generalization is applicable to the Securities and Exchange Commission, if it is applicable at all. But, Mr. Justice Douglas' comment and recommendation serves to underscore the fact that the Congress, members of the independent regulatory agencies and the courts are under a continuing mandate to prevent any erosion of the quality of performance or efficiency of independent regulatory agencies. For this reason, the Securities and Exchange Commission supports the legislation before this Committee that would establish a National Commission on Regulatory Reform.

In addition to seeking our comments and views on the bills pending before this Committee, we also received a list of eleven questions covering, in some detail, the broad subjects with which the pending legislative proposals deal. The legislative proposals and eleven questions seem to us to lend themselves to three broad categories. With the Committee's permission, I propose generally to express the Commission's views on these broad topics. To the extent that we perceive any problems with the specific language of the legislation before you, I shall note these in the course of my discussion of the three broad issues.

The issues posed both by the legislation and the questions, I believe, can be broken down as follows:

First, the effectiveness of the functioning of independent regulatory agencies. This topic is raised by S. 4145, S. 4167 and all or portions of each of the questions posed.

Second, whether the independence of the independent regulatory agencies should be strengthened or diminished. This issue is raised by S. 704, and portions of questions five, seven and nine.

Third, whether a separate federal agency should be established to represent the interests of consumers of "regulated services." This issue is raised by S. 770, and portions of question five.

The Commission is not affected by, and does not intend to offer any comments on S. 3604, a bill which, if enacted, would abolish a number of agencies and offices and which would curtail some of the functions of other agencies.

THE EFFECTIVENESS OF INDEPENDENT REGULATORY AGENCIES

The first issue posed is the effectiveness of independent regulatory agencies.

Measuring agency effectiveness is not a simple task. While, as I previously have noted, we support the adoption of legislation creating a National Commission on Regulatory Reform, I hope the Committee will bear in mind, and the legislative history of S. 4145 will so reflect, that it is not possible to put all independent regulatory or other agencies in a uniform mold. And, the establishment of a Commission with as broad a mandate as both S. 4145 and S. 4167 would confer, could result in a final report that, due to time constraints, manpower limitations and budget shortages, might treat all agencies alike, even though different agencies perform different functions.

Thus, unlike some agencies, we do not grant subsidies of the sort referred to in question four. Nor are we engaged in the kind of licensing functions—those typical of agencies such as the Federal Communications Commission or the Federal Power Commission—that appear to underlie question one. We do, of course, register a number of entities, such as national securities exchanges, brokers and dealers in securities, investment companies and investment advisers; but, aside from statutory disqualifications, predicated generally upon prior wrongful conduct or lack of adequate financial protections for investors, almost any person may register with us. Much of our work is directed toward insuring that appropriate

[1] Douglas, Go East Young Man, at p. 297 (1974).

disclosures to investors are made by entities subject to our jurisdiction, and that dishonest, unfair or otherwise improper market practices are prevented or corrected.

The large bulk of our work, however, at least currently, is to operate in a quasi-legislative capacity to prescribe rules governing the efficiency and future functioning of the marketplace for securities, and the professionals who operate in it.

In the performance of these functions, the collegial form of commission is, in our view, vastly superior to a single administrator. The diverse viewpoints and experiences of our five-member Commission certainly serve to insure that our decisions reflect consideration of all possible ramifications of proposed causes of action. The benefits of this process are difficult to overstate. I suppose it is essentially similar to the situation this Committee, and all other Congressional committees must face. One-man committees might, in some instances, produce legislation far more rapidly than now occurs, but the process would seriously destroy the fine balancing and careful consideration of all viewpoints that generally reflect final legislative decisions of the Congress.

Perhaps more importantly, the collegial commission in our case serves to insure appropriate independence. In 1971, this was the essential conclusion of the President's Advisory Council on Executive Organization,[2] although that report suggests that such independence of the SEC from the President is unfortunate.[3]

Indeed, it should be noted that, over the last three years, this Commission has been the subject of intensive scrutiny, in separate studies, by subcommittees in both the Senate and House charged with jurisdiction over our performance and the substantive laws we administer. While some conclusions reached as a result of those studies are similar to the ones upon which the legislation pending before this Committee apparently is predicated, no suggestion was made by either subcommittee to transform the SEC into a single administrator agency.

This agency is necessarily quite proud of the fine reputation it has earned over the years. Although our effectiveness, functioning, procedures, statutory mandate and substantive jurisdiction recently have been the subject of two Congressional studies by subcommittees familiar with the nature of our functions and mode of our operations, if this Committee believes a further review of these matters is necessary or appropriate, we certainly can and do support appropriate legislation to that effect.

As I have indicated, however, it is our hope that the proposed new Commission will be given enough time and resources to consider the special features and functions of each of the agencies whose performance it will review; and it is important that the results of the study on which this National Commission on Regulatory Reform would embark are not determined in advance of the actual inquiry to be made.[4]

A number of the other questions posed by the Committee seek responses to some of the substantive issues into which we assume any new National Commission on Regulatory Reform will inquire. Time necessarily prohibits an extensive discussion of some of these matters, although we remain willing to supply the Committee with as detailed a written response as it may request. For present purposes, however, it seems sufficient to note briefly the following points:

We are not aware, generally, of any significant deficiencies within our regulatory processes which tend to lessen competition, adversely affect the public and regulated companies, or contribute to inflation. Indeed, in one significant area—the operation of our markets—we are currently taking steps to increase the effective operation of competition. It is true, as I have noted, that the two subcommittees on the Congress that have made an intensive study of this Commission and its substantive jurisdiction have proposed some substantial revisions of our mandate and the standards pursuant to which we comply with that mandate, in oder to give greater effect to competitive policies generally and in order to streamline some of the procedures pursuant to which we may take regulatory action.

As a general matter, I should emphasize that the more procedural "red tape" that is imposed upon independent regulatory agencies, the more difficult it is for an agency to get its job done fairly and with dispatch. This does not mean that an

---

[2] President's Advisory Council on Executive Organizaton, *A New Regulatory Framework: Report on Selected Independent Regulatory Agencies* 102-103 (1971)

[3] *Id.*, at p. 103. As that report there concluded: "Even though the executive branch exercises some control over the agency through the budget submission process, a President is not inclined to support an agency vigorously when he has little or no responsibility for its direction."

[4] In any event, if such a study is to be made of the Commission, we believe the use of a new National Commission, as both S. 4145 and S. 4167 propose, is preferable to a special joint committee on the Congress, as suggested by question ten.

agency can or should ignore basic notions of due process, but it does suggest that, to the extent due process is afforded, additional procedural frills and restrictions should be avoided wherever possible.

While we are unaware of any adverse effects on inflation our regulatory processes may have had, there is no question that the reporting, disclosure and other burdens imposed on various publicly-held companies may result in greater costs of operations for those entities. Nevertheless, the Congress, starting in 1934 and continuing for the 40 years since then, has continued to reaffirm the basic conclusion that the disclosure and other requirements we have imposed upon these companies pursuant to the statutes we administer necessarily outweigh any costs associated with compliance with these requirements by the companies involved. We have not, however, been unmindful of the cost burden that some of our regulations may impose, and, to this effect, we have recently proposed regulations which would attempt to free smaller companies from some of the more costly and onerous reporting requirements without adversely affecting public investors, and we are continuing to explore whether other steps can be taken in this general direction.

There are, to be sure, certain areas with our substantive jurisdiction which may present overlapping jurisdiction or duplication of interests by this Commission and other agencies. On the whole, where such duplication has appeared to be unnecessary, Congress has generally acted to insure that some of this duplication is eliminated or curtailed.

Thus, for example, Congress recently enacted legislation providing for a new Commodity Futures Trading Commission, which would regulate certain interests in commodities that also may be considered to be securities and which, in the absence of effective regulation by some other entity, had been regulated by this Commission.

In another vein, the Commission and the Antitrust Division of the Department of Justice have frequently had differing views as to the best way of promoting meaningful competition within the securities industry. We have, as a general matter, tended to accommodate some of our actions to the views of the Antitrust Division when it does not appear that such an accommodation would conflict with regulatory goals embodied in the Securities Exchange Act of 1934 or other Acts we administer. Despite the fact that it might prove less costly if there were only one government viewpoint on such matters, we believe the public interest has been furthered by the existence of these disparate views.[5]

Finally, I should like to note that the two bills pending before this Committee which would created a National Commission on Regulatory Reform contain some ambiguities which we would like to see clarified.

As you know, both legislative proposals would authorize the new National Commission not only to hold hearings and subpoena witnesses and documents but to utilize advisory committees to perform any of the specific functions the National Commission believes should be performed in that manner. We, of course, intend to cooperate fully both with any National Commission that is created and any advisory committees that are appointed. Nevertheless, it is possible that, in the performance of their functions, either body might seek to obtain information from this Commission which might contain market-sensitive information or information which should otherwise not be publicly disclosed.

While the legislation before this Committee attempts to preserve the confidentiality of documents turned over to the National Commission or its advisory committees, we would prefer it if the legislation were amended to make clear that any document which this agency otherwise could withhold from disclosure, or any document containing information which, if prematurely disclosed, might have an adverse impact on the markets for securities or the professionals or entities operating in those markets, shall not be subject to disclosure by the National Commission or its advisory committees.

---

[5] Question three posed by the Committee raises the question whether there are certain additional substantive matters that are now not regulated but which should be. Once again the extensive studies recently completed by two Congressional subcommittees have resulted in meaningful proposals for new legislation to give this Commission, or other existing agencies, authority to deal with significant problems that heretofore have been unregulated or underregulated. Thus, there is pending before the Congress now S. 2474, which would give this Commission and certain federal bank agencies jurisdiction over persons who are dealers in municipal securities.

Similarly, we are currently exploring with these same Congressional committees additional legislation designed to give us greater jurisdiction over the conduct and activities of financial analysts and investment advisers.

STRENGTHENING OR DIMINISHING THE INDEPENDENCE OF INDEPENDENT REGULATORY AGENCIES

The second major issue posed is the extent of the independence of independent regulatory agencies.

At the outset, I should note that, as this Committee is aware, on October 29 of this year, President Ford signed into law H.R. 11221. Section 111 of that bill effectively precludes any United States officer or agency from requiring certain independent agencies, including this Commission, from submitting legislative recommendations, testimony or comments to any United States officer or agency, for any purpose, prior to the submission of those legislative materials to the Congress. With respect to this agency, that provision of H.R. 11221 appears to accomplish all the purposes of Section 3 of S. 704.

The extent of the independence of a regulatory agency, such as this Commission, which serves by appointment and not by public election, is a matter requiring some careful balancing. Since the agency is part of the "federal government," it should not engage in conduct that may contravene established national policies or priorities, at least not without a full understanding of those policies or priorities and not without consulting with, or obtaining the views of, other interested agencies, where appropriate. It does not necessarily compromise an agency's independence if it considers such diverse viewpoints and weighs other, competing or relevant national interests.

Nor is a cooperative relationship with regulated entities necessarily indicative of a lack of independence, as question nine seems to suggest. The ability, speedily and, often, informally, to effect necessary programs in the public interest has long been recognized as the cornerstone of effective functioning by administrative agencies.[6]

Of course, this Commission's specific mandate is to uphold the interests of investors. To that end, private interests cannot be exalted over the public interest. And the policies of any Administration cannot be given full effect if inconsistent with our statutory mandate.

Over the years, this Commission has enjoyed a fine and productive working relationship with both the executive and legislative branches of government. Changes in the extent and nature of congressional oversight of this agency, and the articulation of new statutory standards and policy guidelines are now embodied in the securities legislation pending before the Congress, which we strongly endorse. But, aside from these new legislative provisions, we do not see a need for any further expansion of the degree of extent of Congressional oversight or the need for any enunciation of new policy guidelines.

S. 704, of course, proposes to curtail further the extent to which the executive branch of government may exercise a controlling influence over our budgetary requests and allocations. It would, if enacted, require us to submit our budget requests directly to the Congress, and concurrently to the President or the Office of Management and Budget.

As we have stated on prior occasions, in connection with other legislative proposals,[7] we have no objection to such a provision. And, since Section 111 of H.R. 11221, which I have already discussed briefly, refers to all legislative submissions by our agency, it may be that the current practice of submitting to the Office of Management and Budget, *prior* to Congress, our budget requests is now prohibited. I should like to note, however, that the Office of Management and Budget has a significant and vital function to perform in reconciling individual agency budget requests with overall national economic concerns and Administration fiscal policies. Its advise and assistance, both to the Congress and individual agencies, is, therefore, something that should be preserved and encouraged.

Finally, S. 704 would amend the Securities Exchange Act of 1934 to provide that this Commission may conduct, supervise and control any civil action in its own name. We already are authorized, of course, to bring civil enforcement actions in our own name and by our own attorneys in federal district and appellate courts. The proposal before you, however, apparently would make clear, among other things, that, when the Commission, its members, or its staff are sued, the action may be defended by our own attorneys. This has generally been our arrangement

---

[6] *See generally* Attorney General's Comm. on Administrative Procedure, *Administrative Procedure in Government Agencies*. S. Doc. No. 8, 77th Cong., 1st Sess. 7–33 (1941).

[7] Hearings Before the Subcommittee on Commerce and Finance of the House of Representatives Committee on Interstate and Foreign Commerce on H.R. 5050 and H.R. 340, 93d Cong., 1st Sess., Ser. No. 93–50, at p. 118 (1973).

with the Department of Justice, and we support the provision of S. 704 which would codify that arrangement.

This provision of S. 704 also would, apparently, extend the Commission's conduct of civil litigation in its own name and by its own attorneys to Supreme Court civil litigation, litigation now supervised by the Solicitor General. We do not object to the provision giving us this authority, but this Committee should be aware that a similar provision of law was stricken from the securities legislation now pending before the House of Representatives (H.R. 5050), and that the Solicitor General has generally been most helpful to us in the conduct of litigation in the Supreme Court.

Question five, posed by this Committee, inquires whether changes should be made in this Commission's authority to conduct court litigation now exclusively conducted by the Department of Justice. Aside from the matters I have just discussed, the only remaining area of law encompassed by this question is the prosecution of criminal actions for violations of the federal securities laws. Although these criminal actions involve the same substantive sections of the federal securities laws as are involved in the civil actions which the Commission supervises, the Justice Department has the exclusive right to determine when and whether criminal actions based upon securities violations will be brought; and, if brought, the Justice Department has full responsibility for prosecuting these actions.

Our attorneys have, however, on numerous occasions, actually litigated criminal proceedings with attorneys for the Department of Justice, and we have litigated, through our own attorneys, actions for criminal contempt. We do not seek any change in this basic relationship between the Commission and the Department of Justice. S. 704 would not change the present state of the law and we do not urge that it do so.

Representation of the Interests of Consumers of "Regulated Services"

The third major issue posed by this legislation and the Committee's questions concerns the need for increased public access to information concerning the operations of independent regulatory agencies and the need for greater public or consumer participation and representation in proceedings before such agencies.

In general, we believe that existing procedures provide adequate public access to information concerning the operations of the Securities and Exchange Commission. Nevertheless, the Commission recognizes that, as the volume of information increases exponentially, more efficient data gathering and disseminating techniques must be employed.

In this regard, Title III of S. 770 would require federal agencies to make full use of automatic data processing in preparing information. While the Commission presently makes extensive use of automatic data processing techniques and equipment to perform our information gathering and dissemination functions, we believe that the increased use of modern methods and equipment, as would be required by the bill, will help to assure greater and more timely public access to information concerning our activities. For this reason, we fully support Title III of S. 770.

Question five, posed by the Committee, suggests that increased public intervention in agency proceedings is desirable. The Commission does not completely agree with this proposition. While, as a general matter, we encourage public or consumer representatives to express their views in proceedings before the Commission, absolute rights of intervention may be used, in a deleterious manner, merely to delay the timely completion of the proceeding. In order to avoid such undesirable results, this Commission generally limits intervention by private parties in its adjudicatory proceedings to persons who are able to demonstrate that their participation as parties with all the rights attendant thereto, will be in the public interest, and that limited participation, through leave to be heard, would not be adequate to protect their interests.

In this connection, I should like to refer, for a moment, to S. 770.

S. 770 would establish a separate independent agency, the Office of Consumers' Counsel for Regulated Services (the "Counsel"), which, *inter alia*, would be authorized to represent the interests of consumers of regulated companies before state and federal agencies, and in the courts. In addition, the bill would provide for improved methods of obtaining and disseminating information with respect to the operations of certain regulated companies to consumers, through the Counsel. With respect to companies under the jurisdiction of the Securities and Exchange Commission, however, the bill would apply only to those regulated under the Public Utility Holding Company Act of 1935 ("Holding Company Act").

The "interests of consumers of regulated services" typically are affected only derivatively by proceedings under the Holding Company Act. The Commission has no jurisdiction to regulate rates and service to consumers; such jurisdiction rests with state or regulatory authorities or the Federal Power Commission. Instead, in administering the Holding Company Act, we deal mainly with matters concerning the financing requirements of companies subject to that Act. In this important area, the Holding Company Act imposes standards designed to safeguard a utility's overall financial integirty and viability.

These safeguards include the maintenance of a sound capital structure; a prohibition against the sale of securities which are not reasonably adapted to a utility's earning power or not appropriate to its economical and efficient operation; and a prohibition against the payment of unreasonably high fees, commissions, remunerations, etc., in connection with the sale of securities. To the extent that these and related objectives are achieved through our administration of the Holding Company Act, the interest of consumers is thereby served, and thus affected, although indirectly.

In some cases under the Holding Company Act, however, the interests of consumers may be affected more directly, as, for example, when a municipally-owned electric or gas system is proposed to be acquired by a neighboring utility company subject to the Act. In such cases, a public hearing may be held, and participation therein by interested persons, particularly representatives of the public, is welcomed and traditionally has been liberally granted by the Commission. Accordingly, the Commission would be pleased to have the opportunity to receive the views of the Counsel on matters or controversies arising under the Holding Company Act.

But, while we would welcome participation by the Counsel in Holding Company Act proceedings in most instances, we are troubled by the provisions of S. 770 which apparently would give the Counsel an absolute right to intervene or to appear as a party in all such proceedings, and to initiate proceedings.

In certain types of proceedings under the Holding Company Act, particularly those involving financing applications by registered holding companies, the delays likely to result from intervention as a matter of right by a third party could cause the subject matter of the proceedings to become moot. In such proceedings, time is of the essence.

Financing applications generally are filed according to a precise schedule, carefully designed to enable the applicant to meet its financing needs under the most favorable market conditions possible. For example, a utility generally will seek to make sure that its securities do not come to market at the same time that securities of another utility or large industrial company are to be offered to the public. Thus, delays occasioned by the intervention of a third party, such as the Counsel, in these proceedings could not only serious impair a holding company's ability to obtain capital at times critical to its financial health, but also could cause a company to miss favorable market conditions.

Also troublesome is that portion of the bill which would give the Counsel the power to initiate proceedings generally under the Holding Company Act and to initiate appeals from such proceedings. We strongly object to vesting such broad and undefined authority in any person or entity. Under the Holding Company Act, such power may enable the Counsel, for example, to initiate a proceeding designed to require a regulated company to divest itself of certain holdings; to deny or revoke an exemption previously granted; or to require a regulated company to restructure its capitalization.

Whether to initiate such proceedings, we believe, should be exclusively within the discretion of the Commission. We believe that it is unnecessarily duplicative and an inefficient employment of government resources to empower another agency to do precisely what our mandate under the Holding Company Act calls on us to do—protect investors and consumers. In this context, we would not object to empowering the Counsel to petition the Commission to institute proceedings subject, of course, to our discretion whether such a proceeding would be necessary or appropriate.

For the foregoing reasons, the Commission believes it essential that S. 770 be modified to permit the Securities and Exchange Commission to retain its discretion whether to grant interested persons, including the Counsel, the right to intervene or appear as parties in proceedings under the Holding Company Act.

Aside from the specific objections noted above concerning the Counsel's right to intervene in or to initiate any Holding Company Act proceeding or appeal

relating thereto, I should like also to express my doubts as to the feasibility of expecting one man or one entity to represent effectively all consumers' interests. As a general matter, consumers are not a unified group of which all members have the same interest. For example, an industrial consumer may have quite different interests than an individual. And, for that matter, an individual living in a rural area may not need or desire the same action that an individual resident in an urban or metropolitan area would consider advantageous.

Notwithstanding these general caveats, to the extent that participation in our proceeding by interested third parties will help us to reach results which we believe to be in the public interest and consistent with our statutory mandate, without causing unnecessary and undesirable delays, we would support any effort to provide such participation.[8]

Title II of S. 770 would require regulated companies to furnish certain information and reports to the Counsel. In this connection, we wish to point out that, to a significant extent, the information called for by Title II is already available, or may be readily derived, from information required by the Commission through various filings under the Holding Company Act, although not necessarily in the same form as prescribed by Title II.

Among other things, Title II of the bill would require a regulated company to furnish to the Counsel, under penalty of civil and criminal sanctions, the name and address of each person, who, directly or indirectly, or acting through others, has the power to vote one percent or more of various classes and types of a company. I should like to point out that, the laws of the various States presently permit securities to be held in street or nominee name, and thus it would be exceedingly difficult, if not impossible, for regulated companies to obtain the information with respect to their shareholders necessary to comply with these reporting requirements.

Whether existing laws should be changed to enable issuers to determine precisely who beneficially holds significant portions of these securities raises broader policy questions than this bill is designed to reach. Among other things, such a provision would require an evaluation of existing procedures utilized for processing securities transactions on national securities exchanges and in the over-the-counter markets. These questions should not be answered only with respect to regulated companies but generally to all companies which are publicly-owned or have significant public debt securities outstanding, and should be answered in securities legislation. The Commission presently is conducting hearings to determine what action, if any, we should take, within our existing authority, to deal with this question.

I hope that this discussion is responsive to the broad issues you have raised. I shall endeavor to respond to any inquiries the Committee may have.

Senator METCALF. Let's hear from all members of the panel.

Our next witness is Mr. John Nassikas, an old friend of this committee and a man whose administration of the Federal Power Commission has gained, as far as this chairman is concerned, a considerable new activity on the committee. He has brought some of Justice Douglas' idea that these commissions should be discontinued after 10 years.

So we are delighted to have you before us again. Sometimes we agree and sometimes we disagree, but it has always been a useful, and I think helpful, dialogue.

Mr. Nassikas?

---

[8] Another aspect of the bill which is potentially troublesome is Section 102(a)(1), which would authorize the Counsel to establish uniform rules of accounting for any class or classes of companies about which information would be required to be obtained pursuant to the bill. While we appreciate Congress' desire to grant the Counsel authority to attain comparability in financial reporting, the bill should make clear that any accounting rules the Counsel establishes will not affect the form of financial disclosures required of the same companies by the SEC. The Commission would hope to avoid duplicative reporting by regulated companies, but, our primary mandate is to protect public investors. Accordingly, the Commission must retain its existing authority with respect to accounting rules, even if our accounting requirements are not consistent with uniform rules developed by the Counsel.

STATEMENT OF HON. JOHN N. NASSIKAS, CHAIRMAN, FEDERAL POWER COMMISSION

Mr. NASSIKAS. Thank you, Mr. Chairman. I'll present my views on the bills under consideration and I will paraphrase my statement. You will forgive me for the voice I have today. It is just that I have a little cold.

I testified on Senate Joint Resolution 253 in hearings this past Wednesday. This bill would create a National Commission on Regulatory Reform for the purpose of evaluating the impact on the economy of the independent regulatory agencies. S. 4145 is the administration's proposal to achieve the same objectives. It was submitted to the Congress by the President following his joint address to the Congress on October 8.

As I indicated in the Senate Commerce Committee hearings, I support the creation of a National Commission. I believe such a commission can assist our efforts to resolve the Nation's severe economic difficulties. It is my view, however, that the National Commission should complete its work expeditiously, preferably as close as possible to the 1 year timeframe specified in S. 4145. Also, the creation of a National Commission on Regulatory Reform should not be used as a justification for further delay in the formulation of a national energy policy, or for that matter, for taking action on other important business.

And I might add parenthetically here, that while I oppose S. 770, the Consumers Information and Counsel Act, I do not think that action on that bill should be delayed pending some further study by the Regulatory Reform Commission. I think it ought to be voted up or down as fast as possible. Specifically, as I say in my statement, I am concerned that the opponents of the administration's proposed deregulation of new natural gas supplies could use the National Commission's investigation as an excuse for further delay of the proposal.

The President made it clear in the same message in which he proposed the National Commission that deregulation is his number one legislative priority in the energy sector. He did not intend his proposal for a National Commission, I am sure, to conflict in any way with congressional action on his substantive energy proposals.

It is also my view that the National Commission should take full advantage of the reorganizational studies, and I am sure they will, that have preceded it such as the recent work of the Ash Council as well as earlier studies going back to the Hoover studies. Needless delay should not be tolerated in reassembling data and information where these earlier studies are relevant.

Regarding membership, I certainly agree that it should be drawn from the executive and legislative branches of Government as well as the private sector. I personally favor including representation from the independent regulatory agencies as provided in Senate Joint Resolution 253. I recognize that some may say that this would create some kind of a conflict in examining the structure and operations of an agency by the one who serves on it. I think we might equally say that an objective, fair-minded regulator might lean over backward to criticize his own agency for that very reason.

In any event, I think that the experience of the regulatory agencies should not be discounted, and I support the policy of Senate Joint Resolution 253 of including regulators.

The Chairman of the National Commission will have an important responsibility, of course, as most Chairman do, to shape and direct much of the Commission's work and will have the bulk of important administrative responsibility, including the selection of the staff personnel that will have the all important daily responsibilities of the work of the Commission.

For these reasons I believe the President should designate a chairman with the advice and consent of the Senate rather than the Commission electing its own Chairman as provided in Senate Joint Resolution 253. At the same time, the Vice Chairman could be chosen by the members of the National Commission, as set forth in the bill.

This is essentially the procedure followed at the FPC. Under section 1 of the Federal Power Act, it is provided that:

> The Commission shall annually elect a vice chairman to act in the case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

As for the scope of the National Commission's proposed investigation, I believe the principal concerns of the Commission should be, one, an evaluation of the purposes for which the regulatory agencies were established and their relevancy today. As you know, the Federal Power Act has been both broadened and strenthened by various court interpretations. The Federal Power Act goes back to the 1920's. There were some very major changes in the 1930's when the Holding Company Act was enacted, but I think that all of the statutes which established the regulatory agencies should be carefully examined to see whether they are in fact relevant today, with, of course, provisions as may be necessary.

Second, the National Commission should study the effectiveness o the regulatory agencies in discharging the duties they have been assigned; third, the economic costs and impact of regulation, fourth, the need for regulation in the future; and five, the structural and procedural needs of the regulatory process now and in the future, including the qualifications, tenure and number of regulators needed to serve the public interest and the industries or economic activities which should be regulated.

While both Senate Joint Resolution 253 and the administration's bill, S. 4145, would provide the kind of review that is needed, there are some important provisions in the administration's proposal that are not included in Senate Joint Resolution 253. First, section 3(a)(iv) of S. 4145 provides that the National Commission shall include in its investigation an examination of State and local government regulatory activities which interact with the Federal independent regulatory system. The importance of this interaction cannot be overemphasized, especially in the public utility sector, where State public service commissions control the bulk of electric power rates and services nationwide. State regulatory commissions regulate about 85 percent of the kilowatt hours and over 90 percent of the electric power revenues. Natural gas distributors and intrastate pipelines are also regulated by State agencies while the interstate natural gas pipeline system is under FPC jurisdiction. Then we also have an anomaly

really, in the natural gas production sector of the industry, where two-thirds of production is dedicated to the interstate market and is subject to our regulation, while one third of production is essentially unregulated as to price in the intrastate market. It is essential, therefore, that the National Commission should evaluate these interrelations.

Also, section 4(c) of S. 4145 provides that "if the Commission receives of any witness or any Government agency"—that sounds almost rhetorical, Senator, a good selection of literary language—"receives of any witness or any governmental agency materials which have been submitted on a confidential basis, and the confidentiality is protected by statute, the material shall be held in confidence by the Commission." I favor this provision. It quite properly reflects current public policy precluding the disclosure of confidential information. However, confidentiality itself and the extent it should be accorded in the regulatory sector are important policy considerations which I think the Commission should review. I also assert as a principle which I endorse and which I try to follow in our regulation, in the absence of overriding reasons compelling the protection of proprietary information, public policy should support the fullest disclosure of information secured in the course of the regulatory process.

I am also in favor of the provision in section 6 of the administration bill which would include the Congress among those agencies which would be required to furnish information to the Commission on Regulatory Reform. I do not really think that it was intended to exclude Congress but I would suggest that that be clarified. They should have access to congressional data because the Congress has conducted some invaluable studies, some of which have been published, others which may be in process of being formulated, and I think that the Commission would benefit and the public interest would benefit by having access to that kind of information.

I will conclude my discussion of S. 4145 by suggesting simply that the National Environmental Policy Act (NEPA) has been ingrained as part of our law for about 5 years now and I think a specific mission of the Commission on Regulatory Reform, at least so far as the Federal Power Commission and other energy agencies are concerned, should be to fully evaluate how effective the statute is and what are the additional net energy costs of NEPA, as well as the delays being caused by NEPA. Overall, is the statute as totally beneficial as we may have thought 5 years ago, or should there be some revision of the statute and standards set forth which do not establish quite as broad a guideline as the written act?

Now, I will keep paraphrasing here. I will cover S. 704, the Regulatory Commissions' Independence Act. S. 704, as revised, has three provisions that may be summarized as follows:

First, budget estimates and requests shall be submitted concurrently to the Congress and the OMB, and while OMB and the independent commissions may consult on budget estimates and requests, OMB cannot change such estimates or requests; such estimates and requests must be submitted to the Congress by the President in his budget in the form that they were submitted to OMB by the independent commissions.

As I say, and as qualified on page 10, I support that. I supported it before this committee. I think it is a fine idea to enable the Congress to review the budget at least on an equal basis with the OMB, and to assist the Appropriations Committees and the agencies in establishing their budgetary limitations.

Second, legislative recommendations, testimony and comments on legislation must be submitted to Congress at the same time they are submitted to OMB. I favor that, as I say, on page 10; and then third, the independent regulatory commissions are authorized to conduct all their own civil litigation.

Pages 11 and 12, in a rather lengthy statement that I will not repeat, summarize our experience with the Solicitor General, and in all fairness, it has been excellent. The Solicitor General has been most helpful to our Commission. We have cooperated with him very well, and our record of appeals is really quite remarkable. I must say, the record speaks for itself. We win most of the time. I do not think I would like to change a winning combination. At the same time, I hasten to add, if the Congress wished us to have sole control over appeals, I think we could hire just a very few more lawyers. We have nine now in our appellate section, 80 to 90 cases pending at all times in the Federal court system, and it is an appellate load that I think is probably as large, or larger, than any independent regulatory agency, and we can handle it. But I would like to leave the structure as is.

With respect to S. 770, the Consumers Information and Counsel Act, I will not repeat what is in my statement. The Federal Power Commission is charged by the Congress with representing the consumer interest. Court after court has said, going back before the *Hope* case, that our predominant concern must be to protect the consumer interest. The theory is that the applicants, the utilities, that come before us are quite mature and sophisticated, and quite able to take care of themselves; we do get into adversary proceedings with utilities who come before us. Our staff is given rather liberal freedom to represent the interests that they believe, from the standpoint of the public interest, are not set forth in the litigation. The classic case that admonishes the FCP and other agencies is the famous *Storm King* case, involving a hydroelectric project, where the court said that we should not be umpires blandly calling balls and strikes, simply using the evidence that was presented before us, and then making a decision. They said that we have a public interest concern to protect, and we should present evidence on other public interest concerns through staff largely, or other experts, and then make our decision.

I was a consumer counsel at one time back in the fifties, representing the State of New Hampshire as people's counsel in all kinds of cases; I happen to think it was necessary there. Our budgetary limitations were such that it was most difficult to, shall we say, combat increasing utility rates and that kind of thing. But we were able to manage somehow. I think it is better to give the resources to the agencies themselves than to create another consumer organization out here that will represent consumer interests before the agencies. I happen to think that we will get better results. I do not think we will get the prolonged delays that are bound to result from independent consumer representation.

And one final point. The Federal Power Commission that we know today is entirely different from that standpoint of representation before us than it was, let us say, 6 or 7 years ago. That is because the public interest firm, and the consumer movement have accelerated, and properly so, as has the environmental movement. The reason I raise this is that these organizations do come into the Federal Power Commission and do argue. State commissions, most notably the New York commission and the California commission, are in every major case which we handle, and some minor cases also. Distributors also, as the Supreme Court said in a southern Louisiana case, affirmatively represent the consumer interests; that is, vis-a-vis producers. So that if a distributor is advocating a point of view before us, they are often advocating a different point of view than the producers. That is all I have to say there.

At the same time, I do not fault the idea of an independent consumer counsel. I do not say that in all instances the Federal Power Com-

At the same time, I do not fault the idea of an independent consumer counsel. I do not say that in all instances the Federal Power Commission has adequately represented the consumer interests. I know that is not so, because we do not have the resources, and I do not think any agency has the total capacity to represent the consumer interests to the degree that we would. But if we get the resources, I believe that my agency, and I am sure others, would represent the consumer interests very ably.

Thank you very much.

Senator METCALF. Thank you very much, Mr. Nassikas. I have long been an advocate of consumer counsel, as you well know, and I think, as you point out—and I am going to come back to this with some of the others—but I think this is the time to bring this up. As you point out, especially in utility rates and regulation, we are largely in the area of State regulatory agencies, and State regulatory agencies have even less resources than the Federal Power Commission has. It has been my experience that the Commissioners almost retreat into a position of putting on black robes and donning wigs, and just sit back, as you suggested in the case you cited from New York—and call the balls and strikes. The overpowering and overwhelming influence of the utilities, with their special bar, is not offset by skilled consumer counsel.

I think that you have made—you personally have made strong advances toward the original concept that the regulatory agencies were supposed to represent the consumer, and the burden of proof is on the person coming in and advocating a change of rate increase or a power siting, or a change in regulations before the Securities and Exchange, or something with the Federal Trade Commission. But as you point out, Congress is as much at fault as anybody. We have been negligent in giving you the staff to take care of it, and the state legislatures have also been negligent. So somebody has to step in and represent the consumer with skill.

I often point out to my own experience when I was newly graduated from law school. I was an assistant attorney general assigned to represent the Montana Railroad and Public Service Commission, among other assignments—audit the auditor's office and the state school board, and so forth; and handle some of the appellate cases.

You know very well what that means. And so, I would go trotting over to the Railroad and Public Service Commission on a rate case, and in would come a whole high-powered group of attorneys, rate analysts, tax experts and so forth, and even some of my own law school professors carrying briefcases for the Montana Power Company. And I would sit there alone, trying to represent the public interest. It is because of that that some of us are after consumer counsel, not because of the tradition that all of you are supposed to represent the consumer. The other guy has the burden of proof; but we are so inclined just to say, well, we are the judges up here on the regulatory agencies.

Mr. NASSIKAS. We cannot be that way. I agree with you that the States—most States, not New York and California, but most States—do not have adequate staffs. They have some excellent men, but they do not have adequate coverage. Unlike us with natural gas and power, for instance, which is enough and then some they often have jurisdiction over telephones, motor transportation, airlines——

Senator METCALF. Weights and measures.

Thank you very much for allowing me to interrupt with this special program that I have exposed.

[The prepared statement of Mr. Nassikas follows:]

PREPARED STATEMENT OF JOHN N. NASSIKAS, CHAIRMAN FEDERAL POWER COMMISSION

Mr. Chairman, I am pleased to present my views on S. 4145, the President's proposal to establish a National Commission on Regulatory Reform and S. 704 and S. 770, as requested in the Committee's invitation of October 25, 1974. The other proposal under consideration, S. 3604, relates to matters outside the scope of the Federal Power Commission's jurisdiction and expertise and I have not, therefore, included it in my presentation.

S. 4145

This past Wednesday, November 20, 1974, I testified at hearings before the Senate Commerce Committee on a Joint Resolution (S. J. Res. 253) sponsored by Chairman Magnuson that would create a National Commission on Regulatory Reform (National Commission) for the purpose of evaluating the impact of the independent regulatory agencies upon commerce. S. 4145 is the Administration's proposal to achieve the same objectives. It was submitted to the Congress by the President following his Joint Address to the Congress on October 8, 1974.

As I indicated in the Senate Commerce Committee hearings, I support the creation of a National Commission. I believe it can assist our efforts to resolve the Nation's severe economic difficulties. It is my view, however, that the National Commission should complete its work expeditiously, preferably as close as possible to the one year timeframe specified in S. 4145. Also, the creation of a National Commission on Regulatory Reform should not be used as justification for further delay in the formulation of national energy policy. Specifically, I am concerned that the opponents of the Administration's proposed deregulation of new natural gas supplies may use the National Commission's investigation as an excuse for further delay on this proposal.

The President made it clear in the same message in which he proposed the National Commission that deregulation is his number one legislative priority in the energy sector. Therefore, he obviously did not intend his proposal for a National Commission to conflict in any way with Congressional action on his substantive energy proposals.

It is also my view that the National Commission should take full advantage of the reorganizational studies that have preceded it such as the recent work of the Ash Council as well as earlier studies. Needless delay should not be tolerated in reassembling data and information from earlier studies where such studies are still relevant today.

With respect to the membership of the National Commission, I agree that it should be drawn from the executive and legislative branches of government as well as the private sector and I favor including representation from the independent regulatory agencies themselves as provided in S. J. Res. 253. I am a firm believer that those with practical experience and working knowledge in an area are best suited to evaluate necessary reforms and modifications in procedure. The expertise of those who serve in the current regulatory system and are familiar with the day to day operations and problems of regulation and long-term policy options within the limitations of their statutory authority should be part of the National Commission's effort.

The Chairman of the National Commission will have an important responsibility to shape and direct much of the Commission's work and will have the bulk of important administrative responsibility, including the selection of the staff personnel that will have the all important daily responsibilities of the work of the Commission. For these reasons, I believe the President should designate a Chairman with the advice and consent of the Senate rather than the Commission electing its own Chairman as provided in S. J. Res. 253. At the same time, the Vice-Chairman could be chosen by the members of the National Commission. This is essentially the procedure followed at the Federal Power Commission. Section 1 of the Federal Power Act provides that "[t]he Commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman."

As for the scope of the National Commission's proposed investigation, I believe the principal concerns of the Commission should be (1) an evaluation of the purposes for which the regulatory agencies were established and their relevancy today, (2) the effectiveness of the regulatory agencies in discharging the duties they have been assigned, (3) the economic costs and impact of regulation, (4) the need for regulation in the future, and (5) the structural and procedural needs of the regulatory process now and in the future, including the qualifications, tenure and number of regulators needed to serve the public interest and the industries or economic activities which should be regulated.

While both S.J. Res. 253 and the Administration's bill, S. 4145, would provide the kind of review that is needed, there are some important provisions in the Administration's proposal that are not included in S.J. Res. 253. First, § 3(a)(iv) of S. 4145 provides that the National Commission shall include in its investigation "an examination of State and local government regulatory activities which interact with the Federal independent regulatory system." The importance of this interaction cannot be overemphasized, especially in the public utility sector, where state public service commissions control the bulk of electric power rates and services nationwide. State regulatory commissions regulate approximately 85% of the kilowatt hours generated in this country and over 90% of the electric power revenues. In addition, natural gas distributors and intrastate pipelines are also regulated by state agencies while the interstate natural gas pipeline system is under FPC jurisdiction. In the natural gas production sector of the industry, two-thirds of production is dedicated to the interstate market and is subject to our regulation while one-third of production is essentially unregulated as to price in the intrastate market. It is essential, therefore, that the National Commission evaluate the interaction of these aspects of the regulatory process in its investigation.

In addition, § 4(c) of S. 4145 provides that "[i]f the Commission receives of any witness or any Government agency materials which have been submitted on a confidential basis, and the confidentiality is protected by statute, the material shall be held in confidence by the Commission." I favor this provision; it quite properly reflects current public policy precluding the disclosure of confidential information. However, confidentiality itself and the extent it should be accorded in the regulatory sector are important policy considerations which I would hope the National Commission will review. In the absence of overriding reasons compelling the protection of proprietary information, public policy should support the fullest disclosure of information secured in the course of the regulatory process.

I am also in favor of the provision in Section 6 of the Administration bill which specifies that all agencies and instrumentalities of the Federal Government, "*including the Congress* . . . shall furnish to the Commission, upon request of the Chairman, such data, reports, and other such information as the Commission deems necessary to carry out its functions . . ." (emphasis added). It is important that the National Commission have access to all relevant data in evaluating the effectiveness and the impact of the regulatory process. The excellent work of the

Committees of Congress in these areas and on related matters should be available to the National Commission in the same manner as executive and independent agency data.

I would like to conclude my discussion of S. 4145 by suggesting that the National Commission be given an additional assignment. The National Environmental Policy Act (NEPA) has been in effect for five years and it has had a significant impact on all agencies of government, including the regulatory sector. While our Commission supports the objectives of NEPA and has followed its mandate in our regulatory responsibilities we do believe that Congress should periodically review its implementation to be sure that its broad criteria are operating effectively in the national interest. I would suggest that as part of the evaluation of NEPA's implementation that the Congress assign the National Commission on Regulatory Reform the responsibility of analyzing the impact of NEPA on the regulatory process as part of its investigation.

S. 704

The stated purpose of S. 704, the Regulatory Commissions' Independence Act (as modified in Committee Working Draft No. 1, October 24, 1974), is "[to restore the independence of certain regulatory Commissions of the Federal Government," including the Federal Power Commission.[1]

The Commission submitted its views on this legislation to the Subcommittee on Budgeting, Management and Expenditures on April 8, 1974.

S. 704, as revised, has three provisions that may be summarized as follows:

(1) Budget estimates and requests shall be submitted concurrently to the Congress and the Office of Management and Budget (OMB) and while OMB and the independent commissions may consult on budget estimates and requests OMB cannot change such estimates or requests; such estimates and requests must be submitted to the Congress by the President in his Budget in the form they were submitted to OMB by the independent commissions.

(2) Legislative recommendations, testimony and comments on legislation must be submitted to Congress at the same time they are submitted to OMB. While the independent commissions may consult with OMB on legislative material they cannot be required to submit such material to OMB prior to submission to the Congress.

(3) The independent regulatory commissions are authorized to conduct all their own civil litigation.

My views on each of these proposals are as follows:

BUDGET ESTIMATES

I would support the concurrent submission of budget requests to the Congress and OMB. However, as now worded, S. 704 appears to preclude any OMB changes in our budget even after its submission to the Congress—at least § 2(b)(2) is subject to that interpretation. While I believe Congress should have access to the Commission's budget estimates before they are adjusted by OMB, I also am of the opinion that OMB's overall responsibility to prepare a unified budget for all government activities makes it necessary for that agency to revise budget requests of all agencies as necessary to meet overall spending limitations and fiscal policies.

LEGISLATIVE REPORTS

I am also of the opinion that the Commission's legislative proposals, recommendations and testimony on legislation should be submitted to Congress at the same time they are made available to OMB. S. 704, as revised, provides for this procedure. I have no objection to the provision in its present form.

LITIGATION

Under current law, the Federal Power Commission conducts all its own civil litigation except appeals to the United States Supreme Court. I have no objection to exercising our own discretion in this area as well, although the Commission has secured substantial benefits from the excellent cooperation we have received from

[1] On February 23, 1972, I testified before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations on S. 448, a bill in the 92nd Congress relating to some of the same provisions contained in S. 704.

the Solicitor General who has consistently taken the appeals we have recommended through our Solicitor.[2]

S. 770

S. 770, the Consumers Information and Counsel Act, is designed to serve three principal functions: (1) provide consumer representation before State and Federal regulatory agencies through a new entity to be known as the Office of Consumers' Counsel for Regulated Services; (2) establish a program to provide grants to State and local governments for consumer counsel programs; and (3) establish a data collection system whereby "regulated companies" would submit detailed information to the Office of Consumers' Counsel to assist that agency in its operations. "Regulated companies" are defined in the bill as any company subject to the jurisdiction of the independent regulatory commissions, including the Federal Power Commission.

Two aspects of the bill, the establishment of a Consumers' Counsel and the data gathering responsibilities assigned to the Consumers' Counsel, concern our Commission and I will direct my comments to them.

CONSUMERS' COUNSEL

The Commission has submitted several reports to the Congress in recent years on substantially the same proposal that is contained in S. 770. As we have stressed in those reports, Congress enacted the Federal Power Act and the Natural Gas Act to provide Federal regulation in the public interest of those aspects of the electric utility and natural gas industries beyond the reach of State regulatory control.[3] Among Congress' chief concerns was the provision of meaningful protection of the interests of the ultimate consumer. The predominant concern of the Federal Power Commission, therefore, is the protection of the consumer interest in reliable electric and gas service at a reasonable price.

In accordance with the mandate of Congress, the Supreme Court has repeatedly stated that the Commission is under a legal obligation to protect consumers, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, at 610 (1944); *Federal Power Commission* v. *Tennessee Gas Co.*, 371 U.S. 145, at 154 (1962); and see *Louisville Gas & Electric Co.* v. *Federal Power Commission*, 129 F. 2d. 126, at 133 (6th Cir. 1942), *cert. denied*, 318 U.S. 761. Thus, in *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414, at 418 (1952), the Court said:

> A major purpose of the whole Act is to protect power consumers against excessive prices. . . .

In *Federal Power Commission* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 631, 640–641 (1972) the Court observed:

> The Natural Gas Act of 1938 granted FPC broad powers "to protect consumers against exploitation at the hands of natural gas companies." *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). * * * Congress created "a comprehensive and effective regulatory scheme," *Panhandle Eastern Pipeline Co.* v. *Public Service Commission*, 332 U.S. 507, 520 (1947), to "afford consumers a complete, permanent and effective bond of protection . . ." *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388 (1959).

and again in *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, at 19 (1961).

---

[2] "[F]or the ten years beginning with the 1963 term of the Supreme Court . . . [t]he Solicitor General was requested to file 26 petitions on behalf of the Federal Power Commission. He authorized 24 of them: 21 of those filed were granted, and the Commission prevailed in 20 of those cases, although in some only in part; one case has not yet been heard and one has not been acted on." Statement of Erwin N. Griswold, Solicitor General, *At Hearings concerning the Securities Exchange Act H.R. 5050, Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce*, 93d Cong., 1st Sess. at 14–15 (June 7, 1973). The one case which had not been heard at the time of Dean Griswold's statement was F.P.C. v. *New England Power Company*, ___ U.S. ___, 39 L.Ed. 2d. 383 (March 4, 1974), which the FPC ultimately lost. The one case which had not been acted upon was *F.P.C.* v. *Texaco, Inc.*, ___ U.S. ___, 41 L.Ed. 2d. 141 (June 10, 1974), in which the FPC ultimately prevailed. Since June 7, 1973, the Solicitor General's office has declined 3 of 5 FPC requests for *certiorari*. So since the beginning of the 1963 Supreme Court term, the FPC has requested *certiorari* in 31 cases, 26 of which were authorized. Of the 26 petitions for *certiorari* filed on behalf of the Commission, 24 were granted, and the Commission prevailed in whole or in part in 22 of those cases. The Commission lost one case, and one other has not been decided yet. The Solicitor General has approved 84% of the FPC's requests for *certiorari;* the Supreme Court has granted 92%; and of those Commission cases finally decided by the Supreme Court, the FPC has prevailed 96% of the time. We presently have four requests for certiorari pending with the Solicitor General.

[3] See e.g., House Report No. 61, June 24, 1919, 61st Congress, 1st Session, to accompany H.R. 3184, which became the Federal Water Power Act, at p. 5. Senate Report No. 621, May 13, 1935, 74th Congress, 1st Session, to accompany S. 2796, which became the Federal Power Act of 1935, at pp. 3, 17–18, 22. House Report No. 709, August 28, 1937, 75th Congress, 1st Session, to accompany H.R. 6586 which became the Natural Gas Act, at pp. 1-3. *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, at 689–691, 692–693 (1947); *Federal Power Commission* v. *Interstate Natural Gas Co.*, 336 U.S. 557, at 581, and separate opinion of Mr. Justice Black at 597 (1949).

"When Congress enacted the Natural Gas Act, it was motivated by a desire 'to protect consumers against exploitation at the hands of natural gas companies.'" *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 147, (1960).

In *Gainesville Utilities Dept.* v. *Florida Power Corp.*, 402 U.S. 515, at 529 (1971) the Court recognized that the Commission is "charged both with assuring industry a fair return and with assuring the public reliable and efficient service, at a reasonable price."

The task of a consumer protection agency in regulating interstate electric and natural gas utility service is, of necessity, highly specialized and demands the services of knowledgeable experts who can be depended upon to bring all facets of a particular problem to the attention of the agency. Over the years, the staff of the Federal Power Commission has accepted its legal obligation to provide forthright presentation and advocacy of the consumer viewpoint before the Commission and the Courts. In addition to staff representation and consumer participation directly or through consumer associations, the consumer interest is also effectively represented by gas distributors [4], state commissions [5], environmental organizations in many instances, and others who participate regularly as parties or intervenors in Commission proceedings. In performing its quasi-judicial function of determining and protecting the public interest, the Commission has been aided by vigorous and effective advocacy of various facets of the consumer interest.

Since the Commission is diligently protecting the consumer interests, we do not recognize the need of consumers for an organization at the Federal level with primary responsibility for protection of consumer interests insofar as our responsibilities are concerned.

DATA COLLECTION

S. 770 would require regulated companies to submit a substantial quantity of data to the Consumers' Counsel annually and even more frequently, if requested. Much of the data that would be collected from regulated companies under our jurisdiction would be duplicative of information already supplied to us by public utilities and natural gas companies on FPC Form Nos. 1 and 2. There is, of course, no objection to those companies also supplying that data to the Consumers' Counsel. However, §102(a)(1) of the bill empowers the Counsel to establish a uniform system of accounts. This authority should be limited to prescribing a system of accounts only for those companies not already subject to an accounting system prescribed by an agency of the Federal government. FPC, for example, prescribes accounting procedures for jurisdictional companies. Those companies should not be required to follow a different system in reporting to the Consumers' Counsel.

I would also suggest that much of the data that must be reported under the bill is extremely voluminous and would result in a counterproductive flood of paper. I am referring to such sections as 201(b)(5) and (b)(6) and 201(c)(6) and (c)(7). It would be a preferable procedure, in my opinion, for the bill to contain less detail on the kinds of data that must be reported. The Consumers' Counsel is given broad authority under §201(d) to collect any data he deems necessary. He, therefore, can determine the nature and extent of the data he needs from regulated companies as experience is gained implementing the statute.

Some of the data requested in the bill, specifically the information requested is §§201(a)(5) and (b)(2), is substantially similar to information we are proposing to require from jurisdictional companies in pending rulemaking proceedings. On April 19, 1974, in Docket No. RM 74–17 we proposed to amend Form Nos. 1 and 2 to require jurisdictional companies to list the top 30 security holders, rather than the top 10 as is presently required, and also to report stockholders by institutional or individual name in addition to the nominee or "street" name. We also proposed an amendment to increase the reporting on long-term debt to require the listing of holders of more than 5 percent of a debt issue or $500,000' whichever is smaller.

---

[4] In *Southern Louisiana Area Rate Cases* (*Austral Oil Co.* v. *Federal Power Commission*) 428 F. 2d 407 (5th Cir. 1970) the Court affirmatively recognized the representation of consumer interests by natural gas distributors (p. 434 n. 86). In its opinion (p. 435) the Court stated: "The FPC must evaluate each rate set against policies as broad as the Natural Gas Act itself. *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 605, 65 S. Ct. 829, 840, 89 L. Ed 1206. The purposes of the Act encompass not only reasonably low rates but maintenance of adequate service for the consumer, and the latter objective is the reason for the *Hope* requirement that rates must be 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.' . . . Indeed, the *Hope* case interprets the policy of the Act as involving both consumer interests and the autonomous interests of the industry. The Commission must 'balance . . . the investor and consumer interests.' 320 U.S. at 603, 64 S. Ct. at 288."

[5] *Id.* at 414 n.3.

In addition, on August 29, 1974, we issued a notice of rulemaking in Docket No. RM 75–7 to require the disclosure of all officerships and directorships held by officers and directors of reporting companies. These rulemaking proceedings are still pending before the Commission.

Title III of S. 770 directs Federal agencies to make full use of automatic data processing in their data gathering and reporting activities. The FPC has made significant progress in this area in recent years. Order No. 494, adopted on September 26, 1973, established a Regulatory Information System (RIS) to adapt FPC reporting procedures and report forms to computer regulatory format. Our system complies with the requirements of Title III of this bill and may serve as a useful guide for other agencies' efforts in this area.

This concludes my statement, Mr. Chairman, I will be pleased to respond to questions.

Senator METCALF. We are delighted to have the next witness, Mr. Richard O. Simpson, Chairman of the Consumer Product Safety Commission. While your Commission does not have the antiquity of, say, the Interstate Commerce Commission, it is certainly very important, and the activities that you are engaged in the very significant to this study and this investigation. So we are delighted to have you here, Mr. Simpson, to talk to us about some of the recommendations you have.

STATEMENT OF HON. RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mr. SIMPSON. I am delighted to be here. As you say, our Commission is 18 months old, and I feel like it is going on 18 years.

I am pleased as Chairman of the Consumer Product Safety Commission to appear before this committee to express my personal views on S. 4145, a proposal to create a Commission on Regulatory Reform.

May I at the outset state that I believe that such a regulatory review is not only warranted, but also highly desirable. I have noted that S. 4145 addresses itself to activities of the independent regulatory agencies, and I am pleased to note that specific agencies are not cited by name. I am pleased because in addition to the independent regulatory commissions, which have been clearly established and defined as such, there also exist within the broad framework of our executive branch other regulators, agencies, councils, Ford administration commissions, et cetera, that are found in Cabinet-level departments. All such governmental regulators should be reviewed so that their actions can be assessed, their independence established if it is found to be necessary, and most importantly the train of accountability for these agencies should be clearly understood and followed.

The Consumer Product Safety Commission is, as previously stated, the newest of the regulatory commissions in Washington, one in which the Chairman has been given a mandate which one Member of Congress has described as "more power than a good man should want or a bad man should have," and I would agree with that Congressman's assessment, and because I agree with that assessment and I see that there are possibilities for abuse, for circumvention of the public interest, and for self-aggrandizement, I doubly welcome this opportunity to come before you today.

The Consumer Product Safety Commission has jurisdiction, as you know, over more than 10,000 individual consumer products, and new products are entering the marketplace continuously. The Commission

is required by statute to develop and promulgate, when warranted, either from its own initiative or in response to citizens' petitions, safety standards to guard against unreasonable risk of injury to the consumer.

In addition the Consumer Product Safety Act itself mandates a blanket safety standard, if you will, contained in section 15 of the statute. To paraphrase, section 15 says that no manufacturer shall manufacture a product which contains a defect which creates a substantial product hazard. Manufacturers and distributors, retailers, and importers are under legal requirement by the Consumer Product Safety Act to report to this Commission, under penalty of law—I might add, a $500,000 penalty of law—they are required to report when they have reason to believe that such a product has been entered into commerce and could create such a hazard. Section 15 has been described as a tattletale provision.

The Commission further has authority, after following certain procedures, to order public notice and either repair, repurchase, or replacement of the pending product at no cost to the consumer. At this point the scope and authority of the Commission would appear to some to be overwhelming. It is, and yet this is but a portion of the mandate and the authority vested in the Consumer Product Safety Commission. Vigorous congressional oversight is necessary and essential to insure that such broad authority is properly used and not abused.

The Consumer Product Safety Act contains some unique features, at least one of which appears in S. 704, the Regulatory Agencies Independence Act. A copy of the comments of the Commission's views on that provision is attached to my statement.[1]

This provision, which has been discussed earlier, requires concurrent budget and legislative reporting. That provision has been in operation in our Commission for 18 months. It is mandated by section 27 of the Consumer Product Safety Act.

This unusual budget feature brings into focus the fiscal game playing that sometimes, and I might add perhaps oftentimes, takes place among the executive agencies, the Office of Management and Budget, and the Congress. We, as a commission, after 18 months of experience under that provision, are currently experiencing some pretty rough sledding with respect to our budget, largely, I believe, because of this new concept, but we are committed to continuing to treat this provision in a candid and straightforward manner.

Unfortunately, our most recent and measured fiscal requirements, however, are caught in the time-honored arena where other Federal agencies fight for funds. We find ourselves faced with extraordinary appropriations cuts, which we believe we cannot absorb within our operating plan, and I am not here to defend the budget, Mr. Chairman, but to point out some current experience and indicate to you that all is not rosy with the concurrent budget provisions.

We have had only 1 full year with the provisions of section 27, and I would suggest it is too soon for us to draw any rational conclusion as to the merits of such a provision or the desirability of imposing such requirements on other agencies. Perhaps the road would be smoother, however, if more were traveling it.

---

[1] See p. 225.

I feel that the question of from whom and of what the independent regulatory commissions are considered to be independent is a key question and one which should be addressed and defined. It has been stated variously that such commissions are neither the child of the executive nor the child of the Congress, that such commissions are part of the Executive and therefore are expected to reflect administration's views and advance the administration's policies, that they are arms of the Congress and are expected to be totally responsive to and vigorously overseen by the Congress.

At the present time, there is no widely agreed upon definition that I am aware of to whom or to what such commissions belong, and I believe that lack of clear agreement on that issue clouds the chain of accountability of independent agencies, and perhaps that is why we are here today.

Perhaps we should leave it ambiguous, and we should leave the independent agencies reporting, as our Commission currently does, concurrently on our activities to the executive and the legislative, acting in a quasi-judicial capacity and standing alone within the Government, with narrow support from without ourselves. One might speculate, however, whether the strange area is one which could become a fertile ground for special interest groups; that is, if independent commissions may find that independence does not necessarily equate with survival and may not pay the bills, and some broader base of power is needed in order to survive and grow. I believe the committee is aware of the openness policy adopted, and, we believe, effectively implemented by the Consumer Product Safety Commission.

I am proud of the Commission for adopting such a direction, and I am especially pleased to report that we feel it is working. We recognize we are doing the public's business, and we believe, very sincerely believe, the public has a right to know what we are doing, how we are conducting our affairs, and where we are allocating our priorities. Openness of an agency can be an effective check against the extraordinary powers vested in regulatory agencies, for the continuous scrutiny of every facet of activity by the public, by the press, by the affected industries, by the Congress, and by other Federal agencies leaves few if any areas unexplored and opens to discussion even the most minor of activities.

The question of independence generally is probably one of the key questions addressed by the Consumer Product Safety Commission. This Commission, as you know, Mr. Chairman, has been engaged for more than a year in a pulling contest concerning five policy-oriented super-grade positions within the Commission, five positions which we maintained, as we interpret the Consumer Product Safety Act—we maintain they should not be protected by the normal Civil Service, for their services are largely advisory and oriented to the chairman who serves for a limited term. We are talking about noncareer appointments and yet because the Commission is a regulatory independent body, these positions should not, we maintain, require the political sanction or clearance, actual or pro forma, or the White House. I think this is part of the dilemma of the lack of definition and accountability of independent agencies.

Hearings have been held in the Senate——

Mr. TURNER. Mr. Chairman, may I suggest a short question here, just on that point, on the clearance?

Now this committee along with the Commerce Committee held some hearings on that, and several members have expressed a concern as to whether or not that problem has been cleaned up. Is it still the same problem where your top executive officials in the Commission must be cleared, or can be vetoed, by the White House?

Mr. SIMPSON. Yes. The problem still exists, and we are probably going to have some of the longest consultants in the history of the Federal Government. It has not been cleared up, no.

Mr. TURNER. Well, what happens after 1 year when they can no longer be consultants?

Mr. SIMPSON. Well, we consult our general counsel and try to work around it.

Mr. TURNER. Has the general counsel been approved by the White House yet?

Mr. SIMPSON. No, sir, he has not.

Mr. TURNER. I think you have a problem.

Mr. SIMPSON. We recognize we have a problem when we testified before this committee. It was a joint committee. We asked for congressional help. This committee, the chairman of the Senate Commerce Committee, and the Senate Committee on Post Office and Civil Service then did send a joint letter to the President, urging that the President use his executive authority to create a fourth category, that is, noncareer appointments for independent agencies where they would have the noncareer status, but would not require any White House clearance, only that of the agency, but so far that has not happened.

Mr. TURNER. So this is an independent regulatory matter that can be solved by law right now if Congress wishes to take some legal steps. Is that correct?

Mr. SIMPSON. Yes; it can, and we offered to help draft a provision if there was any interest in that.

Mr. TURNER. We do not need any study on it?

Mr. SIMPSON. I do not believe so, but that is a personal opinion. Others have differing views on that.

Senator METCALF. Have you submitted a draft of such a proposal?

Mr. SIMPSON. No. Mr. Chairman, when we testified, we said that we believed that it could be solved three different ways: one within the discretionary authority of the Civil Service Commission itself; one by Executive order with the discretionary authority of the President; and one by a change of statute.

Senator METCALF. Was the second direction attempted by a joint letter from the chairmen of the three committees having jurisdiction?

Mr. SIMPSON. Yes, and the answer was that the Office of Management and Budget would study the problem, and my understanding is that they are doing that now. We have not been contacted on such a study, but my understanding is that they are conducting a study, but meanwhile, back at the ranch, we are still faced with the problem.

Senator METCALF. And after their study, we are going to set up a commission to further study it? And who is going to study the study of the commission's study? Go ahead.

Mr. SIMPSON. Well, I am glad you said that, Mr. Chairman, because it prevented me from having to say it. We interpret the statute in one particular way, but there are, in fact, arguments on the other side.

If I might, just touch on this question. I think it is a central one that we trouble ourselves with all the time. It is the question of accountability. Clearly in a Cabinet-level agency, the President is accountable and should and can be held accountable. In the independent agencies, accountability is not so clean. We interpret the Consumer Product Safety Act as making this agency probably more independent than the other independent agencies. There are some unique features that were written into our bill to insure independence. The legislative history supports that intention, and we so interpret the act.

But our interpretation causes some problems. I have previously stated that I think it is dangerous for a Commission to be created and interpret their act the way we do, unless the Congress steps up and assumes a vigorous oversight function. Unless you do that, I think you can create dangerous fiefdoms in independent agencies.

So we are in favor of active and vigorous oversight. And I must say that we have had it so far, but we are only a year-and-a-half old. Perhaps if other agencies had had similar oversight, we may not be up here today. I suggest in conclusion that Congress should consider the option, rather than setting up a National Commission on Regulatory Review, of accomplishing that review itself. To me it is the definition of oversight.

You might want to beef up your committees, assign clear responsibility, give them some definitive direction, and perhaps after a period of time—it may be a year or 2 years—then you may want to take the comments out of those committees into a joint Committee of the Congress and institute the reforms. I might say that I am even a little troubled by the word "reform" because it seems to prejudge that reform is needed. If the word were "review," you might come out with reforms. If we know that certain reforms are needed now then I suggest that we ought to get on with it and review the others.

Senator METCALF. That, of course, is a very important and a very strong point—to admonish all of us in the Congress to continue to do something about the supervision of our special agencies. I know that we have in other legislative duties neglected that very important obligation.

Mr. SIMPSON. Mr. Chairman, might I just comment that you have used the words "our special agencies."

Senator METCALF. Well, I do not agree with Mr. Ash that these are executive agencies. These are legislative. These regulatory commissions are agencies of the Congress, and except for a half-a-dozen people who make assertions that they are agencies of the Executive, the historical observations do not bear that out. Ever since the Interstate Commerce Commission was created, these have been agencies of the legislative body, and they are our agencies. I think that we should do more to protect them and assert our jurisdiction over them.

Mr. SIMPSON. And support them.

Senator METCALF. And support them, absolutely. And that is why you are here, to tell us how we have failed. Are you through?

Mr. SIMPSON. Yes, I am, thank you very much.

[The prepared statement of Mr. Simpson follows:]

PREPARED STATEMENT OF RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mr. Chairman, I am pleased, as Chairman of the Consumer Product Safety Commission, to have an opportunity to appear before this Committee today to express my personal views on S. 4145, a proposal to create a Commission on Regulatory Reform.

As you may be aware, I testified on similar legislation before another committee of the Senate earlier this week. I welcomed both invitations, particularly because I have been outspoken on the view that strong and vigorous oversight—which this bill in fact provides—is essential if we are to have truly regulatory commissions.

May I at the outset state that I believe that such a regulatory review is not only warranted, but also highly desirable, for I believe that the people of this country are well served by the process of continuous examination of and awareness of Federal services and Federal activities.

I have noted that S. 4145 addresses itself to activities of the "Independent Regulatory Agencies", and I am pleased to note that specific agencies are not cited by name. I am pleased because, in addition to the "independent regulatory commissions" which have been clearly established and defined as such, there also exist within the broad framework of our Executive Branch, other "regulators"—agencies, councils, boards, administrations, commissions, etc., that are found in cabinet level departments. All such governmental regulators should be reviewed so that their actions can be assessed; their independence established if necessary; and most importantly, the chain of accountability be clearly understood and followed.

The motivating factor in the surfacing of this legislation, as expressed by the President, is today's need for assessing the inflationary impact of such regulatory of the negative impact.

bodies upon the economy—particularly the possibility that such agencies may be inadvertently legitimatizing strictive and anticompetitive trade practices that ultimately cause elevation in prices to the consumer. A review of the economics of regulatory actions is, I believe, a valid—and needed—one. I suggest that such a study should, however, encompass the cost and benefits of regulatory actions, that is, the measurement of the positive effects of regulation, as well as the assessment of the negative impact.

The Consumer Product Safety Commission is, as you know, the newest of the regulatory commissions in Washington; one in which the Chairman has been given a mandate which one member of Congress has described as "more power than a good man should want or a bad man should have." I agree. And because I agree, and I see that there are possibilities for abuse, for circumvention of the public interest, and for self-aggrandizement, I doubly welcome this opportunity to come before you today.

The Consumer Product Safety Commission has jurisdiction, as you know, over more than 10,000 individual consumer products, and new products are entering the marketplace continuously. The Commission is required by statute to develop and promulgate, when warranted, either from its own initiative or in response to citizen petition, safety standards to guard against unreasonable risk of injury to the consumer.

In addition, the Consumer Product Safety Act mandates a "blanket", if you will safety standard, contained in Section 15 of the statute. To paraphrase, Section 35 says that *NO* manufacturer shall manufacture a product which contains a defect which creates a substantial product hazard. Manufacturers (and distributors and retailers and importers) are under legal requirement to report to this Commission, under penalty of law, when they have reason to believe that such a product has been entered into commerce that *could* create such a hazard. The Commission, further, has the authority, after following certain procedures, to order public notice and either repair, repurchase, or replacement of the offending product, at no cost to the consumer.

At this point, the scope and authority of this Commission may appear to some to be overwhelming. It is. And yet this is but a portion of the mandate and the authority vested in this Commission. Vigorous Congressional oversight is necessary to ensure that such broad authority is properly used and not abused.

The Consumer Product Safety Act contains some unique features, one of which appears in S. 704, the Regulatory Agencies Independence Act. A copy of the comments of the Consumer Product Safety Commission, dated April 22, 1974, on this provision is attached for the interest of the Committee. This provision, requiring concurrent budget and legislation reporting is already in operation for this Commission through the provisions of Section 27 of the Consumer Product Safety Act. This unusual budget feature brings into focus the fiscal game playing that sometimes takes place among the Executive agencies, the Office of Management and Budget, and the Congress.

We, as a Commission, are currently experiencing some rough sledding, with respect to our budget, largely, I believe, because of this new concept, and we are committed to attempting to treat it in a candid and straightforward manner. Unfortunately, our most reasoned and measured fiscal requirements, however, are caught in the time-honored arena where other Federal agencies fight for funds. We find ourselves faced with extraordinary appropriations cuts, which we cannot absorb within our operating plan.

We have had only one full year of experience with the provisions of Section 27, however, and I would suggest it is too soon to draw any rational conclusion as to the merits of such a process—or the desirability of imposing such requirements on other agencies. Perhaps the road would be smoother if more were traveling it.

I feel that the question of from whom, and of what, the independent regulatory commissions are considered to be *independent*, is a key question and one which should be defined. It has been stated variously that such commissions are neither the child of the Executive nor the child of the Congress; that such commissions *are part* of the Executive, and therefore, are expected to reflect the Administration's views and advance the Administration's policies; that they are arms of the Congress, and are expected to be totally responsive to and vigorously overseen by the Congress. At the present time there is no widely agreed upon definition of to whom or to what such commissions belong. And perhaps, they should continue to exist as they are—reporting as do we, concurrently on our activities to the Executive and the Legislative, acting in our quasi-judicial capacity, and standing alone within the Government, with narrow support from without ourselves. One might speculate, however, whether this strange area is one which could become a fertile ground for special interest groups, that is, as independent commissions may find that independence does not necessarily equate with survival, and some broader base of power is needed in order to survive and grow.

I believe the Committee is aware of the "openness" policy adopted—and, we believe, effectively implemented by—the Consumer Product Safety Commission. I am proud of the Commission for adopting such a direction, and I am especially pleased to report that we feel it is working. We know we are doing the public's business, and the public has a right to know what we are doing, how we are conducting our affairs, and where we are allocating our priorities. Openness can be an effective check against the extraordinary powers vested in regulatory agencies, for the continuous scrutiny of every facet of activity, by the public, by the press, by the affected industries, by the Congress, and by other Federal agencies, leaves few if any areas unexplored and opens to discussion even the most minor of activities.

Clearly, in every agency, certain policies can—and in fact, must—be enunciated. These are visible decisions, accompanied by public announcements. Basic policy decisions, which are made by the Consumer Product Safety Commission are generally proposed for public comment prior to final adoption. I am attaching copies of such published policies of the Consumer Product Safety Commission, e.g., the Public Meetings Policy; the Freedom of Information Policy; Proposed Sampling Plan Use in Standards Policy; Staff Participation in Standards Development Policy; and various regulations implementing the authorities of the Act.

The question of independence, generally, is probably one of the key questions addressed by the Consumer Product Safety Commission. This Commission, as you know, Mr. Chairman, has been engaged for more than a year in a "pulling contest" concerning five policy-oriented supergrade positions within the Commission—five positions, which, we maintain, should not be protected by the normal Civil Service, for their services are largely advisory, and oriented to the Chairman, who serves for a limited term. And yet, because the Commission is a regulatory, independent body, these positions should not, we maintain, require the political sanction or clearance, actual or pro forma, of the White House.

Hearings have been held in the Senate on this question, and we are advised that, at the request of the Senate Commerce Committee, the Senate Post Office and Civil Service Committee, and the Senate Government Operations Committee,

the Office of Management and Budget is studying the issue. For your interest, I am attaching for the record, a copy of my testimony at the time of the hearing in question.

I have spoken to the broad subject of regulatory commissions and my own experience as Chairman of one such commission. I would like to re-emphasize my sincere and deep conviction that consistent and vigorous oversight is not only appropriate but necessary in our system of government—and particularly so in the "middle area" of the Independent Regulatory Commissions.

Having established the need for such review, the question then arises as to the appropriate process or vehicle for such activity. In addition to the proposed "review" Commission, I would urge that consideration be given to the *option* of conducting such oversight in the body which has the jurisdiction for oversight, and which has traditionally exercised it—the Congress. Undoubtedly the creation of a new Commission, such as that proposed, would involve personnel and expenses of some magnitude. I would respectfully suggest that the Congress should consider seriously the option of making those moneys available to the appropriate Committees of the Congress, with a specific requirement that those Committees and their augmented Committee staffs pursue this responsibility vigorously, with a specific set of criteria and direction, and file within a prescribed period of time (perhaps 2 years) reports of findings and recommendations. At that point, or perhaps before, a Joint Committee of the Congress specifically created to address regulatory reform would accept these reports and pursue through to legislative accomplishment such changes as may be needed.

Thank you for giving me an opportunity to express my thoughts in this important area. I will be pleased to respond to any questions the Committee may wish to raise.

Enclosures:

[See attachments to Mr. Simpson's prepared statement beginning at p. 170.]

Senator METCALF. Well, we will be back to all of you in a couple of minutes, but we will go ahead now with Mr. Richard Wiley, Chairman of the Federal Communications Commission. Mr. Wiley has as much difficulty as any of you others. I have more dealings with the Federal Power Commission, but sometimes my sympathies are in your area too, Mr. Wiley. Thank you very much for coming, and we are delighted to hear from you.

STATEMENT OF HON. RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. WILEY. Thank you, Mr. Chairman.

I welcome the opportunity to appear here today to present the Commission's views on the subject of regulatory reform which is before your committee in the form of four different legislative proposals, and I also will abbreviate my statement in the interest of time.

My testimony today is directed primarily to one of those proposals, S. 4145, a bill to establish a National Commission on Regulatory Reform. This past Wednesday I testified on a similar measure, Senate Joint Resolution 253, before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, and I will refer that proposal in my comments on S. 4145 where I believe a comparison is particularly relevant.

With respect to the three other bills before your committee, I would note that none of the provisions of S. 3604 pertain to the FCC or to an area in which our agency has any particular expertise, and thus I have no comments on that bill. With reference to S. 770, the Commission has not taken any position on the legislation, but if the committee has any particular questions that they wish to pursue, I would be

pleased subsequently to offer my personal observations. We have previously submitted extensive comments on S. 704 to the Subcommittee on Budgeting, Management, and Expenditures. To conserve time, I shall not reiterate those statements.

Let me say at the outset, Mr. Chairman, that the FCC supports the concept in both S. 4145 and Senate Joint Resolution 253 of establishing a National Commission on Regulatory Reform to study and to report to the President and the Congress on the performance and impact of the independent Federal regulatory agencies. We are mindful that this concept is scarcely a new one. The committees and commissions, both governmental and private, have studied and reported on the regulatory agencies with considerable frequency since their inception. Moreover, the agencies themselves are continually engaged in the review and assessment of their performance through the oversight appropriations, legislative, and judicial processes. We do believe, however, that the Commission contemplated by both of these bills can make a significant contribution to the national debate on the subject of regulatory reform and, more importantly, to appropriate congressional and administrative action.

Our support for this concept is predicated on what we understand to be the basic purposes and objectives of the Commission to be established and the intended scope of the inquiry. Although S.J. Res. 253 is perhaps broader and more detailed in its mandate, both it and S. 4145 would direct the National Commission on Regulatory Reform to study and report, with specific recommendations, on the performance of the independent regulatory agencies in terms of the impact of their activities, and in particular of their rules and regulations on the Nation's economy. Given the serious dimensions of the problem of inflation, we believe that it is clearly a paramount responsibility of the Federal Government to examine its own house to identify and revise or eliminate any regulatory rules or policies which impose undue burdens on commerce, place unnecessary restrictions on competition, or unduly increase consumer costs without any significant countervailing public interest benefit.

In this regard it may not be unfair to say that most prior reform commissions have focused primarily on nonsubstantive aspects of the regulatory agencies, such as their procedures and organization, and have largely ignored the equally, if not more important, substantive issues of regulation. These issues, for example, include the following: What is the need for particular rules and regulations; what are their consequences; who gains from particular rules and regulations, who pays for the gain; who loses and who ultimately suffers the loss; and how can agency rules and regulations be revised to meet changing circumstances or changing assessments of need?

As we understand both bills, the Reform Commission would be mandated to examine these fundamental substantive questions in the context of comparing the economic and noneconomic costs and benefits of particular regulatory activities. To the extent that the Commission would do these things and also make specific recommendations for possible congressional or administrative action, we believe that its creation would be eminently justified.

I should note here, Mr. Chairman, that the FCC is aware that neither the public interest nor the regulated industries are served by outmoded rules and overregulation. To deal with this problem we are

engaged in extensive and continuing studies in the broadcast, cable, and safety and special radio services, and indeed, throughout the Commission, designed to evaluate each and every rule in the Commission's books for its current usefulness. Is it outmoded? Is it unduly burdensome? Is it necessary? If not, then such a rule is a candidate for revised regulation, or as we have termed it, for short reregulation, or perhaps deletion altogether.

As a result of the numerous broadcast reregulation orders issued by the FCC over the past 2½ years, we have amended, and in some cases, deleted, nearly 300 rules and regulations concerning radio and television stations, and I think all in the public interest. In addition to changing outmoded rules, I also believe that in the broadcast arena, for example, such factors as the size of the market, the number of stations in the market, and expecially the size of the individual licensee, should be reflected in the content and relative burdens of our rules. We simply cannot continue to regulate a tiny radio station with three or four employees in much the same manner as a large market VHF television station. The fundamental thrust of all our reregulation efforts is thus to focus regulation on specific subjects and entities where it is clearly needed, to eliminate the waste associated with unnecessary overregulation, and to enable both the FCC and those subject to its regulation to put the time and expense thereby saved to more productive ends.

Skipping over a bit in my statement here, on page 6:

While we believe that these activities represent a determined effort on the part of our agency to ensure that the regulatory product is wholly consistent with the public interest, we would, of course, fully cooperate with the proposed Reform Commission in any review of our progress and would welcome the opportunity to consider any recommendations it might make.

Before leaving the area of substantive regulation to discuss other subjects, I would like to add a few observations concerning the relationship of the regulatory process and the concept of competition. As the members of this committee may be aware, in the past several years the FCC has attempted to introduce the thrust and stimulus of competition into certain traditionally monopolistic or oligopolistic telecommunications services. We have done so not for the sake of competition per se, but in recognition of our statutory mandate to regulate in the public interest. Obviously, there are situations in which competition is not always appropriate or advisable, but we believe that where competition is feasible—that is, where no undue technical or economic harm to basic services would be caused by its introduction—the public stands likely to benefit from lower rates, improved service and more rapid innovation, as well as greater diversity of choice.

We would note at this point, Mr. Chairman, that the FCC is continually engaged in the review and revision of our administrative practices and procedures to keep pace with the burgeoning growth of the industries we regulate.

As Chairman of the FCC, it has been especially distressing for me to discover that all too often the only thing standing between an abundant demand for communications services and available supply, is administrative and bureaucratic delay.

While we are committed to the traditional concents of fairness and opportunity to be heard embodied in our statutes, the administrative Procedure Act and the Constitution, we nonetheless believe that in many instances our procedures have had the effect of sanctioning dilatory pleadings and bureaucratic waste rather than promoting the expeditious formulation, argument, and resolution of substantive issues essential to rational decisionmaking.

To deal with this problem internally we have established in the last few months a full-time adjudicatory reregulation task force with the responsibility to make recommendations for reform directly to the Commission by the end of this fiscal year. We believe we can and, indeed, must reduce the inordinate time and expense now involved in reaching final decision in some Commission cases to insure that our hearing process will not be available only to the wealthy.

In this connection, Mr. Chairman, we have also recently instituted another procedural reform in some common carrier ratemaking proceedings: a new, streamlined procedure calling for all evidence to be submitted in writing and specifying that oral argument is to be held only to the extent necessary. As a result of this paper proceeding, the staff has prepared its recommendations in a very complex and difficult case in about 9 months, whereas under the previous practice it would have taken years.

We at the FCC have also taken measures to improve our management techniques in order to insure that the maximum productivity of personnel and resources will be applied to our ever-increasing workload. An executive team made up of the Chairman and the chiefs of our operating offices and bureaus has been established to plan Commission agendas, to set priorities, and, most significantly, I think, to establish deadlines for everything the Commission does.

This committee meets at least once a week with me and pursuant to our efforts to open up the processes of regulation, we have made monthly schedules of our special Commission meetings planned by this group public information. I might note, Mr. Chairman, that the Commission, the full Commission, is now meeting on the average of 3 and sometimes 4 or 5 days a week in order to meet our regulatory responsibilities.

To further aid our efforts in these areas we have increased our utilization of advanced computer technology, and I spell some of that out in my full statement.

One further administrative step which we have taken to improve our ultimate regulatory product is the holding of regional meetings throughout the country between the Commissioners and key staff, the members of the industries we regulate, and the public at large. Just within the last several weeks we held such a meeting in Chicago and had over 1,000 people in attendance. We believe that these meetings are conducive to the mutual exchange of ideas, comments, and criticism which is essential to insure regulation responsive to the changing needs and perceptions of the public interest. Perhaps more importantly, the Commission's face-to-face contact at the local level with interested members of the public and industry helps to demonstrate that the Washington-based Federal bureaucracy is not remote and impersonal but genuinely concerned with their problems and needs.

We believe that these administrative measures will continue to improve the quality of our regulatory determinations, and permit more prompt action on our increasing workload. The mandate of the proposed Commission appears broad enough to encompass these and similar aspects of procedural and administrative reform. However, should the proposed Commission find it necessary in terms of its available resources to limit its subjects of inquiry, we would hope that it would concentrate its efforts in the area of substantive rule, regulation, and policy rather than on matters of procedural and administrative reform which have already been extensively studied and reported.

In addition to reviewing administrative procedures and practices and particular substantive regulations, it would appear that the Reform Commission would also be mandated to address the broader question of the agencies' "overall goals" in the context of examining their respective enabling statutes. While the regulatory acts have been frequently reviewed in specific part through the amendment and legislative oversight processes, to our knowledge, most, if not all, have never been reviewed in toto to reassess this historic concept and the effectiveness of its implementation by existing statutory provision in the light of modern needs and experience.

We believe, Mr. Chairman, that the purposes and objectives of the Communications Act of 1934 remain valid and necessary, but as our annual legislative programs evidence, we would be among the first to admit the possibility that particular provisions of the act relating to the Commission's jurisdiction and its adjudicatory, rulemaking, and licensing authority may indeed merit review and perhaps revision. And we would hope that these would be additional areas for the Reform Commission's scope of inquiry.

As this review of the scope of inquiry proposed by S. 4145 indicates, the task of the National Commission on Regulatory Reform would be considerable. We believe that the 1-year time frame in S. 4145 may be unrealistic and that the schedule of three annual reports proposed by the Senate Joint Resolution 253 may be a more practical and expeditious vehicle for ordering and meeting the priorities.

With respect to the basic structure of the Commission, we believe that the 12-member body proposed by S. 4145 and Senate Joint Resolution 253 would be appropriate, and I make some general comments, Mr. Chairman, on the appointment process.

We feel that Senate Joint Resolution 253 would perhaps result in a more appropriate cross-section of political and economic viewpoints than the comparable provisions of S. 4145, and would also ensure a stronger joint effort between the executive and legislative branches of Government.

In conclusion, Mr. Chairman, the FCC believes that a National Commission on Regulatory Reform can make a needed and significant contribution to the improved substance, effectiveness, and efficiency of regulation by the independent regulatory agencies. With the qualifications I have noted, we are therefore pleased to support the concept embodied in these resolutions and would hope to have every opportunity to assist the proposed Commission in its endeavors should it be established.

Thank you for permitting me to appear here today.

[The prepared statement of Mr. Wiley follows:]

PREPARED STATEMENT OF RICHARD E. WILEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear here today to present the Commission's views on the subject of regulatory reform which is before your Committee in the form of four different legislative proposals. My testimony is directed primarily to one of those proposals, S. 4145, a bill to establish a "National Commission on Regulatory Reform." This past Wednesday I testified on a similar measure, S.J. Res. 253, which as you know is before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, and I will refer to that proposal in my comments on S. 4145 where a comparison is believed to be particularly relevant.

With respect to the three other bills before your Committee, I would note that none of the provisions of S. 3604 pertain to the FCC or to an area in which our agency, has any particular expertise, and thus I have no comments to make with respect thereto. With reference to S. 770, the Commission has not taken any position on this legislation; however, if the Committee has any particular questions it may wish to pursue, I will be pleased to offer my personal observations. We have previously submitted comments on S. 704 to the Subcommittee on Budgeting, Management, and Expenditures. To conserve time, I shall not reiterate those views in my prepared statement.

Let me state at the outset, Mr. Chairman, that the FCC supports the concept in both S. 4145 and S.J. Res 253 of establishing a "National Commission on Regulatory Reform" to study and to report to the President and the Congress on the performance and impact of the independent Federal regulatory agencies. We are mindful that this concept is scarcely a new one. Committees and commissions—both governmental and private—have studied and reported on the regulatory agencies with considerable frequency since their inception. Moreover the agencies themselves are continually engaged in the review and assessment of their performance through the oversight, appropriations, legislative, and judical processess. We do believe, however, that the Commission contemplated by both S. 4145 and S.J. Res 253 can make a significant contribution to this national debate on the subject of regulatory reform and, more importantly, to appropriate congressional and administrative action.

Our support for this concept is predicated on what we understand to be the basic purposes and objectives of the Commission to be established and the intended scope of its inquiry. Although S.J. Res. 253 is per haps broader and more detailed in its mandate, both it and S. 4145 would direct the National Commission on Regulatory Reform to study and report, with specific recommendations, on the performance of the independent regulatory agencies in terms of the impact of their activities, and in particular of their rules and regulations, on the Nation's economy. Given the serious dimensions of the problem of inflation, we believe that it is clearly a paramount responsibility of the Federal Government to examine its own house to identify and revise or eliminate any regulatory rules or policies which impose undue burdens on commerce, place unnecessary restrictions on competition or unduly increase consumer costs without any significant countervailing public interest benefit.

In this regard, it may not be unfair to say that most prior reform commissions have focused primarily on nonsubstantive aspects of the regulatory agencies, such as their procedures and organization, and have largely ignored the equally, if not more important, substantive issues of regulation. These issues, for example, include the following: what is the need for particular rules and regulations; what are their consequences; who gains from particular rules and regulations (and who pays for the gain); who loses (and who ultimately suffers the loss); and how can agency rules and regulations be revised to meet changing circumstances or changing circumstances or changing assessments of need? As we understand both S. 4145 and S. J. Res. 253, The Reform Commission would be mandated to examine these fundamental substantive questions in the context of comparing the economic and non-economic costs and benefits of particular regulatory activities. To the extent that the Commission would do these things and also make specific recommendations for possible congressional or administrative action, we believe that its creation would be eminently justified.

I should note here, Mr. Chairman, that the FCC is aware that neither the public interest nor the regulated industries are served by outmoded rules and overregulation. To deal with this problem, we are engaged in extensive and continuing studies in the Broadcast, Cable, and Safety and Special Radio Services designed to evaluate each and every rule on the Commission's books for its current usefulness. If a regulation in any service is out of date with advancing technology, if it no longer fulfills its intended function or our regulatory objective, if its wording is not expressed as simply and directly as possible, if—in all—its disadvantages to the public outweigh the attendant advantages, then such a rule is a candidate for revised regulation (or, for short, "re-regulation"), or perhaps deletion altogether. As a result of the numerous broadcast re-regulation orders issued by the FCC over the past two and a half years, we have amended and, in some cases, deleted nearly 300 rules and regulations concerning radio and television station operations. In addition to changing outmoded rules, I also believe that—in the broadcast arena, for example—such factors as the size of the market, the number of stations in the market, and especially the size of the individual licensee should be reflected in the content and relative burdens of our rules.

We simply cannot continue to regulate a tiny radio station, with 3 or 4 employees, in much the same manner as a large market VHF television station. The fundamental thrust of all our re-regulation efforts is thus to focus regulation on specific subjects and entities where it is clearly needed, to eliminate the waste associated with unnecessary or unduly burdensome over-regulation, and to enable both the FCC and those subject to its regulation to put the time and expense thereby saved to more productive ends.

We have characterized this continuing re-examination of our rules as "re-regulation" rather than "de-regulation" because, from time to time, we fully expect to encounter areas where more, not less, regulation is needed. One recent example might be certain parts of our Docket No. 19153 concerning broadcast license renewal requirements and procedures where we increased by some measure what might be termed the public information or local public relations obligations of broadcast licensees. Our aim there was not to create new burdens for their own sake, but to improve the frequency and quality of local dialogue between licensees and the communities they serve in the hope that disputes concerning renewal might be more readily resolved at the local level without resort to the processes of the FCC and the time and expense involved in the filing of pleadings, petitions to deny or other formal challenges.

I should also note that we have recently established a broad-ranging inquiry (Docket 20003) into the economic implications for future telephone service of customer interconnection, flat-rate pricing, and certain separations procedures. With respect to "flat-rate" or cost-insensitive pricing for local telephone service, the FCC is working with state regulatory authorities to study whether such pricing tends to encourage excessive—and perhaps inefficient—use of local exchange facilities. We are also currently reviewing a study which we commissioned to examine alternatives to the traditional rate-base regulation of common carriers, including measurement of performance and cost of capital. These possible alternatives are addressed in significant part to dealing with the problem of inflation through more efficient utilization of existing resources.

While we believe that these activities represent a determined effort on the part of our agency to ensure that our regulatory product is wholly consistent with the public interest, we would, of course, fully cooperate with the proposed Reform Commission in any review of our progress and would welcome the opportunity to consider any recommendations it might make.

Before leaving the area of substantive regulation to discuss other subjects to be studied and reported by the proposed Commission, I would like to add a few observations concerning the relationship of the regulatory process and the concept of competition. As the members of this Committee may be aware, in the past several years the FCC has attempted to introduce the stimulus of competition into certain traditionally monopolistic or oligopolistic telecommunications services. We have done so not for the sake of competition *per se*, but in recognition of our statutory mandate to regulate in the public interest. Obviously, there are situations in which competition is not always appropriate or advisable (for example, we long ago rejected the notion of having two telephone poles in every backyard). However, we believe that where competition is feasible—that is, where no undue technical or economic harm to basic services would be caused by its introduction—the public is likely to benefit from lower rates, improved service and more rapid innovation, as well as greater diversity of choice.

Our reading of both S. 4145 and S.J. Res 253 indicates that the National Commission on Regulatory Reform would also be directed to examine the structures and procedures of the regulatory agencies with a view toward improving their efficiency and effectiveness. As I have noted, there is no dearth of prior investigation, report, and scholarship on this subject. However, we believe that the proposed Commission might, in reviewing and building upon preivous studies to the fullest extent possible, make a contribution to action in this area of regulatory reform. In this regard, we would hope that any commission established would draw upon the considerable work and expertise of the Administrative Conference of the United States, and not duplicate its ongoing efforts.

We would note at this point, Mr. Chairman, that the FCC is continually engaged in the review and revision of our administrative practices and procedures to keep pace with the burgeoning growth of the industries we regulate. As Chairman of the FCC, it has been especially distressing for me to discover that all too often the only thing standing between an abundant demand for communications services and available supply is administrative and bureaucratic delay. We would imagine that our sister agencies share our concerns with respect to this problem, and particularly with reference to adjudicatory proceedings where it has been observed that the regulatory commissions are "drowning in a sea of the process." While we are committed to the traditional concepts of fairness and opportunity to be heard embodied in our statutes, the Administrative Procedure Act and the Constitution, we nonetheless believe that in many instances our procedures have had the effect of sanctioning dilatory pleadings and bureaucratic waste rather than promoting the expeditious formulation, argument, and resolution of substantive issues essential to rational decision-making.

To deal with this problem internally we have established a full-time Adjudicatory Re-regulation Task Force with the responsibility to make recommendations for reform directly to the Commission by the end of this fiscal year. We can—and indeed must—reduce the inordinate time and expense now involved in reaching final decision in some Commission cases to ensure that our hearing process will not be available only to the wealthy.

In this connection, we have recently instituted another procedural reform in some common carrier rate-making proceedings: a new, streamlined procedure calling for all evidence to be submitted in writing and specifying that oral argument is to be held only to the extent necessary. As a result of this "paper" proceeding, the staff has prepared its recommendations in a very complex and difficult case in about nine months, whereas under the previous practice it would have taken years.

We at the FCC have also taken measures to improve our management techniques in order to ensure that maximum productivity of personnel and resources will be applied to our ever-increasing workload. An executive team made up of the Chairman and the Chiefs of our operating Offices and Bureaus has been established to plan Commission agendas, to set priorities, and—most significantly—to establish deadlines. This Committee meets at least once a week. We have also instituted a new Critical Project Form designed to identify major matters within the operating Bureaus, allocate sufficient staff to those tasks, and again to set target dates for completion and Commission action. Special Commission meetings, that is, those involving oral argument or discussion of adjudicatory cases or rulemaking proceedings, are scheduled several months in advance, and pursuant to our efforts to open up the processes of regulation, we have made these monthly schedules public information. I might note, Mr. Chairman, that the full Commission is now meeting—on the average—three or even four days a week in order to meet our regulatory responsibilities.

To further aid our efforts in these areas we are increasing our utilization of advanced computer technology. Installation of an interim third generation computer with multiple processing capability has been completed, and we have accorded the huge and ever-increasing quantities of applications and filings in the Safety and Special Radio field the highest priority for full automation. We have also recently let a contract for an ADP system to be applied to broadcast licensing and expect that it will greatly assist our regulatory efforts in this area.

One further administrative step which we have taken to improve our ultimate regulatory product is the holding of regional meetings throughout the country between the Commissioners and key staff, the members of industries we regulate, and the public at large. We believe that these meetings are conducive to the mutual exchange of ideas, comments, and criticism which is essential to ensure regulation responsive to the changing needs and perceptions of the public interest.

Perhaps more importantly, the Commission's face-to-face contact at the local level with interested members of the public and industry helps to demonstrate that the Washington-based Federal bureaucracy is not remote and impersonal but genuinely concerned with their problems and needs.

We believe that these administrative measures will continue to improve the quality of our regulatory determinations, and permit more prompt action on our increasing workload. The mandate of the proposed Commission appears broad enough to encompass these and similar aspects of procedural and administrative reform. However, should the proposed Commission find it necessary in terms of its available resources to limit its subjects of inquiry, we would hope that it would concentrate its efforts in the area of substantive rule, regulation, and policy rather than on matters of procedural and administrative reform which have already been extensively studied and reported.

In addition to reviewing administrative procedures and practices and particular substantive regulations, it would appear that the Reform Commission would also be mandated to address the broader question of the agencies' "overall goals" in the context of examining their respective enabling statutes. The basic concept underlying each of the seven major Federal regulatory acts was that, by congressional delegation, complex and developing technologies and industries, requiring continued oversight and specialized expertise, could be effectively regulated in the public interest. While the regulatory acts have been frequently reviewed in specific part through the amendment and legislative oversight processes, to our knowledge most, if not all, have never been reviewed *in toto* to reassess this historic concept and the effectiveness of its implementation by existing statutory provision in the light of modern needs and experience.

As the FCC celebrates its 40th anniversary, we believe that the purposes and objectives of the Communications Act of 1934 remain valid and necessary and that its general mandate to the Commission continues to serve as a viable means of ensuring that the public interest will be effectuated by the communications media. However, as our annual legislative programs evidence, we would be among the first to admit the possibility that particular provisions of the Act relating to the Commission's jurisdiction and its adjudicatory, rulemaking, and licensing authority may indeed merit review and perhaps revision. We would therefore support this additional subject area for inclusion in the proposed Reform Commission's scope of inquiry.

As a final comment on the scope of the proposed Commission's inquiry, we would note that unlike S.J. Res. 253, S. 4145 would direct the Commission to examine State and local governmental regulatory activities which interact with the Federal independent regulatory system. Although ours is a Federal system which leaves substantial regulatory authority to the respective States with regard to local or intrastate aspects of commerce and industry, the exercise or non-exercise of that authority by State and local governments necessarily impacts on Federal regulatory activities. This impact and inter-relationship may, in our judgment, be a proper field for study, particularly where Federal and State and local regulation may overlap in either purpose or effect and thereby have the potential for conflict or unnecessary duplication.

As this review of the scope of the inquiry proposed by S. 4145 indicates, the task of the National Commission on Regulatory Reform would be considerable. In this regard, we would observe that the one-year time frame proposed by S. 4145 for the completion of the Commission's work may be unrealistic, and that the schedule of three annual reports proposed by S.J. Res. 253 appears to us to be a more practical and expeditious vehicle for ordering and meeting its priorities.

With respect to the basic structure of the Commission, we believe that the twelve-member body proposed by both S. 4145 and S.J. Res. 253 would be appropriate. As to the particular interests to be represented on the Commission, we share the view expressed by the Chairman of the Senate Committee on Commerce that the subject of regulatory reform is too critical to "be regarded as a 'political football,' game between the forces of regulation and the forces of deregulation." In accordance with this view, we believe that the appointment provisions of S.J. Res. 253 would result in a more appropriate cross-section of political and economic viewpoints than the comparable provisions of S. 4145, and would also ensure a stronger joint effort between the Executive and Legislative branches of government. We would also hope that the membership of the Commission would reflect a diversity of professional backgrounds, as well as a diversity of political and economic interests. The Federal career service, the legal profession, the economist, the consumer, the business community, and the related academic professions should all find representation on the Commission.

In conclusion, Mr. Chairman, the FCC believes that a National Commission on Regulatory Reform can make a needed and significant contribution to the improved substance, effectiveness, and efficiency of regulation by the independent Federal agencies. With the qualifications I have noted, we are therefore pleased to support the concept embodied in S.J. Res. 253 and would hope to have every opportunity to assist the proposed Commission in its endeavors should it be established.

That concludes my prepared testimony, Mr. Chairman, and it will be my pleasure to join the scheduled discussion panel at the appropriate time.

Senator METCALF. Thank you very much, Mr. Wiley, for a very helpful statement. It is a curious thing that by taking the President's proposed bill and putting it in a joint resolution, and combining some of the bills that I have personally introduced, this committee lost jurisdiction to the Commerce Commission and then by my introducing the President's own bill, which does not contain some of the provisions I have long endorsed, we regained jurisdiction over this area.

So I think we have to take all the bills in consideration and it will be our responsibility to try to work out cooperation with our sister committee over there, the Commerce Committee. And I have been reading that most of you have already testified before the Commerce Committee.

Is that not correct?

Mr. NASSIKAS. Yes.

Mr. WILEY. Yes.

Senator METCALF. Mr. Garrett, you put in the record but skipped over the availability of access to information before the FCC.

You are one of the commissions nearby so I can walk over to the SEC and run down some of the material that you have accessible. But we sent members of our staff—Mr. Chesson and Mr. Intermaggio—over and we found out that while everybody seemed to be willing to give us information, all this material is unavailable. They only have one set of files for use by both you and the public, and we have tried to find some information on some of the corporate activities, and half of them were unavailable to my own congressional staff.

You have files stored in Maryland and sometime it takes a couple of weeks to get that information. Even as slow as we are over here in the Congress to adopt new computerized information services, we found that we can do better than that with the Congressional Reference Service. What are you doing about making these files available to the people who are concerned and interested?

Mr. GARRETT. The criticism is well taken, Mr. Chairman. I do not want to argue with you about the facts.

We currently are studying, through our Executive Director's office, various means to improve our system for storing, indexing, and retrieving documents in our files, particularly through the increased use of modern data processing techniques. I hope that, as a result of our efforts in this regard, you will find things a good deal better within the next 6 months or so.

I agree, however, that the present situation is not as good as it should be.

Senator METCALF. Along the same matter, I frequently ask you, Mr. Nassikas, and I had asked you, Mr. Wiley, to give me some information especially in preparation for this hearing. For instance, I wanted to know how much was being spent on regulatory hearings before your Commission. I find out that you spent about $25 million in 1971. I think that is the latest information we have.

Actually, the information from the Federal Communications Commission is as old as 1971, is of very little help, and if we had on-going, up-to-date information available to the Congress, perhaps we would not need such an investigation. Now, what are we doing about getting more current information available? I will direct that question first at Mr. Nassikas.

Mr. NASSIKAS. I agree that some of the information we have is stale. We have voluminous reporting forms, as you know. Probably too many. We started about 3 years ago with a consent of a Regulatory Information System at the Federal Power Commission which will completely computerize all reporting forms—that is, public use forms—that are reported to us.

In addition, we will use this Regulatory Information System for specialized studies. We adopted the system by formal order on September 26th, 1973, and we are well on our way to, as I say, having our reports made on tape to the degree that they can be. The smaller utilities are handicapped by not having the resources to report in this form. We are going to have an optional system to have them report in some other way. We still are behind, and I know that with reference to very important information, but we are doing our best. We are very proud of this Regulatory Information System. We are working hard in evaluating data with private industry.

Senator METCALF. For instance, Mr. Wiley, we have just been able to obtain information on telephone company statistics for the calendar year 1971.

Now some people have said the answer to some of the failure—I hate to use the word "failure" because I think that the regulatory agencies have done a splendid job in view of the support that they have been given—is the neglect or the inability to get statistics up any more current than that. We have to rely on the antitrust provisions and, as has already been pointed out, I think the antitrust problem on the *A.T. & T.* case and so forth is going to go on for years, and that is not any answer to regulation in protecting the interests of the telephone user. Now what are you doing about bringing these statistics up to date?

Mr. WILEY. Well, Mr. Chairman, as you know, the Commission has now changed its procedures from hand production of the common carrier statistics to a computerized method, and I think you are going to find that this will permit us to produce the kind of information that you and we both need much quicker.

Now, for example, our 1972 book has been composed. The 1973 book is in process and is scheduled to go to the Government Printing Office within the next month. The data for the 1974 book will not be received until April. And so I think with the computerized production process which we have now installed, which has taken some time to get underway, we are going to be able to develop materials much sooner.

On the whole question of regulation, within the resources that the Commission has, I think we are doing a creditable job of regulation in areas like common carrier. We have nearly 30 major regulatory actions going as far as A.T. & T., for example, is concerned, and another dozen or so possible ones which are pending in proposed rulemaking.

The Commission obviously needs additional resources, but we are trying to update our processes and to make use of every management

technique available to better utilize the manpower resources that we have.

I am not saying that a reform commission cannot give us good input. As I point out in my statement, we are looking for additional advice. But I think we are meeting our responsibilities.

Senator METCALF. Mr. Wiley, we will take judicial notice of all these self-serving declarations, that you are doing a good job. The reason we are here is to find out how you can do a better job, and I think the admonition that Mr. Simpson has given us, that a reform commission is not exactly what we are talking about, but rather we are talking about a review commission and trying to point out what a better job would be.

Now I am going to skip over a whole lot of things where I agreed with some of the innovations and some of the improvements that you have made and I have observed and we have talked about. What we are talking about today is, do we need a commission to have further improvements or further changes or further review?

Mr. WILEY. We certainly can stand improvement. There is no question about it.

Senator METCALF. Mr. Simpson and then Mr. Nassikas.

Mr. SIMPSON. Well, Mr. Chairman, if I could just comment on what we do on information.

We have adopted a freedom-of-information policy.[1] That is available. It is attached to my statement. It says that essentially all information that is in this agency will be made available except where it invades the privacy of an individual. We have in-depth investigations which we make available. We remove, however, the name of the individual. The only other information not released are proprietary data and trade secrets. We do not take advantage of FVI exemptions for internal memoranda and draft reports. Those are all available to the public. We have public reading rooms in all of our facilities. We have lists of the information that is available and you can go in and browse it yourself.

As to how we handle information, we have an automated system. It was necessary. We have 800 million bits of information in on-line storage. It is updated daily. It includes all of the injury reports with the capability of analysis by product, by age, by region.

We have all of our sample collections, status of reports, status of recalls. I have a video display unit on my desk so I can use it to get at the information. I would be pleased to have you come down and review the system. It works. And in fact, we are quite proud of the people we have on the staff because the programing is, in fact, beyond the state of the art of anything that is being done in the Federal Government and the private sector.

Senator METCALF. When we sent staff down to the Commissions they found out that SEC's agenda is highly classified; ICC's agenda is administratively confidential; FPC is not made public; Federal Maritime Commission said that normally it does not release this material.

Now Mr. Simpson, you have a public calendar in your Consumer Product Safety Commission and the Federal Communications Commission is putting its calendars on the press tape so we can have

[1] See attachment 2 of Mr. Simpson's statement, p. 176.

any trade publication or anyone who wants to read what is happening in your two agencies.

Mr. SIMPSON. Not only read, Mr. Chairman. In ours the public can come in and attend every meeting of our agency with any employee or Commissioner with any outside party. All meetings are open to the public to observe and attend, except one executive session where the only ones invited are the five members of the Commission, no staff. Every other meeting is open to the public.

Senator METCALF. Thank you, Mr. Simpson. Mr. Nassikas.

Mr. NASSIKAS. Well, on that point, I think as to the making an agenda public, it depends upon what your agency's mission is. Our decisions profoundly affect financial markets for utilities and I think there would be a danger in disclosing an agenda or the conversations that lead to the ultimate decision.

In our case I would like to say, if I may——

Senator METCALF. You may say anything you want.

Mr. NASSIKAS. One of the important areas that I did not cover as to the mission of this National Commission is what agencies should they review. Well, in energy, I think it is absolutely imperative that the National Commission review the activities of not only the Federal Power Commission but of course every agency which is in between a regulatory commission and an independent executive agency, whatever that may be, such as——

Mr. TURNER. May I ask a question on that? Are you saying that the Nuclear Regulatory Commission, which is to regulate nuclear safety, has some administrative character? It is not an independent regulatory agency?

Mr. NASSIKAS. Mr. Turner, I have not evaluated the bill yet, but it seems to me that that agency does not quite have the same status as the Federal Power Commission, although I will be happy to review it and determine whether they are in fact as independent as we are.

Mr. TURNER. Well, that agency was created by legislation reported out by this Committee, and the intent was to make it an independent regulatory agency.

Mr. NASSIKAS. Well, if you intended to have that as independent as the FPC, then that is just fine. I am for it.

Mr. TURNER. I understand that you have recommended the possibility of a merger between the Federal Power Commission and and the Nuclear Regulatory Commission.

Mr. NASSIKAS. I have indeed, and just for want of a name I would call it the Federal Energy Commission. The reason that I advocate this is that, after all, they license nuclear plants which will be about 50 percent of our power if we can get them on by the year 1990 or 2000. And we certify, of course, hydroelectric plants, as well as vast liquefied natural gas systems that have more Btu, by the way, than the largest nuclear plant in existence today, coal gasification plants, at least the output of them, and synthetic plants, and it seems to me that one very promising area for this National Commission is to determine whether or not all major energy regulation should be consolidated in one energy commission.

Mr. TURNER. But what you have done here is to combine an economic regulatory function with the safety regulatory function in one commission.

Do you not see some problems there, some incongruities there, and some possible conflicts between those two?

Mr. NASSIKAS. Yes, yes, I do, but I do not think they are insurmountable. What you say is exactly right. At the same time when we examine an energy system we should examine all alternatives under a comprehensive plan considering all public and private benefits, as is provided in section 10(a) of the Federal Power Act.

And it does seem to me that it may be better to build a nuclear plant in a particular location or it may be better to have a coal-fired plant. And I think that this is where we are going to end up some day, and I would like to see it accelerated.

All I am saying is that EPA, for instance, as the Environmental Protection Agency, is probably the single most important energy Agency in our Government today. It is not solely environmental because any decision, any standard that EPA establishes impacts upon both the reliability and the cost of an energy system.

I am suggesting that in energy there has to be a total overview and a total review of the relationships between the various Federal agencies and the State governments.

Senator METCALF. While I have you, Mr. Nassikas, I want to ask you another question.

In the Southern Natural Gas Co., which was decided earlier this year, you dissented— I thought it a very able dissent—and you suggested that you felt that the majority decision was not supported by substantial evidence.

Mr. NASSIKAS. Yes, sir.

Senator METCALF. And you said that it should be reversed on appeal to a circuit court, but then you regretted that you had an inability, as you said, "Our FPC staff is the only party to the proceeding in opposition to the 55-cent rate, and in the absence of intervention by the parties on hearing no appeal may be taken to the U.S. court of appeals." And then you said "to reverse the majority's travesty." That is a pretty good word, too. It is eloquent.

Mr. NASSIKAS. It is a very accurate word.

Senator METCALF. Of regulatory justice. And it is just that sort of a thing that some people have suggested—that maybe there should be more power in the various agencies to handle their own losses or to make such appeals when they come up.

Mr. NASSIKAS. Well, actually, I will say this, that that kind of situation is probably eloquent support for consumer counsel, which you have advocated. I will be the first to admit, if you had a consumer counsel and let's say that the consumer counsel agreed with the dissent, then the consumer counsel——

Senator METCALF. He would have been on that side of the case.

Mr. NASSIKAS. He could have taken it up. So there is that. Even though I would like to see some way of reviewing that kind of case I do not support appeals by dissenters, even if a dissenter happens to be a chairman. My vote is only one vote out of five.

Senator METCALF. You had two there.

Mr. NASSIKAS. Yes, we had two. Bill Springer and I were on that decision. But, to allow an appeal by the two dissenters would lead to some terrible problems.

I have even thought, or somebody else thought, maybe there ought to be a weighted vote, which I discard. The suggestion was a little bit too clever.

Senator METCALF. Well, if we had had a consumer counsel, as you say, that agency could have done it.

Mr. NASSIKAS. Yes, sir, that is right.

Senator METCALF. Well, I do not know about some of this business that Mr. Turner was talking about. I sat in on the conference for that new Federal agency for energy. I have been concerned about nuclear safety and I have been concerned about the growth of nuclear power and the failure of somebody to do some regulation.

In fact, you enumerated a whole lot of things that you are going to do with nuclear power, perhaps by the turn of the century. But you did not go into some of the research that might be available for solar energy or for the better use of our coal and fossil fuel facilities and so forth, that would offset some of the needs for oil from abroad.

But I am concerned about your proposal that we go ahead and deregulate natural gas right now. Of course that is a legislative proposal, I think. You are carrying out the legislation responsibilities until Congress does something about that, are you not?

Mr. NASSIKAS. Absolutely, to the limit of our powers. As long as Congress says we shall regulate natural gas, that is exactly what we will do.

I happen to think that the resource can be more effectively allocated and rationed, so to speak, by the marketplace with safeguards, antitrust safeguards, and others. An excess profits tax should also be considered whereby over a certain level a tax would be imposed on the price and with a credit provision if the excess were invested in research and exploration and development, much like the oil credit and surplus profits tax that have been proposed. This is a very controversial subject.

I do not claim that I am necessarily right. From my studies, though, I think we will get more gas under such a program. I think in the long run the consumer will get far better service. And, I think, we can control the windfall profits problem, as we should. I believe, we should try deregulation of new gas along the lines that I propose.

My proposal has not been simply to deregulate and have no protective convenants for consumers and the public interest. My proposal is very different from the administration's.

Senator METCALF. Well, of course, as you point out, that is a legislative matter.

Mr. NASSIKAS. It is.

Senator METCALF. And that Congress should act and either continue its direction to you to continue to regulate or deregulate or do something in between that gives you an opportunity to exercise some of the flexibility you want.

Mr. NASSIKAS. It is true, and also, there are always middle grounds, too.

Senator METCALF. But that is not a matter to be studied by a commission on the regulatory agencies. That is a matter to be studied as a policy of the legislative branch.

Mr. NASSIKAS. Absolutely. That is what I say in my statement, too. I agree with you. I believe this question has been studied almost as

much as any question in the history of this great Republic, and it just seems to me that the time is long overdue for an up or down vote on it, so that we can then determine where we are going.

Let me say one more thing on deregulation. We have a statute, the Natural Gas Act and, as interpreted by the courts, we have observed that statute. Now, within the limits of that statute we have conducted a number of innovations of the kind that time does not permit going into. We did release some 4,000 small gas producers from price ceilings while maintaining our price controls over the larger companies. About 20 to 25 companies produce about 85 percent of the gas in the United States.

So, we eliminated the small producers from price regulation and the U.S. Supreme Court sustained this action on June 14. We have also, within the limits of our statute, increased competition by the pipeline sector with producers by giving pipeline production subsidiaries and departments the same price advantage as all other producers get for their output.

We also established an advanced payments program, which has attracted over $1 billion of pipeline capital bidding on leases, and also developing natural gas to serve consumer markets.

So these are some of the things we are trying to do. We also set up an optional pricing procedure, which was largely sustained. This has been a very controversial policy by the way. We had several Congressmen, come in on that case right up to the Circuit Court of Appeals for the District of Columbia. The court did sustain us in principle except on pregranted abandonments. That case will probably go to the Supreme Court.

My point is that it takes about 3 years between the time that you do something that you believe is in the public interest and the time it is finally affirmed or disallowed, as the case may be, by the highest court in the land.

We can no longer afford that luxury, Mr. Chairman, of waiting 3 years to see whether our actions are going to be sustained or not. That is one reason why I am for deregulation with protective covenants.

Senator METCALF. Mr. Garrett has said in his statement that he believes that he supported the idea of the Commission. He said that his Commission supported the idea of the study, and you cited Justice Douglas. I have often cited further along in that very same article where Justice Douglas compared regulatory commissions to the life of individuals. You will recall he said at first they are young and aggressive and then they settle down to sort of a middle age status quo, and then they rapidly degenerate into senility. And at times I have suggested that the Interstate Commerce Commission has started with senility and did not even go through the first two. But they too have ebbed and flowed.

But anyway, the whole point is that regulatory commissions tend to be captured by the very industries or agencies they are supposed to regulate. But do we have to have a commission to do that study and make that determination? Should it not be the responsibility of Congress to do that?

Mr. GARRETT. Is that addressed to me, Senator?

Senator METCALF. Well, I am wondering how to attain some of the things that I suspect are in the minds, if I can be a mindreader, in the minds of some people in the administration. They would like to remove some of the regulatory powers, not only deregulation of natural gas, which is just one, but several of the other things. And maybe a commission would propose that. We are told that regulatory agencies are things that are expensive and contribute to inflation and things of that sort. Now should not the Congress do that rather than delegate the power to a special Executive Commission?

Mr. GARRETT. Well, of course, I am sure that ultimately any recommedation that the proposed new commission would come up with would end up back in Congress. At least from my point of view I think it depends upon what you emphasize.

As far as the SEC is concerned, two congressional committees and their subcommittees, those chaired by Congressman Moss of California and Senator Williams of New Jersey, do a very thorough and continuous job of oversight, not only in the way of formal studies, but they and their staffs also have regular communications with the Commission and there is very little that we do of which those committees and their staffs are not fully aware. And, I assume that they represent the Congress in this regard. If the other independent regulatory agencies have a similar relationship with their oversight committees, I do not think we need another commission for the purpose of discovering what the agencies are now doing under their present statutes.

Although we would never resist the establishment of such a commission, if Congress wanted it, the new and interesting, and, in my mind, unexplored idea, at least in modern time, behind this suggestion is that the total regulatory burden in some industries, if not all industries, may have a significant effect on cost and price levels.

I am not familiar with any formal studies, either directed by Congress or by commissions appointed by Congress, that have examined our total regulatory picture from that point of view. And, of course, the proposed new commission's mandate would be simplified and, perhaps, the time required for it to discharge its responsibilities shortened, if it were not given broad responsibility for reviewing the entire regulatory process.

But, looking at this specific point, I think it is unfortunate that, in supporting what seems to me a basically interesting idea, some of the public comments that I have read seem to say our laws are good but our commissioners are stupid, and therefore, we need a commission to go out and see why the commissioners are so stupid.

I do not accept that criticism for ourselves and I have no reason to believe that my brothers on the other commissions do. What should be examined, I think, is whether the basic policies of the laws we administer are appropriate for modern times. And that, I think, can be well done.

Now, we have no particular expertise, Senator, as to whether such a review should be conducted by a commission or by a direct congressional committee itself, although a commission would have the advantage of being able to concentrate on a given area over a period of time, whereas we all know how terribly busy members of Congress are.

Senator METCALF. I am going to ask Mr. Nassikas to comment on that, too, but I want to remind you that Mr. Simon has suggested that the rate obligation to set and fix rates by the regulatory agencies, especially the utility rates in the states commissions, automatically follow the Cost of Living Index, which, to my mind, would be a complete abdication of the regulatory process. Now, if these automatic adjustment clauses, are going to be part of the Commission, we are going to have a recommendation that we just discontinue a whole lot of the obligations that the commissions have.

Mr. NASSIKAS. Well, Mr. Chairman, Bill Simon is a good friend of mine and probably is so because we do not agree on everything. I certainly do not agree with him on this particular concept. It has always been a dream, that you can have push-button regulation. Just set a rate base and then automatically have adjustments to it, and then the commissioners, I guess, can go out and play golf.

Senator METCALF. Well, if we get your computers in operation, then we will not need you at all.

Mr. NASSIKAS. I would hope so. That would be a great accomplishment.

Senator METCALF. I do not agree with that either.

Mr. NASSIKAS. That would be a great accomplishment, in my opinion anyway, but to be sure, there are certain aspects of regulation, such as eliminating regulatory lag, that are important to finance utilities today that we might not have thought were feasible a few years ago.

I will name just one or two of these.

It is possible that we might have rates designed on peak load responsibility which would penalize the use of electric power at peak and then off-peak, in effect, have a lower rate, which would end up with less plant from the capacity side by equalizing the demand factor over a 24-hour cycle, so to speak. I think this is constructive and some of the state commissions are doing a wonderful job on that. Wisconsin just came up with a great case. Vermont, my neighbor up there—I am from New Hampshire and Vermont came out with a peak load responsibility rate design with special metering to be financed by the utility.

There is this kind of innovation going on. Also, we are considering the idea of having at least part of construction work in progress included in the investment base. The fuel clause adjustments require searching review at all times. One of the biggest reasons for the increase of electric rates has been the automatic passthrough of fuels. And yet, I must say that the options to this are pretty severe in the sense of the utilities' cash flow problem. But as for tying electric rates to the Cost of Living Index, I do not think so. The inflationary factors are built in. We can't ignore efficiency and say automatically you are going to get your increase, regardless of how you manage.

I do not think that is regulation. You might as well abolish the whole structure as do that.

Senator METCALF. Well, now Mr. Wiley has a little different problem. There is some competition in some of the areas that you regulate. We have one power line and one distribution system in the electric utility business and you have three major networks, and a lot of competing radio stations.

I think that that very situation points up the matter I believe Mr. Garrett brought up, and that is that unless we give a lot of time and a lot of thought to a commission, they are liable to take regulatory agencies and just lump them into one group, and that would leave you in your problems, either without consideration or considered as a part of an area that you do not experience.

Now, how do you think that such a commission as proposed could handle the problem of competition that you have with the Federal Communications Commission in the absolute and the absolute monopoly problems that Mr. Nassikas has, or the problems of just regulation without rate fixing and so forth that Mr. Garrett meets with the Securities and Exchange Commission?

Mr. WILEY. Well, I think there is no doubt that each commission has its own independent problems consistent with the differing concerns of regulation of the industries we regulate.

I think we can take a look at whether or not the concepts of regulation, policy regulation, and the actual structures of the individual acts that we are regulating under, are still appropriate. This is one thing that we do not always get—a real oversight of the statute. It is difficult, I think, in the congressional process to get to that kind of an overall, long-term review of the statute.

I think that is one of the great contributions that a review commission, which would have the time and be able to stand off a bit from the process, could make. I frankly think we get quite a searching oversight of our activity by the committees of the Congress and I think it is appropriate, as Mr. Simpson has indicated. But the broader aspects of regulatory policy and some of the substantive aspects, as I tried to point out in my statement, is something this Commission could get to.

Senator METCALF. For a long time there was the concept that perhaps instead of regulatory commissions we could have something like an administrative court, and apparently, Congress has abandoned that concept because we are creating more regulatory agencies. Mr Simpson, you are an example of a new commission. We just created one the other day in the energy situation. Do you think that we are going too far in this business of setting up regulatory commissions? I am going to ask you, Mr. Simpson, because your agency is one of the newest. Or should we try to limit the number of regulatory agencies and go into some of the concepts of regulation?

Mr. SIMPSON. Well, Mr. Chairman, I think that we should occasionally and perhaps quite often take the opportunity to sit back and try to figure out what it is all about. At least in my perception, if any agency is created to fill a public need, then there must be a real need before you create the agency. If you want to talk about the need of this agency, the Consumer Product Safety Commission, we are talking about verifiable data that indicates something like 20 million injuries per year associated with these products subject to our jurisdiction.

I do not think that that is subject to too much question—that there is a problem. I think you should approach it with an open mind as to whether or not we should assign a regulatory function to a Cabinet-level department or create a new agency.

I would maintain that both have advantages and disadvantages. One thing we should be very clear about is accountability, or chain of accountability, and there are problems associated with defining accountability in the independent agencies. There are also advantages and disadvantages with collegial bodies.

I do not think we are going to find any truism that applies across the board.

There is one thing we should always do, though, when we create an agency. We should insure, by building into the legislation or mechanism or procedures or policies, that they continue to fill that need. And one of the best ways to do that is to insure the availability of public scrutiny. Public scrutiny would help keep agencies operating in the public interest.

I think you can safely say that safety and economics are interrleated. Therefore, we should not unduly criticize someone who has a mandate to write safety standards for increasing the cost of products. I think it is a natural consequence of our agency. The Congress, when writing the CPSA, was pretty wise and said, at least we have the obligation to know the safety consequences, to the public as well as the economic consequences are of proposed regulations. We should be subject to a challenge if the cost/benefit relationship is out of whack.

So at least there is one approach to economics of safety, but it is only from a year and a half of experience. I believe that another thing that should be done is to abolish secrecy in regulatory agencies. It is difficult to twist arms and become captured by any special interest if all of your business is conducted in public. Our year and a half experience proves that. And by any special interest, I include not only business interests but organized consumer interests.

In our agency all the meetings are open to the public. I think to create a council or a Consumer Protection Agency is an admission that some of the agencies are not doing that job. That is perhaps one way. But you are creating another Fed to watch after the Fed that was not doing things right in the first place. In my perception, if you open up the process so that the opportunity for public scrutiny becomes a reality and that means advance notice of meetings, opportunity to observe and participate, it means availability of information, complete availability of information—then there are enough citizens around this country and public interest groups that will scrutinize. We have them in our agency all the time. And I conclude that it is very, very healthy.

Mr. TURNER. Mr. Simpson, on that one point. We brought this out during the nuclear regulatory agency and ERDA hearings.

There were, indeed, a number of public intervenors with relevant information and with real concern, but they could not make their positions available to the commissions unless they had the funding, and the data and the ability to call witnesses, in order to present their positions.

Would you support a program for all regulatory agencies to provide funds and assistance to these intervenors so they can make their cases?

Mr. SIMPSON. Yes, and as a matter of fact we have gone as far as we could in a limited budget. We are now currently paying transportation and per diem costs for consumer representatives on standards

panels. We have just paid the transportation and per diem cost of a member of Mr. Nader's Health Research Group to intervene in a public hearing on fireworks regulations held in both Kansas City and Honolulu.

I think it is appropriate, but I think it should be an explicit mandate given to the agency. And I think the Congress ought to back that up with funds in the appropriations process.

Mr. TURNER. Would you support such a program, Mr. Nassikas?

Mr. NASSIKAS. Not that broadly. I would like to see it before I would support it.

We have in our agency, as I have testified before this committee before, procedures for people who cannot afford to come in as an ordinary party. But, on a broad-brush basis, for me to say at this hearing that let us extend part of our appropriation to anybody that wants to come in whether they know anything or not——

Mr. TURNER. That, I do not believe, is what Mr. Simpson said.

Mr. NASSIKAS. I am not taking issue with Mr. Simpson. That is the way I interpreted your question.

Mr. TURNER. I think what Senator Metcalf had in mind in the nuclear regulatory agency situation is that the power remained in the Commission to determine the relevance and to determine the need.

Mr. NASSIKAS. And determine the contribution.

Mr. TURNER. That is correct.

Mr. NASSIKAS. I think that kind of control is needed. Certainly, I want the broadest public participation possible.

Mr. TURNER. Mr. Wiley, would you agree with that?

Mr. WILEY. Well, one thing I think, Mr. Turner, that is needed is to give the public a better concept of how to utilize the processes of a very complicated regulatory structure. We put out a procedural manual for all citizens in order to explain, in very down-to-earth language, exactly how you use the Commission's process, how you file an application.

Senator METCALF. I know, but you have to be a member of the Communications Bar here in the District of Columbia to understand the procedures of your Commission.

Mr. WILEY. I would not agree with that, Mr. Chairman. I do not think that is the case.

Senator METCALF. I am telling you that a practicing attorney reading your procedural manual out in the State of Montana cannot find his way through the labyrinth that you have established.

Mr. WILEY. Well, I agree that the procedures are complicated. And they can be improved, and that is one of the things we are talking about today.

So I do not want to make a self-serving declaration but I think the procedural manual was a genuine attempt to try to provide the public with more information. The same with the other things we have talked about.

Senator METCALF. I will agree to that, yes, and maybe we need a commission to study all of these things and to say, "Well, let's streamline some of this process." But I think Congress could do that, too, if we did our job.

Mr. WILEY. I think the consumer input and how to get the public's input is something an overall commission could look at because I

suspect that that problem pervades all of the agencies and I think, Mr. Chairman, you have certainly put your finger on it. It is a difficult problem.

Senator METCALF. Mr. Simpson.

Mr. SIMPSON. Mr. Chairman, I agree. That is why I personally felt that what you are really talking about on this national commission is what I view as the oversight process. And I certainly think the Congress should look at that.

I am a little concerned when you set up a commission on "reform," and not "review." You might pre-judge reform is needed. If the purpose of a review is to solely look at the *adverse* effects of regulatory actions on the economy, that may become a self-fulfilling prophecy. I would hope that they would look at the effects on the economy of regulatory actions, both positive and negative. At least in our agency it has been estimated that the costs of the injuries associated with these products is about $5½ billion a year, and it is a complicated process to study the impact on the economy. But it may well be that you should be spending more money on regulatory actions to get the economic as well as safety benefits.

I just hope that you approach it in an open way, however it is done, whether it is done by an oversight of the Congress or a special activity. And I am not a lawyer, I am an engineer, but I would be concerned of what my lawyers talk about reviewers and reviewees. I would look at their basic motivations and those should all be conducted, I believe also, Mr. Chairman, in an open way with full opportunity for public scrutiny.

Senator METCALF. Mr. Nassikas.

Mr. NASSIKAS. I would say with reference to establishing more independent regulatory agencies, going back to one of your earlier questions.

Senator METCALF. Yes, that was my initial question.

Mr. NASSIKAS. I would think that this should be approached with great caution. I do not support the proliferation of agencies, I think, rather that if we approach it as my colleagues and brothers here have stated this morning, from the standpoint of what should and what should not from a policy standpoint be regulated, and then try to consolidate rather than proliferate. That should be an objective of the Commission.

I do not, of course, eliminate the possibility that other independent regulatory commissions should be established. Once a commission or a consolidated commission is established, it is essential for, I would say, for fair accountability and responsibility to be assessed, it is necessary to give that commission the powers to carry out its delegated tasks whether it is to allocate a resource or whether it is to regulate the safety of nuclear plants.

Senator METCALF. But I think you brought out a most important question.

We started regulating the railroads with the Interstate Commerce Commission and then if you will recall, at the inception of the New Deal there were several abuses and so they just said, "Well, let's follow this pattern of the Interstate Commerce Commission and have other regulatory agencies." It seems to me that every time we find an abuse or something that we want to cure, we say, "Well, let's develop this old pattern."

Perhaps it is time for us to sit down, as you suggest, and say, "Well, is this concept of a regulatory commission the best way to handle the Securities and Exchange or the Federal Communications or the Federal Power, which are different in many, many ways, and yet we try to fit them all into a mold of regulatory activity. Maybe this is a time for us to say, "Well, there may be a better method in some different procedures."

Mr. WILEY. Mr. Chairman, could I add one thing to Mr. Turner's point on proliferation of agencies?

There has been the suggestion, for example, that the Federal Communications Commission should be divided in two parts, one for common carrier matters and one for broadcasting because of the different expertise required. But I think what is happening in these agencies is a blurring between these traditional distinctions—between, in our agency for example, a common carrier and a broadcaster. To the extent that you proliferate and divide, you may not get that broader review that I think the Congress expects when it looks down for expertise in these day-to-day regulatory agencies.

Senator METCALF. Well, the whole question is who should embark upon these? And it is easier for us to say, "Well, let's set up a new commission or let's give one of the old commissions additional jurisdiction over this and squeeze it in to make it fit," rather than having the Justice Department handle some of these things or maybe we should set up something such as administrative courts in some of these areas rather than just go down the road of regulatory agencies.

I do not know but I think that is a problem that Congress should study and consider and we all welcome your advice and counsel on that, Mr. Garrett.

Mr. GARRETT. Senator, I strongly agree with your suggestion that Congress should study this problem. The type of review you have suggested is considerably broader than what we ordinarily think of as oversight, and would require someone to take a much broader view of the activities of all regulatory activities of the government.

Senator METCALF. Well, I have taken a lot more time away from you regulators. You should be getting down there back to your offices and regulating. But I think it has been a useful discussion and a useful dialog.

Mr. GARRETT. Mr. Turner, you asked on the record about H.R. 11221 and H.R. 704, so perhaps you would like an answer on the record. These bills are not co-extensive. H.R. 11221 applies only to the SEC, the Board of Governors of the Federal Reserve System, the FDIC, the Federal Home Loan Bank Board, and the National Credit Union Administration. It does not apply to all independent regulatory agencies, and I should have made that clear at the outset.

Senator METCALF. Mr. Statler, the Minority Counsel, has a question.

Mr. STATLER. First of all, on behalf of the minority let me say that the absence of minority members today is more because of other pressing responsibilities and not because of an uninterest in this area.

I think I would be correct in saying that every one of them has identified himself with one or another of the bills. The ranking member, Senator Percy, and Chairman Ervin have joined in submitting a bill of their own, S. 4167. For the record I would ask that each of you gentlemen comment upon this bill in writing in the same way that you

have in connection with other pieces of legislation which were sent to you ahead of time. S. 4167 was introduced 2 days ago and I will be sure a copy gets to you.[1]

Mr. STATLER. Senator Percy has asked me personally to express his apologies for not being here. He is a delegate to the U.N. and he i up in New York. He did say that he would very carefully review your testimony.

Senator METCALF. May I interrupt there? I know that the other members of the committee are interested and concerned, not only on the minority side but the majority side, and they will review your testimony. We may send you some questions, and the record will be kept open for Senator Percy and Senator Brock and all others to propound those questions and to put them in the proper place.

Mr. STATLER. I would like to focus on the particular area of expertise that each of you gentlemen have. I guess we could go for years commenting upon how many commissioners there ought to be on a regulatory study commission or how the study ought to be organized, or whether the members ought to be appointed by the President or the Congress or whether the Congress ought to conduct the study entirely on its own.

They are all very important questions.

But getting to the substance of what the Commission ought to look into or what any study commission ought to look into, I thinks it would be very helpful if each of you gentlemen in turn, perhap beginning with Mr. Garrett, could address yourselves to the most serious deficiencies within your own agency. And by deficiencies I do not mean that negatively, in the sense that you are doing something wrong. But looking at the total picture, within your own agency how is the regulation anticompetitive, how does it contribute to inflation, or how is it adverse to the consumer or the public interest.

What I would like you to do is to zero in now on your own statutory mandates, on your functions, or your policies, on your operations, on your procedures. In the context of all of that, what Congress has done and what Congress has not done.

Could you suggest for us perhaps the three most serious deficiencies or areas for change or improvement that go to the elements that the President set forth in his inflation speech? Again, the extent to which regulation in your agency contributes to inflation, the extent to which it is anticompetitive, or the extent to which the public interest is not served.

Mr. Garrett, could you begin?

Mr. GARRETT. Well, our jurisdiction with respect to the fixing of rates is, as a general matter, most relevant with respect to the rates of commissions and other charges fixed by national stock exchanges. And as you may know, we are in the process of trying to get the exchanges out of that business at the moment.

With respect to other matters under our jurisdiction, it is our impression that our activities have only a very tangential effect on the cost of doing business to the persons that are subject to our jurisdiction and no discernible effect on price levels. Now, that is not to say that compliance with our regulations is cost-less. Those that object, for example, to additional disclosures required in proxy statements or

---

[1] See p. 67, Mr. Garrett's prepared statement, for comments on S. 4167.

something of that sort will often, among other reasons for objecting, say that compliance without requirements will cost too much. We recently amended our proxy rules to require most publicly held companies to agree to send to stockholders, upon request, copies of the most recent annual report they have filed with us. One of the objections to this requirement was that it would be too expensive. But, we believed that, although the cost may have seemed to be a nuisance and unnecessary to those who did not like the new requirement, overall it was insignificant, relative to the benefits to be conferred on the investing public. We do not, however, make cost-analysis studies each time we adopt a new rule or change one of our reporting forms.

On balance, I do not think there is much that we can do or not do that would have any measurable effect upon the cost of business or the level of prices in our country, although we certainly would be responsive to any effort by this committee or the proposed new commission to reexamine the question to find out whether this is true.

In terms of discontent on the part of people that are subject to our jurisdiction, I suppose the most frequent complaint probably would be what is imagined to be true of all of our agencies—that it takes too darn long to get decisions on certain important matters. Some of the complained-of delay is the result of perhaps overly elaborate procedures to protect the rights of persons to due process of law. But, much of the delay is due to the fact that it simply takes us a long time to make up our minds when we have a long agenda of complicated matters to be studied and resolved.

We are embarked now in the most important task of reexamining and reordering our securities markets, and increased competition and improved efficiency in the securities market is a major goal of our efforts in this regard. Although we believe we can accomplish our goal eventually, under our existing statutory authority, our efforts would be greatly expedited by the adoption of H.R. 5050 on the House side, to match the comparable legislation already passed by the Senate, so that we would have legislation in this Congress. If we get that legislation, we will have no further requests to make of Congress for some time, other than our regular budget requests, because implementing this legislation will be an enormous project, which will keep us busy for quite a while.

I do not think I have anything more to say at this point, unless further questions occur to you.

Mr. STATLER. Mr. Nassikas, could you identify problem areas within the FPC that a regulatory study commission ought to look at? In other words, if the first day of their existence the chairman were to call you up and say—which he probably will not do—"Mr. Chairman, what should we look at within your agency? What changes are needed? What improvements?"

Mr. NASSIKAS. Well, first, I have some detailed answers to the questions that you sent over when you called this hearing, and I will be happy, if you think they might be useful to you, to submit these detailed answers for the record after the hearing.

However, just to back away from that—I think one of the most pervasive problems that has existed and that still continues is the overall energy and environmental regulatory structure as it affects the responsibilities of the Federal Power Commission both as to natural gas and as to electric power.

The reason I say that is that we only have partial responsibility, apart from the State-Federal dichotomy. Let's put that aside for the moment. Just take Federal relationships.

We allocate natural gas. The Federal Energy Administration, under the mandatory allocation program, allocates the other refined product resources. In the electric power sector, we, of course, have coordinated quite effectively with FEA.

We coordinate and cooperate with the nuclear regulating agency and supply witnesses, by the way, also in their proceedings. We also work in a minor way with the Securities and Exchange Commission, and I must emphasize it is minor. Under the Holding Company Act, which they administer, we have supplied witnesses from time to time. However, it is another evidence of the establishment being fractured. The SEC has recommended through the years—I cannot tell you whether it is 10 years or 12—but they have recommended and we have endorsed the recommendation that the public utility holding functions be transferred to the Federal Power Commission except with reference to issuance of securities, and that should remain with the SEC.

I recommended in January 1970 to the Senate Commerce Committee the establishment of an Energy Resources Council. There was a bill passed by the Senate, but the House apparently did not pass it 2 years ago, establishing such a Council. Now as the result of recent legislation we have an Energy Resources Council. This is a step in the right direction. However, the powers of that Council still are not adequate because it is a cooperative and coordinate kind of thing.

I serve on the Energy Council. Mr. Turner, this proviso which you brought up earlier, I serve on that in the sense that I am invited to attend their meetings so that I can participate to the extent that I wish. The reason this is done in that way rather than my serving directly on that Council is because we are an independent regulatory agency, and in this way any possible conflicts that perhaps could come up could be avoided.

However, that is beside the point. If the Energy Resources Council had authority to establish the energy policy of the United States under the standards that you gave them under their charter, then once they made a policy decision in the energy-environmental area, all agencies would have to carry them out within the limits of their statutory authority.

If the statutory authority were not adequate, then it would be incumbent upon the agency and the Energy Resources Council to go to Congress and point out the precise deficiencies that exist so that the overall national policy could be carried out.

Mr. TURNER. Let's take an example. The Energy Resources Council—the White House—says there shall be deregulation of natural gas. That is their policy.

What do you do?

Mr. NASSIKAS. Well, you cannot deregulate unless the Natural Gas Act is changed and I do not advocate total deregulation.

Mr. TURNER. That is not my point. My point is that under that policy, would you come to Congress to get the authority to do it or would you seek to try to do it with what you already have?

Mr. NASSIKAS. Only if our powers enabled us to do it, and I know that our powers do not allow us to do it, so I would have to go to Congress. And I should.

Mr. STATLER. Mr. Nassikas, was that not really the aim of setting up originally the Federal Energy Administration?

Mr. NASSIKAS. I do not really know what the aim was in setting up the Federal Energy Administration. I have read the charter backwards and forwards, and natural gas and electric power were scrupulously carved out of the Federal Energy Administration's authority.

In other words, the Federal Power Commission has maintained its integrity, statutory integrity, totally. Now I am not saying this is right. What I am saying is we should do something about the structure to enable an energy policy to be implemented. That is the number one point.

ERDA is a fine step. That is a step in the right direction. The Congress passed it. It was recommended by the administration. I think it has been accomplished on a fairly timely basis also. The funding also seems to be adequate, although, like everything else, probably you will end up with a lot more money being spent than the $10 billion in the next 5 years, or $20 billion in the next 10 years.

So that is another excellent step to examine and evaluate policies that are essential. But with the Federal Power Commission, we have a responsibility for a reliable supply of electric power and an abundant low cost supply of electricity throughout the United States, with due consideration to conservation and the effective utilization of resources. That is paraphrased from the statute.

But how do we carry that out, if the Nuclear Regulatory Commission controls the nuclear power sector?

Mr. STATLER. Let me interrupt for a minute because the assumption of my question is that the mandate or the statute itself may be called into question. In other words, you do not have to assume that mandate.

The question is, what is it about the Federal Power Commission that needs change at this moment?

Mr. NASSIKAS. Well, I just gave you one very, very broad idea.

Mr. STATLER. I recognize that, but the recommendation was outside the purview of the Federal Power Commission.

Mr. NASSIKAS. But what I am suggesting is that the Federal Power Commission be, in effect, subordinate to an overall national policy, rather than being totally independent, and that is quite a step to recommend.

Mr. STATLER. I realize that.

Mr. NASSIKAS. And I recommend this in the national interest.

Now with reference to other things let me just mention just one. If we are going to have the authority, as we do, to allocate natural gas resources, that is, the pricing of it and the curtailments and all the rest of it, we had better be given broader authority by the Congress. Natural gas is one-third of our energy in the United States, I think it is worth discussing for one minute. I am suggesting that in case you do not deregulate then I would suggest some broadened powers be granted to the Federal Power Commission to prescribe rates for natural

gas that are not tied in solely to costs and a reasonable rate of return because the regulation of the independent producers does not lend itself to classic methods of utility ratemaking.

Mr. STATLER. Mr. Simpson.

Mr. SIMPSON. Yes, Mr. Statler, the comments you recognize are my own and not necessarily the views of the Commission, although I do not think they would vary that much.

As you know, the Consumer Product Safety Commission is only about 1½ years old. As to the authority contained in the Consumer Product Safety Act and the other four laws that we administer, I find very little lack of authority to get the job done. As a matter of fact, it is almost the opposite. The authority concerns me because it is so broad and so powerful and so discretionary.

So I would say that one of the things that I would urge you to look at would be to make sure that the mechanisms exist to provide checks and balances against the abuse of authority, now or in the future.

On the subject of an independent agency's chain of accountability, at least I cannot even tell you the answer to a simple question as to whom I report. Now obviously, one should know the answer to that, but I would tell you today it is difficult and various people think you report to them for various parts and for various reasons and at various times. And so I think the chain of accountability should be looked at.

As to the effects of our actions on the economy, the Congress did pay attention to that when they passed the Consumer Products Safety Act. We have the mandate to affirmatively make findings on the cost, the relative cost increase, the relative effect on competition of our action. We have made a major commitment to a Bureau of Economic Analysis, and I think that is very healthy.

I sincerely believe—and this is from a year and a half experience—that one of the things that should be done is to take a close look at all the perceptions, or misperceptions, of the ills that will come about if you open up Government. And I am talking about opening up regulatory agencies to the extent that we have in our agency.

I think the CPSC is presently the most open agency in Government. Everything is open for public scrutiny. I think that openness builds in some automatic checks against abuses of power because there are many people who would be inclined to look over your shoulder, such as citizen groups. I happen to think that that is healthy.

The perceptions of the problems associated with openness, in my opinion, are far overstated and far overestimated and the benefits of an open agency in gaining public confidence far outweigh any perceived problems. As a matter of fact, even with our open meetings policy, where anybody in the United States can attend our meetings, I would say that in 95 percent of the cases no one else comes in. But there is no speculation as to whether the agencies had their arms twisted or the person coming in tried to twist their arms. It is a much healthier environment. An open agency is a little bit unusual to work in but it does work. The reason we do it is because we felt that Congress gave us that mandate. And we also recognize just by the name consumer and safety in the name of this commission, we would be controversial.

Everything we either do or do not do is viewed controversially by someone. The only way we could see to do our work is in the public domain and I would urge others to try it, and see if you like it.

I did have the opportunity just last night to read S. 4167—that is the two or three pages out of the Congressional Record—and I was pleased to find that many of the things recommended in S. 4167 are either in operation in our Commission by statutory requirement or by policies that we have adopted. On a cursory look, I would find I would have no problem with the approach in S. 4167 if you are going to set up a review commission, although I would urge you to consider the option of doing it yourself through the oversight process.

Mr. STATLER. Mr. Wiley, could you address yourself to the problem of efficiencies within the FCC that the regulatory study Commission ought to look into?

Mr. WILEY. Well, unlike Mr. Simpson's commission, ours is 40 years old and many of the rules and regulations under which we operate are nearly of that vintage, and there is sometimes almost a maternal feeling about some of the regulations among members of the staff and the Commission. Accordingly, we sometimes adhere to outmoded principles and outmoded regulations. We are trying to do something about that, but I think it still continues to be a problem.

Similarly, as the chairman has pointed out, our procedures are extremely complicated and very time consuming. Often, it takes 5 years to get a decision out of the Commission in large cases and particularly in the hearing chain. Here, again, that has been one prime area in which we have attempted to place some judicious thinking and some additional resources.

When it comes to substantive areas, it seems to me that the most troublesome problem we have is the introduction of competition into the regulated industries. But we have done it, for example, in common carrier area. Then we have sometimes been accused of doing so at the expense of the best interest of the consuming population. When we have not done it sometimes, for example in the introduction of cable television, because we determined that perhaps the public interest would be better served by the conventional broadcast system, we have been accused of being protectionist. When we have wanted to do it, for example, in the land mobile area where we have needed more rapid, more innovative, more advanced services, and the technology is there, we found that our statute has hampered us in doing what we think is necessary to get the job done in this modern economy.

And so I feel that a clear delineation as to what extent competition is part of the public interest, and to what extent the statute even covers some of the technological developments which have come along since 1934, would be quite useful. As I said to the chairman, we do get good oversight but we do not oftentimes get a broad overview of the statute under which we operate. That is something that I think the Commission could usefully review.

Mr. TURNER. Counsel, would you yield for a short question?

Mr. STATLER. Yes.

Mr. TURNER. Mr. Wiley, over the past few years you spent a lot of money and a lot of time and effort investigating the American Telephone & Telegraph Co., and part of that investigation, in fact, involved Western Electric and the potential divestiture of Western Electric from A.T. & T.

Do you intend now, in light of the antitrust action filed by the Attorney General against A.T. & T. and Western Electric, to stop pursuing that investigation against Western Electric?

Mr. WILEY. Definitely not, Mr. Turner. We are going to continue to do business as usual, and in all of the pending matters relative to the American Telephone & Telegraph Co. that we now have going without regard to the antitrust suit.

Mr. TURNER. Well, do you see any impediments in your regulatory process in pursuing that investigation now set up by that suit?

Mr. WILEY. Well, I do not know to what extent the Commission will be called upon to make inputs into that suit or what role we will ultimately have to play. It may be that additional resources will be needed, but I do not see it as impacting upon the particular cases we now have going. Phase 2 of docket 19129, to which you made reference, is going along with all due deliberate speed and we would expect to finalize it within the next year or two.

Mr. TURNER. And will you be building a body of evidence and data and material upon which the Department may call you as a witness in that case?

Mr. WILEY. Well, I do not know, as I say, to what extent we will be playing a role in that lawsuit. I have had no communications from the Department at this point, but I would assume that much of the work that we have done in this area, relative to A.T. & T.'s operations and practices, may be something in which the Department would have an interest.

Mr. TURNER. But you do not see any conflict between the regulatory process and the Antitrust Division?

Mr. WILEY. Well, after all, we are regulating under a statute which requires us to act in the public interest. Competition, and the extent of competition, antitrust violations under the Sherman or Clayton Act, may be something that could be seen from quite a different perspective. But I do not necessarily see a conflict. I think the Justice Department has its job to do and we are going to continue to regulate as we have in the past.

Mr. TURNER. Would this be an area then of very serious legislative oversight to make certain that whatever litigation or regulation is going on in this area it shall proceed expeditiously?

Mr. WILEY. I agree totally. I think it is quite appropriate. These long hearing cases with a large company are protracted. They do take a long time. We have got to insure that this small agency has the necessary resources to get the job done and, then that it follows through with those resources.

I think we also have to find ways to improve our reporting procedures and I would commend this committee in that regard in working with all the agencies, not only our own.

Mr. TURNER. I thank counsel for yielding.

Mr. STATLER. One of the persistent criticisms of the regulatory agencies has always involved the competence and level of expertise of the personnel that the agency has been able to attract. Fortunately—and I am sure the chairman will concur—you gentlemen we have here today represent the better side of the appointment process. But there have been problems. As you have seen, Congress has recently turned down some nominations for the agencies on grounds of competence and possible conflict of interest.

My question to you concerns one of the proposals that is listed in S. 4167 for this study commission to look at. It is a proposal to set up or to designate a board of regulatory review to which nominations

would be submitted by the President for his own guidance before formally submitting names to the Congress—much like the procedure now in effect with respect to Supreme Court appointments.

Could I have, in effect, a one-word answer—in favor or not in favor—with respect to your views on that proposal? Do you think such a board would be helpful in selecting out the best possible appointees for these very important posts?

Senator METCALF. May I interrupt? I want to concur with counsel that we have before us the outstanding regulatory commissioners and so forth, but I do not think that they can give a one-word answer. There are so many aspects to that problem. I would be delighted to hear your answers, but not a yes or no.

Mr. STATLER. Well, I believe the responses to the specific proposal for such a board are not complicated.

Mr. GARRETT. I can give a two-word answer—yes, but.

Mr. NASSIKAS. I would like to study it.

Mr. SIMPSON. Mr. Statler, I am of the opinion that Congress in the past may well have been negligent in the confirmation process. And am not sure that any one panacea is going to help.

Now such a panel may be helpful, but I would maintain that you do not need it if you do the proper inquiry.

Mr. WILEY. I have not looked at the provision. I would want to study it. But I would say that the answer to a lot of the regulatory woes that we have talked about today is frankly just good people in the agency, willing to work and to study the problems before them. If this is one way to improve this process, I would want to look at it very carefully.

Mr. GARRETT. My initial reaction is that such a body could be useful in excluding some horrors, but would contribute nothing to getting the best people because the problems of getting the best people are quite beyond anything that such a committee could do.

Mr. NASSIKAS. Just a broad observation. I think that the National Commission on Regulatory Reform should review the structure of compensation. Some very excellent people who might wish to serve on a regulatory commission cannot do it because of the financial sacrifice. Others may wish to serve for longer time but cannot because their resources run dry. I am very serious. I think the level of compensation to attract the kind of talent that is needed is something that requires searching review.

Mr. SIMPSON. Mr. Statler, just an added comment on the attracting and screening of competent personnel. There is an unusual feature of the Consumer Product Safety Act that is, again, addressed to that. This says that no one over Grade 14, after they leave the agency, can work for any manufacturer subject to regulation for 1 year.

We do not know that that has inhibited people but I have talked to some people who have wanted to come into the agency and they said, no; that they think it is a ridiculous provision. They have said, no, and they have not been the ones who have had any interest in a revolving door concept; it is ones I have personally known and they have just said, no, because when you take a look at manufacturers subject to our jurisdiction, there is hardly a company in the United States that is excluded. Maybe it is different if you are talking about five automobile companies, but even some of those make refrigerators and other items subject to our jurisdiction.

Mr. STATLER. We had Mr. Ash of OMB before us yesterday and he singled out some 9 or 10 agencies that he felt the administration intended to focus on in any study commission review. And he was kind enough to include each of your agencies.

However, the question arose in the context of questioning by Senator Allen and Senator Roth, and Senator Metcalf has raised it today, as to go far beyond the purview and parameters of regulations within the independent agencies. I believe if we were to ask the auto industry what ought to be studied, they would certainly point to DOT and specifically to the National Highway Traffic Safety Administration. If we were to ask the petrochemical industry, they would certainly list EPA. I am sure if we asked the drug and cosmetic industry, there is no question that they would name the FDA at the top of their list. And I guess if we were to ask all of industry, they would probably name OSHA, on the basis of letters that I have seen come in to Senator Percy, as the single most pernicious regulatory area.

My question has been answered, I know, by you, Mr. Simpson. I did not detect an answer in the other responses. Simply stated, do you share Mr. Ash's view that this kind of study should be limited to the independent agencies? Or, and I might say the corollary of Mr. Ash's view, that because the other agencies are different, because they are clearly within the executive branch, they should be looked at only by the Council on Wages and Price Stability, which currently has a staff of 14 people, including clerical help, without any participation by the Congress.

The question, most simply stated, do you think that the study of regulation by whatever commission is to be set up, should go beyond the independent regulatory agencies.

Mr. Garrett?

Mr. GARRETT. Well, I think it depends on what you regard as the mission, or at least the primary mission, of this proposed review or reform commission. I think I previously expressed the view that if the area of concern is whether the independent regulatory agencies are properly conducting their present duties, we do not really need a commission—at least we certainly do not from where I sit.

But, if the purpose of the study to be conducted is to consider a basic question of economic policy—are we regulating the wrong things, or are we regulating too much or in the wrong way in terms of its total effect on costs and inflation—I can see no reason to limit it to the independent regulatory agencies. I think it is a Government-wide problem.

Mr. NASSIKAS. I think I expressed my view earlier when I said that you cannot study the role of energy in our society, its impact upon economics or sociology or anything else, by simply limiting the study to the Federal Power Commission and/or the regulatory commissions.

The study should include, for instance, a review of the influence of State Department policy upon overall policies as they may relate to the supply of energy and its cost.

Just by way of example, other agencies of Government in the executive agencies very strongly impact upon what kinds of energy supply we will have, what resources will be developed, whether the oceans will remain undisturbed or whether they will be tapped or used. We have a controversy that covers the entire North American Continent regard-

ing this. And because we import right now almost 40 percent of our oil to the United States, and because we will be importing some very high-priced natural gas very shortly, we better examine the impact of those policies upon our economy and our society.

Mr. STATLER. So you clearly do disagree with Mr. Ash.

Mr. NASSIKAS. Yes, I do disagree with him if he did state that he wished to confine it solely to this. I just do not think that that is what the mission should be of a Commission on Regulatory Reform.

Mr. GARRETT. Let me add also that one of the arguments seems to be that the regulatory agencies do not pay enough attention to competition. They should get out of the way and leave everything to enforcement of the antitrust laws. Well, if you are going to examine that question, you have to examine how the Antitrust Division does its business and what policies it follows.

Mr. NASSIKAS. I, for the record, want to endorse what Mr. Garrett said.

Mr. STATLER. In S. 4167 the Antitrust Division of Justice is clearly included in the area of the study of this Commission.

Mr. Simpson, we know your views but if you have anything to add, we would like to have it.

Mr. SIMPSON. Yes. I not only disagree with Mr. Ash but I think the rationale and the reasoning fails on examination. The stated reason is that the independent agencies are unique. But in a recent letter Mr. Ash sent to Congressman Moss, he said clearly we are part of the executive branch.

So I do not know how one could say we are clearly part of the executive branch for purposes of one thing, but for purposes of which agencies are studied we are not.

We either are or we are not.

Mr. STATLER. For your own information, I suggest you look at yesterday's testimony where Mr. Ash tried to differentiate between the independent agencies, such as your own, and the rest of the executive branch. He makes some arguments there that you could use the other way around.

Mr. SIMPSON. I would be glad to do that. I would be most interested and I intend to.

Mr. STATLER. Mr. Wiley?

Mr. WILEY. Well, I do not want to unduly reiterate what the others have said. I think that the shortcomings, the failures and weaknesses of some of the independent regulatory agencies are rather well covered and analyzed in the oversight proceedings, by Congress now, at least in our area, by Congress now, and if we are going to get to the broader substantive questions of regulation and how much regulation, it seems to me that it has got to be broader than just the independent regulatory agencies.

Mr. STATLER. Thank you.

Thank you, Mr. Chairman.

Senator METCALF. Thank you very much. I think the questions and the responses have both been helpful. We have taken longer than I anticipated but I think you have been a useful and very informative session this morning, and I thank you all for coming up here and lending us your assistance and counsel. And you are always welcome, and I think it has always been helpful to hear from you.

Thank you very much.

I would like to ask about the rest of the program for today.

[Discussion off the record.]

Senator METCALF. We will be in recess until 1:30.

[Whereupon, at 12:30 p.m., the committee adjourned, to reconvene at 1:30 p.m., of the same day.]

AFTERNOON SESSION

Senator METCALF. The committee will be in order.

We are pleased to have—are you a doctor, Professor Houthakker?

Mr. HOUTHAKKER. I suppose I am.

Senator METCALF. Well, we give everybody the benefit of all the titles they have. We have Dr. Houthakker here from the Department of Economics, Harvard University, and we welcome you again before a committee of Congress. You are an expert in testifying, and I notice you have a prepared statement, which is not too long, so go right ahead.

STATEMENT OF HENDRIK S. HOUTHAKKER, PROFESSOR OF ECONOMICS, HARVARD UNIVERSITY

Mr. HOUTHAKKER. Thank you, Mr. Chairman. I am grateful for the privilege of testifying before this committee on S. 4145. Before dealing more specifically with this bill, I would like to say a few words about our general economic situation and its relation to this proposed legislation.

The problem which our economy faces at the present time is an unusual one. Until a few years ago it was safe to say that we had to cope with a recession or with inflation, but not with both at the same time. The fiscal and monetary policies which we adopted with the passage of the Employment Act of 1946 were especially directed at curing recessions, or even better at preventing them, but our approach to the inflationary pressures that emerged from time to time was a much more hesitant one. In fact, we have not so far found any effective way of curing inflation other than slowing down the economy, which has frequently led to recession. Moreover, the efforts to overcome a recession tended to plant the seeds for a subsequent inflation; only rarely in the period following World War II have we had a combination of reasonably full employment and reasonable price stability. Fortunately the inflation or the unemployment which we have had during the remainder of this period has until recently been either mild or short lived.

The combination of inflation and unemployment was first observed in Britain during the 1960's and became known there as stagflation, a word that refers in part to the stagnation of economic growth characteristic of a prolonged recession. Stagflation first made its appearance in the United States in 1970–71, when we had a mild recession, during which the general price level continued to rise, albeit at a reduced rate. Since then inflation has accelerated sharply to its present rate in excess of 10 percent per year, yet there has also been a decline in real GNP and growing unemployment, the two chief characteristics of a recession. This state of affairs puts economic policymakers before a dilemma. The

usual medicine for inflation, a slowdown in the economy, threatens to aggravate the recession, yet the equally usual medicine for a recession, namely fiscal and monetary stimulation, might have an adverse effect on an already disruptive inflation. Clearly we have to rely on new measures to deal with this new situation.

How is it that rapid inflation can coexist with unemployment and other evidence of considerable slack in the economy? That is the question to which we have to find an answer if we want to understand the phenomenon of stagflation and find a remedy for it. Let us observe first that in a competitive market for a single product the emergence of an excess of supply over demand generally leads to a fall in price. Thus a clothing store that finds itself with more sweaters on hand than it can sell at the current price normally announces a sale, where the price is set low enough to get rid of the surplus; indeed, the sale price may well be below the cost at which the sweaters were originally acquired from the manufacturer.

This is not, however, what we find in a market where competition is absent or weak. Just now, for instance, we see automobile producers halting production and laying off workers rather than lower the prices of their cars, which would not only keep their employees at work but also have a favorable effect on the general price level. In fact, the automobile makers recently raised their prices by a large amount despite considerable softness in the demand for cars.

The economy as a whole is an aggregate of markets, some of them competitive and some of them not. If competition is sufficiently widespread the economy as a whole will react to an excess of supply with a fall in the general price level, just as it will respond to an excess of demand by inflation. But if competition is not sufficiently strong the economy as a whole will behave rather like the automobile industry, where rising prices and declining output go hand in hand. This suggests that stagflation is intimately related to the weakness of competition, and that measures to strengthen competition are essential in attacking stagflation.

Next we must ask why competition is so weak as to permit stagflation. There are several reasons for this. The automobile industry, for instance, is highly concentrated. Perhaps antitrust action would be effective in bring better price-output performance to this industry, but it has not been attempted so far.

In many other markets lack of competition is a direct result of Government intervention rather than inaction. Thus agricultural marketing orders, important in milk, fruit and vegetables, stifle competition by allocating territories, curtailing output or permitting the destruction of so-called surpluses. The Postal Service enjoys a legal monopoly which enables it to charge ever higher prices for ever poorer services. Various import quota schemes protect domestic industries from foreign competition. And so one could go on; the list of industries where the Government thwarts the beneficial action of market forces, usually at the behest of trade organizations or labor unions, is long indeed and still growing. Just recently the Congress passed a cargo preference bill—I understand I am wrong about this bill, that the conference report is still before the Senate—which would raise the cost of petroleum for the alleged benefit of merchant seamen,

or at least of their union leaders; fortunately, the Congress has not yet passed this bill, and the President has not signed it. Competition is not dead in the American economy, but it is losing ground steadily and this is one of the principal reasons for our increasing vulnerability to inflation.

This hearing is concerned with the regulated industries and I shall therefore confine the remainder of my remarks to them. Regulation, generally speaking, is the antithesis of competition. It is justified where competition cannot flourish anyway, as in the case of a natural monopoly. There is no question that the telephone industry needs to be regulated, and it may even be conceded that in the 19th century there was a case for regulating the railroads. However, the 19th century is behind us, and the railroads have long ceased to be the only means of efficient transportation.

Yet regulation has not only been continued, but it has been extended to trucking, an industry that is eminently suited to competition because there are no major economies of scale. The purpose of this extension was not to protect shippers from possible exploitation by carriers, but to permit these carriers to operate as a cartel. To see how it contributes to inflation one need only observe the unseemly eagerness with which the Interstate Commerce Commission grants general rate increases while discouraging new entry or cuts in tariffs. A powerful lobbying organization, the American Trucking Association, has seen to it that these cosy arrangements are not disturbed by the various reforms that have been proposed by both Democratic and Republican Presidents.

While the Interstate Commerce Commission is the best-documented instance of the use of regulation to serve the interests of an industry rather than of the public at large, it is by no means the only one. The Civil Aeronautics Board under its present chairman has made no secret of its single-minded devotion to the profits of the airlines rather than to the interests of passengers and shippers. The Federal Maritime Commission is an indispensable element in the system of shipping conferences.

The record of other regulatory commissions is probably better, though it could certainly bear investigation. A critical review of the regulatory performance of these and other agencies, including those at the State level, is long overdue in any case. For this purpose, the term "regulation" should be interpreted broadly, including not only the regulatory commissions but also the regulatory activities of the Departments of Agriculture, Labor, Commerce, HEW, and others.

I am therefore in general sympathy with the purposes of S. 4145. Indeed, I consider regulatory reform to be a crucially important weapon in the struggle against stagflation, though it will have to be accompanied by measures to stimulate competition in many other parts of the economy. Perhaps it would be even better to legislate regulatory reform itself rather than a study of regulatory reform. In the case of surface transportation there is certainly enough in the legislative record to enact needed reforms without further delay. Desirable though this would be, as a veteran of some of these reform efforts, I recognize the strength of the opposition which has usually succeeded in immobilizing such proposals in friendly subcommittees. An authoritative study commission might help in providing momen-

tum for reform and in obtaining better documentation for regulatory reform in the lesser known areas. The deadline of 1 year envisaged for the final recommendations appears to be reasonable.

Senator METCALF. This seems to be an appropriate place to interrupt you, Dr. Houthakker. I have to go over and vote, and as soon as my name is called I will be right back and continue the hearings. So with your permission we will take a recess, subject to the call of the Chair.

Mr. HOUTHAKKER. Certainly.

[A brief recess was taken.]

Senator METCALF. Very well, we will be back into session, and we are delighted to have you continue, Professor Houthakker.

Mr. HOUTHAKKER. Mr. Chairman, what concerns me about S. 4145, however, is that it does not provide for adequate followup through the legislative process. Although the Commission would make "specific recommendations for legislative actions," experience suggests that proposals for regulatory reform are not viewed with much enthusiasm in some of the standing committees of Congress, by which I do not mean this committee. The fact is that these committees were responsible for the special interest legislation that has contributed so much to inflation and inefficient use of resources, and that they cannot always be expected to disappoint industry lobbyists by reserving themselves. I have already mentioned the trucking lobby, whose millions of dollars appear to be used skillfully in the preservation of the status quo. The nefarious activities of some of the dairy organizations have already led to conflictions. The cargo preference bill, already mentioned, is yet another reminder that money talks in Congress even where its sources are dubious to say the least. Indeed, anyone who desires to find the areas where reform is most needed could usefully start by determining which lobbying organizations spend the most money.

It would therefore be desirable if the bill included provisions for a special congressional committee to consider the study commission's recommendations. Some years ago, in the subsidy study organized by the Joint Economic Committee, I suggested the establishment of a Joint Committee on Special Benefit Porgrams, which would see to it that legitimate concern for particular sectors of the economy is not exercised at excessive cost to the general public. This may or may not be the right forum, but in any case it is most important that any proposals emerging from the study receive prompt and balanced evaluation without undue interference from pressure groups. The right of citizens to petition Congress should not be abridged, but neither should congressional committees allow themselves to be influenced primarily by organizations whose point of view is necessarily partial and whose methods of persuasion sometimes raise serious questions of ethics.

What I would like to see as the result of the Commission's study is a thoroughgoing modernization of the regulatory process rather than its abolition. Competition can and should be relied upon to a much greater extent than has been the case in recent years, but there are areas where a modest amount of Government supervision continues to be needed. This does not necessarliy mean that all existing regulatory commissions should be preserved. Conceivably the only thing

to do with the ICC is to abolish it, thus leaving the 80-odd years of rules it has accumulated to the historians and starting with new laws suitable to the 21st century rather than the 19th.

However, such a drastic solution might take too much time, and a more evolutionary approach, aimed at scraping off the barnacles rather than scuttling the ship, might provide more effective relief. In any case I am not in favor of combining the three transportation agencies into a single one; even in regulation itself competition has its advantages. Neither do I favor the idea of single administrators rather than collegial bodies; this idea would in practice transfer much of the power to the staff of the regulatory agencies or to the courts; however, the number of commissioners should not exceed five, except for the Federal Reserve Board. Furthermore, there should be stricter standards for the qualifications of commissioners, many of whom appear to have been selected for their political connections rather than for their professional expertise. At the risk of seeming to promote my own industry I would like to endorse a recommendation made by the Stigler Task Force some years ago to the effect that more economists should be appointed to regulatory commissions.

In conclusion, I venture to express the hope that Congress will treat this legislation as a matter of urgency. Our economy is in serious trouble although the widespread fear of a return to the 1930's is without foundation. We may well be in for a prolonged period of sustained inflation, excessive unemployment, and sluggish growth unless we reinvigorate the economy by greater reliance on its mainspring, private competitive enterprise. Action is needed on many fronts, and the results will not be immediate, but the time to start is now.

Thank you, Mr. Chairman.

Senator METCALF. Thank you for your statement. We are glad to hear from an economist. Sometimes we hear too much, and they, like lawyers, just create additional confusion. Maybe it would be better just to keep them in a consultant's capacity and let the decisions be made by someone other than professionals, such as the legal profession or the economists. Anyway, we certainly need a statement such as yours.

Now, you start, I think, with the proposition that you are conceding that we are going to have such a study commission. The mere fact that I for one introduced a bill for that proposition is no evidence that I am going to support a bill. I just think that some reform—and I am going to take the word that was suggested this morning—some review is probably necessary. But could it not be done just as well by Congress and the various congressional committees? I know that you take a dim view of a couple of these subcommittees, but do you not think we could look into this whole matter as far as our congressional activities are concerned?

Mr. HOUTHAKKER. Senator, in the first place, I would like to make clear that I do not presume to anticipate you or the position of the committee as a whole, and I realize that you introduced this bill by request. Nevertheless, I would hope you would give serious consideration because the outlook for regulatory reform by other routes is, I think, distinctly bleak.

There was a proposal to reform transportation regulation under the Kennedy Administration, and again under the Nixon Administration.

The Kennedy administration proposal did, I think, finally get to the floor of the House anyway in some form or another. The Nixon proposal never got out of subcommittee, if I am not mistaken. This leads me to think that some other mechanism is needed.

I have also been involved, to some extent, in other reform proposals, as in the area of dairy legislation, and there, too, what my amateur political science suggests is that these subcommittees are a major hurdle. I do not know what kind of pressures can be brought to bear upon them to bring out the bills which I think many people in Congress think are needed, and which nevertheless cannot overcome these institutional obstacles.

Senator METCALF. But in any event, it is your thesis that it is not only the so-called principal independent regulatory agencies that need to be looked at and surveyed, it is also the myriad of other agencies that have ancillary and peripheral regulatory functions. You mentioned the dairy industry. Several were mentioned by counsel this morning, that all are not what we ordinarily conceive of as independent regulatory commissions, but certainly have an impact on business. So we do not want to limit this. Its mandate would have to be as broad as that of any regulation is concerned.

Mr. HOUTHAKKER. Yes, Mr. Chairman; I agree with the views expressed this morning by some of the chairmen of the regulatory commissions that there have to be agencies included in this study which are technically part of the executive branch but whose functions really are not very different from those of the technically independent regulatory commissions.

So I would hope that the mandate of this Commission, if it is established, be quite broad, with one qualification that I hope this will not mean the study will go on forever.

I believe that the bill which was just handed to me, introduced by Senator Percy on behalf of Senator Ervin, has a more realistic budget for the study. I believe it is possible to do it within 1 year, if the Commission were to establish a number of task forces, maybe as many as 10 or 12, which would go into particular areas and which would, of course, draw on the very extensive evidence that is present in hearings before the Congress.

There have been hearings on many aspects of not only transportation but in many other areas, too, and this, of course, would not have to be overlooked. On the contrary, the Commission and the task forces would have to rely as much as possible upon already existing research. Many economists, for example, have studied the transportation industry and have come up with figures on the costs and benefits of regulations. Some of them have proposed new ideas. All of this would be available.

I still feel, though, that this would be a more promising way of getting reform through Congress than the route that has been tried in the past, and has generally been unsuccessful.

Senator METCALF. A study commission is very much like a computer. Its results are measured only by the amount of programing that goes into it. If we give it inadequate appropriations or inadequate staff, we come up with something that the recommendations are superficial or worse than none at all, and this is why we are launching this inquiry.

Insofar as I think our committee is concerned, can we make such an overall step and can we include all of these various agencies which are both direct regulatory commissions and the others, OSHA, Coal Mine Safety Board. There are dozens of them. And in the time available, and with the money available, will we have a productive report.

Mr. HOUTHAKKER. I believe that 1 year is not an unrealistic figure, if the Commission is willing to decentralize its work to some extent. That, I believe, is the key to an effective set of recommendations. If the Commission were to spend much of its time just on general principles, we may well have the outcome which you fear. But I do not think that is necessarily the case. A lot depends, evidently, on the membership of this Commission, especially on the Chairman and the Executive Director. If those are people with a sense of purpose in this area, I can see this as one of the most important things that would come out of Congress in the next 2 years.

Senator METCALF. Now I am going to intrude a little bit on Mr. Rouse's jurisdiction; even with the best of good will and the kind of chairman you are suggesting, and the devoted and dedicated work of the staff, how are you going to get any of the reforms or reviews that are suggested enacted if our experience with past commissions is any criteria?

Mr. HOUTHAKKER. Well, Mr. Chairman, this is why I was thinking of a special committee, and I know this is a very difficult thing to do. It is conceivable that this Committee on Government Operations here could perform this function.

I am no expert on congressional procedure, and I cannot give you a definite view as to the pros and cons of this. It does occur to me, though, that there is an element of what is sometimes called synergism in these various reforms. If you just put one reform after another before Congress, then each of the affected industries tends to argue it is unfair to pick on them; that they, after all, make a very tiny difference. We had some of that this morning, too. Mr. Garrett, who I think is an excellent chairman, was also arguing that his agency really cannot make any difference as far as inflation is concerned.

Well, I am not so sure. I am not saying he can make a major difference, but there are, by my count, maybe 40 or 50 areas in which some action is needed, most of it legislative, and together they add up to an awful lot, and that, I think, is a good reason for having all of this in one bill which would go through Congress under somewhat special procedures.

Senator METCALF. Now, the difficulties we have had with this bill seem to me to highlight the difficulties that we are going to have in putting into effect any recommendations of the Commission. For example, the Commerce Committee of the Senate has jurisdiction over some of the regulatory commissions, the Government Operations Committee has jurisdiction over some of them, the Banking and Currency Committee has jurisdiction over the Federal Reserve Board, and the Interior Department has jurisdiction over Coal Mine Safety Board and Labor, over OSHA and all of that, and we cannot even get an agreement as to where the bill is to go, to say nothing of what kind of action we will take after it is referred to a committee. When you talk about an overall bill, that covers this tremendously comprehensive bit of regulation that we have stumbled into in America today. I think that we would be debating for the first session of the Congress on what chairman has jurisdiction.

Mr. HOUTHAKKER. Well, I recognize there are real problems. A concept with which I have been toying, and I admit that I am not an expert on congressional procedure, is an omnibus anti-inflation bill on which it would be a part. I am afraid that our economic situation will continue to deteriorate for a few more months, at least, and that the sense of urgency in Congress, as a result, will increase, too, and this may make various committees somewhat less insistent on their prerogatives. Maybe I am being optimistic, but that is part of the argument for tackling these things simultaneously.

Senator METCALF. Well, that has not been our experience with energy, for example. Certainly we had an urgency about energy in the Nation, and we had seven committees here holding hearings and considering bills at the same time. We have just begun to achieve some kind of control on energy, and we have done it just by a proliferation of things from various committees, ERDA, the Federal Energy Administration, by giving additional responsibilities to the Secretary of Interior. I am just making a pitch for congressional reform, too. But how are we going to achieve any of the reforms or the reviews that you suggest are necessary if we do not do something here at this level regardless of whether we get a valid and viable study or not.

Mr. HOUTHAKKER. Well, what you said about energy, of course, shows the fact that Congress will act when there is sufficient public concern, and, of course, when it comes to energy, we had the gasoline lines and whatnot which brought this to everybody's attention so that there was a favorable climate for doing something.

Senator METCALF. We did damn little.

Mr. HOUTHAKKER. But I am saying that the Congress did at least do various things, and some of the procedural difficulties were overcome.

Now, unfortunately, when we talk about promoting competition, we are talking about a large number of different areas, most of which are relatively insignificant in the public eye, and if this could be presented as an anti-inflationary program, given the fact that there is very widespread concern about inflation, then maybe we would have a chance of getting this considered expeditiously.

Senator METCALF. Are you telling this committee that you seriously believe that activities of the various commissions and agencies that perform regulatory functions have had such an impact upon the business community that they contribute to the inflationary process in America today?

Mr. HOUTHAKKER. Yes, sir; I believe there is considerable evidence, especially with respect to the regulatory commissions operating in the field of transportation, but also with respect to the Argiculture Department, and to some extent the Labor Department and a number of other ones. Those have been studied in some detail, and the conclusions there do add up to something like this.

Senator METCALF. So if we have this on the basis of anti-inflation procedures, we would not only have to study a commission to study the regulatory agenices as we see them, the SEC and FPC and so on, but the Cabinet officers involved, the various commissions of Government, and even such things as the Environmental Protection Agency would have to be studied also, is that correct?

Mr. HOUTHAKKER. Yes. As I said before, there would have to be 10 or 12 task forces.

Senator METCALF. Well, that is a pretty big order, is it not, to study all of those various agencies in 1 or 2 or 5 years?

Mr. HOUTHAKKER. Well, we are, unfortunately, facing increased unemployment, and I think it would be possible to staff these task forces with able people.

Senator METCALF. Perhaps that is true. We will put some coal miners and some copper miners and some forest products people out of the State of Montana onto the Securities and Exchange Commission and I think they will make some significant reforms. I do not know whether they would be valid ones, but they would be interesting.

Mr. HOUTHAKKER. I was not thinking of doing it quite that way, but seriously, I think that a system of task forces, which is provided for in S. 4145, under the name of advisory committees—and I have not had the chance to read 4167 in any detail yet, but that, I think, is the way to go about this, to start immediately by setting up those groups. I do not think it will be too difficult to decide which groups to set up, and give each of them an associate executive director or whatever you want to call him, and have them report within 6 or 8 months. Then the full commission would review these recommendations and transmit them to Congress it they are found to be valid.

Senator METCALF. We certainly appreciate your ideas, and I am not in as much dispute about some of these procedures as some of my questions may have indicated. I think that we have to seriously consider whether or not a national commission, such as suggested by the President or these other bills, is warranted at this time, and if it is warranted, how we can implement it in legislation after it makes a report.

I think the first Commission I remember was the Hoover Commission, and a very distinguished Senator from Wyoming had the TNEC. I do not know how much legislation or how much reform actually came out of that, but at least it gave us background and information upon which we could base subsequent legislation. I was looking at the TNEC investigation a few months ago, and was surprised at how much had really been quietly incorporated into other legislation, and so I think that you have made a strong point here today.

Mr. HOUTHAKKER. I believe that the TNEC experience, of course, would have been more fruitful if World War II had not intervened and made many of the recommendations obsolete. That is not a complaint against the TNEC. I think the Hoover Commission did have considerable impact on the organization of Government, which is what they were concerned with.

Let me add one other thing, if I may, namely, that if there were a demand for an anti-inflation bill right now, I think it would be possible to draft such a bill, but the backup would not be as strong as it should be. It would be a bill that would have a large number of titles on different areas, and it would almost inevitably be something that had to be taken on faith.

Now, Congress, quite rightly, does not take things on faith. One major purpose which I see in this national commission is to provide the necessary backup, drawing on existing studies and on new studies.

Senator METCALF. Well, I am very much afraid that as your testimony is read by people around Washington, we are going to get some anti-inflation bills. For instance, we are going to have somebody put in a bill suggesting that we suspend the clean air and clean water standards on the basis of your testimony.

Mr. HOUTHAKKER. There is no basis in my testimony for that.

Senator METCALF. And they are going to cite you in support of it.

Mr. HOUTHAKKER. I do not think anybody could cite me in support of that.

Senator METCALF. And then somebody else is going to come in with an anti-inflation bill saying, well, we have to curtail some of the industrial companies around the country, especially, say, the automotive industry, leaving out the Fords, I suppose, because the President would veto it otherwise, but they are going to say this is an anti-inflation bill, and it really is not, is it?

Mr. HOUTHAKKER. No; I agree, it really would not be.

Senator METCALF. It costs money to put a clean air standard in, and it costs money to enforce safety regulations in the coal mines, and it costs money to enforce OSHA on which I probably get as much per capita mail as Senator Percy does, but that really is not the significant—a significant cost of inflation, is it?

Mr. HOUTHAKKER. I do not think it is by itself, no. I am not saying that everything that happens under the name of environmental protection is justified, but I did not even mention it in my testimony here in part because I do not think it is of the order of importance as some of the things I did mention. As far as an anti-inflation bill is concerned, I believe the important word there is "omnibus," a bill that covers a large number of subjects, not just a few that somebody happens to like for altogether unrelated reasons.

Senator METCALF. Well, that is an interesting idea, and I can remember when I used to be in the House of Representatives on the Ways and Means Committee, Wilbur Mills was always coming up with an omnibus tax bill, a tax reform bill. His conception was the same as yours that you put so much in the bill that there would be a little bit for everybody and then you would get it through. But everytime he came up with one, there was something that somebody was opposed to, and all those people ganged up on us and we never did get a tax reform bill through. So sometimes we have to approach these things one at a time. Maybe it would be a good idea to just get rid of the Interstate Commerce Commission right away. I am in entire accord with you on that, and then look at some of the other commissions over a longer period.

But I am interested, I really am, in your suggestion that activities of these various agencies could be curtailed or investigated, at least, under the guise of an anti-inflation bill. It just seems to me that that gives weapons to the people who are against this kind of regulation, to capture the fear of the American people about inflation at the same time but will not accomplish very much as far as regulatory agencies are concerned.

Mr. HOUTHAKKER. And I might add that it would not be only an anti-inflation bill but an antirecession bill because it would also increase production and employment. What happens right now in many of these areas is that employment is also being curtailed. The CAB

has, for example, allowed steep increases in air fares, so the airlines have fewer passengers and have to lay off workers. So this would not only affect inflation, but employment.

It would also be part of the concept of this omnibus bill.

Senator METCALF. Well, I think you have made several strong points.

Mr. Statler has some questions.

Mr. STATLER. Just one question, Mr. Houthakker.

What would be your view on one of the proposals that is included as S. 4167, about a provision or this Commission or whatever study group is formed to look into phasing out regulatory agencies after a period of time, or setting a time certain within which they would be eliminated unless Congress specifically renewed their mandate by legislative enactment.

Mr. HOUTHAKKER. I believe there is a great deal to be said for that. I was very much struck by Mr. Garrett's quote of William O. Douglas in his advice to President Roosevelt very many years ago that these commissions should not last more than 10 years, and there is a lot of sense in putting time limits on these activities.

Now, this is less true in some areas than in others. At the moment the telephone industry is one which I think needs to be regulated. It is conceivable, though, that 10 or 20 years from now there will be progress in electronics which will no longer make us rely on a large system of wires, which is technically the reason why the telephone industry is regulated. If all telecommunications were to go by satellite without the use of wires, then it would be an entirely different technology. So I endorse this concept in general.

Mr. STATLER. Thank you.

Senator METCALF. You would be in favor of having the regulatory agencies periodically come up for congressional review as to whether they should be continued, sort of like a Missouri plan for commissions.

Mr. HOUTHAKKER. Yes.

Senator METCALF. I am talking about the Missouri plan for the election of judges, you know, you vote yes or no whether you want to continue that man as a judge. Well, that is very interesting.

Mr. TURNER. The question I am going to ask may throw the witness and everybody, since everyone seems to be seeking its answer.

You mentioned stagflation as being the most serious threat to the economy today.

Mr. HOUTHAKKER. Yes, I think it is.

Mr. TURNER. What is your recommendation for coping with, attacking and solving the problem of stagflation?

Mr. HOUTHAKKER. Well, at the moment we are, of course, in a quandary, as I described in my statement, and right now the time has probably come for more stimulative policies which would certainly have some risk on the inflationary side.

But on the other hand, when it comes to the point, unemployment is probably a more serious problem than even the very sharp inflation we have now. However, I would hope that these stimulative measures be prudent so that we do not perpetuate the kind of inflation that we have had. At the same time we should look at measures such as the ones we are talking about here. That would not only give a once and for all benefit in terms of price level, but also would make our economy less vulnerable to inflation in the future.

I believe our economy has become more rigid over time, and that is one reason why we have had a higher inflation rate in each successive recession.

Mr. TURNER. Well, would it be fair to say that you would do everything to promote a free competitive market in all lines of industry as one of the solutions to stagflation?

Mr. HOUTHAKKER. I think that as a general presumption I would agree with that. I do not want to pin myself down that there is never a case where I would go against a free market, although none occurs to me at the moment. But I believe that in general would be the thrust.

Mr. TURNER. Well, are there not certain markets in the United States, very large ones, which are highly concentrated, and where the resources and products in those markets are subject to the controls of a very few producers or sellers?

Mr. HOUTHAKKER. There are many such markets. They do not cover by any means the whole of our economy, but they cover a large enough part to be a matter of serious concern. The antitrust laws, as they are interpreted at the moment may not be sufficient to deal with the matter. Therefore I believe that some antitrust reform is also indicated. Whether this would be done under the aegis or a national commission of this kind or not, I do not know.

Senator Hart and his subcommittee have been working on this for some time, and I trust a considerable number of industries are at the moment under investigation by the antitrust division from this point of view.

Mr. TURNER. Well, let's take some specific concentrated markets: automobile, steel and oil. Is it your suggested policy that these industries be broken up or split up into competitive units as a means of attempting to solve the problem of stagflation?

Mr. HOUTHAKKER. I would not go as far as this. Breaking up is certainly a remedy in cases where one firm dominates an industry. However, it would not accomplish much, I believe, in an industry like steel where there is no longer a firm that is anywhere near as large as General Motors is in its industry. Therefore, one would have to make case-by-case studies.

Senator METCALF. Well, take the oil industry where seven or eight firms so completely dominate and are allied together that there is, in essence, one firm dominating an industry.

Mr. HOUTHAKKER. If you look at it this way, then I would be in favor of breaking up this one firm. But that is technically not really correct, though, because they are still separate firms which for one reason or another are allowed a much higher degree of cooperation than other firms are allowed.

In other words, I would say that in the oil industry breaking up these firms is not going to accomplish very much either. What is going to be needed is more competition among the existing firms.

Senator METCALF. How can we force them to be competitive?

Mr. HOUTHAKKER. Well, now a number of things which could be done, one proposal which I happen to be in favor of is making the refusal to sell a violation of the antitrust laws. This is one of the ways in which large firms, not only in oil but in copper, for instance, strengthen their positions, say "If you will not play ball with us, you will not get any oil or copper, or whatever it is."

Another thing is to remove certain Government processes which strengthen cooperation between those firms. The Texas Railroad Commission, for instance, in a way functions as a cartel agency. It is not active right now because the situation has changed. But nevertheless, under the auspices of the Texas Railroad Commission, all sorts of things were done which have no place in competitive industry.

Senator METCALF. But how can we force the large oil companies, some of whose interest is not being competitive but whose interests right now are concerned with allying themselves against all the independents and the small producers and the small refiners and the consumers around the country, in a huge cartel themselves—how can we force them to compete with each other?

Mr. HOUTHAKKER. I think we have to have a close look at the exact means by which the oil companies maintain their power, for instance. Control of pipelines has been alleged to be one of these means. I am not in a position to confirm or deny this. I have just heard it said. Usually, in areas like this one, you have to find something very specific at the bottom of an anticompetitive situation, and this may be one of them. It may be that it is the franchising of gasoline stations. There are quite a number of areas like that.

So one would have to go on an industry-by-industry basis. I do not think just breaking up firms by itself is necessarily a productive approach.

Mr. TURNER. But the point that I was reaching was what alternative is there other than regulation? You mentioned refusal to sell, and we have had substantial evidence of that over the last 2 years where the concentrated companies say, "We have only so much resources and we sell to our favorite buyers and we will not sell to you." That is a matter where regulation has to come in to determine equitable allocation.

You mentioned the pipeline, as to whether or not everybody gets a fair shake at going through the pipelines in order to compete. There again we have regulations such sa the ICC regulations to make certain that they play ball fairly and squarely in the pipeline.

So I suggest that perhaps the other side of the free enterprise coin might be a certain degree of regulation in terms of these concentrated industries.

Mr. HOUTHAKKER. That, I think, is in part a question of semantics. If you regard antitrust enforcement as a form of regulation, I would agree with you. But I do not think that is quite the same thing, though.

The antitrust division does not continuously supervise the operation of particular firms or industries. It does intervene when there is violation of the law. So it is not on a continuous but an intermittent basis, and that is why I think the word "regulation" is not quite appropriate for that.

For instance, if a refusal to sell may be in violation of the antitrust laws, especially in the case of large firms then these firms would have to announce a selling price at which everybody could buy. And the violation then would come about if somebody went to a firm and wanted to buy some wire or copper and the firm said, "No, you cannot get it," that would be a violation, and then the process of law would come into force.

I would not call this regulation, though.

Senator METCALF. I have to return to the floor to vote again. I think that all of us are through with our interrogations. We appreciate your participation, your counsel, and advice, which will be valuable in the future as we work on this legislation. Unless there is somtehing else, we will stand in recess until I get back, at which time we will hear from Mr. Rouse.

Mr. HOUTHAKKER. Thank you very much.

[A brief recess was taken.]

Senator METCALF. The committee will be in order.

Now we have the witness that we not only have been waiting for, the last witness of the day, but one whose experience in the last commission study of this nature is going to be very important and significant to our inquiry. It is a privilege to have Mr. Andrew Rouse, former Executive Director of the President's last Advisory Council, here to testify. You have a prepared statement, and you may go right ahead, Mr. Rouse.

STATEMENT OF ANDREW M. ROUSE, SENIOR VICE PRESIDENT, INSURANCE COMPANY OF NORTH AMERICA CORP.

Mr. ROUSE. Mr. Chairman, I am not going to read my statement, but I am going to summarize it in oral remarks.

My statement comments on the bills before this committee. It derives lessons from past commissions and makes some suggestions that this committee might consider in crafting its own legislation to establish a commission to study regulation.

I would like first to comment upon S. 4145, which bill I consider completely inadequate in its structuring of a commission.

Its defects are at least two. It sets up too conventional a commission for too complex a task. In a probably useful effort to give the commission discretion and flexibility, the bill, as it is currently written, fails to give it any direction and does not provide for adequate checks on the activity of the commission. The consequence, I am afraid, would be that the commission would find it very difficult to settle down to its task. It is likely that the product under these conditions would make little sense to whomever the implementers happen to be. Second, the only limitations contained in the bill are the agencies studied, a point which I intend to get back to, and the amount of time and money available. In my view the best that can be said for S. 4145 is that if that commission did come into being, it would not do much damage to things as they currently are.

These problems: The lack of substantive checks on direction, and time and money, are reasonably easily corrected. I would like, in the remainder of this oral presentation, to cover 11 specific items which I think might be considered by the committee in redrafting this bill. I received a copy of the bill introduced by Senator Percy on behalf of himself and Senator Ervin at lunch today. On a fast browse, it looks to me that at least in defining a set of problems to be studied, it goes a good deal further toward what needs to be done than S. 4145 does.

I would like first to cover the subject of the size of the commission. I recognize that most people view this as a technical point, I must say that from my own experience, and that includes four commissions

which I helped set up or served during my own Government service, it is not an inconsequential point. Twelve people is just too many. It is too many because commission members find it difficult, congressional and public members alike, to give the kind of time to these efforts that they demand. That problem becomes exacerbated when you have to get 12 people together to do anything, particularly when you give the commission subpena power. It is quite important that you deal with an administratively manageable group and 12 people is just too many.

Now I recognize, in reducing the size of the commission, you are probably creating something which will be charged with being unrepresentative. I think frankly that there are ways around that, and I will get to that in a moment.

I would cut the commission down to seven or eight people. I would utilize advisory committees, subcommissions, legislative and executive review, and other techniques of that sort to flesh out the work of the commission in various problem areas. And in that I agree with some of the things that Henry Houthakker had to say.

Second, there is a question of the range of investigation which has come up several times. I will not belabor the point. Dealing with the eight or nine regulatory agencies that now fall under the rubric "independent" is just not dealing with the problem. There is very little doubt that some of the areas that Dr. Houthakker mentioned and some of those that are included in Senator Percy's bill also have broad and serious actual and potential effects on the economy. The Federal Reserve Board and the Food and Drug Administration to name two, are obvious ones to regulate in areas uncovered by the Administration's bill. There seems to be very little reason to study one without studying the other.

Third, and this is a point which very few people have mentioned and I consider very important. That is the question of who is the executive director of the commission and how that man is selected. The executive director of the commission, after all, is the conduit, particularly when you are dealing with part-time commission members, the conduit through which information to the members of the commission flows and from whom information flows to those people who are going to be affected by the changes proposed by the commission. He is a man who is in day-to-day contact with people whose cooperation needs to be sought if the commission is going to do its work well. And the executive director therefore is more than just another hired professional; he is key to the quality of the work of the commission.

I would strongly recommend that the Executive Director of this Commission be appointed by the President and that he be approved by the Senate. I would even go so far as to make the Executive Director a member of the Commission, although I do not have any strong convictions about that one way or another.

Incidentally and fourth I recommend Senate approval for the public members of the Commission as well.

Senator METCALF. I asked counsel if these bills provided for that, the confirmation of the Executive Director.

Mr. ROUSE. They do not. Senator Percy's bill, as I understand it, requires that the Chairman and Vice Chairman be confirmed by the Senate, not as members of the Commission but as Chairman and Vice Chairman, which I think probably amounts to the same thing.

Senator METCALF. But you would have all the members of the Commission and the Executive Director.

Mr. ROUSE. All public members and the Executive Director.

To expand on that just for a moment, I would do that, as it has not been done in many commissions in the past because I think, if you are going to be serious about this subject, you have got to be serious about who is on it. I think that while it may be a very small point, it is important that Congress be heavily involved with who these people are going to be. It is not much but it is some commitment that Congress makes during the course of confirmation hearings to take seriously what comes out of the Commission's studies.

Fifth. One of the problems with commissions, as I have noted a moment earlier, is that most, including congressional Members, have other duties. They are not full-time employees. They are not working full time and that really is a serious problem particularly in an area which is as broad as this is and as important as this could potentially be. You want to avoid what has happened in the past where the commissions have quickly become creatures of the staffs. I think that has to be avoided here. Not that the staffs do not have a very important role to play, but you really do not want them making policy for the Commission or putting words into the mouths of the Commissioners.

So I think it is important that at least one of the members of the Commission, and I obviously think it should be the Chairman, ought to work full time at it and that requirement ought to be part of the enabling legislation.

Now, that obviously limits who can be the Chairman. If it is going to be a public member and if he is going to be the head of some company or some university or what have you, it is not likely that he can do that. But there are, in our society, fortunately, men of great ability who have reached retirement age or beyond, I am sure many occur to you who would be more than able to take on this assignment and do a credible job of it.

Sixth, this is the most important point I think I have to make. My problem with the current bill, much less so with Senator Percy's bill, is that it does not make any attempt to define the problems to be studied. Further, I do not know that it is possible to do that in the framework of any bill.

Therefore, I think that the Commission ought to be structured so as to require it to report back to the Congress and the Executive—let's call it at 6 months—at some reasonably short period of time after it starts work, with a definition of the problems, an array of the problems that it intends to study, a description of the method of approach it plans to use in going about studying those problems, and finally who it is they think ought to be studying those problems.

I think, at that point the Congress and the Executive ought to provide direct guidance to the Commission, not wait until they are a year down the road before they really begin working at the problems. Those who are at the policymaking levels and are going to be responsible for trying to implement the eventual proposals ought to take a crack at guiding the Commission in very specific terms as to where they think payoffs are likely to come.

That guidance ought to limit and restrain the Commission's work. They ought not to then be on fishing expeditions. They should have a very good idea of what they ought to be working at. That is

important because, once again, it helps tie in people who are going to be most involved in implementation. It is also important in order to avoid getting 7 or 8 months down the road, having a meeting one day with their staff, at which the members of the Commission look at each other and say, "What in blazes are we supposed to be doing?"

What should be avoided is to leave undefined for a long time the specific problems to be attacked and the method for doing so. There are literally hundreds of things that could be studied, but this Commission should be pointed after some period of time at those areas which the Congress and the Executive hopefully agree are the important and productive areas for study.

Seventh, I would have been happier if the sponsorship of this Commission had come from the Congress rather than from the President. I believe, however, that there is time enough to rectify that in some of the ways I have already suggested, by the Congress reshaping of the bill and maintaining an active line of communication to the Commission through perhaps an ad hoc committee made up of one Member from each House from each of the committees that have a direct involvement.

Perhaps that would be too large an ad hoc committee; maybe it is not possible. But the point nevertheless is that some line of communication that lies between the Commission and the Congress, that lies outside of the congressional Members of the Commission—or that they might very well be the conduit for them—needs to be formulated to make sure that the Congress stays abreast of what is going on in this Commission.

Eighth, I am concerned about implementation. It may be appropriate for the Commission to be terminated with the release of its report. But I think it would be better if something like what happened after the first and second Hoover Commissions were to occur here, particularly since Members of Congress will be members of this committee.

I think it advisable that the Commission be charged by its enabling legislation with at least two additional functions. First is to prepare the draft legislation, the changes in administrative procedure and the like, that would implement their proposals or those which emerge from discussion subsequent to their report.

Second, I think they ought to be given the responsibility to collect and organize the responses to their specific proposals that come from the executive agencies affected or the independent regulatory agencies or from the congressional committees.

Part of the enabling legislation should require these responses. I think that nothing would be easier than for this Commission to finish its work, walk away from it and leave the report in the hands of Congress. We ought to take it at least one or two further steps toward implementation that does not get this Commission too embroiled in, politics.

Ninth, I have mentioned earlier that, in reducing the size of the Commission, I would flesh out the work of the Commission by utilizing subcommissions similar to those Henry Houthakker suggested. Certain areas are clearly subject to legislative or executive review, and these techniques would be designated by the commission as part

of its first 6 months' work, as part of the method of approach for studying each problem. The same would be true of ungovernmental advisory bodies.

I think the use of advising groups and governmental reviews would have the advantages of bringing a great many more people to the Commission's work of building some commitment and some constituency for the eventual implementation of approved proposals.

Tenth, the bills, both the Percy bill and the President's bill, deal entirely with the economic effects of regulation. I think it is very important, and I realize that this is broadening things perhaps unnecessarily, but it is very important that we look not only at the economic effects of the changes in regulation but that we look at the probable social and perhaps even political effects of the kinds of changes this Commission is likely to produce.

It is not, I think, going too far to state that the deregulation, for example, of the motor carrier industry, which may be a very desirable thing to do from the economic point of view, may turn out to be disastrous, unless, in a social sense, the process of deregulation is carefully planned and phased over a long period of time.

For example, I think the idea of abolishing the ICC, which was one of the proposals in one of the bills before this committee, is just harebrained. From the point of view of the economics, it may be absolutely right, but the effects on this country of deregulating the truckers, the household movers, the railroads, and the barge lines in a sort of overnight move would lead to economic and social chaos.

Finally, the question of timing. It has come up over and over again in these hearings. Senator Percy's bill contemplates a 9-month study with a year for dealing with changes in Federal regulations; the joint resolution being considered by the Commerce Committee contemplates 3 years and the President's bill, 1 year.

This task is enormous in breadth. Despite all the material that now exists, the task of assembling, understanding, communicating, and dealing with it in a factual way, is much more awesome than anybody realizes. I do not think that 3 years is too long a period of time.

I would strongly recommend that some very careful attention be given to whether this work can be done in the kind of time that has been suggested here today.

I would divide the work into three phases. As I have already stated, the first would be a problem of defining "phase." Let's call it 6 months for the sake of argument. The second phase, to which I would probably devote something like 9 months or possibly a year, would be the study-investigation-hearing phase and would be directed only at those issues to which the commission had been specifically directed at the end of its first phase of work. Now the third phase would be that aspect of the work which would produce the legislative materials and the report of the commission. It would take 3 months or something of that sort. If the commission is given some responsibility for implementation, that might take another 3 months to 1 year. In total, something on the order of 2 to 3 years. I do not think in the end that 3 years is too long.

I have taken some time to review some of the suggestions that I think might improve the legislation establishing this Commission.

In conclusion, I would like to read the last paragraph of my written testimony:

In sum, I suppose what I am saying is that this task is too large for a commission of the usual sort, that it cannot be done in 1 year, and it cannot be done with the procedures, membership and structure characteristic of most study commissions.

I have suggested a rather complicated alternative. It will cost more. It will take more time. It will involve many, many more people in important tasks, and its procedures and its management will be very complex. All of that has to be weighed against the benefits to be achieved by a more useful product in this increasingly vital area of the American economy.

However, of the Congress feels impelled to act because of difficulties in the economy and the presumption that major changes in regulation can do something about it quickly, I would strongly urge that Congress act, and forget about creating a commission to study the effects of Government regulation on the economy.

[The prepared statement of Mr. Rouse follows:]

PREPARED STATEMENT OF ANDREW M. ROUSE, SENIOR VICE PRESIDENT, INA CORP.

At the outset, I understand these hearings and the bill proposed by the President attempt to deal with a perceived problem—the presumed economic and procedural inefficiencies of the regulation of business in the United States with their accompanying inflationary effects.

THE BILLS UNDER CONSIDERATION ARE INADEQUATE

The President's proposal (S4145) won't help and may be a step backward. It has three deficiencies, each mutually exclusive if the bill were to be accepted in its present form:

1. Its definition of the task is a vast oversimplification

The bill, in asking for an "analysis of the purposes and objectives of regulatory activities", poses an impossible question. Those purposes have been identified again and again. The problem is that they often conflict with each other and this is the very reason the agencies have been established with a quasi-judicial cast. Little is to be gained by listing and analyzing them again. In any event, the priority among those purposes changes from time to time as the economy, technology, public information, structure of the industry, and other factors change.

Their direction and impact has very different economic consequences, industry-by-industry. The bill refers to the independent regulatory agencies, but the economic impact of regulation is not limited to the actions of these groups. State regulation, Federal Reserve Board, Food and Drug Administration, Comptroller of the Currency, to name a random few, also regulate and also impact on the economy. Whatever impact the federal regulatory agencies have is in fact only a portion of the costs to the economy of business regulation.

The subject is complex. Regulation is imbedded into the fabric of American business. There is an enormous array of statute, case law and regulation which applies to any one industry.

Not only is the subject complex in a substantive sense but it also poses organizational, procedural andrjurisdictional problems which are a common thread throughout the regulatory system. But these are not addressed by the proposed bill.

2. The time allowed the Commission is totally inadequate

A year is not enough time to organize the Commission, assemble a staff, define with some precision the course and schedule of studies, carry these out and prepare its report. In sum, it is not enough time to deal with the mechanics of this immense task.

A commission is not a quick fix for a depressed economy. No action recommended by this Commission could have any effect for some time after its proposals are implemented—by its own ground rules that is at least better than one year. Even when Congress has acted quickly, as in the Banking Act of 1933, the groundwork in the form of legislative review and study preceded the Act by two years. One year simply is not enough time to carry out the charge of the bill. Of course, it is

more than enough time for a group of experts with preconceptions to write a report brimming with proposals. But, that would not help much for few of their proposals would be accepted. Cavalier would be the kindest word applied to them by opponents.

One year is enough time, if regulation of business is viewed as a gordian knot which can only be unravelled with a single stroke, such as complete deregulation (as opposed to the more modest variety, such as the proposals to reduce rate bureau control of rail rates). But frankly that is not feasible. Nor, in my view, is it desirable. More important, no convincing hard (as opposed to theoretical) evidence exists that deregulation of many regulated industries would have the desired effect of increasing competition which would benefit the public. In fairness, the opposite is also the case.

3. It follows that the funds authorized for appropriation are insufficient

Five hundred thousand dollars will buy about twelve middling-level professionals after allowances are made for support staff, administration, printing, travel and the other expenses which attend commission efforts. That is tantamount to tossing a marshmallow at an elephant. It would be no improvement if the professionals were all acknowledged experts, with all that suggests in terms of clashing egos, hardened views and possible conflicts of interest.

This Committee is also considering three presumably related bills: S3604, The Federal Agency Efficiency Act; S770, to establish an Office of Consumer Counsel; and S704, The Regulatory Commissions Independence Act.

S3604, The Federal Agency Efficiency Act, if it abolishes the ICC, for example, may prove to have taken appropriate action. However, the case for the proposed abolition of the ICC and the SBA have hardly been made. At the very least a compendium of the accumulated knowledge regarding these actions should be prepared and summarized before attention is given to these elements of the bill.

The other less economically significant proposals, abolishing the Council on Physical Fitness and the Renegotiation Board, prohibiting domestic operations by the CIA, re-assigning the SBA's disaster loan function, and abolishing many of the Civil Defense functions of the Department of Defense, are all steps which existing legislation, previous studies of the OMB and simple logic long ago justified.

S770 attempts to right what many perceive to be an imbalance in the views considered by regulatory bodies. In proposing to establish a Consumer Counsel to represent consumers, to provide funds to other governments to establish similar offices, and to improve the flow of information on regulated industries and companies, the bill seeks to make a fair fight of the regulatory process.

While I agree with the objective, I strongly disagree with the mechanism. Apart from details, three arguments are persuasive to me: it unnecessarily creates a new bureaucracy to carry out a function the commissions themselves are charged with performing; it once again permits the Congress to avoid its ongoing responsibility to redefine the public interest; and, third, through the grant program, it encourages the perpetuation in some very important areas of the dual jurisdiction for regulation which is one of the more eye-catching of the problems which beset business regulation today and which encourages the very inefficiency which fuels inflation.

While it is well beyond the scope of what I want to say today, the interest of consumers would be well protected if agencies were charged with that responsibility specifically, and if agency personnel, including the Commissioners, were selected differently than is apparently the case today, and if all personnel were subject to rules of employment relating to their conduct both in office and their employment subsequent to leaving it.

There is no question in my mind, however, that if a Commission to study the operation and economic effects of regulation is created, the issue at which S770 is directed is a valid and important matter for the Commission's consideration.

Finally, there is S704, The Regulatory Commission's Independence Act. The presumption of the bill appears to be that freeing seven regulatory commissions of the constraints placed on them by tradition, by OMB Circulars 10 and 17, and by allowing them to handle their own legal work free of Justice Department's approval and pre-emption, will liberate them from the influence and control of the Executive Branch. Both, it is implied, are desirable ends. I disagree.

First, there is little doubt that the power to review budgets and legislation is an important element of control and influence. But Congress has always had the power to deal with budgets and legislation as the last pencil on how much and

for what. This bill eliminates Executive review in an area over which they exercise only the authority to propose. It represents once again an example of attacking a problem with the wrong tool.

If the Executive has exercised undue or insiduous control over these agencies, their budgets and legislation, it is and always has been in Congress' powe to reestablish balance. It makes matters worse to omit the review of the OMB (on budgets and legislation), for that reverses the imbalance without correcting the underlying problem.

Second, to insulate from formal Executive review and approval budgets and legislation which will eventually have important economic effects ignores the relationship between forms of business regulation and between industry regulation and promotion. The legislation and operations of these commissions should mesh with the ongoing programs of the Executive Branch, with changes in the structure of the industries regulated and with broad economic policy. Doing so requires formal Executive review. Consultation, given the pressures of mandatory tasks, won't do it.

Once again, the underlying problem—establishing a balance between legitimate and vital input to agency decisions and exercising undue and illegitimate control—is very important. It too is a proper subject for serious thought and for recommended action by whatever study is undertaken of the impact of regulation on our economy.

In sum, the four bills are unsatisfactory.

First, another review of the purposes of regulation would be unproductive.

Second, abolition of agencies without information on its effects might be disastrous.

Third, the complexity of the substance is glossed over in all the bills.

Fourth, organization and management questions are largely ignored.

Fifth, with regard to establishing a commission, adequate resources suited to the task are not provided.

While I am not an economist, nor have I studied the effects of regulation on business and enterprise, I hope I can contribute to this Committee's work from my own perspective and familiarity with the purposes, organization and management of study commissions, and on organization in government generally.

A COMMISSION CAN PERFORM A VALUABLE SERVICE IN THIS CONTEXT

Commissions, regardless of how formulated, can serve one or more of four purposes—

To lend the weight of a commission's prestige to proposals whose basic direction has already been decided.

To provide a mechanism for collecting and disseminating information.

To delay action.

To find and organize facts associated with complex problems and to propose solutions based on those facts.

If other objectives are sought, then the commission form is not appropriate. On the other hand, there are clear alternatives to the commission form which may satisfy equally well the purposes listed above. To name a few: legislative review (Glass-Steagal Act of 1933), executive review (Macomber Commission, 1969), joint commission (Procurement Commission of 1973), regulatory commission review, consultants, advisory committees and government convened conferences.

What a commission is almost uniquely qualified to do, however, is to work on complex problems exclusively, intensely, temporarily and without the intrusion of other affairs. Therefore, while many people are cynical about their value, the commission form has endured because it has value. Properly mandated, structured, operated and terminated, commissions can and have produced useful proposals to solve complex problems.

The problems posed by the regulation of business in the United States are many and very complex. Their solutions, if any, are impregnated with political and social values. To make any useful improvement in the efficiency or in the economic effectiveness of regulation will demand intense yet careful effort, balanced yet definite proposals. This is a task for a commission like none yet assembled in this country. Regulation is a dawn to dusk reality of American business. Altering its structure, legislative mandate, functions, procedures, even its existence, requires attention to the chain of events which such action is likely to set in motion. Of the available alternatives, the fact finding commission form, because its strengths are time and objectivity, is the best.

LESSONS OF PAST COMMISSIONS

The success of Commissions depends upon the background behind their establishment, upon their operation, process and report and on the action taken subsequent to the release of their report. The success or failure of a commission is often determined before its first meeting.

Sponsorship

In creating a study commission, the sponsor must have and retain a strong operational interest in its conclusions. More, he should have the authority to begin at least the process of implementing accepted proposals. Needless to say, the best evidence of operational interest is direct involvement in selecting members and in maintaining a line of communication as the commission does its work.

Membership

Commission membership is also a key background factor. It is not only a matter of prestigious names. Other factors are organizational affiliation, knowledge and experience in the area being studied, and balance of views.

Membership needs to be tailored to the problem and to the purpose for creating the commission in the first place. It's a considerably more difficult task than it appears to be. A commission of "great men" set to a highly technical and factually complex task may soon find itself at the mercy of an experienced and knowledgeable staff. Conversely, experts as members may be intractable when the purpose of the commission is to describe and ratify something like the position of its initiator.

The size of the commission is important as is insuring that the commission is adequately funded. As a rule of thumb, 120% of professional payroll should be adequate.

The commission has little influence over these background factors, but their mishandling may doom the commission's proposals before it opens its door.

Over the second group of factors, the commission has considerable control: its staff, method of investigation, and final report.

Staff

In its own orbit the commission staff, particularly its most senior professionals, should command as much respect as its masters. The day-to-day cooperation of information sources, willing responses to calls for assistance and the like are more an outgrowth of staff effort than of the activity of Commissioners. Successful commissions have always had successful staffs.

The staff of a successful commission should complement the skills of the Commissioners. More often than not, this means that the staff must bring the deep knowledge of an area of study to complement the members' seasoned judgment; or the communications skills to clarify and disseminate the member's ideas.

Finally, it is misplaced economy to talk about a small, tightly-knit staff or other such doggerel when you are talking about studying a mammoth problem. Of course, staff size depends on which of the purposes of a commission you are trying to achieve. However, in a fact-finding/solution-proposing commission each element of the study should have at least a critical mass of professionals to work effectively. Commissions established for other pruposes can do with less.

Method Investigation

There are three aspects of commission operations that contribute significantly to an effective job.

Defining the Study.—Taking enough time to define and outline in some detail what it is going to study, communicating this to its sponsor(s) and organizing its staff around those tasks.

Examples of shot-gun approaches by commissions are numerous. The problem lies in the desire to "hit the deck running". This is particularly a problem when as now the sponsors wanted answers quickly. As a consequence, many of these bodies have found themselves half or more through their tenure before they had a handle on an approach. When adequate time is taken, it follows that the group can save itself considerable grief by reviewing what it intends to do with its initiator. False starts and fruitless studies can be avoided and, as important, the resources needed to do the job re-examined.

Participation.—Involving the active participation of individuals who may be key to implementation during the fact-gathering and proposal drafting stages.

When the commissions have reached for staff and assistance from the agencies who were either going to be affected by its proposals or were involved in their implementation, they more often than others achieved higher levels of success. True, the involvement of these people often led to compromises with the proposals commissioners may have preferred. But it is also true that the involvement of key agency and congressional people helped avoid factual and political pitfalls that otherwise would have occurred. As important, their involvement stimulated a commitment to the proposals. In turn, that contributed to the building of a constituency to aid in implementation.

Accuracy and Consistency.—Maintaining consistency in the fact-gathering approaches by basing the approach on a defined method for each of the problems to be studied.

When an opponent attacks a commission's proposals, the most telling substantive arguments have often dealt with the adequacy of the study approach, its representativeness, the quality or breadth of data, the validity of the assumptions made, or the factual accuracy of the information used to support a proposal. The best commissions guard against these entirely valid criticisms by careful documentation, consistency in approach and, most important, by defining the study approach (describing its limits) long before investigative and analytic fact-gathering begins. Of course, this does not entirely disarm criticism or opposition. It does force opposition to disagreement at the policy/value level where it probably ought to be.

Attention to method helps clear the air of irrelevancies. It allows discussion to center on the supporting analysis and on the values inherent in the proposals.

Reports: Timing, Frequency and Length

Commission reports released early in an administration have had more success than those issued later. The reason is obvious. Clearly, the timing of a commission report should dovetail with public or governmental interest in doing sonething about the problem it addresses. This has required some fine tuning of release dates. It has also led commissions in some cases to produce several reports timed to sustain public awareness.

Some commissions have produced several reports not only for the purposes cited above but also to maintain its communication link with its sponsor. Frequently, study groups have obtained reactions to their material which helped shape the stype of later reports.

Short reports containing succinct summaries seem to have had more impact than reports which are monuments to staff endurance. Even a complex and broad range of subjects when kept digestible through short reports have been more favorably received.

Subsequent Action

Finally, there are factors following release of a report over which the commission can exercise partial control; the President and the Congress relatively more.

Does the commission deposit its report and walk away? Does the commission stimulate interest, work for implementation? "Hanging in" has had a positive effect in the past. This appears to be the case both where the commission members' prestige was part of the raison d'etre for the commission form and also where members were selected as representatives of a view or for their knowledge of an area of study.

Several techniques for assisting implementation have been successfully used: joining the government, assigning implementation operations to government members, use of citizen committees to generate public support, release of commission materials on a planned basis for publication, personal lobbying by commission members, and making the commission itself semi-permanent to shepherd implementation, to name a few.

A COMMISSION TO STUDY THE EFFECTS OF GOVERNMENT REGULATION OF BUSINESS

I am not sanguine about the prospects for a study commission. However, there is really no feasible alternative if a beginning is to be made in objectively evaluating the effects of the net of government regulation on the economy and on the social fabric of the nation. No one knows these effects. And respectable opinion can make almost any case. Opinion and political leaders, frustrated with the nation's economic prospects, are calling for action. But action in the field of regulation, largely unsupported by knowledge of effects, may prove exceedingly unwise.

A properly structured, carefully mandated commission can provide the needed support. It can also provide some of the information which may help the Congress reclassify its priorities among the various objectives of regulation—all now identified as the public interest.

Failure to properly structure and define a commission's job presages a failure, although careful attention will not insure success.

To help improve the usefulness of a commission studying the effects of regulation, Congress and the Executive might consider the following:

1. Define and, through communications with its sponsors, redefine the commission's task

Until a commission has begun its work, the general mandate which characterizes most legislation setting them up is really an insufficient guideline for a commission's work. On the other hand, the authors of the legislation cannot be more explicit for they too have not had the opportunity to define in any detail the problems to be studied.

Regardless of how this commission is constituted, I would suggest that its first task be to identify the areas it intends to study, describe how it will go about those tasks, and report back to its sponsors before going any further. Much research obviously must be done to reach this point. But it is time and money well worth spending. After the commission has reported back, the Congress and the President, I'll predict, will want to re-define the commission's role, functions and objectives.

This time the mandate of the commission should be well defined and the commissioners in no doubt as to the breadth of their assignment and the limitations placed upon them. What you want to avoid here is what has happened to so many others—a meeting four or five months into a commission's life where the members look at each other and ask, "What are we supposed to be doing?"

2. The Commission's staff is important. Its key members should be selected with as much care as the commission itself

In all of this commission's work, day-to-day operations will lie with the staff. The relationships developed between the staff, the Congress and the agencies will generate support, indifference or enmity.

It is also important that each discrete study effort be staffed by enough people so that there is an opportunity for interaction, critical analysis and reinforcement as the work proceeds. Many commissions with large jobs and insufficient staffs to deal with the range of its program have not provided such a critical mass. Even able staffers under these circumstances find themselves working on their own, isolated from insights and information available to others and with insufficient opportunity to test ideas and analyses with others.

The Executive Director of a study commission and the key professionals are also critical to success. These men and women are the principal conduits through which information to the commission flows. They are also the principal contacts with government agencies who are supplying information and who may be charged with implementation.

While it is not common for the appointment of an Executive Director of a commission to be subject to the same scrutiny as the Commissioner's, the subject matter of this commission is such that its Executive Director and several of the key staff people should be carefully evaluated. I would not go so far as to make the Director a member of the commission, although that too has been tried in the past with some success.

3. Time and Money

Neither the amount of time this Commission should sit nor the amount of money it needs are known with any probability of accuracy at this time. Nonetheless, the enabling bill, if it follows convention, will establish a reporting date and identify a sum authorized to be appropriated.

Under these circumstances, the commission, as one of its first considerations, will decide how to cut the study to fit the budgets and the time permitted them—this before they know what they should study.

Clearly time and money limits are a necessary control over commission operations. I question, however, the timing of the installation of those controls. It would be more appropriate in my opinion to divide the task into at least two parts—the first period geared to the problem and method defining phase of the work for which a budget is rather arbitrarily set, and the second geared to the investigation, fact finding, analysis and report writing phases.

The sponsor(s) have the controls they need and the opportunity to deal more realistically with the cost and duration of the commission. In addition, in the latter phase of the commission's work, study groups other than the commission itself might deal with specific aspects of the commission's work. For example, specific approved study areas might be assigned the regulatory agencies, the Administrative Conference of the U.S., Committees of Congress or agencies of the Executive Branch. These should have ample funds and personnel to carry out the studies assigned to them. In this way, the total cost of the commission's work can be minimized.

4. Membership of the Commission

There are many problems here: the number of members, the time they are expected to spend, their affiliation, experience and knowledge—to name a few. Because the area to be studied by this commission is so important to so many people the tendency would be to bring together a group of members representing the Congress, regulated industries, business in general, academia and labor. On the other hand, there is ample evidence that the larger a commission the more difficult and more costly are its procedures, and the more likely it is that the commission will end up a rubber stamp for its staff.

I would strongly resist the temptation to create a large representative commission, yet I recognize that a smaller group selected for its presumed objectivity and knowledge will be charged with being unrepresentative and impractical. I also believe, as I have stated earlier, that the more people who can be brought into the commission's work and who associate themselves with its result, the greater the opportunity for success.

Therefore, I would try to combine both ideas in establishing this Commission. I would propose creating a small commission of seven members, made up of two members of Congress and one representative each of the regulatory commission and the Executive Branch, with the remainder coming from the private sector. One of the latter would be an economist with acknowledged credentials in regulatory economics.

This commission should be charged with the first phase of the study. That is, it would identify the problems for our economy posed by government regulation that ought to be discretely studied. It would describe the method of approach by which these studies will be undertaken. This commission would also propose the appropriate entity to undertake each study.

When the commission has reported back to the Congress and the Executive, those bodies, through the mechanism of the Office of Management and Budget and an ad hoc Committee of each House selected for this purpose, would meet to refine and approve the areas to be studied, the budgets and the duration of each, and the budget and duration of the commission itself. New legislation is then prepared continuing the life of the commission, providing for budgets and deadlines, specifically identifying and defining the problems to be studied, and establishing whatever other bodies or assignments of responsibility are needed to carry out this last phase of the study.

The bill might direct the creation of several "sub-commissions" with their own staffs to study specific problems. It might reserve others for legislative or executive review, others for study within regulatory agencies, by consultants, the Administrative Conference, the regulatory bar, or industry task forces.

The original commission's functions in this phase will be to manage what, by the mere difinition of the scope of the field, is a mammoth research effort. A somewhat different staff will be required for this stage, one whose strengths are in communications, management and reportorial skills as compared to the analytical skills required in the first phase. On the other hand, the organizations assigned the studies will continue to require principally analytic skills.

5. Reporting

It will be the responsibility of the commission to report in writing on the progress of the work to the Congress and to the Executive at the times designated by the enabling legislation. I do not think quarterly reports too burdensome. These reports should cover budget and time conformance for each of the studies. To the extent that it is possible, it should cover the findings of fact and the directions that those findings seem to be pointing.

These reports should be widely disseminated within the Congress, the Executive and among the regulatory agencies. An opportunity for comment on them would be provided by the Commission at its regular monthly meetings where written and oral communications that those involved wish to provide are considered.

As study groups complete their work, reports in draft form should be submitted to the commission for review and approval. When that has been achieved, the commission should submit the reports seriatim in preliminary form to its sponsors with accompanying action documents and should thirty days thereafter release the report (without action documents) for general evaluation.

It is the commission's task to keep abreast of the direction in which each of the studies is going, to terminate studies which are proving fruitless or which become disorganized, and to insure that the findings and probable proposals are both consistent with one another and have dealt as factually and as realistically as possible with whatever issue the group is considering.

To do all this will require a major commitment from commission members. I believe it desirable that the members view their work in the first phase as virtually a full time assignment. I recognize that for Congressmen and for qualified executives this is all but an impossibility. Yet some way must be found to bring more of the commission's attention to the ongoing operation and their time to deliberation than has been characteristic of many commissions in the past. This is particularly true of commissions on which members of Congress have served.

One technique which has been successfully used is for each commissioner to appoint from among the top men of his own staff, company or institution a man who, serving as his proxy, works full time with the commission. While I do not consider this procedure an entirely satisfactory substitute for the commissioner's own time, it is probably the best we can do.

What I would do is require monthly meetings of the commission, each to last three days. I would demand the attendance or, after two months of absence, the resignation of a commissioner. This is difficult and unpleasant to do, but I can think of no other obvious way to get the body there even though the head remains at home.

In sum, I suppose what I am saying is that this task is too large for a commission of the usual sort, that it cannot be done in one year, and it cannot be done with the procedures, membership and structure characteristic of most study commissions. I have suggested a rather complicated alternative. It will cost more. It will take more time. It will involve many, many more people in important tasks, and its procedures and its management will be very complex. All of that has to be weighed against the benefits to be achieved by a more useful product in this increasingly vital area of the American economy.

However, if the Congress feels impelled to act because of difficulties in the economy and the presumption that major changes in regulation can do something about it quickly, I would strongly urge that Congress act, and forget about creating a commission to study the effects of government regulation on the economy.

Senator METCALF. Thank you very much.

I have been giving important consideration to not only your experience on the Commission, but to your very careful thought in consideration of this whole problem. If Congress would consider the kind of legislation that you have suggested, to report within the time frame, and given the necessary appropriations and the very complex organization of the Commission, would you recommend the passage of such legislation?

Mr. ROUSE. Yes.

Senator METCALF. It it were drafted in accordance with your desires and your recommendations, do you think that the usefulness and the public interest would be worthwhile?

Mr. ROUSE. I am not saying, Mr. Chairman, that the effort would produce anything in any event, but I do think that eventually something will come of this. It may not be as a result of this Commission's work. I know that in the Congress often something that is of great interest to members of the legislature waxes for years as a record is built to justify the kinds of changes that seem desirable. At the very least, this kind of a commission could help produce that record. That is the least that can be expected of it. At the most I believe that if the

Commission is directed at certain problems in the study of which Members of Congress and the Executive have concurred and of those people remain involved, there is the probability that something more will come of it. Not as Professor Houthakker has suggested, an omnibus change, but something more like what I suspect you are getting at when you said change at the margin. We may make some useful changes here and there.

As a result of this I suspect that we will not go as far as some would like.

Senator METCALF. On the other hand I take it that a superficial study of one of the ordinary commissions will not be any more profitable than just a useful study that Congress makes in its own oversight functions.

Mr. ROUSE. I am not familiar enough with those studies, but I agree with the first part of what you said, sir. I think that it is not likely that in 9 months or 1 year a commission constituted as S. 4145 would have it constituted would produce anything like that.

Senator METCALF. I have been impressed all day that witnesses have insisted that this is a much bigger question and a much broader question than just the so-called independent regulatory agencies, and I think that you have underscored that significantly this afternoon.

I walked over from the last vote with Senator Proxmire and we were talking about the jurisdiction of his committee, and he named some jurisdictions that do not readily come to mind when we think of the Federal Power Commission or the Securities and Exchange Commission or even the Federal Reserve Board. Those other agencies—and you have named some of them—do have a tremendous impact on the economy and the business communities. So I think it has been worthwhile to have that point underscored both by commissioners who sat here this morning and by others who have testified.

Mr. TURNER. Mr. Rouse, in terms of numbers, professional personnel, what are we talking about with this proposed commission? How many people do you envision to do this job?

Mr. ROUSE. Are you talking about the Commission or its staff?

Mr. TURNER. I am referring to your suggestions with respect to something that you feel is important, to actually do a job, to get something substantive on the record.

Would 200 or 300 people be a ballpark guess?

Mr. ROUSE. Well, let me answer your questions and cite it a different way. When you are thinking about how many people you are going to require, you really have to think about people at what level and for how long are doing what. Let me start out by saying that the key core staff of the Commission probably need not be more than 10 or 15 professionals. However, the numbers of people who will be working at the peak of the Commission's work in what I have described as the second phase, on all kinds of problems that they may have, may well be in the numbers that you have described.

Let me give you two illustrations. The Kappel Commission on Postal Reform back in 1967, I guess, had a staff of only perhaps 20 people, but at the height of the work involved in the Kappel Commission's staff, there were probably as many as 150 people involved.

The Ash Council had a staff at its peak of about 40 full time, but at one time at the end of the first year, there were well over 100 part-timers working on various studies of the commission.

So I think that your guess, Mr. Turner, is not too far off the mark. The key staff, call it 15 or 20, something on that order; at the height of the Commission's work, working on this problem, perhaps as many as 300 people.

Mr. TURNER. Now, when we convert that into dollars, what are we really talking about here?

Mr. ROUSE. It depends upon where the dollars are coming from. I would visualize a great many of these people would be people who are already funded by the agencies, by the Congress and the Administrative Conference of the United States, for example, so that those would not be new dollars.

In terms of new dollars, I suspect that the kind of funds talked about in the joint resolution that the Commerce Committee is considering would be sufficient and that is $1 million a year.

Senator METCALF. Would you yield a moment?

Mr. TURNER. Yes; sure.

Senator METCALF. Do you anticipate borrowing or using the facilities of such organizations as the Brookings Institution or some of those organizations that specialize in study of government?

Mr. ROUSE. Part of what I contemplate in the first phase—and when I talk about method of approach, that is what I had in mind. It is part of identifying the problems for the Commission to study. It would identify a method of approach and the group or groups that they would be calling upon to do the work. The Congress and the Executive would have the specific opportunity to review that before they said go ahead and do it.

And incidentally, you would have a much more realistic idea if you did it that way of what it was going to cost than you do when you sort of put a dollar figure next to a commission, before you have even defined its study areas.

Senator METCALF. Now, would you anticipate that the Commission would early contract out some of the exploration of the problems to such consulting agencies as the Stanford Research Institute or Rand Corp.?

Mr. ROUSE. I would try to use institutional consultants as little as possible. That becomes a problem of control after a while because you enter into a specfic contract, and it often becomes an issue of whether or not they did what they were supposed to under the contract, and quite frankly you have enough to worry about in this area without having those things on top of it.

So I would not, except where things like survey work is required. It depends upon what is going to be studied, but I would not contemplate that.

Furthermore, they are expensive.

Senator METCALF. A lot of them come to mind. I just happened to think of those, but any legislation should at least give the Commission power to do that, to do such contracting as it felt necessary.

Mr. ROUSE. Yes.

Senator METCALF. Thank you.

Mr. TURNER. Well, who would you concentrate on, the employees of the various independent regulatory agencies? Would they give substantial support to your decisionmaking?

Mr. ROUSE. Yes. The OMB, the Administrative Conference of the United States—I think there are some problems here that are likely to be identified, that ought to be dealt with by the legislature itself in the normal course of hearings and the like. There are executive reviews and other tools that you use, and a great deal of the data you need—and you do have subpena powers to get it, if that becomes necessary—will come from regulated companies. A good deal of it will come from the regulating agencies themselves, and they ought to be used to supply this information. I cannot think of a better way to get them involved in what you are doing.

Mr. TURNER. Yes; but data flow and information flow into the study commission is one thing, but subjective judgments and analyses and ideas, that is something else. Our legislative oversight has given us quite a bit of experience with certain biases that many people have in the Office of Management and Budget and in the regulatory agencies as to what and what is not the problem and how it should or should not be solved, and so it would seem to me that an outside, independent group—someone taking an objective look at this—would be both expensive and essential.

Mr. ROUSE. Well, you may be right, Mr. Turner. I assert a strong predilection against using them but if it turned out that you could not get objective analyses, then we would have to use them, and you would have the authority to do so. You might not have to go quite as far as using Stanford. You might use Dr. Houthakker's services and those of his graduate students, who would probably do a pretty credible job. It depends on the job.

Mr. TURNER. I have only one more small point, but maybe one of those that we will be considering.

You narrowed the number of members to the Commission down to five?

Mr. ROUSE. Well, I said seven. I do not want to get hung up on a number.

Mr. TURNER. Well, do you mean you do not want more than seven?

Mr. ROUSE. I do not want it to be 12, and I think 10 or 11 is too many, too. Now, you know, it is not the number. It is the point I want to make. You want to deal with an administratively manageable unit, and 12 is too many.

Now it has been my experience that seven gets to be about right, but as to the number, please be my guest.

Mr. TURNER. Well, I think we may be more interested in the breakdown vis-a-vis Congress and the executive in terms of representation and orientation, and I was just trying to explore with you your thoughts as to what kind of a Commission breakdown of membership you might see, where Congress still has essentially the major input into the Commission, either for public members appointed by the Congress or its own members. It appears we have a congressional problem dealing with "arms of Congress," with a primary congressional concern in input and output, rather than an executive?

Mr. ROUSE. Well, whatever body it is—let us call it seven, and I can see why I would want it to be nine, right away, but if the number were seven, I would have three, possibly three Members of

Congress, and I recognize immediately, that creates a problem. It is probably impossible, and so maybe we ought to think about nine.

Senator METCALF. You cannot have less than four Members of Congress. If you have two from the Senate, one has to be from each party. If you have two from the House, the same thing.

Mr. ROUSE. If you enlarge this to nine, then that really gets to be as far as I personally would go, then you would have four Members of Congress and you would have two, I think, or three members of the executive, including one from the regulatory agencies, and two public members, one of whom would be the Chairman.

Mr. TURNER. I have jotted down some figures. I would like your response to them. Two from the Senate, two from the House, three appointed by the President, two of which would be from the majority party.

Mr. ROUSE. Two of which would be from the majority——

Mr. TURNER. Two from the Senate, two from the House, three from the public, two of which would be from the majority party.

Mr. ROUSE. Well, of course, there would be none from the executive branch then.

Mr. TURNER. That is right. The thought is that the executive branch would be excellent witnesses. I am asking your reaction to it—witnesses. They furnish information; they give you their analyses, their arguments against things, and they give you justification for the regulatory missions. As witnesses they are there, but as Commission members and decisionmakers, it seems to me, they might be in a position where they have to make certain judgments based on their own biases.

Mr. ROUSE. Mr. Chairman, I think if it is necessary to keep the Commission that small, then I would go along with that.

Senator METCALF. Well, I am going to quarrel with my counsel. I might have agreed with him before today, but it would seem to me that the whole consensus here is that input is not just from the quasi-legislative agencies; it is from a myriad of executive agencies, and certainly the executive department should be represented there. Wright Patman has a delightful little phrase, sending the rabbit to the store for a head of lettuce rather than the fox in the chicken coop which is a little more tender, not quite as brutal. If we are going to have the broad impact and the broad scope that has been suggested today—and I have been convinced—it seems to me we should have some representation from the executive department too.

Mr. ROUSE. I would bring that representation into the subgroups that I have described, rather than the Commission itself. I really think that it is essential that the study commission be cut down to a manageable size.

One of the experiences I have had in my own career in government was with the American Revolutionary Bicentennial Commission, which had 30-odd members, and if you have ever tried—it was just impossible to get anything done with that group.

Senator METCALF. Some of us who came from the House of Representatives sat on committees that were composed of 50 members.

Mr. ROUSE. I rest my case.

Senator METCALF. I will take the fifth amendment on that.

Would you have advisory committees?

Mr. ROUSE. Yes; and I would utilize the advisory committees as one of the tools of dealing with these specifically defined problems.

They would not be broad. You would not have an advisory committee for every problem.

Where they might be useful is where value judgments rather than quantitative judgments were indicated. I think advisory committees are useful, and you use them as one of the tools in dealing with specific problems, so I think to the extent the bills are wise in providing for them.

Senator METCALF. Would we have to put in a proviso that the Commission would be subject to the Advisory Committee Act, or do you think the legislation would take care of it?

Mr. ROUSE. I cannot answer the question because I just do not know.

Mr. TURNER. Well, I think it has a lot to do with whether this is an executive advisory commission. I think the Federal Advisory Committee Act has a very real role here in this commission.

Senator METCALF. But sometimes we go down to the executive department, as both counsels well know, and they say, well, that is not one of the commissions or the committees that is governed by the act. So every time we try to use the disclosure procedures or the distribution of membership over various public interests that are concerned, they say, well, that is just for special sorts of things.

But here, where we are talking about oil companies, we have to have expert input of oil information. Or here, where we are talking about bankers, we have to have the expert input from the people who are in the financial community. Or the one that sends me up a telephone pole, is where we are talking about utilities: we just have to have people with utility experience. These public people are just not very helpful, and that built-in bias and lack of objectivity sometimes destroys the whole activity of an overall, broad-based Commission.

Mr. ROUSE. You are right, Senator, and I think the way to deal with it is to listen to it all—all, meaning on all sides of the issue—and utilize the Commission's own staff and others to prepare the materials for the commission making the best you can of all of those cases, but utilizing its own judgment. They, after all, are points of view. There is no way of getting around it.

Senator METCALF. Mr. Statler.

Mr. STATLER. Mr. Chairman, I am sure you will agree with me that the committee is most fortunate in having Mr. Rouse's testimony today. I think it has been some of the most illuminating testimony given by any witness. I say that with a personal bias because I worked with Mr. Rouse—or should say, under him—in preparing the Ash Council's regulatory recommendations, and I can attest to the fact that if we ever do form a study Commission, that Commission would be very fortunate to get somebody with his substantive and administrative expertise serving as a member or chairman, or executive director.

Turning to substance and the most troublesome question, and you raised it, concerns what are the real priorities for this study? If you would, Mr. Rouse—and this really gets at the heart of the problems of the regulatory agencies—could you give us, perhaps in shorthand form, what you view as some of the most important areas for this Commission to be looking at?

Mr. ROUSE. Well, I will try. Remember that the genesis of this idea stems from at least a preconception that a lot of people have that regulation in one way or another has a negative impact upon the

economy, that it contributes to inflation, and so forth. There are some areas where that is not so much a preconception as demonstrable.

One area that was raised by your list of questions, for example, and came up several times this morning, is the area of dual regulation. That is the regulation of the same area by the States and by the Federal Government. The utilities area is one; the securities area is another; transportation is certainly a third. My own business, insurance, is a fourth, at least in some areas.

It is a problem because the rules are often in conflict, and people who are trying to comply with the regulation find themselves, as a practical fact, disobeying one or the other law. I think there is substantial payoff in dealing with the area of dual regulation because it is a burr under the saddle of every business in this country that is subject to dual regulation. It is also a relatively easy one to handle, or at least to identify how to handle, because the tools for dealing with it are well understood. There is Federal preemption; there are reservations to the States; there is a better definition of what the role of one or the other might be with respect to regulation of those industries, and those are areas where we have already done a considerable amount of work in defining roles.

Now that is one area. The second area is one that has been mentioned often about which there has been a lot of study, and where there seems to be apparent insufficiencies in the transportation industry. As I said earlier and I repeat, you would make changes in the nature of that regulation very slowly and in accordance with a very careful plan that looks at the long-term implications of every move you plan to make. However, transportation regulation is an area where there is already much evidence, the commission would have a good start.

But I think the real effort of the Commission needs to be on devising the kind of plan I have described. It is not so much, should the field be deregulated, at least in my mind. I think that is reasonably clear, at least through some of these things, not should, but how, at what pace, and so forth, and so on. That is something that has not been dealt with in any specific way.

Mr. TURNER. If counsel would yield on that point, I think this would be a good time to ask a question that I had here for several of the other witnesses. That is, looking at areas which are regulated and trying to find out where deregulation might be helpful to the economy or where regulation should remain, do you not think it should also be the mission of this new Commission to look at areas where State regulation is inadequate and where Federal regulation is nonexistent, and I cite an example, the insurance industry.

Mr. ROUSE. I wish you had not cited that example. I guess I would—let me put it this way—this is already a very major undertaking. You are now adding a dimension to it, having added quite a few already, a dimension to it whose importance I will not deny, that is the question of inadequate regulation of certain things that ought to be regulated and might very well be regulated by the Federal Government.

Mr. TURNER. I think you would have to look at their economic impact. I think if there was sufficient economic impact, then you would make a value judgment as to whether that were true or not.

Mr. ROUSE. But I think that the thrust of this Commission's work ought to be what can we do to minimize the impact of regulation, to make regulation more efficient, not to try to resolve the issue of what ought to be regulated. That is not now. That is a valid question, but it seems to me it is the next question.

Mr. STATLER. Were there other priority areas you were going to refer to?

Mr. ROUSE. I am not as confident as the four chairmen of the commissions were this morning on their own agencies and the porcesses under which they work.

Mr. STATLER. I do not think this committee is quite that confident either.

Mr. ROUSE. And so I think that there is a major job to be done, a pretty high priority job, in dealing with the way the regulatory process is organized and administered. It is speeding up, but it is not merely speeding up. It is making more effective the entire process of the agencies. I know, Stuart, that I might now repeat all of the Ash Council recommendations, but everybody knows what they are. Those who produced that proposal wanted to make the administrative process significantly more efficient and to bring to bear on that process considerations and perspectives that are not now used there, but I think this Commission should reexamine the question of single administrators and administrative courts, the consolidation and combination of some of those agencies, the separation of promotion and regulation, and the other issues that the Ash report dealt with. Those should be reexamined because there are valid points against all of them.

Nevertheless, the question of making the agencies more responsive is a good one. I was frankly intrigued by the suggestion that somebody made here that the agencies be given a specific tenure, and their mandates and statutes reexamined at the end of that period with a view toward terminating them or continuing them with a revised mandate.

One of the advantages of doing that—and I think it is an important one—is that it makes specific for the Congress a review of the policy under which those agencies operate and seems to me to be key to their operation. The ICC today is not sustaining the motor-carrier industry because they are badly intentioned or anything remotely like it. They are sustaining it because they can see that that is what their legislative mandate is.

Mr. STATLER. You are one who has moved in and out of government, from government back to the private sphere and perhaps at some time in the future back to government. There is presently confronting the Congress the age-old problem of how you deal with conflicts of interest, and one way it takes form is the movement into a regulated industry from a regulatory agency that regulates that industry, or vice versa. Do you have any suggestions as to how that problem might be dealt with, or what should constitute grounds for qualification or disqualification along those lines?

Mr. ROUSE. I feel we have to make a very serious effort to bring the level of the qualifications of men who serve on these commissions to—well, let me start again, I think we have to make an effort to encourage very qualified people to accept commission positions. I do not think it is ever going to be possible, not in the current framework of those commissions, to make them nonpolitical. So that it seems to me the next reasonable place to go is to make sure that whoever is doing the appointing is not appointing people who are not qualified, or are marginally qualified.

As a consequence, I have thought from time to time that it would be useful to have a system similar to what now is utilized in the Federal court systems, and I think somebody alluded to that this morning.

That would provide a continuing slate of qualified people from among whom the appointer could select.

Now clearly, that all falls apart if whoever is making up these slates is himself subject to undue pressure from one level or another. So I suspect that something similar to the system utilized in the Federal court system might be used, but I would broaden the group of, if you will, electors or nominators to go much beyond. For example, the Communications Bar, the Federal Power Bar, that would be wrong, but you include, I suspect, representatives of the consumer interests, the regulated industries, also as nominators. You know, as I say it, I become overwhelmed with its impracticality but, in the idea of making available to the President a list of qualified people, working around that is what you want to aim toward.

You should be able to come up with some good people relatively free of serious personnel errors that apparently have been made in the past.

Mr. STATLER. Thank you very much. That is all the questions I have.

Senator METCALF. Well, I want to concur. It has been a privilege to have you here, Mr. Rouse; to have the committee, and also to have the benefit of this discussion in your prepared statement, and your experience in setting up a commission such as is anticipated under this legislation. We will certainly carefully consider your advice, and it may be that at some future time you will be up here for confirmation and have some of these words thrown right back at you, as has happened to those of us who have been in Congress a long time; very frequently from some of the speeches we have made a few years ago have been looked up in the Congressional Record. But you have been very helpful, and you have made a contribution. I know that we all appreciate your participation.

Mr. ROUSE. Thank you, sir.

Senator METCALF. That will conclude the hearings for today, and the next meeting of this committee on this matter will be Monday, November 25, in this room at 10 a.m., at which time we will start off with Senator Taft.

At this point we will enter additional information requested and submitted for the record.

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
Washington, D.C., November 21, 1974.

Re NARUC Survey of State Freedom of Information (Sunshine) Statutes and Regulations, in relation to S. 4145, a bill to establish a National Commission on Regulatory Reform.

Hon. LEE METCALF,
Chairman, Subcommittee on Budgeting, Management and Expenditures, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR SENATOR METCALF: Pursuant to the recent telephone request of Mr. Vic Reinemer, Staff Director of your Subcommittee, enclosed are four copies of a tabulation, with footnotes, reflecting information the NARUC obtained from its member State agencies in a recent survey of State Freedom of Information (Sunshine) Statutes and Regulations.

We earnestly hope the information will be helpful to your Committee in its consideration of S. 4145, a bill to establish a National Commission on Regulatory Reform.

If we can be of further service, please let me hear from you.

Sincerely yours,

WALTER KURYLO, *Secretary.*

NARUC SURVEY OF STATE FREEDOM OF INFORMATION (SUNSHINE) STATUTES

NA = Not Applicable.

STATE		DOES YOUR STATE HAVE A SUNSHINE STATUTE?	IF SO, DOES IT APPLY TO YOUR STATE AGENCY?	IF NOT, HAS YOUR AGENCY ADOPTED SUNSHINE REGULATIONS ON ITS OWN INITIATIVE?	IF THE STATUTE APPLIES, DOES IT REQUIRE YOUR AGENCY TO ISSUE REGULATIONS?	IF SO, HAVE SUCH REGULATIONS BEEN ISSUED?	HAS THE STATUTE BEEN INTERPRETED BY THE STATE ATTORNEY GENERAL?	HAVE THE COURTS REVIEWED THE STATUTE?	ARE ANY COURT CASES WHICH INVOLVE YOUR AGENCY PENDING?	DOES THE STATUTE OR REGULATION REQUIRE:				HAS THE STATE ATTORNEY GENERAL INTERPRETED YOUR REGULATIONS?	HAVE THE REGULATIONS BEEN SUBJECT TO JUDICIAL REVIEW?	ARE ANY COURT CASES PENDING RE: SUCH REGULATIONS?
										ALL PROCEEDINGS IN PUBLIC?	ONLY SOME PROCEEDINGS IN PUBLIC?	ALL DOCUMENTS OPEN TO PUBLIC?	ONLY SOME DOCUMENTS OPEN TO THE PUBLIC?			
Alabama	1/	Yes	Yes	NA	No	NA	No	No	No	Yes	NA	No	Yes	No		No
Alaska	2/	Yes	Yes	NA	Yes	Yes	No	No	No	No	Yes	No	Yes	No	No	No
Arizona	3/															
Arkansas	4/	Yes	Yes	NA	No	NA	Yes	Yes	No	Yes	NA	Yes	NA	No	No	No
California	5/	Yes	Yes	NA	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	No	No
Colorado	6/	Yes	Yes	NA	No	NA	Yes	No	No	Yes	NA	No	Yes	No	No	No
Connecticut	7/															
Delaware	8/															
Florida	9/	Yes	Yes	NA	No	NA	Yes	Yes	No	Yes	NA	No	Yes	Yes	No	No
Georgia	10/															
Hawaii	11/	No	NA	Yes	NA	NA	NA	NA	NA	Yes	NA	No	Yes	No	No	No
Idaho	12/															
Illinois	13/	No	NA	No	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Indiana	14/	Yes	Yes	NA	No	NA	Yes	No	No	Yes	NA	No	Yes	NA	NA	NA
Iowa	15/	Yes	Yes	NA	No	NA	Yes	Yes	No	Yes	NA	No	Yes	Yes	Yes	No
Kansas	16/	Yes	Yes	NA	No	NA	Yes	No	No	No	Yes	No	No	No	No	No
Kentucky	17/	Yes														
Louisiana	18/															
Maine	19/	Yes	Yes	NA	No	NA	Yes	Yes	No	Yes	NA	No	Yes	No	No	No
Maryland	20/															
Massachusetts	21/															
Michigan	22/	No	NA	Yes	NA	NA	NA	NA	NA	Yes	NA	Yes	NA	No	No	No

Minnesota	23/	Yes	Yes	NA	No	NA	No	No	No	No				No	No	No
Mississippi	24/	No	NA	No	NA	NA	NA	NA	NA					NA	NA	NA
Missouri	25/	Yes	Yes	NA	No	NA		No	Yes	No	Yes	No	Yes	NA	NA	NA
Montana	26/															
Nebraska	27/	Yes	Yes	NA	No	NA	No	No	No	Yes	NA	Yes	NA	No	No	No
Nevada	28/	Yes	Yes	NA	No	NA	Yes	No	No	Yes	NA	Yes	NA	NA	NA	NA
New Hampshire	29/	Yes	Yes	NA	No	NA	Yes	Yes	No	No	Yes	Yes	NA	No	No	No
New Jersey	30/	Yes	Yes	NA	No		No	Yes	No	No	Yes	No	Yes	No	Yes	No
New Mexico	31/															
New York	32/	Yes	Yes	NA	Yes	No	No	No	No	No	Yes	No	Yes	No	No	No
North Carolina	33/	Yes	Yes	NA	No	NA				No	Yes	No	Yes			
North Dakota	34/															
Ohio	35/	Yes	Yes	NA	No	NA	No	No		Yes	NA	Yes	NA	NA	NA	NA
Oklahoma	36/															
Oregon	37/	Yes	Yes	NA	No	NA	Yes	No	No	Yes	NA	No	Yes	Yes	No	No
Pennsylvania	38/	No	NA	No	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Rhode Island	39/															
South Carolina	40/	Yes	Yes	NA	No	NA	Yes	No	No	No	Yes	No	Yes	Yes	No	No
South Dakota	41/	Yes	Yes	NA	No	NA	No	No	No	No	No	Yes	NA	Yes	No	No
Tennessee	42/	Yes	Yes	NA	Yes	Yes	Yes	Yes	Yes	Yes	NA	Yes	NA	Yes	Yes	No
Texas	43/	Yes	Yes	NA	No	NA	No	No		Yes	No	No	Yes	No	No	No
Utah	44/															
Vermont	45/															
Virginia	46/	Yes														
Washington	47/	Yes	Yes	NA	Yes	Yes	No	No	No	Yes	NA	No	Yes	No	No	No
West Virginia	48/	No	NA	Yes	NA	NA	NA	NA	NA	Yes	NA	Yes	NA	No	No	No
Wisconsin	49/	Yes	Yes	NA	No	NA	No	No	No	No	Yes	Yes	NA	No	No	No
Wyoming	50/	Yes	Yes	NA	Yes	Yes	Yes	No	No	No	Yes	Yes	NA	No	No	No
District of Columbia	51/															
Puerto Rico	52/															

Footnotes

1/ Carl L. Evans, Attorney, Alabama PSC, (205) 269-6555, completed the questionnaire. His reply cited Title 14, Alabama Code, Secs. 393-394, which prohibit executive sessions by the Alabama PSC and other State or local boards except "where the character or good name of a man or woman is involved." Violation is a misdemeanor carrying a fine of not less than $10 nor more than $500. Any person who remains in attendance of any secret or executive session shall be deemed guilty of violating the Code. The reply also stated that the PSC is subject to other State laws, as well as rules and regulations, pertaining to promulgation and publication of rules. Any official record, such as transcripts and docket files, is open to public inspection.

2/ J. Lowell Jensen, Executive Director, Alaska PUC (907) 272-1487, completed the questionnaire. Formal hearings are open to the public. All documents, except those designated by regulation to be non-public, are open to public inspection at reasonable times. Alaska Public Utilities Commission Act (AS 42.05.671). Alaska Administrative Code, Title 3, Sec. 48.040 provides in part that, except for specifically designated subjects, all facts, information, reports, orders, memoranda, books, accounts, and papers of every nature in the possession of the PUC are available for examination by the public. The designated exceptions include such subjects as certain communications relating to personnel matters, including medical records, which under governing personnel practices in the State are not public information. Staff papers unless entered as evidence in adjudicatory proceedings; intraorganizational written drafts of orders and findings and communications concerning such drafts; staff notes and memoranda summarizing routine telephone calls and conferences; budgetary and contractual documents pending formal publication; tape recordings, transcripts, notes, minutes and other information relating to conferences which are privileged either by order of the commissioner or by mutual agreement of the parties; confidential legal advice or assistance; and any information which the commission may, for good cause, specifically designate by order as privileged. Provision is made for Commission determination as to release of information requested by subpoena duces tecum.

3/ Reply of Arizona Corporation Commission not yet received.

4/ Kent Foster, General Counsel, Arkansas PSC (501) 371-2047, completed the questionnaire for the PSC; and J. M. Duckett, Attorney, Arkansas Transportation Commission (501) 371-1341 for the ATC. This tabulation represents a synthesis of their replies, which had minor differences in certain items. Both Commissions are under the Arkansas Freedom of Information Act (Act 93 of 1967), Arkansas Statutes 12-2801 to 12-2807. The Attorney General's opinion involved the State Banking Commission. For court decisions involving other official bodies see Arkansas State Police Commission v. Davidson (1973) 490 S.W.(2d) 788; Loman v. McCord (1968) 245 Ark. 389, 432 SW (2d) 753; Pointer v. State (1970), 248 Ark. 710; 454 S.W. (2d) 91; cert. denied, 400 U.S. 959, 27 L. ed. (2d) 268; 91 Sup. Ct. 359. Arkansas Statutes, Sec. 12-2805, specifically provides that except as specifically authorized by law, all meetings of public bodies, except grand juries, shall be public, and spells out provisions for public notice. It permits executive sessions to discuss "employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee." It continues:

> Executive sessions must never be called for the purpose of defeating the reason of the Spirit of the Freedom of Information Act.
>
> No resolution, ordinance, rule, contract, regulation or motion considered or arrived at in executive session will be legal unless following the executive session, the public body reconvenes in public session and presents and votes on such resolution, ordinance, rule, contract, regulation, or motion.

Arkansas Statutes, Sections 12-2806 and 12-2807, provide civil enforcement and criminal penalties for violation of a misdemeanor (i.e., a fine of not more than $200, or 30 days in jail, or both). The Arkansas Transportation Commission reply stated that all State agency documents, including staff recommendations and working papers, are open to public inspection; the Arkansas PSC reply indicated that its staff recommendations and working papers are not open to public inspection.

5/ William R. Johnson, Secretary, California PUC (415) 587-1487, completed the questionnaire. The reply included copies of The California Public Utilities Code, which provides in Section 306 that the commission may hold executive sessions as provided in Sec. 11126 of the Government Code to deliberate on (1) decisions to be reached in proceedings, tariff filings, permits, general orders or crossing protection fund allocations submitted for decisions, or (2) institution of proceedings or litigation. Sec. 11126 of the Government Code also permits executive sessions for consideration of personnel matters. Chapter 3.5, Inspection of Public Records of the Government Code spells out statutory requirements for inspection of public records and authorizes State agencies, including the PSC, to establish guidelines and regulations consistent with it. The PUC adopted General Order No. 66-C, covering this subject, on June 5,1974, and amended a section of it on June 25, 1974. In City of Los Angeles v. Public Utilities Commission (1972) 102 Cal. Rptr.313, 497 P.2d 785, 7 C. 3d 331, the Court held that in general innuendos of misconduct, in absence of specific allegations were insufficient basis for review of propriety of meeting of public utilities commissioners at an airport on July 4 in connection with filing of amended petition for rehearing of commission's decision in rate case.

6/ Chairman Edwin R. Lundborg, Colorado PUC (303) 892-3154, completed the questionnaire. The Colorado Sunshine Act of 1972 was initiated and approved by the people of Colorado at the general election held November 7, 1972, and became effective January 1, 1973. It is cited as Chapter 3, Colorado Revised Statutes 1963, Article 37, Colorado Sunshine Law. It contains provision for public financial disclosure by public officials, registration of lobbyists, and provides that all meetings of two or more members of any board, committee,commission, or other policy-making or rule-making body of any state agency or authority or of the legislature, at which any public business is discussed, or at which any formal action is taken by such board, committee, commission, or other policy-making or rulemaking body, are declared to be public meetings open to the public at all times, except as may be otherwise provided in the constitution. In order to be valid, a resolution, rule, regulation, or other formal action of any policy-making body, must be made at an open meeting that is held after timely notice to the public. In Opinion No. 73-0003, dated January 18, 1973, the Colorado Attorney General ruled, among other things, that the Colorado PUC is a rulemaking authority within the intent of lobbying provisions of the Colorado Sunshine Act. Colorado Revised Statutes, Chapter 113, Article 2, provides that all public records be open to inspection at reasonable times; exceptions include such matters as certain personnel and medical records, trade secrets and addresses and telephone numbers of public elementary and secondary school students. Although the Colorado Sunshine Act does not require the PSC to issue regulations acting to fulfill the intent of that law the PSC issued such regulations on its own initiative. See Decision No. 84540, dated February 22, 1974 in Case No. 5409, which amended PSC Rule 32 to clarify its policy concerning open meetings.

7/ Henry Mierzwa, Executive Secretary, Connecticut PUC (203) 566-2104, indicated in a letter dated June 26, 1974, that Connecticut has a "Right to Know" law which affords public access to State records (Conn. Gen. Stat. Sec. 1-19). He also stated that the "staff of the Attorney General assisting this agency have reviewed your letter and the attached questionaire for the purpose of assisting the Commission to prepare an appropriate reply. We are advised that the nomenclature of your inquiry is confusing and that an appropriate reply cannot be prepared."

8/ Reserved for Delaware Public Service Commission reply.

9/ Prentice P. Pruitt, Legal Director, Florida PSC, (904) 488-7921, completed the questionnaire. The Florida "Government in Sunshine" law is Section 286.011, Florida Statutes. It requires all meetings at which official acts are taken, except as otherwise provided by the State constitution, to be open to the public at all times, and requires the minutes of such meetings to be open to public inspection. Violations are misdemeanors of the second degree. Chapter 119, Florida Statutes, provides that all public records of the State or any county or municipality shall be open at all times to public inspection by Florida citizens. Violations of the statute are misdemeanors of the first degree. By letter of September 13, 1973, 073-344, the Attorney General interpreted the foregoing statutes to prohibit executive sessions to discuss personnel matters, and to require prompt publication of decisions. Times Publishing Company, et.al., v. Williams, et. al., (1969) 222 So. 2d 470, Board of Public Instruction of Broward County v. Doran (1969) 224 So. 2d 693, and Conney v. Board of Public Instruction of Alachua County (1973) 278 So. 2d 260, involve court decisions holding that as public agencies School Boards must hold public meetings. As provided in the statute, all official "filings" and the PSC minute book are public records. Staff recommendations need not be disclosed.

10/ Reserved for Georgia PSC reply.

11/ LeRoy Yuen, Acting Executive Director, Public Utilities Division, Hawaii Department of Regulatory Agencies, (808) 548-7550, completed the questionnaire. The PUC Rules of Practice and Procedure (Gen. Order No.1, June 16, 1966) state that all of the PUC's meetings and hearings, except executive meetings, are open to the public; and that no ruling, regulation, contract, appointment or decision shall be finally acted upon at any executive meeting. All documents except work sheets are open to public inspection. A Sunshine Bill was introduced during the 1974 session of the State legislature, but was not enacted.

12/ Reserved for Idaho PSC reply.

13/ Lee Sundberg, Technical Advisor, Illinois Commerce Commission, (217) 782-7680, completed the questionnaire. A Freedom of Information bill was introduced in the Illinois General Assembly in 1974 but was not enacted.

14/ Larry Wallace, Chairman, Public Service Commission of Indiana, (317) 633-5473, completed the questionnaire. Indiana Revised Statutes, 57-601 et. seq. set forth requirements that, unless otherwise expressly provided by law, the citizens of the State are entitled to full and complete information regarding official acts of government, and shall be permitted to observe public proceedings as well as to inspect public records. Exceptions include records which are by law declared confidential and executive sessions of any administrative body or agency. However, executive sessions may not be used to defeat the declared policy of the Act. Violations are considered a misdemeanor, subject to a fine of not less than $50.00 nor more than $500.00 plus not to exceed 30 days in the county jail. Administrative bodies conducting public hearings are required to all recorded or live broadcasts under reasonable rules and regulations. The Indiana Attorney General has issued a number of opinions concerning freedom of information which are not directly related to transportation or utility regulations. See Official Opinion No. 114, dated December 19, 1953; stating that letters, writings and files regarding complaints to the Commissioner of Insurance are not "public records" and therefore not available for public inspection. A similar view was expressed in Official Opinion No. 7, dated February 18, 1954, to the Commissioner, Bureau of Motor Vehicles, concerning lists of names of persons whose driving privileges were suspended as the result of accident or conviction. Official Opinion No. 43, dated July 12, 1954, to the Commissioner of Health and Preventive Medicine held that the home address of parents as shown in a birth

certificate may not be released to the public because the birth certificate itself is a confidential document which may be released only as provided by statute. Official Opinion No. 36, dated July 13, 1964, held that a Board of County Welfare is required to allow citizen attendance at Board meetings. Official Opinion No. 58, dated September 28, 1964, held that a county recorder has a right to control access to the records filed in his office. Official Opinion No. 19, dated July 11, 1967, held that the Department of Financial Institutions may not withhold from the public,or from the Department Records, the count of votes or the identity of the member casting the vote on the official acts of the Department.

15/ Daniel J. Fay, Assistant Counsel, Iowa State Commerce Commission, (515) 281-5984 completed the questionnaire. Chapter 68A, Iowa Code Annotated states that "public records" include all records and documents of or belonging to the State or any political subdivision, grants citizens and news media the right to examine and copy such records, and authorizes news media to publish them unless expressly prohibited elsewhere in the Code. Violations of the provisions are a misdemeanor, subject to a fine of not more than $100. Certain information, including records which represent the work product of any attorney, which are related to litigation or claim made by or against a public body, and personnel records, are confidential documents. Under the statutory exception only the work product of attorneys for the Commission are not open to public inspection. Iowa Code, Chapter 28A, requires that all meetings of public agencies, including the State Commerce Commission, but excluding any court, jury or military organizations, be public with advance public notice, unless closed meetingsare expressly permitted by law. By a vote of two-thirds members present a public agency may hold a closed (executive) meeting concerning personnel matters, procurement of property or "for some other exceptional reason so compelling as to override the general public policy in favor of public meetings. Violations are a misdemeanor subject to a fine of not more than $100.

16/ For information on the Kansas Corporation Commission response call (913) 296-3321. The Kansas "Open Meeting" law, Chapter 319 of the 1972 Session Laws of Kansas provides for public meetings, and for no binding action by secret ballot. Executive sessions are permitted if the purpose is stated but no binding action may be taken, nor can executive sessions be used to defeat the purposes of the Act. By letter of September 13, 1972, the Attorney General informed the Executive Officer, Kansas State Board of Regents, that the Board cannot exclude audio or visual equipment unless its operation "so seriously and substantially disrupts the meeting as to thwart the very purpose of the meeting."

17/ Richard D. Heman, Secretary, Kentucky PSC, (502) 564-3940, and Billy Paxton, Secretary, Kentucky Department of Transportation responded to the questionnaire. Both referred to Kentucky House Bill 100, which had just been enacted into law effective June 21, 1974. Both indicated that further clarification of the legislation is needed. In this regard the statutory definition of "public agency" specifically excludes judicial or quasi-judicial bodies. Other than these exceptions, all public bodies are required to hold public meetings whenever any public business is discussed or action taken, or any subject other than such matters as proposed or pending litigation involving the body, collective bargaining between public employers and employee representatives, personnel matters, meetings between public agencies and industry prospects, meetings which Federal or State law specifically require to be conducted in privacy, and meetings which the State Constitution provides shall be held in secrecy.

18/ Reserved for further reply by Louisiana PSC.

19/ Horace Libby, General Counsel, Maine Public Utilities Commission, (207) 289-3471, completed the questionnaire. Maine Revised Statutes Annotated, 401-406, requires that all public proceedings be open to the public, and permits written, taped or filmed records of the proceedings so long as such recordation does not interfere with the orderly conduct of the proceedings. Executive sessions are permitted but shall not be used to defeat the purposes of the statute; and no official action can be finally taken in executive session. Written decisions are required to be made and to be open to public inspection. Willful removal, alteration, multilation or secretion of such public records is subject to a fine of not

more than $5,000 and by a prison term of one to three years. On June 6, 1974, the Maine Attorney General expressed the opinion that although the Maine Guarantee Authority is not required to tape record its meetings or to keep any record other than such minutes as are required by law (and such minutes are expressly open to the public), it would be capricious to hold that the public may not hear the tapes of a public meeting not properly held as an executive meeting, under reasonable conditions to safeguard the tapes. He added:

> Maine's Freedom of Access Law, one of the broadest and most liberal of any state, was designed to subject the workings of public agencies to public scrutiny as fully as possible and to limit strictly the records that could be withheld from public view. The importance of this objective is particularly evident when an agency has the Guarantee Authority's extraordinary power to pledge the credit of the State in guaranteeing a loan to a private enterprise and thereby commit substantial public funds. Not only is its business the peoples' business, its money is the peoples' money.

In Sulloway v. Town of Kittery (1973) Docket No. 60/73 the Maine Superior Court held on May 21, 1974, that in holding closed meetings the Kittery Town Council and the Board of Zoning Appeals violated the statutes.

20/ Reserved for Maryland PSC reply.

21/ Reserved for Massachusetts DPU reply.

22/ William G. Rosenberg, Chairman, Michigan PSC, (517) 373-3240, completed the questionnaire. In Bulletin No. 9, dated August 16, 1973, Subject "Availability of Records and Information," he set forth guidelines for compliance by the PSC staff with statutory requirements in making PSC records and materials available to the public.

23/ Jack Van deNorth, Special Assistant Attorney General, Minnesota PSC, (612) 296-6176, completed the questionnaire. Minnesota Statutes, Sec. 15.17 provides for recordkeeping by all State and local officers and requires easy access to them. Except as otherwise expressly provided by law, all public records are open to public inspection under reasonable rules and regulations: Minnesota Statutes, Sec. 471.705, the Minnesota Open Meeting Law, provides that all meetings of State and local public bodies for transaction of public business including executive sessions, shall be open to the public. The statute does not apply to the board of pardons, the adult corrections commission and the youth commission, or to any State agency when exercising quasi-judicial functions involving disciplinary proceedings. Recorded votes are required. Violations are subject to a civil penalty of not to exceed $100 for a single occurrence. Upon a third violation by the same person, such person forfeits the right to hold the office.

24/ C. Keith Howle, Director of Utilities, Mississippi PSC, (601) 354-7265, completed the questionnaire. He stated that the laws governing jurisdiction of the PSC provide for public hearings on all matters that require any type of hearing or taking of testimony; and that all records of the PSC are available for public inspection.

25/ James F. Mauze, Chairman, Missouri PSC, (314) 751-3243, completed the questionnaire. The Missouri Sunshine Law is Chapter 610, Revised Statutes of Missouri (Supp. 1973). The statutes (1) applies to any constitutional or statutory governmental body of the State or any local subdivision, and any other governmental deliberative body under direction of three or more elected or appointed members having rule-making or quasi-judicial power; (2) requires any meeting at which public business is discussed, decided or public policy formulated to be open to the public, subject to certain statutory exceptions (generally applicable exceptions involve legal actions or litigation, land purchases or sales; and other meetings,

records or votes which as otherwise provided by law may be closed, have a closed record or a closed vote); and (3) requires reasonable notification of special meetings. On June 4, 1974, the PSC requested the Attorney General of Missouri for an opinion as to the applicability of certain provisions of the State Sunshine Law on PSC functions, with special reference to conferences by the Commissioners in regard to any pending case after a public hearing has been held but before final action is taken. The PSC action emanated from an opinion by the PSC General Counsel that such conferences are not "public meetings." The request for an opinion by the Attorney General became moot as the result of court action instituted against the PSC by the Kansas City Star. Case No. 27120, Division No. II, Circuit Court of Missouri, Nineteenth Circuit. The Court issued a temporary restraining order against the PSC; the PSC filed a motion to dissolve the temporary restraining order. The case was pending at the time the questionnaire was returned to NARUC.

26/ Reserved for Montana PSC reply.

27/ Everett W. Green, Secretary, Nebraska PSC, (402) 475-2641, completed the questionnaire. Nebraska Revised Statutes Secs. 84-902 requires each State agency to file a copy of its rules and regulations with the Secretary of State, who shall keep a permanent file of them open to public inspection during his regular business hours. Secs. 84-1401 et. seq., provide that except as otherwise expressly provided by the State constitution or statutes, all State and local public bodies shall hold public meetings and give reasonable public notice concerning them. Notes, abstracts and broadcast of the meetings are permitted. Executive sessions may be called by vote taken in open session. Votes taken in executive session need not be recorded. Only actions taken in public sessions are legal.

28/ Noel A. Clark, Chairman, Nevada PSC, (702) 885-4180, completed the questionnaire. NRS Sec. 703.190 states that all biennial reports, records, proceedings, papers and files of the PSC shall be open at all reasonable times to the public, but when it is necessary in the public interest the PSC may withhold any facts or information in its possession for not to exceed 90 days. NRS Sec. 704.190 provides that accident reports filed with the PSC, or reports of any accident investigation made by the PSC are not open to public inspection and may not be disclosed to any person except on PSC order. None of such reports, or any portion thereof may be used in civil actions for damage. The PSC posts on the public bulletin board in its offices, one week advance notice of all meetings, informal conferences, etc. that are scheduled.

29/ Dom S. D'Ambruoso, Secretary, New Hampshire PUC,(603) 271-2443, completed the questionnaire. New Hampshire Revised Statutes Annotated, Vol. 2 (1973 Cumulative Supplement), Sec. 91-A: 1 et seq. requires all public proceedings of the State and local boards or commissions to be open to the public. Minutes of such meetings are open to public inspection. Reasonable notice of meetings is required, except in emergencies. Executive sessions are permitted for consideration of personnel matters, land acquisition or sale, or for matters affecting the character of any person. Any body or agency violating the statute may be charged attorneys' fees and court costs incurred in making the information available. Governor Thomson issued Executive Order No. 74-1, dated January 10, 1974, to implement the statute. The New Hampshire Attorney General has issued guidelines (copy not dated) designed to aid fulfillment of the statutory objectives. In Herron v. Northwood (1971) 111 N.H. 324, the court ruled a town's budget committee cannot approve its recommendations in secret executive sessions. The ruling was prospective only and did not invalidate earlier action. In Mann v. Lebanon School Board (1972) 112 N.H. 160, the court ruled, with one dissent, that teachers salaries are subject to disclosure.

30/ Ralph C. Caprio, Secretary, New Jersey BPUC, (201) 648-2068, completed the questionnaire. The Right to Know Law is New Jersey Statutes Annotated 47: 1A-1, et seq. It states that "Except as otherwise provided in this act or by any other statute, resolution of either or both houses of the Legislature, executive order of the Governor, rule of court, any Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor, all records

which are required by law to be made, maintained or kept on file..." by any State or local body are deemed to be public records that are subject to public inspection and copying. It establishes copying prices to be applied where none have been established. Records of investigations in progress need not be disclosed if inimical to the public interest. The NJBPUC regulations (Sec. 14.3-6.5) require disclosure of all BPUC records except reports of accidents, of investigations of accidents, of safety inspections, and surveys of utility property and equipment. However, in Irval Realty v. NJBPUC, 1971, the Supreme Court of New Jersey held that owners of property damaged by a gas explosion had legitimate interest and were possessed of status entitling them to inspect and copy accident report records the gas supplier was required to file with the BPUC, notwithstanding the agency's regulation that accident reports are not deemed public records for purpose of public inspection. 115 New Jersey Super. 338. In Brozowski v. Pennsylvania-Reading Seashore Lines (1969) the Superior Court of New Jersey, Law Division, ordered the BPUC to open its grade crossing records for inspection under the "Right to Know Law."

31/ Reserved for New Mexico reply.

32/ David N. Gibson, Executive Assistant, Office of Transportation Regulatory Affairs, New York Department of Transportation, (518) 457-1016 completed the questionnaire for his agency, and Samuel R. Madison, Secretary, New York Department of Public Service, (518) 474-6530, completed it for the PSC. The New York Freedom of Information Law became effective September 1, 1974, after the return date of the questionnaire. Section 88-1 of the Act requires each agency to publish rules and thereby make available for public inspection and copying (1) final opinions, including concurring and dissenting opinions, as well as orders; (2) statements of policy and interpretations adopted by the agency and any documents, memoranda, data and other materials which led to their formulation; (3) minutes of meetings and of public hearings; (4) internal and external audits and statistical or factual tabulations made by or for the agency; (5) administrative staff manuals and instructions to staff that affect members of the public; (6) information concerning officers'and employees'positions and salaries; and (7) any other files, records, papers or documents required by any other provision of law to be made available for public inspection and copying. An amendment to the statute created a committee on public access to records to promugulate rules and to advise affected agencies through guidelines and advisory opinions. The Committee is to consist of the Attorney General, Commissioner of the Office of General Services, Director of the Division of the Budget, Commissioner of the Office of Local Government, and four other persons (who are not elected or appointed officials or employees) two of whom must be newsmedia representatives.

33/ Edward B. Hipp, Commission Attorney, North Carolina UC, (919) 829-3969, completed the questionnaire. The North Carolina Code, Chapter 132, spells out requirements for retention of public records, which comprise all written and printed books, papers, letters, documents and maps made and received in pursuance of law by the State and its political subdivisions. It requires public inspection at reasonable times. Chapter 143, Article 33B, declares open meetings as a public policy, directs all official meetings of State and local governments to be open to the public; permits executive session and excludes the public while considering, among other subjects, personnel matters and conferences with legal counsel. Exceptions include all State agencies, commissions or boards exercising quasi-judicial functions during any meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding, and other specifically identified exceptions. The NCUC can meet in executive session to make decisions in adjudicatory proceedings and in performing law enforcement and investigative functions.

34/ Reserved for North Dakota PSC reply.

35/ Boyd B. Ferris, Secretary, Public Utilities Commission of Ohio, (614) 466-4294, completed the questionnaire. Section 4901.12, Ohio Revised Code, provides that all proceedings of the PUCO and all documents in its possession are public records. Section 4901.13 provides that all hearings shall be open to the public.

36/ Reserved for Oklahoma Corporation Commission reply.

37/ Walter Paul, Assistant Commissioner, Oregon Public Utility Commission, (503), 378-6622, completed the questionnaire. He enclosed a copy of the Oregon Attorney General's Public Meetings and Records Manual, (Attorney General's Opinion No. 6996), dated August 15, 1973. The Manual cites Oregon Laws 1973, chapters 172, 794, and Oregon Revised Statutes, chapter 192, as the Public Meeting Law and the Public Records Law, respectively. The Manual points out that executive sessions are permitted for personnel matters, labor negotiations, real property procurement, consideration of records exempt from public inspection law, and certain preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies of other States or nations. The statute encourages the agencies to permit the press to attend executive sessions subject to the understanding that sensitive matters will not be reported.

38/ Michael Kerrigan, Assistant Counsel, Pennsylvania PUC, (717) 787-6416, completed the questionnaire. The Pennsylvania Public Utility Law provides for public hearings, and the Commonwealth Documents Law requires public notice of the PUC's intention to promulgate, amend or repeal any administrative regulation. At the time the questionnaire was completed, a Sunshine statute, which had passed its House of Representatives, was pending in the State Senate.

39/ Reserved for Rhode Island PUC reply.

40/ M. John Bowen, General Counsel, South Carolina PUC, (803) 758-2544, completed the questionnaire. The South Carolina Freedom of Information Act was approved in 1972. It requires that meetings of each State public agency be open to the public, permits executive sessions for personnel matters, administrative briefings and committee reports, negotiations concerning property purchasing, legal advice, and private matters presented by individuals or groups. Executive sessions shall not be called to defeat the purposes of the Act. In Opinion No. 3348, dated July 20, 1972, the Attorney General stated an opinion on executive sessions.

41/ Emil J. Mueller, Counsel, South Dakota PUC, (605) 274-3201, completed the questionnarie. South Dakota Statutes, Chapter 1-27, provides for retention and reproduction of public records; and requires that they be open to public inspection during regular business hours. The questions inquiring whether the statute or regulations require that (1) all proceedings be in public, or (2) only some proceedings in public were answered "No." The answers may be accurate because the statute applies only to public records--not public proceedings. The opinions of the Attorney General state that officials may establish reasonable regulations governing inspection of public records in this office (September 4, 1940); use of office space and equipment (June 7, 1946); that public records are open to inspection by a person during office hours (March 27, 1940); and that County Commissioners may not refuse access to public records in the custody of a county official (August, 1936).

42/ Eugene W. Ward, General Counsel, Tennessee PSC, (615) 741-3191, completed the questionnaire. The Tennessee Sunshine Law, Chapter 442, Public Acts of 1974, approved February 21, 1974, became effective May 1, 1974. It specifies that all meetings of any governing body (which consists of two or more members with authority to make decisions for or recommendations to a public body on policy or administration) shall be open at all times; that advance notice of such meetings be given, and that minutes be taken. On April 8, 1974, the State Attorney General commented on a proposed order of the PSC and suggested minor revisions. The suggested revisions were incorporated in PSC Administrative Order A-1-74, issued April 17, 1974.

43/ Jim C. Langdon, Chairman, Texas Railroad Commission,(512) 475-3365, completed the questionnaire. Article 6252-17, Texas R.C.S., spells out requirements for open meetings, including public notice thereof, by

State and local governmental bodies, and permits executive sessions for such matters as legal advice with respect to pending or contemplated litigation, real property procurement, or personnel matters. Article 6252-17a, Texas R.C.S., spells out requirements for public access to information and records in the custody of governmental agencies and bodies. Exceptions are similar to the exceptions applicable to public meetings.

44/ Reserved for Utah PSC reply.

45/ Reserved for Vermont PSB reply.

46/ Lewis S. Minter, General Attorney, Virginia State Corporation Commission, (804) 770-7663, in a letter dated June 25, 1974, stated:

> The function of our Commission, which is created by the State Constitution to have certain specific powers and duties, is such that we could not fairly use your questionnaire for our response.
>
> Virginia has adopted legislation identified as "The Virginia Freedom of Information Act," being §§2.1-340 through 2.1-346, inclusive, Code of 1950, as amended....
>
> It will be noted that the State Corporation Commission is not specifically precluded from the application of the provisions of that Act, nevertheless, it has never been suggested that they do apply, or were so intended.
>
> It is our conviction that the aforesaid Act does not establish a right of public access to our records and proceedings. We first observe that the Commission does not hold "meetings" for the purpose of discharging its primary responsibilities. Rather, the Commission conducts hearings, within a framework of public sessions, following such notice as shall be proper. Further, and most significant, there are Constitutional provisions and numerous statutes relating solely to the Commission which are intended to protect the public from secret, arbitrary or capricious acts of the Commission, and to assure fair and open hearings to those on whom we sit in judgment as a court of record.

47/ Douglas N. Owens, Assistant Attorney General, Washington Utilities and Transportation Commission, (206) 753-2282, completed the questionnaire. The Washington Open Meetings Act is Chapter 43.20, Revised Code of Washington. The Washington Public Disclosure Law is Chapter 1, Washington Session Laws, 1973; the regulations are found in Chapter 480-04; and related provisions of other chapters under the same title of the Washington Administrative Code. Executive sessions are permitted for consideration of national security matters, and personnel matters,unless the employee involved requests a public hearing. Any writing containing information relating to the conduct of the government or the performance of any governmental or propriety function prepared, owned, used or retained by any State or local agency regardless of physical forms or characteristics is required to be open to public inspection unless specifically exempted by Sec. 31, Chapter 1, Laws of 1973. The exceptions include such subjects as personal and medical data; personnel files; preliminary drafts, notes, recommendations, and intraagency memoranda in which opinions are expressed or policies formulated, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action; certain legal documents; and specific intelligence or investigative files compiled by law enforcement agencies, includ- identity of complainants unless authorized by the individual.

48/ John E. Carrigan, Chairman, West Virginia PSC, (304) 348-2164, completed the questionnaire. West Virginia PSC General Order No. 165 calls for public sessions for hearing motions, evidence or oral arguments, or for public conferences. The PSC Secretary, upon request, will advise any party as to the

form of petition, complaint, answer or other paper the party desires to file; and will furnish from the PSC files any information required for a full presentation of the facts material to any controversy, investigation or other proceeding. Public utilities are required to file tariffs with the PSC, and its Secretary shall keep all tariffs open to public inspection. Upon payment of fees fixed by law, any person may obtain certified copies of papers on file in the Secretary's office. West Virginia Code Sec. 24-2-9 authorizes the PSC to require utilities to file information concerning rates, service charges and practices; and Sec. 24-3-5 requires every public utility to file with the PSC, and keep open to public inspection, schedules showing rates, charges and tolls for services rendered.

49/ William F. Eich, Chairman, Wisconsin PSC, (608) 266-1241, completed the questionnaire. All proceedings are open to the public except deliberations following quasi-judicial hearings, conferences with counsel and personnel matters. Chapter 297, Laws of Wisconsin 1973, contains provision for open meetings, subject to the exceptions indicated and others which do not relate to a regulatory agency.

50/ Alex J. Eliopulos, Secretary, Wyoming PSC, (307) 777-7315, completed the questionnaire. The Wyoming Freedom of Information Act, Wyoming Statutes, 1973 Cum. Supp. Sec. 9-692.10 et seq., requires agencies of the State and local subdivisions to hold meetings, including special meetings, open to the public based on public notice. Executive sessions not open to the public may be held for specifically enumerated purposes, such as personnel matters, litigation, national security, information classified as confidential by law, and disciplinary actions affecting students as provided by law. Persons disrupting any public meeting can be removed. In Opinion No. 17, of August 3, 1973, the Attorney General concluded that the enactment applies to the PSC and other State agencies, as well as to many local agencies. Even before that opinion was expressed, on May 29, 1973, the PSC adopted a resolution setting forth its policy concerning meetings in conformity with the statute. Wyoming Statutes, 1973 Cum. Supp. Secs. 9-692.1 et seq. spells out requirements for public inspection of public records, and identifies certain exceptions.

51/ Reserved for District of Columbia PSC reply.

52/ Reserved for Puerto Rico PSC reply.

Summary of NARUC Survey of State Freedom of Information (Sunshine) Statute

Total Number of States (including D. c. and Puerto Rico		52
Status of Replies		
Completed Questionnaire	35	
Letter Response	1	
Sub-Total		36
Awaiting Reply		16
Total		52

Substance of Questionnaires

States with Sunshine Statutes		29
Sunshine Statutes Apply to State Agency	27a	
Additional State Agencies Adopting Sunshine Regulations	3b	
Total State Agencies Covered by Sunshine Statutes & Regulations		30
State Agency Sunshine Regulation Required by Statute		6
Regulations Adopted	5	
Regulations Pending	1c	6

a. See Footnotes 17 and 46 re: Kentucky and Virginia.
b. See Footnotes 11, 22 and 48 re: Hawaii, Michigan and West Virginia.
c. See Footnote 32 re: New York.

ATTACHMENTS TO STATEMENT OF RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION

1. Proposed Procedural Policy on Meetings, Prior Public Notice, and Records of Proceedings.
2. Proposed Procedures for Disclosure or Production of Information Under Freedom of Information Act.
3. Proposed Statement of Policy on the Use of Sampling Plans.
4. Proposed Statement of Policy regarding Employee Membership and Participation in Voluntary Standards Organizations.
5. Proposed Recordkeeping Requirements for Consumer Product Safety Complaints.
6. Consumer Safety Standards—Requirements and Procedures.
7. Substantial Product Hazard Notifications—Submission of Information by Manufacturers, Distributors, and Retailers.
8. April 22, 1974, Letter from Chairman Richard O. Simpson to Senator Metcalf regarding S. 704.
9. Statement of Richard O. Simpson, Chairman, U.S. Consumer Product Safety Commission, before the Committee on Commerce and the Committee on Government Operations, United States Senate, April 3, 1974.

ATTACHMENT 1

[From the Federal Register, Vol. 39, No. 207—Oct. 24, 1974]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1001]

MEETINGS, PRIOR PUBLIC NOTICE, AND RECORDS OF PROCEEDINGS AND INTERIM PROPOSED AMENDED POLICY

Procedural Policy

Policy on public involvement. The most important mission of the Consumer Product Safety Commission is to protect the public from unreasonable risks of injury associated with consumer products. To achieve its goal, the Commission requires the interest and participation of the public. Therefore, whenever practicable, the Commission will give all interested parties the opportunity to be heard and otherwise participate. At the same time, the confidentiality of trade secrets and other material protected by law will be maintained.

The Commission believes that all manufacturers, importers, distributors, and retailers, should be vitally concerned about the safety of the consumer products they make and sell. The Commission believes further that all consumers should be vitally concerned about the safety of products they purchase and use. Through a constructive association of the Commission, industry and the consuming public, the goal of significantly reducing the risk of injury associated with consumer products can be achieved.

Summary of amendments. The Consumer Product Safety Commission in developing the proposed and interim procedures set forth below regarding public notification and disclosure of meetings, has followed the principle that the public interest is best served when regulatory affairs are open to the fullest extent possible. To that end, all Agency staff have been directed to implement procedures hereafter set forth whereby meetings and records will be open to the public unless they fall within exceptions required by law or established in this policy.

The Commission has operated under a basic regulation regarding meetings since October 1, 1973 (38 FR 27214). It is the judgment of the Commission that the soundness of this regulation has been unquestionably demonstrated through its experience with it over a period of many months. However, several areas for clarification of the regulation have been suggested by Agency staff and the public. Consequently, the Commission has added to the regulation a table of contents, definition of certain key terms, more explicit requirements for notification of meetings in the public calendar, replacement of the requirement of FEDERAL REGISTER notice with a requirement of public calendar notice for meetings involving Commissioners or Agency staff and outside parties on pending matters, clearly and narrowly drawn exceptions to requirements for advance public notice, clearly and narrowly drawn exceptions to the right of the public to attend meetings, and separate expanded sections dealing with the news media and telephone conversations.

The Commission has explicitly detailed exceptions to its requirements for advance public notice and its requirements that the public be permitted to attend meetings involving substantial interest matters because it is important to make clear that these and only these narrow exceptions exist relative to this policy. In addition to certain specific exceptions, the Commission acknowledges that extraordinary circumstances arise which might appear to require either that advance notice cannot be given or that the meeting be closed, or both. To ensure that no one claims the existence of extraordinary circumstances without justification, this policy requires: (1) Approval from the Chairman whenever Agency staff, other than personal staff of Commissioners, wish to hold or attend a meeting without giving advance public notice, and (2) approval from a majority of the Commission whenever Agency staff, other than personal staff of Commissioners, wish to hold or attend a closed meeting.

Because it would unduly compromise the individual independence of the Commissioners to have to obtain permission from any of their fellow Commissioners to hold or attend a meeting without giving advance public notice or to hold or attend a closed meeting, no requirement for such permission has been included for Commissioners. Personal staff of Commissioners must obtain such permission from their respective Commissioners. It is the intention of the individual Commissioners to exercise their discretion in this regard only under extraordinary circumstances.

The requirement of Federal Register notice for meetings involving agency staff and outside parties on pending matters has been modified because (a) the distinction between "pending" and "substantial interest" matters has been eliminated as being unnecessary, (b) the public calendar notice for meetings has generally proven to be as adequate for giving notice as the Federal Register, and (c) delay in the scheduling of meetings often results from the requirement for Federal Register notices.

The Commission concludes that the proposed amended policy should be published in the Federal Register so that the public can comment on it and that the proposed amended policy should serve as its interim policy until comments have been received and the policy finalized.

Therefore, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14), it is hereby proposed that Title 16 of the CFR be amended by adding to Chapter II an amended part 1001 containing at this time only one section as follows:

PART 1001—ADMINISTRATION, PRACTICES AND PROCEDURES

Sec.

1001.60 General policy considerations.
1001.61 Definitions.
1001.62 Forms of advance public notice.
1001.63 Types of and requirements for meetings.
1001.64 Recordkeeping categories.
1001.65 The news media.
1001.66 Telephone conversations.
1001.67 Chart summary of meetings policy.

Authority: Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76), and the Refrigerator Safety Act (15 U.S.C. 1211–14).

§ 1001.60 General policy considerations

(a) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission must involve the public to the fullest possible extent in its activities.

(b) To guarantee public confidence in the integrity of its decisionmaking, the Commission must, to the fullest possible extent, conduct its business in an open manner which is free from any actual or apparent impropriety.

(c) To achieve the goals set forth in paragraphs (a) and (b) of this section, the Commission believes that, wherever practicable, it should notify the public in advance of all meetings involving matters of substantial interest held or attended by its personnel and permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Commission should keep records of them which are freely available for inspection by the public.

§ 1001.61 Definitions

For purposes of this regulation, the following words shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title of the Consumer Product Safety Commission.

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commission.* The five Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(d) *Meeting.* Any face-to-face encounter in which one or more employees, including Commissioners, of the Agency discuss any subject relating to the Agency or any subject under its jurisdiction.

(e) *Outside party.* Any party not an employee or under contract to do work for the Agency. Examples of persons falling within this definition are representatives from industy, consumer groups and government. Members of the news media are not considered to be outside parties when acting in a newsgathering capacity.

(f) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that as a minimum is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: petitions, administrative hearings, and matters published for public comment. However, employment interviews; inspection of nonconfidential Agency documents by the public; negotiations for internal Agency needs such as custodial services, office equipment, computer services, and similar "housekeeping" contracts do not constitute substantial interest matters.

§ 1001.62 Forms of advance public notice

Advance notice of Agency activities is provided to the public so that it may know of and participate in these activities to the fullest extent possible. The following two types of notices are utilized by the Agency.

(a) *Public calendar.* The public calendar is the principal means by which the agency notifies the public of its day-to-day activities. The public calendar provides advance notice of (1) public hearings, (2) Commission meetings, (3) meetings with outside parties involving substantial interest matters, (4) selected staff meetings, (5) Advisory Committee meetings, and (6) other events such as speeches, participation in panel discussions, etc. Upon request, any person or organization will be sent the public calendar on a regular basis free of charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. In addition, interested persons may contact the Office of the Secretary to obtain information from a master calendar kept current on a daily basis. This calendar, supplemented by meeting summaries, is intended to serve the requirements of section 27(j)(8) of the Consumer Product Safety Act. Commissioners and Agency staff are responsible for reporting meeting arrangements to the Office of the Secretary at least 7 days in advance. Such reports shall include the following information:

(i) Probable participants;

(ii) Subject of the meeting (as fully and precisely designated as possible);

(iii) Who requested the meeting;

(iv) Whether the meeting involves matters of substantial interest;

(v) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets);

(vi) The date of the meeting;

(vii) The place of the meeting.

(b) *Federal Register.* The Federal Register is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the public calendar is the primary device through which the Agency notifies the public of its routine, daily activities, the Federal Register will be utilized only when required by law or when the Agency believes that the additional coverage it can provide is necessary to assist in notification to the public of important meetings.

§ 1001.63 Type of and requirements for meetings

For the purpose of implementing the Agency's meeting policy, meetings which involve Agency staff or the Commissioners shall be classified in the following categories, and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for preparing transcripts of the hearings.

Where possible, notice of forthcoming hearings will be published in the public calendar and the Federal Register at least 30 days before the date of said hearings.

(b) *Meetings of the Commission.* Meetings of the Commission are held for the purpose of conducting the formal business of the Agency including the rendering of official decisions, and for the gathering of information by the Commission. Such meetings may be of the following types:

(1) *Executive sessions.* Executive sessions are sessions at which policy and regulatory decisions are made by the Commission. They are attended solely by the Commissioners and are held by majority vote of the Commission and without prior notice. Formal minutes are the responsibility of the Commission.

(2) *Closed sessions.* Closed sessions are generally attended only by the Commissioners and members of the Agency staff. Closed sessions may be held at the direction of a majority vote of the Commission and without prior notice. The Office of the Secretary is responsible for the minutes.

(3) *Open sessions.* Open sessions are attended by the Commissioners, the Agency staff, and any other individual or group desiring to observe. Members of the public desiring to attend an open session are encouraged to contact the Office of the Secretary at least one day prior to the meeting. Notice of an open session will usually be furnished through the public calendar at least 7 days prior to the session. The Office of the Secretary is responsible for the minutes.

(c) *Meetings between Commissioners or Agency staff and Outside Parties.* The following set of requirements shall apply to meetings between Commissioners or Agency staff and outside parties whether hosted or attended at Agency premises or at the premises of outside parties:

(1) *Notice.* Notice of meetings with outside parties involving substantial interest matters shall be furnished through the public calendar at least 7 days in advance. Any Agency employee planning to host or attend such a meeting must notify the Office of the Secretary immediately upon making arrangements for such meeting. Once notification has been made, those subsequently desiring to attend the meeting need not notify the Office of the Secretary. When there is no opportunity to give 7 days advance notice of a meeting, Agency staff (other than the personal staff of Commissioners) who desire to hold or attend such meeting must obtain the approval of the Office of the Chairman. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If such approval is obtained, the Office of the Secretary must be notified in advance of the meeting to record the meeting on the master calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the succeeding public calendar. Because it could unduly compromise the independence of individual Commissioners, they need not obtain the permission of the Chairman to hold or attend an emergency unscheduled meeting. Listing of the meeting in the master calendar is still required.

(i) *Exceptions.* The notice requirement shall not apply to:

(*a*) Meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served),

(*b*) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act, and

(*c*) Discussions held in the normal course of field surveillance inspection and investigation of a person or company. However, advance notice is required for any negotiations leading to settlement of individual cases.

(4) *Attendance by the public.* Any person or organization may attend any meeting listed in the master calendar unless that meeting has been listed as a closed meeting. Generally, all meetings between Agency employees and outside parties are open to the public for the purpose of observation or participation subject only to space limitations. Participation by the public may be permitted by the meeting chairperson. A person or organization desiring to attend should give at least one day of advance notice to the Office of the Secretary or the employee holding or attending such meeting wherever feasible.

(i) The following meetings are not open to the public:

(*a*) Meetings, or, if possible, portions of meetings at which proprietary data are to be discussed in such a manner as to imperil its confidentiality.

(*b*) Meetings held by outside parties at which limits on attendance are imposed by lack of space need not be open: *Provided,* That such meetings are open to the press or other news media.

(*c*) Initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open.

(*d*) Meetings held during the normal course of field surveillance, inspection, or investigation of a person or company. The public may, however, attend negotiations leading to settlement of individual cases.

(e) Meetings held with other government officials where said government officials request that the meeting be closed, and, in the opinion of the Agency employee, extraordinary circumstances warrant closing the meeting.

(f) Meetings with contractors in connection with the negotiation of competitive and noncompetitive contracts. Also, all meetings with contractors required in the administration of Agency contracts and with contractors regarding "housekeeping" functions of the Agency

(g) Meetings between Agency staff (other than Commissioners and their personal staff) and an outside party, when, by majority vote of the Commission, it is determined that extraordinary circumstances require the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(h) Meetings between a Commissioner, his or her personal staff, and an outside party, when in the opinion of the Commissioner extraordinary circumstances require that the meeting be closed. In such case the reasons for closing the meeting or portion of a meeting, shall be detailed in the public calendar.

(d) *Staff meetings.* Staff meetings are attended only by members of the Agency as a general rule. At the discretion of the participants, such meetings may be listed on the public calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(e) *Advisory Committee meetings* Meetings of the Agency's Advisory Committees are scheduled by the Commission. Notice will be given both by the public calendar and the FEDERAL REGISTER. Advisory Committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibility with the objective of providing advice and recommendations to the Commission. The Agency's Advisory Committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, and the Technical Advisory Committee on Poison Prevention Packaging. The Office of the Secretary is responsible for the recordkeeping for such meetings.

§ *1001.64 Recordkeeping categories*

Depending on the type and purpose of meetings, different levels of recordkeeping are appropriate. The following is a list of the types of and requirements for the three categories of recordkeeping utilized by the Agency.

(a) *Meeting summaries.* Meeting summaries are written records setting forth the issues discussed at all meetings with outside parties involving substanial interest matters. A meeting summary should detail the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the public calendar and should describe any decisons made or conclusions reached regarding substantial interest matters. A summary should also indicate the date and the identity of persons at the meeting. A meeting summary or notice of cancellation of the meeting must be submitted to the Office of the Secretary within twenty (20) days after the meeting for which the summary is required. The Office of the Secretary shall maintain a file of meeting summaries in chronological order.

(b) *Commission minutes.* Commission minutes document the decisions of the Commission. Minutes may be taken verbatim when necessary or desirable and may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(1) Minutes recorded at executive session are subject to the final approval of the Commission. The Commission's final minutes constitute the official means of recording the decisions of the Commission and the votes of the individual Commissioners when filed with the Office of the Secretary.

(c) *Transcript records.* A transcript is a verbatim record of meetings. Transcript records may include exhibits submitted to be part of the formal record of a meeting. Transcripts are generally taken at public hearings. Copies of transcripts are placed on file for public inspection in the Office of the Secretary.

§*1001.65 The news media.*

The Agency recognizes that the news media occupy a unique position relative to the activities of the Agency. It is believed that the inherently public nature of the news media requires that their activities be exempt from the requirements of this meetings policy whenever meetings are held with the news media for the purpose of informing them about Agency activities. Such meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§1001.66 Telephone conversations

Telephone conversations present special problems regarding this meetings policy, It is recognized that persons outside the Agency have a legitimate right to information and to present their views regarding Agency activities. It is further recognized that such persons may not have the finanical means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to attendance or participation by the public, care must be taken to ensure that they are not utilized to circumvent the meetings policy. Two basic rules apply to telephone conversations:

(a) Any telephone conversation in which substantial interest matters are discussed with outside parties must be detailed in a meeting summary.

(b) All Agency personnel must exercise sound judgment in discussing substantial interest matters during a telephone conversation and should, in the exercise of such discretion, not hesitate to terminate a telephone conversation and insist that the matters being discussed be postponed until a meeting with appropriate advance public notice may be scheduled or until the matter is presented to the Agency in writing if the otuside party is financially or otherwise unable to meet with the Agency employee. A chart summary of the proposed amended meetings policy is as follows:

CHART SUMMARY OF MEETINGS POLICY

Meeting category	Notice			Attendance		Records		
	Federal Register	Public calendar	No advance notice	Open	Closed	Minutes	Transcript	Meeting summary
Public hearings	X	X	----------	X	----------	----------	X	
Involving Commission:								
Executive session			X	---------	X	X	---------	
Closed session			X	---------	X	X	---------	
Open session		X	----------	X	---------	X	---------	
Involving outside parties		X[1]	----------	X[2]	----------	----------	----------	X[3]
Advisory committees	X	X	----------	X	----------	----------	X	
Staff meetings		X[4]	----------	----------	X[4]	----------	----------	X[4]

[1] Notice in the public calendar is required for all meetings between Commissioners, Agency staff, and outside parties involving matters of substantial interest, except:

(a) meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served),

(b) initial reports pursuant to sec. 15(b) of the Consumer Product Safety Act, and

(c) discussions held in the normal course of field surveillance and investigation. However, advance notice is required for any negotiations leading to settlement of individual cases.

[2] Meetings between Commissioners or Agency staff and outside parties are open to the public, except:

(a) meetings or portions of meetings at which proprietary data is to be discussed in such a manner as to imperil its confidentiality.

(b) meetings held by outside parties at which limits on attendance are imposed by lack of space, provided that such meetings are open to the press or other news media.

(c) initial notifications pursuant to sec. 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open.

(d) meetings held during the normal course of field surveillance, inspection, or investigation of a person or company. The public may, however, attend negotiations leading to settlement of individual cases.

(e) meetings held with other government officials where said government officials request that the meeting be closed and, in the opinion of the Agency employee, extraordinary circumstances warrant closing the meeting.

(f) meetings with contractors in connection with the negotiation of competitive and noncompetitive contracts. Also all meetings with contractors required in the administration of Agency contracts and with contractors regarding "housekeeping" functions of the Agency.

(g) meetings between Agency staff (other than Commissioners and their personal staff) and an outside party when, by majority vote of the Commission, it is determined that extraordinary circumstances require the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting should be detailed in the public calendar.

(h) meetings between a Commissioner, his or her personal staff, and an outside party, when in the opinion of said Commissioner, extraordinary circumstances required the meeting be closed. In such case the reasons for closing the meeting, or portion of a meeting, shall be detailed in the public calendar.

[3] Meeting summaries are required for meetings where matters of substantial interest are discussed.

[4] At the discretion of participants.

Comments and views on this notice may be submitted, preferably with five copies, to the Secretary, Consumer Product Safety Commission, room 1025, 1750 K Street, NW., Washington, D.C. 20207 on or before December 30, 1974. Comments received after that date will not be considered. All comments timely received will be on public view in the Office of the Secretary during normal working hours, Monday through Friday.

Dated: October 17, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 74-24618 Filed 10-23-74; 8:45 am]

ATTACHMENT 2

[From the Federal Register, vol. 39, No. 163—Aug. 21, 1974]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1015]

PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER FREEDOM OF INFORMATION ACT

Proposed Interim Guidelines

The purpose of this notice is to propose Consumer Product Safety Commission regulations implementing the provisions of the Freedom of Information Act (5 U.S.C. 552) concerning the availability to the public of records contained in the files of federal agencies.

It is Commission policy that the interest and participation of the public is vital for carrying out the functions of the Consumer Product Safety Commission. The Commission, recognizing the fact that public participation can be best realized when members of the public can readily gain access to Commission information and records, states that its policy is to make the fullest possible disclosure of information to any person who requests information, without unjustifiable expense or delay. Information exempted from disclosure under the Freedom of Information Act may, when not prohibited by law, nevertheless be made available when the Commission determines that disclosure is in the public interest.

Section 25(c) of the Consumer Product Safety Act (86 Stat. 1227, 15 U.S.C. 2074(c)) expresses the intent of Congress that the Commission make certain of its records available to the public irrespective of the exemptions contained in the Freedom of Information Act. These records include accident or investigation reports made by officers or employees of the Commission as well as reports on research projects, demonstration projects, and other related activities. The only restriction is that accident or investigation reports must not be made available to the public in a manner which will identify any injured person or any person treating the injured person without the consent of the identified person. The Commission intends applying the provisions of section 25(c) of the Consumer Product Safety Act to reports received before and after the formation of the Commission under all of the transferred acts in addition to reports made under the Consumer Product Safety Act. Accordingly, insofar as the regulations proposed below deal with section 25(c) reports, they are applicable to all such reports in the files of the Commission.

These proposed regulations provide information concerning the production and disclosure of records of the Consumer Product Safety Commission. Pending the issuance of final regulations, records shall be made available to members of the public using the regulations poposed in this notice as guidelines. In addition to records developed and maintained by the Consumer Product Safety Commission since its formation, Commission records include records transferred under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, The Refrigerator Safety Act, and the Flammable Fabrics Act, by section 30(e)(1)(A) of the Consumer Product Safety Act (86 Stat. 1231, 15 U.S.C. 2079(e)(1)(A)). Therefore, regulations of other federal agencies which may have applied to the disclosure or production of information pertaining to these transferred acts are expressly superseded as of the date of publication in the Federal Register of these proposed regulations as interim guidelines.

Accordingly, under provisions of the Consumer Product Safety Act (86 Stat. 1207; (15 U.S.C. 2051)), the Federal Hazardous Substances Act (74 Stat. 372 as amended; (15 U.S.C. 1261)), the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; (15 U.S.C. 1571)), the Refrigerator Safety Act (70 Stat. 953; (15 U.S.C. 1211)), the Flammable Fabrics Act, (67 Stat. 11 as amended; (15 U.S.C. 1191)), and the Public Information Act (Freedom of Information Act) (Pub. L. 89–487 as codified by Pub. L. 90–23, 81 Stat. 54; (5 U.S.C. 552)), the Commis-

sion proposes to add a new Part 1015 to Title 16, Chapter II, Subchapter A, as follows:

PART 1015—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

Sec.

1015.1 Purpose and scope.
1015.2 Public reference facilities.
1015.3 Requests for identifiable records and copies.
1015.4 Responses to requests for records; responsibility.
1015.5 Prompt responses.
1015.6 Responses; form and content.
1015.7 Appeals to the Commissioners from initial denials.
1015.8 Requests received during the course of administrative proceedings.
1015.9 Fees for production of records.

Subpart B—Exemptions From Production and Disclosure Under 5 U.S.C. 552(b)

1015.15 Purpose and scope.
1015.16 Exemptions (5 U.S.C. 552(b)).
1015.17 Information submitted to Commission; requests for treatment as exempt material.

Subpart C—Disclosure of Commission Accident or Investigation Reports Under 15 U.S.C. 2074(c)

1015.20 Public availability of accident or investigation reports.

Authority: 86 Stat. 1207; (15 U.S.C. 2051), 74 Stat. 372 as amended; (15 U.S.C. 1261), 84 Stat. 1670; (15 U.S.C. 1471), 70 Stat. 953; (15 U.S.C. 1211), 67 Stat. 11 as amended; (15 U.S.C. 1191), 81 Stat. 54 (5 U.S.C. 552).

SUBPART A—PRODUCTION OR DISCLOSURE UNDER 5 U.S.C. 552(a)

§ 1015.3 Purpose and scope

(a) The regulations of this subpart provide information concerning the procedures by which Consumer Product Safety Commission records may be made available for inspection and the procedures for obtaining copies of records from the Consumer Product Safety Commission. Official records of the Consumer Product Safety Commission consist of all documentary material maintained by the Commission in connection with its responsibilities and functions under the Consumer Product Safety Act. Commission records include records transferred to the Commission under the Federal Hazardous Substances Act, Poison Prevention Packaging Act of 1970, Refrigerator Safety Act, and Flammable Fabrics Act, as well as records maintained under any other authorized activity. Official records do not, however, include objects or articles such as tangible exhibits, samples, models, equipment, or other items of valuable property; books, magazines, or other reference material; or documents routinely distributed by the Commission in the normal course of business such as copies of FEDERAL REGISTER notices, pamphlets, and laws. Official records of the Commission made available under the requirements of the Freedom of Information Act (5 U.S.C. 552) shall be furnished to the public as prescribed by this Part 1015. Documents routinely distributed to the public in the normal course of business may continue to be furnished to the public by employees of the Commission informally and without compliance with the procedures prescribed herein.

(b) The Commission's policy with respect to requests for records is that disclosure is the rule and that withholding is the exception. All records not exempt from disclosure will be made available. Moreover, records which may be exempted from disclosure will be made available as a matter of discretion when disclosure is not prohibited by law, or is not against the public interest.

(c) The Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, published in June, 1967, is available from the Superintendent of Documents and may be consulted in considering questions arising under the Freedom of Information Act.

§ 1015.2 Public reference facilities

The Consumer Product Safety Commission will maintain in a public reference room or area the materials relating to the Consumer Product Safety Commission which are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made available for public inspection and copying. The principal location will be in the Office of the Secretary. The address of this office is:

Office of the Secretary
Consumer Product Safety Commission
1750 K Street, NW, 10th Floor
Washington, D.C. 20207.

This public reference facility will maintain and make available for public inspection and copying a current index of the materials available at that facility which are required to be indexed by 5 U.S.C. 552(a)(2). For the purpose of providing the opportunity for greater public access to records of the Consumer Product Safety Commission, the Commission may establish additional public reference facilities. Each such additional reference facility will also maintain and make available for public inspection and copying a current index of the materials available at that facility which are required to be indexed by 5 U.S.C. 552(a)(2).

§ 1015.3 Requests for identifiable records and copies

(a) A request for access to records of the Commission shall be in writing addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

(b) A request for access to records should identify the records requested in sufficient detail to enable Commission personnel to locate them without an unreasonable amount of effort. Where possible, specific information regarding dates, title, file designations, and other information which may help identify the records should be supplied by the requester. If the request relates to a matter in pending litigation, the court and its location should be identified. Where the information supplied by the requester is not sufficient to permit identification and location of the records by Commission personnel without an unreasonable amount of effort, the requester will be contacted and asked to supply the necessary information.

(c) If it is determined that a request would unduly burden or interfer with the operations of the Commission, the response denying the request on those grounds shall so state and shall extend to the requester an opportunity to confer with appropriate Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

§ 1015.4 Responses to requests for records; responsibility

The ultimate responsibility for responding to requests for records is vested in the Secretary of the Consumer Product Safety Commission. The Secretary or delegate of the Secretary may respond directly or forward the request to any other office of the Commission for response.

§ 1015.5 Prompt responses

Requests for records shall be promptly acknowledged and responded to, normally within ten working days of their receipt. If a request is not complied with or satisfactorily acknowledged promptly, the requester may request the Secretary to take appropriate measures to assure prompt action on the request. In order for a requester to treat a failure to respond as a denial and file an appeal, the requester must have filed a written petition with the Secretary complaining of delay.

§ 1015.6 Responses; form and content

(a) When a requested record has been identified and is available, the requester shall be either supplied with a copy, or notified as to where and when the record will be made available for inspection. If the payment of fees is required, the requester shall be advised by the Secretary in writing of any applicable fees under § 1015.9 hereof.

(b) A response denying a written request for a record shall be in writing signed by the Secretary or delegate of the Secretary and shall include:

(1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record with a brief explanation of how the exemption applies to the record withheld; and

(2) A statement that the denial may be appealed to the Commissioner of the Consumer Product Safety Commission. Any such appeal must be made within 30 days of receipt of the denial by the requester.

(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified by the Secretary or delegate of the Secretary.

§ 1015.7 Appeals to the Commissioners from initial denials

(a) When the Secretary or delegate of the Secretary has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Commissioners of the Consumer Product Safety Commission by writing to the Consumer Product Safety Commission, attention of the Chairman, Washington, D.C. 20207.

(b) The Commissioners will act upon the appeal within 30 working days of its receipt, if practicable. Where novel and/or difficult questions are involved, the Commissioners may extend the time for final action for a reasonable period beyond 30 days upon notifying the requester in writing of the reasons for the extended deadline and the date on which a final response may be expected.

(c) The Commissioners' action on appeal shall be in writing and signed by the Chairman of the Commission. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation consistent with the purpose of the exemption of how the exemption applies to the records withheld, and the reasons for asserting it.

(d) Copies of all appeals and copies of all actions on appeal shall be furnished to and maintained in a public file by the Secretary.

§ 1015.8 Requests received during the course of administrative hearings

Requests received during the course of an administrative hearing for the disclosure or production of Consumer Product Safety Commission records may be granted or denied by the Presiding Officer of that hearing. The decision of the Presiding Officer regarding such a request may be appealed to the Commissioners in accordance with the procedures contained in § 1015.7. If the rules of practice governing the conduct of the hearing at which a request for Commission records is made contain conflicting procedures for the disclosure or production of Commission records, such procedures shall take precedence over the procedures contained in this Part 1015.

§ 1015.9 Fees for production of records

(a) Fees shall be charged in accordance with the schedule contained in paragraph (f) of this section for services rendered in responding to requests for Consumer Product Safety Commission records under this subpart; however, certain information provided routinely in the normal course of doing business will be provided at no charge.

(b) Fees may be determined and levied only by the Secretary or delegate of the Secretary. The Secretary may, where special circumstances warrant, waive fees. The Secretary's determination may be appealed to the Commissioners in the same manner as appeals from denials under § 1015.7 hereof.

(c) There shall be no fee charged for services rendered in connection with the production or disclosure of records unless the charges, as calculated according to the schedule contained in paragraph (f) of this section, exceed the sum of $25. Where the charges are calculated to be an amount in excess of $25, the fee charged shall be the difference between $25 and the calculated charges.

(d) No fee shall be levied where the records requested are not provided or made available.

(e) The payment of fees should be made by check or money order payable to the Treasury of the United States.

(f) The schedule of charges for services regarding the production or disclosure of Consumer Product Safety Commission records is as follows:

(1) Search for records and deletion of nondisclosable data and information (calculated from the time when the person making the search and/or deletions obtains the relevant files and begins the actual search and/or making of deletions): $1.50 per one-quarter hour.

(2) Computer time:

Central Processing Unit, $10.80 per minute.
Card Reader, 60 cents per 1,000 cards.
Card Punching, 60 cents per 333 cards.
Printer, 60 cents per 100 lines.
Tape or Disk, 75 cents per 1,000 number of reads or line yards.
Minimum charge, $1.50.

Nothing in this paragraph shall be construed to entitle any person, as of right, to any services in connection with computerized records, other than services to which such person may be entitled under 5 U.S.C. 552.

(3) Reproduction, duplication, or copying of records: 10 cents for each page.

(4) Reproduction, duplication, or copying of microfilm:

Microfilm, 75 cents per frame.

Microfiche, $1.45 per jacket (includes title).

(5) Photographic reproduction:

	Black and white	Color
8 by 10 in.	$2.50	$9.50
5 by 7 in.	1.75	5.00
4 by 5 in.	1.50	
3½ by 5 in.	.50	

(6) Certification of true copies: $1.00 each.

(7) Postage: Actual cost basis.

SUBPART B—EXEMPTIONS FROM PRODUCTION AND DISCLOSURE UNDER 5 U.S.C. 552(B)

§ 1015.15 Purpose and scope

(a) The regulations of this subpart provide information concerning the types of records which may be withheld from production and disclosure by the Consumer Product Safety Commission. These regulations also provide information on the method whereby persons submitting information to the Commission may request that the information be considered exempt from disclosure, and information concerning the Commission's treatment of documents submitted with a request that they be treated as exempt from disclosure.

(b) No identifiable record requested in accordance with the procedures contained in this part shall be withheld from disclosure unless it falls within one of the classes of records exempt under 5 U.S.C. 552(b). To the extent permitted by law, the Commission will make available records authorized to be withheld under 5 U.S.C. 552(b) whenever the Commission determines that disclosure is not against the public interest.

(c) The exemptions contained in § 1015.16 are as contained in 5 U.S.C. 552(b). These exemptions will be interpreted in accordance with the applicable law at the time a request for production or disclosure is considered.

§ 1015.16 Exemptions (5 U.S.C. 552(b))

(a) Records specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.

(h) Records contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Records of geological and geophysical information and data, including maps, concerning wells.

§ 1015.17 Information submitted to the Commission; requests for treatment as exempt material

(a) Any person submitting material to the Commission that the person believes should be exempt from disclosure may accompany the submission with a request that the material be considered exempt. Each such request should refer to the appropriate exemption provision(s) and explain why the material should be considered exempt. Material received with a request that it be considered exempt shall not be maintained in a public file. If, in complying with a request for the disclosure of records, it is determined that some or all of the material relative to the request has been claimed to be exempt from disclosure, the requester will be supplied with a list of this material and informed that those portions found not to be exempt will be made available as soon as possible.

(b) The Commission will not decide whether material received with a request that it be considered exempt falls within one of the stated classes of exemptions until a request for production or disclosure is made for that information. The determination will be based on the most authoritative judicial interpretations available at the time a request for disclosure or production is considered.

(c) When a request for production or disclosure is received, the person originally submitting the material will be informed and given the opportunity to present additional information and views respecting the exempt status of the material. If, after considering the additional information and views, it is concluded that the material should be disclosed, the person submitting the material will be informed of this conclusion at least 10 days prior to disclosure. In no event, however, will the material be returned to the person submitting it.

SUBPART C—DISCLOSURE OF COMMISSION ACCIDENT OR INVESTIGATION REPORTS UNDER 15 U.S.C. 2074(c)

§ 1015.20 Public availability of accident or investigation reports

(a) Accident or investigation reports made under the authority of the Consumer Product Safety Act, Federal Hazardous Substances Act, Poison Prevention Packaging Act of 1970, Flammable Fabrics Act, or the Refrigerator Safety Act by an officer, employee, or agent of the Commission are available to the public under the procedures set forth in Subpart A of this Part 1015. No portion of such reports are subject to the exemptions contained in the Freedom of Information Act (as restated in § 1015.16) except that portions identifying any injured person or any person treating such injured person shall be deleted unless the written consent of such person not to delete identifying portions is obtained by the Commission. Where disclosure of an accident or investigation report is requested by supplying the name of the person injured or other details of a specific accident (other than cases where the report is requested by the injured person or the injured person's legal representative), the person making the request will be asked to submit a consent to the disclosure signed by the injured person or the injured person's legal representative. Written consents submitted under this section shall bear a statement certifying that such consent was obtained with the full knowledge of the person giving the consent and that the person giving the consent was the person identified in the accident or investigation report or the legal representative of such identified person. The report will not be disclosed until the written consent is received by the Commission. No deletion of identifying portions of such reports or refusal to disclose without the Commission having first received written consent shall be considered as a denial by the Commission of disclosure of Commission records.

(b) Research reports, demonstration reports, and reports or other related activities of the Commission are available to the public under the procedures set forth in Subpart A of this Part 1015.

Interested persons are invited to submit on or before October 21, 1974, written comments regarding this proposal. Comments and any accompanying material or data should be submitted addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, tenth floor, 1750 K Street, NW., Washington, D.C. during working hours, Monday through Friday.

Dated: August 15, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 74-19183 Filed 8-20-74; 8:45 am]

ATTACHMENT 3

[From the Federal Register, vol. 39, No. 168—Aug. 28, 1974]

CONSUMER PRODUCT SAFETY COMMISSION

USE OF SAMPLING PLANS

Proposed Statement of Policy

The Consumer Product Safety Commission is publishing for comment a proposed statement of policy concerning the use of sampling plans in Commission rules. Such a policy is considered a general statement of policy or a rule of agency procedure and, therefore, exempt from the notice and public procedure provisions of 5 U.S.C. 553 (Administrative Procedure Act). However, in view of the importance of such a policy and because a public hearing was previously held on this issue, the Commission has decided to seek public comment on the proposed policy. The decision to publish the proposed policy for comment is not intended to establish a precedent to be followed for the implementation of future procedural rules. The proposed statement of policy is as follows:

I. *Introduction.* The Consumer Product Safety Commission has developed a statement of policy on the use of sampling plans in Commission rules bearing in mind that the over-riding purpose of Commission safety rules is, notwithstanding any other possible considerations, to protect the consumer from products posing an unreasonable risk of injury. It is also true that in order for safety rules to be effective they must clearly and explicitly spell out the responsibilities of those being regulated, especially as to those particulars which define compliance with the rule.

The Commission has considered extensively the many arguments which have been put forth on the advantages and disadvantages to both consumers and manufacturers of the incorporation of sampling plans in Commission rules. The issues were illuminated in two days of public hearings on the use of sampling plans held April 4–5, 1974, and by many written comments and analyses provided the Commission by various parties subsequent to the hearings.

Emerging from its careful consideration of the subject, the Commission recognizes the following:

A. While in principle, 100 percent testing of items of production would appear to provide maximum assurance of safety to consumers, there are situations in which cost or other considerations might argue against a requirement for 100 percent testing. On the other hand, online quality control and testing programs at various stages of the production process or product safety overdesign could offer alternatives to 100 percent testing of end products without substantially compromising 100 percent conformance with the desired product characteristics as set forth in the CPSC rule.

B. In general, increasing the level of assurance of 100 percent compliance of articles coming off the production line entails increased costs—costs which must, in the interest of the consumer, be balanced against the increments in safety flowing from the increments in cost.

C. The use of sampling plans by the Commission in certain cases could impose additional burdens of proof on the Commission in seeking sanctions legally available to it. On the other hand, in the absence of a Commission-specified sampling plan, the possibility exists that courts will subjectively adopt varying criteria for determining whether the nonconforming items involved were the result of a manufacturing fluke or indicative of a pattern of production meriting conviction on a violation of the rule.

D. Regarding the prosecution of private liability suits, the Consumer Product Safety Act explicitly states that conformance with a Commission ruie shall not relieve any person from liability at common law or under State statutory law.

E. While the use of sampling plans in Commission rules would permit a certain fraction of production to be "noncomplying", their use could in some cases provide a net incentive for manufacturers to continually reduce the likelihood of nonconforming items because of the economic consequences of a requirement to reject or reprocess nonconforming lots.

F. In those instances where sampling plans might be used they could be incorporated in either the standard itself, certification rules, or enforcement rules.

G. The Commission should not be bound by current manufacturing processes, but rather should make every effort to encourage technological advances in manufacturing processes which would tend towards making 100 percent product conformity more of a reality.

In view of the foregoing, the Commission has developed the following policy statement which is intended to reflect in a brief and concise manner the requirements established through deliberation of the Commission.

II. *Policy on Sampling Plans.* Decisions on the use of sampling plans by the Commission will be on a case-by-case basis. Sampling plans will be included in Commission regulations where appropriate from the point of view of combined cost and benefit to the consumer and where necessary to specify clearly and unambiguously the technical requirements of the regulation and accompanying legal obligations to regulated industries.

Sampling plans will not be used in any case in which those nonforming items which may be acceptable under the sampling plan adversely affect the safety of consumers to any substantial degree.

When sampling plans are used as part of the Commission's regulations the following shall be used as guide for manner of inclusion:

First preference—in a certification program.

Second preference—in published enforcement rules accompanying the standard.

Third preference—as part of the standard.

III. *Comment on Proposed Policy.* Interested persons are invited to submit, on or before September 27, 1974, written comments regarding this proposal. Comments and any accompanying material should be submitted, preferably in 5 copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, 10th floor, 1750 K Street, NW., Washington, D.C., during working hours Monday through Friday.

Dated: August 23, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 74-19967 Filed 8-27-74; 8:45 am]

[From the Federal Register, vol. 39, No. 140—July 19, 1974]

CONSUMER PRODUCT SAFETY COMMISSION

BICYCLE SAFETY STANDARD

Notice of Denial of Petitions Requesting Procedure Under Consumer Product Safety Act

In a petition dated February 25, 1974, the Bicycle Manufacturers Association of America (BMA) requested the Consumer Product Safety Commission to proceed with the establishment of a bicycle safety standard pursuant to the Consumer Product Safety Act (15 U.S.C. 2051-81) in lieu of continuing to proceed pursuant to the Federal Hazardous Substances Act (15 U.S.C. 1261-74). The petitioner also requested suspension of all steps involved in promulgating such a standard under the Federal Hazardous Substances Act until the Commission rules on the petition.

The petitioner contended that the requested change in procedure should be granted because:

1. A standard promulgated under the Consumer Product Safety Act would preempt conflicting State and local government standards.

2. Development of a standard under the Consumer Product Safety Act would cover all bicycles rather than just those solely designed for use by children, as proposed under the Federal Hazardous Substances Act (FEDERAL REGISTER of May 10, 1973; 88 FR 12300).

3. Promulgating the standard under the Federal Hazardous Substances Act will not reduce the risk of injury "to a sufficient extent," and therefore section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2970(d)) requires that the standard be processed under that act.

4. A standard promulgated under the Consumer Product Safety Act will clearly be more effectively compiled with than a standard promulgated pursuant to any other authority.

The first two arguments given were also presented in a similar petition by BMA dated June 14, 1973. BMA was notified that its June 14, 1973, petition was denied by the Commission.

Regarding arguments 3 and 4 above, the Commission finds that the petitioner has failed to provide persuasive arguments that a risk of injury could not be eliminated to a sufficient extent under the Federal Hazardous Substances Act or that a standard promulgated under the Consumer Product Safety Act will clearly be more effectively complied with than a standard promulgated pursuant to any other authority. Further, the Commission is unaware of any other arguments that would persuasively support petitioner's request.

Accordingly, pursuant to section 10(d) of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1217 (15 U.S.C. 2059(d))), notice is given of the Commission's denial of the BMA petitions dated June 14, 1973, and February 25, 1974.

A copy of the petitions may be seen during working hours, Monday through Friday, in the Office of the Secretary, Consumer Product Safety Commission, 1750 K Street, N.W., Washington, D.C. 20207.

Dated: July 16, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74–16591 Filed 7–18–74;8:45 am]

ATTACHMENT 4

[From the Federal Register, vol. 39, No. 140—July 19, 1974]

EMPLOYEE MEMBERSHIP AND PARTICIPATION IN VOLUNTARY STANDARDS ORGANIZATIONS

Proposed Statement of Policy

The Consumer Product Safety Commission is in the process of establishing a policy concerning membership and participation by Commission personnel in voluntary standards organizations "(voluntary standards organizations" as used in this document is intended to include those organizations that develop voluntary standards either as a major or minor part of the organizations' purpose). Such a policy is considered a general statement of policy or a rule of agency procedure and therefore exempt from the notice and public procedure provisions of 5 U.S.C. 553(b)(3)(A) (Administrative Procedure Act). However, in view of the importance of such a policy, the fact that several requests have been made asking the policy be published for public comment and because a public meeting was previously held on this issue, the Commission has decided to seek public comments on the proposed policy. The decision to publish the proposed policy for comment is not intended to establish a precedent to be followed for the implementation of future procedural rules. The proposed policy is set forth below:

I. *Introduction.* The purpose of this policy is to establish guidelines for Commission employees governing membership and participation in the activities of voluntary standards development bodies that concern products subject to the jurisdiction of the CPSC. The Commission desires to ensure that such membership and participation:

(1) Complies with the intent of the Consumer Product Safety Act, and the other Acts administered by CPSC.

(2) Furthers the objectives and programs of the Consumer Product Safety Commission,

(3) Is not contrary to the public interest, and

(4) Does not present a real or apparent conflict-of-interest in the execution of I(1), I(2) and I(3), above.

II. *Policy Statement.* The Commission recognizes the role that voluntary standards may have in:

(1) Reducing unreasonable risks of injuries associated with consumer products.

(2) Eliminating, in some instances, the need for mandatory standards, and

(3) Providing a basis for mandatory standards.

The Commission realizes that there are advantages and benefits to be derived from the participation of its personnel in voluntary standards organizations. However, the Commission is also aware of the need to eliminate or reduce to a minimum any real or apparent conflict-of-interest situations as they might present an appearance of the Commission:

(1) Giving preferential treatment to any organization or group, or

(2) Losing its independence or impartiality.

Every effort must be made to avoid adversely affecting the confidence of the public in the integrity of the Commission.

III. *Procedure Safeguards.* The Commission recognizes that with regard to the decisions made by the Commission concerning the promulgation of consumer product safety rules:

(1) Only those members of the staff listed in Sections V(A) and V(B), below, have the responsibility for making the final recommendation to the Commissioners with regard to either adopting an existing standard or accepting an offer to develop a standard under Section 7 of the Consumer Product Safety Act,

(2) Individuals from several Commission offices and bureaus will be involved in the development of a staff recommendation concerning the acceptance of an existing standard or an offer to develop a standard.

(3) The recommendations and views of each person involved in the development of a staff recommendation will be carefully reviewed and either endorsed, questioned or rejected by that person's Division Chief, Office or Bureau Director, the Standards Coordinator, the Chief of the Technical Analysis Division, the Director of the Office of Standards Coordination and Appraisal, and the Executive Director,

(4) The Commissioners exercise the ultimate decision-making authority, and

(5) Any existing standard accepted as a proposed consumer product safety rule, and any proposed standard developed by an offeror will be subject to further review and comment by any and all interested or concerned persons after it is published in the FEDERAL REGISTER pursuant to section 9 of the Act. In view of the foregoing, the Commission establishes the following guidelines governing membership and participation in voluntary standard organizations.

IV. *Membership Criteria.* A. Commission employees may become individual members of voluntary standard development bodies at their own expense (5 U.S.C. 5946).

B. Commission employees, other than those holding positions enumerated in section V(A), and V(B), below, may also hold membership on Committees, subcommittees, councils or boards of such bodies, except as qualified in subsection G of section V below.

V. *Participation Criteria.* A. Commission employees holding the positions listed below, because they make the final decision, or because they advise those who make the final decision with regard to either adopting an existing standard or accepting an offer to develop a standard under Section 7 of the CPSA, shall not participate in the standardization activities of any organization that is involved in the development of voluntary standards concerning products subject to the jurisdiction of the Consumer Product Safety Commission.

(1) The Commissioners of the CPSC,
(2) The Commissioner's Special Assistants,
(3) The General Counsel, and
(4) The Legal Staff of the General Counsel.

B. Commission employees holding the positions listed in this subsection, because they develop the final recommendation to the Commission with regard to either adopting an existing standard or accepting an offer to develop a standard under Section 7 of the CPSA, shall not participate in the standardization activities of any organization that is involved in the development of voluntary standards concerning products subject to the jurisdiction of the CPSC.

(1) The Standards Coordinators of the Technical Analysis Division of OSCA.,
(2) The Director of the Technical Analysis Division of OSCA,
(3) The Director of the Impact Analysis Division of OSCA,
(4) The Director of the Office of Standards Coordination and Appraisal and his immediate staff.
(5) The Executive Director and his staff,
(6) The Director of the Bureau of Engineering Sciences,
(7) The Director of the Bureau of Economic Analysis,
(8) The Director of the Bureau of Biomedical Science, and
(9) The Medical Director.

C. Commission employees, other than those holding offices, listed in Section V(A) and Section V(B) above, may participate in the development of voluntary safety standards for consumer products but only in their capacity as employees of the Commission and as part of the official duties. Travel and other expenses will be provided as specified in appropriate regulations. Commission employees may engage in such participation only after having received advance approval for such participation from the Executive Director with the concurrence of the General Counsel.

D. Commission employees who attend meetings of voluntary standards organizations (but do not participate) must have such attendance approved in advance by the Executive Director with the concurrence of the General Counsel.

E. Commission employees shall not, except in extraordinary circumstances and when approved in advance by the Commission, participate in meetings concerning the development of voluntary standards or meetings where voluntary standards are developed that are not open for observation and participation, where appropriate, by any and all interested or concerned persons. Attendance at all meetings shall be noted in advance on the Public Calendar.

F. Attendance and participation in voluntary standardization activities shall be contingent on Commission employees being considered and listed by standards development committees and organizations as advisory, nonvoting members. In no case shall a Commission employee vote or otherwise indicate approval of a voluntary standard.

G. Commission employees who participate in the development of voluntary standards shall not accept voluntary standards committee positions which involve policy or primary leadership roles (e.g., chairman, secretary). Subject to prior approval by the Executive Director with the concurrence of the General Counsel, an employee may accept a committee position only if it is clearly in the public interest for that Commission employee to carry out the functions of that specific position.

H. The Commission will participate, upon request and subject to the provisions of para. V(C), in voluntary standards activities which appear to further the objectives and programs of the Commission and which are not inconsistent with on-going or anticipated regulatory programs of CPSC. In the event of duplication of effort by two or more groups in developing voluntary standards for the same products or class of products, the Commission may encourage the several interests to participate in the development of a single voluntary standard.

I. Commission employees who participate in the development of a voluntary standard and who later participate in an official capacity in the evaluation of that standard as the basis for a proposed consumer product safety rule, shall describe clearly in their evaluation of the voluntary standard the extent of their participation in the development of that voluntary standard.

Interested persons are invited to submit, on or before August 19, 1974, written comments regarding this proposal. Comments and any accompanying material should be submitted, preferably 5 copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, tenth floor, 1750 K Street, NW., Washington, D.C., during working hours Monday through Friday.

Dated: July 16, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 74-16590 Filed 7-18-74; 8:45 am]

ATTACHMENT 5

[From the Federal Register, vol 39, No. 171—Sept. 3, 1974]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1120]

CONSUMER PRODUCT SAFETY COMPLAINTS: RECORDS, ACCESS, AND INFORMATION

Proposed Recordkeeping Requirements

The purpose of this notice is to propose requirements that manfacturers, importers, private labelers, and distributors of consumer products maintain and permit access to records and provide information relating to consumer product safety complaints. These requirements are proposed under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)). Comments on this proposal are invited on or before October 3, 1974.

Section 16(b) of the Act requires every manufactuerer (including importer), private labeler, or distributor of a consumer product to establish and maintain such records, make such reports, and provide such information as the Consumer Product Safety Commission may by rule reasonably require for the purposes of implementing the Act or to determine compliance with rules or orders prescribed under the Act. Section 16(b) also requires every manufacturer (including importer),

private labeler, or distributor of a consumer product, upon request of an officer or employee duly designated by the Commission. to permit the inspection of appropriate books, records, and papers relevant to determining whether such person has acted for is acting in compliance with the Act and rules under the Act.

The proposal under consideration would require records of all consumer product safety complaints to be maintained in an accessible location for a period of at least five years from receipt. All complaints, even those deemed by persons subject to the rule to be of no merit, would have to be maintained, so that the Commission could obtain a full picture of all consumer product safety complaints received in regard to any particular consumer product. The proposed rule would also require that duly designated officers, agents, or employees of the Commission be given immediate access to the records required to be maintained and that information required by the Commission be supplied immediately upon request.

Under the proposal, importers would be subject to the same requirements manufacturers are required to follow, since the term manufacturer, as defined in section 3(a)(4) of the Act (15 U.S.C. 2052(a)(4)), includes the term importer.

The rule, as proposed, would apply to manufacturers, importers, private labelers, and distributors of consumer products subject to regulation under the Consumer Product Safety Act and under authority of the Acts transferred to the Commission by section 30 of the Act (15 U.S.C. 2079), namely, the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 3471 et seq.), the Flammable Fabrics Act (15 U.S.C. 1393 et seq.) and the Refrigerator Safety Act (15 U.S.C. 1211 et seq.).

Section 30(d) of the Consumer Product Safety Act states that risks of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action taken under the transferred acts may be regulated by the Commission only in accordance with the provisions of those acts. The proposed rule is based, in part, on the premise that these requirements as to Consumer Product Safety Complaints are essential to the purpose of protecting the public against unreasonable risks of injury associated with consumer products and, moreover, that it is essential for the Commission to be able to obtain information on consumer product safety complaints from all manufacturers, importers, private labelers, and distributors of consumer products. At this time the Commission believes that risks of injury associated with consumer products cannot be eliminated or reduced to a sufficient extent by action taken under the transferred acts and proposes this rule to apply to manufacturers, importers, private labelers, and distributors of consumer products subject to the transferred acts and the Consumer Product Safety Act, Comments and legal arguments on this issue may, of course, be presented in response to this notice.

Information collected under any final rule would allow the Commission to determine the number and extent of consumer product safety complaints which have been received relating to a specific product. It would help the Commission determine priorities for future rules and determine the hazards which future regulations should address. It would also assist the Commission in determining compliance with the Consumer Product Safety Act, particularly sections 15 and 17 of the Act, and the transferred acts, as well as with consumer product safety rules or other rules and orders prescribed by the Commission.

Although the proposed rule may have an effect on private products liability litigation, the Commission believes that the proposed rule is within its authority and it believes that the benefit to be obtained from the ability to monitor consumer product safety complaints requires that the rule proposed be issued. One of the purposes of this notice is to provide opportunity for comment and legal argument on this issue.

Failure to comply with the requirements of any rule that may be promulgated in final form would constitute a violation of section 19(a)(3) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(3)), and could subject the violator to the civil and criminal penalties set forth in sections 20 and 21 of the Act (15 U.S.C. 2069, 3070).

The Commission does not view the proposed rule as the sole rule to be issued under section 16(b) of the Act. Rather, it will consider adoption of such additional rules under section 16(b) as it finds are necessary for implementing the Act or determining compliance with rules or orders prescribed under the Act.

The Commission proposes that any final rule promulgated would (1) become effective thirty days after its publication in the Federal Register, and (4) apply to all consumer product safety complaints received after the effective date of the rule.

Therefore, under the authority of section 16(b) of the Consumer Product Safety Act (Pub. Law 92-573, 86 stat. 1222, 15 U.S.C. 2065(b)), the Consumer Product Safety Commission proposes the following Part 1120:

PART 1120—RECORDKEEPING

Subpart A—Consumer Product Safety Complaints: Records, Access, and Information

Sec.

1120.1 Purpose and scope.
1120.2 Definitions.
1120.3 Records.
1120.4 Access.
1120.5 Information.

Authority: sec. 16(b), Pub. L. 92-573; 86 Stat. 1222; 15 U.S.C. 2065(b)

SUBPART A—CONSUMER PRODUCT SAFETY COMPLAINTS: RECORDS, ACCESS, AND INFORMATION

§ 1120.1 Purpose and scope

(a) This subpart is promulgated under the authority of section 16(b) of the Consumer Product Safety Act. (15 U.S.C. 2065(b)).

(b) The purpose of this subpart is to state requirements for all manufacturers, importers, private labelers, and distributors of consumer products to maintain records of all consumer product safety complaints received, to make reports of consumer product safety complaints as required in this subpart, and, upon request, to provide certain information to the Consumer Product Safety Commission concerning consumer product safety complaints. This subpart also requires that those subject to this subpart permit the inspection and copying of all consumer product safety complaints and books, records, and papers related to those complaints.

(c) This subpart applies to all consumer product safety complaints received by every manufacturer (including importer), private labeler, and distributor of a consumer product on or after the effective date of this section.

(d) This subpart applies, pursuant to section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079), to every manufacturer, importer, private labeler, and distributor of a consumer product subject to regulation under the Consumer Product Safety Act and under authority of the Acts transferred to the Commission by section 30 of Act, namely, the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) and the Refrigerator Safety Act (15 U.S.C. 1211 et seq.).

§ 1120.2 Definitions

(a) The definitions of terms set forth in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) shall apply to such terms as used in this subpart.

(b)(1) The term "consumer product safety complaint" means any oral or written communication, regardless of the truth of the allegations contained therein, received by a manufacturer, importer, private labeler, or distributor, from any individual or organization, concerning a death, illness, or injury or potential death, illness, or injury related to a consumer product or any complaint related to the safety of a consumer product. The term also includes written memoranda of any oral communication, and records of law suits related to consumer product safety.

(2) The term "consumer product safety complaint" includes the analysis, if any, by those subject to this subpart (and their agents or contractors) of any consumer product safety complaint and the written response and/or written memorandum of the oral response, if any, to any consumer product safety complaint. The analysis of the consumer product safety complaint includes such records as technical studies, tests, or other records of investigation of the complaint and the conclusion thereon, if any.

§ 1120.3 Records

(a) Every manufacturer, importer, private labeler, or distributor of any consumer product shall maintain, for a period of at least five years from date of receipt of consumer product safety complaints, records as described in paragraph (d) of this section, organized according to the consumer product about which the

complaint was made. The records so required shall be identifiable and readily accessible for inspection and copying, upon request, to duly designated officers, agents, or employees of the Consumer Product Safety Commission.

(b) Such records shall be maintained at the main corporate headquarters or principal place of business in the United States of each person subject to this section: *Provided*, That the records may be maintained at such other location(s) within the United States as may be designated by the manufacturer, importer, private labeler, or distributor subject to this subpart, if a list of the location(s) of such records is additionally maintained at such location where records are maintained and at the main corporate headquarters or principal place of business in the United States of each person subject to this subpart.

(c) The distributor or private labeler of a consumer product may delegate the responsibility for maintaining records required by this subpart to the manufacturer or importer of the consumer product: *Provided*,

(1) The manufacturer or importer agrees, in writing, to maintain the records required by this subpart in accordance with the provisions of this subpart; and

(2) The distributor or private labeler agrees, in writing, to transmit to the manufacturer or importer, all consumer product safety complaints related to the safety of the consumer product; and

(3) The distributor or private labeler maintains a copy of the delegation of responsibility and agreements required by this paragraph and a list of the person(s) to whom and location(s) to which the consumer product safety complaints have been transmitted at the main corporate headquarters or principal place of business in the United States of the distributor or private labeler; and

(4) The distributor or private labeler immediately provides the Commission access (for inspection and copying) to and information about such delegation, agreement, and list pursuant to §§ 1120.4 and 1120.5.

(d) The records of consumer product safety complaints shall contain at least the following:

(1) At least one copy of any written consumer product safety complaint;

(2) A written memorandum of each oral consumer product safety complaint;

(3) A record of any law suit(s) filed regarding or related to a consumer product safety complaint, including the date filed, the court and the docket number involved, a copy of the complaint filed, and the outcome of any such law suit, if concluded;

(4) An analysis, if any, by those persons subject to this section (and their agents or contractors) of the allegations of any consumer product safety complaint;

(5) The written response, if any, by those subject to this section to any consumer product safety complaint. If the response is oral, a written memorandum of the response shall be maintained.

(e) The records required by this subpart may be maintained in hard copies or microfilm or microfiche, or other similar manner. They may not be maintained, for the purposes of this section, on computer tape.

§ 1120.4 Access

(a) Immediately upon an oral or written request of an officer, agent, or employee duly designated by the Commission, every manufacturer, importer, private labeler, or distributor of a consumer product shall permit inspection and copying of books, records, and papers relating to consumer product safety complaints required by this subpart.

(b) Immediately upon an oral or written request of an officer, agent, or employee duly designated by the Commission, every manufacturer, importer, private labeler, or distributor of a consumer product shall permit access to and copying of list(s) of location(s) at which the records required by this subpart are maintained.

§ 1120.5 Information

Each manufacturer, importer, private labeler, or distributor of a consumer product shall immediately provide to the Commission upon oral or written request of any duly designated officer, agent, or employee of the Commission:

(a) A list of the locations of records kept in compliance with this subpart; and

(b) Answers to questions from the Commission as to whether any consumer product safety complaints have been received with regard to any particular consumer product.

Comments and views on this notice may be submitted, preferably with five copies, to the Secretary, Consumer Product Safety Commission, Room 1025, 1750 K Street, NW., Washington, D.C. 20207, until October 3, 1974. Comments received after that date will not be considered. All comments timely received will be on public view in the Office of the Secretary during normal working hours, Monday through Friday.

(Sec. 16(b), Pub. L. 92-573, 86 Stat. 1222; (15 U.S.C. 2065(b)))

Dated: August 27, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74-20186 Filed 8-30-74;8:45 am]

ATTACHMENT 6

[From the Federal Register, vol. 39, No. 89—May 7, 1974]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

Subchapter B—Consumer Product Safety Act Regulations

PART 1105—SUBMISSION OF EXISTING STANDARDS; OFFERS TO DEVELOP STANDARDS; AND THE DEVELOPMENT OF STANDARDS

Consumer Products Safety Standards; Requirements and Procedures

In the Federal Register of January 4, 1974 (30 FR 1152), and pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056), the Consumer Product Safety Commission proposed regulations (16 CFR Part 1105) covering (1) the submission of existing standards to CPSC, (2) the submission to CPSC of offers to develop consumer product safety standards, and (3) the actual development of consumer product safety standards by organizations or individuals whose offers have been accepted by CPSC. Also proposed were requirements for cost contributions by CPSC toward the development of standards. The proposal invited interested persons to submit comments on or before February 4, 1974.

In response to the proposal, comments were received from the Air-Conditioning and Refrigeration Institute; American Institute of Architects; American National Standards Institute; American Society of Association Executives; American Society for Testing and Materials; Association of Home Appliance Manufacturers; Mr. Bruce I. Bertelsen, Prof. Joseph A. Page, and Ms. Nancy Southard of the Georgetown University Law Center; Borden, Inc.; Carpet and Rug Institute; Consumers Union of United States, Inc.; Mr. John T. Crandall; Mr. Arnold B. Elkind; Gas Appliance Manufacturers Association; Glass Container Manufacturers Institute, Inc.; Lehn & Fink Products Co., Division of Sterling Drug, Inc.; Massachusetts Public Interest Research Group; Montgomery Ward; Representative John E. Moss; National Association of Manufacturers; National Electrical Manufacturers Association; National LP-Gas Association; National Retail Merchants Association; National Swimming Pool Institute; Ohio Match Co., Subsidiary of Hunt-Wesson Foods, Inc.; Personal Safety Systems; Power Tool Institute; RCA Corp.; Sears, Roebuck & Co.; Mr. C. A. Swanson; Underwriters' Laboratories, Inc.; and Wheel Estates.

The principal issues raised by the comments and the Commission's conclusions thereon are as follows: Significant changes resulting from comments received and/or from Commission evaluations are discussed.

1. *Objectives of the act.* Proposed § 1105.1(b), regarding general policy considerations, states in part, "One of the major objectives of the Consumer Product Safety Act is to reduce unreasonable risks of injury associated with the use of injury associated with the use of consumer products by developing 'consumer product safety standards' for those products."

A comment notes that consumer product safety standards are only one of the tools available to the Commission in reducing unreasonable risk of injury and suggests adding at the end of the first sentence of proposed § 1105.1(b) the phrase "where necessary to eliminate or reduce the risk of injury."

The Commission agrees that promulgating mandatory standards is not the only means provided by the act for reducing or eliminating unreasonable risks of injury. To better express this fact, sec. 1105.1(b) has been revised to provide that the objectives of the act may be achieved through the development and promulgation of mandatory standards where they are considered necessary to eliminate or reduce the risk of injury.

2. *Description of consumer product safety standard.* A comment suggests that the description of "consumer product safety standard" in proposed § 1105.1(b) is not consistent with the act and with the description in proposed § 1105.8(b).

The Commission agrees that the description of "consumer product safety standard" should be consistent whenever it is used in these procedures and that the description should follow the congressionally established description. The Commission has therefore conformed the description of "consumer product safety standard" in §§ 1105.1(b) and 1105.8(b).

3. *Participation by the public.* a. A number of comments are directed toward the practicality and reasonableness of the Commission's policy of providing for the participation of any and all interested persons in the development of standards.

The Commission provided in proposed § 1105.5(a) that interested persons could participate in one of two levels of activity, "either in person or through correspondence." To clarify more fully the position of the Commission on participation by all interested persons, the Commission has, in § 1105.5(b)(1), provided for the identification by the offeror of the number and experience of the individuals the offeror intends to be directly involved (in person) in the development of standards. Others, including all of those persons who have requested the opportunity to participate in the development of the standard, will be able to contribute by corresponding directly with the offeror and conveying any information relating to hazardous product experiences or any suggestions relating to the scope and coverage of the standard. Additionally, § 1105.7(b) provides that the offeror shall send to all participants a copy of the draft standard developed by the offeror so they may review the draft standard and provide any comments on it with respect to its adequacy or effectiveness in reducing the unreasonable risks of injury.

b. Two comments question the offeror's being responsible for giving notice to individual consumers to participate in the standards development process. One addresses the need for the Commission to provide adequate notice. While the Commission accepts some of this responsibility, it recognizes that the act specifically charges the offeror with the responsibility for providing notice and opportunity for interested persons to participate in the development of standards. The Commission, in § 1105.5(a)(2), requires the offeror to develop and implement a specific plan to provide such participation.

c. In order to encourage and facilitate the participation of the public in the standards development process, the Commission, in response to another comment, has provided in § 1105.6(e) for the maintenance of a list of all persons and organizations expressing an interest in participating in the development of standards. Further, the Commission has provided in § 1105.6(e) for the transmission of a copy of the FEDERAL REGISTER notice of proceeding as well as the FEDERAL REGISTER notice of acceptance of any offer to appropriate persons and organizations on that list.

4. *Ultimate consumers.* Proposed § 1105.1(d) expresses the general policy that all interested persons, including the general public and especially ultimate consumers, are encouraged to become involved in the development of standards as offerors and participants.

Several comments object to the stress placed upon the involvement of ultimate consumers. One suggests removing this stress by placing emphasis on the involvement of qualified representatives of affected industries as well as ultimate consumers. Another suggests eliminating the word "especially" and adding the words "technical groups" after the words "interested persons".

The Commission reaffirms its policy that ultimate consumers are to be especially encouraged to become involved in the development of standards. This does not mean, however, that other persons and groups with experience and expertise are not needed or are not encouraged to participate. Accordingly, no change has been made in § 1105.1(d) regarding the importance of ultimate consumers in standards development proceedings.

5. *Ad hoc associations.* Proposed § 1105.5(c) provides for the submission of an offer by an individual member on behalf of the members of an ad hoc association which may be accepted after the Commission receives a notarized copy of a power

of attorney from each member of the association authorizing the individual member to submit an offer.

Several comments express concern that ad hoc associations may not be technically competent or sufficiently well organized to develop a standard. Several of these comments suggest strengthening the requirements for ad hoc associations by emphasizing that the technical competency requirements apply to them or by requiring that ad hoc associations provide organizational documents and assurances that the associations will be capable of completing the development of a standard.

One comment suggests that the procedures for power of attorney appear more onerous than is necessary and questions whether a power of attorney is also necessary to enable an association to participate in the development of a standard by another offeror.

The concept of ad hoc associations has been introduced in these regulations to facilitate the development of standards by new or loosely formed groups. Although such groups must be capable of demonstrating competence prior to the acceptance of an offer, the Commission concludes that the procedures as proposed relating to ad hoc associations should not be made either more or less restrictive. The power of attorney requirements apply only to the submission of offers and not to participation in the development of a standard by another offeror. The power of attorney is necessary to help ensure that the person with whom the Commission is dealing is authorized to act for the other persons in the association. This requirement would become especially important in the event the Commission agrees to make a contribution toward the cost of the standards development.

In response to a comment, § 1105.5(c) has been clarified by deleting the phrase "Prior to acceptance of an offer from an ad hoc association," from the last sentence.

6. *Existing standards.* a. Several comments object to the requirement of proposed sec. 1105.4(b)(1) that existing standards submitted for consideration as proposed consumer product safety standards meet all of the requirements for standards developed by offerors.

The Commission agrees that this requirement is too broad and has revised § 1105.4(b)(1) to state that each notice of proceeding will establish the specific requirements for existing standards.

b. Several comments object to the requirement in proposed § 1105.4(b)(2) that the submission of an existing standard be accompanied by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the developmend and approval of the standard.

The regulation (now § 1105.4(b)(3)) has been changed by adding the phrase "to the extent that such information is available" after the word "accompanied."

c. One comment suggests that § 1105.4 be changed to permit the submission of portions of existing standards.

In the Commission's view, existing standards should be submitted in their entirety. A provision has been added (now § 1105.4(b)(2)) to require the person submitting the existing standard to identify the portions that are appropriate for inclusion in the consumer product safety standard.

d. One comment suggests requiring that an existing standard be submitted with an evaluation of all comments received during its development.

The Commission concludes that such information would be of questionable usefulness and therefore declines to adopt the suggestion.

e. Regarding proposed § 1105.3(a)(3), one comment suggests that when the Commission publishes information with respect to an existing standard that it include an evaluation of the existing standard.

Section 1105.3(a)(3) has been changed to state that the Commission will include information respecting any deficiencies in the existing standard that would make it not totally acceptable as a mandatory standard.

f. One comment suggests deleting the reference to "foreign" standards from proposed § 1105.3(a)(3). The commentor fears that foreign standards will not be suitable for domestic producers. The commentor suggests that while they may be studied during development, they should not be made mandatory unless great care is exercised.

The Commission concludes that since foreign standards will be subject to the same scrutiny and evaluation as other standards, no change is necessary.

g. In response to a comment noting that the Commission may decide both to publish an existing standard and accept an offer to develop a standard for the same consumer product, proposed § 1105.6(a) (now § 1105.6(a)(1)) has been changed to state that the Commission may accept one or more offers to develop a standard if

the Commission "(i) does not decide to publish an existing standard as a proposed consumer product safety standard, or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product."

Additionally, for completeness, paragraph (c) has been added to § 1105.4 to prescribe the conditions under which the Commission may publish an existing standard as a proposed consumer product safety standard in lieu of accepting an offer to develop a standard.

h. In response to a comment noting that an existing standard may be submitted by anyone, the third sentence of proposed § 1105.2 has been changed by deletion of the word "their" between the words "submit" and "existing." The purpose of this change is to indicate that persons do not need to have a proprietary interest in the existing standards in order to submit it.

i. In response to a comment which notes that the Commission is not required to find that there is no acceptable existing standard before it can accept an offer to develop a standard, proposed § 1105.1(c) has been changed by deleting the phrase "if the Commission determines that there is no acceptable existing standard" from the third sentence. This change is consistent with the change indicated for § 1105.6(a) (mentioned in "g" above) and also reflects the fact that the Commission may decide to both publish an existing standard and accept an offer to develop a standard for different risks associated with the product. The third sentence of proposed § 1105.1(c) has also been amended by deleting the word "new" between the words "a" and "standard" to indicate that the standards developed by the offeror may be a modification of an existing standard and may not be entirely "new."

7. *Development period.* a. Several comments object to the sentence contained in proposed § 1105.1(h) which reads "The Commission believes, however, that as a general rule, the public interest is best served by the development of standards in the shortest possible time." The comments contend that this phrase places an undue emphasis on speed as opposed to the development of an effective and workable standard.

The Commission did not intend to imply that speed was the single most important factor in the development of a standard. The sentence (now contained in § 1105.1(i)) has been revised to reflect this policy as follows: "The Commission believes, however, that as a general rule, the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in this Part 1105."

b. Proposed §§ 1105.2 and 1105.6 (a) provide that the Commission will normally accept one or more offers to develop a standard within 60 days after publication of the notice of proceeding. Several comments object to this provision because it encroaches on the already short 150-day statutory period for the development of standards and could leave as few as 90 days to develop a standard.

Section 7(b) of the act states in part that "An invitation [to offer to develop the proposed consumer product safety standard] shall specify a period of time during which the standard is to be developed which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate." Section 7(b)(4) of the act provides that the offer to develop a standard shall be submitted to the Commission within 30 days after the date of publication of the notice.

The Commission will certainly do all within its power to evaluate and accept offers within or soon after the 30-day period. The Commission concludes, however, that up to 30 additional days may be necessary to properly evaluate and accept offers. Since the act stipulates that the 150-day period shall begin when the notice of proceeding is published, the Commission is not free to change the starting date to the day offers are accepted. To compensate for the fact that this may leave as few as 90 days for the actual development of the standard (as opposed to the 120 days Congress apparently anticipated), the Commission provided in proposed § 1105.3(a)(6) (now (a)(7)) that the notice of proceeding shall specify the period of time during which the standard is to be developed and submitted to the Commission. Section 1105.1(i) states that the Commission will adopt a reasonable approach in determining the amount of time necessary to develop standards. If necessary, the Commission may change the length of time for the development of the standard. This may be accomplished in accepting an offer as provided for in

proposed § 1105.6(e)(2) (now § 1105.6(d)(2)), or by later extending the period for development if good cause is shown and the reasons for such extension are published in the FEDERAL REGISTER. To more accurately reflect the intent of the Commission, it is concluded that the regulations as proposed should not be changed in response to the comments received on this issue, except that §§ 1105.2 and 1105.6(a) have been changed to provide that the Commission will as soon as possible, usually within 60 days, accept one or more offers to develop a standard.

c. One comment suggests that proposed § 1105.2 be changed to state that extensions of time will not be granted except in extraordinary circumstances, that 60 days shall be the maximum time for the extension of a development period, and that the general public and participants in the standards development proceeding be given the opportunity to comment on the desirability of granting an extension.

While the Commission agrees that extensions should only be granted when necessary and desirable, the Commission does not agree that an arbitrary maximum is in the best interest of the public. There may be occasions when the granting of an extension of longer than 60 days would result in the completion of a standard in a shorter period of time than if the Commission were required to begin the process over or to proceed to develop a standard independently. After receiving a request for an extension, the Commission will certainly consider the views of persons having information pertinent to making the decision. However, the Commission does not agree that soliciting the views of the general public on this issue would be very helpful. Additionally, as a practical matter, the solicitation and evaluation of public comments could cause an undue delay in the development process since such solicitaton of comments would, almost of necessity, require publication of the proposed extension and invitation for public comment in the Federal Register.

8. *Technical competence.* To implement section 7(d)(1) of the act, which provides for the acceptance of offers from technically competent offerors, several sections of these regulations were proposed to aid the Commission in determining whether offerors are technically competent to develop standards. Proposed § 1105.5 (a) and (b), regarding the submission of offers, would require that certain information be provided the Commission by the offeror in submitting an offer. Proposed §1105.6 (a) established the factors the Commission would utilize in determining technical competence.

a. Several comments recommend changes in these sections which would specify the factors necessary for evaluating the offeror's technical competence in greater detail and would set forth minimum requirements, especially in the area of actual technical experience with the product to be regulated.

Although the factors to be utilized in determining technical competence might be specified in greater detail, the Commission considers the regulations as proposed to be sufficient in this respect until such time as the Commission gains sufficient experience to know which factors should be specified. Specific product experience need not be emphasized in these regulations since an offeror, in developing a plan for the participation of interested persons, should be able to overcome any personal lack of product experience by demonstrating managerial ability to obtain participants with appropriate product experience. Also, the Commission intentionally established evaluation criteria without providing minimum requirements in order to provide a degree of flexibility which would not otherwise be possible.

b. Regarding proposed § 1105.5(b)(1), which requires a statement listing the number and occupations of the personnel the offeror intends to utilize in developing the standard, several comments suggest that the phrase "personnel the offeror intends to utilize" be expanded and broken down into specific types of individual groups.

The Commission agrees and this section has been revised to require that the offeror distinguish and specify the status of the individuals the offeror plans to directly involve in the development process. Further, the term "occupations" has been replaced with the term "experience" in this section to provide the Commission with more relevant information.

c. Regarding proposed § 1105.6(a), which states that one of the factors to be considered by the Commission in determining technical competence is that the offeror has provided a rational approach to the solution of that problem, one comment suggests the deletion of this provision and the addition of the following: "that the offeror has described a rational procedure for solving that problem." The comment argues that as written, this provision would require that the offeror indicate the substance of the standard to be developed, rather than simply the procedures for developing the standard.

The Commission concludes that the suggested change should not be made since an indication of the type of standard the offeror plans to develop may be as relevant to the issue of technical competence as the procedures to be utilized in developing a standard.

9. *Commission requirements for the development of standards.* Proposed § 1105.6(a), dealing with the acceptance of offers, provides in part that the Commission will accept one or more offers if it determines that the offeror will comply with all of the requirements of the Commission for the development of a standard.

One comment contends that this section fails to specify with sufficient detail the requirements for the development of standards in general. The comment also contends that by using the word "standard" in the singular in this portion of the regulations, the Commission is stating that the development of each standard will be subject to a different set of requirements and that this is not in line with the statutory provisions of section 7 of the act.

The Commission, having considered the comment, concludes that a change in the regulations on this issue is unwarranted. The regulations in this part for the development of standards will apply to the development of all standards and are as detailed as is presently possible and desirable. The Commission chooses not to specify more detail at this time in order to provide a degree of flexibility and to gain experience in working with these regulations.

Regarding the issue of whether any Commission requirements for the development of a specific standard should be prescribed other than in these regulations, the Commission concludes that this may be necessary because of the diverse nature of the products under the Commission's jurisdiction and the different types of standards to be developed. Any additional requirements will, however, be stated in each notice of proceeding.

10. *Acceptance of more than one offer.* Proposed § 1105.6(a) states that the Commission will accept one or more offers to develop a standard. One comment suggests that more than one offer should be accepted only in unusual and urgent circumstances since some of the participants in the standards development process, particularly manufacturers, would then be forced to participate with two or more offerors and that this would waste time and money.

The Commission recognizes that it has no statutory duty to accept offers from more than one offeror and that in many instances, active participants representing the same entity would be present during the development by each of the several offerors. Where the Commission determines, however, that a better standard would be developed if there are multiple offerors it will accept more than one offer. This may occur, for example, where multiple offerors, are deemed necessary to cover all of the identified risks; to permit development with diverse and unique approaches; or to expand the probability of success. The Commission will not accept multiple offerors simply because it has received offers from more than one technically competent offeror.

11. *Notification of nonacceptance.* When the Commission has determined that an offer to develop a standard should not be accepted, the Commission shall, as provided by proposed § 1105.6 (g), notify the offeror in writing of the fact that the offer has not been accepted.

Several comments suggest that this section be changed to provide for the Commission to also inform the offeror of the reasons for nonacceptance. One comment suggest that in addition to notifying individual offerors of the reasons for the nonacceptance of their offers, that the section be changed to provide for the notification to include a general description of the types of defects encountered in other unacceptable offers. This comment contends that the adoption of this suggestion would encourage unsuccessful offerors to continue to submit offers in the future.

The Commission concludes that unsuccessful offerors should, when they so request, be informed of the reasons for the nonacceptance of their offers and has changed the regulation (now § 1105.b(f) accordingly. However, the Commission does not view the requirement that it include a discussion of the reasons for the nonacceptance of other offers as serving a useful purpose and therefore does not adopt this suggestion. Copies of letters to unsuccessful offerors will be available under the Freedom of Information Act to anyone requesting access to such information.

12. *Modification of offers.* Proposed § 1105.6(b), regarding the acceptance of offers, states as follows: "In accepting an offer to develop a standard, the Commission may require a modification of the offer as a condition of acceptance." The

purpose of this provision is to permit an offeror to modify an offer which would be acceptable only if certain changes were made first.

Several comments express the concern that this provision would permit the Commission to change the offer after it had been accepted.

To more accurately reflect the Commission's intent, this provision has been changed by deleting the word "in" and replacing it with words "prior to" and adding the word "minor" to qualify "modifications."

13. *Amending standards.* Several comments express concern over the fact that the proposed regulations fail to provide procedures for updating or amending standards once they have been issued and suggest that the final regulations include such procedures. Two comments suggest the establishment of a procedure whereby the offeror who developed the standard would be appointed on a continuing basis to monitor and update the standard.

The Commission concludes that the changes suggested should not be adopted in the final regulations since section 9(e) of the act provides that where an amendment to a standard involves a material change, sections 7 and 9 of the act apply. Therefore, where the Commission believes a material change is required, it will initiate a proceeding in the same manner as it would initiate a proceeding for the development of a new standard. Where the required change is not considered material, it will amend the standard by rule in accordance with the procedure specified in section 9(a)(2) of the act.

14. *Consumer complaint letters.* One comment suggests that the regulations be changed to require all manufacturers and distributors of consumer products to file with the Commission a copy of each letter received by the company alleging a safety defect in one of its products. The purpose of this suggested requirement would be to provide the developer of a standard with information relating to consumer experiences with the product.

In response to this comment, the Commission concludes that this requirement is not appropriate for inclusion in these rules. The notice of proceeding should adequately define the risks of injury to be regulated and the Commission will make information relevant to the analysis of the hazard available to the offeror. Additionally, a Commission press release will indicate that any interested person may communicate directly with the offeror.

15. *Testing programs.* Proposed § 1105.8(a) states that recommended standards submitted by the offeror shall, where the Commission considers it to be appropriate, contain testing programs and that testing programs, where the Commission considers it to be appropriate, shall include sampling plans.

Several comments object to the requirement that sampling plans be included with the standards for one or more of the following reasons: (1) because the requirement would dilute the incentive for an offeror to develop a reasonable and technologically practicable standard; (2) because it would be better to require testing programs under section 14 of the act which deals with product certification rather than under section 7; (3) because mandatory test programs would increase compliance costs for the manufacturer without materially improving the condition causing the defect; (4) because no one testing program can be appropriately used by all manufacturers of a product; (5) because the propriety of including testing programs and sampling plans is questionable under the act; (6) because the penalties in the act for non-compliance provide all the incentives necessary to assure that products conform to Commission standards; (7) because manufacturers should have a choice of methods to determine quality control; (8) because the development of sampling plans is beyond the expertise of many would-be offerors; and (9) because sampling plans can only be developed after a standard is completed and would require an undue amount of time. Several comments endorse the concept of requiring testing programs with sampling plans. One comment suggests adding a requirement that sampling plans be based on standard acceptable quality control levels as established by the American Society for Quality Control.

The Commission concludes that it is neither necessary nor appropriate to resolve the issue of the correctness of requiring offerors to develop testing programs, including sampling plans, in these regulations. Therefore, § 1105.8(a) now provides that recommended standards shall, if the Commission considers it to be appropriate, contain reasonable testing programs, including sampling plans. This section has, however, been changed to delete the definition of the term "sampling plans." The meaning of the term will be made clear if and when the Commission determines that a sampling plan should be part of a particular standard.

16. *Test methods.* Proposed § 1105.8(a) provides that recommended standards shall be submitted, where the Commission considers it appropriate, with suitable test methods for the measurement of compliance with proposed standards which are reasonably capable of being performed by persons subject to the act or by private testing facilities.

Several comments endorse the inclusion of the requirement for test methods. One comment suggests that, except in cases where a standard is written in terms of a specific test, the requirement be changed to provide that manufacturers shall not be precluded from using other suitable test methods.

17. *Test instruments or devices.* Proposed § 1105.7(g) provides that if the Commission determines that test instruments or devices are necessary for the evaluation of the standard, the Commission may require the offeror to sell the instrument or device to the Commission at the offeror's cost.

Three comments object to this provision as being an unreasonable forced sale and suggest that the submission of plans and specifications should be sufficient.

The Commission concludes that there may be occasions where prompt evaluation of the standard requires immediate access to the use of the test instrument or device. In such a case, the mere receipt of plans and specifications may not be sufficient. The regulation has been changed, however, to provide that where the offeror does not wish to sell the instrument or device to the Commission, it may loan the instrument or device to the Commission for use during the evaluation. It has also been changed to provide that in any circumstance, detailed descriptions or plans and specifications shall be submitted.

18. *Economic and environmental impact information.* Proposed § 1105.7(c)(4) would require the offeror to maintain and submit to the Commission records consisting of a statement of the economic and environmental factors considered during the development of the standard. Proposed § 1105.8(e) would require the offeror to submit to the Commission information demonstrating that compliance with the standard would be technologically practicable as well as information, where it can reasonably be obtained, on the potential economic and environmental impact of the standard.

One comment contends that the regulations should be revised to require the offeror to take into account the economic impact of a proposed standard. Several other comments argue that offerors should not be required to prove technological practicability or to prepare economic and environmental impact statements since this responsibility properly belongs to the Commission.

The Commission recognizes that it has the responsibility for ultimately determining the technological practicability in addition to the economic and environmental reasonableness of consumer product safety standards. However, in order for the recommended standard to be one which would be promulgated, it is necessary for offerors to at least consider these factors and keep a record of the issues discussed. Therefore, the Commission concludes that the proposed sections of the regulations relating to these issues strike the proper balance and should not be changed.

19. *Circulation of draft standards for comment.* Regarding proposed § 1105.7, dealing with the development of recommended consumer product safety standards, subsection (b) states in part as follows: "The offeror, after considering all suggestions and contributions, shall draft a standard. The draft standard shall be sent to all participants and to other appropriate persons (including a representative number of manufacturers or wholesalers and importers of the product proposed to be regulated and consumers) for their review and concurrence. Unanimity among all participants and appropriate persons shall not be a prerequisite to the submission by the offeror to the Commission of a standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission."

a. A comment suggests that since the cost of reproducing and distributing draft standards may be quite large, the regulations should be changed to specifically provide that the Commission will bear the cost of reproducing and distributing draft standards.

The Commission concludes that since § 1105.9 already provides the mechanism for making requests for cost contributions, a special provision in these regulations is not necessary.

b. A comment notes that the phrase "for their concurrence" (as used in proposed § 1105.7(b)) is inconsistent with the sentence following since the phrase implies that agreement is necessary.

The Commission agrees and has revised § 1105.7(b) to state "for their review and concurrence or nonconcurrence."

c. One comment contends that the language of proposed § 1105.7(b) implies that the offeror may not begin drafting a standard until all suggestions and contributions have been received and suggests that the language be revised to state that the offeror shall draft the standard prior to or concurrent with the receipt of comments and suggestions.

The Commission concludes that the suggested revision should not be made since prior unilateral drafting by the offeror could vitiate the impact of the participation procedures. However, the Commission does not view the language as proposed as preventing the offeror from proceeding through a series of early drafts.

d. Several comments concern the language of proposed § 1105.7(b) referring to the persons and organizations to whom the draft standard shall be sent for comment.

One comment suggests that the offeror only be required to submit the draft to proper representatives of all participants, not to all participants. Another comment makes a similar suggestion to transmit the draft to representatives of the necessary interests as opposed to individuals.

The Commission concludes that the Congress intended all interested persons to have the opportunity to participate in the development of standards and that reviewing the draft standard is one opportunity to which they are entitled. Therefore, the proposed requirement for transmitting the draft standard to all participants is unchanged.

In response to the comments concerning review by representatives of the necessary interests including persons and organizations other than participants, the Commission concludes that the draft standard should be transmitted only to persons and organizations who have previously become participants. All other interested persons will have ample opportunity to express their views concerning the standard during the rulemaking procedures under section 9 of the act. The portion of § 1105.7(b) dealing with this has therefore been revised to read "The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence."

20. *Evaluation of comments.* Proposed § 1105.7(c)(3) provides that each offeror must maintain written records of an evaluation by the offeror of all of the comments received by the offeror during the development of the standard.

Two comments suggest that this requirement is overly burdensome and would be counterproductive. One of the comments suggests deleting § 1105.7(c)(3) as proposed and rewriting it to state as follows: "A statement or evidence by the offeror that all of the comments received by the offeror during the development of the standard received fair and responsible consideration."

The Commission concludes that the statutory requirement for the opportunity for public participation in the development of standards requires that substantive issues raised in the comments be considered by the offeror and that the best evidence of offeror consideration is a record of the offeror's evaluation. Section 1105.7(c)(3) has, however, been changed to require that a record be maintained of "a discussion describing the basis for resolution by the offeror of all of the substantive issues raised during the development of the standard."

21. *Independent evaluations.* One comment expresses the opinion that while participation in the development of standards is to be expected by those having a monetary interest in the outcome, it may be difficult to achieve consumer participation. This comment suggests that until such time as an act is passed which provides an official consumer advocate, these regulations should contain a requirement for an independent evaluation by a private testing laboratory of each standard submitted by an offeror.

While the Commission recognizes that an independent evaluation may be necessary under certain circumstances, it sees no need to impose this obligation on itself in evaluating each and every standard submitted. Where deemed necessary, however, the Commission certainly will seek independent evaluations.

22. *Analysis of standard by the offeror.* Proposed § 1105.8(c) provides that "Each requirement of a standard [developed by an offeror] shall be supported by: (1) An analysis demonstrating that the requirement is reasonably necessary to prevent or reduce the unreasonable risks of injury identified in the notice of proceeding; and (2) a statement explaining why the requirement is in the public interest."

a. Two comments contend that references throughout these regulations and specifically in this section should not be made to "unreasonable risks of injury." It is argued that this determination requires a balancing of various factors and should not be made prior to the promulgation of the standard.

The Commission agrees that the final determination of whether the risks are unreasonable must be reserved until the promulgation proceedings when the Commission will have all the necessary facts before it. Since section 7 of the act directs that any requirement of a standard be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with a product, and also directs that the notice of proceeding state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury, the Commission must preliminarily identify what it believes at the time to be unreasonable risks in order that the offeror's efforts will be directed only to risks which may be unreasonable. However, neither the Commission's initial identification of unreasonable risks of injury, nor the offeror's analysis referring to the risks as being unreasonable binds the Commission to the determination in instituting its promulgation proceedings. Ample opportunity will be afforded in these proceedings for interested persons to comment on and object to the Commission's determinations.

b. One comment suggests that proposed § 1105.8(c) be changed to provide that the offeror must present an "analysis" demonstrating that each requirement is in the public interest rather than a "statement." Another comment recommends that the public interest statement be required only for the entire standard and not for each requirement of the standard.

The Commission agrees with both comments and has revised § 1105.8(c) accordingly.

c. One comment questions whether the Commission will provide offerors with a hazard analysis demonstrating that the requirements are necessary.

The Commission cannot provide the offeror with an analysis demonstrating that the Commission will not know what requirements will be developed by the offeror. The Commission will, however, make material available to the offeror relating to the risks of injury, the need for a standard, and any other information which may be helpful to the offeror. This is provided for in § 1105.3(a)(4) of the final regulations.

23. *Proprietary information.* Proposed § 1105.7(c) provides for the maintenance by the offeror of certain records concerning the development of the standard.

One comment suggests that this section be changed to require the offeror to carefully identify confidential information. Another comment suggests adding a sentence to the end of paragraph (c) as follows: "Except that nothing in this subsection (c) shall be considered to require or permit the disclosure of trade secrets or other proprietary or private data otherwise prohibited by the Product Safety Act." The comment argues that this sentence is necessary since the act prohibits the disclosure of proprietary data.

The Commission recognizes its duty not to disclose trade secrets and other confidential information. However, certain material may be necessary for the Commission to properly evaluate the standard. Where the Commission receives such information which is legitimately entitled not be disclosed, the Commission will not disclose it. A change in these regulations is not necessary since the closing text of proposed § 1105.7(c) (now part of § 1105.7(c)(5)) provides that the availability of information is subject to the restrictions contained in the Freedom of Information Act and the Consumer Product Safety Act. A change to require that all confidential information be carefully identified is also not necessary since the Commission's regulations under the Freedom of Information Act will set forth provisions relating to the submission of confidential information to the Commission.

24. *Monitoring by Commission employees; technical assistance by the Commission.* Proposed § 1105.7(a) provides that offerors whose offers have been accepted shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

One comment asks how the Commission plans to monitor the development process. Another comment suggests that the Commission provide technical assistance to offerors in developing standards, particularly those lacking technical expertise.

The degree of Commission participation in the developmental process, especially through the device of "monitoring", has been intentionally left unspecified

in these regulations. This matter is such that only experience will enable the Commission to reach the proper balance between what could be termed interference and what could be termed lack of cooperation.

25. *Satisfactory progress.* a. Regarding proposed § 1105.7(d), which provides for the submission of progress reports to the Commission for the purpose of determining whether the offeror is making satisfactory progress, two comments suggest that requirements for the submission of progress reports be more clearly specified.

The Commission agrees and has revised § 1105. 7(d) to specify monthly progress reports containing certain information.

b. One comment objects to the inclusion in proposed § 1105. 7(d) of a provision for Commission inspection of the offeror's facilities and developmental activities.

In the Commission's view, this authority is necessary as an aid to the Commission in determining whether the offeror is making satisfactory progress in the development of the standard.

c. Two comments suggest that satisfactory progress should not, as stated in proposed § 1105.7(d), be measured solely by completion of the development of the standard by the end of the development period. One of these comments suggests that the regulations be changed to permit the Commission to extend the development period as an alternative to terminating the offeror's role in the development process (as provided for in proposed § 1105. 7(e)) when the offeror is found not to be making satisfactory progress.

The Commission agrees that there may be circumstances where extending the development period would be preferable to terminating the offeror's role in the development process and has revised § 1105.7(e) accordingly.

26. *Termination of the development proceeding.* Proposed § 1105.7(f) provides that the development proceeding may be terminated if no offeror is making satisfactory progress and that the Commission may then independently develop a proposed standard or contract with third parties for the development of a proposed standard.

Several comments address the topic of Commission policies and procedures following termination of the development proceeding. The Commission concludes that a discussion of the course of action to be taken following termination is not an appropriate subject for coverage in these regulations. Section 1105.7(f) has therefore been changed to eliminate the phrase "or contract with third parties for the development of a proposed standard," since this option would remain available to the Commission irrespective of the fact that it is not specified in these regulations.

27. *Development of standards by the Commission.* Section 7(e) of the Act provides that, except under certain circumstances, the Commission may not independently develop a proposed consumer product safety rule. These circumstances are essentially as follows: (1) that having published a notice of proceeding, the Commission has not accepted an offer to develop a standard within 30 days of the date of publication of the notice; (2) that the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated; or (3) that the Commission has determined that no offeror whose offer was accepted is making satisfactory progress in the development of the standard. These circumstances are restated in proposed §§ 1105.6(d) and (f) and 1105.7(f).

a. One comment suggests that proposed § 1105.6(f) be changed to state as follows: "In any case in which the sole offeror whose offer is accepted is the manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard, the Commission *shall* independently proceed to develop a proposed standard during the development period." (emphasis added)

The Commission concludes that the addition of this requirement is not desirable since it could force duplicative efforts in situations not requiring independent development by the Commission. Had Congress beleived that the development of a standard by the manufacturer, distributor, or retailer of a product to be regulated was inherently not in the public interest, it could have required independent development by the Commission.

b. One comment suggests that a phrase be added to proposed § 1105.6(f) as follows: "and shall independently proceed to develop or acquire the technical capability necessary to properly evaluate the standards recommended to it."

The Commission concludes that the addition of this phrase is unnecessary since it implies that the Commission will only acquire the technical capability necessary to properly evaluate standards recommended to it when the sole offeror whose offer has been accepted is the manufacturer, distributor, or retailer of the product proposed to be regulated. The Commission will always prepare itself to evaluate recommended standards irrespective of the type of offeror developing the standard.

c. A comment recommends that proposed § 1105.6(f) be changed to add a statement to the effect that when the sole offer accepted is that of a trade association the Commission may not proceed to develop a proposed standard.

The Commission concludes that the suggested change is not appropriate.

d. Several comments suggest that when the Commission proceeds to independently develop standards, it should provide for public participation in the same manner as offerors are required to provide for public participation.

Since these rules are intended to prescribe the manner in which standards will be developed by offerors, and are not intended to regulate the independent development of standards by the Commission, the Commission concludes that it is not appropriate for these rules to address the procedures for the independent development of standards by the Commission itself. Proposed § 1105.1(a) has been changed to eliminate the implication that these rules will govern the independent development of standards by the Commission.

28. *Format at recommended standards.* Proposed § 1105.8(a) provides that recommended standards shall be submitted in the format prescribed by the Commission. Proposed § 1105.8(b) provides that a standard shall be written in a manner appropriate for use as a federal mandatory standard as specified in the format established by the Commission.

Two formats have been submitted to the Commission with the comments for consideration for use as the Commission's format. One comment notes that the offeror will need the format before undertaking the development work and suggests that the regulations be changed to require that the Commission format be published in the FEDERAL REGISTER with the notice of the acceptance of an offer.

The Commission agrees that an offeror should have the format before commencing the development of the standard and has changed § 1105.8(a) to provide that the format for each standard will be made available to the offeror on or before the acceptance of an offer.

29. *Contributions to the offeror's cost.* a. Proposed § 1105.9(h)(1) provides that the Commission will not contribute to ward "Costs for the acquisition of any interest in land or buildings, however, the Commission may contribute toward the lease or rental of land or buildings."

One comment objects to Commission contributions toward the lease or rental of land or buildings as a violation of the prohibitions established in section 7(d)(2) of the act.

No change in the regulations (now § 1105.9(g)(1) is considered necessary with respect to this comment since the Commission interprets the statutory prohibition of contributions for the acquisition of land or buildings not to include payments for leases or rentals during the period of development. It is the view of the Commission that to construe the word "acquisition" to exclude contributions toward leases or rentals would not be consistent with the congressional intent for the Commission to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations.

b. Another comment suggests that a provision be added to proposed § 1105.9(a) that the Commission may agree to contribute to the offeror's cost only in those cases in which the Commission determines that the offeror "has the technical competence and other capabilities provided in the statute and defined in these regulations." This comment contends that the criteria for contributions does not include the test of competence and will therefore not adequately protect the Commission, the public, or competing offerors.

The Commission concludes that no change in the regulations is warranted by this suggestion since Commission contributions are already subject to the acceptance of an offer from a technically competent offeror, This is provided for in § 1105.9(a), which states in part: "The Commission may, in accepting an offer, agree to contribute to the offeror's cost * * *."

c. One comment contends that the requirements for the submission of offers (§ 115.5) are so formal that it would require considerable time and money to

prepare an offer. The comment suggests that to encourage the submission of offers by consumer groups, the Commission should enter into agreements to reimburse the offeror for standards development costs based upon a "brief prospectus" rather than a formal offer.

The Commission concludes that the regulations should not be changed in response to this comment. The requirements established for the submission of offers are minimal. They contain only what the Commission believes to be essential for the proper evaluation of submitted offers.

d. One comment recommends that the regulations be revised to provide that offerors whose offers have been accepted as well as "good faith offerors" whose offers have not been accepted, be reimbursed for their costs in preparing offers. The purpose of this change would be to encourage the preparation of offers by those who might otherwise hestiate to do so.

The Commission is authorized by section 7(h)(2) of the act to contribute only to the offeror's cost in developing proposed consumer product safety standards. Since the act does not expressly authorize the Commission to reimburse offerors for the cost of preparing offers, the suggested change is not warranted.

e. One comment recommends that the regulations be revised to state that the amount of contribution requested shall have no bearing on the acceptability of an offer. The argument presented in support of this recommendation is that otherwise acceptable offers should not be rejected on the basis of the contribution requested and that the act does not authorize rejection on this basis.

The Commission agrees that the evaluation of an offer should not be affected by the amount of contribution requested by the offerors. However, the Commission does not feel it necessary to revise the proposed regulations to eliminate any consideration of the amount of the contribution requested from the decision to accept an offer.

f. Proposed § 1105.9 (g) and (h) (now § 1105.9 (f) and (g)) sets forth statements of items of cost toward which the Commission may contribute and items of cost toward which the Commission will not contribute. Included is a reference to the Federal Procurement Regulations, 41 CFR Part 1–15.

One comment suggests that since these regulations extend over 60 pages, the Commission should either specifically refer to the applicable sections or delete the reference to the procurement regulations.

The Commission gave consideration to developing a set of principles for determining allowable costs for which it would reimburse offerors developing standards. However, it is not known what costs can be anticipated in the course of developing a standard. Accordingly, it was decided to adopt an established set of cost principles. Although the cost principles in 41 CFR Part 1–15 are extensive, only a subpart of those principles will apply to any one development agreement, depending on the type of organization that is developing the offer. For example, if a university is developing a standard, the subpart principles governing educational institutions would apply. The Commission therefore declines to adopt the suggestion.

g. Proposed § 1105.9(h)(2) (now § 1105.9(g)(2)) provides that the Commission will not contribute toward "costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer."

A comment suggests amending this section by adding that "the Commission will contribute toward the salary costs of an offeror at the time that the offer is made, to pay longevity, overtime, or other routine increases to its personnel during the course of development of the standard, and will contribute toward the salaries of new employees or consultants hired by the offer to aid in the development of the standard."

The Commission agrees that part of the suggestion has merit and has revised the subsection to provide an exception for the payment of longevity and other routine increases to individuals which may accrue during the development of the standard. The Commission does not agree to include contributions toward overtime since the offeror should schedule the development of the standard without planning on overtime. Any work during overtime hours will normally be the offeror's responsibility. It is not considered necessary to revise the subsection to allow for the payment of the salaries of new employees of consultants since the language of the subsection does not now prohibit this.

h. A comment suggests that the regulations be revised to specifically provide for the Commission to contribute toward the offeror's costs when the offeror is a trade association or business corporation. The reason given is that often these groups have small budgets and could not otherwise afford to develop standards.

Although the legislative history of the act indicates that Congress intended cost contributions to be used as an aid to permit consumer organizations to engage in standards development or to participate in the development of a standard by another offeror, neither the act nor these regulations preclude contributions to other types of groups. Since the Commission has not prescribed a list of those organizations to which it might contribute, the Commission concludes that the suggested revision should not be made.

i. Proposed § 1105.9(c) states as follows: "The offeror should normally finance at least 5 percent of the total project cost. If the offeror, however, has little or no nonfederal sources of funds from which to make a cost contribution, the requirement for cost sharing may be waived by the Commission."

The Commission, having considered comments relevant to the issue of the 5-percent financing requirement, concludes that proposed § 1105.9(c) should be deleted. Although the Commission does expect offerors to commit as much of their own resources toward the development of standards as is reasonably possible, a requirement for a specific percentage contribution does not appear to be necessary.

30. *Miscellaneous.* a. One comment recommends that before a press release is issued relating to the initiation of a proceeding for the development of a standard that the press release be circulated for comment to affected manufacturers. The purpose of this would be to prevent misrepresentation and unwarranted inferences by the press. The comment contends that this procedure would be consistent with section 6 (b) and (c) of the act.

Since press releases relating to the initiation of a proceeding to develop a standard will generally not identify a product by manufacturer or brand name, the Commission concludes that this recommendation need not be adopted.

b. For the purpose of achieving consistency with the act, one comment suggests changing the word "risks" in proposed §§ 1105.3(a) (1) and (2) to the word "risk."

The Commission declines to make this change since it would be impractical in most cases to proceed with the development of a standard on the basis of a single risk where more than one risk can be identified with a single consumer product.

c. In response to a comment regarding proposed § 1105.3(a)(4), professional societies have been added to the list (now § 1105.3(a)(5)) of persons invited to submit an existing standard or offer to develop a proposed standard.

d. In response to several comments regarding proposed § 1105.3(a)(5), the regulations have been changed (now § 1105.3(a)(6)) to provide that a requirement for any additional information to be submitted to the Commission, either with an existing standard or with a standard developed by an offeror, will be included in the Federal Register notice of proceeding to the extent the need for such additional information is known at the time the notice of proceeding is published.

e. One comment suggests addition of the word "domestic" to the list of persons in proposed § 1105.5(a) who may submit offers to develop standards. The Commission declines to adopt this suggestion since the act itself neither makes nor implies this restriction. It is noted, however, that the Commission is of the view that it can only accept offers from those fully capable of providing the opportunity for public participation within the United States.

f. Several comments suggest including the terms "trade associations" "professional or technical societies," and "retailers" in the list of organizations contained in proposed § 1105.5(a)(1) of persons to receive notice of the right to participate in the development of the standard. The Commission agrees and has made the change.

g. In response to a comment suggesting that offers may be accepted from organizations as well as from persons, proposed § 1105.6 (c) and (d)(1) has been changed to provide for the identification of the organizational affiliation of the person whose offer is accepted.

h. In response to a comment, proposed § 1105.8(e) has been changed by adding the phrase "by the offeror" between the words "obtained" and "concerning" in the last sentence and between the words "obtained" and "data" in the second sentence. This change is to indicate that potential economic and environmental effect information is to be submitted to the Commission with the standard developed by the offeror only to the extent it can reasonably be obtained by the offeror.

i. Proposed § 1105.8(e) has been changed in response to a comment by the addition of the words "small business" between the words "on" and "and" in the second sentence. This change was made in recognition of the fact that in submitting economic effect information, small business should not be overlooked.

Therefore, having evaluated the comments received, the Commission concludes that the proposed regulations, with changes, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (sec. 7, Pub. Law 92-573, 86 Stat. 1212-15; 15 U.S.C. 2056), a new Part 1105 is added to Title 16, Chapter II, Subchapter B, as follows:

Sec.

1105.1 General policy considerations.
1105.2 Summary of time sequence for the development of standards.
1105.3 Commencement of proceedings.
1105.4 Submission of existing standards.
1105.5 Submission of offers.
1105.6 Acceptance of offers.
1105.7 Development of recommended consumer product safety standards.
1105.8 Recommended consumer product safety standards developed by offerors.
1105.9 Contributions to the offeror's cost.

AUTHORITY: Sec. 7, Pub. Law 92-573, 86 Stat. 1212-15; 15 U.S.C. 2056.

§ 1105.1 General policy considerations

(a) The general policy under which the procedures in this Part 1105 are issued is that the interest and participation of the public is vital for carrying out the functions of the Consumer Product Safety Commission. Commission activities and deliberations are open to the public and afford any interested person the opportunity to participate and be heard. Accordingly, standards development activities by offerors will be open to the public and will afford the opportunity for any interested person to participate in the development of standards.

(b) The major objective of the Consumer Product Safety Act ("act") is to reduce unreasonable risks of injury associated with the use of consumer products. This objective may be achieved through the development and promulgation of mandatory "consumer product safety standards" where they are considered necessary to eliminate or reduce the risk of injury. A consumer product safety standard is a standard which will consist of (1) requirements as to performance, composition, contents, design, construction, finish, or packaging, or (2) requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions, or (3) any combination of (1) and (2). Requirements other than those relating to labeling, warnings, or instructions, shall whenever feasible be expressed in terms of performance requirements.

(c) Under the act, consumer product safety standards may originate in three ways. First, the Commission, after publishing a "notice of proceeding" in the Federal Register, is authorized to publish as a proposed standard an existing standard which has been previously issued or adopted by a qualified public or private agency or organization. Second, the Commission is authorized to accept offers from one or more persons or organizations to develop a standard. Third, the Commission may under certain circumstances independently develop a standard.

(d) Since safety standards are intended to eliminate or reduce unreasonable risks of injury associated with consumer products, the Commission, in issuing this Part 1105, seeks the involvement of all interested persons, the general public, and especially ultimate consumers. Ultimate consumers and thier representatives, as well as all other interested persons, are invited and encouraged to become involved by submitting offers to develop standards and by participating in the development of standards by other offerors.

(e) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards; such groups are referred to in these rules as "ad hoc associations."

(f) Public involvement will be encouraged through the use of extensive public notice. In addition to providing notice in the Federal Register, the Commission will issue a press release at the initiation of a proceeding. This release will invite any person to either submit an existing standard or offer to develop a standard. A press release will also be issued at the time an offer is accepted. This second press release will invite all interested persons to participate in the development of a standard and will describe the method by which interested persons, including ultimate consumers, may participate.

(g) The Commission will maintain a list of all persons and organizations that have expressed an interest in either being offerors or in participating in the development of standards. Copies of the FEDERAL REGISTER notice of proceeding, press release, and/or other relevant documents will be transmitted by the Commission to appropriate persons and organizations on the list that have expressed

an interest in being offerors. Copies of the Federal Register notice of proceeding and the notice of acceptance of any offers will be transmitted by the Commission to appropriate persons and organizations on the list that have expressed an interest in participating in the development of standards.

(h) The act enables the Commission to contribute to the offeror's cost in developing a standard in any case in which the Commission determines that a contribution is likely to result in a more satisfactory standard. The Commisssion views this provision of the act as a means by which a variety of organizations will be able to develop standards. The Commission also views this provision as a means by which the Commission can assist a cross section of interested persons, including consumers, to participate in the development of standards.

(i) The act provides that the invitation for the submission of offers to develop a standard shall state the period of time during which the standard is to be developed. Congress anticipated that this period would normally end 150 days after the publication of the invitation. The act also provides that the Commission may extend or shorten the period for development if it finds for good cause that a different period of time is appropriate either at the time of the invitation or at a later time. The Commission expects to receive standards that will, if adopted, appropriately reduce the unreasonable risks of injury to the public. The Commission will adopt a reasonable approach to determining the amount of time necessary to develop standards. The Commission believes, however, that as a general rule the public interest is best served by the development of standards in the shortest possible time commensurate with the objectives of the act and in conformance with the requirements contained in this Part 1105.

§ 1105.2 Summary of time sequence for the development of standards

The notice of proceeding inviting the submission of existing standards and the submission of offers to develop standards will specify a period of time during which the standard is to be developed and submitted to the Commission. The act specifies that this period will end 150 days after the publication of the notice in the Federal Register, unless the Commission for good cause finds, and includes such finding in the notice, that a different period is appropriate. Under the act, persons must submit existing standards or offers to develop standards to the Commission within 30 days after the date of publication of the notice of proceeding in the Federal Register. The Commission will evaluate the submissions and publish a summary of the terms of any accepted offer or offers as soon as possible, usually within 60 days after the date of publication of the notice of proceeding. In submitting an offer to develop a standard, each offeror is required to include a realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the development period. In accepting an offer and publishing a notice of the summary of the terms of each accepted offer, the Commission will either reaffirm the original period of time for the development of the standard, or, for good cause stated, establish and publicize a new period of time for the development of the standard. The standard, with all required accompanying information, must then be submitted to the Commission within the specified time, unless the Commission grants an extension and publishes a notice in the Federal Register stating its reasons for the extension.

§ 1105.3 Commencement of proceedings

(a) A proceeding for the development of a consumer product safety standard shall be commenced by the publication of a "notice of proceeding" in the Federal Register which shall:

(1) Identify the product and clearly describe the nature of the risks of injury associated with the product;

(2) State the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risks of injury associated with the product;

(3) Include information with respect to any existing domestic, foreign, or international standard known to the Commission which may be relevant to the proceeding, including information as to any deficiencies that the Commission recognizes in each identified standard that may make it not totally acceptable as a proposed rule;

(4) Provide information concerning the availability of Commission material relating to: (i) The specific nature of the risks of injury associated with the product, (ii) the basis for the Commission's determination concerning the need for a mandatory standard, and (iii) additional information relating to the development of a mandatory standard which may be helpful to potential offerors;

(5) Include an invitation for any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person, within 30 days after the date of Federal Register publication of the notice:

(i) To submit to the Commission an existing standard as the proposed consumer product safety standard; or

(ii) To offer to develop a proposed consumer product safety standard;

(6) Include, to the extent known at the time the notice of proceeding is published, any requirement for additional information which is to be submitted to the Commission with either an existing standard or a standard to be developed by an offeror; and

(7) Specify the period of time during which the standard is to be developed and submitted to the Commission.

(b) The Commission will, for the purpose of providing greater public awareness of its actions, issue a press release concerning the initiation of the proceeding. The press release will summarize the information contained in the Federal Register notice, including the invitation to any interested organization or person to submit an existing standard or to offer to develop a proposed consumer product safety standard.

(c) The Commission will transmit a copy of the Federal Register notice, press release, and/or other relevant documents to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in being offerors for one or more standards.

§ 1105.4 Submission of existing standards

(a) Any standards-writing organization, trade association, consumer organization, professional or technical society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit a standard previously issued or adopted by any private or public organization or agency, domestic or foreign, or any international standards organization, that contains safety-related requirements which the person believes would be adequate to prevent or reduce the unreasonable risks of injury associated with the product identified by the Commission.

(b) Any submission of an existing standard should:

(1) To the extent possible, meet the requirements for standards developed by offerors contained in section 1105.8 as specified in each notice of proceeding;

(2) Identify the specific portions which are appropriate for inclusion in the proposed rule; and

(3) Be accompanied, to the extent that such information is available, by a description of the procedures used to develop the standard and a listing of the persons and organizations that participated in the development and approval of the standard.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under the act would eliminate or reduce the unreasonable risks of injury associated with the product, then the Commission may, in lieu of accepting an offer to develop a standard under section 1105.6, publish the existing standard as a proposed consumer product safety standard.

§ 1105.5 Submission of offers

(a) Any standards-writing organization, trade association, consumer organization, technical or professional society, testing laboratory, university or college department, wholesale or retail organization, Federal, State, or local government agency, engineering or research and development establishment, ad hoc association, or any company or person may submit an offer to develop a proposed consumer product safety standard. Each offer shall include a detailed description of the procedure the offeror will utilize in developing the standard. Each offer shall also include:

(1) A description of the plan the offeror will use to give adequate and reasonable notice to interested persons (including individual consumers, manufacturers, distributors, retailers, importers, trade associations, professional and technical societies, testing laboratories, Federal and State agencies, educational institutions, and consumer organizations) of their right and opportunity to participate in the development of the standard;

(2) A description of the method whereby interested persons who have responded to the notice may participate, either in person or through correspondence, in the development of the standard; and

(3) A realistic estimate of the time required to develop the standard, including a detailed schedule for each phase of the standard development period.

(b) Each offeror shall submit with the offer the following information to supplement the description of the standard development procedure:

(1) A statement listing the number and experience of the personnel, including voluntary participants, the offeror intends to utilize in developing the standard. This list should distinguish between (i) persons directly employed by the offeror, (ii) persons who have made a commitment to participate, (iii) organizations that have made commitments to provide a specific number of personnel and (iv) other persons to be utilized, although unidentified and uncommitted at the time of the submission. The educational end experience qualifications of these personnel relevant to the development of the standard should also be included in the statement. This list should include only those persons who will be directly involved in person in the development of the standard; and

(2) A statement describing the type of facilities or equipment which the offeror plans to utilize in developing the standard and how the offeror plans to gain access to the facilities or equipment.

(c) Persons who are not members of an established organization may form a group for the express purpose of submitting offers and developing standards. These groups are referred to as "ad hoc associations." An offer by an ad hoc association may be submitted by an individual member if the offer states that it is submitted on behalf of the members of the association. The individual member submitting the offer shall submit to the Commission a notarized copy of a power of attorney from each member of the association authorizing the individual member to submit an offer on behalf of each other member.

§ 1105.6 Acceptance of offers

(a)(1) If the Commission (i) does not decide to publish an exising standard as a proposed consumer product safety standard or (ii) decides to publish an existing standard as a proposed consumer product safety standard which does not address all of the specified unreasonable risks of injury associated with the product, the Commission will as soon as possible, usually within 60 days of the date of publication of the notice of proceeding in the Federal Register, accept one or more offers to develop a proposed consumer product safety standard.

(2) Acceptance of an offer will be based on a determination by the Commission that an offeror is technically competent, is likely to develop an appropriate standard within the period specified in the notice of proceeding or within the period determined by the Commission to be necessary and appropriate for the development of the standard, and will comply with all of the requirements of the Commission for the development of the standard.

(3) An offeror will be considered to have technical competence if the offer submitted indicates to the satisfaction of the Commission (i) that the offeror has demonstrated a thorough understanding of the problem, (ii) that the offeror has provided a rational approach to the solution of that problem, and (iii) that persons with appropriate technical expertise or experience will be utilized in the development of the standard either as employees, consultants, or volunteers.

(b) Prior to accepting an offer to develop a standard, the Commission may require minor modificatious of the offer as a condition of acceptance.

(c) The Commission shall publish in the Federal Register the name, address, and organizational affiliation of each person whose offer it accepts and a summary of the terms of each accepted offer including the date established for the submission of the standard.

(d) The Commission, at or near the time of the Federal Register acceptance notice, will issue a press release which:

(1) Identifies each person (name, address, and organizational affiliation) whose offer has been accepted;

(2) Summarizes the terms of each accepted offer including the date established for the submission of the standard; and

(3) Invites all interested persons to participate in the development of the standard and informs them of how they may participate.

(e) The Commission will transmit to appropriate persons and organizations, on a list maintained by the Commission, that have expressed an interest in participating in the development of one or more standards a copy of the Federal Register notice of proceedings as well as the notice of the acceptance of any offers.

(f) All persons submitting offers to develop standards whose offers have not been accepted will be notified in writing by the Commission. If requested by an offeror, the reasons for the nonacceptance of the offer will be supplied.

(g) If the Commission does not accept an offer to develop a proposed consumer product safety standard, the Commission may independently develop a proposed consumer product safety standard. Notice of this decision will be published in the Federal Register.

(h) In any case in which the sole offeror whose offer is accepted is a manufacturer, distributor, or retailer of the consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop a proposed standard during the development period.

§ 1105.7 Development of recommended consumer product safety standards

(a) The offeror shall comply with all Commission requirements for the development of standards and with all terms of the acceptance and shall cooperate with Commission liaison personnel assigned to monitor the development of the standard.

(b) In developing a standard, the offeror shall use the method agreed upon for interested persons to participate in the development of the standard and shall fully consider all of the suggestions and contributions of the respective participants. The offeror, after considering all suggestions and contributions, shall draft a standard. The draft standard shall be sent to all participants for their review and concurrence or nonconcurrence. Unanimity among all participants shall not be a prerequisite to the submission by the offeror to the commission of a standard which, in the offeror's judgment, optimally meets the terms of the offer accepted by the Commission.

(c) The offeror shall maintain complete written records of the development of the standard. These records shall include:

(1) The names, addresses, and titles, if any, of all persons contacting the offeror for the purpose of participating in the development of the standard;

(2) All written comments and any other information submitted by any person in connection with the development of the standard, including the dissenting views of participants and comments and information with respect to the need for the standard;

(3) A discussion describing the bases for resolution by the offeror of all of the substantive issues raised during the development of the standard;

(4) A statement of the economic and environmental factors considered during the development of the standard; and

(5) Records of all other matters relevant to the development and evaluation of the standard. These records shall be submitted to the Commission at the termination of the development period. The Commission will make these records available for public inspection and will supply copies upon request, subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), section 6 of the Consumer Product Safety Act (15 U.S.C. 2055), and regulations relating to the availablity of Commission records.

(d) The offeror shall provide monthly progress reports containing a summary of progress made, the work under way, the significant problems encountered, and the work remaining to be accomplished. These reports shall be transmitted to the Technical Analysis Division, Office of Standards Coordination and Appraisal, Consumer Products Safety Commission, Washington, D.C., 20207. The offeror shall cooperate fully with the Commission and permit the inspection of its facilities and developmental activities by duly authorized representatives of the Commission for the purpose of determining whether satisfactory progress is being made toward the completion of the standard. The offeror shall be considered to be making satisfactory progress if the Commission concludes that the standard may reasonably be expected to be completed in accordance with the provisions of the accepted offer by the end of the development period.

(e)(1) If it appears to the Commission that an offeror is not making satisfactory progress, the offeror will be given the opportunity (i) to demonstrate ability and willingness to complete the development of the standard by the end of the development period, or (ii) to justify the need for an extension of the development period.

(2) The Commission, after consideration and due notice, may (i) terminate the offeror's role in the development process and require the offeror to submit to the Commission all information, records, and documents which pertain to the development of the standard, or (ii) extend the development period and publish notice of such extension in the Federal Register, with the justification for the extension. If the Commission terminates the offeror's role in the development process, the

offeror shall remit all funds contributed by the Commission which have not been expended.

(f) If the Commission determines that no offeror whose offer was accepted is making satisfactory progress, the Commission may terminate the development proceeding, publish a notice of the decision to terminate in the Federal Register, and independently develop a proposed standard.

(g) The offeror shall submit with the standard, test instruments or devices constructed or acquired to perform compliance tests if the Commission determines that these instruments or devices are necessary for the evaluation of the standard. In such a case, the instrument or device shall be sold to the Commission at the offeror's cost or loaned to the Commission for the evaluation of the standard. Further, the offeror shall in any circumstance submit detailed descriptions or plans and specifications for the acquisition or construction of these instruments or devices.

§ 1105.8 Recommended consumer product safety standards developed by offerors

(a) Recommended standards must be suitable for promulgation under the act. To be considered suitable, a standard shall be written in a manner appropriate for use as a Federal mandatory standard as specified in the format established by the Commission. The format for each standard will be made available by the Commission on or before the acceptance of an offer. Recommended standards shall be supported by test data or other documents or materials which the Commission requires. Recommended standards shall also, if the Commission considers it to be appropriate, contain suitable test methods and reasonable testing programs. Test methods for the measurement of compliance with proposed standards shall be reasonably capable of being performed by the Commission and by persons subject to the act or by private testing facilities. Testing programs shall, if the Commission considers it to be appropriate and so states in the Federal Register notice of the acceptance of the offer, include sampling plans.

(b) Recommended standards shall consist of:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging; or

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements specting the form of warnings or instructions; or the form of warnings or instructions; or

(3) Any combination of (1) and (2).

(c) A recommended standard shall be supported by:

(1) An analysis demonstrating that each of the requirements is reasonably necessary to prevent or reduce and unreasonable risks of injury identified in the notice of proceeding; and

(2) An analysis explaining why the recommended standard is in the public interest.

(d) Each requirement of a standard, other than requirements relating to labeling, warnings, or instructions, shall whenever feasible be expressed in terms of performance. Whenever the requirements are not expressed in terms of performance, an explanation shall be provided to support the use of the nonperformance requirements.

(e) The offeror shall, in submitting a recommended standard, include data and information to demonstrate that compliance with the standard would be technologically practicable. The offeror shall also submit, to the extent that it can reasonably be obtained by the offeror, data and information on the potential economic effect of the standard, including the potential effect on small business and the international trade. The economic information should include data indicating (1) the types and classes as well as the approximate number of consumer products which would be subject to the standard; (2) the probable effect of the standard; (2) the probably effect of the standard on the utility, cost, and availability of the products; (3) any potential adverse effects of the standard on competition; and (4) the standard's potential disruption or dislocation, if any, of manufacturing and other commercial practices. Further, the offeror shall include information, to the extent that it can reasonably be obtained by the offeror, concerning the potential environmental impact of the standard.

§ 1105.9 Contributions to the offeror's cost

(a) The Commission may, in accepting an offer, agree to contribute to teh offeror's cost in developing a proposed consumer product safety standard in any case in which the Commission determines:

(1) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(2) That the offeror is financially responsible.

(b) In order to be eligible to receive a financial contribution, the offeror, in addition to furnishing the information required under § 1105.5, must submit:

(1) A request for a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution:

(2) A statement asserting that the offeror will employ an adequate accounting system (one in accordance with generally accepted accounting principles) to record standard development costs and expenditures; and

(3) A request for an advance payment of funds if necessary to enable the offeror to meet operating expenses during the development period.

(c) The Commission, in publishing the terms of the accepted offer, shall include a statement of the purpose and amount of the Commission's contribution.

(d) The offeror whose offer has been accepted shall, for a period of three years after final payment under the development agreement, maintain records which fully disclose the total cost and expenditures for the project and such other records which will facilitate an effective audit. The Commission and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records relevant to the development of the standard.

(e) The Commission, based upon a finding after an informal hearing that all or part of the Commission's contribution has been or is being misused, may seek reimbursement of that part of the contribution which has been or is being misused and shall have the right, after providing due notice, to terminate the development agreement and to discontinue payments towards the contribution. For the purpose of this Part 1105, "misuse of a contribution" means a use other than that agreed upon in writing by the parties.

(f) The items of cost toward which the Commission may contribute are those allowable direct and indirect costs allocable to the development project (as set forth in the applicable subparts of Part 1–15 of the Federal Procurement Regulations (41 CFR Part 1–15)). The Commission may contribute to the costs of assuring adequate consumer participation in the development of the standard.

(g) The items of cost toward which the Commission will not contribute include:

(1) Costs for the acquisition of any interest in land or buildings; however, the Commission may contribute toward the lease or rental of land or buildings;

(2) Costs for the payment of salaries in excess of the salaries paid by the offeror to individuals at the time immediately preceding the offer, except for longevity and other routine increases which may accrue during the development of the standard;

(3) Costs for the payment of items in excess of the offeror's actual cost;

(4) Costs for items having a usable lifespan in excess of the development period, except that a contribution may be made toward the proportionate value of the item during the development period determined by subtracting the item's estimated market value at the termination of the development period from the actual acquisition cost (the cost of items purchased by the Commission under sec. 1105.7(g) cannot be included in the Commission's contribution); and

(5) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

(h) Offerors who have received contributions from the Commission shall submit to the Commission a full accounting of these contributions and shall remit all amounts not expended within 60 calendar days after the offeror submits the standard.

Since the regulations promulgated above, 16 CFR Part 1105, are procedural regulations and since their becoming effective will provide for commencment of proceedings to establish safety standards, delayed effective data is deemed inappropriate in this instance.

Effective date. The regulations promulgated above, 16 CFR Part 1105, shall become effective May 7, 1974.

(Sec. 7, Pub. Law 92–573, 86 Stat. 1212–15; 15 U.S.C. 2056)

Dated: May 1, 1974.

SADYE E. DUNN.
Secretary, Consumer Product Safety Commission.

[FR Doc.74–10731 Filed 5–6–74;8:45 am]

ATTACHMENT 7

[From the Federal Register, vol. 39, No. 34—Feb. 19, 1974]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

Subchapter B—Consumer Product Safety Act Regulations

PART 1115—SUBSTANTIAL PRODUCT HAZARD NOTIFICATIONS

Submission of Information by Manufacturers, Distributors, and Retailers

In the Federal Register of August 3, 1973 (38 FR 20902), the Consumer Product Safety Commission, pursuant to section 15 of the Consumer Product Safety Act (15 U.S.C. 2064), proposed a regulation (16 CFR 1100.25) regarding the informing of the Commission by manufacturers, distributors, and retailers of noncomplying or defective consumer products. This document acts on that proposal, however, the material promulgated below has been expanded from a section (16 CFR 1100.25) to a part (16 CFR Part 1115).

Principal features of Part 1115. The purpose of Part 1115 is to establish notification requirements to be followed by manufacturers, distributors, and retailers who obtain information reasonably supporting the conclusion that one of their consumer products fails to comply with an applicable consumer product safety rule or contains a defect that could create a substantial product hazard.

Part 1115 provides that when such information is obtained, the manufacturer, distributor, or retailer shall make an initial notification to the Commission, by some means, within 24 hours. If the initial notification is by a means other than in writing, it must be confirmed in writing within 48 hours.

Thereafter, additional information submitted to the Commission shall address the nature of the hazard involved; the manner in which information concerning the hazard was obtained, including copies of consumer complaints, if applicable; the number, nature, and severity of injuries related to the product; the number of units of the product in inventory; identifying marks on the potentially hazardous units; corrective action taken; preventive measures taken; and plans regarding notice to consumers.

The information to be submitted under Part 1115 is necessary to enable the Commission to evaluate the notification and to determine if a reported product that could create a substantial product hazard does, in the Commission's opinion, create a substantial product hazard. In those cases where a manufacturer, distributor, or retailer determines that a substantial product hazard does exist, the information is necessary to help the Commission determine if the substantial product hazard has been reported in a timely fashion, if the notification is adequate, and if the corrective measures taken are appropriate for the circumstances.

Response to the proposal. In response to the proposal of August 3, 1973 (38 FR 20902), comments were received from 18 manufacturers, 24 associations of manufacturers, 3 retail organizations, 7 associations of retailers, an association of distributors, 2 public interest groups, 2 members of the public, an employer's council, and a law firm.

Principal changes in provisions. Although the provisions of the regulation promulgated below are substantially similiar to those of the proposal, there are some additions, deletions, changes, etc. As stated above, the regulation has been expanded from a section to a new Part 1115. The proposed regulation required that the notification state whether injuries associated with the hazard have occurred; the promulgated regulation expands this requirement to include the number, nature, and severity of injuries associated with the hazard. The proposed requirement that a list of names and addresses of distributors, retailers, and purchasers of the product involved be submitted to the Commission has been deleted. The promulgated regulation, however, provides that persons notifying under the regulation shall make this information available to the Commission if requested. In addition, the promulgated regulation requires manufacturers to inform the Commission whether the product involved is still being manufactured, requires the submission to the Commission of copies of consumer complaints that deal particularly with the potential product hazard, and requires that the Commission be informed whether refund, replacement, or repair actions have or will be taken and, if applicable, how the manufacturer plans to dispose of existing inventory.

Issues raised by the comments and CPSC decisions thereon—A. *Authority to promulgate section 15(b) notification requirements.* Comments were received from one manufacturer, one association of retailers, and seven associations of manufacturers regarding the authority of the Commission to promulgate the proposed regulation dealing with notification requirements under section 15(b) of the Consumer Product Safety Act. The comments contend that the notification requirements exceed the Commission's authority.

Because section 15(b) is viewed as contemplating a notice of "failure to comply" or of a defect which could create a "substantial product hazard" to the Commission, the extensive notification requirements are viewed by the commenters as going beyond the statutory authority. In particular, the comments question the Commission's reliance on sections 15(a), 15(b), 27(b), and 27(e) of the act to justify the proposed regulation.

Three comments specifically question the general jurisdiction of the Commission with respect to the items specified in paragraph (c) of the proposed regulation, which enumerates the types of information the Commission considers essential in determining the existence of a substantial product hazard.

Section 15(b) of the act specifically requires every manufacturer, distributor, and retailer of a consumer product distributed in commerce to immediately notify the Commission "upon obtaining information which reasonably supports the conclusion that such product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard" (15 U.S.C. 2064(b)). The proposed regulation details an effective manner for compliance with section 15(b) of the act.

Moreover, other sections of the act provide support for the Commission's proposed regulation. Section 27(b) of the act grants to the Commission the power to require, by general order, any person to submit in writing such reports and answers to questions as the Commission may prescribe (15 U.S.C. 2076(b)). This section applies with particularity to distributors and retailers who obtain information which reasonably supports the existence of a substantial product hazard and it is the basis on which the Commission exercises jurisdiction over distributors and retailers. Section 27(e) grants authority to the Commission to require performance and technical data from any manufacturer in order to carry out the purposes of the act (15 U.S.C. 2076(e)). This section provides the Commission with the authority to require manufacturers to supply the Commission with data which are within the knowledge of the manufacturer and are essential in carrying out the purposes of section 15(b).

The Commission does not consider the information sought in § 115.7(a) of the promulgated regulation to be unreasonable. The most complete notification possible is required to protect the public against unreasonable risks of injury associated with consumer products.

For these reasons the Commission reaffirms not only its authority to promulgate this regulation but also the statutory basis for 16 CFR Part 1115.

B. *Application of notification requirements to the transferred acts.* Comments were received from one retail organization, two associations of retailers, and three associations of manufacturers questioning the Commission's authority to apply the notification requirements of section 15(b) of the act to the products subject to regulations under authority of the acts transferred to the Commission by section 30 of the Consumer Product Safety Act (15 U.S.C. 2079); namely, the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), and the Refrigerator Safety Act (15 U.S.C. 1211 et seq.). The comments rely on section 30(d) of the Consumer Product Safety Act which states that a "risk of injury associated with consumer products which could be eliminated or reduced to a sufficient extent" by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act may only be regulated by the provisions of those acts. One association of retailers also requested clarification on the status of the Refrigerator Safety Act, which is covered in section 30(c), but is not mentioned in section 30(d) of the act.

The Commission affirms the position expressed in the proposed regulation that it has the authority to require manufacturers, distributors and retailers of "consumer products" (as that term is defined in section 3(a) of the act) which are subject to regulation by the Commission under provisions of the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, the Flammable Fabrics Act, or the Refrigerator Safety Act to comply with the requirements

for notification of defects set forth in section 15(b) of the Consumer Product Safety Act and the provisions of Part 1115 promulgated below. Reports are required for defects which create or could create a substantial product hazard. Failures to comply with a standard or regulation issued under the provisions of the transferred acts are not required to be reported unless such failures to comply are also defects which create or could create a substantial product hazard.

Upon considering the numerous possibilities of risk to the consuming public by products falling within the authority of these acts, the Commission finds under section 30(d) of the act that such risks can neither be eliminated nor reduced to a sufficient extent in a timely fashion unless the Commission is notified under section 15(b) of the act. This finding by the Commission is based on the fact that none of the provisions of the transferred acts require notification to be made to the Commission upon the obtaining of information which reasonably supports the existence of a substantial product hazard. The Commission has determined this type of notification to be essential for the purpose of protecting the consuming public against unreasonable risks of injury associated with consumer products. The lack of notification requirements under the transferred acts combined with the clear intent of the Congress to give the Commission discretion to regulate risks of injury which cannot be eliminated or reduced to a sufficient extent under the transferred acts supports the Commission's findings, based on section 30(d) of the act, that it is essential for the Commission to obtain all available information from manufacturers, distributors and retailers of consumer products regarding substantial product hazards.

The Commission reemphazises that this section 15(b) notification applies only to defects and not to violations of standards or regulations issued under the transferred acts which do not involve a defect. Moreover, this finding by the Commission is not contrary to the purposes of section 30(d) of the Act since the Commission intends to regulate those products subject to the transferred acts according to the provisions of such acts; the requirement of a section 15(b) notification does not carry with it automatic regulation of the product under the Consumer Product Safcty Act. If a notification were received of a defect in a product subject to a transferred act, a further determination under the provisions of section 30(d) as to the specific risk of injury presented by that defect would be required before any further action could be taken under the provisions of the Consumer Product Safety Act.

In response to the request for clarification concerning the applicability of the notification requirements of the act to manufacturers, distributors, and retailers of consumer products subject to regulation under provisions of the Refrigerator Safety Act, the Commission observes that section 30(d) of the Act is not applicable to risks of injury associated with consumer products subject to regulation under provisions of the Refrigerator Safety Act. Therefore, all manufacturers, distributors, and retailers of consumer products subject to regulation under provisions of the Refrigerator Safety Act are subject to the notification requirements of the Consumer Product Safety Act without a further determination under section 30(d).

C. *Specific jurisdictional questions.* 1. Comments were received from two associations of manufacturers regarding the application of the act to boats and associated equipment. The comments state that section 3(a)(1)(G) of the act specifically reserves to the Coast Guard exclusive jurisdiction over all boats and vessels falling within the scope of the regulatory authority of the Boat Safety Act of 1971. The area of "associated equipment" is viewed by the commenters as posing a more difficult jurisdictional question as the Boat Safety Act is broad enough to cover marine safety articles "intended for use by a person on board a boat" (46 U.S.C. 1452(8)(c)), which would seem to cover many consumer products such as flashlights, fire extinguishers, etc. The commenters suggest that this area of overlap could be avoided if manufacturers whose products are intended exclusively for marine application were to label their products "For Marine Use Only" or words to that effect.

The Commission finds that boats and vessels, as defined at 46 U.S.C. 1452(1) and (2), are specifically exempted from the coverage of the Consumer Product Safety Act and, therefore, the notification requirements of the act are not binding on manufacturers, distributors, or retailers of such products.

Associated equipment, as defined at 46 U.S.C. 1452(8), which is not capable of nonmarine application, is also specifically exempted from the coverages of the Consumer Product Safety Act.

Equipment or accessories which are capable of both marine and nonmarine applications are within the jurisdiction of both the Boat Safety Act of 1971 and the Consumer Product Safety Act. However, if the item may be used as a "consumer product," as defined at 15 U.S.C. 2052, even though that may not be its predominant use, it comes within the jurisdiction of the Consumer Product Safety Act, and manufacturers, distributors and retailers of such items must comply with the notification requirements of this act.

2. Comments were received from two trade associations regarding the authority of the Consumer Product Safety Commission to require manufacturers, distributors, and retailers of drugs to comply with section 15(b) of the act. The comments state that drugs are specifically excluded from the definition of a consumer product (15 U.S.C. 2052) and therefore the notification requirement of section 15(b) are inapplicable.

The Commission agrees with these comments. Section 15(b) of the Act applies only to "consumer products distributed in commerce" and sinse drugs are not consumer products according to the act, the notification requirements of the act are inapplicable to manufacturers, distributors, and retailers of drugs.

Child-resistant packaging in which drugs and other products are packaged so as to comply with the provisions of the Poison Prevention Packaging Act of 1970 does not come within the coverage of section 15(b); therefore, manufacturers, distributors, and retailers of such packaging must comply with the notification requirements of the act as to any defects in the packaging which create or could create a substantial product hazard.

3. Comment was received from the National Association of Bedding Manufacturers (NABM) questioning the Consumer Product Safety Commission's authority to require the mattress industry to comply with the notification requirements of section 15(b) of the act. NABM states that it would be "both inappropriate and unwarranted to place the requirements of proposed § 1100.25 on the mattress industry," which is currently regulated by the provisions of the Flammable Fabrics Act. As has been fully explained in paragraph B of this preamble, there is no inconsistency in the application of the notification requirements of the act as to any defects which create or could create a substantial product hazard and in the application of the Flammable Fabrics Act. The Flammable Fabrics Act and its implementing standards do not require reports of defects. Manufacturers, distributors, and retailers of products subject to the Flammable Fabrics Act must therefore comply with the notification requirements of the Consumer Product Safety Act. This in no way affects the duty of manufacturers of mattresses to comply with the existing Flammability Standard for Mattresses (FF 4–72).

4. Comment received from the Recreational Vehicle Institute questioned the jurisdiction of the Consumer Product Safety Commission over recreational vehicles and equipment, including motor homes, travel trailers, camping trailers, fifth-wheel travel trailers, slide-in campers, and pickup covers. Any motor vehicle, as defined at 15 U.S.C. 1391(3), and any motor vehicle equipment, as defined at 15 U.S.C. 1391(4), is specifically excluded from the coverage of the act (15 U.S.C. 2052). Therefore, manufacturers, distributors, and reailers of such products are not required to comply with the notification requirements of the act.

A more complex jurisdictional question arises in the area of components, appliances, or equipment which are manufactured both for use in recreational vehicles and for use in other types of accommodations or activitees. Such an item would seemingly fall within the scope of both the Motor Vehicle Safety Act and the Consumer Product Safety Act. However, if the item may be used as a consumer product, as defined as 15 U.S.C. 2052, even though that may not be its predominant use, it comes within the jurisdiction of the Consumer Product Safety Act. Manufacturers, retailers and distributors of recreational items that are consumer products must therefore comply with the notification requirements of the act.

It should be noted that mobile homes do not come within the definition of consumer product (15 U.S.C. 2052) and therefore are not covered by the act. However, any component, equipment, or appliance sold with or used in or around a mobile home does come within the scope of the act and manufacturers, distributors and retailers of such products must comply with the notification requirements of the the act.

Snowmobiles and minibikes, which are not primarily used on the public streets, roads, or highways, do fall within the coverage of the act; therefore, manufacturers, distributors, and retailers of such products must comply with the notification requirements of the act.

5. A specific comment dealing with the Commission's authority with respect to toys was received from the Toy Manufacturers of America (TMA). TMA states that unless the Commission exercises its authority pursuant to section 30(d) of the Consumer Product Safety Act to regulate risks of injury associated with toys or other articles intended for use by children under the terms of the Consumer Product Safety Act, the Commission can only regulate such items under the provisions of the Federal Hazardous Substances Act. TMA emphasizes, however, its preference for regulation under the Consumer Product Safety Act and has submitted a petition to this effect which was denied by the Commission on October 16, 1973 (38 FR 28715).

As stated in Part B of this Preamble, the Commission finds that risks of injury associated with consumer products falling under jurisdiction of the Federal Hazardous Substances Act can neither be eliminated nor reduced to a sufficient extent unless the Commission is notified pursuant to section 15(b) of the act. Therefore, as to defects which could create a substantial product hazard, manufacturers, distributors, and retailers of toys or other articles intended for use by children, to the extent these are consumer products as defined at 15 U.S.C. 2052, must comply with the notification requirements of the act.

D. *Due process controversy.* Comments were received from one associatoin of retailers, two manufacturers, and four associations of manufacturers stating that the section 15(b) notification requirements and the provisions of the regulation published on August 3, 1973, would deprive manufacturers, distributors, and retailers of due process of law. The thrust of the comments is that complete notification will circumvent the procedures of section 15 (c) and (d) of the act; will deprive manufacturers, distributors, and retailers of the basic due process right to an adjudicatory hearing; and will alter the statutory provisions used to determine whether public or personal notice, or repair, replacement, or refund must be provided.

The Commission finds these arguments to be without merit. The information sought by the regulation promulgated below is required by the Commission in making an informed decision whether further action by the Commission is neccessary. After review by the Commission it may be decided that the reported defect does not present a substantial product hazard or that the actions already taken adequately protect the public. Compliance with the notification requirements of the act in no way circumvents section 15 (c) and (d) of the act, which allow for remedial action only upon a finding based on a hearing. The right to a hearing, prior to notice and remedy orders, in accordance with the Administrative Procedure Act is specifically mandated by the act (15 U.S.C. 2064(f)) and will be followed by the Commission. The statutory provisions in section 15 (c) and (d) of the act will also be followed. The Commission does not have the authority to make the information received in the notification requirements the basis for notice and remedy orders without following the statutory provisions of section 15 (c) and (d). It is expressly stated that notice and remedy orders may be issued only after a hearing (15 U.S.C. 2064 (c) and (d)) and the Commission intends to comply with this statutory language. Therefore, the Commission finds no denial of due process in the provisions of the regulation.

E. *Time requirements: Initial notification.* Comments were received from ten manufacturers, nine associations of manufacturers, two associations of retailers, and one member of the public regarding the time period within which initial notification is to be made to the Commission. The comments stress the impossibility of complying with detailed initial notification requirements within such a short time span and suggest that between thirty days and six months be given for compliance. One comment suggests that notification to the Commission include a definite statement as to whether or not manufacture of the product has been halted and a statement regarding proposed disposition of finished goods and work in process inventory.

The Commission reaffirms its position in the proposed regulation, but recognizes that clarification is needed in the area of time requirements for initial notification. It is the intent of the Commission that manufacturers, distributors and retailers of consumer products immediately inform the Director of the Bureau of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301) 496-7631, upon "obtaining information which reasonably supports the conclusion that a consumer product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard." Despite the use of the statutory language to pinpoint the tolling of the twenty-four hour notification period, questions will inevitably arise as to the exact point at which this time period begins to run. Al-

though it is obvious that no exacting standard can be formulated on this issue because of the differences in the manufacture and distribution of consumer products, the Commission intends that this provision for immediate notification be met without placing an unreasonable burden on the notifying party. For example, it is not intended that this twenty-four hour notification period begin to run when a potential defect or failure to comply is discovered by an employee working on the assembly line; however, when this information is conveyed to management and confirmed as presenting a potential product hazard, the twenty-hour notification period begins to run. The Commission emphasizes that no delay in the process of notification to management or in the confirmation by management of a potential product hazard will be tolerated. Information regarding a defect or a failure to comply which could create a substantial product hazard must be treated as a matter of top priority at all times by persons subject to this regulation.

The initial notification shall include responses to those items listed in § 1115.5 of the regulation and, to the extent such information is available, responses to those items listed in § 1115.7 This information shall be submitted by any means but shall be received by the Commission within twenty-four hours of obtaining information which reasonably supports the conclusion that a defect or a failure to comply with an applicable consumer product safety rule has occurred.

If the initial notification is by any means other than in writing, it shall be confirmed in writing within forty-eight hours of obtaining information which reasonably supports the conclusion that a defect or a failure to comply with an applicable consumer product safety rule has occurred. Such written confirmation shall contain responses to the items listed in § 1115.5 of the regulation and, to the extent such information is then reasonably available, responses to the items listed in § 1115.7(a).

The Commission realizes that all of the information sought in § 1115.7(a) will not be available within 48 hours. The regulation requires only that information which is reasonably available. The balance of the material sought is to be furnished as soon as it can be obtained by the person making the notification.

The Commission also realizes that in some cases no one in the manufacturing or distributing chain will be able to supply all of the information requested in § 1115.7(a). Should this be the case the Commission would treat a response stating that such information is not available as an adequate response for the purposes of this regulation. However, the Commission would, in those cases, have to make any regulatory decision based on the assumption that the worst possible answer, in terms of hazard to consumers, had been received.

These time limits refer to notification during working hours within the business week. Thus, if a manufacturer, distributor, or retailer obtains information regarding a defect or a failure to comply on Friday, he is obliged to make immediate notification no later than the following Monday and is obliged to make written confirmation no later than the following Tuesday.

The additional notification requirements requested in the comments concerning whether or not the manufacture of a particular consumer product has ceased and concerning the proposed disposition of finished goods and work in process inventory are favored by the Commission and have been included as § 1115.7(a) (14) and (23) of the regulation.

F. *Time requirements; Complete notification.* Comments were received from four trade associations questioning the "open-endedness" of paragraph (d) of the proposed regulation. The comments emphasize a desire for a time limit within which complete notification will have occurred.

The Commission understands the interest of manufacturers in securing a time limit, but emphasizes that such a time limit can work to the disadvantage of manufacturers as well as to their advantage. If a time limit for complete notification were to be ordered by the Commission, manufacturers, distributors, and retailers would be forced to furnish extensive notification reports within a short time period irrespective of the current status of their recordkeeping, the type of consumer product distributed in commerce, and the number of consumer products so distributed. The Commission finds that the explanation of "complete notification" in § 1115.7 (d) and (e) of the regulation will allow for the receipt of all pertinent information without placing an undue burden on manufacturers, distributors, and retailers and will also give the Commission the flexibility it needs to deal with each problem on a case-by-case basis. The Commission, therefore, reaffirms its position on complete notification and no time limit is established.

G. *Proprietary information.* Comments were received from four associations of manufacturers and two manufacturers regarding the status of proprietary information which is submitted to the Commission in order to comply with the notification requirements of section 15(b) of the act.

The Commission recognizes the hesitation of a manufacturer to turn over information which could aid his competitors. However, §1115.7(a)(24) of the regulation does not place an undue burden on the manufacturer. It emphasizes the right of reporting party to separate that information which the reporting party believes is entitled to protection under the provisions of the Freedom of Information Act (5 U.S.C. 552) and section 6 of the Consumer Product Safety Act (15 U.S.C. 2055).

Section 6 provides that "any information described by subsection (b) of section 552, title 5, United States Code," any information "otherwise protected by law from disclosure to the public," or any information "which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code" shall be confidential (15 U.S.C. 2055(a)(1) and (2)). The Commission fully intends to provide protection for the above-mentioned types of proprietary information which are received in response to §1115.7(a)(24) of the regulation. Moreover, section 6(b) of the act would apply to any information to be released by the Commission which would permit the public to readily identify the manufacturer. Thus, if information were obtained from a retailer or distributor about a manufacturer's product, the Commission is bound by this provision of the act to give the manufacturer an opportunity to assess and respond to this information before the Commission may make a public release. However, it should be pointed out that section 6(b) of the act grants to the Commission the power to substantially shorten the notice to a manufacturer if health and safety factors are involved.

For these reasons, the Commission reaffirms the position taken in the proposed regulation.

H. *Request for additional information.* Comments were received questioning the ability of the Commission to request additional information in §115.7 (d) and (e). The comments state such requests are "an invitation to open-ended and unlimited investigations and to harassment of persons who have given the type of notice contemplated by the statute, but who, for whatever reason, do not provide the types of answers desired by the staff, to the numerous extraneous questions reflected in the proposed regulations."

While the Commission recognizes the broadness of the language used in these paragraphs, it emphasizes that its intent is to obtain relevant information from manufacturers, distributors, and retailers. The Commission realizes that additional information may be essential to complete notification and, therefore, no change in the regulation is warranted.

I. *Waiver of defenses.* One association of manufacturers questioned whether the final statement described in paragraph (f) of the proposal published on August 3, 1973, was a waiver of all defenses.

The Commission in no way views the final statement in this light. Manufacturers, distributors and retailers are entitled to a hearing under section 15(f) of the act before any order may be issued by the Commission pursuant to section 15(c) and (d), and this legislative intent would be circumvented if the manufacturer, distributor, or retailer had waived all defenses at the time of the hearing by complying with the requirements of section 15(b) of the act. Therefore, no substantive change is made in the section dealing with final statements.

J. *Comments on language used in proposed regulation.* 1. Comments were received from two manufacturers and two associations of manufacturers regarding the reference made in the proposed regulation to the applicability of the definitions of terms made in section 3 of the act. The commenters request a clarification of the meaning of "substantial product hazard" as that term is used in section 15(a) and, by reference, in section 15(b) of the act.

The Commission finds that the statutory definition of "substantial product hazard" is sufficient for the purposes of the notification requirements of the act.

2. Comment was received from one association of retailers requesting elaboration of the phrase "potential product hazard."

The Commission chose these words to emphasize that section 15(d) requires the reporting of defects which "could create a substantial product hazard." The notifying party should consider the number, nature, and severity of the defective or noncomplying products before notifying the Commission of a potential product hazard. Accordingly, the subject phrase has not been changed.

3. Two trade associations requested clarification on the exact meaning of a merce," as that phrase is used in section 15(b) of the Consumer Product Safety Act. The comments questioned whether a notification, under section 15(b) of the act, must be given when according to the best information available to the manufacture, a defect in a consumer product or a failure of a consumer product to comply with an applicable consumer product safety rule is discovered and remedied before leaving the manufacturers plant.

In response to these comments, the Commission emphasizes the broad statutory definition given to "commerce" in section 3(a)(12) of the act. For the purposes of this regulation, however, a manufacturer who corrects a defect in a consumer product or a failure of a consumer product to comply with an applicable consumer product safety rule while all units of such product are still within his plant, need not comply with the notification requirements of the act.

4. Comments were received from seven manufacturers, ten associations of manufacturers, two retail organizations, and one association of retailers questioning the use of the word "discovery" in paragraphs (b)(1), (b)(3), and (c) of the proposed regulation to describe the manner in which a reporting party learns of a defect or of a failure to comply. According to the comments, the idea that a defect is "discovered" is overly simplistic. "A determination that a defect exists in a consumer product or that a failure to comply with an applicable consumer product safety rule has occurred involves investigation and deliberation."

The Commission agrees with the comments and concludes that the word "discovery" should be replaced with the statutory language "upon obtaining information which reasonably supports the conclusion that such product fails to comply with an applicable consumer product safety rule or creates a substantial product hazard." Sections 1115.4, 1115.6, and 1115.7(a) of the regulation read accordingly.

5. One manufacturer, one association of manufacturers, one retail organization, and one consumer group expressed interest in the phrase "as available" in paragraph (b)(3) of the proposed regulation which is used to qualify the amount of information which must be forwarded to the Commission for the purposes of initial notification. Two commenters feel that the phrase should be changed to read "as is readily available"; another states that the phrasing should be changed to place less responsibility on retailers; while still another states that the phrase should be deleted as it provides a "loop-hole" through which to escape the notification requirements of the act.

The Commission recognizes the merit of all the comments but finds that a proper balance can be best struck by leaving the wording as originally published.

The Commission, however, is aware that retailers and distributors may not be in a position to comment on the various requested items in § 1115.7(a) of the regulation and, for that reason, has designated the person(s) it considers primarily responsible for supplying the specific information requested by this regulation. In connection with this designation of the most appropriate notifying party, the Commission emphasizes that, according to section 3(a)(4) of the act, a manufacturer includes any person who manufacturers or imports a consumer product. This designation is not to be reviewed as a limitation on the responsibility of a notifying party who obtains information in addition to that for which he is primarily responsible; the notifying party is responsible for the most complete notification possible. The Commission finds that this approach is the most reasonable way in which to accomplish the purposes of section 15(b) of the act without placing an impossible burden on the manufacturer, distributor or retailer. § 1115.7(a) of the regulation reads accordingly.

K. *Extent of Notification Requirements.* Many comments were received questioning the enumerated items appearing in paragraph (c) of the proposed regulation. The comments state that some of the information requested, particularly that requested in paragraph (c)(14)–(22) of the proposed regulation, goes beyond that needed by the Commission to carry out the purposes of section 15(b) of the act. Other comments question the language of the individual items. The Commission will discuss these comments individually.

1. One manufacturer asked that the word "potential," as used in paragraph (c)(3), (4), (5), (6), and (7) of the proposed regulation to describe the type of product hazard which is the subject of a 15(b) notification, be changed to "possible" as the former word carries the import of a hazard which might exist in the future while the intention of the request should be to discern the possibility of a defect or of a failure to comply with an applicable consumer product safety rule.

The Commission finds no merit in this request. Webster's Third New International Dictionary defines "potential" as "expressing possibility" and, thus, the comment seems to hinge on subjective semantics.

2. One manufacturer questioned the importance of paragraph (c)(5) of the proposed regulation which requires the reporting party to disclose the manner in which the potential hazard was discovered. The manufacturer states that the paragraph "seems to have little relevance to the steps to be taken to protect the public from hazard.

The Commission finds this paragraph to be helpful in pinpointing the place in the channels of commerce where the consumer product has come to rest, and more importantly, it is helpful in determining the extent of the potential danger posed by the consumer product. For these reasons, this paragraph is included in the regulation.

3. Several comments were received regarding the wording of paragraph (c)(7) of the proposed regulation which requires information on any injuries associated with the hazard or potential product hazard. One comment requests that the words "associated with" be changed to "that were caused by."

Another commentor suggests that the number, nature and severity of such injuries be reported to the Commission.

The Commission rejects the first suggestion as it places an extremely narrow construction on the intended meaning of the requirement. The Commission finds merit in the other suggestion and § 1115.7(a)(7) of the regulation reads accordingly.

4. (i) Paragraph (c)(8) of the proposed regulation which deals with the number of products and the number of units of each such product which presents a hazard or potential product hazard, was commented on by one manufacturer and one association of manufacturers. The manufacturer states that "information requested by paragraph (c)(8) is not required until such time as the product hazard is identified and jurisdiction attaches under section 15(c) and (d)."

As the Commission has tried to make clear throughout the course of this preamble, the notification requirements of the act do not take the place of the provisions of sections 15(c) and (d) of the act. The purpose of § 1115.7(a) (8) is clearly to identify the product(s) and the number of units of such product(s) which present a potential product hazard.

(ii) Another comment requested that the term "product," as used in paragraph (c)(8) of the proposed regulation, be defined as "an article, a single generic type of consumer good (or component thereof) and shall be distinct from variations due to design" and that the term "unit" be defined as a "a single item of a product."

The Commission finds that the definition provided for "consumer product" in section 3(a) of the act is adequate and also finds that the term "unit" is sufficiently understood by the general public and needs no further elaboration. Accordingly, paragraph (c)(8) of the proposal is included in the promulgated regulation as § 1115. 7(a)(8).

5. Two comments were received dealing with paragraph (c)(9) of the proposed regulation which requires information on the number of units of each product in the hands of consumers. Once again, a comment states that such information is, not required until section 15(c) and (d) of the act have come into play. The Commission has dealt with this issue throughout this preamble and finds no merit in it.

Another comment states that "it will be difficult, and in some cases impossible for manufacturers to obtain this information. It may be possible to accomplish this only through computerization of inventory, shipping, and sales records. Many manufacturers and their dealers will find that this responsibility may put them out of business."

The Commission does not intend to take a callous attitude toward manufacturing interests and recognizes that the burden placed on manufacturers, distributors, and retailers by these notification requirements may be extensive. However, the Commission is not, at this time, requiring specific records to be maintained, leaving a manufacturer free to make a public announcement of a substantial product defect in lieu of pinpoint notification. Therefore, the Commission supports the inclusion of paragraph (a)(9) of § 1115. 7.

6. Comments were received from one manufacturer, one retailer, and one association of manufacturers regarding paragraph (c)(10) of the proposed regulation, which concerns the dates when the units were manufactured and distributed. Two commenters find the word "faulty" a poor choice to describe a defect in a con-

sumer product or a failure to meet an applicable consumer product safety rule and suggest that the statutory language be substituted or that the word "potentially" be included before "faulty."

The retailer points out "since the distribution system is covered by paragraph (c)(11), paragraph (c)(10) should be confined to the date when the units were manufactured and shipped from the factory."

The Commission agrees that the word "faulty" is inappropriate and has removed it from § 1115.7(a)(10). Moreover, the Commission also agrees with the retailers comment recording the redundancy of paragraph (c) (10) and (11) of the proposed regulation. Section 1115.7(a)(10) of the regulation is changed accordingly.

7. Comments were received from one retail organization and one manufacturer regarding the necessity of paragraph (c)(11) of the proposed regulation which requires an accounting of when and where such products (and the number of units of each product) were distributed. The comments state that providing the information requested is premature and that the tracing of the units through the channels of commerce is not necessary for the Commission's purposes.

The Commission finds these arguments to be without merit. It is precisely the type of information requested in § 1115.7(a)(11) of the regulation that will allow the Commission to adequately weigh the dangers posed by the potential product hazard. The Commission, therefore, includes § 1115.7(a)(11) in this promulgation.

8. One manufacturer and one trade association request that paragraph (c) (12) and (13) of the proposed regulation be modified with a qualifying phrase, such as "for products so identified," as many consumer products cannot practically be serialized.

The Commission recognizes the narrow scope of these two paragraphs and amends both to include "identifying marks."

The Commission also finds the comments to have merit and has added to, paragraph (a)(12) and (13) of § 1115.7 the phrase: "for products so identified.'

9. Comments were received from one manufacturer and one retail organization objecting to paragraph (c)(14) of the proposed regulation which would require a company involved in 15(b) notification to produce lists of names and addresses of every distributor, retailer, and purchaser and to have them available in connection with its records of defect. Paragraph (c)(14) of the proposed regulation is viewed as posing a voluminous, if not impossible, recordkeeping requirement.

The Commission has reassessed paragraph (c)(14) of the proposed regulation and agrees with the comments that submission automatically of all the requested information could work an undue hardship on persons reporting under the provisions of the regulation without, in some cases, aiding the Commission in its mission. Accordingly, this requirement has not been included in Part 1115.

However, the Commission has added paragraph (c) of § 1115.7 to the regulation and paragraphs (d), (e), and (f) of the proposed regulation are being issued as § 1115.7(d), §1115.7(e) and § 1115.8, respectively.

The new paragraph requires persons reporting under the provisions of the regulation to make available to the Commission, upon request, the information previously required to be sent to the Commission in paragraph (c)(14) of the proposed regulation. In this manner the information will be requested only when necessary. If the information sought by the Commission is not available because the recordkeeping system of the reporting person cannot furnish such material, the Commission will then have to base its regulatory action upon the best available information.

10. One association of manufacturers states that paragraph (c)(15), (17), (18), and (19) of the proposed regulation tends to be coercive of results which the statute provides will be obtained, if at all, as a result of a full adjudicatory hearing under 5 U.S.C. 554.

The Commission has addressed this argument on numerous occasions in this preamble and finds no merit in the suggestion.

11. One retail organization objects to the word "purchasers" in paragraph (c) (16) of the proposed regulation when that term is used to describe the persons to whome the reporting party has, is, or will be giving advice regarding a potential product hazard. The commenter emphasizes his objection to the term if it is intended to include consumers. The retail organization states that it may be impossible to advise many purchasers of corrective action due to the inability to ascertain the identity of the purchasers.

The Commission does indeed intend the word "purchaser" to include consumers, but it does not find that paragraph (c)(16) of the proposed regulation presents an impossible task. Paragraph (c)(16) of the proposed regulation is not an order

to take corrective action; this would be contrary to the provisions of section 15(c) and (d) of the act. It is merely an inquiry regarding what corrective action has been independently taken by manufacturers, retailers, or distributors. The fact that complete lists of purchasers many be unavailable is recognized by the Commission. The Commission is merely interested in the steps that have been taken to remedy a potential product hazard. Paragraph (c)(16) of the proposed regulation is included in the regulation as § 1115.7(a)(19).

12. It was requested that a new provision be added to § 1115.7(a) that will read "What efforts have been or will be made to repair, replace, or refund the price of such products?"

The Commission recognizes that it is inconsistent to inquire about one form of corrective action, namely, notification, without making inquiry into the other areas of corrective action. For this reason, the Commission finds the suggestion to have merit and has changed the regulation accordingly. The Commission stresses, however, that this is not a requirement that corrective action be taken.

13. Comment from one member of the public suggests that information submitted in response to paragraph (c) (19), (20), and (21) of the proposed regulation be submitted at some later date, "perhaps no later than six months after the initial notification."

As the Commission has fully explained in Part F of this preamble, complete notification is extremely important in carrying out the functions of the Commission. For this reason, the Commission denies this request and these paragraphs appear as (a)(16)–(18) of § 1115.7 of the regulation.

14. Comments dealing with § 1115.7(a)(24) of the regulation have been fully covered in part G of this preamble, which deals with proprietary information. However, in response to numerous inquiries, the Commission wishes to point out that the last sentence in paragraph (c)(22) of the proposed regulation should be a separate paragraph. Accordingly, that provision appears in the regulation as § 1115.7(b).

L. *Additional Requests.* 1. One consumer group suggests that the Commission require manufacturers, distributors, and retailers to forward to the Commission copies of consumers' complaints which relate to the potential product hazard that is the subject of the section 15(b) notification.

The Commission finds merit in this suggestion and § 1115.7(a)(5) of the regulation read accordingly.

2. Another comment suggests that a retailer or distributor who notifies the Commission of a potential consumer product defect or of a failure to comply with an applicable consumer product safety rule also forward such information to the manufacturer of the consumer product.

While the Commission does not have the authority to require that such notification be made to a manufacturer, it finds merit in the proposal and suggests that retailers and distributors forward this notification to manufacturers.

3. Comments were received from one law firm and one association of manufacturers questioning whether section 15(b) of the act and the regulations promulgated thereunder are prospective or retrospective in scope. One of the comments requests that notification be required only for those consumer products distributed in commerce after the effective date of the act.

The Commission does not accept this view. Nothing in the act states that the Commission's authority extends only to those consumer products distributed in commerce after May 14, 1973. The Commission is expressly mandated to "protect consumers against unreasonable risks of injury from hazardous products" and the Commission finds this includes any consumer product which has been distributed in commerce and has come or could come into the hands of the consuming public. This does not mean that a manufacturer, distributor, or retailer who obtained information which reasonably supported the existence of a defect or of failure to comply prior to May 14, 1973 (the date the Commission was activated), is now required to comply with the notification requirements of section 15(b) and the provisions of the regulation promulgated below; rather, every manufacturer, distributor, or retailer who obtains information after May 14, 1973, which reasonably supports the conclusion that a consumer product, which has been distributed in commerce and which has come or could come into the hands of the consuming public, contains a defect or a failure to comply with an applicable consumer product safety rule, is required to notify the Commission in accordance with section 15(b) and the provisions of the regulation promulgated below.

M. *Filling a section 15(b) notification.* The chief executive officer of the notifying company shall sign and certify any information forwarded to the Commission for the purposes of complying with section 15(b) of the act, or shall delegate

this responsibility and so advise the Commission in writing. The form set forth in § 1115.9 may be used to inform the Commission of this delegation of responsibility.

Conclusion. Having evaluated the comments received and other relevant information, the Commission concludes that the proposed regulation, with the changes discussed above, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (Pub. L. 92–573), secs. 15 (a), (b), 27 (b), (e), 30, 86 Stat. 1221, 1228, 1231 (15 U.S.C. 2064 (a), (b), 2076 (b), (e), 2079), Title 16 is amended by adding the following Part 1115 to Subchapter B of Chapter II:

Sec.

1115.1 Scope
1115.2 Purpose.
1115.3 Definitions.
1115.4 General requirements.
1115.5 Initial notification.
1115.6 Time limits for initial notification.
1115.7 Subsequent notification.
1115.8 Final statement.
1115.9 Delegation of authority.

Authority: Secs. 15 (a), (b), 27 (b), (e), 30, 86 Stat. 1221, 1228, 1231 (15 U.S.C. 2064 (a), (b), 2076 (b), (e), 2079).

§ 1115.1 Scope

This Part 1115 prescribes notification requirements to be followed by manufacturers, distributors, and retailers who obtain information which reasonably supports the conclusion that one of their products fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard.

§ 1115.2 Purpose

The purpose of this Part 1115 is to enable the Commission to evaluate notifications to determine if a reported product which could create a substantial product hazard does, in the Commission's opinion, create a substantial product hazard and to determine the adequacy of a substantial product hazard notification.

§ 1115.3 Definitions.

The definitions of terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to such terms as used in this Part 1115.

§ 1115.4 General requirements

Every manufacturer of a consumer product distributed in commerce and every retailer and distributor of such consumer product shall immediately inform the Director, Bureau of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207 (phone (301) 496–7631), of any defect or failure to comply immediately upon obtaining information which reasonably supports the conclusion that a consumer product fails to comply with an applicable consumer product safety rule or upon obtaining information which reasonably supports the conclusion that a product contains a defect which creates or could create a substantial product hazard. Such manufacturer, distributor, or retailer need not so inform the Commission if the manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply. For the purposes of this Part 1115, the Commission will be "adequately informed" when it has received the information specified in this Part 1115.

§ 1115.5 Initial notification

The initial notification to the Commission shall:

(a) Identify the product.

(b) Give the name and address of the manufacturer, or if the manufacturer is unknown, the name and address of every distributor and/or retailer of such product known to the manufacturer, distributor, or retailer making the notification.

(c) Specify the nature and extent of the defect or the failure to comply with an applicable consumer product safety rule.

(d) Give the name and address of the person informing the Commission.

(e) Furnish (to the extent such information is then reasonably available) the data specified in § 1115.7(a).

§ 1115.6 Time limits for initial notification

(a) The initial notification to the Commission may be by any means but should be received by the Commission within 24 hours after the reporting party has

obtained information which reasonably supports the conclusion that a defect or a failure to comply with an applicable consumer product safety rule has occurred. If the initial notification is by means other than a written communication, it shall be confirmed in writing within 48 hours of obtaining informatoin which reasonably supports the conclusion that a defect or a failure to comply with an applicable consumer product safety rule has occurred and shall include the data (as is then reasonably available) specified in § 1115.7(a).

(b) The time requirements referred to in paragraph (a) of this section pertain to notification during working hours within the business week.

§ 1115.7 Subsequent notification

(a) Subsequent notification to the Commission shall be made in writing and shall include, but not be limited to, the information listed below in this paragraph (a). The person(s) responsible for supplying such information is (are) placed in parentheses after each item of information requested. For the purposes of this Part 1115 and in accordance with the act, "manufacturer" includes any importer of consumer products.

(1) Name and address of the person informing the Commission (manufacturer, distributor, retailer).

(2) Identification of the product, including description and retail price; name and address of the manufacturer of the product; and location of manufacturing plants (manufacturer, distributor, retailer, to the extent known to each).

(3) Nature of the potential product hazard (manufacturer, distributor, retailer).

(4) Date upon which information was obtained which reasonably supported the conclusion that a potential product hazard existed (manufacturer, distributor, retailer).

(5) Manner in which information was obtained supporting the existence of a potential product hazard, such as consumer complaint, quality control testing, etc. If consumer complaints are involved, copies of such complaints should be forwarded to the Commission. (Manufacturer, distributor, retailer.)

(6) Nature of the potential injury associated with the potential product hazard (manufacturer, distributor, retailer).

(7) Whether injuries have occurred associated with the hazard or potential product hazard. Include the number, nature, and severity of such injuries. (Manufacturer, distributor, retailer, to the extent known to each.)

(8) Number of products which present a hazard or a potential product hazard and the number of units of each such product involved (manufacturer, distributor, retailer, but distributor and retailer only to the extent known from products at hand).

(9) Number of units of each product in the hands of consumers (manufacturer, distributor, retailer, but distributor and retailer only to the extent known from products at hand).

(10) Specific dates when units were manufactured and shipped from the factory (manufacturer, but distributor and retailer to the extent known).

(11) An accounting of when and where such products were distributed and the number of units of each product so distributed (manufacturer, distributor).

(12) Model numbers, serial numbers, or identifying marks involved for products so identified (manufacturer, distributor, retailer).

(13) Location on product where model number, serial number, or identifying mark appears for products so identified (manufacturer, distributor, retailer).

(14) Whether manufacture of the product has ceased (manufacturer).

(15) Whether corrective action has been, is being, or will be taken by the manufacturer and how long it has or will take (manufacturer).

(16) What engineering changes will be made to correct the defect and/or failure to comply with an applicable consumer product safety rule and the timetable for accomplishing such changes (manufacturer).

(17) Description of those tests conducted in factories to avoid the defect and/or failure to comply with an applicable consumer product safety rule (manufacturer).

(18) What new quality controls will be initiated to avoid the defect and/or the failure to comply with an applicable consumer product safety rule and the timetable for changes to be placed in effect (manufacturer).

(19) Whether advice about the product has been, is being, or will be given to purchasers, including consumers, and how such advice was or will be given (manufacturer, distributor, retailer).

(20) Whether public notice of the defect or failure to comply has been or will be given. If already given, furnish copy to the Commission. (Manufacturer, distributor, retailer.)

(21) Whether refund, replacement, or repair actions have been, are being, or will be taking place (manufacturer, distributor, retailer).

(22) Whether notice has been or will be mailed to each person who is a manufacturer, distributor, or retailer of such product and what effort has been or will be made to notify consumers directly where such consumers are known (manufacturer, distributor, retailer.)

(23) Plans for the proposed disposition to finished goods and work-in-process inventory (manufacturer).

(b) Unavailability of any portion of the information specified in paragraph (a) of this section shall not delay submission of available data.

(c) Upon request, the reporting person shall furnish to the Commission a list of the names and addresses of all disbtributors, retailers, and purchasers, including consumers, to the extent known to the reporting party.

(d) Subsequent notification to the Commission by a manufacturer shall be considered complete whenever the information specified in paragraph (a) of this section and any additional information requested by the Commission during the course of its investigation has been furnished.

(e) Subsequent notification to the Commission by a distributor or retailer shall be considered complete whenever the information specified in paragraph (a) of this section (as is available to the distributor or retailer) and any additional information requested by the Commission during the course of its investigation has been furnished.

(f) In submitting information, the reporting person should state whether any of the information is believed to be entitled to exemption from disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552) or regulations issued thereunder. Information for which exempt status is claimed (such as trade secrets, confidential financial or commercial information, or information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy) should be specifically identified, and reasons should be given to substantiate the claim for exemption.

§ 1115.8 Final statement

A written report by a responsibile official of the manufacturer shall be submitted to the Director, Bureau of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207, when all of the information specified in § 1115.7 has been supplied.

§ 1115.9 Delegation of authority

The chief executive officer of the notifying company shall sign and certify any information forwarded to the Commission for the purposes of complying with section 15(b) of the act, or shall delegate this responsibility and so inform the Commission in writing. Information regarding such delegation may be submitted in the following form:

DELEGATION OF AUTHORITY

(Name of company)_____

I_____hereby certify that
(type name)

I am Chairman and Chief Executive Officer of the above-named company and that as such I am authorized to sign documents and to certify on behalf of said company the accuracy and completeness of information in such documents.

Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person listed below.

This delegation is effective until revoked in writing.

Authority delegated to:_____
(Name)

_____
(Address)

_____
(Title)

Extent of authority:_____

_____

_____

Signed:_____
(Name)

_____
(Address)

_____
(Title)

Effective date. The regulation promulgated above, 16 CFR Part 1115, shall become effective March 21, 1974.

(Secs. 15(a), (b), 27(b), (e), 30, 86 Stat. 1221, 1228, 1231 (15 U.S.C. 2064(a), (b), 2076(b), (e), 2079))

Dated: February 13, 1974.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.74-3847 Filed 2-15-74;8:45 am]

ATTACHMENT 8

CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., April 22, 1974.

HON. LEE METCALF,
Chairman, Subcommittee on Budgeting, Management, and Expenditures, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your February 22 request for the views and recommendations of the Consumer Product Safety Commission with respect to the success of section 27(k) of the Consumer Product Safety Act and comparable provisions contained in S. 704, the "Regulatory Agencies Independence Act."

The Commission believes that it is too early to determine the effectiveness of the budget process as outlined in section 27(k) since we are still in the first budget cycle. The Commission is, however, pleased to describe its implementation of section 27(k) and offer its views on comparable provisions contained in S. 704.

Section 27(k)(1) requires that whenever the Commission submits any budget estimate or request to the President or the OMB, it must concurrently transmit a copy to the Congress. Interpretation of section 27(k)(1) varies among the parties involved, primarily with respect to the scope of the material that must be provided to the Congress. The Commission has taken the position that a budget request is a process, not merely the submission of a resource level statement. As such, the request includes supportive justification whether submitted formally in writing or presented orally in the course of hearings and negotiations. Thus, in the implementation of section 27(k)(1), Congress is assured of receiving all information relevant to the Commission's budget request, including information supplied to OMB and that arising in OMB/Commission budget sessions.

On the other hand, S. 704 would have the agencies named therein submit directly to the Senate and House of Representatives their estimates and requests for regular, supplemental, and deficiency appropriations. Those estimates and requests would not be subject to change upon direction by any other government agency. Further, the language contained in S. 704 appears to prohibit the agencies from concurrently transmitting to OMB a copy of an appropriations estimate or request submitted to Congress. The Commission is unaware of any reason that would justify such restraint. The Commission considers the approach provided in section 27(k)(1) to be preferable since it permits concurrent transmission of budgetary information to the OMB and Congress.

S. 704 would require that any communications to Congress respecting legislation made by the agencies named in the bill could not be submitted to, or be subject to change by, the OMB or any other authority. This appears to prohibit the agencies from sending information copies of their views on legislation to the OMB after those have been submitted to Congress. Further, S. 704 would permit the agencies to comment to the OMB upon legislation submitted by that office without providing a copy of such comments to the Congress. The Commission believes it preferable to have Congress and the OMB concurrently apprised of an independent agency's views on legislation regardless of who initially requests those views. This approach is reflected in the Commission's interpretation and implementation of section 27(k)(2).

We trust that the above information is responsive to your inquiry.

Sincerely,

RICHARD O. SIMPSON, *Chairman.*

ATTACHMENT 9

STATEMENT OF RICHARD O. SIMPSON, CHAIRMAN, U.S. CONSUMER PRODUCT SAFETY COMMISSION BEFORE THE COMMITTEE ON COMMERCE, COMMITTEE ON GOVERNMENT OPERATIONS, U.S. SENATE, APRIL 3, 1974

Mr. Chairman, the Consumer Product Safety Commission welcomes the opportunity to appear before this distinguished panel to express its concerns with respect to a Federal practice which appears to be diametrically opposed to the intent of the Congress when it created this Commission.

The Commission takes quite seriously its charge to operate as an "independent regulatory commission". This charge was established by the language of the law and is supported by the legislative history of the act. It is our belief that Congress intended to create a strong agency, removed as far as possible from the influence of partisan politics or political controls. Indeed, it should not be captured by any special interests.

We would point out that the Consumer Product Safety Act itself has unique provisions which bear on the subject of the independence of this Commission. We would first like to refer the committee to section 4(a) of the Consumer Product Safety Act which states that "an independent, regulatory commission is hereby established . . ." Later in that section Congress stated that the Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. As you are probably all aware, this provision is unique among federal regulatory agencies. Section 27(k) of the Consumer Product Safety Act goes to further lengths to ensure independence by describing a different means of insuring that budget estimates and requests are concurrently transmitted to the Congress and OMB and that any legislative recommendations, testimony or comments by this Commission are also concurrently transmitted to OMB and the Congress. Section 4(g)(2), prohibiting employment by a Commissioner or senior official of the Commission with a manufacturer subject to regulation by CPSC for a period of one year after leaving the Commission, is clearly intended to discourage undue industry influence. The Commission's policy of openness in the conduct of its business furthers this intent.

I refer you to these sections to demonstrate our bases for believing that the Consumer Product Safety Act is Congress' latest expression of what it considers an independent regulatory agency should be.

We have sought diligently to adhere to that expression and believe, to date, we have been successful.

This Commission is aware of the long-practiced, but unofficial system of political clearance of key management personnel in Federal agencies. We are further aware that the process is one which has not been totally without the approval of the Legislative Branch, as well as the Executive Branch. In fact, the system of political clearance has been discussed before the Senate Committee on Post Office and Civil Service during hearings relating to the Civil Service Commission. It may well be an appropriate process for non-regulatory agency personnel. Indeed, it would be almost impossible to imagine an Administration functioning without the ability to ensure that those in policy-making positions in the Executive Branch can and will be advocates of that Administration's policies and programs.

It is not, however, in our view, an appropriate process with respect to regulatory agencies—independent regulatory agencies. And that, Mr. Chairman, is the keystone of our complaint.

The Consumer Product Safety Commission has diligently and professionally handled personnel recruitment, and has made its selections for key management positions. Throughout the screening process, the overriding criteria were "interest and competence," and at no time did we ask for the political affiliations of the candidates. As required, we have forwarded to the Civil Service Commission all of the information and documentation required by its regulations in order to effect the appointment of our management selections. To date, we have not received Civil Service Commission concurrence in most of these appointments. We have been advised by the Civil Service Commission that White House clearance was required and has not been received on our non-career candidates.

A letter of protest with respect to this clearance process was sent to the Chairman of the Civil Service Commission. Copies of that letter were made available to appropriate Members of Congress and to the White House.

The thrust of the response from the Civil Service Commission was that this political clearance process is a custom which has been adhered to by all parties involved over a period of time, and should the Consumer Product Safety Com-

mission not agree that such a procedure is appropriate to its functions, the Civil Service Commission would suggest that those for whom clearance was required be submitted as candidates for career status, rather than "Schedule C" status.

And there we find another side to the coin. Surely, it would not be appropriate nor proper to appoint an entire top management staff "set in concrete" through the career Civil Service, to provide support and direction for an independent, regulatory commission.

Political and other changes in public attitude will be reflected in time by the changing make-up of the Commissioners. The Commissioners must have the ability to also bring about desirable changes in the Commission's management personnel. Unlimited tenure to key management personnel could result in making the staff more powerful than the sum of the Commissioners, or, in essence, cause the tail to wag the dog.

This brings us to the point, Mr. Chairman, of seeing the total nondesirability and, in fact, conflict of interest involved in a political clearance process when independent regulatory agencies are involved. It is not only the "evil" we decry in this instance, it is the "appearance of evil" and the opportunity for loss of confidence. The average citizen believes independent means just that. The public's cynicism and growing lack of faith in the institutions of government must not be ignored.

The policies and programs such key management personnel should advocate, however, are not Administration programs—or Congressional programs—or any partisan programs. These people are representatives of a Commission charged with quasi-judicial regulatory functions, which can only be performed properly in a non-partisan atmosphere, an atmosphere of what is best, to remove or remedy "unreasonable risks of injury to consumers" than what is best to forward (or deter) the Administration's programs.

A review of the regulations prescribed by the Civil Service Commission in Title 5 of the Code of Federal Regulations, Chapter 1, Part 9 at Section 9.20 shows that non-career executive assignments are allowed only when it has been determined that there is a need to fill the position by a person who will either advocate an Administration program; support or develop political policies of the Administration; or serve as a principal or personal assistant to a Presidential appointee or other key political figure.

As previously mentioned, none of these three categories, in the opinion of the Consumer Product Safety Commission, fits precisely the non-career executive assignments we believe appropriate for an independent regulatory commission.

I have asked our General Counsel to look into the system of appointing so-called "super-grade" non-career executives. We find that there is no statutory or even Executive Order basis for the three non-career categories described above. It therefore appears to this Commission that in the case of independent regulatory commissions the Civil Service Commission should create a separate category of non-career executive assignments solely for these independent agencies.

The Commission has no desire to operate "in a vacuum" or to be removed from the realities of life. There is a political balance provided for in the appointment of the five Commissioners and, we believe, appropriately so. It should provide a bi-partisan balance, and we believe it does. The Commissioners are appointed by the President of the United States with the advice and consent of the Senate. The Chairman is designated by the President of the United States. In both of these procedures, it is expected that there will be scrupulous examination—by the White House through its clearance processes, and by the Senate through its confirmation hearings, and Floor vote.

The Commission has an office of Congressional Relations which seeks to respond to the needs and requests of the Congress in a non-partisan manner. The directions and policies of the Commission are on view for all to see, to participate in, and to criticize.

The independence we seek, Mr. Chairman, relates to policy direction, decision making, management activities, emphasis, attitude, tone. We do not seek independence from accountability, and, in fact, are finding the checks and balances both stimulating and helpful. The Commission was, as you know, the subject of oversight hearings last week before the House Committee on Interstate and Foreign Commerce. Oversight is a proper and appropriate function of the Congress, and certainly provides an accounting and a review.

Further review is provided by the appropriations process which incorporates the review of the Executive Branch through the Office of Management and Budget; the assessment of the appropriate legislative committees in oversight and

authorization; and the detailed inspection and guidance of the Appropriations Committees.

And there is the ultimate opportunity, through the legislative process, to extend, amend, authorize, appropriate, or veto the programs and funds of the Commission.

We do not view this issue as a partisan one, we are not suggesting that this Administration is seeking to control in some sinister way the activities and actions of the Consumer Product Safety Commission. We are saying that political considerations applied to staff are inappropriate and, in fact, wrong, when that staff serves in an advisory capacity to the Commissioners of an independent agency created to regulate consumer product safety in an even-handed, impartial, nonpartisan manner. We believe, in fact, that it is inappropriate in any independent regulatory commission, which has a political balance requirement of its commissioners, and performs a quasi-dudicial, regulatory function.

In essence, Mr. Chairman, it is the principle with which we take issue, not the individuals involved. The "political clearance process" is not new: The Consumer Product Safety Commission *is* new, and the actions we take, whether we are totally aware of it or not, are precedent setting.

We would be less than honorable, Mr. Chairman, if even as we strive to remain free of capture by those whom we regulate, we became willing captives of political partisans.

Any "policy" clearance required for these individuals should be solely the judgment of the person or persons charged with the executive responsibility in the agency concerned.

If the Congress agrees that a new type of non-career supergrade position description is needed for independent agencies, it would be helpful if the Congress would so inform the Civil Service Commission, perhaps by a simple "Sense of Congress" resolution.

Absent a resolution of this problem by the CSC in setting up a new category for key, non-career staff positions in regulatory agencies, we believe legislation is desirable to bring about the change. If this Committee agrees, we would be pleased to propose legislative language or to comment on such legislation at an appropriate time.

Mr. Chairman, we would be pleased to answer your questions.

[Whereupon, at 4 p.m., the committee recessed, to reconvene at 10 a.m., Monday, November 25, 1974.]

REGULATORY REFORM—1974

MONDAY, NOVEMBER 25, 1974

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 3302, Dirksen Senate Office Building, Senator Walter Huddleston presiding.

Present: Senators Huddleston and Brock.

Also present: Robert Bland Smith, Jr., chief counsel and staff director, W. P. Goodwin, counsel, Eli Nobleman, counsel, and Elizabeth A. Preast, chief clerk, Committee on Government Operations; Vic Reinemer, staff director, E. Winslow Turner, chief counsel, Alan Chvotkin, professional staff member, and Lyle Ryter, minority counsel, Subcommittee on Budgeting, Management, and Expenditures; Alvin From, staff director, and Lucinda T. Dennis, chief clerk, Subcommittee on Intergovernmental Relations; and Richard A. Wegman, chief counsel and staff director, Subcommittee on Reorganization, Research, and International Organizations.

Senator HUDDLESTON. The committee will come to order, and we will continue with our inquiry into a possible commission on regulatory agencies.

The first witness this morning is Mr. Thomas E. Kauper. Mr. Kauper, please identify yourself and your title and the gentleman with you for the record and proceed with your statement.

STATEMENT OF THOMAS E. KAUPER, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE ANTITRUST DIVISION, ACCOMPANIED BY JOE SIMS, SPECIAL ASSISTANT

Mr. KAUPER. Thank you, Mr. Chairman.

I am Thomas E. Kauper, Assistant Attorney General in charge of the Antitrust Division, Department of Justice. I am accompanied by my special assistant, Joe Sims.

I am pleased to be here today to discuss the views of the Department of Justice concerning a number of bills which would create a national commission to study the impact of the regulations promulgated by the various regulatory agencies.

S. 4167 would establish a National Commission on Regulatory Reform to evaluate the effect of Federal and State regulation on inflation, competition and the public interest. The Commission would be composed of three representatives from the private sector, three senior officials of the executive branch, two Senators and two Members of the House of Representatives, all to be selected by the

President. Within 9 months following the appointment of the commissioners, S. 4167 would require that the Commission report on a rather lengthy list of issues set forth in the bill.

These include a report on the most serious deficiencies within the regulatory process which tend to contribute to inflation, lessen competition or which adversely affect the public in regulated companies; the extent to which certain areas of the national economy are overregulated or underregulated with special emphasis on overlapping regulatory jurisdictions; the economic costs and benefits of regulation or lack thereof with special emphasis on the inflationary impact of regulation on the costs to the consumers of goods and services, the added cost to suppliers and manufacturers in providing goods and services, the anticompetitive effects of some regulation, the degree of market concentration in regulated as opposed to nonregulated industries and productivity factors affected by regulation.

The bill would also require the Commission to report within the 9-month period on a number of structural issues such as the replacement of the Commission form with a single administrator, revamping conflict of interest statutes as they apply to regulatory agency officials, removal of Office of Management and Budget oversight on budget and legislative requests, and the issue of permitting each regulatory agency to independently control and supervise its own litigation in the Federal courts.

While S. 4167 contains many laudable issues to be reviewed by the Commission, we believe that it on the whole tends to misconceive the purpose of the review requested by the President. The purpose of this review is, simply put, to assess the effect of Federal regulation on competition and its impact in possibly creating a misuse of this Nation's resources and contributing to inefficiency and economic waste in the regulated sector.

As I have indicated, many of the issues raised in section 3(a)(8) of the bill are basically structural issues such as the collegial form of the Commission, the creation of a new administrative court of appeals as an expert judicial unit to handle appeals from the regulatory agencies, and the like.

In our view these structural issues, while important, do not go to the central deficiencies in the commissions today and do not have significant bearing on the question of regulation's impact on inflation. The principal deficiencies in agency performance, in the view of the Department, result more from agency inflexibility and protectionism toward established firms in the regulated industries than from administrative slowness through overjudicialization or collegial disagreements. Even were the Regulatory Reform Commission to adopt many of the proposals suggested in S. 4167, that action would be at most of relatively minor value in advancing competition and economic efficiency which are the primary interests of the public in this inflationary period.

In contrast, the Council of Economic Advisers in its 1970 Economic Report was critical of the regulatory agencies on substantive rather than structural factors.

> The fundmental problem lies in the complex and conflicting objectives that sometimes characterize economic regulation itself. Agencies are supposed to protect the present and future interests of consumers, employees, investors, and the Government.

No one can begin to see the full consequences of current decision on all these groups. As quasi-judicial bodies, the regulatory commissions tend to give much weight to precedent. As a result, change of any kind becomes hard to justify and even harder to allow when some affected group can claim immediate harm, whereas the potential beneficiaries are widely diffused and usually not represented. Yet innovation and adaptation are the dynamics of economic progress.

There is no clear safeguard against these dangers, but more reliance on economic incentives and market mechanisms in regulated industries would be a step forward.

("Economic Report of the President," February 1970, pp. 107–8.)

Competition can and should be a crucial factor in achieving this goal. Fostering competition will require revision of some statutory mandates as in the transportation field, reexamination of overly protectionist statutory interpretations, and appointment of regulators more committed to free market mechanisms and economic efficiency. But we doubt that revision of agency or appellate structure will significantly increase agency dedication to fostering competition and industry efficiency.

It has also been our experience that regulatory delay, dissension, and vacillation often stem more from outmoded or conflicting statutory commandments than from agency structure. For instance, so long as the law requires in express language that each person wishing to carry interstate freight by truck must prove that the public convenience and necessity will be served by allowing him to compete, that is, obtain a Federal certificate, transportation regulatory agencies will have to conduct lengthy, costly, adjudicatory hearings which in themselves and because of their usual results retard competition and efficiency.

The same would be true for cases in which the law demands that anyone wishing to change the rate for carrying any commodity by truck, rail, barge, or air, if opposed, must prove that the rate is compensatory, reasonable, and nondiscriminatory. Alterations in agency structure might ameliorate this situation, but only to a limited degree.

It is more important to simplify or reinterpret the statutory tests, or eliminate regulation altogether. Thus, amendment of the transportation acts to lessen Federal regulation or to place the burden of proof on those who try to keep out a competitor or oppose pricing freedom would probably produce a much more substantial net gain in regulatory speed and performance than structural experiments.

We believe that a reform commission review designed to improve the performance of the regulatory agencies should include, in order of priority: (1) Revision of regulatory statutes to promote greater efficiency in regulation and regulated industries by allowing greater freedom on entry, exit, pricing, and services; (2) interpretation of regulatory acts in such a way as to allow the maximum amount of competition compatible with the public interest purposes of the regulatory scheme; and (3) creation of programs by which the caliber of regulatory officials might be improved.

Senate Joint Resolution 253 contemplates that the newly established Commission would within 1 year be required to report to the President and to the Congress on the impact of regulation by the regulatory agencies. The Commission would be required to investigate the impact of the agencies' regulations upon market structure, competition, inflation, employment, prices, health, and safety. In the second

year the Commission would be required to investigate and make recommendations to the President and to the Congress on the methods of improving the agencies as well as the regulatory structure. Those recommendations would be made by the Commission in specific legislative form. In the third year, the last year of the Commission's existence, the Commission would be required to make a status report on the progress made in implementing its conclusions and recommendations.

Under Senate Joint Resolution 253, the composition of the Commission would consist of three members appointed by the majority leader of the Senate, three appointed by the Speaker of the House of Representatives, three appointed by the President, with advice and consent of the Senate, from the personnel of Independent Regulatory Agencies, and three appointed by the President with the advice and consent of the Senate from lists of qualified individuals on the basis of their special training, experience, or qualifications.

Senate Joint Resolution 256 differs from other pending legislation in a number of ways. First, the composition of the Commission would consist of 15 members, including 3 each to be appointed from the Senate, the House of Representatives, and the executive branch. Under this legislation, the three executive branch representatives could not include officials of regulatory agencies. In addition, Senate Joint Resolution 256 would mandate the appointment of six members from the private sector, two each from the labor community, the business community, and from consumer representatives.

Senate Joint Resolution 256 would authorize the Commission to study and make recommendations concerning any agency which regulates by rulemaking or adjudication, and would not be limited to the independent regulatory agencies. The Commission's authority would also include an examination of proposals for the creation of an Agency for Consumer Advocacy.

Senate Joint Resolution 256 would require the Commission to report on alternative methods for improving representation of consumers within the decisionmaking process of the regulatory agencies and would include specifically consideration of the establishment of a nonregulatory agency to represent the interest of consumers. Senate Joint Resolution 256 would require a report on this portion of the Commission's study with in 18 months.

Senate Joint Resolution 256 would require a report from the Commission within 1 year containing conclusions and recommendations on the impact of legislation; within 2 years recommendations as to changes in the regulatory system, including procedures as well as the scope of particular regulatory schemes; and within 3 years a report detailing steps taken or underway to carry out the recommendations of earlier reports.

We believe this time schedule is simply too long. The need is too great to wait 3 years. A much shorter time period, such as the 1 year contemplated by S. 4145 or the 9-month period of S. 4167, is sufficient to undertake the necessary study and analysis and to prepare the necessary legislative recommendations.

S. 4145, the administration's proposal, would provide for the establishment of a Commission within the executive branch composed of four members from the private sector and four senior officials of the

executive branch as appointed by the President, two Senators appointed by the President of the Senate, and two Members of the House of Representatives appointed by the Speaker of the House.

The President would have the authority to designate the chairman and the vice chairman among those members appointed to the Commission. The Commission would be required to prepare and make a report to the President and the Congress not later than 1 year following the appointment of its members. That report would include a detailed review of the purposes and objectives of selected regulatory activities, the assessment of the actual performance of the agencies in achieving those purposes, an analysis of the goals and benefits of each activity, and an examination of State and local government regulatory activities which interact with the Federal regulatory system.

The report would also include recommendations for legislative action and review the overall goals and procedures of the agencies, as well as an assessment of costs of modification and a recommendation for continued surveillance of Federal independent regulatory activities. We prefer this legislation.

It appears to the Department that the need for regulatory reform under current economic conditions is greater than in any recent era. In our view the regulatory schemes, adopted in earlier periods of the depression or when other economic conditions existed, have failed in modern times to encourage economic efficiency and productivity and have instead encouraged waste within the regulated sector. Given the rate of growth and technological progress which the last four decades have seen, it is not surprising that the regulatory agencies are often characterized as ineffective in protecting the consumer against monopoly exploitation, as often producing serious distortions in resource allocation, and often resulting in massive net losses to society.

Largely at the behest of congressional mandate, agency regulation has often pursued the common goal of restricting competition by means of price regulation, entry regulation, technology control and service quality limitations. We believe this Nation can no longer afford, and should not tolerate, such wasteful Government practices.

The Department of Justice has long been an advocate of regulatory reform and supports the administration's efforts to bring about this reform. We are concerned, however, that a Commission to study regulatory reform not run for an undue length of time. From a historical perspective this Nation has had a number of commissions. The Roosevelt era had the Brownlow Commission.[1] The Truman and Eisenhower era has the two Hoover Commission studies.[2] The Kennedy administration gave us the Landis study,[3] while the Johnson years produced numerous task force reports. Under the Nixon administration we had the Ash Council report.[4] All of these studies yielded little in affirmative action for change.

Also, these studies and others produced by noted economists and administrators, including studies currently underway in executive branch agencies, such as the Department of Transportation, provide

---

[1] President's Committee on Administrative Management, report of the committee with studies of administration in Federal Government (1937).

[2] Commission on Organization of the Executive Branch of the Government, report (1949); Commission on Organization of the Executive Branch of the Government, report (1955).

[3] J. Landis, report on regulatory agencies to the President-Elect (1960).

[4] The President's Advisory Council on Executive Reorganization, "A New Regulatory Framework," report on selected independent regulatory agencies (1971).

a strong working background for the proposed Regulatory Reform Commission. In the area of transportation, numerous experts have reached the unanimous conclusion that the impact of entry and price regulation on competition has been detrimental to the interests of the public in seeking cost oriented efficient services.

This is not to say that the Commission should simply rubberstamp earlier studies on transportation or those which concern other areas. But much of the work has been done and should not be repeated. The formation of a commission simply to restudy areas already under study raises considerable concern from an inflationary standpoint as creating in itself needless waste and duplication.

The need for elimination of economic waste is too urgent for a 3-year study. We need change now. We would hope that a Regulatory Reform Commission would undertake such studies as are necessary and would propose remedial legislation as soon as possible. This, of course, will require a knowledgeable commission adhering to a tight time schedule.

For these reasons we support S. 4145. The provisions of S. 4145 provide for one-third of the Commission members to be from the executive branch, a recognition of the expertise possessed by many members of the branch as the result of dealings with and representation of the agencies. We understand this could include members of the independent regulatory agencies.

S. 4145 also provides for the chairman and vice-chairman to be appointed from among the Commission members by the President, an assurance that the leadership of the Commission will be sensitive to the administration's desire for prompt action, and not dilatory tactics. Further, S. 4145 requires the Commission to file its report and legislative recommendations within 1 year, a time schedule more responsive to the urgency of the problem than the 3-year time frame of Senate Joint Resolution 253.

Apart from the new actions to be taken by the proposed Commission, the Department of Justice urges the Congress to draft and pass legislation now which will confine regulation to those areas where it can be demonstrated clearly that the benefits of competition—competitive prices, technological innovation, and optimal allocation of resources—are outweighed by the injury to the public interest which competition would permit, and then only to the minimum extent required to protect those specified interests.[1]

Otherwise, as the Supreme Court stated in *United States* v. *Third National Bank in Nashville*, the benefits of competition, long acknowledged by Congress, business, and consumers alike, would be sacrificed needlessly. There is legislation now before Congress which would accomplish, to some degree, these ends. The Surface Transportation Act is one such example.

We have also begun our own regulatory reform project, hopefully leading to suggestions to the Commission and the Congress for statute-by-statute revision. This project, which will include examination of air transportation, surface transportation, pipelines, ocean transportation, electric power, banking and finance, common

[1] The Supreme Court adopted this guide in *Silver* v. *NYSE*, 373 U.S. 341, 357 (1963), holding that regulation should displace the antitrust laws only if necessary to make the regulatory scheme work, and then only to the minimum extent necessary.

carrier communication, and the securities industry, is being given high priority within the Antitrust Division, and we would hope to complete the project in time to be able to make an early and effective contribution to the Commission when it is established.

The study will focus on the history and stated purpose of the existing regulatory schemes, and compare these to the actual operation and effect of existing regulation. We will analyze the relationship, if any, of the regulatory scheme as it exists today to the stated objectives of regulation, and the effect the current system of regulation has on economic efficiency.

With this background, we will then develop necessary legislative and administrative proposals to adjust the various regulatory systems to enable desirable specific regulatory goals to be accomplished without unnecessary interference with competitive policy. Our current project will seek to develop specific programs embodying these principles for each area under study. We will of course coordinate our efforts with the efforts of any Regulatory Reform Commission which is established, as well as with the Council on Wage and Price Stability, which will also be investigating regulatory activities which impede competition and tend to raise costs.

Today is a time for change, a time for concern about economic efficiency. True efficiency cannot be mandated by the Government, but must depend on the skill and initiative of individual enterprise. As I have indicated, competition rewards the innovator while regulation regulates what otherwise would be the rewards of success, and thus blunts the innovative drive.

We must look carefully for means of regulatory reform wherever such reform will result in net savings to the economy. And we must adopt these reforms quickly. This is the mandate I would hope Congress would give the Regulatory Reform Commission under S. 4145.

Thank you, Mr. Chairman.

Senator HUDDLESTON. Thank you very much for that very detailed statement. You indicated that the need for regulatory reform is greater now than ever before.

What conditions do you see escalating or becoming more serious in the future if nothing is done now?

Mr. KAUPER. I think our belief, Mr. Chairman, is that there is a great deal of waste caused by much of our regulation today. It is becoming increasingly apparent that this Nation, while perhaps it could afford that kind of waste at one time, can no longer do so. Moreover, I think as industries grow more complex, as our technological developments increase at a very rapid pace, the necessary effect of regulation, I believe, is to in many ways carry regulation over into areas in which it was never contemplated it would operate as the economy grew more complicated.

It seems to me there is an awareness now that these problems exist, that they are going to become more acute, and it is time to stop up short and ask "What are we doing?"

Senator HUDDLESTON. Do you see any way of developing a national policy that addressses itself to inflation or the economic situation that we are in without a thorough review and changes in the regulatory policies and system?

Mr. KAUPER. No. It seems to me it is an essential part of any such program.

Senator HUDDLESTON. You also said that the present system often produces serious distortions in our resource allocations. Can you elaborate on that and give me some examples?

Mr. KAUPER. I think, Mr. Chairman, that when one has the kind of regulatory patterns that we do in transport and a variety of other areas, we do not permit the normal flow of resources in and out of those industries. Indeed, it can work both ways. We may compel the inefficient use of resources by refusing to permit people to terminate services.

I cannot give you today any specific dollar figure estimates on particular regulatory activity. That is what we are now working on in the Division. I think there is a consensus that there are a number of places in which we are misallocating resources. There is very little doubt about it.

Senator HUDDLESTON. You have been quoted as saying that certain practices of price fixing and anticompetitive measures have raised price levels by $80 billion a year.

Can you elaborate on that some, explaining what actions were taken into consideration and how you arrived at the figure?

Mr. KAUPER. That figure is based on a series of estimates by a number of economists. Indeed, you can find economists' estimates at a number of figures. It is based on a percentage of gross national product.

I should indicate, Mr. Chairman, that that figure talks about economic waste in the economy as a whole. It is not necessarily tied to antitrust violations specifically; it has been quoted for that purpose and that is not accurate. Nor is it limited to problems of regulatory reform. It is based on a study made by Professor Sherer, chief economist at the Federal Trade Commission.

Senator HUDDLESTON. I am sure you cannot comment directly on the A.T. & T. case but a general question has been raised that you might be able to comment on.

The chairman of the board of A.T. & T. has indicated that the suit could simply result in higher rates and poorer service. Do you believe that classical competition in this or other cases is always best or are there situations where a monopolistic setup may be preferable?

And would you expect a Commission that studied regulation to recommend the retention of some practices that tend to protect monopolies?

Mr. KAUPER. I would think any reform Commission will undoubtedly recommend that some degree of regulation be retained where monopolies are necessary. I do not want to comment specifically on the A.T. & T. case, but I think we should point out, for example, that we have not challenged the monopoly of local telephone companies in providing local exchange service.

I do not think we are at a point yet where anybody wants to see two sets of telephone poles and so on, in that sense. I think clearly one has to recognize that we do anticipate that monopoly will be continuing in some circumstances and it will be regulated. The importance of the Commission is to understand precisely where these

areas are and to make their proposals accordingly, rather than to have regulation imposed for some other reason or to simply be existing by virtue of its own kind of inertia.

There are going to be areas where there is still going to be regulation.

Senator HUDDLESTON. A Washington Post editorial yesterday suggested that the main issue in the case of A.T. & T. might be: Are they simply to big to regulate?

Mr. KAUPER. I would doubt that is the issue.

Senator HUDDLESTON. I am wondering whether that could be an issue, notwithstanding the fact that that operation may actually be providing the consumer with as good a service at as low a cost as he may obtain any other way.

Mr. KAUPER. I do not want to limit my remarks to that particular case because it is in litigation. I do not want to comment particularly on it. But I think that one of the questions that has to be considered by any commission is whether given the sizes of various firms that are regulated, whether regulation can really be effective.

That is true of any regulatory problem.

The whole question of the efficiency of regulation may depend in part on the nature of those being regulated.

Senator HUDDLESTON. You get into kind of a philosophical and a practical question, too, as to whether the purpose of regulation is to provide competition just for competition's sake or whether it is to provide the consumer with the best possible service at the lowest possible cost, or whether it might be to prevent any company or business from getting bigger than somebody thinks it ought to be.

Mr. KAUPER. You have put a number of things altogether there, Mr. Chairman. Clearly, regulation, to the extent that it exists, has as its basic rationale the provision of the best service to the consumer. We believe that, normally speaking, to take your second theme, it is provided through competition and that we ought not depart from the regulation of and by the marketplace unless there is some clearly demonstrable reason for doing so.

We do not, however, generally take the position that we regulate somebody just because of their general size or indeed, that we take other action based upon their size.

Senator HUDDLESTON. Do you consider the Justice Department's movement in this particular case a unique situation? Is this the beginning of an accelerated policy or program by the Department to enter into antitrust cases, or is this a one-shot proposition?

Mr. KAUPER. I do not know if I would describe it as either one-shot or part of a program. Our particular investigation was completed. The decision was made to file and we filed. We do have other investigations but to suggest that this is part of some massive deconcentration program would probably be a mistake.

Senator HUDDLESTON. In your statement you suggested that a Commission on Regulatory Reform should focus on the economic aspects of regulation and the structure of the regulatory commissions.

Does this mean that you think the Commission should avoid consideration of administrative practices and procedures and substantive regulations, or do you view these as coming under two categories?

Mr. KAUPER. I think we would probably all agree that there are a number of procedural issues, issues going to the structure of the Commission which have been debated for many years and to which there may be room for improvement. But our primary message is that the real problem is one of the substance of regulation and not at least—to the same degree—the structure of the procedures the agency itself follows.

Hence, we believe what is essential, and I think what the President called for, was a review of the substance of regulation; more particularly, the statutory mandates setting the policies that these agencies follow.

I do not want to suggest that it is inappropriate to review procedures and structures, but I do believe it would be a mistake for the Commission to become preoccupied with those questions, and to go ahead without full consideration of the basic policy issues which seem to me are really the heart of the problem.

Senator HUDDLESTON. It has been said that the record of the Justice Department on antitrust enforcement is not particularly good. You may disagree with that.

Mr. KAUPER. I do.

Senator HUDDLESTON. Have you encountered significant problems in trying to enforce the antitrust laws? If so, what were some of these problems and how can they be overcome.

Mr. KAUPER. I think there are always a number of problems in enforcing antitrust laws. There are questions that go to our basic authority, our investigative authority, for example. We do not believe it is sufficient. We have a bill pending before the Congress now to deal with that problem. There are always questions of budget, although we have gotten a substantial increase for this year.

There are questions, I suppose, that go simply to the rather complex nature of the economy, the numbers of people needed both to investigate a matter and try a matter. It is very complicated. I do not think, however, there are any overriding barriers to effective enforcement. We are trying to identify the areas where we think, for example, through legislation, we can be more effective, but I do not see any real overriding difficulty.

Senator HUDDLESTON. Mr. Saxby, the Attorney General, has indicated this is an area in which he has a particular interest and apparently wants to give more impetus to it.

Do you believe this activity should be expanded within the Department?

Mr. KAUPER. I think so; yes. We are delighted with the emphasis that the Attorney General has given it, and perhaps more importantly the emphasis that the President gave it in his message, which I think is about the first time in 20 or 25 years that there has been a Presidential statement about it. I think it does indicate a very important emphasis with which I certainly agree.

Senator HUDDLESTON. There is a practical aspect in getting something done rather quickly. The time involved in an antitrust suit plus the many appeals that may follow make it important that we proceed in the way suggested by the proposed legislation: To have an overall review followed by, hopefully, some quick action by Congress. It is a more practical way to bring about immediate results than proceeding through litigation.

Mr. KAUPER. I think that is right. Of course, in the particular area that we are now speaking, Mr. Chairman, regulatory reform, in many of these cases nothing can be done through antitrust litigation in any event. But it is certainly true, particularly in structural matters, that antitrust cases and antitrust relief are not going to be an immediate matter. We are putting the emphasis on price fixing, and I think programs there can bear much more immediate fruit, but certainly in the more long-run kinds of antitrust relief, one is not talking about anything that is going to be measurable in the immediate future.

Senator HUDDLESTON. What kind of problems do you run into when one Government agency is involved in litigation with another Government agency?

Mr. KAUPER. This is a problem that arises periodically. The Department, of course, represents most of these agencies, and that may be the issue that you are raising. We continue to believe that is the way that it should be. I think, generally speaking, based at least on my own experience, this is not a major problem. It is true that we have on occasion taken positions other than that desired by the agency we may represent, in which case it is not uncommon to permit them to make their argument on their own behalf. But it is a rather uncommon occurrence, and I think that problem has been blown somewhat out of proportion. I do not think it is a significant difficulty, not as far as I have been able to see.

Senator HUDDLESTON. You mentioned the Department itself is undertaking a study of regulatory agencies. It may be useful for this committee to know how this study is progressing, who is directing it, whether it is underway at this time, and when it is expected to be completed.

Mr. KAUPER. It is being directed in part through the office of one of our Deputy Assistant Attorney Generals. We are shooting for a deadline toward the end of the year on the initial information, with recommendations in early spring. We have two or three sections of the Division who are working on parts of it. Mr. Sims is coordinating a major part of it, and I think we are pretty well underway.

What we have hoped to do is be in a position, assuming there is going to be a Commission, to advise that Commission of our specific views and recommendations at an early point in its study, to provide some assistance to that Commission in its work.

Senator HUDDLESTON. Is this project looking into specific problems, or is it a broad approach?

Mr. KAUPER. We are going more or less statute by statute, Mr. Chairman. There will be a wide range of rather specific problems, air transport, motor transport, common carrier communications, a whole variety of things. Each one is being taken initially separately, and the whole thing will be put together. But I assume it will be addressing relatively specific problems as it goes along.

Senator HUDDLESTON. Committee counsel has a question.

Mr. TURNER. Thank you, Mr. Chairman.

My first question is on behalf of Senator Metcalf, who did want to be here today but unfortunately was called away to prepare for a House-Senate conference this afternoon on important matters. Mr. Kauper, in your statement you have identified the transmission of

regulatory commission budget and legislative recommendations as an important area, but not one of those for study. This is one of the things that Senator Metcalf has been most concerned with, that we do identify those matters which should be studied, and leave the Congress those which it is prepared to move on. In doing that we have introduced S. 704 and furnished the Department of Justice with committee print No. 1, and I believe Senator Metcalf was hoping that we might get comment from you on that bill, which is procedural and ready for markup. It does in fact relate to the simultaneous submission of budget. It relates to the control of litigation, and various other matters, and if you are not prepared to answer that at this stage, we would appreciate a statement for the record.

Mr. KAUPER. I do not want to give detailed comment on that at this time. I think we do have a number of difficulties with the bill, in terms for example of the control of litigation. The Department's position on that is pretty well known, and I will not repeat it here. But we can provide you with some specifics on it. In terms of a somewhat broader question, which is the question of study by the Commission, I think that our concern is that it becomes very easy to be preoccupied with the procedural and structural matters, and a commission which is devoting a substantial part of its resources to such matters is likely to be diverted from the major substantive issues. So our concern has been that the Commission, in whatever form it takes, not allow itself to be preoccupied with those questions.

Now, S. 704 goes to the substantive proposal as such and perhaps we should give further comments on it at a later time.

Mr. TURNER. One of the reasons that the Senator was interested in this particular provision relating to controlling the litigation was that it would spread around the financial burden of the litigation as well as the policy burden. It would take some of the financial burden off of Justice if the various commissions handled their own litigation.

Mr. KAUPER. There are two ways to do that, take it away from the Department, or give the Department more money.

[The following was subsequently supplied for the record:]

DEPARTMENT OF JUSTICE,
Washington, D.C., July 24, 1974.

Hon. SAM J. ERVIN, Jr.,
Chairman, Senate Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 704, a bill proposing a "Regulatory Agencies Independence Act."

S. 704 purports to "restore the independence" of the Civil Aeronatuics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission.

Rather than "restoring" the independence of these regulatory agencies, these bills in fact attempt to limit traditional Presidential managerial control of the Executive Branch. The total impact of this legislation would be to strengthen these regulatory agencies' independence at the expense of the President's ability to manage the Executive Branch. In so doing, Congress, in effect is interfering with the Executive's Article II, Section 3 right to recommend legislative programs or "such Measures as he shall judge necessary and expedient" and his obligation to "take Care that the Laws be faithfully executed." Both of these Article II, Section 3 executive functions require that the Chief Executive retain a measure of managerial control over administrative bodies within the Executive Branch. Legislation designed to deny the Executive the control he requires to manage the Executive Branch and to coordinate its functions, to formulate Executive policy, to seek implementation of an Administration's legislative program, and to

execute the laws through effective supervision of Government litigation is of questionable constitutional validity under Article II and the doctrine of the separation of powers.

The Department of Justice is particulary concerned with Section 5 of the bill which would accord the affected agencies independent litigating authority to represent themselves in any civil proceeding, including Supreme Court practice. The Department is opposed to the extension of these agencies' independent litigating authority and especially to what appears to be a grant of Supreme Court litigating jurisdiction.

Section 5 would amend the enabling statutes of the respective agencies, authorizing them by their boards or commissions in any civil action to act in their own names and through their own attorneys, who shall supervise and, in the agencies' discretion, may conduct litigation in any action to which the board or commission is a party, including, it may be argued, appeals to the Supreme Court. These provisions, therefore, substantially alter the role of the Attorney General, the Solicitor General, and the U.S. Attorneys in a great variety of litigation. Moreover, because Section 5 does not expressly remove numerous references to the United States, the Attorney General or the U.S. Attorneys in statutes relating to civil litigation involving these agencies, relying solely on the reference to "notwithstanding any other provision of law", the prospect that the legislation will create considerable confusion and ambiguity is very real.

Section 516 of Title 28 contains the statutory centralization of responsibility for protection of the Government's interests in litigation in the Department of Justice.

"Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence thereof, is reserved to officers of the Department of Justice, under the direction of the Attorney General." (*See also*, 28 U.S.C. §517, 518, 519.)

This provision represents the codification of the strong policy which is furthered by insuring that the Government take a consistent and uniform position in its litigation and that authority for representation of the Government's interests in court derive from one source. A few independent agencies have historically had special statutory authority to appear in court. However, such authorizations are generally unwise, diluting the centralization which necessarily best protects the Government's interests in litigation. Examination of the need to present a consistent reason or position before the courts in cases not only involving the particular concern of these agencies but also issues having a relevance to general concerns and policies within the Executive Branch requires deletion of all provisions authorizing regulatory agencies to appear in court independently of the Chief Executive's control exercised through the Attorney General.

Although some regulatory agencies have been empowered to represent themselves in court, none has been granted concurrent Supreme Court litigation authority with the Solicitor General, provided in 28 U.S.C. § 518(a). The elimination of the Solicitor General's screening process abolishes any vestige of the Chief Executive's control over the judicial policies of this segment of the Executive Branch.

There are basically four major policy reasons supporting the principle of centralized litigation control. These are:

1. The presentation of a uniform position on important legal issues to the courts requiring the exercise of selectivity in the filing and presentation of cases;

2. The ability to select test cases which will present the Government's position in the best possible light since court determinations will have precedential effect beyond the particular agency involved;

3. Greater objectivity in the filing and handling of cases by attorneys who are not themselves the affected litigations; and

4. Achievement of better rapport with the courts since there is an undeniable recognition of the judiciary's preference for litigation control by the Department of Justice.

With regard to the reasons for this Department's opposition to any attempt to authorize agencies to represent themselves before the Supreme Court, independent of the supervision of the Justice Department, there are four major policy arguments in favor of the Solicitor General's control. These are:

1. This control insures that the Government presents to the Supreme Court only those cases that meet the Court's own exacting standards for review;

2. Control of Government Supreme Court litigation is important to avoid inconsistencies or incompatibilities in the position the Government takes before the Court;

3. A related consideration is the importance of avoiding the litigation of significant legal issues that have Government-wide impact in a case which, because of its factual and procedural coloration, may be a poor vehicle for litigating the question; and

4. Finally, the Solicitor General and his staff are able to bring to bear in the conduct of Government Supreme Court litigation skills, experience and knowledge that the office has gained over many years.

The central theme of these four reasons is that control of Supreme Court litigation by the Department of Justice insures that the best interests of the Government as a whole will be safeguarded by eliminating the possibility of its taking inconsistent positions on legal issues affecting the Government as a whole. Moreover, the control of Government litigation, and especially of Supreme Court litigation, in addition to being a sound principle of Government administration,[1] is also inherently involved in the executive power vested in the President under Article II of the Constitution. Executive power necessarily includes the control of judicial policies within the Executive Branch, especially in litigation involving not just the particular interests of the governmental entity immediately before the court but also the interests of the Government and the United States as a whole.

Although this Department defers to the Office of Management and Budget, as the Executive office most directly affected regarding Sections 2 and 3, we nonetheless consider a brief comment is warranted regarding the effect of these sections. The main thrust of these sections is the weakening of the President's management control over the formulation of Executive legislative policies and his control over the Budget. With respect to the named agencies, Section 3 would effectively abolish the Office of Management and Budget's legislative reference function, first officially recognized in Executive Order No. 8248, 3 C.F.R. p. 576 (1938–1943 Compilation) by President Roosevelt pursuant to the creation of the divisions of the Executive Office of the President (Reorganization Act No. 1 of 1939, Public No. 19, 5 U.S.C. App.). This reorganization transferred the Bureau of the Budget from the Department of the Treasury to the Executive Office of the President. Part II, paragraph 2(e) of Executive Order No. 8248, *supra*, states that the Bureau was:

"To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice."

This legislative reference function was continued in the Office of Management and Budget under Reorganization Plan No. 2 of 1970, 35 F.R. 7959, Presidential Message of March 12, 1970, and Executive Order No. 11541, 35 F.R. 10737 (July 1, 1970).

Similarly, Section 2 would restrict the President's control over the Budget by requiring that the named agencies submit their appropriations requests directly to the Congress. The level of the appropriation request for a particular agency necessarily reflects the Executive's policy determination of what programs are accorded a specific priority in relation to all other Government programs. This ordering of priorities is an executive function which should be exercised through the Office of Management and Budget.

Section 4 of the bill would add a new section 3512 to Title 44, United States Code, which would forbid the named agencies from submitting determinations to collect information to the Office of Management and Budget for approval. It should be noted that section 409 of the Act of November 16, 1973, P.L. 93–153, enacted after the date that S. 703 was introduced, has added a section 3512 to Title 44 which gives the Comptroller General authority to review regulatory determinations to collect information.

The Committee may well wish to review section 7 of the bill, entitled "Independence in Apportioning Appropriations" in light of the enactment of Title X of P.L. 93–344, the Impoundment Control Act of 1974.

For the reasons stated above, the Department of Justice recommends against the enactment of S. 704.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. VINCENT RAKESTRAW,
Assistant Attorney General.

[1] Hoover Commission, "Legal Services and Procedure," a report to the Congress by the Commission on Organization of the Executive Branch of the Government (March, 1955).

Mr. TURNER. The second bill was S. 770, which would establish an Office of Utilily Consumer Counsel. When Director Ash was here before this committee, he recognized that the committee had before it litigation that would improve the standing of consumers in dealing with Federal and State regulatory agencies, S. 770 would also improve the availability and dissemination of regulatory information to the public.

Mr. KAUPER. Here again, that bill raises a question about the role of the Department, its representation both of the agencies and its role itself as an advocate before many of these commissions.

Mr. TURNER. Mr. Kauper, we already have been over the fact that you see procedures, administrative practices, and structural changes to be something that would not be a priority, if considered at all, by this new commission.

Is that a correct statement?

Mr. KAUPER. I think that is the way we would proceed, yes.

Mr. TURNER. In fact, what we would be concentrating on with this Commission, if it were formed, are those economic and large substantive relationships between the areas regulated and our national economy.

Mr. KAUPER. That is right.

Mr. TURNER. One of the first that you imply here which should be looked at would be the effect of existing regulation, existing statutes and regulatory agencies, and their responsibilities, on the economy.

Mr. KAUPER. That is correct.

Mr. TURNER. May I ask you, sir, why not at the same time, why not have the study commission assess areas where there is an absence of Federal regulation?

Mr. KAUPER. I think, Mr. Turner, I do not disagree with that. What is being called for is essentially a review of what should be regulated.

Mr. TURNER. And deregulated?

Mr. KAUPER. Regulated or deregulated; yes. Obviously one in going through a study of what is now regulated might, for example, conclude that the logic of an acceptable system may require some further regulation in some other area. What we are trying to seek is a rationale, and that rationale presumably can have applications coming both ways in some circumstances. So I would not say that is simply a matter of studying those areas that are not regulated. If, for some reason, we think logical regulation extends to some other area and that is an acceptable result, so be it.

Mr. TURNER. One of the objectives, I take it, for the study commission to look into would be areas which should be returned to the free marketplace.

Mr. KAUPER. That assumes a conclusion that might be mine. I am not sure that it would be the Commission's, but yes, I think that is one of the questions which is to be examined, is to whether some of these areas should not be returned to the free marketplace.

Mr. TURNER. Is it not a fact, that when we are dealing in the free marketplace, the only protection which the people have from abuses in the free marketplace would be the antitrust laws, both the Sherman Act and the Clayton Act?

Mr. KAUPER. That is true; if you were to return a particular area of regulation to a total free market commitment and did not retain some regulatory authority.

Mr. TURNER. Would it not follow, sir, that in these considerations by this commission, that they should also be looking into the effectiveness of the prosecution of the antitrust laws by the Department of Justice?

Mr. KAUPER. One would have to concede that in going to a pattern of nonregulation, if that is what you are going to do, you would have to make judgments as to whether the antitrust laws could effectively control abuses that might exist. That is the opposite side of the coin.

Mr. TURNER. While looking into the effectiveness and adequacy of the prosecution of the antitrust laws by the Department of Justice, would it also not be important to look at the laws themselves to see whether those laws are effective for prosecution?

Mr. KAUPER. I do not have much doubt about that question. I think the laws are adequate. You could look at that question, the great merit of those statutes are their generality. That would serve us very well, I do not think there would be any particular deficiency in those statutes.

Mr. TURNER. The next point, which was brought up on Friday, was the impact of some concentrated markets in the United States on the economy, particularly on inflation. Would it not be that such a consideration or study should include an identification of those major concentrated markets such as automobiles, steel, oil, even insurance, as they would one, affect the economy, and two, should be handled by governmental mechanisms.

Mr. KAUPER. I think it is a subject that warrants study, no question about that, but I have a feeling that if a Commission is chartered to study the entire economy of the United States and its structures, then there is very little possibility of any concrete proposal coming from it in anything like a reasonable period of time. It seems to me that the pattern of regulation is something that is capable of discrete study, and that this study ought to be confined to that without intimating that there are not other areas worth looking into. This Commission's mandate should be confined to something that is studiable and can be reported on within a reasonable period of time.

Mr. TURNER. You will agree that the concentration of economic power in these major industries to which I refer to have a great impact on our present economic condition, would you not?

Mr. KAUPER. You could get a great many economists who would never agree. Whether they do or do not, I am not an economist, I am a lawyer, and I have some difficulty putting all that together. Certainly there are a number of economists who would think the answer to that question is, "Yes".

Mr. TURNER. Senator Metcalf received a letter from Nicholas Johnson, former Commissioner of the Federal Communications Commission, in which he makes several points. I will quote some of them. "One of the risks of deregulation is that unregulated oligopoly or monopoly may be all that remains," and then he says:

> The question then is whether the Justice Department and the Federal Trade Commission would be prepared to increase antitrust enforcement efforts against oligopolistic and conglomerate groups in the order of tenfold as a preliminary condition to any deregulation.

Before I ask the question, I would ask the chairman if this letter from Mr. Johnson may be placed in the record.

Senator HUDDLESTON. Without objection.

[The letter referred to follows:]

WASHINGTON, D.C.

Hon. LEE METCALF,
Chairman, Subcommittee on Budgeting, Management and Expenditures,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Following conversation with your staff regarding your forthcoming hearings on regulatory reform, it was suggested that I pass along to you a thought about antitrust policy that you might wish to pursue with Assistant Attorney General Kauper and Federal Trade Commission Chairman Engman.

One of the risks of "deregulation" is that unregulated oligopoly or monopoly may be all that remains.

My own preference would always be for a fully competitive marketplace rather than government regulation, but it is my impression that a fully competitive marketplace exists in virtually no segment of the American economy at this time. (This is, in my judgment, one of the principal reasons for inflation—and some estimates place the cost to the American consumer of the failure to enforce the antitrust laws at something of the order of $100 billion per year.)

The question, then, is whether the Justice Department and the Federal Trade Commission would be prepared to increase antitrust enforcement efforts against oligopolistic and conglomerate groups by something on the order of ten fold as a preliminary condition to any deregulation.

Sincerely,

NICHOLAS JOHNSON,
Former Commissioner, Federal Communications Commission.

Mr. TURNER. Do you agree with Mr. Johnson in order to develop an effective antitrust enforcement as we move toward a freer market in this country that your resources would have to be increased tenfold?

Mr. KAUPER. No; I think that is somewhat extreme. I think obviously there would be questions in some areas of deregulation with respect to increased antitrust enforcement. No doubt about that. It may call for increased resources.

I think that it is worth pointing out that some of the industries that are regulated cannot fairly be characterized as being concentrated. I do not think, for example, that I am prepared to characterize the motor carrier business as heavily concentrated. There may be some additional industries where the concentration level itself is the direct result of regulation by the limitation on entry. It may well be that they would not be concentrated but for the fact of regulation.

One cannot assume that in areas when you deregulate, if that were to be the result, that even necessarily in that particular industry would there be a concentrated industry. There may be some, yes, and there would have to be some antitrust enforcement to some degree.

Mr. TURNER. Do you agree that the automobile industry is a concentrated industry?

Mr. KAUPER. By any definition it is.

Mr. TURNER. There are four suppliers and one supplier has some 50 percent or more of the market.

Mr. KAUPER. That is right.

Mr. TURNER. Are you presently conducting an investigation of the automobile industry in your department?

Mr. KAUPER. We are reviewing to some degree automobile pricing. I do not think I will go any further than that at this point.

Mr. TURNER. Are you reviewing automobile prices?

Mr. KAUPER. Yes.

Mr. TURNER. Are you reviewing automobile market shares?

Mr. KAUPER. I do not think one needs to review that. Everyone knows what they are. I think probably I ought not to go any further with that.

Mr. TURNER. With respect to Mr. Johnson's suggestion of a tenfold increase in resources, and I appreciate your answer to it, how much of a percentage of increase in financial resources have you requested from the executive branch for fiscal 1976? I am not asking for dollars because I understand that that is something that you are still struggling with, but approximately a ballpark percentage of increase to meet these economic problems for the coming years?

Mr. KAUPER. I am not sure I can give that to you, Mr. Chairman. Obviously, percentages, really, as a practical matter, is another way of saving dollars and the department is still working on its final submission.

Mr. TURNER. How much did the Department spend for, let's say estimated, for fiscal 1975 for antitrust enforcement?

Mr. KAUPER. Our budget for the current year is somewhere in the range of $17 million. That represented an increase of some 83 personnel over the previous year, which I guess is a 10- to 12-percent increase in personnel. The total figure runs about $17 million.

Mr. TURNER. You would be able to furnish the committee with the numbers of attorneys, economists and paraprofessional staff that you have at the present time?

Mr. KAUPER. Yes; we can provide you with that. I do not have it right with me in terms of the total breakdown, but we can certainly provide it to you.

[Mr. Kauper in letter form supplied the committee with the following:]

The number of attorneys, economists, and para-professionals now employed by the Antitrust Division, as of December 31, 1974, is 338 attorneys, 36 economists, and 39 para-professional personnel.

Mr. TURNER. Senator Huddleston directed a question to you as to the ability and reputation, I guess, of the Antitrust Division over the last 6 years as being good, fair, or bad, but I think we ought to have some statistics on this.

Could you furnish the committee a list of cases brought during the last 6 years under section 1 of the Sherman Act?

Mr. KAUPER. We can provide that.

Mr. TURNER. Under section 2 of the Sherman Act?

Mr. KAUPER. Yes.

Mr. TURNER. Section 7 of the Clayton Act?

Mr. KAUPER. Yes.

Mr. TURNER. And section 8 of the Clayton Act?

Mr. KAUPER. We will provide you with the information.

Senator HUDDLESTON. We will make that a part of the record.

[The material referred to may be found on p. 305.]

Mr. TURNER. In your statement, Mr. Kauper, you state that the principal deficiency in current agency performance is protectionism toward established firms. This committee, I think, would like to know what you mean by protectionism toward established firms, how it operates and then what specific legislative approaches you might suggest.

Mr. KAUPER. What we mean there probably encompasses a number of things, but I think most important what it encompasses is the basic rationale of a good deal of the regulation that presently exists. That is the number of industries that we find that particular firms are not allowed to enter because it would be viewed to be detrimental to those who are in the business. Concededly, that is also a judgment that the protection of those firms' revenues, if you like, is in the public interest. Nevertheless, that is the mechanism through which the system works, and I think in our judgment in many cases that is totally unwarranted and I think, in part at least, we are talking about a protection that is afforded by the statutory mandate itself.

There are other situations where particular agencies over particular time periods, by virtue of their relationship to the firms that they do regulate, have gotten themselves in a position in which they have, in essence, given undue weight to the interest of the firms that they regulate. And while there has been a good deal of comment about that, I think that one really has to recognize that the problem here is less the agencies and their personnel than mandates that they are required to carry out.

Mr. TURNER. I want to be more specific. This is a question that the chief counsel to Senator Ribicoff has given to me.

Which areas of our regulatory economic structure have gotten this protectionist treatment?

Mr. KAUPER. I think, for example, the pattern of regulation in the motor carrier business has to be characterized as a protective interest. You may come back and suggest that is what the statute mandates, that is the system of regulation.

I am not sure I disagree with you on that. But it is, nevertheless, a form of protection and there is no question about that.

Mr. TURNER. On that one point, let me get to this question. Let us suppose that the recommendation came from the proposed study commission that we deregulate the motor carriers, and let us suppose that Congress was most persuaded by the recommendation and, in fact, proceeded to deregulate.

Could you tell us exactly how the Antitrust Division of the Department of Justice would police the motor carrier industry and develop a policy toward that carrier industry to protect the public against abuse?

Mr. KAUPER. We would police that industry as we have any other. At the present time you have an industry where the entry is controlled by the Interstate Commerce Commission and where rates are fixed by ratemaking conference. If we were to totally deregulate, although I must say parenthetically I would assume we would do that over a period of time, the same law would apply to that industry as any other. If there were price fixing, it would be a criminal violation.

We spend some time with the trucking industry now so we already have resources in the trucking business and I suppose we could police it as we do any other industry. There is nothing peculiar about it in that sense.

Mr. TURNER. Mr. Kauper, I spent 8 years as a trial attorney in the Antitrust Division from 1952 to 1961. As a full-time employee of the Federal Government, I probably worked on no more than five or six cases, and one of those cases involved the General Motors bus monopoly. That case lasted 11 years. Day after day, year after year;

counsel was forced to meet all matters of motions, filings, pleadings, depositions, arguments, before judges, and year after year the case went on without trial.

There has been before us here at this committee many complaints of the fact that the process of litigating antitrust cases as a method of regulation is archaic and inadequate.

Would you not say, sir, that there is some merit to that claim?

Mr. KAUPER. Yes, I think there is. I think many antitrust cases clearly do go too long. They are too complicated. I would be the last to quarrel with you on that.

On the other hand, if one is raising the question, particularly about the motor carrier industry, which I must say I do not view as a concentrated industry, I think the major problem there, if it were to exist, as an immediate effect of deregulation would be a price-fixing type activity. Those cases tend to be prosecuted quite quickly. They do not take the same degree of time as the kind of case of which you are speaking. But certainly, I would have to agree with you, that some antitrust litigation does take far too long. There are delaying tactics that are frequently too successful. That is quite clear.

Mr. TURNER. I have a few more questions, Mr. Chairman, but I do not want to take the time.

Senator HUDDLESTON. I think the minority counsel has some questions. We will proceed with him.

Mr. STATLER. Thank you, Mr. Chairman.

Mr. Kauper, in response to the chairman's inquiry, when the figure of $80 billion came up you indicated that it was related to economic waste in the economy as a whole. Do you have a ballpark figure or a guesstimate as to the proportion of the total amount which relates to the activities of regulatory agencies?

Mr. KAUPER. It would be misleading if I gave you a ballpark figure. Of the Nation's economy, 10 percent is involved in the regulated industries. But I do not think that I could give you some particular figure off the top of my head. I think that figure will show up somewhere.

Mr. STATLER. Is it more like a direct proportion of 10 percent, or more than 10 percent?

Mr. KAUPER. I would suspect it is more than 10 percent.

Mr. STATLER. Of that figure, do you have any idea of the economic waste attributed to the existence of the fair trade laws that Attorney General Saxbe has criticized?

Mr. KAUPER. I do not have that figure with me, but I think the Council of Economic Advisers in their study estimated it at $1.5 billion a year.

Mr. STATLER. In connection with regulatory agencies, it is my understanding in some cases there is a de facto immunity from the antitrust laws given to some of the activities of regulated industry by virtue of the existence of these regulatory agencies.

How do you, as an antitrust chief, view the existence of those immunities? In the study of a regulatory process, should that be one of the areas of investigation or inquiry that this Commission ought to look at?

Mr. KAUPER. Clearly so. Obviously, what you have, running through the pattern of many of these statutes, is some conduct that to the extent that it is regulated, ought not to be viewed as antitrust violations. There is a certain symmetrical logic to that.

But I think that one has to consider the role of antitrust enforcement in these regulated industries as a part of any total review program, whether that be our involvement before the agency itself, which is a rather common sort of thing, or our ability to bring suit under the antitrust laws where regulated industries are involved.

The whole question of injection of competition, which is a broader issue, I would suppose also would encompass that question.

Mr. STATLER. In your tenure at the Justice Department can you cite some examples where the de facto granting of such immunity has been a matter of concern to you?

In other words, I am asking about situations where, on behalf of the Justice Department, you objected or where the Department expressed its disapproval.

Mr. KAUPER. Let me distinguish two things here. One is where we appeared before the agency to urge them not to take action which would, in essence, give immunity. That has been true, for example, before the CAB in such matters as capacity limitations, charter floors, and so on.

Then there is a second question where we are trying to make decisions on whether we can sue or not and whether we are barred by some kind of action. I do not know that there has been any matter in which we have filed suit that we have lost on that basis, but there certainly are some areas that we cannot challenge, such as ratemaking conferences, rate bureaus. Some mergers, for example, are clearly immune from suit, and so on.

In areas where the effect of the agency's action is to immunize, it is not uncommon for us to appear before that agency. It is the only forum we have. The CAB may be the best current example of that.

Mr. STATLER. So that the record will be complete, could you provide us with a list of those immunity situations during your tenure where there has been objection on the part of your division? [1]

Mr. KAUPER. You are talking about objection to the agency?

Mr. STATLER. Objection to an agency action that has the effect of granting immunity.

Mr. KAUPER. Yes, I can provide that.

Mr. STATLER. Not only those circumstances where you actually intervened, but also those where your counsel had told you that you did not have a statutory right to intervene.

Mr. KAUPER. That is going to be a little more difficult in terms of what information we have available to us. I am not quite sure what we can do with that in terms of information because we would not have any record that we can immediately pull, but we may at least be able to give you some examples.

Mr. STATLER. To the extent you can. In terms of actual intervention, can you also provide the committee with a list of circumstances or situations where you have intervened in the activities of other departments or agencies and the reasons why you did so intervene? [1]

Mr. KAUPER. I am not sure how that is distinguished from your prior questions.

Mr. STATLER. I would imagine not every case is one where the effect of the agency action is antitrust immunity.

Mr. KAUPER. All right. We can provide that.

[1] See p. 524.

Mr. STATLER. The effect may relate, for example, to consumer costs.

Is there any one agency as to which you most commonly either do intervene or would like to intervene?

Mr. KAUPER. No, I do not think I should try to single out a particular agency at this point. We have intervened before the ICC, the CAB, the Federal Communications Commission. We have been involved with the SEC, but I do not think that I will try to single one out in particular.

Mr. STATLER. How about EPA or the Department of Agriculture?

Mr. KAUPER. We had some involvement with both but not in terms of making any formal intervention.

Mr. STATLER. Any other departments?

Mr. KAUPER. Of the executive branch?

Mr. STATLER. Executive branch departments or other agencies.

Mr. KAUPER. There are very few of those that really run any kind of formal proceeding in which we would intervene. We supply our views on a variety of matters in other departments, but there are not very many of them that are directly involved in economic regulation as such.

Where we are dealing with other kinds of programs, they may ask for our views on a particular matter and we supply them, but it is not a matter of formal intervention.

Mr. STATLER. The Department of Agriculture clearly has jurisdiction over areas of economic regulation.

Mr. KAUPER. Yes. Much of that may be done through informal procedures. There are some formal procedures with respect to marketing orders and so on. I am not sure that we ever formally intervene in one of those proceedings.

Mr. STATLER. Intervene may be too formal a word; but participation in any way, such as a letter of advice?

Mr. KAUPER. What you are asking us to do is provide information which I think is going to be pretty hard to categorize. Here again there may be examples, but I doubt if we can give you an exhaustive list of correspondence, for example.

Mr. STATLER. What I am also getting at, and I did not see it in your testimony, relates to one of the provisions of S. 4167, which you commented on extensively. One of the major differences of that bill is the fact that it includes in its ambit of jurisdiction many of the regulatory activities which are exercised by Government departments that are outside the so-called seven or eight traditional independent regulatory agencies—among them the Environmental Protection Agency, the Occupational Health and Safety Administration. The economic impact of regulation in these areas may be even greater than that of some of the independent regulatory agencies that you have cited.

Mr. KAUPER. You may well be right in terms of impact. However, I think our concern, indeed, our impression of what this Commission was supposed to set out to do was to examine essentially economic regulation. I do not necessarily mean by that regulation which imposes an economic cost, but regulation which goes to the basic economic structure and economic decisions within a given marketplace such as entry, pricing and so on.

I am sure one could say that logically one ought to look at things such as occupational safety control, food and drugs, but it seems to me that there is a marked distinction between that kind of activity and the kind of activitity that is designed and has as its reason for existence the actual betterment of economic performance as such. My own feeling is that the Commission would be better limited to that than going over into some of these other areas that are also a form of regulation, but with a different reason for existence.

Mr. TURNER. If Counsel would yield on that point, this is one concern Senator Metcalf had during the hearings, that we have over here a body of economic regulators who are concerned with prices and rates and costs, and that in turn has an effect on the inflation or stagflation. Then over here there are a number of independent agencies that are responsible for safety and health, and you are saying that you do not see this study commission moving into that area, except as it relates directly to economic evaluation.

Mr. KAUPER. I think the major thrust ought to be in the former area. The question was put in terms of looking at several other agencies, where I think generally—I think I would be right about this—are the agencies that are listed in the bill. None of them have direct economic regulatory function but are instead worrying about issues of health and safety.

Mr. STATLER. The Food and Drug Administration: Market entry is involved there in terms of what drugs you can put on the market.

Mr. KAUPER. Yes, that is true, and you can find other areas where that is probably true, as well. But presumably the reason for denying entry is not a notion of how one achieves the best economic performance of the industry, but instead that the drug is unsafe. I would assume that would be the reason.

Mr. STATLER. I just have a few more questions.

As chief of the Government's antitrust responsibility, what is your personal view concerning the fact that antitrust responsibilities are split between the Justice Department and the FTC? Would enforcement be improved, if those functions were to be merged in any one agency?

Mr. KAUPER. That has been a subject of debate, I suppose, for many, many years. My own feeling is that the existing relationships are reasonably good ones, that there is something to the notion that each one keeps the other on its toes, to some extent. It is always suggested that it creates a high degree of confusion. I really do not think that is the case, and I would be most reluctant, I think, to see a change in some really dramatic form from that jurisdiction.

Mr. STATLER. In other words, after you leave government, you will not be writing an article saying that the functions ought to be merged?

Mr. KAUPER. I would doubt it.

Mr. TURNER. You do feel that the Department of Justice should have continuing communication with the regulatory agencies informing them of Justice Department policy, do you not?

Mr. KAUPER. Of course.

Mr. TURNER. If that is so, then why did you not inform the Federal Communications Commission that you were going to bring a case against A.T. & T.?

Mr. KAUPER. I think the position we would take on that basically is we were filing an antitrust suit. The question you put to me, at least in the terms of the way I answered it, was would we keep them informed on matters within their regulatory jurisdiction? Would we appear before them and so on?

The answer is yes.

Mr. TURNER. They are currently conducting an in-depth investigation or hearing into the divestiture of Western Electric from A.T. & T., the very subject and nature of the case that you filed in court.

Do you intend to utilize them as a witness for you in court on this case?

Mr. KAUPER. I am not going to comment any further on the A.T. & T. case.

Mr. TURNER. Do you see any litigating obstacles to your going forward with your case while they are going on with theirs?

Mr. KAUPER. I do not.

Mr. TURNER. Do you see any litigating obstacles for their going on with their investigation while you are conducting your discovery and your litigation in the Federal courts?

Mr. KAUPER. Probably not.

Mr. TURNER. Would you agree that this is something that should be of substantial oversight for this Committee?

Mr. KAUPER. The particular case?

Mr. TURNER. The particular objectives of both the regulatory commission and the Justice Department concurrently being pursued.

Mr. KAUPER. Obviously the question is of jurisdiction.

Mr. STATLER. To follow up on another question, which I believe the chairman raised, do you presently feel that the resources and the funds in the Antitrust Division are sufficient, leaving Nick Johnson's comments aside, to carry out the mandates that Congress has given your agency?

Mr. KAUPER. Clearly we can always use more. We seem to be able to keep our personnel occupied. At the same time, one has to recognize that the Department's request is a part of the overall budget request, and I am simply not in the position to make an intelligent comment as to how one trades off extra people here against the cuts somewhere else.

So I think probably we can use more people, sure, but I am not sure that that is the final judgment; that has to be made.

Mr. STATLER. How about the laws we are administering?

Do you feel they are sufficient?

Mr. KAUPER. Generally they are. There are some things we are still pushing for. At the moment we are pushing for increases in the penalties for antitrust violations. We are pushing for an amendment to the CID statute, to hopefully broaden our civil investigating authority, where I think we are much weaker than we should be. But I think, generally, they are probably adequate.

There are some other things that we are looking at.

We are looking at the interlocking provisions with an eye toward possible amendments, and the question of the fair trade laws. I think the basic antitrust statutes themselves are pretty good.

Mr. STATLER. A final question.

Getting back to regulation in the traditional independent regulatory agencies versus regulation in some of the other independent agencies that are not in the traditional realm of the seven or eight you referred to, or Roy Ash has referred to, do you think it is wise that Congress be excluded from the consideration of problems within the regulatory ambit of those other, the nontraditional independent regulatory agencies?

In other words, should that responsibility of overseeing those agencies and reporting on their regulatory deficiencies be left entirely to the executive branch, to your Antitrust Division or a Council on Wages and Price Stability that has 14 employees, including clerical assistants about whom we are told that there is presently one person working on this project?

Mr. KAUPER. Here again there are two parts to that. I would assume in terms of the operations of those agencies, if what we are talking about is operations, that Congress has some oversight authority as they do over any executive branch agency. I am not sure whether your question is aimed more specifically at this Commission, which I guess I do not view as a congressional oversight kind of operation but rather a study Commission. To me the reason for treating those executive agencies somewhat different for that purpose is, (1), I think there is ongoing study in the executive branch itself, and (2), most of those agencies are not really involved in economic regulations. That goes back, I think, to what you and I discussed a few minutes ago.

Mr. STATLER. Is your own Department study limited to the selected independent regulatory agencies?

Mr. KAUPER. In large part it is; yes.

Mr. STATLER. Finally, does your testimony today have to be cleared through the Office of Management and Budget?

Mr. KAUPER. I assume it does; yes.

Mr. STATLER. Thank you.

Senator HUDDLESTON. Thank you, Mr. Statler.

On the question of the effort your Department is putting into and anticipates putting into antitrust activity, is it accurate to say that you will be devoting more of your budget allocation and more personnel to this area regardless of future appropriations.

Mr. KAUPER. Yes, sir.

Senator HUDDLESTON. Can you give me an indication to what degree political interference is involved with your activity?

Is this one of your probems?

Mr. KAUPER. No; it has not been. That may be the blessing of the particular time when I arrived, but it most assuredly has not been a problem.

Senator HUDDLESTON. But it has occurred.

Mr. KAUPER. I am not an expert on the file. Certainly there is some reason to think from time to time in the past it has.

Senator HUDDLESTON. You have not encountered it since you have been in your present position?

Mr. KAUPER. No, sir.

Senator HUDDLESTON. One final question.

In some regulatory agencies that have been established, Congress has been rather specific in limiting the type of regulations that they are to devise; in others it has given the agencies almost carte blanche authority to set up whatever regulations they see fit.

Has Congress been too restrictive or not restrictive enough, or is there a happy medium we should try to achieve?

Mr. KAUPER. This is probably not the happiest answer of all, but I would suspect there is a happy medium somewhere. I think in circumstances where the Congress has been very specific, has mandated very precise regulatory goals, it has probably achieved those goals, but at the same time, the inflexibility which it creates in the agency makes it extremely difficult to respond to changed conditions. The only way to change them is to come back to the Congress, which is not always an easy thing to do.

On the other hand, extremely generalized delegations I think have posed some difficulties, too. So it is very important, and I would hope this would really be a major part of the thrust of this Commission, to define goals precisely, goals against which regulation is measured, and leave the Commission then, or the agency, to the extent that it does have a program, free to reach those goals with some mandate that it do so in a way that it takes into account competitive consideration and gives very heavy weight to that.

There are difficulties in being very precise.

Senator HUDDLESTON. Does that indicate a desirability that Congress maintain some kind of veto power or a type of approval or disapproval of proposed regulations?

Mr. KAUPER. That is a very difficult thing to make work, Mr. Chairman. I think basically if you are going to have a regulatory scheme, it pretty much has to be entrusted to someone who is going to regulate it. To try to say, you have to have congressional approval or to put it the negative way, the right of disapproval, would probably make the system just incredibly inflexible.

Senator HUDDLESTON. Thank you very much, Mr. Kauper.

We appreciate your lengthy session with us.

The next witness is Mr. James Turner.

Mr. Turner among other things is the author of a book entitled "Chemical Feast."

Would you identify yourself for the record and proceed with your statement.

STATEMENT OF JAMES TURNER, ATTORNEY, WASHINGTON, D.C., AUTHOR OF "CHEMICAL FEAST"

Mr. JAMES TURNER. Mr. Chairman, my name is James Turner. I am an attorney in Washington, D.C., specializing in representing consumer groups and groups interested in advancing the consumer interest. I was a consultant to the Nader organization, Center for the Study of Responsive Law, and wrote the book "The Chemical Feast" which is the Nader report on the Food and Drug Administration.

Subsequent to that time I have been involved in questions of food and food regulation, and in that capacity attended the recent inflation summit on food in Chicago where some of these issues were raised. The issues are part of the hearing today.

I believe from my experience in the area of food regulation, on which I was invited to testify here today, I can offer some comments on regulation and what it means to an efficient economy which does not have inflation. I have a statement which I have prepared, and it was

presented to the committee last week. I do not intend to read it. I will take only a few minutes to summarize the points in it and to add some comments that I have developed since attending the hearings last week.

Senator HUDDLESTON. Very well. Your total statement will of course be a part of the record.

[The prepared statement of Mr. James Turner follows:]

PREPARED STATEMENT OF JAMES S. TURNER, ESQ.

We are examining regulatory agencies today because our economy is functioning badly and some people have suggested that regulatory agencies are part of the cause of this problem. Any assessment of the soundness of this suggestion should begin with certain fundamentals.

First, a good deal of what we have come to know as regulation is not carried out by the well-known "independent" regulatory agencies or even by the more obscure regulatory agencies which are a part of the various departments of government. Rather it is carried out by boards and commissions such as those that determine the marketing practices for dozens of kinds of agricultural commodities within the United States. No effort to examine, understand or alter the impact of regulation on the economy can be positive in its effects unless these relatively obscure agencies of policy are included along with "dependent" and "independent" regulatory agencies in any study of the impact of regulation on the economy.

Second, regulatory agencies will function effectively only if they are used to enhance rather than replace the interaction of a dynamic marketplace based on competition between producers and consumers. Thus, whenever a study of the effect of regulation on the economy is undertaken, the measure of successful regulatory action should be the degree to which it enhances competition.

Third, regulatory agencies must act as umpires regulating the dynamic interactions between consumers and producers which give the nation its economic vitality. Unless consumer power equal to producer power can be made an effective economic force, tinkering with the regulatory agencies will do little to help the economy.

1. LACK OF MARKET COMPETITION

The way agricultural commodities are regulated gives an insight into the problems posed to the economy by regulatory action. The distribution of California navel oranges is under the control of a commodity board. This board is made up of California navel orange producers who determine by board policy how many of their oranges will be allowed to leave the state.

When the Cost of Living Council was operating with strong price control authorities, they noticed that the price of oranges was being kept high by keeping the number of oranges leaving California low. The board took action to increase the number of oranges leaving California and claimed to have found a direct lower of price in the Eastern market as supermarkets began to have specials on oranges.

Commodity boards such as this one operate in dozens of commodity markets from prunes to walnuts to tomatoes. Similar promotional boards operate in the meat and egg areas. There are also the milk marketing boards and their satellites, the milk marketing cooperatives, which have virtually stifled competition in the milk market and have brought heavy pressure on independent milk producers. As these mechanisms cut the amount of competition inflationary practices—reducing quality and/or raising prices—begin to replace dynamic business practices and first the consumer and then the entire economy suffers.

Examining how these commodity boards work gives some insight into how these defacto regulatory agencies can be made to function more soundly. Currently the producers of a commodity in which a board operates, on either a state or national level, is assessed a returnable fee which, to the extent it is not sought for refund, become the working budget of the board. These funds then become the operating money for education, information, advertising and promotional functions of the board. Since the money all comes from producers and since the members of the board are predominately if not solely producer, it is rare that any interest other than the producer's is ever seriously attended to. In such a situation it makes relatively very little difference whether the parties at interest (the producer) get a high price for a few items or a low price for a lot of items. As a result, situations like that described in navel orange board occur frequently and are spotted with relative ease by economists.

This organizational structure suggest one possible remedy for the inequitable operation of the commodity marketing boards. It might be possible to create a comparable set of commodity consumption boards. Or better yet turn the existing marketing boards into marketing and consumption boards in which there was an equal balance of consumer and producer power. The consumer function—whether a new board or made a part of the old boards—could be funded by a voluntary refundable consumer checkoff system at the food store checkout counter. With a funding base and equal consumer representation in the marketing decision making, the one-sidedness of the current regulations would be altered.

This idea is sketchy and is offered primarily for its illustrative value rather than its details. However, any serious study and evaluation of the economic effect of regulations and regulatory function would be severely flawed if it overlooked the impact of regulatory actions that occur outside the traditional regulatory sectors. It would also be seriously flawed if it failed to examine regulation and regulatory action inside the larger contest of the interaction between consumer and producer power.

Similar efforts should be directed at the milk marketing boards where the near total power of milk producer cooperatives should be balanced by the equal power of organized consumers with representatives on the marketing boards. In fact a good deal of the regulatory process could be better understood and possibly improved if a study of it included efforts to determine if and how the power producers have over the process could be balanced by power to consumers.

2. COMPETITION BETWEEN PRODUCERS AND CONSUMERS

One of the major misconceptions of modern American economic thinking rests on the belief that vigorous antitrust policy is the primary tool for the restoration of Adam Smith's free market competitive Capitalism. In fact, antitrust policy is an essential but secondary method for bringing about Adam Smith's type of Capitalism.

Antitrust policy is designed to ensure that there are sufficient number of sellers to offer the consumer a choice so that only the best buys (the highest quality for the fairest price) will be made by the consumer. Such effective choices by the consumer are the primary discipline on the market and the major source of competitive activity according to Adam Smith. But once the primary role of consumer power in the marketplace is recognized as the essential engine of competitive, capitalism's many alternatives or supplements to antitrust policy suggest themselves as appropriate ways to restore vitality and balance to both the economy and the role of the regulatory agency. The very basis of the American economic system demand equal power for consumers and producers.

Adam Smith assigned consumerism a central place in his theory of a free market economy and the wealth of nations. In describing the plan of work for his revolutionary book, "The Wealth of Nations," Smith argued that a nation's wealth depends on the percentage of its population which has enough real per capita income to consume the necessities and conveniences of life.

"Consumption," he wrote in the book itself, "is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer." As his central thrust, Smith vigorously attacked mercantilism, the then predominant economic system, for inverting this natural and proper economic state.

"In the mercantile system," he argued, "the interest of the consumer is almost constantly sacrificed to that of the producer; and it seems to consider production and not consumption, as the ultimate end and object of all industry and commerce."

Smith laid precise blame for this destructive situation on the nation's producers. "It cannot be very difficult to determine who have been the contrivers of this whole mercantile system; not the consumers, we may believe, whose interest has been entirely neglected; but the producers, whose interest has been so carefully attended to; and among this latter class our merchants and manufacturers have been by far the principal architects."

Without an understanding of the role Adam Smith assigned to consumerism, the free market system cannot be made to work. Unfortunately, many twentieth century spokesmen who rely on the arguments for a free economy, use them to justify practices which Adams Smith sought to condemn. As a result "free enterprise" and the existence of "corporate economy" have come to be viewed as synonymous. Actually Smith viewed them as opposites.

In fact he directed much of the attack contained in "The Wealth of Nations" against corporations. "Increase or competition," he wrote defending the competition, "would reduce the profits of the masters as well as the wages of the workman. The trades, and crafts, the mysteries would be losers. But the public would be the gainer, the work of all artificers coming in this way much cheaper to the market. It is to prevent this reduction of price and consequently of wages and profit, by restraining that free competition which would most certainly occasion it, that corporations and the greater part of corporation law have been established."

Smith condemned "the clamor and sophistry of merchants and manufacturers (which) easily persuade(s) * * * that the private interest of a part, and of a subordinate part of the society, is in the general interest of the whole." He attacked as "without foundation" the pretense that corporations are necessary for the better government of trade." "The real and effectual discipline which is exercised over a workman, is not that of his corporation, but that of his customers. It is the fear of losing their employment which restrains his fraud and corrects his negligence."

Since Americans, at least rhetorically, trace their economic roots to Adam Smith's capitalism, they should remember that much of its thrust was against the intricately constructed corporate protectionism of late eighteenth century England's government-industrial complex of which "the merchants and manufacturers have been by far the principal architects." To the extent that an analogy can be drawn between then and now, Adam Smith would be critical of many practices which his writings are often called upon to defend.

Recognizing the insights of Adam Smith's capitalism gives a beginning point to consider the future role of the regulatory agency. Specifically, if it is to have a role at all, it must be as the regulator between consuming and producing sectors of the economy which are of roughly equal economic power. Any effort to substitute the judgment of the regulatory agency for the interactive judgments reached by the competition between consumer and producer will continue the trend toward distortion and disintegration of the American marketplace.

The current nature of the American corporation and corporate law operating much as Adam Smith described their 18th century counterparts is the single most significant barrier to the creation of the balanced competitive free market economy on which the economic future of America and probably the world depends. Nothing so sharply captures the delay of corporate self-reliance or the drift toward a government/business complex as the comment of the Treasury Secretary, John Connally to Senator Proxmire during hearings on the Lockheed Loans. "Let's face it," he suggested, "we no longer live in a free market economy."

3. REGULATORS AS UMPIRES

James Madison, writing during the constitutional crisis of 1787, set out a fundamental guideline for the activities of government as he saw them and as they came to be in early America, thinking largely under his guidance and tutelage.

"The great desideratum in Government is such a modification of the sovereignty as will render it sufficiently neutral between the different interests and factions, to control one part of the society from invading the rights of another, and at the same time sufficiently controlled itself, from settling up an interest adverse to that of the whole society."

This neutral sovereignty properly conceived and executed serves as the regulator of the society. Twentieth Century regulatory agency inside the American government stepped into Madison's concept of the neutral governmental function. This concept gave the regulatory agency its theoretical legitimacy.

Two years after setting out the neutral government concept, Madison stated his proposition even more boldly: "The best provision for a stable and free government is not a balance in the powers of the Government though that is not to be neglected, but an equilibrium in the interests and passions of the society itself, which cannot be attained in a small society. Much has been said on the first. The last deserves a thorough investigation."

Applying this principle of Madison's to the regulatory sector of government helps that sector make some sense. If the marketplace is looked at as a football game, the referee role of the regulators begins to take shape. If one football game appears to be too simple an analogy, then the permutations and combinations that develop inside a division, a conference, or a league can be used as a more

fitting model. In any case, the whole composition depends on the competence skill and incorruptability of the officials.

If a football game is used as an analogy, then following the premise of Adam Smith, one team is the producers and the other is the consumers. If there are not two teams of relatively equal power, then the game will be a bore. If there are two teams of equal power, the game will be a bloody mess unless the referee/regulators do their job effectively.

Currently, the major problem is that the producers field an immensely more powerful team than consumers field. In addition, there is a tendency for regulators to play right guard, quarterback or end on the producers' team, blocking (withholding information), running the ends (subsidizing the market) or catching passes (working out problems in endless closed meetings). The result is that the regulatory/corporate complex administers the marketplace in an effort to anticipate, plan for and overcome its irrationalities. Such an effort removes the vitality from economics and begins to sap the wealth of the nation.

Thus the real future for the regulatory agency depends on modifying corporate law and corporations so that regulatory agencies have producer and consumer sectors of relatively equal power to regulate.

4. SUMMARY

Competition between various producers is an essential but secondary need in preserving the economic vitality of a society. Such competition is meant to serve as a tool to aid in the primary competition between producers and consumers that makes the system function.

The structure of the Twentieth Century American corporation is flawed. It has become insensitive to the marketplace, reliant upon government and uncomfortable with competition. As a result, it has lost its ability to respond to the consumer. The regulatory agency has served as the crutch for this decline.

Regulators who can only be effective as neutral arbitrators of economic confict find it difficult, if not impossible, to resist the pressure brought to bear on them by large corporate power centers. They cannot be made to function effectively unless and until the pressure on them is relieved by the building of strong consumer pressure to counter the pressure of producers. Future regulatory agencies need to be part of a general economic renaissance which will place the principles of competition between producers and consumers back as the central function of the American marketplace. Succeeding in such an effort might well restore the economic vigor and dynamism that along with American ingenuity and abundance of resources has allowed Americans and unparalleled productive capacity. Harnessing that capacity might well be part of, if not the only answer to meeting the growing pressure on world resources. Properly structured the regulatory agency can be a useful tool in such an effort.

Mr. JAMES TURNER. As the witness preceding me said, we are at a watershed period in the question of regulation. I think it is really a conceptual watershed. We are actually facing two basic questions that I think should be addressed by this committee and then by any subsequent investigation of regulation that may be carried on.

They are first of all the nature and purpose of regulation, and secondly the nature and purpose of competition.

I would like to begin with the first and do that by picking up Mr. Statler's question about why agencies such as the Department of Agriculture and the Food and Drug Administration should be excluded from the kind of investigation that is being proposed in legislation before you today.

I would suggest that all of the reasons that I have heard are fallacious, and nothing could do us more disservice than to conduct a series of investigations on the subject of regulation that were not coordinated, indeed, were not a single investigation. The rationale presented this morning was that those that are involved on the executive side are involved in safety and health, where those involved in the independent area are involved in questions of regulation of the economy.

There is no such distinction that exists. For example, one of the agencies listed as an independent regulatory agency in the administration proposal is in fact the Consumer Product Safety Commission, which is not charged with any regulation in the economic area, but indeed does have major economic impact.

Conversely, the Food and Drug Administration, which was excluded in this morning's testimony because it was inadvertently or accidentally an impacter on the economy, maintains within its own structure a division to look into the impact of its decisions on the economy. It has a staff of people who produce reports about how a particular regulation will affect the economy, and indeed, it has statutory authority to work on economic fraud questions. Indeed, it maintains a series of interagency arrangements with the Federal Trade Commission with input on economic questions, and indeed, it is the maintainer of a series of food standard systems that are designed purely and simply for their economic impact aside from all safety activities.

So I would suggest that the question of whether independent or nonindependent agencies should be mixed together cannot turn on whether they investigate safety or nonsafety items. Both kinds of agencies do both things. Indeed, in the Agriculture Department you have a series of marketing order and other boards that regulate purely economic questions. It is in these areas that it would be extremely important for some investigation to be undertaken.

And this raises, by the way, a third serious area of focus that has not even come up in the hearings. We had discussion about independent regulatory agencies and about dependent regulatory agencies. In fact, the Agriculture Department regulators are neither of those, but are in fact independent boards in the sense that they bring competing interests to sit down and establish the framework of a market.

So not only should all regulatory agencies be included in any review of the nature and purpose of regulation, but there are some institutions that are not even regulatory agencies which should be included in such a study.

For example, you have the entire milk marketing order system which is not a regulatory system, but which is operated in such a way that it does have tremendous impact on the price of milk. Indeed, it has been estimated that the operation of those boards at the current time is operating ineffectively to the extent that perhaps as much as $4 billion has been lost to the American consumer over the last decade.

In addition to those kinds of boards, the milk marketing boards, there are fruits and vegetable boards. There is, for example, a board known as the California Navel Orange Board. This board during the operations of the wage and price control system 2 years ago was noticed to be limiting the transport of oranges from the area by administrative decisions.

The wage and price controls regulators went to that board directly and using their legal authority, forced more oranges to be released from California in the eastern domestic market, with the direct result that the price of oranges on the wholesale level to supermarkets dropped 15 percent.

This is a clear situation in which a regulatory activity outside of regulatory agencies was in fact impacting on the economy in such a way as to lead to inflation.

I would suggest that the question of the nature and purpose of regulation has been misunderstood by those who are trying to separate out certain kinds of regulatory activities. Senator Allen last week asked Mr. Ash when did we get into this mess? How recently was it that the problem occurred that we are all talking about? Mr. Ash said, well, I was not around at that time, but I would suspect that back around a year after the Interstate Commerce Commission was created we started getting into this mess.

I would suggest that there is on the historical record evidence that our problem began before the Interstate Commerce Commission was created. Indeed, the historical analysis of the creation of the ICC by the historian Gabriel Kolko who is widely respected and whose work on the ICC is considered to be a historical classic, points out that the legislation was drafted by railroad lawyers working on behalf of the railroads, that the passage of the legislation was urged by the chambers of commerce in existence at that time. Going back and looking at the historical and contemporary newspaper record, you find a great deal of support for the Interstate Commerce Commission coming from the industry itself. Indeed, the bill languished for almost 11 years, until industry embraced it. Then it passed.

I would suggest to those who say regulatory agencies soon become captured by those that they regulate, that there is strong evidence that they are born captured. They do not come into existence until such time that the industry to be regulated finds that it needs them. Indeed, prior to the creation of the Interstate Commerce Commission there were many efforts on the part of the industry to set up private, voluntary systems very much like the Interstate Commerce Commission. These systems were set up to manage price, to manage markets. They were called railroad pools. Every member of the railroad industry signed an agreement that he would only charge a certain price. Remember, there were no antitrust laws at this time. They agreed to charge a certain price. They agreed to market only in certain areas.

There was a pool administrator that was appointed whose job it was to insure compliance on a voluntary basis with this system. It was only after the collapse of this system on several different occasions that finally the railroad industry used its support to bring about the creation of a Federal Interstate Commerce Commission. In essence this put into legislation the kind of voluntary system that could not be enforced privately. But it also brought into the framework the arm of the Federal Government to enforce what could not be enforced privately.

Indeed, shortly after the passage of this statute, J. P. Morgan and other railroad interests met and made as their first priority of business enforcement of the Interstate Commerce Commission against their competitors who would not comply with it.

I would suggest then in the Interstate Commerce model, we have a framework in which institutions have come into being to help industry people, but have come down to us in history as if they were meant to help the consumer. They were not necessarily meant to help

consumers. The Food and Drug Administration did not come into existence while it languished—for 30 years—in the U.S. Congress until the National Canners Association, the biggest trade association in the food industry at that time, endorsed its creation.

For the moment I just would want to make one small aside and say that by saying that these institutions were created to serve the industries that they were designed to regulate, I do not mean at that time in history that was necessarily a bad policy. We had a serious problem with railroad pirating, with cutthroat competition, and other kinds of destructive activity that were going on.

This may very well have been a reasonable system to incorporate. It may well not have been. Nonetheless, the point is these institutions were created to work out the warring conflicts between various segments of the industry that were causing serious economic problems. They were not designed as consumer protection institutions.

I would suggest with that point in mind that the second conceptual problem that we must address is the nature and scope of competition. What is competition supposed to be in the framework of what we call a capitalistic or a free market economy?

Adam Smith, of course, was the father of the concepts that make up the free market system, and he identified the central force in his free market system as the consumer. He said:

> Consumption is the sole purpose of all production, and the interests of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.

His argument was that primary to the development of a free economic system is the placing in the hands of the consumer the kind of economic power that will make it possible for that individual to act as the disciplinary force on those who are the sellers.

Indeed, the antitrust concepts that have grown up around the idea of free marketing have grown up as a secondary effort to support the economy. They have grown up in an effort to provide enough sellers so that the consumers' discipline would have someplace to be expressed.

The primary force in the free market system was the force of having consumer power. Adam Smith went on to say that in the system that he was attacking, which was called mercantilism:

> The interest of the consumer is almost constantly sacrificed to that of the producer, and it seems to consider production and not consumption as the ultimate end and object of all industry and commerce.

I would suggest to you as you are given arguments about efficiency and cost of producing and so forth, we tend to move into an area where the producers' interests get focused on more effectively than consumers' interests. The point that Adam Smith made over and over in the "Wealth of Nations" was we have major corporations that have been created like the East India Co., and whenever they run into economic problems, they go to the Parliament for a subsidy, as the East India Co. did. When the subsidy does not save them economically, they ask for special trading privileges which the East India Co. did. In one instance, the trading privilege was to sell tea to the United States without the duty that would be required on other people selling tea, giving them a market advantage.

We met that particular challenge to the United States by having the Boston Tea Party, and it was the East India Co.'s tea that went in the water, not the King's tea.

The point is, the arguments that Adam Smith made, the arguments that support our free market system, placed the consumer at the center of the whole competitive structure. Smith went on to describe the laws that had been created to support and protect corporations in mercantile England, which I think are very similar to laws that we now have, and said:

> It cannot be very difficult to determine who have been the contrivers of this whole system, not the consumers, we may believe, whose interests have been entirely neglected, but the producers, whose interests have been so carefully attended to, and among this latter class are merchants and manufacturers who have been by far the principal architects.

I would suggest to you that the whole concept of the free market system as designed by Adam Smith was to provide an opportunity for those who were the consumers, the buyers in the market place, to exercise force in that market place equal to that exercised by the producers. I would suggest to you, as the economic situation in the United States began to become more and more corporatized, at the turn of the last century, we as a society began to think up a series of ideas about how to remove power from the corporate sector, and as a counter to those ideas, the regulatory agency concept was planted to allow the managers of the corporate economy a forum in which they could work out their problems which would not disrupt the rest of the economy drawing down on their heads all the wrath of the society.

I would suggest in 1974 it is untangling that kind of a problem that we face. Given this kind of conceptual framework, it seems to me that we face a question of rationale as the last speaker talked about, and as the counsel mentioned. A question of whether the real choices are returning to a free market system or continuing in a regulated system. I would suggest there is a third alternative, to design legislation for institutions, to allow consumers to express their power in the marketplace as the theory of the marketplace demands, if it is going to work.

This would mean, for example, the creation of institutions that will bring consumer input directly into the operation of the regulatory system. This would mean taking the area that has been exclusively occupied by the industry being regulated, and bringing consumer input directly into that framework.

Without such structural change, you will not seriously address the problem of regulation and its impact on the economy.

Specifically in regard to the legislation that is before you today, I suggest that the Commission that has been proposed must, if it is going to be effective, include as members of the Commission, people who are representative of both the consumer interests and the producer interests. This would mean that the kinds of issues that I am discussing would become a serious focus of any kind of regulatory investigation. Without that kind of focus, we would merely get a replay of things such as the Landis report, the Ash report, and the others cited by the witness earlier today. Such a replay would lead us not to a reform of the system, but to digging ourselves in deeper by excluding those activities which are effective in regulating the corporate economy and including those which are not effective. It will allow us to make exactly the same choices we made each other time that we have looked at the regulatory agencies; that is, enhancing the power of the regulated industries within regulatory agencies and minimizing the power of the consumer.

I have given you the general framework that I think should be used to look at the kind of legislation before you.

Senator HUDDLESTON. You mentioned that the ICC and the FDA, and mentioned that they are captive of those that they are supposed to regulate. What other agencies do you put in this category? All of them?

Mr. JAMES TURNER. Dr. Kolko has gone on and examined other agencies. He did a more thorough examination of the Interstate Commerce Commission. But he has examined all others. I would suggest they are all in a power situation, where their contemporary peer group activities revolve around the industries that they regulate. You have a series of very real problems. First of all, all of them. Then, you have very serious, real problems that caused this to occur. In the Food and Drug Administration, when it came time to appoint a new general counsel to replace one that had been there since creation of the agency, there was only a small community available from which to draw someone who could work in that office. The person came from one of the major food and drug law firms, with a series of food and drug clients.

Senator HUDDLESTON. You emphasized the need to have consumer interest represented, to paraphrase, in the proper proportion to their power and interest. Is there an area where the interest of the producer has to be taken into account particularly in the long term if the interest of the consumer is to be protected? There is a question of competitiveness in keeping production at a level where the consumer can use his power.

Mr. JAMES TURNER. Yes, there is definitely that and in quotation from Adam Smith, he says: "The interests of the producer are to be attended to only insofar as it may be necessary in promoting that of the consumer," which is exactly what you said. Certainly, it is important to be sure that the producer is not overburdened, not unnecessarily overburdened or overburdened period; because overburdening is not necessary. It is a part of the argument today, we are concerned about your interests, because your interest is important in advancing the consumer's interest.

Senator HUDDLESTON. The lowest possible price immediately might not always be the total criterion for determining whether the consumer's interest is going to be served over the long term.

Mr. JAMES TURNER. Not only will it not always be, but it will never be. The lowest possible price is never the proper criterion to utilize. There has got to be the highest possible quality for the lowest possible price, but the lowest possible price itself used as a measure, will only lead to the depreciation of quality. This in turn would lead to a serious disruption of the whole situation, and become inflationary.

Senator HUDDLESTON. Availability of supply?

Mr. JAMES TURNER. Exactly.

Senator HUDDLESTON. From your study of the FDA, what extent has its policies been inflationary and increased the cost, without regard to quality control and the other type of things that they may be concerned with?

Mr. JAMES TURNER. I cannot put a dollar figure on the FDA. The FDA regulates a marketplace that includes $250 billion worth of retail products. It has a tremendous impact. There are indications of the kinds of problems that need to be looked at. I would argue that the depreciation of quality is an inflationary factor, if you are paying the

same price for a lower quality goods, you have actually had your dollar inflated. You are not able to buy as much with it as you have in the past.

The FDA has tended to overlook this impact in such instances as setting the standard for orange juice. In that orange juice product area, there was a tremendous debate between consumer groups and the FDA about how to label orange juice products. They wanted to say, all orange juice products that contained between 25 percent and 75 percent orange juice should be labeled the same way, as orange juice products. The problem with that is you immediately depreciate the quality of every one of the products that was above 25 percent down to 25 percent. That is a direct cost to consumers—how much of a cost, I cannot tell you—but I can say that the FDA has an economic bureau—or economic activity. They ought to be looking into these activities.

We have a problem—that is enough. There are others in the agriculture area. You can find at least four marketing areas in which the Cost of Living Council projected a problem in costs to consumers. Cling peaches, nuts, oranges—I do not remember the fourth—those could add up to several million dollars, if not $100 million, collectively. And in the milk market area, as I say, a very conservative estimate is $4 billion over the past 10 years.

I should mention one other thing about regulatory agencies in the cost area which is often overlooked. When you are talking about excess profits as being a result of these activities, you may not be taking into consideration the entire price rise. The Federal Trade Commission did a study several years ago on the outdoor bleacher industry, and in that industry, it was projected by the FTC that there was a 15-percent excess profit situation which suggested collusion. They went to the industry, got a consent decree against collusion, and that led to a price drop of almost 30 percent in the marketing price. This happened because the FTC was squeezing out excess administrative costs, which included corporate jets and fancy offices, and high, inflated expense accounts, and so forth, as well as excess profits. When you think about this, you have a lot of different ways that you can make the economy less inflationary, by the way regulatory action is used.

Senator HUDDLESTON. In determining the potential of the cost of the milk marketing situation, your estimate was $4 billion. How do you determine that? Is that $4 billion above what the consumer could have bought the same quantity of milk for?

Mr. JAMES TURNER. That is an extremely important point, and I would like to take a moment to address it because of the way that the hearings have proceeded while I have been here. When, I say the milk marketing has led to, perhaps, by conservative estimate (and that was done by a former Department of Agriculture official), to a $4 billion cost to the consumer, I do not juxtapose to that the concept that we should eliminate milk marketing orders. Eliminating milk marketing orders could lead to a situation far worse than that cost. The problem is, how to make those marketing orders operate in such a way that they will take into consideration the entire marketplace, both producers and buyers, when they come up with a regulatory activity or the regulatory impact.

In that particular instance, that money was taken from premium charges, and what is considered to be excess premium charges. It might well be possible to restructure the marketing order system, having a framework within which the consumer interest and the producer interest are both represented in a price-setting situation, to maintain supplies—that they were designed for—maintain producer market power opposed to retail market power—which they were designed for—and at the same time, not allowing that power to be so all-pervasive that it goes beyond the power of the other parts of the marketplace, to the extent that it is bringing in excess money. That is the framework that I believe any study of regulation in regard to the economy should be conducted in. If it is conducted in the framework, should we have regulation, and regulation costs a lot, therefore we ought to get rid of it—then we are moving back to a situation that we had at the turn of the century, where practices that are now under regulation that we have forgotten about would again become rampant; the least of which is what Nicholas Johnson has suggested. Incidently, I would point out that the previous witness did not say that in all cases, you will not have an oligopolic situation. If you go to a situation where there is no regulation, and end up in an oligopoly situation, it is very problematic even if the Justice Department would have the authority to break up oligopolies at this point. You could move yourself into a very serious problem if it was juxtoposed as a free market versus the regulated market.

Senator HUDDLESTON. You say regulation is necessary?

Mr. JAMES TURNER. Yes. But it ought to be done properly, and properly means bringing the consumer interest in the framework.

Senator HUDDLESTON. Let me quote from your book, "The Chemical Feast," that was published in 1970. Page 17, and I quote:

> If the food industry can use that questionable additive until it is conclusively proven to be unsafe, people will be injured. The processing provisions of the food additive law are designed to avoid this kind of entry. But FDA has failed to protect the public interest against such injury.

Could you expand on that charge?

Mr. JAMES TURNER. Yes.

We are talking about one of the laws that the Food and Drug Administration enforces, the food additive law. I will give you a specific example that we are involved in at the present time at the Food and Drug Administration. It will give you also, I think, an insight into the regulatory question that I was talking about earlier.

In 1970, as that book was being prepared, a number of food additives were under very serious criticism. Cyclamates had just been removed—incidentally, we had had meetings with HEW, with Secretary Finch, on the question of cyclamates, and I believe that had a great deal to do with this action. In addition, monosodium glutimate had been voluntarily removed from baby food. In addition to that, you had had other additives such as brominated vegetable oil and other substances changed in status to require further testing.

At that very time, the Serle Co. began development of a new artificial sweetener called asnevtome. We began to ask the Serle Co.—we representing the interests of consumers, and being concerned about the potential safety of that substance—whether we could be involved in some way, by raising questions as that substance was developed. We were not allowed to be involved in any way.

Two years ago, the Serle Co. filed a series of safety test results with the Food and Drug Administration, and we asked at that time, could we be involved now in reviewing those tests to see if the law had been followed. And we were told that we could not' the law did not permit it, because this was commercial data which is excluded under the Freedom of Information Act. By the way, we went to court to receive this kind of data in another case, and we got an indeterminate opinion saying in that particular case, no; but bring it back in another case.

For 2 years, this substance resided in the FDA which it issued through the studies. We sought both through the companies involved and through the FDA, to bring the consumer input in, discussing the safety of that additive. Subsequently, 4 months ago, the FDA announced that they would permit the marketing of chemical in food. At that time, for the first time, myself and our scientific advisers had the opportunity to go to the FDA hearing clerk's office, and look at that data. I want to mention that that was a very unique situation. It was only the first time that, in granting a food additive—the first time in the history of the law—in granting a food additive petition, the FDA had allowed the safety data to be looked at. We went and looked at that data.

The reason they did allow access is that we pressured them to do so, by repeatedly asking what they base their decision on. We looked at that data, and found that there had been a study done on monkeys in which monkeys had eaten this particular substance in medium to higher doses, and all of them had gotten epileptic seizures. Our argument was, that this posed a very serious question about whether or not that substance should be on the market. Our argument was, we should have been allowed to ask that question much earlier in the process. Our argument was that, since we had not been, we demanded a hearing from the Food and Drug Administration, which was our right under the law. We now have a hearing which is being developed. We will be holding a hearing on that substance.

Incidentally, the whole time that we are trying to get this hearing, and so forth, the FDA has legally allowed the marketing of that substance. It has not yet been marketed, but there is not a legal restriction on marketing. My suggestion is that here is a specific example where the FDA has allowed something to come on the market that poses a potential hazard, where the consumer was excluded completely from the regulatory process all the way up to the very last minute, while for 2 years the FDA met, on an ongoing basis, with both the food company, General Foods, that wished to market this under contract from Serle, and the Serle Co., the company that manufactured it.

My suggestion is, on these kinds of issues, the absence of the consumer input early in the process is a serious problem from the policy point of view.

Senator HUDDLESTON. Has the situation improved any since 1970?

Mr. JAMES TURNER. I gave you the major improvement. Under pressure, they filed the documents that showed that they were, in our opinion, making a mistake. That is an improvement; I would not say it is not. On the other hand, from the standpoint of protecting the American public, it poses some very serious questions about how that process operates.

Senator HUDDLESTON. Your testimony describes how a commodity board in California controlled the supply of navel oranges in this country. Who actually selected the members of that particular board?

Mr. JAMES TURNER. The board—I am not clear exactly who selects them. They are certified by the Secretary of Agriculture. They report under his authority, and they are almost exclusively representatives of the industries involved. There is now a tremendous effort on the part of consumer groups in the California area to include consumer representation on all commodity boards, starting right now, and that is beginning to gain momentum.

Senator HUDDLESTON. Are they responsible to the Department of Agriculture?

Mr. JAMES TURNER. It is the Federal marketing order, and their activities are regulated under the Department of Agriculture rules.

Senator HUDDLESTON. Do you have any statistics as to what proportion of food the housewife buys is controlled by such a board?

Mr. JAMES TURNER. There are over 70 of both kinds of boards. Then there are the milk boards, and you end up with a very high percentage—maybe 25 to 30 percent—clearly under their control, perhaps some peripheral control. Let me suggest, in regard to these last two questions, perhaps you can understand more clearly what my concern is about consumer interests if I explain how they work.

These boards levy a tariff on the sale of the commodity that they are regulating. Let us take an Ohio board, for an example. These are both State and Federal, and they work in roughly the same way. Ohio has a beef marketing board which levies a tariff, essentially, on the sale of beef. So for every head of cattle that is sold that is raised in Ohio, the seller pays in a dime—I think that is the present rate—to a general fund that is managed by the Ohio Department of Agriculture. The management is purely fiscal. The people who raise cattle in the State of Ohio elect the membership of the board that sets policy. That board then sets the policy of how to use this money, and it operates at about $100,000 to $150,000 a year. Any member of the group can write to the Department of Agriculture and ask for his money back. That makes it a voluntary process.

The result of this is, you have a producer-controlled, producer-financed institution, whose primary purpose is to provide information, education, and publicity for the sale of the commodity involved, in this case beef. They have it for apples, or any other area that you may want. What we are arguing is that there should be a comparable framework for the people who consume food. There ought to be an agricultural consumers' board, or there ought to be the two married together. Conceptually, we would argue that a similar voluntary checkout system could be instituted. For example, the supermarket checkout counter, where a person is asked to voluntarily donate 1 mill of their purchase to the consumer marketing board. This would raise in the food area $125 million annually nationwide, if everybody gave their 1 mill.

What we are suggesting is the creation of that kind of an institution to counterbalance the kind of marketing institution on the producers' side would lead to an interaction between what we call competitive, in the classic Adam Smith free market sense, for the setting of policy and the selling and buying of food. For example, the advertisements

of such institutions that go on television, that says buy prunes, buy peaches, et cetera, would be able to be subjected to the kind of review that now the FTC is demanding they be subjected to by law. The question of how much should be released or not released, as in the case of the navel orange board, would be subject to a much different kind of discussion, not only preserving the producer's marketplace, but also having consumer input; saying, look, you put this many oranges at a lower price, you are going to make even more money. So just do not focus on raising the price of the commodity you have, but also focus on the possibility of creating a larger market. If you can create a larger market at a lower price, you will make more money in the long run than if you create a smaller market at a higher price. These kind of arguments could be carried out in the framework of such an interaction.

That is the kind of question that I think the Review Commission that we are talking about in this legislation should undertake. Any tinkering with the way the process is, trying to improve this part or get rid of that part, would really be counterproductive.

Senator HUDDLESTON. In absence of consumer input, is it your judgment that these boards ought to be limited or eliminated?

Mr. JAMES TURNER. You would have to look at each of the boards specifically to decide that question. As soon as you begin doing that, you are in a situation where what you really need as an ongoing review process. The Cost of Living Council began that. They were going down the boards one at a time, looking at those where objective economic data suggested a serious market manipulation problem. They had already identified four; and then, as we all know, they went out of business.

I am suggesting that that kind of ongoing process can be extremely useful in creating a much more effective economy, that puts more supply of food, in this case, in the marketplace at a better price for the consumer, and a better return for the producer. I do not believe we are going to be able to market agriculturally without some kind of a management system, of which this is the very rudimentary beginnings. I am suggesting that the next addition that should be made is the putting in of the kind of inputs I am talking about.

Senator HUDDLESTON. I am wondering whether there is any danger here of an oversimplification when you refer to producers and consumers as two separate, distinct, monolithic-type groups. The interests of consumers are so varied, and certainly the interests of the producers are quite varied. It is almost begging the point to refer to them just as separate, with separate interests that are easily defined and described.

Mr. JAMES TURNER. Let me answer that this way. In trying to develop this concept, and speaking to others about it, I used the analogy of the football game. In the football game, we have the producer—in my analogy, you have a producer team and you have a consumer team, and you have all the officials who are the regulators. Our biggest problem in our society, in terms of regulation and so forth, and one which is getting a great deal of support from the public, is that the head linesman and field judge and so forth have started playing right guard and quarterback on the producer's team. We do not want that; we think that is bad. But we are not arguing that they

should play left guard or quarterback on the consumer team. They should be regulating equal forces in the marketplace. That is an oversimplification. But to understand how that analogy can be carried further, we can say, let us then, instead of thinking of a football game, think of the central division of the NFL, so we make it a little more complicated; several different producer teams and several different consumer teams. Then we can put it in the three divisions, then the AFL, and then the whole concept of the football structure.

All I am suggesting to you is, the oversimplification that has occurred up to now is the oversimplification that our only problems are on the production side, and that there is a clear and distinct consumption side. That does not mean that the interest of the producer is always opposed to that of the consumer. It is quite clear that they are not always the same, and we have continuously had a presentation and analysis of regulation of our economy. If only we can work out the differences between all the different producers, and provide enough of that in the ball game, then everything will be all right. And we have completely overlooked the development of the consumers' skill in making the economy work.

Senator HUDDLESTON. The only fault I find with your analogy is it does imply that there is a continual conflict between consumer interests and producer interests, and in some cases, they may be traveling along the same road, going in the same direction. What about agencies like FDA and USDA that are not directly subject to Presidential direction? Do you think they would better represent interests of the public less susceptible to the judicial pressure than the independent regulatory agencies?

Mr. JAMES TURNER. It is perhaps more likely that the opposite is true, and indeed, that is why independent regulatory agencies were created; to avoid that kind of influence from the elected administrative personnel. I believe, actually, from looking at the situation, and the way that regulation has developed as the dynamic in this society, it makes little difference where the regulatory agency is placed. Indeed, the Food and Drug Administration is a dependent regulatory agency, merely by the historical accident that the man who drafted the legislation happened to be an employee of the Department of Agriculture, and asked that the authority be placed in the Department of Agriculture, in his Department. That is why it is there; there is no other reason. The fact that it has been moved from department to department over the years shows that there is no particular reason why it should have been put where it was in the first place, other than historical accident.

I am suggesting that the dynamic of the framework, the dynamic of the constant input of one side of the economic argument, is what has created the situation that leads regulation down roads that are not the most productive. It does not matter whether it is the independent or dependent.

Senator HUDDLESTON. Does counsel have any questions?

Mr. TURNER. I do have several questions, but I am going to cut it short, and get to a specific example, and maybe get your response to it, Mr. Turner.

Am I correct that you are favoring, in your recommendations, a return to the free market system wherever possible?

Mr. JAMES TURNER. Yes, definitely that, and more. That is, a return to the principles of the free market system, we cannot go back to the village marketplace that Adam Smith had. But we can restore the principles of the free market system. That is what I am relying on.

Mr. TURNER. Is it not a fact that the sugar market today in the United States is operating unregulated and is a free market, other than the import quotas?

Mr. JAMES TURNER. Yes, that is correct.

Mr. TURNER. Is it also not a fact that the price of sugar has skyrocketed in this country over the past several months?

Mr. JAMES TURNER. Correct.

Mr. TURNER. Is it also not a fact that the sugar industry is dominated by a concentrated group of sellers, no more than four, who hold the power to control the price and the allocation of supply of sugar?

Mr. JAMES TURNER. I would agree with that, definitely.

Mr. TURNER. Then this would be an example of a free market operating. What is your response to that?

Mr. JAMES TURNER. My response was, first of all, it is not an example of a free market operating. It is an example of an oligopoly operating. The point I made earlier, and I join with the kind of concern that Nicholas Johnson expressed—if you move to a nonregulated economy, you are going to end up with a very serious problem. The real functional problem in sugar, as nearly as we can tell from looking at it, is we have dropped from a 20-week to 15-week supply in the pipeline, or in the pipeline framework, which is merely the result of, apparently, the Russian agriculture policy, planning to go on the world market rather than staying out of it. It is the relatively small dislocation, but enough to set off the forces of the managed sugar economy to run prices up.

Mr. TURNER. You would agree that we would not be able to rely on the antitrust Division to solve the problem?

Mr. JAMES TURNER. That is correct.

Mr. TURNER. Then what kind of regulatory mechanism should this study commission be looking at as a means of resolving this problem of concentrated sellers in a market?

Mr. JAMES TURNER. Incidentally, I would suggest the intervention of the American Government in the sugar market was greater before consumers proposed the legislation than it is now, and the prices were still going up. It was a serious problem, unrelated to the Sugar Act activities. What I am suggesting, as a general principle, a philosophy, is that a regulatory framework should be established in these kinds of situations. It does not mean it only has to be regulation that would bring the consumer interest directly in impact with the policy planners. I, for example, believe——

Mr. TURNER. Excuse me, I am only looking for potential mechanisms. How can consumers be brought together with this concentrated group of four, to cause them to change their planning with respect to price?

Mr. JAMES TURNER. The sugar marketing board, in that kind of instance, would be a good thing, if it was made up of 50 percent of consumers and 50 percent of producers, with the Government controlling it, as the regulators of that interaction; and sitting down

with money for the consumer people to do research in the marketing framework, and so on, and money for the sugar people, which they already have—which we do not have—to begin to bring into the decisionmaking the design for a planning of the sugar market, the other side of the point of view.

I want to go back and say, this does not mean when they sit down and talk, they are not going to agree on perhaps, most of what they talk about. But there are those points where they do not agree which now exclude completely the point of view of the consumer from the planning process. There is only the point of view of the producer in that process. That is the kind of regulatory mechanism I would see operate.

Mr. TURNER. I would suggest such agreement may be in direct violation of the antitrust laws.

Mr. JAMES TURNER. That is a serious problem that has to be looked at by the Commission that is doing the regulating. For example, there are serious questions about the antitrust implications of milk marketing. I believe the kind of framework we are talking about, if a Commission is going to look at regulation, and come out with some kind of recommendation, and the kind of approach I am talking about is part of that. Quite clearly, they must look at the antitrust regulations to determine how they can be effectively utilized, and where they have been counterproductive.

Mr. TURNER. Do you support breaking up these large companies, these concentrated markets, into small units?

Mr. JAMES TURNER. My personal feeling on that question; any company that is beyond the point of efficiency in terms of market activity should be brought back to efficiency. That does not mean breaking down companies just because they are large. Almost every issue where there has been a question of size will feature a company or a pair of companies that are larger than the point of market efficiency. Just raw economic data indicates points of diminishing returns, the next increment of production costs more than mere preceding.

Quite clearly, by antitrust action, all companies of that size should be broken back to the point of diminishing return, or whatever standard that was determined that would be the most efficient objective economic standard.

On the other hand, there are many companies operating today that are large but efficient because they have been able to make use of economies of scale. I do not believe those should necessarily be broken up if you can bring alternate power for decisionmaking into their structures.

Mr. TURNER. Do you feel the Antitrust Division of the Department of Justice is ineffective in doing its job?

Mr. JAMES TURNER. I do not think it is effective. For structural reasons it does not have the money, it does not have the resources or legal conceptions. There is serious question whether they can really go after an oligopoly. The fact that a serious question exists in such a framework creates tremendous legal problems. That is where most of the delay comes from when there is a serious legal question, even if all the scholars in the world accept one agree you are going to have serious legal delays.

Mr. TURNER. I have no further question.

Senator HUDDLESTON. Does minority counsel have any questions?

Mr. STATLER. No, sir.

Senator HUDDLESTON. Thank you very much, Mr. Turner, for your presentation. You have been very helpful to the committee.

Mr. JAMES TURNER. Thank you.

Senator HUDDLESTON. We have reached the noon hour. We have two additional witnesses for today. We will now recess until 1:30.

[Whereupon, at 12:15 p.m., the subcommittee recessed to reconvene at 1:30 p.m. of the same day.]

AFTERNOON SESSION

Senator HUDDLESTON. The committee will come to order. We will resume our hearings. The next witness will be Dr. William H. Melody.

Mr. Melody, if you will identify yourself for the record, and if, in the interest of time, you care to summarize your statement, the entire statement will go in its entirety into the record. That will be satisfactory or you may proceed, whatever you think it best.

STATEMENT OF DR. WILLIAM H. MELODY, ASSOCIATE PROFESSOR OF COMMUNICATIONS ECONOMICS, ANNENBERG SCHOOL OF COMMUNICATIONS, UNIVERSITY OF PENNSYLVANIA

Mr. MELODY. Thank you, Mr. Chairman. It is my pleasure to be with you today.

My name is William Melody. I am presently associate professor of communications economics at the Annenberg School of Communications, University of Pennsylvania. I am an economist by training and have been in particular a student of the regulated industries with emphasis on the public utility industries and the operation of the independent regulatory commissions.

In recent years my particular focus has been on the operation of the Federal Communications Commission and State regulatory bodies affecting the communications industry. My interest in the regulatory process in other industries has been maintained. Since I have submitted a statement, I will summarize briefly its key points and then go directly to my recommendations.

The question of the role of regulation is directed to industries where it has been concluded at least in certain respects the role of competition cannot perform an effective regulatory role. So if I might contrast what I wish to say here with the testimony which you heard from the last witness this morning. I think we should draw a clear distinction between those industries or markets in which it has been concluded that regulation must act, and those where it is concluded that antitrust principles and competition can be maintained.

As I understand the earlier witness's major point, he was talking about the philosophy of the economic conception of competition. But in terms of his resolution of several industry problems, he was really proposing a system of countervailing power where the consumer's interest is introduced at a similar level of concentration as that of the industrial interest. That as a concept is one that is sound but only after it is concluded that competition cannot be a viable force in the particular industries involved.

I think there is a danger that the consumer's interest could well become a part of a bureaucratically entrenched operation which would deal with a similar concentrated operation on the production side. The end result could be that many markets where competition could very well work effectively would not be permitted to operate.

In a word, I think the problem of regulation is one that we should view in a much broader context than traditional regulatory commissions. In essence, monopoly markets or highly concentrated, oligopoly markets are regulated markets. They are regulated by the industry involved to meet their purposes. Regulatory commissions have been established as countervailing power to insure that the concentrated regulated markets operate in the public interest rather than the interest of the industries. It is certainly my conclusion from an examination of the competition between the concentrated industry and the regulatory commission, that the regulatory commission has certainly not been the effective regulator. The effective regulator has been the concentrated industry and its representatives

Instead of commissions regulating firms to achieve Government objectives, for the most part the firms have regulated the commissions to achieve their objectives of continuing control over their markets. This has resulted in underregulation of established firms and overregulation on all matters that would change the status quo, such as the entry requirements for new firms.

I think this is a particularly important point to recognize. When one looks at regulation, we often see the suggestion that we ought to abolish regulatory commissions and regulations. That in itself, I think, is a fairly simplistic view. Private regulation by concentrated industrial interests is certainly not a desirable result. The problem is that the structure of regulation has been bent the wrong way. There is underregulation where regulation should be. There is overregulation where it should not be, namely at the very frontiers of change and entry to traditional industries.

Let me just briefly summarize some of the major critical points I am sure you have heard before of the nature of independent commission regulation. Almost universally it has been passive and reactive in nature. It has not taken the initiative in terms of determining policy. It has tended to act as a judicial operation in which the regulatory agencies act as mediators or arbitrators of specific problems brought before them.

As a result, in a great many cases the policy agenda is not determined by the agencies but by the particular interests that bring problems to them, and in a great majority of cases the interest of consumers generally are not represented. The end result is that the agencies become regulators of companies and not of industries and markets. That distinction is a serious one because if an agency is regulating a market, it looks on the performance of the market. If it is focusing its regulation solely on chosen companies, it becomes concerned with the welfare of the company.

A serious problem has been the fact that there has been a much better distribution of power among the regulatory agencies than in the industries they regulate. Generally, the best example of that is in the telephone industry where 1 Federal and 49 State commissions, as well as local commissions in the State of Texas, attempt to regulate

the Bell System. The Bell System can very effectively play one commission off against the other in achieving its particular objectives.

Going now to the particular concern of the committee, the problem of inflation is one that I think is subject to substantial abuse in the regulatory framework. We recognize that in most public utilities regulation is on a cost-plus basis. So when costs are increased there is an automatic passthrough, with no competitive check.

We hear much about regulatory lag and the concern of automatic cost adjustment clauses. The automatic passthroughs, I think, can be a significant cause of inflation. Regulatory commissions which do not examine these questions in a much more serious way than they have done in the past can simply permit the automatic passthrough of those costs which cause inflation. They go much beyond simple recovery from inflation.

Insofar as the beneficial role of competition is concerned, the traditional philosophy of most regulatory agencies is that regulation is a substitute for competition. Therefore, it is incompatible to attempt to have both in a regulatory environment. This is particularly true of State commissions and the current example that I would cite is the situation where the Federal Communications Commission adopted a policy in favor of competition in specialized communication markets. Ironically, it was not the Bell System or other communications companies that took the FCC to court on the matter. It was the State commissions, the State commissions clearly viewing competition as an indication of the FCC's copping out on its regulatory responsibilities.

Regulation provides rather substantial barriers to entry. These perhaps can be summarized in three steps. The first is the certification process itself. When the regulatory agency must provide certification for new entrants, this process can be dragged on to be a multiyear process that can destroy the advantages that a competitor may see in terms of market or technological advantages that he would have in entering a regulated market. Secondly, if the firm does enter, the established utility with substantial monopoly power can bring that monopoly power to bear on the utility without being as vulnerable to the antitrust laws as it would be if it were not a regulated company. And third, there is what I think can be best classified as the process of regulatory delay, delay through the regulatory process. Where an established firm cannot block entry through the first two steps, it can use the regulatory process to "due process the competition to death," and this is something that has happened on many occasions.

The communications industry is perhaps viewed these days as an industry that has been somewhat forward looking on the matter of competition in that it has passed a number of policies over the past decade that have permitted new firms to enter markets and compete in communications markets, at least theoretically.

I would emphasize this does not go to the basic telephone service, roughly 85 to 90 percent of the industry, but to the specialized submarkets of the total communications industry. The industry is so large, however, that the submarkets can involve millions and hundreds of millions of dollars. What has happened is the FCC has made a great many policy statements letting companies in but then has been rather ineffective in attempting to see that its policies are implemented. The end result has been that the competitive reactions of the Bell

System of a rather drastic and predatory nature, have stopped competition from developing significantly.

In my statement I have cited a number of illustrations beginning with private microwave communications. In approximately 1960 the Bell System responded with a price reduction up to a factor of seven times from previous prices, which tended to stop competition. The illustrations are extended through the development of miscellaneous common carriers which deliver TV signals around the country and through the FCC's *Carterfone* decision affecting equipment connected to the communications system, to specialized common carriers and satellites.

It is ironic that after the FCC adopted policy in favor of competition in domestic satellites, the competitive proposals seemed to drop by the wayside. There appeared to be no effective competition forthcoming until IBM came into the market with a proposal with Comsat. Where these two corporations could provide competition with A.T. & T., IBM has such a dominance over its own market, the Federal Trade Commission and the Justice Department both filed with FCC expressions of great concern about IBM's monopolization here.

Looking particularly at the communications industry, it is one where technology is changing rather quickly and many of the changes are coming from the computer and its related industries. The future of communications is what we might call the future of integrated information processing systems. Regulatory policy is going to determine whether the trend of events is dictated by the communications industry or the computer industry. If the FCC cannot do much more than it has in the past, then essentially the communications industry and the Bell System will dictate the course of events and I think there will be much new technology that will not be implemented most efficiently.

Let me go now to my recommendations.

Specifically, I endorse S. 4145, the establishment of a National Commission on Regulatory Reform. However, the Commission should be directed to address the entire range of structural reforms. It should begin by accepting the fact that the structure of existing regulation is deficient. This should be the point of the inquiry. We have had enough studies over the years that have demonstrated the deficiencies of the regulatory process. The Commission should look immediately to the range of alternatives.

S. 770 should not await the results of the National Commission's study. The absence of advocacy of consumer interests is a major deficiency of existing regulation. The creation of a consumer's counsel and the expansion of information reported by regulated companies must be a cornerstone of any regulatory reform; they are desperately needed now.

Third, all realistic reorganization proposals must encompass at least Federal and State regulation, and preferably include local regulation as well. Federal regulation involves one-third or less of most of our major regulated industries. To eliminate State regulations would be a drastic mistake.

With regard to the specific character of regulation, I think any reform must look at the role long-range policy planning must play as a permanent part of regulation. At present, it does not play a significant

role at all. Also, the question of technological assessment is important as a permanent part of regulation.

And of course, in addition, there should be a requirement that the industry structure be continuously monitored and all aggregations of monolpoly power be justified by the regulatory commission on public interest grounds. This could perhaps be emphasized by requiring commissions to file competitive impact statements as a part of all major policy decisions. In addition, I think there should be increased accountability by regulatory agencies to the public for the substantive aspects of its policies. Annual reports should describe and defend the body of regulatory policies, including the structure of the industry and the extent of monopoly.

I think the real problem of much of regulation today is illustrated by the familiar legal phrase that is used in decisions—that certain kinds of action are "not unreasonable." This kind of defensive policy-making has not helped anyone, I think. Certainly expanded information and reporting requirements should be imposed upon the regulatory companies and made public as a means of facilitating public intervention in the regulatory operation.

Regulation needs substantial strengthening in terms of increased resources and expertise. Although individuals can make a great difference in the effectiveness of regulation, the fundamental deficiencies lie in the regulatory structure as it now exists. At present, regulation is simply inadequate to the magnitude of the task and the power of the established regulated firms. I would include the Justice Department in that statement. I view the A.T. & T. suit with substantially mixed feelings. I think clearly the suit is warranted. I think there are substantial public benefits that could be obtained. But looking at what is realistically likely to happen, I can see 10 years of litigation and the end result being a consent decree in which the structure is really not altered that much. It is a classic case of what I cited earlier as "due processing the problem to death."

I think the dependency of the regulatory agencies upon the firms they regulate must be severed. Stronger regulation should lead to more regulation where it is necessary and less regulation directed toward preventing competition.

The mixture of subsidy grants and regulation in the same agency has never worked effectively. The subsidy conditions have been used invariably as a tool to limit competition for fear that increased subsidies will be required. Subsidy grants should be made by a separate agency in much the same way that REA programs are now administered.

The collegial system of regulation has not been a strong one. Three member commissions, with strong powers and responsibilities for the chairman, would permit diversity while providing a base for more dynamic leadership.

Nationwide companies, such as the Bell System, should be either federally chartered and regulated entirely by a Federal commission, or broken up into regional companies that correspond more closely to the scope of State commissions.

Finally, the FCC should be separated into two agencies, one to regulate over-the-air broadcast communications and the other to regulate telecommunications common carriers and CATV. The com-

bination of broadcast and common carrier regulation has led to deficiencies in both. More specialized commissions would lead to improved regulation of both.

That ends my formal statement. Thank you.

Senator HUDDLESTON. Thank you very much, Mr. Melody, and I appreciate your directing a good part of your testimony directly to the proposed legislation and the recommendations related to it. But going back to a theoretical question, how do you view the regulatory agencies as they exist now? As independent bodies? As creatures of Congress or an arm of the executive branch? Or what, in fact, do you think they are?

Mr. MELODY. I have mixed feelings about that. Very often it depends on how they are operating. If they are acting very independently and doing it badly, one tends to believe they ought to be moved more closely under Congress. When one sees Congress influence the commissions in what appears to be reflecting the influence of the regulated industry, one wishes to move the commissions away from Congress.

My own view would be, assuming the commissions can be substantially strengthened, to establish them as independently as possible subject to whatever continuing review Congress must have. I recognize there must be some review, but I would think that policy determination should be made as independently as possible.

Senator HUDDLESTON. You do place a great deal of emphasis on the need for structural reform as well as the reform of the product of the regulatory agencies.

Mr. MELODY. Yes. I think they are so intertwined, one cannot look at one without the other. For example, I would conclude a big problem on the Interstate Commerce Commission is they have 11 commissioners. With the FCC, it has too many when it has 7. That clearly is not all the problem but I think as long as you have that many commissioners on a commission, you are going to be missing a substantial amount of leadership.

Senator HUDDLESTON. In the case of the FCC and its responsibility in regulating the broadcast media, is that not an example of the need for regulation that is somewhat apart from the competitive aspects?

Mr. MELODY. Yes. That is really one of the reasons why I suggest separating broadcast from telecommunications regulation. They are different and should be regulated differently and broadcast regulation goes to different things than common carrier regulations.

Senator HUDDLESTON. Are there examples where the need for regulation may hinge on proper utilization of a limited resource considered to be a public asset or public resource?

Mr. MELODY. Certainly. I guess you could generalize your statement and say almost all of regulation is based on such considerations in the sense that it is concluded that one will have a more efficient allocation of resources by having a limited number of suppliers.

In the case of a single telephone company in a local area, we do not want two telephones and two sets of wires and poles. Certainly, this limitation could be applicable wherever you are dealing with a natural resource.

Senator HUDDLESTON. In the case of the telephone company, there are no actual physical restraints. It is physically possible to have a dozen telephone companies. It is not physically possible to have a dozen radio stations operating on the same frequency.

Mr. MELODY. You are correct. One does need standards on which one can license, but one could design standards to have very little competition, or one could also design standards that have much more competition.

So in that sense, the allocation of the frequencies is not a matter that is solely devoid of economic input on the competitive question. In fact, the Office of Telecommunications Policy has had a study done that would indicate that a substantially increased number of VHF broadcast licenses could be fit into the existing allocational system with some minor modifications.

There is a question of designing the standards which are going to allocate broadcast frequencies so as to either encourage competition or to limit competition. But clearly, that does introduce a unique sarcity problem which does not exist in most telecommunications common carrier regulations.

Senator HUDDLESTON. I have a few questions on the structure of the proposed Commission on Regulatory Reform. Do you think it is significant whether the Commission is considered a part of the executive branch or the legislative executive Commission?

Mr. MELODY. My own preference would be to have it as the tool of Congress. I think this is perhaps biased by the fact that, historically, we have had a lot of commissions as a part of the executive branch and not much has come from them. I realize there have been some as a part of Congress, also.

My biggest concern about the Commission is the Commission be given a short life, specifically a mandate for change, and not be used as an excuse to stop or delay other worthwhile proposals.

Senator HUDDLESTON. Do you think it advisable to have the President appoint the Chairman and Vice Chairman or should this be done by perhaps the membership of the Commission?

Mr. MELODY. I would have to say I have no strong reason for proposing one or the other.

Senator HUDDLESTON. You mentioned that it should have some restricted time in which to accomplish its objectives. Do you have any suggestion as to what an appropriate time would be?

Mr. MELODY. I think 1 year is plenty, Mr. Chairman.

Senator HUDDLESTON. How broad or how specific do you think the Commission's scope should be?

Mr. MELODY. I think the Commission should be requested to return with specific recommendations for dealing with specific regulatory agencies or specific regulated industries, and I would list them by name. So for example, there ought to be a plan or a set of alternative plans proposed for communications, transportation, power, et cetera.

Senator HUDDLESTON. You envision this as a legislative package that would come back from the Commission?

Mr. MELODY. In the form of proposed legislation, yes.

Senator HUDDLESTON. Does counsel have any questions?

Mr. TURNER. Yes, I do, Mr. Chairman.

One of the witnesses this morning was interrogated with respect to the *A.T. & T.* case. The subject has come up in prior hearings. The concern seems to be developing here as to just how these two cases are going to proceed in tandem together and how the work of the Federal Communications Commission, can be utilized by the Justice Department in presenting the case.

Are you familiar with what the Federal Communications Commission has been doing in the area of investigating and developing facts with respect to the relationship between A.T. & T. and Western Electric?

Mr. MELODY. Yes, sir.

Mr. TURNER. Would you give us your feelings about the scope of that evidence and the degree of depth in which they went to update it? Is there a substantial amount of evidence that has been developing?

Mr. MELODY. I think it is certainly the most thorough investigation, in my view, that has been taken of the Western Electric-A.T. & T. relations since the 1930's when the FCC was created.

As I view the role of the A.T. & T. task force, the FCC body that is engaged in this investigation, they are involved in a specific hearing and the immediate concern of the Commission is a matter of telephone rates. So I do not know even if the FCC or the task force has the power to recommend divestiture.

Mr. TURNER. This is exactly the point I want to get at, with respect to discovery and only on the issue of obtaining information fact, data, evidence as far as you know, it has been done in a competent, legal manner, obtained under oath and they do have a body of information that could be available to any attorney who is representing the United States in the larger case?

Mr. MELODY. Certainly.

Mr. TURNER. That would be a logical place to go to obtain a witness without necessarily obtaining any comment as to whether there should be divestiture or not. At least FCC would be a body where we could look for facts already obtained.

You are shaking your head yes.

Mr. MELODY. That is correct and that is the first place I would look.

Mr. TURNER. One of the things we have had experience with in the antitrust field has been the enormous amount of time taken up between the time the complaint is filed and the time that trial is assigned. That time is primarily taken up in the form of discovery, the obtaining of facts and the meeting of motions on both sides to perfect the pretrial discovery in order to get to the trial.

I am asking for your opinion. Do you think a great deal of that time in the A.T. & T. case has already been cut shorter as a result of the FCC investigation?

Mr. MELODY. Yes. I think that it should be substantially shortened. My concern is, shortened from what to what? Whether it has been shortened enough, I do not know. Whether it has been shortened from a 5-year process to a 2-year process, I do not know. I know the FCC task force has been at work in a very intensive review. There has been a substantial amount of information put into the public record, and the task force is going to be putting direct testimony in by its own witnesses sometime within the next 6 months. Again, that is all material that I would consider directly relevant to the Justice concern. The question is, I do not want to indicate that is necessarily enough. Justice still may need another 2 or 3 years for all I know.

Mr. TURNER. With respect to the subjects to be considered by the proposed study Commission, you may have been here this morning when I went over some additional items.

Would you not feel that the absence of Federal regulation in certain areas should be considered by the Commission?

Mr. MELODY. Certainly. As a conceptual matter, there may be industries for which technology in particular has changed and one no longer needs regulation. The concern is, if you abandon regulation, what you generally find is the industry is still concentrated and you cannot simply follow through with one step. What you would need to do is follow through to the second step, namely, to insure that it is competitive, which would generally require some kind of antitrust action.

Mr. TURNER. That goes to my second point. The effectiveness of the prosecution of the antitrust laws, as well as the laws themselves, should be another area, should be consistent with any studies of deregulation.

Mr. MELODY. It would have to be.

Mr. TURNER. Finally, the third one that comes along, and we could spend a considerable amount of time on this—the Senate Antitrust and Monopoly Subcommittee has—is the area of unregulated concentrated markets and their direct impact on our economic condition. Senator Metcalf, seems to feel that is one of the more important things which such a study commission might look into.

What is your reaction to it?

Mr. MELODY. I agree with the Senator's concern. It is something that ought to be looked into. I would question whether this is the Commission that ought to do it, simply for this reason: The more the Commission tries to take on, I suspect, the less it is going to be able to do effectively.

I believe that the Industrial Reorganization Act is something that would allow investigation into some of those industries. I would prefer to pursue that matter as a separate thing.

Mr. TURNER. My final question. You referred to policy planning in regulatory agencies as being an essential part of their responsibility. How can there be policy planning and how can it be implemented while at the same time regulatory decisions are required to be made on a quasi-judicial adversary basis?

Mr. MELODY. I do not see the adversary native nature policy planning in any way. On occasion, regulatory agencies have started to move in this direction. The problem has been that there has been no specific immediate decision required, so they generally have not done anything.

Let me cite an example. In about 1966 it became clear to the Federal Communications Commission that there was a growing technological interdependence and interrelationship between the computer and communications industry and there was going to be a long series of problems arising, including the definition of what was communications and what was data processing. Where does the scope of the regulation extend when the computer is doing switching as well as data processing? Is the computer performing communications functions? The FCC, in one of its finer moments, tried to examine this question from the standpoint of what its long-range set of policies should be, and it gathered a substantial amount of information.

The difficulty was that in gathering the information, the FCC did not follow through and design a system of policies that it would use as a guide to its longrun development of these industries.

I think the adversary process is just as necessary to the planning function as it is to the normal day-to-day regulation, in that, you have information coming from different sources, I think we can consider all the sources as vested interests. So you need critical examination of all of it, and the best way is through an adversary process. The adversary process, however, does not just have to take place in a formalized legal setting.

Mr. TURNER. Thank you.

Senator HUDDLESTON. Senator Brock, do you have questions?

Senator BROCK. I have no questions.

Senator HUDDLESTON. Counsel?

Mr. STATLER. If a study Commission is formed and it comes back with the recommendation that after a certain number of years, selected regulatory agencies either will be phased out or eliminated within a time certain unless Congress reauthorizes them, what would be your response to that kind of recommendation?

Mr. MELODY. I think it would depend on what the alternatives were.

Mr. STATLER. Let me clarify: Specified agencies would be phased out unless Congress said that they should continue by statutory enactment.

Mr. MELODY. I guess my reaction would depend on what else went with it. If it was simply a phaseout of regulation, for example, in an industry which I think is clearly concentrated, I would be concerned. To cite an example, there has been much discussion about natural gas production. I am not an advocate that regulation of natural gas production has been good, but I think if we take existing regulation off natural gas production, there is certainly enough concentration in the industry that it is not going to help the consumer. If that was the sole objective, the sole mandate, I would be very concerned. If it was accompanied with requirements to move with the application of antitrust laws to enforce competition, I would say generally that might be a good idea, as long as a specific, reasonably short period was specified.

I express my concern here as founded in the fact that technology does change and economic conditions change, so it may well be that if this is a 10- or 15-year process we are talking about, 10 or 15 years from now the most desirable industry conditions might be very changed.

Mr. STATLER. Might it not be a sufficient purpose that such a requirement or recommendation would require Congress to pay much closer attention and exercise much better oversight over the regulatory agencies. That is, Congress would have to determine, based upon actual performance, whether these agencies ought to be continued, whether they are performing their responsibilities.

Mr. MELODY. Any focus upon that question is one that has been sadly lacking in the past, and it gets us down to the industry structure, namely, what is the extent of competition, what is the extent of monopoly, and how do we justify the monopoly that is there? That needs to be done by someone. If commissions are going to remain in somewhat the same form as they are now, that has to be the focus, and perhaps a dictated focus from Congress as to what the cornerstone of their policies are.

Mr. STATLER. Thank you.

Senator HUDDLESTON. Mr. Melody, do you agree with some of the previous witnesses who have indicated that current antitrust type practices in industries that are regulated are contributing considerably to the inflation that we have, the higher prices than the customer ought to have to pay?

Mr. MELODY. The matter of concentration is definitely a cause of our inflationary problems. However, I would like to qualify that by saying it is a long-run cause which I think is apparent from the testimony before this committee. It is going to require solutions that take a fairly long period of time. Clearly to deal with the current inflationary problems, we need much more than that.

Senator HUDDLESTON. Thank you very much. We appreciate your appearance.

[The prepared statement of Dr. Melody follows:]

PREPARED STATEMENT OF DR. WILLIAM H. MELODY, ASSOCIATE PROFESSOR OF COMMUNICATIONS ECONOMICS, ANNENBERG SCHOOL OF COMMUNICATIONS, UNIVERSITY OF PENNSYLVANIA

I. QUALIFICATIONS

My name is William H. Melody. I am Associate Professor of Communications Economics in the Annenberg School of Communications, University of Pennsylvania, a position I have held since January 1971. Prior to my present position I was a Senior Staff Economist at the Federal Communications Commission for four and one-half years.

I have a Ph. D. degree in economics from the University of Nebraska. My major area of study and research was the regulated industries. I have previously taught courses in industrial organization and the economics of regulation at Iowa State University and the University of Nebraska. Presently at the University of Pennsylvania I direct a program of graduate teaching and research in communications economics, regulation and public policy. My recent research and writing includes: co-editor (with G. Gerbner and L. Gross) of *Communications Technology and Social Policy* (Wiley, 1973); "Interconnection: Impact on Competition, Carriers and Regulation," in S. Winkler, ed., *Computer Communications: Impacts and Implications* (ICCC/IEEE, 1972); "Economic Implications of Vertical Integration," with M. I. Irwin, in *The Telecommunications Industry: Integration vs. Competition* (Praeger, 1971) by M. I. Irwin; "Regulation and Competition in the Field of Data Communications," (Paris: OECD, 1971); "Interservice Subsidy: Regulatory Standards and Applied Economics," in H. M. Trebing, ed., *Essays on Public Utility Pricing and Regulation* (Michigan State University, 1971); and "An Evaluation of Pricing Practices and Policies in Domestic Communications," with H. M. Trebing. (Staff Papers, *President's Task Force on Communications Policy*, Clearinghouse of Federal, Scientific, and Technical Information), June 1969. These publications are all directed to the study of various aspects of the industrial and regulatory structure of the communications industries. Although my research and writing in recent years has focused on the regulation of the communications industries, I have maintained my activity in the study of other regulated industries and the regulatory process. This statement is addressed primarily to the traditional public utility industries, with special reference to communications.

I have testified as an expert witness before the Federal Communications Commission, the Postal Rate Commission, several state regulatory agencies as well as the United States Senate. I have consulted from time to time with corporations in the communications industry, government agencies, international organizations and other institutions on communications matters.

II. DEFICIENCIES OF THE REGULATORY PROCESS

Efficiency in the allocation and use of economic resources in competitive markets is derived from an absence of monopoly power by the competing firms. The inefficiency of monopoly is derived from an imbalance in economic power that enables a monopolist to exploit his position. Monopoly power permits private

regulation of the market and the market prices of goods and services. Government regulation is intended to provide countervailing power that will neutralize the monopoly power of regulated firms and achieve stated social objectives. In the competition between governmental commissions and industrial monopolists over regulation of the industries, the commissions have clearly lost. Instead of commissions regulating firms to achieve government objectives, for the most part the have regulated the commissions to achieve their objectives of continuing control over their markets. This has resulted in under-regulation of established firms and over-regulation on all matters that would change the status quo, such as entry requirements for new firms.

Traditionally regulation has been almost entirely passive and reactive in nature. It has done little on its own initiative, but rather has responded to the initiative of others—usually complaints involving regulated firms. Regulatory agencies have viewed their role almost entirely as a judicial one. Thus, they generally act as mediators or arbitrators between conflicting private interests rather than active determiners of the public interest. Commission policy is determined not by long range policy planning, but by *ad hoc* decisions on matters brought before them by outside interests. The policy agenda is not determined by the commissions, but by others.

As a result of this passive approach to regulation, commissions have not regulated industries, markets, or technologies. Rather they have regulated specific companies. Thus, the focal point of regulation has been specific companies, the conditions necessary for their secure operation and their role as agents of the commission in implementing policy. In many cases, the regulated firms have acquired the status of chosen entities which should be protected from the rigors of aggressive competition.

This narrowly perceived regulatory role is surprising in light of the extremely broad legislative mandates under which commissions operate. Certainly one significant reason for it is the fact that most commissions have been drastically understaffed and underfinanced for the task that they have been assigned. For the little positive regulation that they do, they must rely on information and expertise provided by the regulated firms. As a result, effective performance is sporadic and infrequent. Because of this dependency of regulatory agencies on the regulated firms, the agencies are subject to the dominating and continuous influence of the major regulated firms. In most commissions, the regulated industries have more access to commissioners than do members of the commission staffs.

In many regulated industries, large nation-wide or region-wide firms are subject to partial regulation by more than one regulatory agency—generally one federal and several state regulatory commissions. E.g., electricity, natural gas, telephone. The distribution of government regulatory power is much more diversified than the distribution of economic power within the regulated industries. Therefore, the larger, more concentrated firms can successfully play-off the different regulatory commissions to achieve their own objectives.

National economic policy relating to inflation or other matters typically is not recognized as a factor in the formulation of regulatory policies. In fact, normal regulatory processes easily can become a cause of inflation. The primary activity of public utility commissions is profit regulation of monopoly utilities. Profit regulation is implemented by applying a straight forward cost-plus formula. For the most part, commissions have been unable even to examine rigorously utility expense and investment expenditures by standards of efficiency and reasonableness. Utilities do not have a strong incentive to bargain vigorously on purchase prices or to minimize costs since these costs can be readily passed on to monoploy users who will pay higher rates because they have no alternative. The automatic fuel adjustment, and other cost adjustment clauses approved by commissions in recent years will certainly not help the fight against inflation.

Commissions have seldom recognized the beneficial role of competition in implementing regulatory policies. This is partly due to the fact that most modern regulatory agencies were established during the economic depression of the 1930's when regulation was viewed by many as a substitute for competition. In fact, most state regulatory agencies—which regulate a much greater proportion of the regulated industries than the federal commissions—are hostile to competition. Rather competition policies are viewed as an abdication of regulatory responsibilities to preserve established firms and regulate them.

Regulation itself has become perhaps the greatest barrier to entry of any to be confronted by a firm desiring to enter the regulated industries. For the established regulated firms, there is no better barrier to entry than regulatory policy prohibiting it. If a firm desires to enter a regulated industry, it must overcome unique

barriers to entry at three different levels. First, the process of obtaining certification by the commission to enter the market. Second, if entry certification is achieved, the new entrant is subject to the anti-competitive response of established firms with substantial monopoly power.

The fact that they are regulated provides established firms with a degree of insulation from the antitrust laws. Thus, the new entrant is likely to be subject to a very substantial predatory response by the established regulated firms. Third, the established firms can make effective use of the regulatory process to delay entry and make entry and survival a deep pocket game absorbing both substantial resources and inordinate amounts of time. Thus, the market, operational or technological advantages of a new firm can be dissipated readily as the new entrant is "due processed to death." Indeed, even a firm the size of General Electric has declined to enter domestic telecommunications—by implementing a very imaginative satellite proposal—primarily because of the regulatory process.

The regulatory process is not characterized by long range policy planning or the continuing examination of the structure of the regulated industries and the respective roles of competition and monopoly. Neither is it characterized by technological assessment and evaluations of the potential role of competition in achieving public interest objectives. As a rule, the regulatory process does not provide for effective representation of the interests of the mass of general consumers. Therefore, its primary effect has been to preserve inherited relationships among the regulated firms and provide a barrier to all potential changes from the status quo.

III. DEFICIENCIES IN COMMUNICATIONS REGULATION

Regulation of the communications industries fits the pattern of regulation described above in most respects. It is undertaken by the Federal Communications Commission and 49 state regulatory agencies. It is passive in nature; most policy is developed through *ad hoc* decisions that attempt to arbitrate differences between the contending interests of the regulated firms. The interests of general consumers and viewers are typically not provided for in the regulatory process The commissions are subject to the pervasive influence of the dominant firms in the regulated industries, AT&T and the broadcast networks.

Communications regulatory agencies have not reflected inflationary impact considerations in their decisions. Rigorous review of the costs of regulated carriers is seldom undertaken. E.g., between 1954 and 1969 the Bell System paid enormous amounts of excess income taxes because it chose not to take advantage of the liberalized tax depreciation provisions of the tax code. These unnecessary costs were passed through automatically to telephone users. In recent years the Bell System has been engaged in drastic revisions of its rates, lowering rates to block competition and raising rates for monopoly services in order to maintain desired profit levels. These changes in the fundamental structure of telephone rates both prevent the efficiency of competition and require inflation-causing rate increases.

As the largest firm in the world, AT&T is able to employ divide and conquer tactics among the 50 commissions that regulate parts of it to neutralize the effect of any undesirable regulation. Bell clearly engages in more regulation of the regulatory agencies than vice versa. Perhaps the best example is the controversy surrounding an FCC policy decision to permit competitive entry into specialized communications markets. The National Association of Regulatory Utility Commissioners (NARUC) not only opposed the FCC competitive policy as a matter of principle, but also appealed the FCC competitive policy as a matter of principle, but also appealed the FCC decision to the courts where it now rests. State commissions regulate more than two-thirds of the communications industry and are thus in a position to subvert the FCC's competition policy. Reform of regulation must include the state commissions, which not only regulate the vast majority of regulated industry activities but also have the greatest and most far reaching regulatory deficiencies.

To its credit, the FCC has made several landmark decisions opening competitive opportunities in selective communications markets in recent years. Unfortunately it has not followed through with effective implementation of its competition policies, and competition has been blocked, delayed or neutralized by the predatory responses of the Bell System. Potential competition from private microwave systems prompted Bell to introduce selective discriminatory rate reductions (Telpak rates) to as low as one-seventh of the prior rates in 1959. After 14 years the FCC still has not reached a decision as to whether such rates are compensatory or reasonable. Competition from private microwave has been restricted and con-

sumers of the basic monopoly telephone service have supplied Bell's allowed overall profit requirements.

The FCC permitted miscellaneous common carriers (MCC's) to transmit television signals from large cities to smaller towns and rural areas in the 1950's. (AT&T serves the large cities.) Because their prices were lower than AT&T's, broadcasters encouraged the MCC's to extend their systems to compete with the Bell System. In response, Bell drastically altered its rates for TV transmission, blunting the development of effective competition. The FCC has not ruled on the reasonableness of those rates. After declaring Bell's artificial and prohibitive interconnection restrictions to have been unlawful since their inception in its *Carterfone* decision in 1968, the FCC has become so bogged down in conflicts with NARUC and the Bell System regarding its implementation that it may never be implemented. Despite the FCC's competitive policy decision relating to specialized common carriers, Bell has neutralized its implementation by means of interconnection restrictions, predatory pricing and manipulation of the regulatory process. Moreover, Bell continues to employ new ramifications of its obstructionist tactics.

Although the FCC has announced competitive policies relating to domestic satellites and radio common carrier services, it has been unable to follow through with effective implementation that would make those policies operational. Therefore, it is doubtful whether the FCC is capable of implementing its own competition policies.

In contrast with domestic telecommunications, FCC policies in international telecommunications have restricted rather than permitted competition. International communications is regulated as a cartel, wherein it is impossible for satellite communications to compete with transoceanic cable or even specialize in serving those locations where it can provide service most efficiently. In CATV, the FCC virtually froze development of the industry between 1966–72 and has been extremely reluctant to permit CATV to compete with over-the-air broadcasting. Thus, the FCC record on competition is a mixed one that does not reflect a commitment to implement competition as an integral part of the regulatory process.

IV. RECOMMENDATIONS

The experience of regulation demonstrates that reform is needed. The major deficiencies have been documented many times. The issue that remains is the nature of the reform that should take place. Toward that end, I have the following recommendations:

1. I endorse S. 4145, the establishment of a National Commission on Regulatory Reform. However, the Commission should be directed to address the entire range of structural reforms. It should begin by accepting the fact that the structure of existing regulation is deficient, and look immediately to alternatives to the present structure.

2. S. 770 should not await the results of the National Commission's study. The absence of advocacy of consumer interests is a major deficiency of existing regulation. The creation of a consumer's counsel and the expansion of information reported by regulated companies must be a cornerstone of any regulatory reform; they are desperately needed now.

3. All realistic reorganization proposals must encompass at least federal and state regulation, and preferably include local regulation as well.

4. Improved regulation must include:

   (*a*) the creation of long range policy planning as a permanent part of regulation;

   (*b*) the creation of technological assessment as a permanent part of regulation;

   (*c*) a requirement that industry structure be continuously monitored and all aggregations of monopoly power be justified by the regulatory commission on public interest grounds.

5. Because of the tendency of regulation to either prevent competition, or permit its destruction by established monopolists, regulatory agencies should be required to prepare competitive impact statements as part of all major policy decisions. There should never be a presumption against the entry of new competitors.

6. There should be increased accountability by regulatory agencies to the public for the substantive aspects of its policies. Annual reports should describe and defend the body of regulatory policies, including the structure of the industry and the extent of monopoly.

7. Expanded information and reporting requirements should be imposed upon the regulated companies and made public.

8. Regulation needs substantial strengthening in terms of increased resources and expertise. Although individuals can make a great difference in the effectiveness of regulation, the fundamental deficiencies lie in the regulatory structure as it now exists. At present, regulation is simply inadequate to the magnitude of the task and the power of the established regulated firms. The dependency of the regulatory agencies upon the firms they regulate must be severed. Stronger regulation should lead to more regulation where it is necessary and less regulation directed toward preventing competition.

9. The mixture of subsidy grants and regulation in the same agency has never worked effectively. The subsidy conditions have been used invariably as a tool to limit competition for fear that increased subsidies will be required. Subsidy grants should be made by a separate agency in much the same way that REA programs are now administered.

10. The collegial system of regulation has not been a strong one. Three member commissions, with strong powers and responsibilities for the chairmen, would permit diversity while providing a base for more dynamic leadership.

11. Nation-wide companies, such as the Bell System, should be either federally chartered and regulated entirely by a federal commission, or broken up into regional companies that correspond more closely to the scope of state commissions.

12. The FCC should be separated into two agencies, one to regulate over-the-air broadcast communications and the other to regulate telecommunications common carriers and CATV. The combination of broadcast and common carrier regulation has led to deficiencies in both. More specialized commissions would lead to improved regulation of both.

Mr. STATLER. Mr. Chairman, one of the invited witnesses was Mr. Arthur Wood, chairman of the Board of Sears, Roebuck, and he has submitted testimony that he would like included in the record.

Senator HUDDLESTON. Without objection, we will insert that in the record.

[The prepared statement of Mr. Arthur Wood follows:]

PREPARED STATEMENT OF ARTHUR M. WOOD, CHAIRMAN OF THE BOARD, SEARS, ROEBUCK & CO.

I appreciate the opportunity to submit the views of my company on S. 4145, and on related bills, to establish a twelve-member National Commission on Regulatory Reform to conduct a one-year review of Federal, and State and local government regulatory activities, including (1) an analysis of the purposes and objectives of the regulatory activities; (2) an assessment of actual performance in achieving the purposes and objectives; and (3) an analysis of the costs and benefits of each activity.

I regret that I could not adjust my schedule to accept your thoughtful invitation to testify in person.

Sears supports the objectives of S. 4145, and urges that Congress act promptly to insure that the regulatory agencies are efficiently performing the purposes and objectives for which they are established; and that, under present circumstances, the benefits of such regulation clearly exceed the costs involved to the public.

At the summit conference on inflation which I attended, there was general agreement that the Federal Government imposed too many hidden and too many inflationary costs on our economy. These costs of regulations are hidden from the public view, but become part of the costs of goods passed on to the consumer in the form of higher prices. According to the Chairman of the Federal Trade Commission, Mr. Lewis A. Engman, the annual costs of regulatory measures in the transportation area alone may exceed $16 billion.

Following the summit conference, President Ford noted the need to undertake a long-overdue total reexamination of the independent regulatory agencies and proposed that Congress establish a National Commission on Regulatory Reform "to identify and eliminate existing Federal rules and regulations that increase costs to the consumer, without any good reason, in today's economic climate."

I will only highlight a few government policies and programs, which in my opinion, frustrate attempts to improve efficiency and achieve lower prices. Their impact on the price of goods is direct and immediate. The following are the programs I have in mind:

1. ROBINSON-PATMAN ACT AND MILLER-TYDINGS AMENDMENT TO THE SHERMAN ACT

The Robinson-Patman Act stifles buyer initiative in bargaining for lower prices. Thus a vital force in price making is neutralized. The Act inhibits frequent, gradual, localized price moves, which is the essence of a competitive market. The Act has been characterized as anticompetitive by numerous groups that have studies its operation. Among the most recent studies are the 1968 report of the Neal Task Force created by President Johnson and the 1969 Stigler Report requested by President Nixon. The Neal Report recommended a thorough revision of the Robinson-Patman Act to remove features that unduly restrict the free play of competitive forces. The Stigler Report made similar recommendations.

The Miller-Tydings Amendment is an exception to the Sherman Act. The Sherman Act prohibits price fixing; however, the Amendment permits the states to adopt Fair Trade legislation, allowing manufacturers and wholesalers to set the exact or maximum prices at which their customers—either wholesalers or retailers—may resell a product. This type of legislation enables a seller to eliminate competition among his wholesale and retail customers. Consumers would be better off if this exception to the antitrust laws were eliminated.

2. ANTI-DUMPING AND COUNTERVAILING DUTIES IMPOSED UNDER TARIFF LAWS

These duties may be exacted on imported items in addition to the regular tariffs imposed on them. The added duties are intended to offset lower prices charged by the foreign seller for goods imported into the United States, as compared to goods sold by him in his ho e market. These prices may be lower, because the foreign seller is satisfied with a lower profit on export sales, or because his government is willing to subsidize his exports in one anner or another. The net result of these added duties on imported goods is to protect domestic producers from foreign competition, thus keeping prices above the competitive level.

3. COLLECTIVE BARGAINING MATTERS

Management is required to bargain with labor unions concerning work rules. Frequently these rules limit or prohibit the introduction of new, efficient techniques and equipment. Sometimes the rules limit the amount of work that might be done in a work day. These restrictions inevitably result in higher costs and consequently higher prices. Management is required to bargain with respect to these restrictive practices, under pain of being cited for an unfair labor practice. The ground rules for collective bargaining should prohibit the consideration of terms that limit efficiency or productivity.

4. DAVIS-BACON ACT

This statute has the effect of increasing the cost of goods and facilities acquired by the Federal Government. The Act requires government contractors to pay wages prevailing in the locality where the construction is to be done. The Secretary of Labor determines in advance of the bidding what wages prevail in a given area. His determinations are almost always identical to the wage rates of organized labor, even though those rates are normally higher than the wages paid to the majority of workers in a given locality. The result is that higher wages are paid on government jobs than would be necessary under a "lowest responsible bidder" system.

5. REGULATION OF TRANSPORTATION

Transportation laws need to be revised to eliminate restrictive practices that inhibit reductions in rates and improvements in service. The specific regulatory controls of the Interstate Commerce Commission which should be eliminated are entry and exit restrictions applicable to all modes of transportation. For motor carriers, the result would be the elimination of routing, commodity and backhaul restrictions. The maintenance by the ICC of minimum and maximum price controls should likewise be eliminated. Industry rate bureaus, pooling and mergers, and predatory pricing activities should lose their exempt status and become subject to the federal antitrust laws.

Changes in the Civil Aeronautics Board jurisdiction should follow along the lines of changes proposed for the ICC. Areas to be deregulated would apply to entry and exit restrictions as well as rate controls. As with ICC carriers, antitrust laws should apply to collective rate fixing, pooling and mergers, and predatory pricing activities of air carriers.

Similarly, the Jones Act, limiting commerce between two U.S. points to domestic fleets, should be repealed. The continuation of these restrictive practices increases the costs of transporting goods.

6. EXCESSIVE REQUIREMENTS OF STANDARDS-SETTING AGENCIES

The agencies referred to in this paragraph promulgate standards for the manufacture of products and for the operation of business facilities; the standards are designed to promote product safety, to protect the environment, and to provide safe working conditions. In many instances the regulatory bodies insist on a degree of protection that is unduly costly in relation to the benefits to be attained. Frequently, the standards rest on speculation and theoretical projections for which there is inadequate support. Implementation of these standards, especially when done on a "crash basis", adds significantly to the cost of production and is ultimately reflected in higher prices. The agencies engaged in these standards-setting activities include the Consumer Product Safety Commission, the Environmental Protection Agency and the Department of Labor.

It is not my desire to relax our vigilance and thereby permit real hazards to continue to exist. But much of the work of these agencies lies in evaluating conditions in the broad middle ground, where the likelihood of a hazard is highly conjectural. These agencies should be directed to limit their regulatory activities to remedying real hazards.

7. REPORTS AND PAPERWORK

Recent regulatory activities have increased the record keeping burden imposed on business. Examples include the Consumer Product Safety Commission's proposed requirements for accumulating and retaining customer data, and the National Highway Traffic Safety Agency's requirements for accumulating data on purchasers of tires. These will add significantly to the cost of operations. Consideration should also be given to the FTC's recently developed Line-of-Business Report. It will probably necessitate responding companies to change their accounting systems and gather detail not otherwise needed. Unquestionably, compilation of the report will involve significant time and expense. The report will probably enable the regulatory agencies to shift their focus from the "enterprise taken as a whole" to the segments of the enterprise. Policies that over look the "enterprise concept" may result in unfortunate tinkering with industry structure and organization. The wisdom of the Line-of-Business Report, as well as the need for other information requested of business, should be reconsidered.

8. DELAY IN MAKING DECISIONS

The Constitution in the first three articles provided for the executive, legislative and judicial branches of the U.S. government. The fourth branch—the independent regulatory agencies, was added much later. When my company was founded in 1886, there were no independent regulatory agencies. Fifty years later, at a time of the Depression, there were still only a handful—the ICC and FTC being the most prominent. Since the Depression, there has been established a new regulatory agency or board every second or third year.

The purpose of establishing this fourth branch of government, not specifically provided for in the Constitution, was for the stated purpose of achieving expeditious action in complex areas by specialized, expert bodies.

Unfortunately, instead of expediting action, one of the largest parts of the hidden cost to the public of regulation, is regulatory delay. This inherent delay in agencies set up for the purpose of speeding decisions, is certainly one of the most serious deficiencies of regulatory agencies today.

An example of such delay is the merger case before the Interstate Commerce Commission—which was filed in 1963, to merge the Rock Island with various western rail carriers. This railroad is the strategic connecting link—the bridge or intermediate carrier for Sears' goods moving from New York, Philadelphia, Columbus or Chicago to our California stores.

The Rock Island and the western railroads had been waiting since 1963—waiting through 274 days of hearings, lasting over 27½ months; waiting for the Administrative Law Judge to issue three volumes of an initial decision ten years later on February 15, 1973; and waiting for nearly a year after the ICC heard final oral argument on this case, for a Commission decision. On November 8, 1974, the Chairman of the ICC made a public announcement that a majority of the Commission had approved the merger of the Rock Island and Union Pacific

Railroads, with certain conditions, but that the Commission's decision would not be available for distribution for an additional "several weeks."

The Commission's decision came five years after the ICC reported on the status of the Rock Island merger case at Senate Commerce Committee "oversight" hearings.

Eleven years ago, before this merger case was filed, the Rock Island was a profit-making railroad. Since 1965, while the case has been pending, the Rock Island lost approximately $90 million, with 1974 estimated losses of $17 million—up approximately 14 percent from 1973.

My company is not a party to this proceeding, and we neither approve nor disapprove of the merger. But the public and Sears is the loser for the interminable delay in this case. When this case is finally resolved, new and better routes can be established to more efficiently distribute goods. Because of the delay inherent in regulation, competition and change have been slowed, restricted and stifled. Everything waits until the bureaucratic process is completed.

In the marketplace the changes in products, customer needs and desires, and technologies present a constant challenge, and an individual business adapts or perishes. There is an increasing tempo of change in today's competitive world.

To give a measure of how rapidly the pace of change has been quickened by postwar technological revolution, a few years ago Sears analyzed its mix of goods and found that well over one-half of all items then listed in the Sears' catalog did not exist twenty years before; and over one-third of all items did not exist ten years before.

Another measure of change—in the last decade while the Rock Island and other western railroads were waiting a merger decision in order to change their plant facilities, Sears in the retail markets served by the Rock Island, opened approximately 110 new stores, and closed or relocated 70 old stores.

As the need to respond to change quickens, it is vital that we reexamine schemes of regulation inherited from the past, to insure that they have not become agencies stifling change—protecting time-honored privileges—or restricting innovation.

The delay not only weakens the industries regulated by preventing their quickly adapting to changed circumstances, but also it weakens the regulatory agencies expert, specialized knowledge. For example, only two of the present eleven ICC Commissioners were serving in 1963 when the case was first filed.

The expert knowledge in this case on the part of at least nine former members of the ICC has been completely lost due to delay, and new commissioners have been added who were unfamiliar with the case. There is presently one vacancy pending on the Commission.

I would recommend three principles for inclusion in any legislation to undertake this long-overdue reexamination on the independent regulatory agencies:

First, each regulatory agency should be thoroughly reexamined to review the objectives and purposes of each activity for which it was established; to measure its actual performance with respect to each such activity, particularly the delay inherent in carrying out its purposes and objectives; and in today's inflationary costs, the burden of waste and inefficiency measured on a scale with the actual benefits to the public from each agency activity.

Second, Congress should impose a halt on the establishment of any new independent agencies, until this reexamination is completed. At a time of 12 percent inflation, we cannot afford to make more mistakes while we are trying to correct those of the past. It is disturbing to encounter proposals to add more governmental regulatory agencies when the need to weed out present inefficient and wasteful practices is everywhere recognized.

Third, any review if it is to be worthwhile should be conducted on an impartial basis. I would urge the Committee to reject proposals which would involve the agencies judging their own behavior, rather than having an independent look. Further, the 12-month, $500,000 review provided for in S. 4145, is far preferable to the three-year $3 million study proposed in other measures. The last thing we need is further delay in the effort to do away with present regulatory inefficiency and waste.

Again, let me express my appreciation, for the opportunity to submit this statement in support of the objectives of S. 4145, and its prompt passage.

Senator HUDDLESTON. Our next witness is Mr. Richard Godown.

STATEMENT OF RICHARD D. GODOWN, SENIOR VICE PRESIDENT AND GENERAL COUNSEL OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. GODOWN. Thank you, Mr. Chairman.

My name is Richard D. Godown. I am senior vice president and general counsel of the National Association of Manufacturers. We are most pleased at the invitation to appear before you and give testimony on S. 4145, a bill to create a National Commission on Regulatory Reform. I am happy, also, Mr. Chairman, to be able to report that my testimony here today is endorsed by some 70 independent associations which are affiliated with NAM. They are the National Industrial Council. A list of these organizations is appended, and I would appreciate it if this could be made part of the record of this hearing.

It is a pleasure, Mr. Chairman, to report that NAM strongly endorses creation of a National Commission on Regulatory Reform and is happy to lend its support to S. 4145.

In his October 8, 1974, message to a joint session of Congress, President Ford cited the need to take "a long overdue total reexamination of the independent regulatory agencies." He called for a "joint effort by Congress, the executive branch, and the private sector to dentify and eliminate existing Federal rules and regulations that ncrease costs to the consumer without good reason, in today's economic climate."

We note that S. 4145 was introduced by request and therefore presume that it embodies the proposal put forth by the administration for accomplishing the objectives set forth by the President. We applaud these objectives and pledge the best efforts of this association and its membership to help achieve them.

Inflation has many root causes, with overregulation high among them. Henry David Thoreau long ago instructed, "That government governs best which governs least," a maxim which seems constantly to get buried under a never-ending flood of rulemaking. We do not propose to discuss here which particular agencies have offended most or how each has transgressed in some portion. We will earnestly address ourselves to this task when the National Commission holds its hearings. For the time being, suffice it to say that over the years we have observed a bureacratic turism at work: every government agency always attempts to expand its authority beyond the statutory grant. The net result is frequently that industry is saddled with unnecessary regulation which has no legal foundation.

Obviously there is recourse to the courts if this is so, but this produces delay, huge costs, and inferquent satisfaction even when you do prevail. Sales opportunities may have passed, a domestic or foreign competitor may have entered the market, or other developments have occurred which place one at a competitive disadvantage.

Paperwork is another problem which grows out of regulatory bureaucracy. The average American businessman and private citizen are being literally buried by an avalanche of required Government paperwork.

Between December 1967 and June 1974, businessmen found 159 more mandatory forms on their desks to be filled out. That made a

total of 2,178 in 1976. Individuals, too, filled out 189 additional Federal Government forms in the same period.

A further problem is the ever-present danger that agencies may play ping-pong with your interests. Permit me to cite an example.

In one recent instance, a manufacturing facility which relies on natural gas was notified by their supplier that under curtailment plans, approved by the Federal Power Commission, their allotment of natural gas would be cut. The company requested allocation of propane as an alternative power source but was told the Federal Energy Administration handles this. Application at FEA brought forth the response that since the company was a natural gas user, it came under jurisdiction of the FPC and had to go there for relief. To add to the tragedy of what in other circumstances would be a humorous story, in the company involved manufactures insulation material, which is desperately needed to conserve fuel throughout the country.

Coming back now to the central issue, we would point out that we do not feel the National Commission should content itself with an investigation of whether the regulatory agencies are acting lawfully, but rather whether their overall activity seems to be in the best interest of the general public. In a larger sense, the Commission should seek to determine the impact of an agency's regulations on competition, prices, and supply. In other areas, it should ask: What are the results of regulations with regard to employment, energy conservation, and the environment? Are these concerns being properly balanced? Is industry getting proper guidance or simply a welter of regulation and general harassment? How does the public fare in all of this or have we arrived at a point where Government is too busy running the hospital to be able to care for the sick? Can we not all still easily agree that there should be greater reliance on market forces and less economic regulation by the Government?

We feel, Mr. Chairman, that creation of the Commission should not permit avoidance of those reforms in regulation which have been studied to the fullest. Neither should it hold up appropriate modifications of executive department rules and regulations growing out of recommendations of the Council on Wage and Price Stability. As you know, the President has directed the Council to identify programs within the executive branch whose costs appear to outweight any benefits to the public or which unnecessarily restrict competition or productivity.

Let me now discuss several of the specific provisions of S. 4145. In regard to Commission members: to serve along with two Members of the House and two from the Senate, the President is called upon to appoint four members from the executive branch and four from the private sector. We wonder at this composition. One speculates the executive branch members will be chairmen or high ranking officials from regulatory agencies themselves. Hence in assessing actual performance, they will certainly have a conflict of interest if not a biased point of view. We suggest that two individuals from the executive branch would be sufficient and that the private sector be allotted six members. Within this latter group at least half should be from business since it is business which is being regulated.

As to functions, we believe that in addition to the elements which S. 4145 calls for to be included in the report the Commission is to transmit to the President and Congress, there should be added a specific requirement for comment covering agency structure and operations. It may well be that these are already covered by the broad language of the bill, and if so, it will at least be helpful to have the legislative history so reflect.

With regard to scope, a great volume of regulation emanates from other than independent regulatory agencies. The departments of Government headed by Cabinet-rank officer as well as agencies not designated as regulatory frequently promulgate rules and regulations which are held to have the force and effect of law. In some instances the basis for the authority is statutory and in others may be bottomed on an Executive order. In any case, the effect on business is usually marked, and we would strongly urge that the charter of the National Commission be extended to cover examination of these areas of activity.

As to duration, given the rather broad nature of the task set out for the National Commission and the suggestions for expansion we ourselves have made, we feel that more than 1 year will probably be required to complete the work. Therefore, NAM would recommend a Commission lasting 2 years or longer if necessary.

Mr. Chairman, the President has called for a combined effort to rid the Nation of unnecessary regulatory control as a means to help stem inflation. On behalf of the National Association of Manufacturers, and the 70 or more organizations affiliated with the National Industrial Council, who join in endorsing this statement, we reiterate our support.

Again, thank you for this opportunity to be heard, and I will be glad to answer any questions.

Senator HUDDLESTON. Thank you, Mr. Godown.

[The full prepared statement of Mr. Godown follows:]

PREPARED STATEMENT OF RICHARD D. GODOWN ON BEHALF OF NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman, my name is Richard D. Godown. I am Senior Vice President and General Counsel of the National Association of Manufacturers. We are most pleased at the invitation to appear before you and give testimony on S. 4145, a bill to create a National Commission on Regulatory Reform.

NAM is a voluntary membership organization composed of large, medium and small companies whose combined output amounts to approximately 85% of the goods manufactured in the United States and who together employ 82–85% of those engaged in manufacturing. Actions of regulatory agencies have a profound impact on the every day operations of these companies and their employees and therefore NAM has a keen interest in the legislation now before this Committee. I am happy to be able to report that my testimony here today is endorsed by more than 70 independent associations who are affiliated with NAM through the National Industrial Council. A list of these organizations is appended, and I would appreciate if this can be made part of the record of this hearing.

It is a pleasure, Mr. Chairman, to report that NAM strongly endorses creation of a National Commission on Regulatory Reform and is happy to lend its support to S. 4145.

At the outset let me state that during the course of these hearings the primary interest of NAM is focused on S. 4145. We do recognize that the Committee is also addressing itself to S. 704, the Regulatory Agencies Independence Act; S. 770, The Consumers' Information and Counsel Act; and S. 3604, The Federal Agency Efficiency Act. We oppose S. 770 on principle since it would establish still another independent agency called the Office of Consumers' Counsel for Regulated Serv-

ices. The question of whether or not there is a necessity to do so is precisely the kind of inquiry the National Commission on Regulatory Reform, called for by S. 4145, would be superbly equipped to answer. To create this new agency prior to such an investigation would not seem reasonable. Based upon this same rationale we would not favor establishing the kind of agency independence enumerated under S. 704 or abolishing the various governmental instrumentalities named in S. 3604 without serious investigation of the kind which a National Commission could perform. In any event we would have serious reservations about abolishing the Overseas Private Investment Corporation and the Small Business Administration. Because of the importance we attach to the establishment of a National Commission we do not however purport to treat other than S. 4145 at length in the course of this testimony. We will be prepared to address each of the matters covered by S. 704, S. 770, and S. 3604 at subsequent hearings.

In his October 8, 1974 message to a Joint Session of Congress, President Ford cited the need to take "a long-overdue total re-examination of the independent regulatory agencies." He called for a "joint effort by Congress, the Executive Branch and the private sector to identify and eliminate existing federal rules and regulations that increase costs to the consumer without good reason, in today's economic climate." We note that S. 4145 was introduced "by request" and therefore presume that it embodies the proposal put forth by the Administration for accomplishing the objectives set forth by the President. We applaud these objectives and pledge the best efforts of this Association and its membership to help achieve them.

Inflation has many root causes, with over-regulation high among them. Henry David Thoreau long ago instructed, "That Government governs best which governs least", a maxim which seems constantly to get buried under a never ending flood of rulemaking. We do not propose to discuss here which particular agencies have offended most or how each has transgressed in some portion. We will earnestly address ourselves to this task when the National Commission holds hearings. For the time being, suffice it to say that over the years we have observed a bureaucratic truism at work: Every government agency always attempts to expand its authority beyond the statutory grant. The net result is frequently that industry is saddled with unnecessary regulation which has no legal foundation. Obviously there is recourse to the courts if this is so but this produces delay, huge costs and infrequent satisfaction even when you do prevail. Sales opportunities may have passed, a domestic or foreign competitor may have entered the market, or other developments have occurred which place one at a competitive disadvantage.

Paperwork is another problem which grows out of regulatory bureaucracy. The average American businessman and private citizen are being literally buried by an avalanche of required government paperwork.

Between December 1967 and June 1974, businessmen found 159 more mandatory forms on their desks to be filled out. That made a total of 2,178 in 1974. Individuals, too, filled out 189 additional federal government forms in the same period.

Not only are Americans filling out more government applications, compliance reports and statistical questionnaires—it's also taking them longer to do it. By June 1974, for instance, American businessmen were spending 35.6 million manhours a year to complete these forms—up 11.9 million manhours from 1967. Individuals, also, were forced to up the time they spent on this paperwork by 11.5 million manhours over this period. These figures do not include time spent on state and local forms.

Expanded federal programs such as the Occupational Safety and Health Act, social security, manpower training, environmental protection, and equal employment opportunity compliance account for most of the 50 per cent increase in the reporting burden borne by American business since 1967. [1]

A further problem is the ever present danger that agencies may play ping-pong with your interests. Permit me to cite an example.

In one recent instance, a manufacturing facility which relies on natural gas was notified by their supplier that under curtailment plans, approved by the Federal Power Commission, their allotment of natural gas would be cut. The company requested allocation of propane as an alternative power source, but was told the Federal Energy Administration handles this. Application at FEA brought forth the response that since the company was a natural gas user it came under jurisdiction of the FPC and had to go there for relief. To add to the tragedy of what in other circumstances would be a humorous story, the company involved manu-

[1] See The Paperwork Predicament, by Roye L. Lowry, Statistical Reporter—Number 75-3.

factures insulation material, which is desperately needed to conserve fuel throughout the country.

Combing back now to the central issue, we would point out that we do not feel the National Commission should content itself with an investigation of whether the regulatory agencies are acting lawfully but rather whether their overall activity seems to be in the best interest of the general public. In a larger sense, the Commission should seek to determine the impact of an agency's regulations on competition, prices and supply. In other areas, it should ask: What are the results of regulations with regard to employment, energy conservation and the environment? Are these concerns being properly balanced? Is industry getting proper guidance or simply a welter of regulation and general harassment. How does the public fare in all of this or have we arrived at a point where government is too busy running the hospital to be able to care for the sick? Can we not all still easily agree that there should be greater reliance on market forces and less economic regulation by the government?

Roy Ash, Director of the Office of Management and Budget, during his appearance before the Committee on November 21, 1974, presented the following facts and opinions:

"The annual expenditures of the independent regulatory agencies are minimal, approximately 1/10 of 1 percent of the Federal Budget. However, their regulations impose a hidden cost of Government that is many times greater but much less visible to the public. Too often in the past we have deluded ourselves that regulation is an inexpensive way to achieve certain national objectives—that through this form of intervention, Government could provide the public a particular service or benefit at little or no real cost. In the bureaucratic attempt to help we have created a whole system of hidden taxes or costs to pay for many 'protections' that may not be worth those costs and in many instances are inherently unfair."

We endorse these remarks and repeat them here for emphasis.

We feel, Mr. Chairman, that creation of the Commission should not permit avoidance of those reforms in regulation which have been studied to the fullest. Neither should it hold up appropriate modifications of Executive Department rules and regulations growing out of recommendations of the Council on Wage and Price Stability. As you know, the President has directed the Council to identify programs within the Executive Branch whose costs appear to outweigh any benefits to the public, or which unnecessarily restrict competition or productivity.

Let me now discuss several of the specific provisions of S. 4145:

Commission members.—To serve long with two members of the House and two from the Senate, the President is called upon to appoint four members from the executive branch and four from the private sector. We wonder at this composition. One speculates the Executive branch members will be Chairmen or high ranking officials from regulatory agencies themselves. Hence in assessing actual performance they will certainly have a conflict of interest if not a biased point of view. We suggest that two individuals from the Executive branch would be sufficient and that the private sector be allotted six members. Within this latter group at least half should be from business since it is business which is being regulated.

Functions.—We believe that in addition to the elements which S. 4145 calls for to be included in the report the Commission is to transmit to the President and Congress, there should be added a specific requirement for comment covering agency structure and operations. It may well be that these are already covered by the broad language of the bill and if so it will at least be helpful to have the legislative history so reflect.

Scope.—A great volume of regulation emanates from other than independent regulatory agencies. The Departments of government headed by Cabinet rank officers as well as agencies not designated as "regulatory" frequently promulgate rules and regulations which are held to have the force and effect of law. In some instances the basis for the authority is statutory and in others may be bottomed on an Executive Order. In any case the effect on business is usually marked and we would strongly urge that the charter of the National Commission be extended to cover examination of these areas of activity.

I must note parenthetically at this point that NAM, under its constitution and bylaws, consistently addresses itself to problems of a federal nature and therefore we take no position with regard to that provision of S. 4145 which would extend Commission's activities to State and local governmental regulatory activities. I will add, however, Mr. Chairman, that the question of whether or not federally promulgated regulations have preemptive effect is a matter of constant concern.

Duration.—Given the rather broad nature of the task set out for the National Commission and the suggestions for expansion we ourselves have made, we feel that more than one year will probably be required to complete the work. Therefore, NAM would recommend a Commission lasting two years or longer if necessary.

Mr. Chairman, the President has called for a combined effort to rid the nation of unnecessary regulatory control as a means to help stem inflation. On behalf of the National Association of Manufacturers, and the seventy or more organizations affiliated with the National Industrial Council, who join in endorsing this statement, we reiterate our support.

Again, thank you for this opportunity to be heard and I will be glad to answer any questions.

NATIONAL INDUSTRIAL COUNCIL AFFILIATES ENDORSING NAM STATEMENT

American Paper Institute.
American Boiler Manufacturers Association.
American Corn Millers Federation.
American Petroleum Institute.
American Pipe Fittings Association.
Associated Industries of Alabama.
Associated Industries of Cleveland.
Associated Industries of Florida.
Associated Industries of Idaho.
Associated Industries Inc.
Associated Industries of Kentucky.
Associated Industries of Minneapolis.
Associated Industries of Oklahoma.
Associated Oregon Industries.
Association of Washington Business.
California Manufacturers Association.
Can Manufacturers Institute.
Carteret Industrial Assoc.
Cast Metals Federation.
Central Illinois Industrial Association.
Central Piedmont Industries, Inc.
Central Virginia Industries, Inc.
Columbus Industrial Association.
Connecticut Business & Industry Association Inc.
Employers Association of Detroit.
Employers Association of Summit County.
Employers Industrial Relations Council.
Farm & Industrial Equipment Institute.
Gas Appliance Manufacturers Association.
Georgia Business & Industry Association.
Hawaii Employers Council.
Idaho Employers Council.
Illinois Manufacturers' Association.
Indiana Manufacturers Association, Inc.
Industrial Conference Board.
Industrial Fasteners Institute.
Industrial Management Council of Rochester, N.Y.
Iowa Manufacturers Association.
Kansas Association of Commerce & Industry.
Minnesota Association of Commerce & Industry (MACI).
The Mahoning Valley Industrial Council.
Manufacturing Association of Eastern Ohio and Western Pennsylvania.
Manufacturers Association of Berks County.
Manufacturers Association of Erie.
Manufacturers Association of Southern Connecticut, Inc.
Manufacturers Association of Syracuse.
Michigan Manufacturers Association.
Miller's National Federation.
Mississippi Manufacturers Association.
Mobile Homes Manufacturers.
Mountain States Employers Council.
National Association of Glove Manufacturers, Inc.
National Association of Photographic Manufacturers, Inc.

National Crushed Stone Association.
National Knitwear Manufacturers Association.
Nebraska Association of Commerce & Industry.
New Jersey Manufacturers.
Northeast Wisconsin Industrial Association—Manitowoc, Wis.
The Ohio Manufacturers Association.
Pennsylvania Manufacturers Assn.
Printing Industries of America.
Rubber Manufacturers Association.
Salt Institute.
Texas Manufacturers Association.
Timber Products Manufacturers Assn.
Tristate Industrial Association, Inc.
Valley Industrial Association.
Virginia Manufacturers Association.
West Virginia Manufacturers Association.
Wisconsin Manufacturers Association.

Senator HUDDLESTON. I might ask you, since you did not mention the problem that evolves sometimes when regulatory agencies seem to go far afield of their intent, do you think Congress, in establishing a regulatory agency, should have been more specific or restrictive in precisely what the regulatory limitations should have been?

Mr. GODOWN. Yes, sir, Mr. Chairman. I will answer that question in the affirmative, but be very careful in doing so. I think that a nice balance needs to be struck. I would suggest that somewhere between a broad grant of authority to root out unfair and deceptive practices, as in the case of section 5(a)(1) of the Federal Trade Commission Act, and a completely inclusive set of instructions, if you will, or completely inclusive charter for a given agency which by definition will probably be outmoded or probably will miss a major area immediately on its promulgation.

The question you ask is a difficult one here. It is an extremely difficult test for Congress. My direct answer would be yes, I think an attempt should be made to prescribe the areas of responsibility and authority for regulatory agencies.

Senator HUDDLESTON. Should there be further some type of a review on the part of Congress of proposed regulations before they go into effect with the possibility of a veto authority?

Mr. GODOWN. Yes; in general. Again, that is a very tricky proposition because if too much interference, if you will, is introduced into the rulemaking process, then it becomes entirely burdensome and you find you do not have any rules or regulations. I would think that a veto proposition on the part of Congress would be a good thought. If Congress fails to act within a given number of days, or if a particular committee of Congress which has jurisdiction in the area does not veto within a given number of days, 60 or 90, then the regulation takes on the full force and effect of law would perhaps be a good provision.

Senator HUDDLESTON. As I understand it, you give about the same weight to the structure of the regulatory agencies and to the substance of the regulations for review by the commission.

Do you think that both need to be reviewed to the same extent?

Mr. GODOWN. Yes, sir. Both need to be reviewed; whether or not it should be an exact even split of attention a given agency should get from the national commission, I do not know. Certainly structure should be looked at because structure is part of the problem.

Senator HUDDLESTON. You suggested that perhaps the Commission's life should be extended to 2 years. Do you believe also that it should have a deadline for arriving at its recommendations and findings?

Mr. GODOWN. Yes, sir. I think certainly after the first 12 months a preliminary report should be called for. I would also say, Mr. Chairman, perhaps in clarification, that we are not wedded to the idea of a full 24 months, but it seems to us that 12 months is too short a period, particularly if the charter is expanded, as suggested.

I would think that we would look favorably upon a commission which perhaps was called for for a preliminary report at 12 months and a final report in 18 months, if that seems to be feasible.

Senator HUDDLESTON. We should have some specific reporting date?

Mr. GODOWN. Yes, sir.

Senator HUDDLESTON. In the makeup of the Commission you suggest changes which I think are logical. Also you support the idea that consumer interests should be represented on the Commission.

Mr. GODOWN. Yes, sir. I think in fairness they would have to be.

Senator HUDDLESTON. Senator Brock.

Senator BROCK. I wonder if you would agree with me—well, let me turn it around. One of the criticisms of the Ash Commission Report was it dealt entirely with structure and not with substance, not with the purpose of regulation, the basic enacting legislation and the authorization. It is a criticism with which I personally agree because if you change the structure and do not change the policy you have not done anything except make a bad policy more efficient in its implementation.

It seems to me that if this Commission is to have a mandate, it should be primarily one of establishing areas of jurisdiction and broadly defined areas of policy that would be subject to congressional action, and if we could complete that, then perhaps we could take a look at structure.

I question whether or not structure should even be considered until it has been determined whether or not there should be regulation, and on what premise? This should be the first job.

Do you disagree with that?

Mr. GODOWN. I would not disagree, Senator. If you will, I will add only this thought, we are somewhat concerned if structure—in fact, I would agree with the priority in which you put the areas that are to be studied, and I would add on structure. We are somewhat concerned if structure is not looked at somewhere in this process. Will it be a long time before Congress gets back to looking at it again?

We would view it as a necessary concomitant of any study, but not perhaps the most important, nor does it have to be the primary or initial area of study.

I agree with you, the Ash Commission has already had a look at that, and we can certainly benefit from the results of their studies.

Senator BROCK. Let me ask you a little more political question.

Are we jousting at windmills in the fact that we had the Ash Commission back in 1961? Did we not have the Landis Commission and a commission before that? I do not know how many we have had. But as long as I can remember, the Congress has been creating commissions to study regulatory policy. That goes back to the date when we enacted the Interstate Commerce Commission.

What gives you any reason to expect we might change and accept any recommendations of this Commission?

Mr. GODOWN. I am ever hopeful, Senator. Certainly the idea of having a Commission is one that we feel deserves support. The situation would be made better rather than worse by having a commission. In the absence of a commission you will certainly have continued helter-skelter promulgation of rules and regulations. You will have anticompetitive results from independent regulatory commission action. We simply view this as a step in the right direction.

Senator BROCK. So do I. I would not be cosponsoring the bill. But the question is, how do we effectuate the process as to make it do something that nobody else has ever done before, that is, achieve reform?

I do not think anybody argues about the need. Nobody I know of. But it seems like every time we establish need we run up against a rather sizeable group that has an interest in keeping things the way they are.

Mr. GODOWN. Perhaps the answer would be, Senator, as to whom the commission reports. Maybe the answer is that it should in fact specifically be made a creature of the Congress, you yourselves keep the oversight function, and certainly Congress has the authority under the Constitution to carry out any of the recommendations.

So I think it makes a nice package, if you will.

Senator BROCK. The suggestion has been made that instead of creating a commission with Presidential appointees, we create a joint committee of the Congress.

Would that be attractive to you? Would it have more political substance? Would it have the competence or capacity to analyze the problem and its various ramifications?

Mr. GODOWN. I had not considered that before, Senator. I must say that one wonders whether or not a joint committee could in fact take the time to pay the kind of particular attention as needed under the circumstances. I wonder whether events would not hurry things along and a report be called for and an incomplete job done under those circumstances. I would have to reserve judgment.

Senator BROCK. I was just curious. I am not trying to put you on the spot.

Mr. GODOWN. Yes, sir.

Senator BROCK. I have a consuming interest in this subject. I very much want to see it reach fruition. I am reaching for almost any method I can to arrive at that objective.

I appreciate very much your support and your testimony and I thank you for coming.

Mr. GODOWN. Thank you very much, Senator.

Senator HUDDLESTON. Does Counsel have any questions?

Mr. TURNER. Thank you, Mr. Chairman.

Mr. Godown, you support the idea of a study commission and you pledge your best efforts toward it, and I would presume that you would not want to impair its favorable consideration in any way.

Mr. GODOWN. That is true, sir.

Mr. TURNER. Senator Metcalf has expressed concern that establishing such a Commission might provide reasons for some to seek delay on legislative action, procedural as well as substantive legislation, presently existent and moving along.

Is that not a justifiable concern on his part?

Mr. GODOWN. I can see where it could possibly come about. Whether it is a justifiable concern, I do not know.

Mr. TURNER. In your statement you make it a very clear point that you oppose Senator Metcalf's S. 704 and S. 770, as well as Senator Proxmire's S. 3604, and after saying that, you then say, "to create this new agency"—that is, S. 770's independent Utility Consumers Council—"prior to such an investigation, would not seem reasonable," and "based on this same rationale, we would not favor establishing the kind of agency independence enumerated under S. 770 or abolishing the various governmental instrumentalities named in S. 3604 without serious investigation of the kind which a national commission could perform."

So, in effect, you are using the establishment of the Commission as an argument and a reason for holding up substantial legislation which has been subject to hearings and markup and all kinds of consideration over a period of several Congresses. That is the purport of your statement.

Mr. GODOWN. Not as I see it, Mr. Turner.

Mr. TURNER. I think Senator Metcalf might be interested in your view.

Mr. GODOWN. I think our rationale is set forth somewhat clearly in my statement. Our position on the legislation that you mention is simply that, given the nature of the action called for, we feel that rather than conclude or rather than beg the question, and rather than simply investigate whether or not what S. 770 calls for should be brought about, or what S. 704 calls for, or S. 3604 calls for, for the kind of investigation that would emanate from the Federal Commission on Regulatory Reform, we feel that if a Commission is going to be created, it should be done with interest, should be given the proper authority, and given time to investigate, time to give recommendations, and that be considered.

Mr. TURNER. That may be true, but with respect to S. 704 and S. 770, and I will parenthetically put in the Consumer Protection Act as well, do you intend to use this establishment of a study commission as an argument against consideration of such legislation in the next Congress?

Mr. GODOWN. Which Consumer Protection Act, S. 770?

Mr. TURNER. No. S. 707, the CPA bill.

Mr. GODOWN. I am sorry, I do not recognize the number.

What does S. 707 call for, the creation of a Consumer Protection Agency?

I would think based on the same rationale that I have used with S. 707 and others, before Congress is asked to vote again after four unsuccessful tries this year. I would think that it would be the better part of judgment to create a national commission, to let the national commission look into the charges made by the advocates who are supporting the creation of the Consumer Protection Agency, and in fact see whether or not they agree that this kind of agency is called for.

Mr. TURNER. I think I ought to make my point clearer. I know the national association's objections to the Consumer Protection Act. I know that it has substantive reasons in opposition to it. I am merely saying, are you going to use the establishment of this study com-

mission as yet another argument against going forward with the Consumer Protection Act?

Mr. GODOWN. Mr. Turner, let me answer this way. We will continue to oppose the creation of a Consumer Protection Agency on whatever grounds we think are rational and reasonable. We are fullsomely on the record on that point, and if in fact, the idea comes back and there is a further attempt to create a Consumer Protection Agency that is again brought forth, you can count on the National Association of Manufacturers opposing it. And we may turn to S. 4145 and any other legislation which puts our rationale on the record. We think it is a bad idea. We think it is an attempt to superimpose another layer of government. We think it is the wrong answer. You know what we think.

Mr. TURNER. We know.

Is there not a way in which you can pursue your opposition to the Consumer Protection Act and at the same time support a limited study commission without using the new commission as another argument against the Consumer Protection Act? That is all I am saying.

Mr. GODOWN. No, sir. You are attempting to judge some further action that we may or may not take, using the National Commission against the Consumer Protection Agency. I reject that.

Our argumentation will be put forth in full on the record at that time.

Mr. TURNER. With respect to S. 704, we are practically ready for markup on that bill. All that does is provide for a simultaneous budget and legislative recommendations as well as litigating controls.

Do you feel that that bill has not been sufficiently considered, that it cannot go along independent of an establishment of a commission to study regulatory agencies?

Mr. GODOWN. We did not participate in the hearings on that bill, and I am not aware of what is on the record so far. I am aware of the provisions of S. 704, and I will say for the record that particular provision that we would object to is the fact that it would permit agencies to collect information on forms without OMB clearance.

Mr. TURNER. That is absolutely incorrect. Maybe you are looking at a bill that was drafted many, many months ago but we have had legislation before the Congress, and it was the Alaska pipeline case, and we went over that mountain and we solved that hurdle, and the Office of Management and Budget by law does not have any control over forms of regulatory agencies anymore.

It could be you are looking at the original bill as introduced back on February 1 of 1973, but the bill has now gotten into a new state called Subcommittee Print No. 1, and without taking any further time, I would be glad to give you a copy of that print, and you may comment on it for the record.

Mr. GODOWN. I thank you.

Senator HUDDLESTON. Does minority counsel have any questions?

Mr. STATLER. Assuming the kind of membership you are talking about—six public members of which there would be three from the business community—what would you think would be the fairest allocation of business representation?

Should it be one from small business, one from middle-sized business, and one from large business?

Have you given any thought to that? Or should we look at areas of industry, the communications area, the auto area?

Mr. GODOWN. I do not think you can do the latter because after all, practically the totality of the business community is involved. I would think that there would be some merit, yes, in having a representative from big business, if you will, and certainly a representative from small business.

I only recommended that there be three out of six from the business community. I would suppose the third one comes from a medium size business.

More importantly, I would think the background and the preparation for the participation and exercising reasonable judgment is the more important thing. I would look to the individuals first, and then to their sector of identification later.

Mr. STATLER. Mr. Godown, I know it was introduced late, and you may not have received a copy, but have you had a chance to look at S. 4167?

Mr. GODOWN. I am sorry, I have not.

Mr. STATLER. May I ask—I will give you a copy as soon as the hearing is over—that you take a look at that bill? It was introduced by Senator Percy and Chairman Ervin from the Government Operations Committee last week. Copies should have been sent to you. If they were not, I will see to it that they are. Could we have your formal reaction to that bill? We would appreciate it.

I think you will find in that measure some of the points you touched upon, such as including the executive branch departments, or units within them. And you will find many agencies that would be addressed by that study, above and beyond the number of agencies intended by S. 4145.

Mr. GODOWN. I will be glad to respond for the record with written comments, yes.

[The information referred to and subsequently supplied follows:]

NATIONAL ASSOCIATION OF MANUFACTURERS,
December 18, 1974.

STUART M. STATLER,
Chief Minority Counsel, Government Operations Committee, Old Senate Office Building, Washington, D.C.

DEAR MR. STATLER: During the course of my testimony on behalf of the National Association of Manufacturers, before the Senate Government Operations Committee dealing with S. 4145, a bill to establish a National Commission on Regulatory Reform, you requested NAM comment on a similar bill (S. 4167) introduced by Senator Percy. Our reactions to S. 4167 are as follows, and may be inserted in the hearing record if you so desire.

As indicated in my testimony before the Committee on November 25, 1974, NAM strongly endorses creation of a National Commission on Regulatory Reform. We would prefer a 12-member Commission made up of two representatives from the executive branch, two members from the House of Representatives, two from the Senate and six from the private sector, at least three of whom we feel should be from business, since it is business which is being regulated.

We believe that one year is perhaps too short a period of time for the Commission to accomplish its objectives. Therefore, we have suggested that when created, its duration be 18 months to 2 years.

Section 3 of S. 4167 lists the duties of the proposed National Commission. We would agree that any review and recommendations forthcoming from the Commission should cover deficiencies in the regulatory process which tend to contribute to inflation and lessen competition; over-and-under regulations in the economy; the economic costs and benefits of regulation or lack thereof; an evaluation of

regulatory purposes and objectives mandated by statute and specific recommendations for legislative actions to improve effectiveness, efficiency and responsiveness.

Furthermore, we would agree that regulatory agencies should be encouraged to enunciate broad policy guidelines as opposed to strict adherence to case by case decisions. We particularly agree that the Commission should make recommendations which would result in a continuous review and assessment of the economic costs, benefits and deficiencies of federal regulatory activities.

We would earnestly hope that in this way the federal bureaucracy might be diminished. We note also that under Section 3 of S. 4167 the National Commission would be called upon to evaluate proposals for making the regulatory responsibilities of the various agencies more independent of the executive branch; for elimination of collegial commissions; for revising procedures for selecting commissioners; for revamping the conflict of interest statutes; for limiting the removal of regulatory agency officials and paying the cost and expenses of interveners on behalf of the "public" or "consumer interest"; for creating a new administrative court; for amending the administrative procedure act; and for instituting direct subsidies in certain instances. In the case of these latter problems, we would reserve judgment. We believe that considerable thought and discussion should be engaged in before actually instituting any of the actions indicated by the proposals. We will be happy to appear before the National Commission and give testimony in each of these issues.

We particularly agree with the definition under Section 7 of S. 4167 of "federal regulatory agency", believing that in order for the National Commission to do a meaningful job, its area of investigation must be at least as broad as this bill would make it.

During testimony you also requested, for the record, the NAM position regarding Fair Trade laws. Although this matter has been discussed on numerous occasions, no firm conclusions have ever been agreed to, and therefore, officially we have no position.

We appreciate this opportunity to comment on S. 4167.

Very turly yours,

RICHARD D. GODOWN.

Mr. STATLER. Recently, Attorney General Saxbe has recommended the elimination of the fair trade laws, and in the testimony I just put in the record from Arthur Wood of Sears in response to the problems of regulation, he too recommends elimination of the fair trade laws as an anticompetitive practice and one that adds to inflation.

What would be the position of NAM on that proposal?

Mr. GODOWN. I am sorry; I am not prepared to respond at this point. If you will permit, I will be glad to respond for the record.

Mr. STATLER. Would you, please?

Mr. GODOWN. Yes.[1]

Mr. STATLER. Finally, do you have any target agencies or target areas that you think really should be a first order priority of this Commission? In other words, would you put at the top of your list the ICC, or auto regulations, or what?

Do any particular aspects of regulation stand out, such that whatever else the Commission decides to study, it should certainly focus either on those areas? That is, activities which you think are truly antagonistic to a competitive system—to free enterprise?

Are there any particular agencies that should especially be the focus of attention by this Commission?

Mr. GODOWN. Whether or not I would accept the descriptive adjectives, I will take your question as intended, I am sure, and answer this way. I would think the Federal Trade Commission certainly would be one of the agencies which should be looked at by any national

[1] See letter to Mr. Stattler from Mr. Godown, dated December 18, 1974, supra.

commission from the point of view of its regulatory authority. Industry is going round and round right now. You have something called the line of business report form, and there is a major marked difference of opinion about whether or not there is authority for the Commission to order in a mandatory fashion that such a line of business report form be filled out by those companies that have had the requests levied on them by the Federal Trade Commission.

I would expect that this kind of issue will probably be in the courts fairly soon. Perhaps it will be solved that way. In the meantime, there has been a tremendous amount of activity, both on the part of the Federal Trade Commission and on the part of the business community considering this particular aspect. Industry's view is the Trade Commission obviously does not have the authority and it should come to Congress first off. That is just an outstanding example.

Mr. STATLER. That would be an example of an agency.

You mentioned the line of business reporting. Are there any other kinds of activities that come within the scope of what you think ought to be this Commission's active concentration?

Mr. GODOWN. None stand out more than any other at this point.

Mr. STATLER. Thank you very much, and we will look forward to receiving your additional comments.

Senator HUDDLESTON. Thank you, Mr. Godown, on behalf of the committee. I express our appreciation.

Mr. GODOWN. Thank you, Mr. Chairman.

Senator HUDDLESTON. That completes our list of witnesses today.

The committee will stand in adjournment until 10 a.m. tomorrow.

[Whereupon, at 3 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, November 26, 1974.]

APPENDIX

Appendix 1

ANTI-TRUST CASES INITIATED BY THE DEPARTMENT OF JUSTICE SINCE JAN. 1, 1963

1733. *United States* v. *General Motors Corporation*, Civ. 63-C-80 (N.D. Ill.). A complaint under Section 2 of the Sherman Act and Section 7 of the Clayton Act was filed on January 14, 1963, requiring defendant General Motors to divest itself of its diesel locomotive manufacturing division.

The complaint charges that through the acquisitions of two locomotive manufacturing companies in 1930 and by using its vast economic power illegally to induce railroads to buy its locomotives, defendant has achieved the dominant position in the manufacture and sale of new and rebuilt railroad locomotives in the United States. As a result of its monopoly position, the complaint asserts that two of its four domestic competitors have been virtually excluded from the industry and that the two remaining competitors have only about 11 and 8 percent of the business.

This suit is a companion to an indictment returned against defendant on April 12, 1961. The case is pending.

1734. *United States* v. *The Duluth Clearing House Association, et al.*, 5-63-CR-6 (D. Minn.)

1735. *United States* v. *The First National Bank of Saint Paul, et al.*, 3-63-CR-8 (D. Minn.)

1736. *United States* v. *Northwestern National Bank of Minneapolis, et al.*, 4-63-CR-6 (D. Minn.)

1737. *United States* v. *Northwestern National Bank of Minneapolis, et al.*, 4-63-Civ.-52 (D. Minn.)

1738. *United States* v. *The First National Bank of Saint Paul, et al.*, 3-63-Civ.-37 (D. Minn.)

1739. *United States* v. *The Duluth Clearing House Association, et al.*, 5-63-Civ.-4 D. Minn.)

Three separate indictments were returned on February 8, 1963, under Section 1 of the Sherman Act, charging eighteen Minnesota commercial banks, a bank holding company, and a clearing house, with fixing artificially high rates for service charges and for interest on loans, and fixing artificially low rates for interest paid on deposits.

Duluth Clearing House Association Case. Four Duluth banks and a clearing house were named as defendants. They are charged with conspiring 1) to fix artificially high rates on the interest charged for loans, 2) to fix uniform service charges, and 3) to induce other Duluth and nearby banks to adopt the same rate schedules.

The First National Bank of Saint Paul Case. Seven St. Paul banks and a holding company were named as defendants. They are charged with conspiring since 1957 to fix uniform service charged for checking accounts and other bank services. They assertedly decided upon uniform charges in meetings and telephone conversations and started using the charges between January 1 and April 1, 1958. The conspiracy had the effect of eliminating competition among the defendant banks for the accounts of depositors and other customers, and of forcing customers to pay artificially high prices for bank services.

Northwestern National Bank of Minneapolis Case. Eleven banks were named as defendants in this indictment which charged that they conspired unlawfully since 1955 to fix terms, conditions, and interest rates for loans to correspondent banks. As a result, competition among the defendants for the correspondent bank business was eliminated and both the correspondent banks and individual borrowers were forced to pay artificially high rates of interest. The defendants assertedly furthered the conspiracy at a series of meetings between January 1959 and August 1960 in Minneapolis, St. Paul and Duluth.

Three parallel civil cases were filed in conjunction with the return of the indictments. These complaints asked the court to forbid continuation of the price-fixing activities charged. The cases are pending.

1740. *United States* v. *Ingersoll-Rand Company, et al.*, Civ. 63-124 (W.D. Pa.). A complaint under Section 7 of the Clayton Act was filed February 14, 1963, charging that Ingersoll-Rand's proposed acquisition of two leading manufacturers of coal mining machinery and of one manufacturer of other mining equipment, would substantially lessen competition and would give Ingersoll-Rand a decisive advantage over other manufacturers in the field.

The complaint alleges that the combination of Ingersoll-Rand with Goodman, Lee-Norse, and Galis, may increase the relative size and diversification of Ingersoll-Rand to such a degree that its advantages over its competitors and other companies may lessen competition and tend to create a monopoly, that the acquisitions will result in the elimination of the acquired companies as independent factors thereby causing an undue reduction in the number of enterprises engaged in these fields of activities. The mergers would also deprive rival customers and suppliers of the companies of a fair opportunity to compete.

The complaint seeks to enjoin defendants from consummating the acquisitions and asked the court to issue a temporary restraining order and preliminary injunction forbidding the acquisitions pending outcome of the suit.

On March 6, 1963, a preliminary injunction was granted and on April 11, an opinion in support of the preliminary injunction was filed by the court holding that the effect of the proposed acquisitions may be substantailly to lessen competition, or to tend to create a monopoly. The defendants appealed to the Circuit Court of Appeals and on June 5, 1963, the Court filed an opinion affirming the district court's preliminary injunction which prohibits Ingersoll-Rand from acquiring three firms in the field of coal mining machinery pending this litigaton. The case is pending.

1741. *United States* v. *Goldring Packing Co., Inc., et al.*, Cr. 31945 (S.D. Calif.). On March 14, 1963, an indictment was returned under Section 1 of the Sherman Act against two Los Angeles firms who supply Fresh meat to the United States Navy Commissary Store, Long Beach, California. The indictment charges that the defendants and co-conspirators engaged in an unlawful combination and conspiracy to allocate between themselves the business of supplying fresh meat to the Navy Commissary and agreed to submit non-competitive and collusive bids to the Navy. The case is pending.

1742. *United States* v. *H. P. Hood & Sons, Inc., et al.*, Cr. 63-110-C (D. Mass.). A six-count indictment was returned on March 15, 1963, against two corporations, charging Hood with trying to drive out of business, milk dealers who sell milk at cheaper prices in glass jugs, and further charged that Hood conspired with The Greater Atlantic and Pacific Tea Company to restrain competition and to monopolize the Greater Boston milk market.

One charged defendants with conspiring to restrain trade in violation of Section 1 of the Sherman Act. The second charged them with conspiring to monopolize, in violation of Section 2 of the Sherman Act.

Four counts charged Hood alone. One count charged the Company with attempting to monopolize milk sales in violation of Section 2 and three counts charged violation of Section 3 of the Robinson-Patman Act. One of the Robinson-Patman counts charged Hood with seeking to eliminate Cumberland Farms, a major jug handler, as a competitor. Another charged Hood with giving discriminatory discounts to certain milk retailers located near Cumberland stores. The third charged Hood with giving the special secret rebates to A&P. The case is pending.

1743. *United States* v. *United States Steel Corporation, et al.*, 63-CR-312 (S.D. N.Y.)

1744. *United States* v *Taylor Forge and Pipe Works, et al.*, 63-CR-313 (S.D. N.Y.)

Two indictments were filed April 2, 1963, charging seven steel companies with conspiring illegally to fix prices in violation of Section 1 of the Sherman Act. The United States Steel case named as defendants five corporations involved in the sale of wrought steel wheels and the Taylor Forge indictment named four corporations engaged in the sale of rolled steel pipe flanges and rings. Two corporations were involved in both cases.

Wrought steel wheels are used on passenger and freight cars, diesel locomotives, subways and elevated rapid transit lines, etc. Defendants are charged with fixing identical factory and delivered prices and submitting identical bids, and assertedly held meetings at hotels and clubs to discuss price changes. The defendants also corrected so-called pricing "mistakes" which occurred when they quoted non-identical prices to customers.

Rolled steel pipe flanges are used to connect pieces of pipe. They have a variety of industrial uses, such as braces for large vats and boilers and in missiles and ordnance equipment. This indictment charged that the four defendants agreed to conform to the flange price schedule published by Taylor. They also sold rings according to agreed-upon price schedules. The conspiracy also involved meetings which were held "for the purpose of ironing out differences in the interpretation and application of the price schedules." The cases are pending.

1745. *United States* v. *Branch River Wool Combing Co., Inc., et al.*, Civ. 3123 (D. R.I.). A complaint, under Section 7 of the Clayton Act, was filed May 13, 1963, against two corporations engaged in the production of wool top. The complaint alleges that French Worsted sold its Combing Division machinery to Branch River, and leased its premises to Branch River. According to the complaint, a series of contracts between the two parties had the effect of temporarily subleasing machinery and premises back to French Worsted.

The complaint asks that Branch River Wool be required to divest itself of assets acquired from the French Worsted Company and to eliminate the restrictive covenants, and also asks that Branch River be enjoined from making further acquisitions without prior approval of the court. The case is pending.

1746. *United States* v. *Cities Service Company, et al.*, Civ. 2680 (D. Del.). On May 29, 1963, a complaint was filed under Section 7 of the Clayton Act alleging two companies merged illegally, thus causing restrained competition in the production and marketing of ammonia products used for fertilizer.

The complaint charged that the joint venture between Continental Oil Company and Cities Service through Petroleum Chemicals, Inc.: (1) eliminated potential competition between the companies in the production and sale of ammonia; (2) foreclosed other suppliers of ammonia from selling ammonia to Mid-South Chemical Corporation; and (3) afforded the Mid-South Chemical Division of PCI a competitive advantage over other firms selling anhydrous ammonia as fertilizer, through the combination of the resources and facilities of Cities Service and Continental.

Filed at the same time as the complaint was a proposed consent judgment and stipulation providing a thirty day waiting period until the judgment is signed. In the consent judgment, Cities Service has agreed to a court order requiring it to end the joint venture, either through sale of its interest in Petroleum Chemicals, Inc. or by purchasing the remainder of its holdings. The judgment will not bar any further antitrust action against Cities Service should they attempt another acquisition or joint venture. The final judgment was entered June 29, 1963, thus terminating the case.

1747. *United States* v. *FMC Corporation, et al.*, Civ. 41541 (N.D. Calif.). A complaint, under Section 7 of the Clayton Act, was filed June 5, 1963, alleging that FMC, a large manufacturer of industrial chemicals and packaging machinery, should be forbidden to acquire the operating assets of the American Viscose Corporation, a leading rayon cellophane maker. The complaint charged the planned acquisition would substantially lessen competition and would give FMC other anti-competitive advantages which would violate the Celler-Kefauver anti-merger section of the Clayton Act. The complaint asked that the court issue a preliminary and permanent injunction against the acquisition. The case is pending.

1748. *United States* v. *Nachman Corporation, et al.*, 63-CR-154 (E.D. Mo.). An indictment under Section 1 of the Sherman Act was filed June 6, 1963, against nine corporations and one individual charging conspiracy to illegally fix noncompetitive prices on the sale of bed springs. The aforesaid conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and the co-conspirators to raise, fix, stabilize, and maintain prices, quantity discounts, terms and conditions for the sale of bed springs. As a result, bedding companies which produce and sell box springs and inner spring mattresses have been deprived of the benefits of open price competition. The case is pending.

1749. *United States* v. *Sperry Rand Corporation, et al.*, 63-CR-352 (N.D. Ill.).

1750. *United States* v. *Sperry Rand Corporation, et al.*, 63-CIV-1100 (N.D. Ill.).

An indictment, under Section 1 of the Sherman Act, was filed June 20, 1963, against seven corporations and five individuals involved in the sale of metal library shelving. The indictment charged that the defendants entered into an agreement to allocate among themselves sale of library shelving; refrain from price competition with each other; and submit non-competitive and rigged bids and price quotations to prospective purchasers of library shelving. The indictment asserts that the defendants held meetings several times each year for the purpose of effectuationg the aforesaid conspiracy in restraint of trade.

On the same day, a companion civil suit was filed, under Section 1 of the Sherman Act, containing the same allegations against four of the corporations named in the indictment. The complaint asks that the court find the alleged agreement among the defendants in violation of Section 1 and that it forbid the continuation or resumption of the activities charged. The cases are pending.

1751. *United States* v. *Blaw-Knox Company, et al.*, 63 Cr. 602 (S.D.N.Y.). An indictment under Section 1 of the Sherman Act was filed July 2, 1963, charging 8 corporations and 9 individuals with effectuating price increases by revising price schedules pursuant to an agreed upon formula; draftng a comprehensive steel castings price catalogue; agreeing upon special price schedules for certain types of steel castings; exchanging information at arranged monthly meetings in four cities and making telephone calls between meetings. The case is pending.

1752. *United States* v. *United Fruit Company, et al.*, Cr. 32416 (S.D. Cal.). A three count indictment under Section 2 of the Sherman Act, was filed July 16, 1963, charging 2 corporations and 2 individuals, engaged in the importation and sale of bananas, with restraining competition by importing two banana vessels instead of one into the Port of Los Angeles every week; increasing the quantity of bananas imported for sale, thereby causing an oversupply; and causing the Port of Los Angeles to deny a public berth for banana cargoes of other competitors.

Count one charges a conspiracy to monopolize, count two an attempt to monopolize and count three charges monopolization of the Western States banana market.

On October 22, 1963, the court accepted *nolo* pleas over the objection of the Government. Fines in the amount of $6,000 were imposed on October 23, on all three counts, however as fines on Counts I and II are to run concurrently, the total fines collected are $4,000.

1753. *United States* v. *Boston and Maine Railroad, et al.*, Cr. 63-252-S (Mass.). A two count indictment under Section 10 of the Clayton Act and 18 U.S.C. 660 was filed August 13, 1963, charging 2 corporations and 4 individuals obtained considerable personal profit from business dealings involving the sale of railway cars.

Count one charges that B&M and three of its officers, who had substantial interest in defendant International, with selling, without conducting competitive bidding, 10 railway cars to International for $250,000. The following day, International resold the cars for $425,000. Count two charges all defendants with violating a federal criminal statute specifically forbidding embezzlement or misapplication of company funds by the officers of a common carrier. International paid large sums of money to three of the defendants. Almost entirely out of the proceeds of its resale of the cars, which they withheld from B&M and retained exclusively for their own account and use. The case is pending.

1754. *United States* v. *Kaynar Mfg. Co., Inc., et al.*, Cr. 32630 (S.D. Calif.).

1755. *United States* v. *Kaynar Mfg. Co., Inc., et al.*, Civ. 63-1036S (S.D. Calif.). An indictment and complaint under Section 1 of the Sherman Act were filed August 29, 1963, charging six corporations and three individuals conspired to raise and fix prices for self-locking nuts. The complaint asks that defendants be ordered to issue new and independent price lists and that they be enjoined from entering into future similar agreements.

September 16, 1963, the court accepted *nolo* pleas from all defendants and imposed fines totaling $4,500, thus terminating the criminal case. The civil case is pending.

1756. *United States* v. *Suburban Gas, et al.*, Cr. 63-183 (Oregon). An indictment under Section 1 of the Sherman Act was filed September 24, 1963, charging one corporation and one individual with fixing prices and allocating territories in northwestern and central Oregon in the sale of liquefied petroleum gas.

The indictment charges that the defendants and co-conspirators conspired from August 1959 through some time in 1961 to raise, fix and maintain prices at which their product was sold to consumers and to refrain from soliciting the customers of each other. The case is pending.

1757. *United States* v. *Crocker-Anglo National Bank, et al.*, Civ. 41808 (N.D. Calif.). A complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed on October 8, 1963, against three banking corporations, charging the proposed acquisition of Citizens National Bank of Los Angeles by Crocker-Anglo of San Francisco would lessen, impair and concentrate competition in commercial banking in California and foster mergers by other large banks. The complaint also charges that a 1956 consolidation, wherein Crocker

National Bank combined with Anglo California National Bank to form the present Crocker-Anglo was a Section 7 violation. This acquisition and nine other acquisitions by Crocker-Anglo since 1956, and three acquisitions by Citizens, and the proposed merger between Crocker and Citizens have been challenged as violations of Section 7. The Government sought a preliminary injunction and asked the court to take the necessary action to prevent the proposed merger. Government's motion for preliminary injunction was denied November 4, 1963. The case is pending.

1758. *United States* v. *The Calumet National Bank of Hammond, et al.*, Civ. 3723 (N.D. Ind.). A complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act, was filed October 10, 1963, against two banking corporations engaged in commercial banking, charging that the merger of Calumet and Mercantile National Bank would substantially lessen competition in banking in the Hammond area and increase banking concentration in both Hammond and the surrounding service area.

The Comptroller of the Currency rescinded his approval of defendants' application to consolidate and on November 6, 1963, the court ordered dismissal of the complaint without prejudice on Government's motion.

1759. *United States* v. *Container Corporation of America, et al.*, Civ. C180G63 (M.D. N.C.). A complaint under Section 1 of the Sherman Act, was filed October 14, 1963, charging nineteen corporations with restraint of interstate trade and commerce in the sale of corrugated containers in a seven-state area in the southeastern United States.

The complaint alleges that the defendants prevented unrestricted price competition by continuously exchanging among themselves information as to prices being charged or to be charged specific customers for the custom made containers.

The complaint asks that the defendants be enjoined from exchanges of any price information relating to specific customers. The case is pending.

1760. *United States* v. *National Institute of Diaper Services, Inc.*, Civ. 63–3103 (S.D.N.Y.). A complaint under Sections 1 and 3 of the Sherman Act was filed October 23, 1963, charging one trade association with restraint of interstate trade and commerce in the Diaper Service business.

The complaint alleges that the defendant conspired with its members to grant to each member operator exclusive trading areas from which all other members were barred from doing business and to obtain products and services for its member operators that are of value to diaper service operators.

Filed at the same time as the complaint was a proposed consent judgment and stipulation providing a thirty day waiting period until the judgment is signed.

This judgment, which became final November 21, 1963 enjoins the diaper service from continuing these practices and requires it to accept any qualified diaper service for membership upon request.

1761. *United States* v. *Association of Casualty and Surety Companies, et al*, Civ. 63 CIV 3106 (S.D.N.Y.). A complaint under Sections 1 and 3 of the Sherman Act was filed October 23, 1963, charging three trade associations with conspiracy in the automobile property insurance auto damage appraisal business and repair business.

The complaint alleges that the defendant associations by the adoption and operation of the Independent Appraisal Plan, a nationwide program, have combined and conspired to eliminate competition among member companies in the adjustment and settlement of automobile property insurance claims, among automobile damage appraisers and among repair shops in order to control and depress automobile damage repair costs through boycott, coercion and intimidation of repair shops.

Filed at the same time as the complaint was a proposed consent judgment and stipulation providing a thirty day waiting period until the judgment is signed.

This judgment was entered November 27, 1963, and requires the defendants to terminate the Independent Appraisal Plan and prevents any similar program being instituted. The judgment further enjoins defendants from placing into effect any plan, program or practice which recommends any appraiser of damage to automobiles; advises or suggests firms or persons do business or refuse to do business with any appraiser or repair shop; allocates customers among appraisers; or fixes prices to be paid for the appraisal and repair of damage to automobiles.

1762. *United States* v. *Simplex Time Recorder Company, et al.*, Civ. 63–878–F (Mass.). A complaint under Section 2 of the Sherman Act was filed October 28, 1963, charging one corporation and one individual with unlawfully attempting to monopolize the time equipment industry in restraint of interstate trade and

commerce. The complaint alleges that Simplex sought to acquire Stromberg and, upon failing to do so, threatened to put Stromberg out of business. It is alleged that Simplex then attempted to do so by threatening to undersell Stromberg, by hiring away a substantial number of important Stromberg personnel and by circulating false rumors that Stromberg was going out of business.

Filed at the same time as the complaint was a proposed consent judgment and stipulation providing a thirty day waiting period until the judgment is signed.

This judgment was entered November 29, 1963, enjoining Simplex from hiring away employees of competitors unless such employees initiate contacts with Simplex; acquiring the stock of any competitor unless Simplex establishes that proposed acquisition would not tend to have any effect upon competition or selling at unreasonably low prices for the purpose or with the probable effect of destroying competition.

1763. *United States* v. *Pennsylvania Refuse Removal Association, et al.*, Cr. 21558 (E.D. Pa.)

1764. *United States* v. *Pennsylvania Refuse Removal Association, et al.*, Civ. 34417 (E.D. Pa.)

An indictment and complaint under Section 1 of the Sherman Act were filed October 30, 1963, charging one trade association and seven individuals with conspiracy in the refuse removal business in restraint of interstate trade and commerce.

The indictment and complaint charge that defendants and co-conspirators conspired to allocate customers; refrain from competing for the customers so allocated; raise, fix and maintain prices for refuse removal to customers; submit collusive and rigged bids for refuse removal to customers; urge, induce and coerce other removers to participate in the conspiracy; and impede, obstruct, threaten, intimidate, harass and take action against persons and companies in order to exclude them from the refuse business and to compel them to join the conspiracy.

The complaint asks appropriate injunctive relief to dissipate the conspiracy and seeks dissolution of the Association. The cases are pending.

1765. *United States* v. *Studebaker Corporation*, Civ. 01863 (Neb.). A complaint under Section 1 of the Sherman Act was filed October 31, 1963, charging one corporation with restraint of interstate trade and commerce in the oil additives business.

The complaint alleges that Studebaker and its distributors agreed that Studebaker would set uniform prices, terms, and conditions of sales at all levels of distribution, that each distributor would have an exclusive territory and would not sell outside of such territory.

The complaint seeks that defendant be enjoined from price fixing and allocating territories and that defendant notify distributors and jobbers that they may sell additives at such prices to such persons and in such areas as they please. The case is pending.

1766. *United States* v. *Nassau-Suffolk Pharmaceutical Society, Inc.*, Civ. 63–C–1206 (E.D.N.Y.)

1767. *United States* v. *Nassau-Suffolk Pharmaceutical Society, Inc.*, Civ. 63–C–1207 (E.D.N.Y.)

Two complaints under Section 1 of the Sherman Act were filed November 7, 1963, charging the Association with restraint of interstate trade and commerce in the drug business.

The first complaint alleges that defendant conspired with its members to restrain trade by agreeing to establish and maintain uniform prices for prescription drugs sold to consumers in Nassau and Suffolk through the use of price schedules which were sold and distributed to members and to non-member pharmacists, who were urged to use schedules.

Filed at the same time as the complaints were proposed consent judgments and stipulations providing a thirty day waiting period until the judgment is signed.

This first judgment which became final December 9, 1963, enjoins the Association from maintaining or furthering any program to formulate or suggest the use by any pharmacists of any pricing schedule or professional fee schedule for pricing prescription drugs or in any way influencing any person to use any such schedule.

The second complaint charges the Association and its members conspired to restrain trade by agreeing to stabilize and maintain minimum resale prices of fair traded drug products and related goods through means which included in-

vestigating and policing drug store sales of members and non-members, advising manufacturers of sales of their products below fair trade prices, threatening price cutting druggists and instigating and financing law suits to enjoin and punish such price cutters.

This consent judgment which also became final, December 9, 1963, enjoins the Association from engaging in any program to maintain or suggest prices for drug products or related goods or to compel any person to sell such products at any fixed, maximum or minimum price. The judgment also restricts the Association from policing prices, urging manufacturers to enforce fair trade prices, and threatening or instigating law suits to maintain fair trade prices.

1768. *United States* v. *International Ore & Fertilizer Corporation, et al.*, Cr. 63–CR–927 (S.D.N.Y.)

1769. *United States* v. *International Minerals & Chemical Corporation, et al.*, Cr. 63–CR–928 (S.D.N.Y.).

Two indictments under Section 1 of the Sherman Act, were filed November 7, 1963, charging seven corporations and three individuals with restraining interstate trade and commerce in the fertilizer business.

The first indictment charges that the defendants (two corporations and three individuals) agreed among themselves to allocate tonnage and eliminated price competition in the sales of triple superphosphate fertilizer manufactured in, and exported from, the United States to the Republic of Korea.

The second indictment charges that five corporations agreed among themselves to fix uniform prices for the export sales of phosphate rock fertilizer and assertedly establish artificially high prices for phosphate rock exports, particularly to Western Europe and Japan. The cases are pending.

1770. *United States* v. *Cincinnati Insurance Board*, Civ. 5489 (S.D. Ohio). A complaint under Section 1 of the Sherman Act was filed November 14, 1963, charging one trade association, involved in the sale of fire and casualty insurance, with agreeing to boycott mutual companies and also to boycott any insurance company which was not represented by a member of the Board.

The complaint alleges that the defendant and its member co-conspirators adopted written rules and oral understandings formulated to govern and control the business activities of the member co-conspirators for the purpose of effectuating the aforesaid conspiracy.

Filed at the same time as the complaint was a proposed consent judgment and stipulation providing a thirty-day waiting period until the judgment is signed.

The consent judgment, which became final December 19, 1963, enjoins the Board from continuing these practices. In addition, the Board must furnish a copy of the decree to each of its members and to each insurance company doing business in Hamilton County, and must give a copy to any new member in the future.

1771. *United States* v. *Blue Chip Stamp Company, et al.*, Civ. 63–1552–S (S.D. Calif. CD). Complaint under Sections 1 and 2 of the Sherman Act, was filed December 26, 1963, charging Blue Chip Stamp Company, eight corporations, each of which operates chains of supermarkets in California, and one corporation which operates a chain of drug stores in California, have engaged in a conspiracy in restraint of and monopolize trade and commerce, and goods, wares and merchandise sold at retail in California and that these defendants participated as co-conspirators in monopolizing and attempting to monopolize interstate trade and commerce in trading stamp business.

The complaint alleges that the combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to do all that was necessary for defendant Blue Chip to achieve and maintain a position of monopoly in the trading stamp business in California.

The complaint asks that the combination and conspiracy to monopolize the trading stamp business be found in violation of Sections 1 and 2 of the Sherman Act and that each defendant retailer be required to divest itself of ownership of all stock in Blue Chip and be enjoined from controlling or attempting to control Blue Chip. The case is pending.

1772. *United States* v. *Max Factor & Co.*, Civ. 14757–1 (W.D. Mo.). A complaint under Section 1 of the Sherman Act, was filed December 27, 1963, charging that defendant has combined and conspired with certain co-conspirator drug and department stores to fix the retail prices at which Max Factor COSMETICS would be sold.

The complaint alleges that the defendant utilized the refusal to deal as a weapon to police its retail prices. The defendant is alleged to have required a discounter who had been cut off from the supply of Max Factor products that he agree to adhere to Max Factor's prices as a condition to being reinstated as a dealer.

The complaint asks that the defendant be enjoined from engaging in resale price fixing activities and be prevented from enforcing the State fair trade laws against retailers. The case is pending.

1773. *United States* v. *The Brookman Co., Inc., et al.*, Cr. 39462 (N.D. Calif.). Indictment under Section 1 of the Sherman Act was returned January 3, 1964, charging 3 corporations, 1 partnership and 4 individuals with conspiring to submit collusive and rigged bids to general contractors and to allocate and divide resilient floor covering jobs among themselves. The case is pending.

1774. *United States* v. *Cascadia Lumber Company, et al.*, Cr. 64–7 (D. Ore.). One count indictment under Section 1 of the Sherman Act was returned January 15, 1964, charging 5 corporations and 2 partnerships with rigging their bids for timber purchases from the United States Forest Service in western Oregon.

The indictment charges that the defendants and co-conspirators conspired to allocate Forest Service sales among themselves, to eliminate competition among themselves and to force non-members of the conspiracy to pay higher prices for timber.

The indictment was dismissed on May 18, 1964 on plaintiff's motion and a superseding information was filed (1774 A).

1774–A. *United States* v. *Cascadia Lumber Company*, et al., Cr. 64–73 (D. Ore.). Information filed March 25, 1964, superseding the indictment (Cr. 64–7), charges five corporations and two partnerships with submitting rigged bids for timber purchases for the U.S. Forest Service and allocating Forest Service sales among themselves. The case is pending.

1775. *United States* v. *Alexander & Baldwin, Ltd., et al.*, Civ. 2235 (D. Hawaii). Complaint under section 1 of the Sherman Act and Section 7 of the Clayton Act was filed January 20, 1964 against 5 corporations engaged in the ocean shipping business. It is alleged that the joint acquisition prior to 1959 of 40.2 percent of defendant Matson, the dominant shipping line between Hawaii and the Mainland, by the other 4 defendants who are referred to as the "Big Four" and the acquisition of additional stock, by the Big Four, after Matson redeemed the stock of all its stockholders, with the exception of the Big Four and 3 other large shareholders, increasing their percentage to 73.58 percent is in violation of Section 7 of the Clayton Act and Section 1 of the Sherman Act. Due to the acquisitions, officers and directors of the Big Four have come to hold 12 of the 21 directorships on the Matson board of directors.

The complaint also alleges that control by the Big Four of large percentages of the sugar, pineapple and other business in Hawaii, together with their control of Matson, has resulted in the limitation of actual and potential competition between Matson and other water carriers between Hawaii and the mainland.

The complaint asked that the "Big Four" be required to divest themselves of their entire stock ownership in Matson and that no representative of any of the four firms be permitted to sit on Matson's board of directors. The case is pending.

1776. *United States* v. *New Orleans Chapter, Associated General Contractors of America, Inc., et al.*, Cr. 29371 (E.D. La.).

1777. *United States* v. *New Orleans Chapter, Associated General Contractors of America, Inc.*, Civ. 14190 (E.D. La.). An indictment and complaint under Section 1 of the Sherman Act were filed January 28, 1964 charging 1 trade association and 6 individuals with conspiring to establish an association chapter rule forbidding members to submit bids on anything less than general contractors for entire construction projects, the effect of which is to prohibit chapter members from bidding on projects in which builders or architects deal directly with subcontractors. It is also charged that the defendants and co-conspirators exerted influence upon owners, architects, general contractors and subcontractors in the New Orleans metropolitan area to accept and abide by the rule and the defendants boycotted those builders who refused to abide by this rule and who dealt directly with subcontractors.

The complaint which was filed only against the trade association, in addition alleges that the Association and its membership agreed that each member would include in his bids the cost of quantity surveys and Chapter dues to be paid by the successful bidder.

The complaint seeks, among other things, to prevent the Association from unlawfully dictating the manner in which bids shall be taken for construction work and asks that it be precluded from obtaining quantity surveys for bidders and requiring the inclusion of these and other costs in bids submitted by general contractors. The cases are pending.

1778. *United States* v. *Jantzen Inc., et al.*, Cr. 64–25 (D. Ore.) Indictment under Section 1 of the Sherman Act was returned February 6, 1964 against 4 corporations charging a conspiracy to fix prices of ladies' swimwear. The indictment charges that the defendants and co-conspirators agreed that each would maintain its retail price structure by forcing retaler customers to adhere to preticketed retail prices until price break dates agreed upon by them; agreed upon uniform price break dates; persuaded retailers to maintain preticketed prices until the agreed-on price break dates; and exchanged information and advice on retailers who reduced or attempted to reduce prices before price break dates agreed upon by the defendants and co-conspirators. On March 12, 1964, *nolo* pleas were accepted from all defendants. Fines totalling $68,000 were imposed April 20, 1964.

1779. *United States* v. *United States Steel Corporation, et al.*, 4–64 Criminal 28 (D. Minn.) Indictment under Section 1 of the Sherman Act was returned February 10, 1964 against 6 corporations and 6 individuals charging a conspiracy to restrain in the sale of fabricated structural steel. The indictment charges that the defendants conspired to allocate sales among themselves; to refrain from price competition with each other and to submit rigged bids. It is further charged that the defendants met weekly at various places and allocated specific structural steel jobs among themselves and after a job was allocated to one defendant, the others either did not bid or entered bids that would not obtain the job. The case is pending.

1780. *United States* v. *International Ore & Fertilizer Corporation, et al.*, 64–34 Civil-Tampa (M.D. Fla.). Complaint under Section 1 of the Sherman Act was filed February 11, 1964 against 11 corporations alleging a conspiracy to fix prices in the sale and export of phosphate rock (fertilizer). The complaint alleges that the defendants, which consist of 7 producers of phosphate rock, three oil companies and 2 exporters, used a common agent for export sales which resulted in the elimination of competing exporters selling abroad. It is further alleged that defendants sold phosphate rock for export at common, non competitive prices; and allocated between and among themselves specified tonnages to be sold through the exporters to customers in foreign countries.

The complaint seeks to enjoin the producer-defendants from selling through a common broker and to prohibit the exporter from selling the product of more than one producer. The court was further requested to enjoin each defendant from participating in any Webb Pomerene association for a period of ten years.

On April 3, 1964, defendants International Ore and Fertilizer Corp. (Interore) Phosphate Rock Export Corp. and Occidental Petroleum Co., which had acquired both companies, moved to dismiss, to quash service and for summary judgment on grounds that service had been made on a new corporation with the same name but that the complaint described a predecessor corporation. The Government argued that the alleged conspiracy was continued by the new defendants and was granted time to file a new complaint. The case is pending.

1781. *United States* v. *American Cyanamid Company, et al.*, Civ. 64–39 (M.D. Fla.). Complaint under Section 1 of the Sherman Act was filed February 17, 1964 against 10 corporations alleging a conspiracy to fix prices in the sale of phosphate rock (fertilizer). The complaint alleges that the defendants, which consist of 8 producers of phosphate rock and 2 oil companies, conspired to establish and maintain uniform prices for the purpose of restricting price competition among themselves. The complaint also asserts that the defendants conferred with each other for the purpose of determining whether to increase prices pursuant to the escalation clauses or the reopening provisions of their contracts for the sale of pospate rock; determining the specific amount of proposed price increases to be taken pursuant to the escalation clauses or reopening provisions of their contracts for the sale of phosphate rock; and determining the specific changes in the terms and conditions that would govern the sale of phosphate rock.

On April 29, 1964, an order was entered upon motion of the Government to drop two defendants and to add one defendant and to amend the complaint so as to reflect these changes. The new defendant American Agricultural Chemical Co. is a wholly-owned subsidiary of Continental Oil Co., which had acquired assets, and engages in mining and selling phosphate rock.

The complaint asked the court to forbid continuation of the conspiracy in any way and to order each defendant to issue new and independently determined prices. The case is pending.

1782. *United States* v. *Jos. Schlitz Brewing Company, et al.*, Civ. 42127 (N.D. Calif.). Complaint under Section 7 of the Clayton Act was filed February 19, 1964 against 2 corporations engaged in the manufacture of Beer. The complaint alleges that the acquisition of the asset of Burgermeister Brewing Corporation by defendant Schlitz and the stock acquisition by defendant Schlitz in John Labatt, Ltd., a Canadian brewer, may be substantially to lessen competition, or tend to create a monopoly in the beer industry. The complaint also asserts that if Schlitz is permitted to carry out its plan to acquire a substantial number of shares in John Labatt, Ltd., it would become the largest American brewer.

The complaint seeks a preliminary injunction against acquisition by Schlitz of any Labatt stock, and asks that Schlitz be required to divest itself of the Burgermeister Brewing Corporation. The case is pending.

1783. *United States* v. *Philadelphia Association of Linen Suppliers, et al.*, Civ 35168 (E.D. Pa.). A complaint under Sections 1 and 2 of the Sherman Act was filed February 26, 1964, charging one trade association, ten corporations, one partnership and eight individuals with a conspiracy to restrain, to attempt to monopolize, and to monopolize trade and commerce in furnishing linen supplies.

The alleged conspiracy included refraining from competing for customers, setting fixed prices for linen supplies, submitting rigged bids for linen supplies to public agencies, institutions and hospitals, and harassed other linen suppliers to exclude them from the industry or compel them to join the conspiracy.

At the same time as the filing of the complaint, a consent judgment was entered terminating the case. Under the judgment, the defendants agreed not to fix prices, rig bids, allocate customers, or otherwise restrain trade in violation of Sections 1 and 2 of the Sherman Act. It also requires the defendants to terminate the existence of the trade association and to destroy that Association's file of customer registration cards.

1784. *United States* v. *Jantzen Inc., et al.*, Civ. 64–111 (D. Ore.). A complaint under Section 1 of the Sherman Act was filed March 10, 1964 charging 4 corporations with fixing prices on ladies' swimwear. The complaint alleges that the defedants and co-conspirators agreed that each would maintain its retail price structure by forcing retailer customers to adhere to preticketed retail prices until price break dates agreed upon by them; agreed upon uniform price break dates; persuaded retailers to maintain preticketed prices until the agreed-on price break dates; and exchanged information and advice on retailers who reduced or attempted to reduce prices before price break dates agreed upon by the defendants and co-conspirators.

The complaint asks for an injunction against the continuation of the conspiracy and for other relief including the termination of all contracts or agreements which prescribe the price at which any retailer may sell swimwear. The complaint asks that the defendants be enjoined from preticketing their swimwear with a retail price or from suggesting the price to be charged by retailers and that they be enjoined from refusing to sell swimwear to any retailer where the basis for such refusal is the retailer's failure to sell swimwear at prices suggested by the manufacturer. The case is pending.

1785. *United States* v. *American Pipe and Construction Co., et al.*, Cr. 3338 (S.D. Calif.).

1786. *United States* v. *Kaiser Steel Corporation, et al.*, Cr. 33339 (S.D. Calif.).

1787. *United States* v. *United Concrete Pipe Corp., et al.*, Cr. 33340 (S.D. Calif.).

1788. *United States* v. *United States Industries, et al.*, Cr. 33341 (S.D. Calif.).

1789. *United States* v. *United States Steel Corporation, et al.*, Cr. 33342 (S.D. Calif.). Five indictments under Section 1 of the Sherman Act were returned March 10, 1964 charging six corporations and eight individuals with rigging bids and allocating western sales for pipe used to carry water in ten Western States.

Each indictment charged a separate conspiracy, assertedly resulting in higher prices for the federal government, cities, public water authorities, and private customers.

The indictments involve (1) concrete pipe, (2) steel large diameter pressure pipe, (3) alternate large diameter pressure pipe, (4) alternate small diameter pressure pipe, and (5) steel small diameter pressure pipe.

The defendants were charged with participating in periodic meetings at which they decided which would submit the low bids on various projects according to agreed-upon percentages of the total business.

Fines in the total of $59,750.00 were imposed June 19, 1964 on *nolo* pleas from all defendants which the court had previously accepted over Government's objections.

BB# 1785—$13,000.00; 1976—$5,500.00; 1787—$17,500.00; 1788—$15,750.00; and 1789—$8,000.00.

1790. *United States* v. *Aluminum Company of America, et al.*, Civ. 35353 (E.D. Pa.). Complaint in three counts under Section 1 of the Sherman Act, the False Claims Act and Section 4A of the Clayton Act was filed March 19, 1964 against six manufacturers of aluminum conductor cable.

The complaint alleges a conspiracy among the defendants, to fix, stabilize, and maintain uniform prices, terms, and conditions for the sale of aluminum conductor cable, and to quote such prices to various public agencies and electric utilities. The complaint also alleges a conspiracy among the defendants to defraud the United States in the sale of aluminum conductor cable to the Government.

Count I of the complaint asks for injunctive relief against future price fixing and bid rigging in the distribution and sale of aluminum conductor products. The complaint asks for double damages under the False Claims Act in Count II and alternatively, in Count III, for single damages under the Clayton Act. The case is pending.

1791. *United States* v. *The O. M. Scott & Sons Company*, Civ. 760–64 (D. of D.C.). Complaint under Sections 1 and 3 of the Sherman Act was filed March 30, 1964 against one corporation for fixing prices of lawn care products. The complaint alleges that the defendant and co-conspirators have engaged in an unlawful combination and conspiracy to fix the resale prices of lawn care products manufactured by defendant and have maintained such fixed resale prices in violation of Sections 1 and 3 of the Sherman Act.

The complaint asks that the court prohibit Scott perpetually from carrying out any combination to restrain the sale of its lawn care products and that the defendant be required to take such affirmative action as will dissipate the combination. The case is pending.

1792. *United States* v. *Crown Textile Manufacturing Company, Inc., et al.*, Civ. 35420 (E.D. Pa.). Complaint under Section 7 of the Clayton Act was filed March 31, 1964 against two affiliated corporations engaged in the production of hair canvas, alleging that defendant Crown Textile's acquisition of the inventory and use of name of Puritan Looms, Inc. and Arel-Dillon Mfg. Co., Inc. and defendant York-Dixie's acquisition of the hair canvas manufacuring plant of Arel-Dillon, may substantially lessen competition or tend to create a monopoly in the manufacture and sale of hair canvas.

The complaint states that the two defendants are affiliated with each other and also that the two acquired companies are affiliated with each other The complaint requests that the defendants be required to divest themselves of all assets acquired from Puritan Looms, Inc. and Arel-Dillon Mfg. Co., Inc. and the defendants be enjoined from acquiring assets of any person engaged in the manufacture, distribution, or sale of hair canvas. The case is pending.

1793. *United States* v. *Bay West Paper Company*, Civ. 64–C–86 (E.D. Wisc.). Complaint under Section 1 of the Sherman Act was filed April 1, 1964 charging one corporation with restraining trade in the manufacture, sale and distribution of industrial paper towels.

The complaint alleges that Bay West Paper Company and its distributors have been engaged in a combination, plan, agreement, and understanding pursuant to which (a) the defendant has allocated territories and customers among its distributors; (b) distributors have refrained from selling products of the defendant except to customers allocated to them; and (c) said distributors have maintained resale prices prescribed by the defendant. The complaint also charges that pursuant to the combination, the defendant's distributors agreed to prohibit customers from using certain patented towel cabinets except to dispense Bay West Paper Company's industrial paper towels.

The complaint asks that the defendant be perpetually enjoined from entering into any agreements having similar purpose or effect. The case is pending.

1794. *United States* v. *Piper Aircraft Corporation*, Civ. 8447 (M.D. Pa.). Complaint under Section 1 of the Sherman Act and Section 3 of the Clayton Act was filed April 2, 1964 against one corporation engaged in the sale and distribution of light aircraft.

The complaint alleged that Piper and its franchised distributors and dealers have engaged in an unlawful combination and conspiracy to eliminate price and

other forms of competition among such distributors and dealers in the sale and marketing of Piper light aircraft in violation of Section 1 of the Sherman Act.

The complaint further alleges that the Piper franchise agreements and Piper's policies prohibiting franchised distributors and dealers from selling light aircraft manufactured by Piper's competitors substantially lessened competition in the sale of light aircraft throughout the United States, thereby violating Section 3 of the Clayton Act.

The complaint seeks to enjoin Piper from imposing any restrictions on territories within which, persons to whom, or prices at which distributors or dealers of Piper light aircraft and parts may sell such products, or from requiring its distributors or dealers not to sell other manufacturers airplanes and parts. The case is pending.

1795. *United States* v. *Beech Aircraft Corporation*, Civ. W-31-29 (D. Kansas). Complaint under Section 1 of the Sherman Act and Section 3 of the Clayton Act was filed April 2, 1964 against one corporation engaged in the sale and distribution of light aircraft.

The complaint alleged that Beech and its franchised distributors and dealers have engaged in an unlawful combination and conspiracy to eliminate price and other forms of competition among such distributors and dealers in the sale and marketing of Beech light aircraft.

The complaint further alleged that the Beech franchise agreements prohibiting franchised distributors and dealers from selling light aircraft manufactured by Beech competitors substantially lessened competition in the sale of light aircraft throughout the United States.

The complaint seeks to enjoin Beech from imposing any restrictions on territories within which, persons to whom, or prices at which such distributors or dealers of Beech light aircraft and parts may sell such products, or from requiring its distributors or dealers not to sell other manufacturers airplanes and parts. The case is pending.

1796. *United States* v. *United States Steel Corporation, et al.*, 64 Cr. 344 (S.D.N.Y.). Indictment under Section 1 of the Sherman Act was filed April 7, 1964 in the District Court charging eight corporations and two individuals with eliminating price competition in the sale of carbon steel sheet.

The indictment charged that the defendants and co-conspirators agreed on the establishment of and changes in charges for extras (those component parts of the price of steel which, when added to the base price, constitute the total price of the various qualities and sizes of the sheet products) and, further, that they agreed from time to time on uniform standards and charges for steel sheet products being produced, and for new steel sheet products to be introduced into the market by defendants. The indictment further charged that the defendants held hotel meetings, at which no minutes were kept, to establish and carry out price-fixing agreements. The case is pending.

1797. *United States* v. *Monsanto Company, et al.*, Civ. 64-342 (W.D. Penn.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed April 13, 1964 against three corporations engaged in the production and sale of chemicals (toluenediisocyanate—TDI).

The complaint charges that the creation, by Monsanto and Bayer, of a jointly-owned company (Mobay) and the continuing control exercised by the joint-parents over the activities of Mobay, violates Section 1 of the Sherman Act and Section 7 of the Clayton Act. At the time of Mobay's formation, Monsanto was producing TDI in the United States and Bayer, which was producing TDI in Germany, was exporting the product to customers in the United States. Subsequent to the formation of Mobay, both Monsanto and Bayer terminated their individual efforts to sell TDI in the United States and used Mobay as the means of jointly exploiting their interests in this product. Mobay was formed in 1954 as a device to eliminate competition between Monsanto and Bayer in the production and sale of TDI. The complaint alleges that in addition to eliminating competition between Monsanto and Bayer in the production and sale of TDI, the existence of Mobay has been a deterrent to the entry of potential producers of TDI.

In addition to TDI, the complaint alleges that because of Bayer's desire to use Mobay as the vehicle for the exploitation of all Bayer's developments in the United States, competition may be substantially lessened in the production and sale of other products where Monsanto and Bayer would have pursued their interests individually had it not been for the formation of Mobay.

The complaint asks that the contract between Monsanto and Bayer be dissolved, and that Monsanto and Bayer be enjoined from retaining or acquiring any ownership interest in Mobay; and that Monsanto be enjoined from entering into any joint venture agreement with a competitor. The case is pending.

1798. *United States* v. *Standard Oil Company (N.J.), et al.*, Civ. 64-490 HW (S.D. Calif.). Complaint under Section 7 of the Clayton Act was filed April 14, 1964 against three corporations alleging that the proposed acquisition by Humble of the western operations of the Tidewater Oil Company may substantially lessen competition or tend to create a monopoly in the production and sale of petroleum products. Humble would acquire virtually all of the marketing, manufacturing and transportation assets of Tidewater's western division. The suit charged that the acquisition would eliminate actual and potential competition in the sale of gasoline and other petroleum products, in violation of the Clayton Act.

The Government on April 15, 1964 filed a motion for preliminary injunction seeking to enjoin the consummation of the agreement of sale until after the court had ruled on the merits of the case. A three-judge expediting court continued the hearing to May 26, 1964 by a stipulated order which also provided that the transaction would not be consummated until ten days after the court had ruled on the motion for preliminary injunction.

On April 29, 1964 the defendant Humble Oil & Refining Company, prior to the service by any defendant of an answer to the complaint, formally advised the Government that Humble had notified Tidewater of the termination of the proposed transaction. On the basis of the termination of the agreement the Government dismissed the suit without prejudiec on May 1, 1964.

1799. *United States* v. *Allied Chemical Corporation, et al.*, 64 Civ. 1175 (S.D.N.Y.) Complaint under Section 7 of the Clayton Act was filed April 15, 1964 against two corporations charging that the proposed acquisition by Allied of General Foam's assets may substantially lessen competition or tend to create a monopoly in the production and sale of chemicals (toluenediisocyanate—TDI). The complaint states that Allied is a major producer of toluenediisocyanate (TDI) and other chemicals used in the production of urethane foam. General Foam, the complaint alleges, is the country's second largest manufacturer of flexible, urethane foam, and purchases substantial quantities of TDI.

The complaint charges that the effect of the acquisition of General Foam by Allied would be to deprive independent producers of TDI and other urethane chemicals of an opportunity to compete for the substantial quantities of TDI.

The complaint charges that the effect of the acquisition of General Foam by Allied would be to deprive independent producers of TDI and other urethane chemicals of an opportunity to compete for the substantial market for these chemicals represented by General Foam's purchases. In addition, the complaint alleges that as a result of the acquisition Allied would gain a decisive competitive advantage over other producers of flexible urethane foam which would seriously impair the ability of such producers to compete with the combined company; and that, the effect of the acquisition would be to precipitate similar acquisitions with an eventual lessening in the number of firms producing flexible urethane foam.

The complaint seeks a preliminary injunction restraining the defendants from carrying out the acquisition agreement and that the defendants be enjoined from carrying out said agreements. The case is pending.

1800. *United States* v. *Archer-Daniels-Midland Company, et al.*, Cr. 86-270 (W.D. N.Y.). Indictment under Section 1 of the Sherman Act was filed April 28, 1964, charging twelve corporations and six individuals with fixing prices in the sale of bakery flour. It is alleged that the defendants and co-conspirators agreed to fix, stabilize and maintain prices, terms and conditions of sale of bakery flour to commercial buyers east of the Rockies. The indictment also charges that the defendants held meetings at which they discussed and agreed upon prices, terms and conditions of sale of bakery flour; they adopted and published daily uniform list prices for bakery flour; and between meetings, communicated price changes to each other through two industry "statistical" services. The case is pending.

1801. *United States* v. *J. R. Simplot Company, et al.*, Cr. 33611 (S.D. Calif.). Indictment under Section 1 of the Sherman Act was filed April 30, 1964, charging five corporations with conspiring to eliminate price competition in the sale of fertilizer (dry phosphatic materials).

The indictment charges the defendants with agreeing to apply uniform seasonal discounts, credit terms and price differentials. The defendants are also charged with conspiring to discontinue customer trucking allowances and restricting distributor discounts to purchasers meeting certain proscribed qualifications. *Nolo* pleas were accepted by the court June 15, 1964 from all defendants. The case is pending.

1802. *United States* v. *Arcos Corporation, et al.*, Cr. 64–200 (N.D. Ohio).

1803. *United States* v. *Arcos Corporation, et al.*, Civ. 64–334 (N.D. Ohio). An indictment under Section 1 of the Sherman Act was filed May 11, 1964 charging four corporations with restraining trade in the sale of stainless steel welding electrodes. The indictment charges that the defendants and co-conspirators agreed among themselves to fix and maintain prices for the sale of stainless steel welding electrodes; and to bid uniform prices for the sale of stainless steel welding electrodes to the United States Government.

A companion civil case was filed on the same date against the four corporate defendants asking double damages and forfeitures under the False Claims Act in Count I and alternatively, in Count II, for single damages under Section 4A of the Clayton Act. The cases are pending.

1804. *United States* v. *The E. W. Scripps Company*, Civ. 5656 (S.D. Ohio). Complaint under Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act was filed May 27, 1964, charging 1 corporation with restraint of interstate trade and commerce and with monopolizing the publication of daily newspapers in the Cincinnati area. It is alleged that the acquisition by Scripps of the Cincinnati Enquirer may substantially lessen competition or tend to create a monopoly.

The complaint asks that defendant be required to divest itself of the stock of Cincinnati Enquirer and that Scripps Company and its officers be enjoined in the future from acquiring stock or assets of any company in the publication of daily newspapers in metropolitan Cincinnati. The case is pending.

1805. *United States* v. *General Telephone and Electronics Corporation, et al.*, Civ. 64 CIV 1912 (S.D.N.Y.). Complaint under Section 7 of the Clayton Act was filed June 19, 1964, charging that the proposed acquisition by General Telephone of the capital stock of Western Utilities, a holding company, and its three affiliates may substantially lessen competition or tend to create a monopoly in the manufacture, distribution and sale of products used in furnishing telephone services. It is alleged that the competitors of General Telephone and its subsidiaries may be foreclosed from selling these products.

A stipulated order was entered June 22, 1964, permitting consummation of the merger as scheduled, but requiring General Telephone to maintain each of the acquired companies in a condition as going businesses should the Government prevail on the merits. The case is pending.

1806. *United States* v. *Bowling Proprietors' Association of America, Inc.*, Civ. 64 CIV 1922 (S.D.N.Y.). Complaint under Sections 1 and 2 of the Sherman Act was filed June 23, 1964, charging 1 trade association with restraint of interstate trade and commerce and monopolization in commercial bowling establishments by adopting, enforcing and coercively using tournament eligibility rules. These rules require the league bowler to do this league bowling exclusively in a BPAA establishment, thus curtailing competition.

The suit asks that the BPAA be required to sever connections with any affiliated association which does not conform its tournament eligibility rules with the terms of any final judgment in the case. The case is pending.

1807. *United States* v. *American Pipe and Construction Co., et al.*, Civ. 64–832–TC (S.D. Calif.)

1808. *United States* v. *Kaiser Steel Corporation, et al.*, Civ. 64–833–PH (S.D. Calif.).

1809. *United States* v. *United Concrete Pipe Corp., et al.*, Civ. 64–834–CC (S.D. Calif.).

1810. *United States* v. *U.S. Industries, Inc., et al.*, Civ. 64–835–WB (S.D. Calif.).

1811. *United States* v. *United States Steel Corporation, et al.*, Civ. 64–836 (S.D. Calif.) Five complaints under Section 1 of the Sherman Act, Section 4A of the Clayton Act and False Claims Act were filed June 23, 1964, against 6 corporations, manufacturers of steel or concrete pressure pipe, seeking damages from the defendants growing out of illegal combinations and conspiracies in the production and sale of said water pipe in 10 Western States. (See BB indictments 1785–1789)

The complaints allege that the defendants agree to divide orders for the purchase of steel and/or concrete water pipe and agree to submit rigged and collusive bids. Each complaint concerns a specific agreement in regard to certain types of pipe.

The complaints each contain two counts: The first claims double damages and $2,000 for the conspiracy under the False Claims Act (31 U.S.C. §§ 231–233), and the second, in the alternative, claims recovery of actual damages under § 4A of the Clayton Act (15 U.S.C. § 15A). It is charged that the Government has been financially damaged by paying substantially higher prices for pipe, the amount of which is presently undetermined, due to the illegal conspiracies amongst the defendants. The cases are pending.

1812. *United States* v. *United States Rubber Company*, 64 CIV 1949 (S.D.N.Y.). Complaint under Sections 1 and 3 of the Sherman Act was filed June 24, 1964, charging defendant corporation with restraint of interstate trade and commerce in the sale of "Keds" by stabilizing and maintaining retail prices of Keds, policing retail prices at which Keds are sold, preventing retail dealers from selling or shipping Keds to other retail dealers for resale, withholding all supplies of Keds from retail dealers selling at less than minimum prices or shipping to other retail dealers for resale, and coercing certain price cutting retailers to withdraw all Keds from sale.

The complaint asks that the defendant be enjoined from continuing to carry out its illegal practices, and further that it be enjoined from applying or seeking to apply any State fair trade laws against any person buying or selling "Keds", or suggesting or otherwise disseminating retail price of "Keds". The case is pending.

1813. *United States* v. *Price's Creameries, Inc., et al.*, Cr. 21883 (D. N.Mex.). Indictment under Section 1 of the Sherman Act was filed June 26, 1964, charging 4 corporations with restraint of interstate trade and commerce in the sale of milk to public school systems in Southeastern New Mexico by combining and conspiring to allocate business and submit non-competitive, collusive, and rigged bids and price quotations. Case is pending.

1814. *United States* v. *California Chemical Company, et al.*, Civ. 64–873–S (S.D. Calif.). Complaint under Section 1 of the Sherman Act was filed June 30, 1964, charging 4 corporations with restraint of interstate trade and commerce in the sale of dry phosphatic materials in 11 western states by conspiring to eliminate price competition, by agreeing to allow discounts to only certain purchasers, to establish and maintain a uniform differential between the price for shipping in bags and for shipping in bulk, to apply uniform credit, to discontinue trucking allowance and to set seasonal discounts.

The complaint requests the court to enjoin the continuation of the conspiracy and to order the issuance of new price lists which contain the terms and conditions for the sale. The case is pending.

1815. *United States* v. *Price's Creameries, et al.*, Civ. 5715 (D. N.Mex.) Complaint under Section 1 of the Sherman Act was filed July 6, 1964, charging 4 corporations with restraint of interstate trade and commerce in the sale of milk to public school systems in Southeastern New Mexico by combining and conspiring to allocate business and submit non-competitive, collusive, and rigged bids and price quotations.

The complaint asks for injunctive relief to end the conspiracy and restore competition in the sale and distribution of milk. The case is pending.

1816. *United States* v. *Chrysler Corporation, et al.*, Civ. 709–64 (D. N.J.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed July 30, 1964, charging that the proposed acquisition of Mack Trucks, Inc. by Chrysler Corporation would substantially lessen competition in the truck and diesel engine industries.

The complaint alleges that the acquisition would eliminate actual and potential competition between Chrysler and Mack in the manufacture and sale of trucks and truck parts, and might foreclose diesel engine manufacturers other than Mack from selling to Chrysler.

The complaint also asked that a preliminary injunction be issued restraining the defendants from carrying out the agreement to merge. The court granted the application for a preliminary injunction and enjoined the defendants from any further action to consummate the agreement to merge. The two defendants then terminated the agreement. The case is pending on matters of relief.

1817. *United States* v. *Dymo Industries, Inc.*, Civ. 42672 (N.D. Calif.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed August 3, 1964, charging 1 corporation with conspiring to maintain resale prices and to prevent its United States jobbers, distributors, and retail dealers from selling embossing tools and tape in foreign commerce.

The complaint also alleges that the 1960 acquisition of Roovers-Lotsch Corporation, its only competitor at that time was for the purpose of removing Roovers as an alternate source of embossing tools and tapes. This acquisition violated both Section 7 of the Clayton Act as well as Section 1 of the Sherman Act.

The complaint asks that Dymo be enjoined from continuing or renewing the offenses alleged, from imposing any limitation or restriction on the sale or resale of any product which it manufactures and from applying or seeking to apply any state fair trade laws against any person buying or selling embossing tools and tape. The prayer also requests that Dymo be directed to divest itself of its subsidiary Roovers, Inc., the successor of Roovers-Lotsch Corporation. The case is pending.

1818. *United States* v. *Empire Steel Corporation, et al.*, Cr. 174-94 (D. Colorado). Indictment under Section 1 of the Sherman Act was returned August 6, 1964, charging 5 corporations with conspiring to fix prices in restraint of trade and commerce for Carbon Steel Products. Four defendants have entered *nolo* pleas and fines will be imposed in January. The case is pending.

1819. *United States* v. *Third National Bank in Nashville, et al.*, Civ. 3849 (M.D. Tenn.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act charging that the proposed merger of Nashville Bank into Third National would lessen and impair competition, and substantially increase concentration in commercial banking in the Nashville area.

The complaint asks that the agreement to merge be adjudged to be in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act and that a preliminary injunction issue against these defendants. Preliminary injunction being denied the court is asked to require each defendant to divest itself of all stock, assets and other properties acquired through such merger. The case is pending.

1820. *United States* v. *Johnson & Johnson*, Civ. 840-64 (D. N.J.). Complaint under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act was filed September 16, 1964, charging 1 corporation with monopolizing the sale and distribution of first aid products and baby toiletries through food stores.

The complaint also charges that the defendant has entered into agreements and understandings with wholesale purchasers in the food field which are in unreasonable restraint of trade and which prohibit such purchasers from dealing in products manufactured by the defendant's competitors.

The complaint alleges that J&J in effectuating and carrying out the monopolization has required rack operators, self-service supermarkets and wholesale grocers to agree to and to purchase and display J&J products to the complete or substantial exclusion of competitive products and to purchase the full line of J&J products.

The complaint also charges that J&J granted special discounts to wholesale purchasers who complied with its requirements relating to purchase and display. On the other hand it threatened to and refused to sell to purchasers in this market who refused to agree to or did not comply with its requirements.

Injunctive relief is sought to dissipate the monopoly and to restore free and open competition. The case is pending.

1821. *United States* v. *Commercial Credit Company, et al.*, Civ. 64 C 1605 (N.D. Ill.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed September 22, 1964, against 2 corporations alleging the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the finance-company industry.

The complaint asks that the proposed acquisition by Commercial of General's stock be adjudged a violation of Section 7; that the acquisition agreement between Commercial and General be adjudged a violation of Section 1; that a preliminary injunction issue restraining the defendants from consummating the agreements; and that the defendants be perpetually enjoined from acquiring in any way stock, assets or other interest in each other.

On September 30, 1964, stipulation dismissing action as defendants have abandoned the agreement to merge.

1822. *United States* v. *Burlington Industries, Inc., et al.*, 64 CR 871 (S.D. N.Y.).

1823. *United States* v. *Burlington Industries, Inc., et al.*, 64 CIV 3090 (S.D. N.Y.). An information under Section 1 of the Sherman Act was filed October 9,

1964, charging 6 corporations and 5 individuals with price fixing and illegal restraints of trade in the weaving and selling of glass fiber industrial fabrics. The defendants are charged with holding secret meetings to implement price fixing agreements at various places in New York and using a secret code or veiled terminology to camouflage price fixing agreement and communications.

A complaint filed at the same time charging 11 corporations and 5 individuals with the same violations and asks the court to forbid the defendants to continue price fixing with competitive weavers in the sale of glass fiber industrial fabrics. The cases are pending.

1824. *United States* v. *Gestetner Corporation*, 64 CIV 3121 (S.D. N.Y.). Complaint under Section 1 of the Sherman Act was filed October 14, 1964, charging 1 corporation with illegally allocating territories and fixing prices in the sale of stencil duplicating machines and related machines and parts, and accessories and supplies.

The complaint asserts that the defendant entered into an agreement with its co-conspirators to sell only to classes of customers and in territories allocated to it; and to sell at prices, terms and conditions fixed by defendant.

The complaint asks that the defendant be adjudged in violation of Section 1 of the Sherman Act and that the defendant be perpetually enjoined from continuing or renewing any agreement having similar purpose or effect and to advise its distributors and dealers that they may resell Gestetner products where, to whom, and at such prices as they choose. The case is pending.

1825. *United States* v. *Standard Oil Company (New Jersey), et al.*, Civ 954–64 (D. N.J.). Complaint filed October 22, 1964, against 2 corporations alleging the proposed acquisition of Potash Company of America by Standard Oil Company would violate Section 7 of the Clayton Act. The complaint alleges that the said acquisition of Potash Company of America, would eliminate any competition between the two companies and give Standard the largest domestic potash production facilities of any producer.

The complaint seeks to enjoin defendants from consummating the acquisition and asked the court to issue a temporary restraioning order and preliminary injunction. A temporary restraining order was granted which was extended by a stipulation of the parties and trial scheduled for January 25, 965. The case is pending.

1826. *United States* v. *The Bridge Construction Corporation, et al.*, Cr. 64–28 (D. Maine). A two count indictment under Section 1 of the Sherman Act was filed October 23, 1964, charging 1 corporation and 1 individual with price fixing and conspiring to defraud the federal government in the highway construction business.

Count 1 charges that the defendants and co-conspirators engaged in a conspiracy to fix, raise and stabilize prices; to allocate jobs among themselves; and to submit high non-competitive and rigged bids in violation of Section 1 of the Sherman Act. Count 2 charges the defendants and co-conspirators knowingly and willfully conspired to defraud the U.S., and particularly the Bureau of Public Roads of the U.S. Department of Commerce. The case is pending.

1827. *United States* v. *The Lima News, et al.*, Civ. 64–178 (W.D. Ohio). Complaint under Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act was filed November 19, 1964, charging 1 corporation, a partnership and 3 individuals with conspiring among themselves to monopolize the daily newspaper business in the Ohio area. The complaint alleges that the defendants have attempted to monopolize and have monopolized the newspaper business in Lima, Ohio. The defendants are also charged with having monopolized the newspaper market by acquiring the assets of the Lima Citizen in violation of Section 7 of the Clayton Act.

The complaint asks that the defendants be ordered to divest themselves of their interests in the Lima newspaper, that existing agreements against competition be voided. The case is pending.

1828. *United States* v. *Coast Manufacturing & Supply, Inc.*, Civ. 43028 (N.D. Calif.).

1829. *United States* v. *Burlington Industries, Inc.*, 64 CIV 3543 (S.D. N.Y.).

1830. *United States* v. *Clark-Schwebel Fiber Glass Corp.*, 64 CIV 3544 (S.D. N.Y.).

1831. *United States* v. *J. P. Stevens & Company, Inc.*, 64 CIV 3545 (S.D. N.Y.).

1832. *United States* v. *United Merchants & Manufacturers, Inc.*, 64 CIV 3546 (S.D. N.Y.). Five complaints under Section 1 of the Sherman Act charging the

largest producers of glass fiber industrial fabrics with participating in separate vertical conspiracies with their distribtuion to fix prices and allocate sales territories.

Each suit asked the court for injunctive action to halt the conspiracies and to order each defendant firm to inform its distributors that they are free to buy the fabrics from whomever they wish and to sell to whomever they wish at such prices as they deem proper. The cases are pending.

1833. *United States* v. *Chas. Pfizer & Co., Inc.*, Civ. 15290–1 (W.D. Mo.). Complaint under Section 1 of the Sherman Act was filed December 7, 1964, charging 1 corporation with restraint of trade and conspiring unlawfully with wholesalers and retailers to fix retail prices for Coty cosmetics.

The complaint alleges that defendant would police its resale prices; that competitors of co-conspirator wholesalers and retailers would be required to adhere to resale prices fixed by defendant; that defendant would not sell to, and would attempt to prevent access to Coty products by competitors of co-conspirator wholesalers and retailers who did not adhere to resale prices fixed by defendant.

The complaint asks that the defendant be found in violation of Section 1 of the Sherman Act and that the defendant be perpetually enjoined from continuing, reviving or renewing the alleged conspiracy or any conspiracy having similar purpose or effect. The case is pending.

1834. *United States* v. *Abbott Laboratories, et al.*, Civ. 64 C 2040 (N.D. Ill.). Complaint under Section 7 of the Clayton Act filed December 8, 1964, against 2 corporations alleging that the merger may substantially lessen competition and tend to create a monopoly in the production and sale of nuclear instruments.

The complaint alleges that if the merger were consummated, both defendants would acquire competitive advantages over their rivals by their post-merger ability to sell nuclear instruments and radiopharmaceuticals simultaneously and, possibly, in "packages." The result would be to foster other mergers and, ultimately, to destroy the independent, competitive, growing nuclear instrument industry.

The complaint asks that the proposed merger be declared unlawful; that a preliminary injunction be issued against the defendants restraining them from taking any further action to consummate the agreement; and that each of the defendants be enjoined from acquiring or merging with any manufacturer or producer of radiopharmaceuticals, radiochemicals or nuclear instruments. The case is pending.

1835. *United States* v. *Broadcast Music, Inc., et al.*, 64 CIV 3787 (S.D. N.Y.). A complaint under Section 1 and 2 of the Sherman Act was filed December 10, 1964, charging 2 corporations with combining illegally to monopolize copyrighted music for broadcasting. Because of the attempted monopoly composers assertedly have been denied a competitive market for the sale of licenses to their music and for its performance and their royalties have been depressed.

The complaint asks that the court adjudge that the defendants constitute a combination to restrain and monopolize the copyrighted music business; and that the broadcasters represented by defendant RKO be ordered to divest themselves of the stock of defendant BMI. The case is pending.

1836. *United States* v. *Boston and Maine Corporation, et al.*, Cr. 65–355–S (D. Mass.). A thirty count indictment under Section 10 of the Clayton Act; Section 660, Title 18, U.S. Code; Section 2, Title 18, U.S. Code; and Section 371, Title 18, U.S. Code was filed December 16, 1964, charging 1 corporation and 4 individuals obtained considerable personal profit from business dealings involving the sale or railroad cars.

Counts one and two charge B&M and its officers with selling, without conducting competitive bidding, to a corporation in which the individual defendants had a substantial interest. Counts three thru twenty-nine charge the individual defendants with wilful misapplication of company funds and with aiding and abetting and wilfully permitting the misapplication of such funds. Count thirty charges the individual defendants with a conspiracy to carry out the offenses described above. The case is pending.

1837. *United States* v. *Boston and Maine Corporation, et al.*, Cr. 64–356–S (D. Mass). A three count indictment under Section 10 of the Clayton Act; Section 660, Title 18, U.S. Code; Section 2, Title 18, U.S. Code; and Section 371, Title 18, U.S. Code was filed December 16, 1964, charging that 5 corporations and 4 individuals obtained considerable personal profit from business dealings involving the sale of railroad cars.

Count one charges B&M and three individuals with selling, without conducting competitive bidding, to a corporation in which the individual defendants had a substantial interest. Count two charges all of the defendants except B&M with a conspiracy to carry out the offenses violating Section 660, Title 18, U.S. Code. Count three charges the individual defendants with wilful misapplication of company funds and with aiding and abetting and wilfully permitting the misapplication of such funds. The case is pending.

1838. *United States* v. *American Pipe and Construction Co., et al.*, Civ. 64–1775–PH (S.D. Calif.). A complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed December 21, 1964, against 2 corporations alleging that American's acquisition of the Tubular Products Division of U.S. Industries lessened competition in the small diameter pressure pipe (SDP pipe) market in eight Western States.

The complaint asks that the acquisition be adjudged to be unlawful in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act; that American be required to divest itelf of all interests acquired from USI; and that American be perpetually enjoined from acquiring directly or indirectly and interest in any company engaged in the manufacturer or sale of SDP Pipe. The case is pending.

1839. *United States* v. *The Concentrated Phosphate Export Association, Inc., et al.*, 64 CIV 3914 (S.D. N.Y.). A complaint under Section 1 of the Sherman Act was filed December 21, 1964, charging 1 association and 5 corporations with fixing prices and allocating business to sell the concentrated phosphatic fertilizers they produced to the Republic of Korea under the foreign aid program.

The complaint alleged that the defendants deprived the United States of the right to have its foreign aid program procurement made at free and competitive prices.

The suit asks dissolution of the Association and an injunction against further fixing of prices and allocation of business. Since the Webb Pomerance Act was designed to enable American producers to compete abroad with foreign competitors, it is the Government's position that defendants' actions were outside the permissible use of an export association. The case is pending.

1840. *United States* v. *Pennsalt Corporation, et al.*, Civ. 37123 (E.D. Pa.). Complaint under Section 1 of the Sherman Act was filed December 24, 1964, charging 9 corporations with agreeing among themselves to eliminate price competition by establishing their price of chlor-alkali products jointly, concurrently and in unison. The complaint also alleges that the defendants met at various places to increase prices, exchange competitive and economic facts and information and to discuss chlor-alkali price changes, profit deterioration, inter-product price relationships and price maintenance.

The complaint asks that the court adjudge that the defendants have violated Section 1 of the Sherman Act; that the defendants be perpetually enjoined from continuing to engage in any similar activities. The case is pending.

1841. *United States* v. *Aluminium Limited, et al.*, Civ. 1174–64 (D. N.J.). Complaint under Section 7 of the Clayton Act was filed December 30, 1964, against 3 corporations alleging that defendant Aluminium entered into an agreement with defendant National to acquire National's aluminum Division which may be to substantially lessen competition or tend to create a monopoly in the aluminum siding venetian blind components and awnings industry.

The complaint alleges that the acquisition of National's aluminum fabricating interests would thus give Aluminium a competitive advantage over independent, non-integrated fabricators, to the detriment of actual and potential competition.

The complaint asks that the court issue a preliminary injunction to block the acquisition pending trial and a permanent injunction following trial. The case is pending.

1842. *United States* v. *Owens-Corning Fiberglas Corporation, et al.*, Cr. 40052 (N.D. Calif.). An information under Section 1 of the Sherman Act was filed December 30, 1964, charging 10 corporations and 12 individuals with conspiring to submit collusive and rigged bids on acoustical tile ceiling jobs and allocating such jobs among themselves.

The information also charges that defendants held secret meetings in restaurants and hotels and conducted telephone conversations in which collusive agreements were made deciding which firms would win specific installation jobs; which would submit higher bids and the exact amounts to be bid. The case is pending.

1843. *United States* v. *Citizen Publishing Company, et al.*, Civ. 1969-Tucson (D. Ariz.). Complaint under Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act against 4 corporations was filed January 4, 1965, charging that the proposed merger of the only two daily newspapers in Tucson would violate Section 7 of the Clayton Act. The complaint also charges that the operation of the two newspapers pursuant to the terms of a joint-publishing agreement entered into by the newspapers in 1940 constituted a violation of both the restraint of trade and anti-monopoly sections of the Sherman Act. The complaint asks the court to issue a permanent injunction against the merger and to find the agreements to be illegal and order cancellation. The case is pending.

1844. *United States* v. *Aeroquip Corporation, et al.*, Cr. 41312 (E.D. Mich.). Indictment under Section 1 of the Sherman Act was returned January 14, 1965, charging 1 trade association, 7 corporations and 4 individuals engaged in an unlawful combination and conspiracy in restraint of interstate trade and commerce in hydraulic hose. The combination and conspiracy consisted of a continuing agreement understanding and concert of action to secure a price advantage over their competitors in the purchase of hydraulic hose; persuade and induce hydraulic hose manufacturers to adopt and maintain a classification system based upon qualifications which preclude their competitors from obtaining the lowest price in the purchase of hydraulic hose; persuade and induce hydraulic hose manufacturers to abide by the qualification system under threat of decreased purchases or promise of increased purchases of hydraulic hose; and persuade and induce hydraulic hose manufacturers to adjust their prices in such a manner that the price paid for hydraulic hose by the defendants was less than that paid by their competitors. The case is pending.

1845. *United States* v. *Electric Hose and Rubber Company, et al.*, Cr. 41313 (E.D. Mich.). Indictment under Section 1 of the Sherman Act was returned January 14, 1965, charging 6 corporations and 3 individuals with engaging in an unlawful combination and conspiracy to raise, fix and maintain prices in the sale of hydraulic hose assemblies. All defendants have entered *nolo* pleas. The case is pending.

1846. *United States* v. *The Times Mirror Company*, Civ. 65-366-EC (S.D. Calif.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed March 5, 1965, against 1 corporation engaged in the newspaper business in California. It is alleged that the acquisition and ownership of the stock of the Sun Company, which was the defendant's largest competitor within a 75 mile radius of Los Angeles, constitutes an unlawful contract in violation of Section 1 of the Sherman Act. The complaint further alleges that the effects of the merger may be to lessen competition or tend to create a monopoly in the newspaper industry in the Los Angeles area.

The complaint asked the court to order the Times-Mirror Company to divest itself of its stock in the Sun Company and to forbid the defendant to acquire any other newspaper in the metropolitan Los Angeles area. The case is pending.

1847. *United States* v. *Northern Virginia Beer Wholesalers, Incorporated, et al.*, Cr. 4181 (E.D. Va.). Indictment under Section 1 of the Sherman Act was returned March 11, 1965, charging 1 association, 7 corporations and 8 individuals with participation in a price fixing conspiracy in the sale and distribution of non-premium beer to military installations in Northern Virginia. The indictment charges that the conspiracy began as early as July 1962 and continued with an agreement to increase the price of non-premium beer to the military to uniform levels in line with the commercial or street price of such beer effective November 9, 1964. The case is pending.

1848. *United States* v. *Penick & Ford Ltd., Incorporated, et al.*, Civ. 345-65 (D. N.J.). Complaint under Section 1 of Sherman Act and Section 7 of the Clayton Act was filed April 6, 1965, against 2 corporations, to prevent the proposed acquisition of Penick & Ford by Reynolds Tobacco. Reynolds is the largest tobacco company in the United States and an extremely large purchaser of paper and packaging materials. Penick & Ford is the fourth largest corn starch producing company in the United States and is also a sizeable producer of processed foods.

The complaint alleges that the acquisition agreement if consummated may substantially lessen competition or tend to create a monopoly in the corn starch industry and that the agreement between the defendants constitutes a contract and combination in unreasonable restraint of trade and commerce. The complaint further alleges that reciprocity is a current business condition in the corn starch industry.

The complaint asks that the proposed acquisition be adjudged a violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act and that the defendants be enjoined from consummating the agreement. The case is pending.

1849. *United States* v. *The American Oil Company, et al.*, Cr. 153–65 (D. N.J.).

1850. *United States* v. *The American Oil Company, et al.*, Civ. 370–65 (D. N.J.).

A three count indictment and a complaint under Sections 1 and 2 of the Sherman Act were filed April 8, 1965, charging 8 corporations with fixing the prices of gasoline in Pennsylvania, New Jersey and Delaware. The defendants are charged with fixing prices at two levels, the "tank wagon price" at which gasoline is sold to dealers, and the retail price at which dealers sell to the public.

Count I charges all defendants with having conspired to fix tank-wagon and retail prices in a trading area of New Jersey, Pennsylvania and Delaware and substantially restricting the amount of gasoline available to distributors and dealers selling private brand gasoline.

Counts II and III charges 4 companies with having conspired and attempted to monopolize the sale of gasoline in the trading area, in violation of Section 2 of the Sherman Act, by fixing tank-wagon and retail prices and the substantial restriction of the amount of gasoline available to distributors and dealers engaged in the sale of private brand gasoline.

The complaint asks for injunctive and other relief to compel the adoption by the defendants of competitive policies. The cases are pending.

1851. *United States* v. *R. L. Polk & Company, et al.*, Cr. 41457 Supp. Civ. 13135 (E. D. Mich.). Petition filed April 13, 1965, for an order to show cause why 1 association, 2 corporations and 1 individual, should not be found in criminal and civil contempt for violating certain provisions of a consent decree entered March 16, 1955, prohibiting restraints of trade and monopolization in the sale of city directories.

The petition charges defendants knowingly sold or caused to be sold city directories below cost for the purpose or with the effect of destroying a competitor or eliminating competition in identified towns and cities throughout the United States, in violation of the judgment; also, that respondents knowingly allocated cities, territory and markets for the publication and sale of city directories; hindered, restricted and prevented other publishers from publishing competitive city directories; and refrained from competing or left Association publishers free from competition in identified cities and towns, in violation of the judgment.

The defendants are further charged with engaging in unfair competitive practices to increase its dominant position and to eliminate publishers with limited assets from freely competing in local markets. The case is pending.

1852. *United States* v. *Champion Papers Incorporated*, Civ. 02270 (D. Nebr.). Complaint under Section 7 of the Clayton Act was filed April 19, 1965, against 1 corporation a leading manufacturer of paper and paper products, alleging that 3 acquisitions since 1961 has foreclosed a substantial market for printing and writing paper and paperboard consisting of the acquired companies' purchases for resale; foreclosed a substantial market for envelope papers consisting of the purchases by the envelope manufacturer subsidiaries of Carpenter Paper; and acquired advantages as a paper merchant, as an envelope manufacturer and as a folding box manufacturer which will probably reduce the vigor of competition in the sale of printing and writing papers, envelopes and folding boxes.

The complaint asks that these acquisitions be adjudged illegal and in violation of Section 7 of Clayton Act and that defendant be required to divest itself of all assets formerly held by Carpenter Paper by Whitaker and by Sample-Durick. The case is pending.

1853. *United States* v. *American Hospital Supply Corporation, et al.*, Civ. CA–3–1018 (N.D. Texas). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed May 19, 1965, against 2 corporations charging that the proposed acquisition of the assets of W. H. Curtin & Company, may substantially lessen competition or to tend to create a monopoly in the manufacture, distribution and sale of scientific supplies. The complaint also alleges that the acquisition agreement between the defendants constitutes a contract and combination in restraint of trade.

The complaint asks that a preliminary injunction be issued against the defendants and that they be perpetually enjoined from entering into any similar arrangement. The case is pending.

1854. *United States* v. *Grinnell Corporation, et al.*, Civ. 3508 (D. R.I.). Complaint under Sections 1 and 2 of the Sherman Act and Section 4A of the Clayton

Act was filed June 7, 1965, charging 4 corporations for actual damages sustained by plaintiff as a result of defendants' violation of Sections 1 and 2 of the Sherman Act in the fire and burglar-alarm business. The complaint also alleges that defendants violated Sections 1 and 2 of the Sherman Act by engaging in a conspiracy to monopolize and attempting to monopolize the said business.

The complaint asks for judgment against the defendants for actual damages sustained by plaintiff and that the restraints of trade by defendants be adjudged to be in violation of Sections 1 and 2 of the Sherman Act. The case is pending.

1855. *United States* v. *Curtis Circulation Company, Inc., et al.*, Civ. 611–65 (D. N.J.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed June 9, 1965, against the 2 largest national distributors of publications and their jointly owned subsidiary, National Magazine Service, Inc., charging that the effect of the concurrent acquisition of the stock of N.M.S. by Curtis and Select may be to substantially lessen competition or to tend to create a monopoly. The complaint also alleges that the defendants have engaged in a combination and conspiracy designed to eliminate competition between Curtis and Select and between them and others for dealers space and display of publications.

The court is asked to decree that defendants have violated Section 1 of the Sherman Act and Section 7 of the Clayton Act; that Curtis and Select be enjoined from continuing the aforesaid violations and that they be enjoined from acquiring or holding any ownership or interest in each other or any other person engaged in the distribution or sale of publications and the NMS be dissolved under such terms and conditions as the court may direct. The case is pending.

1856. *United States* v. *Hat Corporation of America, et al.*, Civ. 10980 (D. Conn.). Complaint under Section 7 of the Clayton Act was filed June 11, 1965, charging 2 corporations with entering into an acquisition agreement to substantially lessen competition or tend to create a monopoly in the manufacture, distribution and sale of men's fur felt hats.

The complaint asks the acquisition be adjudged to be in violation of Section 7; that a preliminary injunction be issued enjoining the defendants from consolidating or intermingling the business operations now conducted by Stylepark or its assets or operating personnel with those of HCA; and that HCA be required to divest itself of all the assets, business, goodwill, trade marks and brand names resulting from the acquisition. The case is pending.

1857. *United States* v. *Russell Stover Candies, Inc., et al.*, Civ. 11474 (W.D. N.Y.). A complaint under Section 7 of the Clayton Act was filed June 28, 1965, seeking to enjoin the proposed acquisition of Fanny Farmer Candy Shops, Inc., by Russell Stover Candies, Inc. It is alleged that the proposed acquisition if consummated, would eliminate actual and potential competition between Stover and Farmer; might substantially lessen competition generally in high quality boxed or packaged candy industry; would unduly increase concentration in that industry; and would foster the cumulative process of mergers and acquisitions in that industry.

Before the hearing on the Government's motion for a preliminary injunction, the boards of directors of Stover and Farmer voted to terminate and abandon the acquisition agreement. The Government's motion to dismiss the complaint without prejudice was granted June 29, 1965, thus terminating the case.

1858. *United States* v. *Mercantile Trust National Association, et al.*, Civ. 65–C–241(1) (E.D. Mo.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed July 7, 1965, against 2 associations charging that the proposed merger between Mercantile Trust and Security Trust would lessen competition and tend to create a monopoly in commercial banking in and around St. Louis.

The complaint asks that the agreement to merge be adjudged to be in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act and that a preliminary injunction issue against these defendants. Preliminary injunction was denied from the bench and the banks merged. The case is pending.

1859. *United States* v. *Falstaff Brewing Corporation et al.*, Civ. 3523 (R.I.). Complaint under Section 7 of the Clayton Act was filed July 13, 1965, against 2 corporations alleging that the proposed merger between the defendants may be substantially to lessen competition or to tend to create a monopoly in the production and sale of BEER in the New England area.

The complaint asks that the proposed merger be adjudged to be in violation of Section 7 of the Clayton Act and that a preliminary injunction issue and that

the defendants be perpetually enjoined from acquiring or transferring any stock, assets or other interest in each other. The court denied the Government motions for a stay of the acquisition agreement. On September 21, Narragansett was dismissed as a defendant. The case is pending.

1860. *United States* v. *The American Oil Company, et al.*, 65 CR 150(3) (E.D. Mo.). Indictment under Section 1 of the Sherman Act was returned July 22, 1965, charging 18 corporations and 17 individuals with submitting collusive, non-competitive and rigged bids and price quotations and allocated among themselves the sale of LIQUID ASPHALT to the State of Missouri. The indictment states that the violations have fraudulently denied the State of Missouri the right to receive competitive sealed bids and price quotations in the purchases of its liquid asphalt requirements and has been denied the right of buying liquid asphalt from suppliers of its own choice. All defendants entered *nolo* pleas and were fined a total of $609,500 on November 19, 1965, thus terminating the case. Each individual defendant was given a six-months suspended jail sentence.

1861. *United States* v. *Burlington Industries, Inc., et al.*, 65 Civ. 2293 (S.D. N.Y.).

1862. *United States* v. *Burlington Industries, Inc.*, 65 Civ. 2294 (S.D. N.Y.).

1863. *United States* v. *J. P. Stevens & Company, Inc.*, 65 Civ. 2295 (S.D. N.Y.).

1864. *United States* v. *United Merchants & Manufacturers, Inc.*, 65 Civ. 2296 (S.D. N.Y.).

1865. *United States* v. *Clark-Schwebel Fiber Glass Corporation*, 65 Civ. 2297 (S.D. N.Y.).

1866. *United States* v. *Coast Manufacturing and Supply Corporation*, Civ. 43887 (N.D. Calif.). Six two-count complaints under Section 1 of the Sherman Act, Section 4A of the Clayton Act and False Claims Act were filed July 27, 1965, against 6 corporations engaged in the production of glass fiber industrial fabrics. The case Burlington (BB 1861) names all 5 defendants plus the other cases are single defendants.

The complaints seek damages suffered by the Government in its capacity as a purchaser of glass fiber industrial fabrics particularly for use in defense, aerospace and missile programs. The complaints allege that conspiracies between the defendants, and seperately between each defendant (with the exception of Exeter Manufacturing Company) and its independent distributors, resulted in higher prices being paid by federal governmental agencies.

The complaints also allege that the conspiracies resulted in the Government paying substantially higher prices to its cost-plus fixed-fee contractors, who sold products to the Government.

The complaints each contain two counts: Count 1 is under the False Claims Act and seeks double damages and forfeitures while count 2 claims, in the alternative, actual damages under Section 4A of the Clayton Act. The cases are pending.

1867. *United States* v. *Pennzoil Company et al.*, Civ. 65–838 (W.D. Pa.). Complaint under Section 7 of the Clayton Act was filed August 4, 1965, charging that the proposed merger of Kendall Refining Company into Pennzoil Company will eliminate competition between them in the purchase of Penn grade crude oil; eliminates Kendall as a substantial factor in the purchase of such crude oil and substantially increase concentration in the production and purchase of Penn grade crude oil and tend to create a monopoly.

The complaint asks that the proposed merger be adjudged to be in violation of Section 7 of the Clayton Act; that a preliminary injunction issue; and that defendants be pereptually enjoined from consummating the agreement to merge. December 30, 1965, the court handed down an opinion granting the preliminary injunction. The case is pending.

1868. *United States* v. *Associated Aviation Underwriters et al.*, 65 Civ. 2400 (S.D. N.Y.).

1869. *United States* v. *United States Aviation Underwriters, Inc. et al.*, 65 Civ. 2401 (S.D. N.Y.). Two complaints under Sections 1 and 2 of the Sherman Act were filed August 5, 1965, (BB 1868) against 2 associations and 1 individual, (BB 1869) against 1 association and 1 corporation, alleging separate conspiracy by two underwriting pools to restrain and monopolize interstate and foreign trade and commerce in aviation insurance and reinsurance.

Both complaints allege that the principal terms of each conspiracy were to prohibit each member company from engaging in aviation insurance and reinsurance, except in combination with the other member companies; to allocate

to each member company a certain participation quota in the total aviation insurance business of the members pool; to exclude certain types of insurance companies from each pool; to suppress competing aviation insurance underwriters; and to prevent the forming of new aviation insurance pools.

Both complaints ask that the court decree, among other things, the dissolution of defendants' aviation insurance pools and that the court regulate any future group activities of defendants in the field of aviation insurance and reinsurance. The cases are pending.

1870. *United States* v. *Bethlehem Steel Company et al.*, Cr. 35325 (S.D. Calif.) Indictment under Section 1 of the Sherman Act was returned September 28, 1965, charging 2 corporations with engaging in a conspiracy to fix prices on the sale and manufacture of subsurface pumps and subsurface pump parts. The indictment charges the defendants under an agreement going back to 1960, sold pumps and parts at identical prices set by Youngstown at the same level as prices of other manufacturers. Bethlehem refrained from selling the products brought from Youngstown in California, Oregon, Washington and Alaska and Bethlehem would discontinue, where practical, the handling of competitive pumps and parts. All defendants entered *nolo* pleas and were fined a total of $11,000, on October 26, 1965.

1871. *United States* v. *Armco Steel Corporation et al.*, Cr. 35326 (S.D. Calif.). A two-count indictment under Section 1 of the Sherman Act was returned September 28, 1965, charging 11 corporations with fixing prices in the manufacture and sale of subsurface pumps and subsurface pump parts. Count 1 alleges 77 defendants have engaged in a conspiracy to raise, fix, maintain, and stabilize prices of subsurface pumps and parts sold in California and service charges for the assembly, maintenance, and repair of subsurface pumps. Count 2 alleges that 11 corporations combined and conspired to raise, fix, maintain, and stabilize prices of subsurface pumps and parts sold in the United States by raising by 10 percent the prices published in the respective price lists of the defendants. The case is pending.

Count 2 charges 10 defendants with having combined and conspired to raise, fix, maintain and stabilize prices of subsurface pumps and parts sold in the United States by raising by 10 percent the prices published in the respective price lists of the defendants.

The complaint asks that the defendants named in counts 1 and 2 be adjudged in violation of Section 1 of the Sherman Act; and that the defendants be perpetually enjoined from continuing or renewing the conspiracy hereinbefore alleged or engaging in any other conspiracy having similar purpose or effect. The case is pending.

1873. *United States* v. *Bethlehem Steel Company et al.*, Civ. 65–1426–IH (S.D. Calif.). Complaint under Section 1 of the Sherman Act was filed September 28, 1965, against 2 companies engaged in the sale of subsurface pumps and subsurface pump parts. The complaint alleges that the defendants have engaged in a conspiracy that Youngstown and Bethlehem would make domestic sales of subsurface pumps and parts manufactured by Youngstown at identical prices to be established by Youngstown; that Youngstown would establish said prices for pumps and parts at the same level as the prices of other manufacturers of pumps and parts in the United States; that Bethlehem would refrain from selling subsurface pumps and pump parts purchased from Youngstown in the State of California, Oregon, Washington and Alaska; and that Bethlehem would discontinue where practical the handling of competitive subsurface pumps and parts and would purchase and resell wherever possible.

The complaint asks that the court adjudge that the defendants have violated Section 1 of the Sherman Act; and that the defendants be perpetually enjoined from continuing, maintaining or renewing, directly or indirectly any conspiracy hereinbefore alleged or engaging in any other conspiracy having a similar purpose or effect. The case is pending.

1874. *United States* v. *Allis-Chalmers Manufacturing Company et al.*, Civ. 65 C 253 (E.D. Wisc.). Complaint under Section 7 of the Clayton Act was filed September 30, 1965, against 2 corporations engaged in the sale of riding garden tractors and attachments. The complaint alleges that the proposed merger of Simplicity Manufacturing Company into Allis-Chalmers Manufacturing Company will lessen competition or tend to create a monopoly. The complaint also alleges that the merger will result in an elimination of actual and potential competition between Allis-Chalmers and Simplicity, a lessening of competition in general, and increase in industry concentration and foster other mergers.

The complaint asks that the proposed merger be adjudged a violation of Section 7 of the Clayton Act; that a preliminary injunction issue; and that defendants be perpetually enjoined from entering into the aforesaid illegal practices. The case is pending.

1875. *United States* v. *Herff Jones Company et al.*, Civ. IP65–C–465 (S.D. Ind.). Complaint under Section 1 of the Sherman Act and Section 7 of the Clayton Act was filed October 4, 1965, in the Eastern District of Pennsylvania and then transferred, against 2 corporations and 2 individuals engaged in the manufacture and sale of class rings. The complaint alleges that the corporate defendants conspired to have the individual defendants John T. Waugh and Robert G. Waugh assume managerial control of both companies and then cause Herff and Roberts to merge. The complaint alleges that the proposed merger will eliminate competition in the sale of class rings and that Roberts will be eliminated as an independent competitive factor.

The complaint asks for a preliminary and permanent injunction to prevent the merger. It also requests that the individual defendants, John Waugh and Robert Waugh, be enjoined from simultaneously holding an office in both Herff and Roberts. This case is pending.

1876. *United States* v. *Pyrotronics, Inc.*, Civ. 1115–65 (D. N.J.). Complaint under Sections 1 and 3 of the Sherman Act was filed October 15, 1965, against 1 corporation engaged in the sale and distribution of automatic fire and smoke detection equipment. The complaint alleges that the defendant and co-conspirators have engaged in an unlawful conspiracy in restraint of trade whereby co-conspirator distributors are restrained from selling to the United States Government or agencies thereof, to original equipment manufacturers, to certain designated National Accounts and for export to foreign countries by the terms of Manufacturer-Distributor contracts; allocated customers, classes of customers and territories among defendant and its co-conspirator distributors; co-conspirator distributors are restrained from reselling to customers, classes of customers and in territories not allocated to them by Pyrotronics.

The complaint asks that the court find the defendant in violation of Sections 1 and 3 of the Sherman Act; that the company be required to revise its distributor contracts to give Pyrotronics customers the benefit of a free competitive market. The case is pending.

1877. *United States* v. *Association of American Weighmasters, Inc.*, 65 Civ. 3342 (S.D. N.Y.). Complaint under Section 1 of the Sherman Act was filed November 8, 1965, against 1 trade association alleging that the defendant and co-conspirators conspired to fix and promulgate prices to be charged by its members for weighmaster services and the members of the association adhere to the prices thus fixed and promulgated.

The complaint asks that the defendant be perpetually enjoined from carrying on any activities to fix or promulgate prices for weighmaster services. The court is also asked to issue such orders with respect to membership in AAW as are necessary to assure that the membership of AAW abides by any final judgment entered by the court. The case is pending.

1878. *United States* v. *Rheingold Corporation et al.*, 65 Civ. 3372 (S.D. N.Y.). Complaint under Section 7 of the Clayton Act was filed November 9, 1965, against 4 corporations engaged in the production and sale of beer challenging the acquisition of assets of Ruppert by Rheingold Breweries, Inc. The complaint alleges that competition between Ruppert and Rheingold Breweries will be eliminated; competition generally in the production and sale of beer may be substantially lessened; concentration in the production and sale of beer will be substantially increased and mergers and acquisitions in the beer industry may be fostered to the detriment of competition.

The complaint asks that Rheingold and Rheingold Breweries be perpetually enjoined and restrained from acquiring interest in Ruppert, and that National and Ruppert be perpetually enjoined and restrained from transferring any stock, assets or other interest in Ruppert to Rheingold or Rheingold Breweries. The case is pending.

1879. *United States* v. *Anthracite Export Association et al.*, Civ. 9171 (M.D. Pa.). Complaint under Sections 1 and 2 of the Sherman Act was filed November 10, 1965, against an export trade association and 8 corporations engaging in a conspiracy in restraint of and to monopolize the production and sale of anthracite coal. The complaint alleges that the 6 anthracite producers, combined through the Anthracite Export Association and the 2 wholesalers, Foreston

Coal Company and Foreston Coal Export Corp., to carry out the alleged violations. The complaint alleges the defendant producers used the export association to fix prices of anthracite and to allocate the Army business among themselves. The complaint also alleges that the defendant producers further eliminated competition by agreeing to offer anthracite under this program exclusively through the Foreston companies; that defendants hindered rival domestic exporters from quoting on and purchasing anthracite produced by nonmembers of the export association, by exerting pressures and invoking continuing sales agency and sales agreements; and that defendants and the Dutch co-conspirator resorted to bidding tactics, including the use of quantity discounts, designed to prevent other producers, exporters and importers from obtaining some of the Army business.

The complaint asks an injunction against the alleged price-fixing, allocation of Army business, joint bidding and other activities which have deprived the United States of the right to buy anthracite for the Army at free and competitive prices, and prevented other producers and exporters from competing freely in this substantial Army business. The case is pending.

1880. *United States* v. *Robert G. Venn et al.*, 65–535–CR–WM (S.D. Fla.) Indictment under Section 1 of the Sherman Act was returned December 13, 1965, against 11 corporations and 4 individuals engaged in the distribution and sale of milk and milk products. The indictment charges that defendants entered into a conspiracy to fix and maintain prices in the distribution and sale of milk and milk products in the Miami area, to refrain from taking one another's customers, to report violations of the agreement to a public relations company for correction, and to take various other steps toward preserving market stability. The case is pending.

1881. *United States* v. *Pittsburgh Brewing Company et al.*, Civ. 65–1406, (W.D. Pa.). Complaint under Section 2 of the Sherman Act and Section 7 of the Clayton Act was filed December 28, 1965, against 1 corporation and 1 individual engaged in the production and sale of beer. The complaint alleges that defendants have attempted to monopolize the sale and distribution of beer in 7 markets in Pennsylvania, Ohio and West Virginia and that defendants sought to acquire for Pittsburgh Brewing a controlling interest in Duquesne Brewing; and that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the production and sale of beer in the same 7 markets.

The complaint asks the court that a temporary restraining order and a preliminary injunction issue and that defendants be required to divest themselves of any Duquesne stock and that they be enjoined from any actions that would give them any control or influence over Duquesne in the future.

On December 29, 1965, after hearing on the Government's motion for temporary restraining order, the parties entered into a court-approved stipulation which is to remain in effect until after final disposition of the case. The defendants agreed not to vote any stock of Duquesne and not to in any manner control or attempt to control the conduct, policies or operations of Duquesne. The case is pending.

1882. *United States* v. *First National City Bank et al.*, Civ. 65–3963, (S.D. N.Y.). Complaint under Section 7 of the Clayton Act was filed December 30, 1965, against 1 banking association and 4 corporations engaged in the credit card industry. The complaint alleges that First National City Bank, Hilton Hotels Corporation and Hilton Credit Corporation proposed to consummate a plan of acquisition and merger on December 31, 1965, whereby Carte Blanche would acquire all of the outstanding shares of, and merge with, Hilton Credit Corporation. Under the plan shareholders of Hilton Credit, including Hilton Hotels Corporation, would receive approximately $12 million and a 50 percent economic interest in Carte Blanche. FNCB Service would retain voting control and a 50 percent economic interest in Carte Blanche.

The complaint asks the court for the issuance of a temporary restraining order and preliminary injunction to enjoin the parties from taking any action to consummate the proposed acquisition pending adjudication of the matter on the merits.

The temporary restraining order was granted December 30, 1965, the hearing on the preliminary injunction was set for January 4, 1966. The case is pending.

1883. *United States* v. *D. D. Bean & Sons, Co., et al.*, 66 CR 11 (S.D. N.Y.).

1884. *United States* v. *D. D. Bean & Sons, Co., et al.*, 66 CIV 64 (S.D. N.Y.). An indictment and complaint under Section 1 of the Sherman Act were filed January

10, 1966, charging 9 corporations and 4 individuals with engaging in a conspiracy to raise, fix and stabilize prices at which they would sell resale book matches.

The corporations named in the indictment were also named in the civil case with the exception of 1 company and no individuals were named. The complaint asks that each defendant be enjoined from continuing or renewing the combination and conspiracy as alleged.

On April 6 and April 27, 1966, *nolo* pleas were accepted and fines in the amount of $110,000.00 were imposed by Judge Palmieri on 4 corporations. The cases are pending.

1885. *United States* v. *International Pipe and Ceramics Corporation, et al.*, Cr. 9–66 (D. N.J.). Indictment under Section 1 of the Sherman Act was filed January 11, 1966, charging 3 corporations and 3 individuals with a conspiracy to fix prices, to allocate and divide orders, and to submit collusive price quotations for certain types of nonpressure concrete pipe.

An April 29, 1966, 4 defendants were fined a total of $70,000.00 on their pleas of *nolo contendere* previously accepted over the Government's objections. On May 4, 1966, the remaining defendant was dismissed, thus terminating the case.

1886. *United States v. International Pipe and Ceramics Corporation, et al.*, Cr. 10–66 (D. N.J.). Indictment under Section 1 of the Sherman Act was filed January 11, 1966, charging 5 corporations with a conspiracy to fix prices, allocate and divide orders, and to submit collusive price quotations for low pressure concrete pipe in northern New Jersey.

On April 29, 1966, 4 defendants were fined a total of $71,000.00 on their pleas of *nolo contendere* previously accepted over the government's objection. On May 4, 1966, the remaining defendant was dismissed, thus terminating the case.

1887. *United States* v. *Associated Cement Contractors of Michigan, Inc.*, Cr. 41932 (E.D. Mich.). Indictment under Section 1 of the Sherman Act was returned January 11, 1966, charging an association with engaging in a conspiracy to fix prices for cement installations in the Detroit area. The association is charged with agreeing to increase the price, fix and maintain a minimum price, halt installations for and refuse to contract with home builders who did not agree to pay the minimum price for cement installations; and refrain from soliciting the business of any home builder who is the customer of another association member. The case is pending.

1888. *United States* v. *United Concrete Pipe Corporation, et al.*, Cr. 3–690 (N.D. Texas). Indictment under Section 1 of the Sherman Act was returned January 20, 1966, charging 2 corporations and 1 individual with engaging in a conspiracy to fix prices, allocate jobs and rig bids in the sale of concrete pressure pipe in Texas. The case is pending.

1889. *United States* v. *American Honda Motor Company, Inc., et al.*, Cr. 35909 (S.D. Calif.). Indictment under Section 1 of the Sherman Act was returned March 15, 1966, against 1 association, 1 corporation and 6 individuals charging that the Association has been used by its members and American Honda as a vehicle for fixing and maintaining uniform retail prices in the sale of Honda motorcycles, parts and accessories in the greater Los Angeles area.

On March 30, 1966, all defendants pled *nolo contendere* and fines totalling $21,700 were imposed June 10, 1966. Each individual was placed on probation for 1 year, thus terminating the case.

1890. *United States* v. *Ace Drill Bushing Co., Inc., et al.*, Cr. 35941 (S.D. Calif.).

1891. *United States* v. *Ace Drill Bushing Co., Inc., et al.*, Civ. 66–483TC (S.D. Calif.). An indictment and complaint under Section 1 of the Sherman Act were filed March 17, 1966, charging 10 corporations and 8 individuals with engaging in a conspiracy to fix prices, so as to suppress competition and deprive customers of the opportunity to purchase drill jig bushings under competitive conditions.

The complaint which names only the 10 corporations requests that defendants be restrained from exchanging price information and required to withdraw their present price lists and subsequently issue independently achieved price list. The complaint request relief to the extent that each defendant and its successors be perpetually restrained from engaging in any price fixing conspiracy.

On April 26, 1966, all defendants were fined a total of $49,000.00 on their pleas of *nolo contendere*, accepted over the Government's objections, thus terminating the criminal case. The civil case is pending.

1892. *United States* v. *National Cleaning Contractors, Inc., et al.*, 66 Civ. 885 (S.D. N.Y.). Complaint under Section 7 of the Clayton Act was filed March 28, 1966, against 2 corporations alleging that the proposed merger between the

defendants may substantially lessen competition or tend to create a monopoly in the sale of general cleaning and maintenance contracting services in the metropolitan New York area and other areas where National and Kinney sell such services. The Government asked for an immediate temporary restraining order and for preliminary and permanent injunctions against the merger.

A proposed stipulation and final judgment was filed June 22, 1966, to be final in 30 days. The case is pending awaiting the entry of this judgment.

1893. *United States* v. *Provident National Bank, et al.*, Civ. 40032 (E.D. Pa.). Complaint under Section 7 of the Clayton Act was filed April 1, 1966, against 2 associations alleging that the proposed merger between the defendants may be substantially to lessen competition or to tend to create a monopoly in commercial banking in the Philadelphia area.

The complaint is the first to be filed since the Bank Merger Act was amended February 21, 1966. The new legislation provides that upon the filing of the complaint the merger transaction is automatically stayed pending adjudication or a specific order of the court providing otherwise. The new law also makes it possible for the Federal supervisory agency approving the merger, in this case the Comptroller of the Currency, to appear as a matter of right in the proceedings and be represented by counsel. The case is pending.

1894. *United States* v. *Socony Mobil Oil Company, et al.*, KC CR 873 (D. Kans.).

1895. *United States* v. *Socony Mobil Oil Company, et al.*, Civ. 2487 (D. Kans.). Indictment and complaint under Section 1 of the Sherman Act were filed April 5, 1966, charging 10 corporations, with engaging in a conspiracy to fix prices, allocate dleivery locations, and rig bids in the sale of liquid asphalt to the state of Kansas. Eight of the 10 defendants were also charged in a companion civil case.

The complaint asks for an injunction against similar bid rigging conspiracies in the sale of liquid asphalt to any customers in the United States. It further asks that defendants be required in submitting a sealed bid on liquid asphalt to any Federal, State or local Government to submit with such a bid an affidavit certifying that the bid was arrived at without collusion. The cases are pending.

1896. *United States* v. *Minnesota Mining and Manufacturing Company*, Civ. 66 C 627 (N.D. Ill.). Complaint under Sections 1 and 2 of the Sherman Act was filed April 7, 1966, against 1 corporation alleging that the defendant attempted to control the industries by systemic coercion of competitors, through suits or threatened suits for patent infringement, to accept illegal patent license agreement in the manufacturing and selling of pressure sensitive tape, magnetic recording tape and aluminum presensitized lithographic plates. In each industry the defendant is charged with an attempt to monopolize and in both the plate and pressure sensitive tape industries, it is charged with entering into contracts in restraint of trade.

The complant alleges that by said license agreements defendant was able to fix licensee's resale prices, set royalty rates on increasing basis as licensee's sales increaed, prohibit private brand selling, require a grant back license under certain conditions and require licensee to assist Minnesota in any litigation.

The complaint asks for a court order requiring 3M to issue royalty-free licenses on its patents in effect in the industries at the time of the order and to issue reasonable royalty licenses on such patents obtained during the ucceeding 10 years. The case is pending.

1897. *United States* v. *Schenley Industries, Inc., et al.*, 66 CIV 1175 (S.D. N.Y.). Complaint under Section 7 of the Clayton Act was filed April 25, 1966, against 2 corporations alleging that the proposed acquisition may be substantially to lessen competition or to tend to create a monopoly in the sale of Scotch whiskey and distilled spirits.

The complaint asks that the proposed acquisition be adjudged to be in violation of Section 7 of the Clayton Act and that a preliminary injunction issue and that Schenley be enjoined from acquiring, stock or assets of any other company engaged in the production, importation or sale of distilled spirits in the United States. The case is pending.

1898. *United States* v. *Permatex Company, Inc.*, Civ. 66 C 395 (E.D. N.Y.). Complaint under Section 1 of the Sherman Act was filed April 28, 1966, against 1 corporation alleging that Permatex, its warehouse distributors, reporting distributors and jobbers, conspired for the purpose of restricting price competition and refused to sell maintenance chemical products to discount houses and other price cutting retailers and to persons who resell such products to discount houses and other price cutting retailers.

The same day a stipulation and proposed judgment was filed with the usual 30-day waiting period. The judgment was entered on June 2, 1966, and grants appropriate relief against the alleged boycott of discount houses and other price cutting retailers, also gives appropriate relief against price fixing by Permatex.

1899. *United States* v. *First National Bank of Hawaii, et al.*, Civ. 2540 (D. Hawaii). Complaint under Section 7 of the Clayton Act was filed June 10, 1966, against a commercial bank not engaged in the trust business and a trust company not engaged in the commercial banking business alleging that the merger agreement if consummated may be substantially to lessen competition or to tend to create a monopoly in the banking and trust field in the Hawaii area.

The complaint asks that the defendant be enjoined from carrying out the merger agreement.

Under the new Bank Merger Act amendment, the filing of the complaint automatically suspends the merger pending court action. The case is pending.

1900. *United States* v. *First National Bank of State College, et al.*, Civ. 9433 (M.D. Pa.). Complaint under Section 7 of the Clayton Act as filed June 17, 1966, against 2 banking associations alleging that the proposed merger between the defendants may be substantially to lessen competition or to tend to create a monopoly in commercial banking in Centre County, Pennsylvania.

The complaint asks that the defendants be enjoined from carrying out the agreement of merger or any similar plan or agreement, the effect of which would be to merge, consolidate or in any other way combine the businesses of defendants.

Under the new Bank Merger Act amendment, the filing of the complaint automatically suspends the merger pending court action. The case is pending.

1901. *United States* v. *Reed Roller Bit Company, et al.*, Civ. 66–248 (W.D. Okla.). Complaint under Section 7 of the Clayton Act was filed June 21, 1966, against 3 corporations alleging that the acquisition between Reed and American may be substantially to lessen competition or to tend to create a monopoly in the production and sale of tool joints and drill collars products essential to oil well drilling.

The complaint asks for a court order requiring either revocation of the acquisition agreement or the sale by Reed of the assets it acquired in the transaction. The case is pending.

1902. *United States* v. *The College of American Pathologists*, Civ. 66 C 1253 (N.D. Ill.). Complaint under Sections 1, 2 and 3 of the Sherman Act was filed July 7, 1966, against 1 association alleging that the defendant and its co-conspirators have conspired in an attempt to monopolize and have monopolized the trade and commerce in commercial medical laboratories. The complaint asserts that the conspiracy was aimed at the operation of the laboratories solely for the profit of pathologists, elimination of any such laboratories owned or operated by others—such as chemists, biologists or physicists—regardless of the quality of their work and an absence of price competition among members of the association.

The complaint seeks to enjoin the defendant from continuing these activities and asks that the court grant whatever relief it considers necessary to restore competition in the medical laboratory industry. The case is pending.

1903. *United States* v. *Phillips Petroleum Company, et al.*, Civ. 66–1154–FW (S.D. Calif.). Complaint under Section 7 of the Clayton Act was filed July 13, 1966, against 2 corporations alleging that the acquisition by Phillips of Tidewater's Western Marketing and Manufacturing Division would reduce competition in the sale of motor gasoline in California, Oregon, Washington, Arizona and Nevada, between the defendants.

The court denied the Government's motion for a temporary restraining order and took the motion for preliminary injunction under advisement, which was later denied.

The complaint asks that the companies be enjoined from consummating the acquisition and that Tidewater be enjoined from selling any part of its western division to any major oil company without approval of the Department. The case is pending.

1904. *United States* v. *Florists' Transworld Delivery Association*, Civ. 28784 (E.D. Mich.). Complaint under Sections 1 and 2 of the Sherman Act was filed August 1, 1966, against 1 corporation alleging a conspiracy to monopolize and restrain the wire order flower trade. The complaint states that the association fixed nation-wide prices of floral arrangements; fixed nation-wide commissions and service charges; and regulated and restricted the content of members advertising.

The complaint asks for a court order against the asserted monopolistic and restrictive practices by FTD. The case is pending.

1905. *United States* v. *American Honda Motor Company, et al.*, Cr. 40956 (N.D. Calif.). Indictment under Section 1 of the Sherman Act was returned August 3, 1966, charging 1 corporation, 1 association and 7 individuals with conspiring to fix, maintain and stabilize retail prices of Honda motorcycles, parts and accessories sold in the San Francisco Bay Area. The case is pending.

1906. *United States* v. *American Honda Motor Company, Inc., et al.*, 66 CR 574 (N.D. Ill.). Indictment under Section 1 of the Sherman Act was returned September 12, 1966, charging 2 corporations and 5 individuals with conspiring to fix, maintain and stabilize retail prices of Honda motorcycles, parts and accessories sold in the Chicago area. The case is pending.

1907. *United States* v. *Chicago Linen Supply Association*, 66 CR 575 (N.D. Ill.).

1908. *United States* v. *Chicago Linen Supply Association, et al.*, Civ. 66 C 1652 (N.D. Ill.). Indictment and complaint under Section 1 of the Sherman Act were filed September 12, 1966, against the association charging a conspiracy with its member firms to refrain from soliciting each other's customers and to stabilize and maintain non-competitive prices for furnishing linen supplies to customers in the Chicago, Illinois area.

In addition to the association the complaint charges 11 corporations and 2 individuals with the same illegal practices.

The complaint asks that defendants be enjoined from engaging in the conspiracy alleged or any other activities having similar purpose or effect, and that defendants be required to issue new price lists and to certify to the Department that they were arrived at independently.

On October 24, 1966, the association pleaded *nolo* and a fine of $15,000.00 was imposed thus terminating the criminal case. The civil case is pending.

1909. *United States* v. *Rubino Builders, Inc., et al.*, Cr. 27438 (D. Md.). A three-count indictment under Section 1 of the Sherman Act was returned September 13, 1966, against 4 corporations and 1 individual. Three of the four corporate defendants are charged in separate counts with conspiring to rig bids with the fourth corporate and one individual defendant for the construction of a school in Prince George's County, Maryland. The individual defendant is charged with supplying the prices to be quoted by the other 3 defendants in a sealed bid to the Board of Education of Prince George's County, Maryland, which prices were contrived higher than those to be quoted by the other defendant. The case is pending.

1910. *United States* v. *Pioneer Builders, Inc., et al.*, Cr. 27439 (D. Md.). A two-count indictment under Section 1 of the Sherman Act was returned September 13, 1966, against 3 corporations and 1 individual. Two of the three corporate defendants are charged in separate counts with conspiring with the third corporate and one individual defendant to rig bids for the construction of a Montgomery County, Maryland, school. The individual is charged with supplying the prices to be quoted by 2 defendants in a sealed bid to the Board of Education of Montgomery County, Maryland, which prices were contrived higher than those to be quoted by the other defendant.

On October 25, 1966, one corporate defendant pleaded *nolo* and a fine of $5,000.00 was imposed. The case is pending.

1911. *United States* v. *Bowling Proprietors' Association of Northern Ohio, Inc., et al.*, Cr. 66-243 (N.D. Ohio).

1912. *United States* v. *Bowling Proprietors' Association of Northern Ohio, Inc.*, Civ. 66-649 (N.D. Ohio). Indictment and complaint under Section 1 of the Sherman Act were filed September 14, 1966, charging 1 trade association and 3 individuals with conspiring to fix prices of open, league and tournament bowling in the Cleveland area. It also charged the elimination of competition by prohibiting price inducements or promotions without association approval.

The complaint which is only against the trade association, asks that the association be permanently enjoined from fixing prices and suppressing competition among its members. The cases are pending.

1913. *United States* v. *World Journal Tribune, Inc., et al.*, Civ. 66-2967 (S.D. N.Y.). Complaint under Section 7 of the Clayton Act was filed September 14, 1966, against 4 corporations charging that the acquisition of substantially all New York City newspaper publishing assets, including the contracts and commitments pertaining to newspapers—syndicated features of the Tribune, may substantially lessen competition and tend to create a monopoly in the publishing of daily news-

papers of general circulation and daily afternoon newspapers of general circulation in New York City by giving the World Journal a decisive competitive advantage over the only other daily afternoon newspaper in New York City, the New York Post.

The complaint asks that the new newspaper be required to waive its present rights to the features and columns, thereby making it possible for all New York dailies, including the World Journal Tribune, to compete on an equal basis for the publication rights.

On November 7, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed October 6, 1966, requiring a 30-day waiting period.

The judgment requires the defendants to waive their existing rights to publication in the New York City area of 19 features which formerly appeared in the New York Herald Tribune, the New York World Telegram & Sun, and the New York Journal American.

Under the terms of the decree the defendants are required to inform each daily newspaper of general circulation within 50 miles of New York City of the waiver by supplying each such newspaper with copies of the decree and letters of waiver sent to the feature syndicates involved. The World Journal Tribune is free to compete for new contracts for the features but cannot sign such contracts within 30 days after waiving its rights.

1914. *United States* v. *General Electric Company*, 66 CIV 3118 (S.D. N.Y.). Complaint under Section 1 of the Sherman Act was filed September 27, 1966, charging 1 corporation with restraining trade and fixing prices in the sale of light bulbs. The complaint challenged a series of agency agreements between defendant and its distributors and retailers.

The complaint asks that defendant be permanently enjoined from maintaining such agreements and from imposing any restrictions on the prices or conditions at which distributors and retailers may sell the products. The complaint also asks that defendant be required to notify all of its distributors and retailers now a party to such agency agreements that they may distribute and sell the products at prices and terms of their own choosing. The case is pending.

1915. *United States* v. *Ehrenreich Photo-Optical Industries, Inc.*, Civ. 66–C–929 (E.D. N.Y.). Complaint under Section 1 of the Sherman Act was filed September 29, 1966, charges 1 corporation with engaging in contracts, through its subsidiaries, with retailer-customers for the purpose of preventing price competition among them in the sale of its photographic products to the public.

The same day a proposed judgment was filed with the usual 30-day waiting period. On October 31, 1966, the final judgment was entered thus terminating the case.

The judgment enjoins defendant from having any agreements which fix the prices, restrict the customers, or set the conditions by which any person may re-sell defendant's equipment. Also defendant is forbidden from enforcing resale price maintenance for a period of 1 year in states with fair trade laws.

1916. *United States* v. *The Bank of Virginia*, Civ. 4959 (E.D. Va.). Complaint under Sections 1 and 2 of the Sherman Act was filed September 30, 1966, charging 1 corporation with restraining trade and attempting to monopolize regional credit service in the Richmond-Petersburg and Tidewater metropolitan areas of Virginia. The complaint alleges that defendant required that merchants using its credit plan deal with no other regional credit service.

The complaint asks that the defendant be required to give no further force to the exclusive dealing provision of its current contracts and forbidden to include such a provision in future contracts.

On December 27, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 25, 1966, requiring a 30-day waiting period.

The judgment requires the Bank to eliminate the exclusive features of its contracts with the participating merchants, and in addition, the judgment enjoins the Bank from conditioning the availability or continuance of its services upon the agreement of the participating merchant to do business exclusively with the Bank.

1917. *United States* v. *Pennsalt Chemicals Corporation, et al.*, Civ. 41252 (E.D. Pa.).

1918. *United States* v. *Dentists' Supply Company of New York*, Civ. 41253 (E.D. Pa.).

1919. *United States* v. *Ritter Pfaudler Corporation*, Civ. 41254 (E.D. Pa.). Three complaints under Section 7 of the Clayton Act were filed September 30, 1966, against 4 corporations, charging that the series of acquisitions of retail dental distributors may substantially lessen competition or tend to create a monopoly in the dental supplies industry.

The complaints ask that defendants be required to divest themselves of all the business and assets of the firms acquired through purchase or merger, plus all of the business resulting from those acquisitions and mergers. Also that the defendants should be enjoined for a period of 10 years from acquiring stock or assets of any firm engaged in the manufacture, distribution, or sale of dental products. The cases are pending.

1920. *United States* v. *American Radiator & Standard Sanitary Corporation, et al.*, Cr. 66–295 (W.D. Pa.).

1921. *United States* v. *American Radiator & Standard Sanitary Corporation, et al.*, Civ. 66–1184 (W.D. Pa.). An indictment under Section 1 of the Sherman Act was returned October 6, 1966, against 1 association, 8 corporations and 8 individuals, charging that defendants conspired to raise, fix, maintain and stabilize prices of plumbing fixtures (enameled cast iron and vitreous china). The defendants held meetings at various times under the guise of so-called "official" PFMA meetings to discuss prices.

A complaint against the same association and corporations was filed the same day making the same charges.

The complaint asks that the association be dissolved and that the defendants be permanently enjoined from fixing prices and restraining trade. The cases are pending.

1922. *United States* v. *Plumbing Fixture Manufacturers Association, et al.*, Cr. 66–296 (W.D. Pa.). An indictment under Section 1 of the Sherman Act was returned October 6, 1966, against 1 association and 10 corporations charging that defendants conspired to raise, fix, maintain and stabilize prices of plumbing fixtures (stable vitreous china). The defendants held meetings at various times under the guise of so-called "official" PFMA meetings to discuss the prices. The case is pending.

1923. *United States* v. *Amfac, Inc., et al.*, Civ. 2576 (D. Hawaii). Complaint under Section 7 of the Clayton Act was filed October 11, 1966, against 2 corporations, charging that the proposed acquisition by Amfac of the business and assets of HC&D, Ltd. both of Honolulu would substantially lessen competition or tend to create a monopoly in the production and sale of ready-mixed concrete and concrete products.

The complaint asks for temporary restraining order and a preliminary injunction against the defendants preventing and restraining them from taking any action in furtherance of the agreement between them. After oral argument the court on October 13, 1966, granted a temporary restraining order.

On November 1, 1966, the case was dismissed by stipulation, the defendants having decided to abandon their plans for acquisition.

1924. *United States* v. *First City National Bank of Houston, et al.*, Civ. 66–H–695 (S.D. Texas). Complaint under Section 7 of the Clayton Act was filed October 19, 1966, against 2 banking associations, charging that the proposed merger would substantially reduce competition and increase concentration in commercial banking in Harris County (Houston) and the Houston metropolitan area.

Under the Bank Merger Act as amended February 1966, the filing of the suit automatically suspends the merger pending court action.

The complaint asks that defendants be enjoined from carrying out the acquisition or any similar plan of combining or merging. The case is pending.

1925. *United States* v. *Montana State Food Distributors Association, Inc., et al.*, Cr. 344 (D. Montana).

1926. *United States* v. *Beatrice Foods Co., et al.*, Cr. 345 (D. Montana). Two indictments under Section 1 of the Sherman Act were returned November 18, 1966, charging that defendants conspired to fix prices for dairy products in Montana. The first indictment charges 1 trade association, 1 corporation and 3 individuals with fixing the retail prices for fluid dairy products. The second indictment charges 9 corporations and 8 individuals with fixing wholesale and suggested retail prices of nonfluid dairy products. The cases are pending.

1927. *United States* v. *Ohio Honda Dealers Sales Association, Inc., et al.*, Cr. 8890 (S.D. Ohio.) An indictment under Section 1 of the Sherman Act was returned November 22, 1966, against 1 association, 2 corporations and 2 individuals charging that defendants conspired to fix the prices of Honda motorcycles and parts in Ohio. The case is pending.

1928. *United States* v. *Fuel Oil Dealers' Division of the Central Montgomery County Chamber of Commerce, et al.*, Cr. 22756 (E.D. Pa.). Indictment under Section 1 of the Sherman Act was returned January 26, 1967, charging 1 association, 6 corporations and 10 individuals with illegally raising and fixing the prices of FUEL OIL in Norristown, Pennsylvania. The case is pending.

1929. *United States* v. *The General Tire and Rubber Company, et al.*, Civ. C67155 (N.D. Ohio). Complaint under Sections 1 and 2 of the Sherman Act was filed March 2, 1967, against 4 corporations alleging that the defendants have conspired to utilize their total purchasing power to coerce and persuade suppliers to buy tires from them. The complaint also alleges that the defendants entered into reciprocal purchasing arrangements in which they agreed to buy products from suppliers if the suppliers in turn bought from them.

The complaint asks that the defendants be permanently enjoined from having any reciprocal purchase agreements, or from having trade relations or reciprocity programs. The case is pending.

1930. *United States* v. *L. G. Balfour Company, et al.*, Cr. 25074 (N.D. Ga.). Indictment under Section 1 of the Sherman Act was returned March 22, 1967, charging 4 corporations and 3 individuals with conspiring to submit collusive and rigged prices, bids and quotations in the sale and attempted sale of class rings, graduation invitations and announcements to students in the State of Georgia. The case is pending.

1931. *United States* v. *Lindsay-Schaub Newspapers, Inc.*, Civ. 6748 (E.D. Ill.). Complaint under Sections 1 and 2 of the Sherman Act was filed March 27, 1967, against 1 corporation alleging that the defendant restrained trade and attempted to monopolize the daily newspaper field in the Champaign-Urbana, Illinois area. The complaint also alleges that defendant reduced advertising and subscription rates and intentionally operated the Champaign-Urbana Courier at a loss while trying to gain control of the Champaign-Urbana News-Gazette.

On April 27, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day waiting period.

The judgment forbids the Courier to either purchase the News-Gazette or sell to it. The defendant is also forbidden to refuse to sell advertising in the Courier alone. The defendant cannot give reduced rates if a customer advertises in more than one of the firm's papers. The defendant cannot discriminate against a person because he advertises in a competing paper. Nor can the defendant give special low rates to a customer because he refuses to advertise in a competing paper.

1932. *United States* v. *The National Farmers' Organization, Incorporated*, Civ. 7–1928–C–1 (S.D. Iowa). Complaint under Section 2 of the Sherman Act was filed March 29, 1967, against 1 corporation alleging defendant used coercion in an attempt to monopolize the interstate sale and distribution of milk in 19 states. The complaint also alleges that competition between NFO members and the non-affiliated farmers has been substantially reduced.

The complaint asks that the NFO and its members be permanently enjoined both from threatening non-member farmers, carriers, and processors and from trying to monopolize the sale of milk by such illegal means. The case is pending.

1933. *United States* v. *Harper & Row, Publishers, Inc.*, Civ. 67 C 612 (N.D. Ill.).

1934. *United States* v. *The Bobbs-Merrill Company, Inc.*, Civ. 67 C 613 (N.D. Ill.).

1935. *United States* v. *Childrens Press, Inc.*, Civ. 67 C 614 (N.D. Ill.).

1936. *United States* v. *Thomas Y. Crowell Company*, Civ. 67, C 615 (N.D. Ill.).

1937. *United States* v. *Dodd, Mead & Company, Inc.*, Civ. 67 C 616 (N.D. Ill.).

1938. *United States* v. *E. P. Dutton & Company, Inc.*, Civ. 67 C 617 (N.D. Ill.).

1939. *United States* v. *Golden Press, Inc.*, Civ. 67 C 618 (N.D. Ill.).

1940. *United States* v. *Grosset & Dunlap, Inc.*, Civ. 67 C 619 (N.D. Ill.).

1941. *United States* v. *Holt, Rinehart and Winston, Inc.*, Civ. 67 C 620 (N.D. Ill.).

1942. *United States* v. *Little, Brown & Company, Inc.*, Civ. 67 C 621 (N.D. Ill.).

1943. *United States* v. *The Macmillan Company*, Civ. 67 C 622 (N.D. Ill.).

1944. *United States* v. *William Morrow & Company, Inc.*, Civ. 67 C 623 (N.D. Ill.).

1945. *United States* v. *G. P. Putnam's Sons*, Civ. 67 C 624 (N.D. Ill.).

1946. *United States* v. *Random House, Inc.*, Civ. 67 C 625 (N.D. Ill.).

1947. *United States* v. *Charles Scribner's Sons*, Civ. 67 C 626 (N.D. Ill.).

1948. *United States* v. *The Vikings Press, Inc.*, Civ. 67 C 627 (N.D Ill.).

1949. *United States* v. *Henry Z. Walck, Inc.*, Civ. 67 C 628 (N.D. Ill.).

1950. *United States* v. *Franklin Watts, Inc.*, Civ 67 C 629 (N.D. Ill.). Eighteen complaints under Section 1 of the Sherman Act were filed April 18, 1967, against 18 corporations alleging that the defendants charged illegal resale price maintenance in the sale of library edition of children's books to schools, libraries, and governmental bodies.

The complaints ask that the defendants be forbidden to either fix prices or use the term "net" price in price lists. In addition that the defendants be enjoined from suggesting re-sale prices of books or refusing to sell books because of the wholesaler's re-sale prices. All of the defendants also should be prohibited from quoting "list" or published prices when submitting sealed bids to schools, libraries or governmental agencies for a purchase exceeding $100,000. The cases are pending.

1951. *United States* v. *California Shell Dealers Association, Inc., et al.*, Cr. 41348 (N.D. Calif.). Indictment under Section 1 of the Sherman Act was returned April 26, 1967, charging 1 corporation, 2 associations and 4 individuals with illegally raising and fixing the retail prices of gasoline in Alameda and Santa Clara, counties, California. The indictment also charges that the defendants have eliminated the giving of trading stamps and the posting of large price signs at stations. In addition, defendants have harassed stations which constinued to give stamps or post price signs. The case is pending.

1952. *United States* v. *Marin Independent Service Station Association*, Cr. 41349 (N.D. Calif.). Indictment under Section 1 of the Sherman Act was returned April 26, 1967, charging 1 association with eliminating the giving of trading stamps and harassing stations which continued using them. The indictment charges that the conspiracy to eliminate trading stamps in effect suppressed the granting of discounts in the retail price of gasoline and served to fix prices.

On May 17, 1967, defendant plead *nolo* and on June 7, 1967, the defendant was sentenced to 1 year's probation and a $1,000. fine, suspended on the condition that the illegal activity not recur in the 1 year, thus terminating the case.

1953. *United States* v. *Automotive Service Dealers Association, et al.*, Cr. F-65-CR (E.D. Calif.). Indictment under Section 1 of the Sherman Act was returned May 25, 1967, charging 1 association and 1 individual with conspiring to raise and fix retail gasoline prices and eliminate the posting of large price signs at stations. The indictment also charges that defendants harassed stations which continued to put up the signs. The case is pending.

1954. *United States* v. *Globe Ticket Company, et al.*, Cr. 22924 (E.D. Pa.). Indictment under Section 1 of the Sherman Act was returned June 15, 1967, charging 10 corporations and 14 individuals with conspiring to fix the prices of tickets used by theaters, athletic teams and a variety of other customers. The case is pending.

1955. *United States* v. *Gulf & Western Industries, Inc., et al.*, Civ. 67-1057-CC (C.D. Calif.). Complaint was filed on July 25, 1967, charging 2 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that Gulf & Westerns acquisition of the asset of Desilu Production may substantially lessen competition or tend to create a monopoly in the rental of studio facilities used for the production of television programs or feature films.

On August 25, 1967, thet case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day waiting period.

The judgment permits the acquisition but requires Gulf & Western to sell within 2 years 2 of the 3 newly acquired Desilu studios to purchasers who will file with the court an undertaking to operate the properties as studio facilities. Should Gulf & Western fail to sell the said studios within 1 year, the firm would be required to engage a broker acceptable to the Government to seek a buyer during the second year.

The judgment also requires Gulf & Western to offer up to 30 full production stages for rental by other producers during the next 3 years and also is prohibited by the judgment from buying any more production stages in California for 10 years.

1956. *United States* v. *Sonoco Products Company*, Civ. 67-520 (E.D. S.C.). Complaint was filed on August 3, 1967, under Section 2 of the Sherman Act against 1 corporation alleging that since 1945 Sonoco has attempted to monopolize and has monopolized interstate trade and commerce in manufacturing and sale of paper cones. Paper cones are used in the textile industry as carrier of yarns and fibers.

The complaint alleges that Sonoco entered into restrictive agreements with foreign firms not to sell either cones or cone manufacturing equipment in United

States. Further, that Sonoco initiated a series of programs with purpose and intent of eliminating domestic competition in the manufacturer and sale of paper cones. Among other things, the complaint asserted, Sonoco reduced price of competitive cones at previous levels.

The complaint asks that Sonoco be required to sell its Atlanta Manufacturing plant and for a period of 10 years make available to manufacturers and potential manufacturers of paper cones machinery plans, patent licenses and paperboard. The case is pending.

1957. *United States* v. *Joseph P. Cuddigan, Inc., et al.*, Indictment No. 7408 (D. R.I.)

1958. *United States* v. *Joseph P. Cuddigan, Inc., et al.*, Civ. 3843 (D. R.I.). An indictment and complaint under Section 1 of the Sherman Act were filed September 12, 1967. The indictment charges 14 corporations and 15 individuals with conspiring to allocate jobs and submit collusive bids and non-competitive bids for the sale and installations of plumbing fixtures.

The complaint against 14 corporations and 3 individuals asks that the defendants be permanently enjoined from allocating business, submitting collusive bids or fixing prices. The cases are pending.

1959. *United States* v. *Eversharp, Inc., et al.*, Civ. 43623 (E.D. Pa.). Complaint was filed September 20, 1967, charging 3 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the acquisition of Schick Electric, Inc. common stock by Eversharp and imminent merger of Schick into Eversharp may substantially lessen competition or tend to create a monopoly with regard to the shaving instrument industry.

On August 24, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day period.

The judgment provides that if Eversharp and Schick merge they must form 2 subsidiary companies, 1 embracing the dry shaving business now conducted by Schick, the other containing Eversharp's wet saving business. One of the companies would have to be sold within 2 years to a Government approved purchaser. If Schick and Eversharp do not merge, the proposed judgment would require Eversharp and Technicolor to sell their Schick stock within 6 months.

1960. *United States* v. *Peabody Coal Company, et al.*, Civ. 67 C 1621 (N.D. Ill.). Complaint was filed September 21, 1967, charging 4 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that defendants acquisitions of all of the stock of Midland Electric Coal Corporation may substantially lessen competition or tend to create a monopoly with respect to bituminous coal industry.

On October 23, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day waiting period.

The judgment requires Peabody to divest itself of a coal business with a production of a least 6 million tons annually and a potential for 20 more years of such production.

The judgment also provides that Peabody is enjoined from acquiring any stock in or control of any operating coal company, or buying any coal mine in Eastern Coal Province sales area for 10 years without Government approval.

1961. *United States* v. *General Dynamics Corporation, et al.*, Civ. 67 C 1632 (N.D. Ill.). Complaint was filed September 22, 1967, charging 3 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that defendant's acquisition of United Electric Coal Company of Chicago may substantially lessen competition or may tend to create a monopoly in the production and sale of bituminous coal.

The complaint asks that General Dynamics be required to divest itself of all the stock and assets of United Electric Coal Company and that defendant be enjoined from acquiring stock or control of any other firm engaged in production or sale of bituminous coal in Illinois or in the Eastern Interior Coal Providence. The case is pending.

1962. *United States* v. *Hancock Bros., Inc., et al.*, Cr. 41530 (N.D. Calif.). Indictment was returned on September 25, 1967, charging 3 corporations and 2 individuals with violation of Section 1 of the Sherman Act. The indictment charges that defendants had conspired to fix, stabilize and maintain prices of tickets used by theaters, athletic teams and a variety of other customers. The case is pending.

1963. *United States* v. *American Bakeries Company, et al.*, Cr. 7613 (W.D. Mich.). Indictment was returned on October 4, 1967, charging 13 corporations, 13 individuals and 1 trade association with violation of Section 1 of the Sherman Act. The indictment charges that defendants engaged in a conspiracy to fix, maintain and stabilize prices in the sale of bread and baked goods in the State of Michigan. The case is pending.

1964. *United States* v. *National Bank & Trust Company of Central Pennsylvania, et al.*, Civ. 10214 (M.D. Pa.). Complaint was filed October 12, 1967, charging 2 bank corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the merger of Keystone Trust Company with and into National Central may substantially reduce competition and tend to increase concentration in commercial banking in the Harrisburg, Pennsylvania, area.

The complaint asks that the defendants be enjoined from carrying out the acquisition or any similar plan or agreement. The case is pending.

1965. *United States* v. *Sterling Faucet Company, et al.*, Cr. 67–273 (W.D. Pa.). Indictment was returned October 16, 1967, charging 6 corporations with violation of Section 1 of the Sherman Act. The indictment charges that defendants engaged in a conspiracy to fix, maintain and stabilize prices of plumbing brass fittings. The case is pending.

1966. *United States* v. *United Oil Dealers Association*, Cr. 1148 (C.D. Calif.). Indictment was returned October 16, 1967, charging 1 association with violation of Section 1 of the Sherman Act. The indictment charges that defendants conspired to raise, stabilize and maintain prices of gasoline and to eliminate the posting of price signs at service stations in the San Fernando Valley of Los Angeles County. The case is pending.

1967. *United States* v. *Essex Wire Corporation*, Civ. 1927 (N.D. Ind.). Complaint was filed October 31, 1967, charging 1 corporation with violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act in the sale of magnet wire and insulation material.

The complaint alleges that the defendant entered into contracts which required purchasers of magnet wire to buy insulation material from the defendant which resulted in a illegal restraint of trade and substantially lessened competition in interstate trade and commerce.

On December 12, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day waiting period.

The judgment enjoins the defendant from conditioning the sale of magnet wire or allocating the amount thereof upon the basis of purchase of other products.

1968. *United States* v. *Venice Work Vessels, Inc., et al.*, Civ. 67–1623 Sec. G (E.D. La.). Complaint was filed November 6, 1967, charging 1 corporation and 4 individuals with violation of Sections 1 and 2 of the Sherman Act. The complaint alleges that the defendants have engaged in an unlawful conspiracy to monopolize the chartering of work vessels by inducing the owners of charter work vessels to broker exclusively through defendant corporation. It was alleged that the defendants used their power as public officials to induce oil companies to patronize the Venice firm.

The complaint asks that defendants be perpetually enjoined from entering into any agreement or practice which have the effect of monopolizing the charter of work vessel market. The case is pending.

1969. *United States* v. *Cooper Industries Inc., et al.*, Civ. 67–360 (S.D. Ohio). Complaint was filed November 13, 1967, charging 2 corporations with violations of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Cooper Industries and Waukesha Motor Company may substantially lessen competition or tend to create a monopoly in the sale of gas compression engines.

The complaint asks that defendant be required to divest itself of all the stock interest of Waukesha already acquired and the defendant be enjoined from carrying out the proposed merger. The case is pending.

1970. *United States* v. *Laub Baking Company, et al.*, Cr. 67415 (N.D. Ohio).

1971. *United States* v. *Laub Baking Company, et al.*, Civ. C67–850 (N.D. Ohio). An indictment and complaint were filed November 14, 1967, charging 5 corporations and 3 individuals with violation of Section 1 of the Sherman Act. The indictment and complaint charges that defendants conspired to raise, fix and stabilize prices on bread and baked goods sold to schools and institutions in northern Ohio.

The complaint naming the 5 corporations asks the defendants be enjoined and restrained from participating in any combination or conspiracy to eliminate price competition. The cases are pending.

1972. *United States* v. *Simmonds Precision Products, Inc.*, 67 CIV 4506 (S.D. N.Y.). Complaint was filed on November 15, 1967, charging 1 corporation with violation of Section 7 of the Clayton Act. The complaint alleges that the acquisition by Simmonds of Liquidometer Corporation, Inc., may substantially lessen competition or may tend to create a monopoly in the manufacturing and sale of fuel gauging systems.

The complaint asks that Simmonds be required to divest itself of all assets and business acquired from Liquidometer and that defendant be enjoined from acquiring stock and assets of any firm engaged in the manufacture or sale of fuel gauging systems. The case is pending.

1973. *United States* v. *Chicago Tribune-New York News Syndicate, Inc.*, 67 CIV 4596 (S.D. N.Y.).

1974. *United States* v. *Field Enterprises, Inc.*, 67 CIV 4597 (S.D. N.Y.).

1975. *United States* v. *The Hearst Corporation*, 67 CIV 4598 (S.D. N.Y.). Three complaints were filed November 21, 1967, charging the above corporations with violations of Section 1 of the Sherman Act in the distribution of syndicated features and comic strips. The complaint alleges that the defendants entered in illegal contracts with newspapers granting unreasonably large exclusive publication territories for their comic strips, columns and other features.

The complaint asks that the defendants be ordered to terminate each of the aforementioned contracts and in addition that the defendants be perpetually enjoined from entering in any future contracts which would have the effect of illegally restraining trade. The cases are pending.

1976. *United States* v. *The York Bank and Trust Company, et al.*, Civ. 10264 (M.D. Pa.). Complaint was filed on November 24, 1967, charging 2 bank associations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of First National with and into York may substantially reduce competition and tend to increase concentration in commercial banking in York County, Pennsylvania.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect.

On December 29, 1967, the case was dismissed by a stipulation, as defendants had abandoned the agreement to merge.

1977. *United States* v. *National Funeral Directors Association of the United States, Inc.*, Civ 67 C 395 (E.D. Wisc.). On November 24, 1967, a complaint was filed charging 1 corporation with violation of Section 1 of the Sherman Act. The corporation is a federation of member State trade associations of funeral directors. The complaint alleges a continuing conspiracy to restrain price competition amongst funeral directors by means of an agreement to refrain from advertising the prices to be charged for conducting funerals and to coerce individual funeral directors to refrain from advertising such prices.

The complaint asks that the defendant be permanently forbidden to continue the asserted restraints on advertising of prices. It also asked that the defendant be required to exclude from membership any state or local group which restricts such advertising. The case is pending.

1978. *United States* v. *Union Camp Corporation, et al.*, Cr. 4558 (E.D. Va.). A six count indictment was returned on November 30, 1967, charging 2 corporations and 2 individuals with violation of Section 2 of the Sherman Act.

The indictment charges Union with an attempt to monopolize interstate trade and commerce in window bags through the use of an allegedly invalid patent. The indictment stated that the defendants used the invalid patent to coerce a manufacturer of window bag attachment machinery to restrict sales of said machinery only to Union Licensees.

Another count charges a conspiracy between Union and Bemis Company to illegally restrain trade in the same manner.

The remaining four counts charge the individual defendants, both officers of defendant corporations, with aiding and abetting the corporations violations of the antitrust laws set forth in the principal counts. The case is pending.

1979. *United States* v. *Thomson-Brush-Moore Newspapers, Inc.*, Civ. 67-904 (N.D. Ohio). On December 8, 1967, a complaint and simultaneous proposed consent judgment were filed charging 1 corporation with violation of Section 7 of the Clayton Act. The complaint alleged that the defendants proposed acquisition of Brush-Moore Newspaper, would substantially lessen competition or tend to create a monopoly in the publishing of daily newspaper in Stark County, Ohio and asked that defendant Thomson be enjoined from acquiring all or any part of the stock of Brush-Moore.

The proposed judgment, which will be entered 30-days from the date of filing, orders Thomson to divest itself within 12 months from date of entry of final judgment of all its interest in the Alliance Publishing, Inc., to a person or persons approved by the Government. The case is pending.

1980. *United States* v. *American Bakeries Company, et al.*, Civ. 5787 (W.D. Mich.). On December 11, 1967, a complaint was filed charging 13 baking companies and a trade association with violation of Section 1 of the Sherman Act. The complaint alleged that the individuals met at various times and places throughout Michigan to plan wholesale and retail price fixing of bread and baked goods and also the rigging of bids to public institutions.

The complaint asks that the defendants be enjoined from engaging in the illegal activities alleged; that the defendant association be dissolved and disbanded; that the defendants be enjoined from communicating with other bakers with regard to prices of baking goods prior to their release to the public or general trade and that the defendants withdraw existing price lists and discount schedules and independently compile new lists and schedules. The case is pending.

1981. *United States* v. *County National Bank, et al.*, 67 Civ 4906 (S.D. N.Y.). On December 14, 1967, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleged that the proposed merger between County National and Citizens Bank may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect. The case is pending.

1982. *United States* v. *Topco Associates*, Civ. 68–C–76 (N.D. Ill.) On January 15, 1968, a complaint was filed charging 1 corporation with violation of Section 1 of the Sherman Act. The complaint alleges that Topco and its member grocery chains have conspired to allocate exclusive territories among themselves for the retail distribution of grocery and non-food products.

The complaint asks that the court adjudge Topco has violated Section 1 of the Sherman Act and that Topco be restrained from entering into any agreement to limit or restrict the territories within which or the customers to whom any firm may sell Topco-controlled brands. The case is pending.

1983. *United States* v. *American Angus Association*, Civ. 1460 (W.D. Mo.). On January 15, 1968, a complaint was filed charging 1 corporation with violation of Section 1 of the Sherman Act. The complaint alleges that the defendant, the only registrar of purebred Angus cattle in the nation, has through regulations and restrictive agreements executed among its members, refused registration of artifically conceived purebred calves thereby resulting in a restraint of trade in the field of artificial insemination.

The complaint asks that the court adjudge the association and its members to be in violation of Section 1 of the Sherman Act and that the association be restrained from imposing or attempting to impose any restriction upon the registration of artificially conceived purebred Angus cattle. The case is pending.

1984. *United States* v. *Tidewater Marine Service, Inc., et al.*, Civ. 68–97–B (E.D. La.). On January 16, 1968, a complaint was filed charging 4 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Tidewater with Twenty Grand Marine Service, Inc. and the acquisition of the stock of Pan Marine Service, Inc., by Tidex, Inc. may substantially lessen competition or tend to create a monopoly in the field of charter vessels used to transport cargo and equipment in connection with petroleum operations offshore the United States.

The complaint asked that the proposed merger and acquisition be adjudged in violation of Section 7 of the Clayton Act and that the defendants be perpetually enjoined from carrying out the proposed merger and acquisition and any similar plan having the same effect. The case is pending.

1985. *United States* v. *New Jersey National Bank and Trust Company, et al.*, Civ. 55–68 (D. N.J.). On January 16, 1968, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleged that the proposed merger between New Jersey National and Belmar-Wall may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect.

On March 22, 1968, the case was dismissed as the application to merge was withdrawn.

1986. *United States* v. *Phillipsburg National Bank and Trust Company, et al.*, Civ. 56–68 (D. N.J.). On January 16, 1968, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleged that the proposed merger between Second National Bank of Phillipsburg and Phillipsburg National Bank and Trust Company may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect. The case is pending.

1987. *United States* v. *Globe Ticket Company, et al.*, Civ. 68–176 (E.D. Pa.). On January 24, 1968, a complaint was filed charging 9 corporations wtih violation of Section 1 of the Sherman Act. The complaint alleges that defendants conspired to allocate customers, to fix prices and to rig bids in the sale and manufacture of tickets used by theaters, athletic teams and a variety of other customers.

The complaint asks that the defendants be enjoined from engaging in the illegal activities alleged therein; that the defendants submit a written certification of noncollusion with each sealed bid; that they issue new price lists pursuant to individual and independent review; and that they take all necessary action to insure that their ticket manufacturing subsidiaries abide by the terms of the final judgment. The case is pending.

1988. *United States* v. *Gillette Company*, Civ. 68–141–W (D. Mass.). On February 14, 1968, a complaint was filed against 1 corporation alleging that Gillette's acquisition of Braun Akleingesellschaft the third largest producer and seller of electric razors in Europe violated Section 7 of the Clayton Act.

The complaint alleges that the elimination of Braun as a potential independent competitor may substantially lessen competition and tend to create a monopoly in the shaving industry. The complaint also alleges that competition will be lessened between Gillette and the Ronson Corporation because of an agreement between Braun and Ronson to share all technology know-how in the electric razor field until January 1, 1976.

The complaint asks the court adjudge the acquisition of Braun stock by Gillette to be in violation of the Clayton Act and that a preliminary injunction issue and that Gillette be required to divest itself of all stock and interest in Braun acquired pursuant to aforementioned acquisition, and be perpetually enjoined and restrained from acquiring any stock, assets or other interest in Braun. The case is pending.

1989. *United States* v. *Sterling Drug, Inc., et al.*, Civ. 175–68 (D. N.J.). On February 23, 1968, a complaint was filed charging 2 corporations with a violation of Section 1 of the Sherman Act. The complaint alleges that Sterling's licensing agreement with E. R. Squibb and Son's is an unreasonable restraint of trade and commerce in the sale and distribution of the drug meglumine.

The agreement provided that the licensee would sell meglumine only "in a finished dosage form packaged for the ultimate consumer under Squibb's name and label". This license agreement prevented Squibb from selling the drug in bulk form to other drug companies thereby precluding their entry in the meglumine market.

The complaint asks that the court enjoin the defendants from entering into or adhering to any agreement which would restrict the sale of meglumine in bulk form or under other than its established trade name or label. The case is pending.

1990. *United States* v. *Syntex Corporation, et al.*, Civ. 478–68 (D. D.C.). On February 23, 1968, a complaint was filed charging 3 corporations with violation of Section 1 of the Sherman Act. The complaint alleges that the defendants entered into a contract of unreasonable restraint of trade and commerce in the sale and distribution of the drug medroxy. It alleges that the defendants agreed with one another that whichever of them was awarded a patent on medroxy would grant to the others an irrevocable, non-exclusive, non-transferrable, royalty-free license to sell medroxy "in finished pharmaceutical form under the established trade level" of such defendant.

The complaint asks the court to adjudge the agreement an unreasonable restraint of trade in violation of Section 1 of the Sherman Act and enjoin the defendants from entering into any agreement which would restrict the sale of medroxy in bulk form. The case is pending.

1991. *United States* v. *Glaxo Group Limited, et al.*, Civ. 558–68 (D. D.C.). On March 4, 1968, a complaint was filed charging 2 foreign corporations with a violation of Section 1 of the Sherman Act. The complaint alleges that the licenses granted by defendants Glaxo and Imperial Chemical Industries, Ltd., to three American drug companies resulted in an unreasonable restraint of trade and commerce in the sale and distribution of the drug griseofulvin.

The agreements required the licensees to sell the drug only in finished dosage form for use by the consumer and prohibited bulk sales to third parties without permission from the defendants.

The complaint asks the court to permanently enjoin defendants from entering into any agreement which prevents their licensees from selling the drug in bulk form to third parties, and in addition that the Imperial patent be declared invalid for failure to comply with requirements of patentability. The case is pending.

1992. *United States* v. *Automatic Fire Alarm Company of Delaware, et al.*, Supp. Civ. 2785 (D. R.I.). On March 4, 1968, criminal and civil contempt proceedings were filed charging 1 corporation and 2 individuals with violating provisions of a final judgment of July 11, 1967, dealing with fire and burglar alarms. The petition charges that each respondent has continually disobeyed and resisted lawful orders and decrees set forth in Section VII(A) of the judgment. The petition further charges that AFA has engaged in a program which will or may result in further violation of Section VII(A) of the judgment, and to frustrate an objective of the judgment that subscribers cancelling service contracts with AFA retain title to the circuitry installed on the premises. Petition also alleges that AFA has violated Section VII(C) of the judgment by refusing to allow a protection service subscriber to cancel a protection service contract. The petition asks that the court order the respondents to show cause why they should not be held in criminal and civil contempt. The case is pending.

1993. *United States* v. *Farbenfabriken Bayer A.G., et al.*, Civ. 586–68 (D. D.C.). On March 7, 1968, a complaint was filed charging 2 corporations with violation of Section 1 of the Sherman Act. The complaint alleges that the more than 100 license agreements under a United States patent owned by Bayer and exclusively licensed to Chemagro is an unreasonable restraint of trade and commerce in the sale and distribution of the chemical diethyl. The agreements provided that the licensees could not resell diethyl as such but had to process it into fertilizers, pesticides or other agricultural products and in addition could only sell to a restricted class of customers.

The complaint further alleges that in many cases the licensees were illegally required to label each package of diethyl products they produced restricting the use and resale of subsequent purchasers.

The complaint asks the court to permanently enjoin the defendants from maintaining any restriction on diethyl purchased from them or on any dicensee under the Bayer patent. The case is pending.

1994. *United States* v. *Independent Body Shop Association of Reno and Sparks, Inc.*, Cr. R 14068 (D. Nev.)

1995. *United States* v. *Independent Body Shop Association of Reno and Sparks, Inc.*, Civ R 2041 (D. Nev.)

An indictment and complaint were filed March 7, 1968, charging 1 corporation with violation of Section 1 of the Sherman Act. The indictment charges that the defendant association and unnamed co-conspirators fixed, raised and maintained prices in the area of auto body repair work.

In addition it was alleged in the complaint that the association allocated body repair work and conspired to divide markets by excluding towers from body repair work and body repair shops from towing.

On April 12, 1968, the criminal case was terminated by a plea of *nolo contendere* and a fine in the amount of $2,000 was imposed.

On June 24, 1968, the civil case was terminated by the entry of a final judgment pursuant to a stipulation filed May 21, 1968, requiring a 30-day waiting period.

The judgment forbids the association from fixing prices and allocating market.

1996. *United States* v. *Cities Service Company, et al.*, Civ. 68–213J (D. Mass.). A complaint was filed March 8, 1968, charging 4 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that defendants acquisition of Jenney Manufacturing Company may substantially lessen competition or tend to create a monopoly with respect to petroleum products industry. The acquisition involved the long term lease of Jenney-owned service stations

coupled with the sale of Jenney's storage depots and commercial accounts. The agreement also gave Cities Service exclusive right to the Jenney trade mark and provided that Jenney would not market any petroleum products except heating oil in New England for 10 years.

The complaint asks the sale and lease agreement be rescinded and the defendants completely restore Jenney to its previous position as a substantial and independent gasoline marketer. The case is pending.

1997. *United States* v. *General Host Corporation, et al.*, Cr. 23200 (E.D. Pa.).

1998. *United States* v. *General Host Corporation, et al.*, Civ. 23200 (E.D. Pa.).

An indictment and complaint were filed March 13, 1968, charging 7 coprporates and 8 individuals with violation of Section 1 of the Sherman Act. The indictment charges that the defendants conspired to fix the prices, terms and conditions of the sale of bread in the Philadelphia area.

The complaint against 7 corporations asks that they be enjoined from continuing or renewing any agreement to fix the price or condition for sale of bread. The cases are pending.

1999. *United States* v. *Caterpillar Tractor Company, et al.*, Civ. P-2981 (S.D. Ill.). On March 27, 1968, a complaint was filed charging 2 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Chicago Pneumatic Tool Company with and into Caterpillar Tractor may substantially lessen competition or tend to create a monopoly in the field of portable air compressors for rock drills and rock drilling equipment.

The complaint asks that the merger be adjudge in violation of Section 7 of the Clayton Act and that the defendants be enjoined and restrained from carrying out the proposed merger.

On March 28, 1968, the case was dismissed as Caterpillar and Chicago Pneumatic withdrew their agreements to merge since the suit was instituted by the Division.

2000. *United States* v. *Wilson Sporting Goods Company, et al.*, Civ. 68-C-549 (N.D. Ill.). A complaint was filed March 27, 1968, charging 2 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Nissen Corporation with and into Wilson may substantially lessen competition or tend to create a monopoly in the field of gymnastic equipment.

The complaint asks that the acquisition be adjudged in violation of Section 7 of the Clayton Act and that the defendants be perpetually enjoined from carrying out the aforementioned agreements. The case is pending.

2001. *United States* v. *Steiner American Corporation, et al.*, Cr. 1753 (D. Nev.). An indictment was returned April 30, 1968, charging 1 partnership, 2 corporations, and 5 individuals with violation of Section 1 of the Sherman Act. The indictment charges that the defendants conspired to raise, stabilize and maintain prices; to refrain from soliciting each others' customers; and to allocate business among themselves in the linen supply industry in Las Vegas, Nevada area. The case is pending.

2002. *United States* v. *First National Bank of Jackson, et al.*, Civ. 4310 (S.D. Miss.).

2003. *United States* v. *Deposit Guaranty National Bank of Jackson, et al.*, Civ. 4311 (S.D. Miss.).

Two complaints under Section 7 of the Clayton Act were filed May 28, 1968, against 4 corporations alleging that both mergers may be to substantially lessen competition or to tend to create a monopoly in commercial banking field.

The complaints asks that each defendant be forbidden to merge and that the mergers be declared unlawful. The cases are pending.

2004. *United States* v. *Work Wear Corporation*, Civ. C-68-467 (N.D. Ohio). On June 28, 1968, a complaint was filed against 1 corporation alleging that the acquisitions of 25 industrial laundries and of stocks and assets of three work clothes manufacturers may substantially lessen competition and tend to create a monopoly in the work wear industry throughout the United States in violation of Section 7 of the Clayton Act.

The complaint asks that the defendant be required to divest itself of such stock and assets of the work clothes manufacturers laundries which it acquired and that for a 10 year period all of Work Wear's persons acting or claiming to act on its behalf, be enjoined from acquiring the stock or assets of any manufacturer of work clothes or laundry. The case is pending.

2005. *United States* v. *The Mead Corporation*, Civ. 3576 (S.D. Ohio).

2006. *United States* v. *Hammermill Paper Company*, Civ. 68–597–C (D. Mass.). Two complaints under Section 7 of the Clayton Act were filed July 8, 1968, alleging that 2 defendants had violated the Clayton Act by their acquisitions of 2 paper wholesaler claims.

Each complaint asks that the acquisitions be adjudged to be inviolation of Section 7 of the Clayton Act, and that the defendants Hammermill and Mead be ordered and directed to divest themselves of all of the common stock, property and assets which they have acquired. The cases are pending.

2007. *United States* v. *Florida Power Corporation, et al.*, Civ. 68–297–Civ.–T (M.D. Fla.). Complaint under Section 1 of the Sherman Act was filed July 8, 1968, against 1 corporation and 1 company, alleging unreasonable restraint of trade and a consequent elimination of competition in the wholesale sale and distribution of electric power.

The suit seeks an injunction against the continuance, maintenance or renewal of any agreement or concert of action which allocates or divides wholesale electric power customers or service areas. The case is pending.

2008. *United States* v. *B & W Market, et al.*, Civ. 5258 (D. Wyoming). Complaint under Section 1 of the Sherman Act was filed August 1, 1968, by the United States Attorney for Wyoming, against 4 corporations and 3 individuals alleging price fixing and unreasonable restraint of interstate commerce in dairy products. The complaint also alleges that there was a continuing agreement to prohibit Challenge Dairy from selling milk at retail and that defendants threatened to boycott Challenge Dairy if it maintained a retail milk route.

The complaint asks that the court adjudge defendants to be in violation of Section 1 of the Sherman Act, and that defendant Challenge Dairy be required and ordered to restore operation of a retail milk route in the State of Wyoming. The case is pending.

2009. *United States* v. *Wilson Sporting Goods Co., et al.*, Cr. 68–181 (D. Ore.). On August 1, 1968, an indictment under Section 1 of the Sherman Act was returned against 6 corporations engaged in the sale of athletic equipment to schools. They were charged with submitting rigged and collusive bids to various schools and school districts in Portland and within a 50-mile radius thereof.

On October 9, 1968, 6 corporations were fined a total of $23,000 on their pleas of *nolo contendere*, previously accepted by the court over the Government's objection.

2010. *United States* v. *Oregon Athletic Equipment Co., Inc., et al.*, Civ. 68–424 (D. Ore.). Complaint under Section 1 of the Sherman Act was filed on August 1, 1968, alleging that 6 corporations had engaged in the offense of submitting rigged and collusive bids to schools for the sale of athletic equipment.

The complaint asked that the defendants be enjoined from engaging in any plan with a similar purpose, and that each defendant be required to annex to every sealed bid or quotation a written certificate that the bid or quotation was not the result of collusion between the defendant and any competitor. The case is pending.

2011. *United States* v. *Oregon Restaturant and Beverage Association, et al.*, Cr. 68–162 (D. Ore.). On August 1, 1968, an indictment under Section 1 of the Sherman Act was returned charging 1 association and 2 individuals with a conspiracy to restrain the sale of beer by distributors to consumers in the state of Oregon. The case is pending.

2012. *United States* v. *The First National Bank of Maryland, et al.*, Civ. 19801 (D. Md.). Complaint under Section 7 of the Clayton Act was filed August 16, 1968, against 2 banking associations alleging that the proposed merger between the defendants may be to permanently eliminate competition between the merging banks and eliminate the possibility of the First National Bank of Maryland as a potential entrant into Hartford County in the commercial banking field.

The complaint asks that the proposed merger be adjusted in violation of Section 7 of the Clayton Act and that defendants and all persons on their behalf be enjoined from carrying out the aforesaid agreement. The case is pending.

2013. *United States* v. *Bank of Las Vegas, et al.*, Civ. R–2100 (D. Nev.). Complaint filed August 23, 1968, under Section 7 of the Clayton Act against 3 banking associations and 1 corporation, alleging that the proposed merger may be to substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the merger agreement be adjudged in violation of Section 7 of the Clayton Act, and that the defendants be enjoyed from carrying out the aforesaid merger agreement. The case is pending.

2014. *United States* v. *The Chelsea Savings Bank, et al.*, Civ. 12733 (D. Conn.) Complaint filed August 29, 1968, against 2 mutual savings banks, alleging violation of Section 7 of the Clayton Act and Section 1 of the Sherman Act challenged the proposed consolidation of the 2 savings banks. The complaint alleges that the consolidation would lessen competition between the defendants, would tend to lessen competition generally in the Norwich area and that concentration in the relative market would be substantially increased. The complaint also alleges that the 2 banks hold about 40% of the Greater Norwich area real estate mortgage loans outstanding in area savings institutions.

The Government seeks to have the merger declared illegal as a violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act and that a permanent injunction be issued. The case is pending.

2015. *United States* v. *The Fidelity Bank, et al.*, Civ. 68–1975 (E.D. Pa.).

2016. *United States* v. *Girard Trust Bank, et al.*, Civ. 68–1976 (E.D. Pa.). On September 10, 1968, 2 complaints were filed under Section 7 of the Clayton Act, challenging the proposed mergers of 2 Doylestown, Pennsylvania banks into 2 of the largest commercial banks in the Philadelphia area. The complaints allege that the proposed mergers would effectively eliminate competition between the banks, and that potential competition in commercial banking would be reduced.

On November 19, 1968, the cases were dismissed on motions of the Government, as the mergers were withdrawn.

2017. *United States* v. *Pennsylvania National Bank and Trust Company, et al.*, Civ. 68–2025 (E.D. Pa.). On September 17, 1968, a complaint was filed under Section 7 of the Clayton Act against 2 banks in Pennsylvania seeking to enjoin the acquisition of a bank in Shenandoah by the named defendant. The complaint alleges that the 2 banks have entered into an agreement which will result in a merger of the 2 banks, and a merger with the title of the named defendant. The complaint also alleges that the aforementioned merger agreement may be to substantially lessen competition or to tend to create a monopoly in the field of commercial banking in Schuylkill County and around the Borough of Shenandoah.

The complaint asks for injunctive relief and a decree that the merger is in violation of Section 7 of the Clayton Act. The case is pending.

2018. *United States* v. *Intercontinental Fur Corp., et al.*, 68 CR 764 (S.D. N.Y.). On September 18, 1968, an indictment was returned against 18 corporations and 2 partnerships on a charge of conspiring to eliminate competition in violation of Section 1 of the Sherman Act in their dealings with the purchase of Alaska sealskins. The indictment charges that defendants agreed not to compete with one another in the bidding at the semi-annual sealskin auctions held by the Fouke Fur Company on behalf of the United States and Japanese Governments. The manufacturers agreed not to bid for the skins in competition with the dealers. The case is pending.

2019. *United States* v. *Hobart Manufacturing Company, et al.*, 68 CR 235(2) (E.D. Mo.). An indictment was filed October 9, 1968, by the United States Attorney for Missouri, charging 2 corporations with violation of Section 1 of the Sherman Act. The defendants were charged with fixing prices in the sale of industrial food machines. The case is pending.

2020. *United States* v. *Combustion Engineering, Inc.*, Civ. 68–4082 (S.D. N.Y.). On October 16, 1968, a complaint was filed against 1 corporation alleging a violation of Section 7 of the Clayton Act. The action challenged the acquisition by defendant of 21% of the outstanding stock of United Nuclear Corp., engaged in the production and sale of fuel burning equipment.

The complaint seeks to prevent defendant from acquiring the stock or assets of any other firm in the United States engaged in the production or sale of nuclear fuel. The case is pending.

2021. *United States* v. *Diamond International Corporation, et al.*, Civ. 5051 (N.D. Calif.). On October 17, 1968, a complaint was filed under Section 7 of the Clayton Act, challenging the proposed merger of 2 corporations engaged in the printing business. The complaint alleges that competition between the defendant corporations will be eliminated and competition generally may be substantially lessened in the printing and sale of lithographic paper labels in the Pacific Coast area and in the United States as a whole.

On December 12, 1968, the merger was abandoned and the cast was dismissed by the Government without prejudice.

2022. *United States* v. *Interpace Corporation, et al.*, Civ. 68–1202 (W.D. Pa.). On October 17, 1968, a complaint was filed against 4 corporations alleging violation of Section 7 of the Clayton Act in the production of china earthenware for

home use. The complaint alleges that the merger has made it more difficult for potential entrants to get into the commercial china market.

The complaint asks that the acquisition be adjudged in violation of Section 7 of the Clayton Act; that a preliminary injunction be issued; that Interpace be required to sell the business and assets it obtained in the merger and to require Interpace to provide the new buyer with assets necessary to make the new operation viable and independent. The case is pending.

2023. *United States* v. *Nederlandsche Combinatie Voor Chemische Industrie, et al.*, Cr. 68–870 (S.D. N.Y.). On October 25, 1968, a 5 count indictment was returned against 15 companies and 8 individuals. The first 3 counts charge violations of the Sherman Act, i.e., a conspiracy in restraint of trade, a conspiracy to monopolize, and monopolization. Count 4 charges a violation of Section 73 of the Wilson Tariff Act and Count 5 charges a conspiracy to defraud the United States Government. The conspiracy involved the production and sale of quinine, quinidine and other cinchona products. The case is pending.

2024. *United States* v. *Union Camp Corporation, et al.*, Civ. 5005A (E.D. Va.). On November 4, 1968, a complaint was filed against 2 corporations alleging a violation of Sections 1 and 2 of the Sherman Act in their commerce in window bags and mesh window bags. The complaint alleges that defendants conspired to exclude competitors from and control entry into the manufacture and sale of mesh window bags by asserting a patent known by the defendants to be invalid.

The complaint asks that defendants be found in violation of Sections 1 and 2 of the Sherman Act. The complaint seeks an injunction which would prohibit Union and Bemis from threatening anyone with patent infringement suits for any patent which either believes to be unenforceable and from consulting with any of their licensees as to which competitors would be denied patent licenses. In addition the Government also seeks an order requiring each defendant to dedicate to the public all patents which either defendant believes to be unenforceable. The case is pending.

2025. *United States* v. *F. W. Means & Co., et al.*, 68 CR 60 (W.D. Wisc.). On November 7, 1968, an indictment was returned charging 3 corporations and 4 individuals with violation of Section 1 of the Sherman Act in the field of industrial linen supplies. The indictment charged that defendants, by agreement, refrained from soliciting each other's customers, and balanced accounts with each other to compensate for any business lost to or gained from each other. The case is pending.

2026. *United States* v. *Hart Schaffner & Marx*, 68 CIV 21676 (N.D. Ill.). On November 13, 1968, a complaint was filed alleging that 1 corporation was violating Section 7 of the Clayton Act in the distribution and sale of Men's and Women's Clothing. The complaint alleges that the effect of Hart's purchases may be to substantially lessen competition or tend to create a monopoly in the manufacture, distribution and sale of men's and women's clothing. The complaint challenged the acquisitions made by Hart since January 1, 1965 of 33 corporations, operating 48 retail stores located in various metropolitan areas throughout the United States.

The complaint asks that the acquisitions be adjudged in violation of Section 7 of the Clayton Act and that Hart be enjoined from acquiring the stock or assets of any firm engaged in the retailing of men's suits. The case is pending.

2027. *United States* v. *Columbus Bowling Proprietors Association*, Cr. 9167 (S.D. Ohio). On November 20, 1968, an indictment was returned against 1 bowling association charging violation of Section 1 of the Sherman Act in the field of commercial bowling establishments. The indictment charges a conspiracy to fix prices of open, league and tournament bowling in the Columbus area and eliminate competition among defendant association members by prohibiting price inducements or promotions without the Association's approval. The case is pending.

2028. *United States* v. *Scott Paper Company, et al.*, Civ. 32049 (E.D. Mich.). On November 29, 1968, a complaint was filed alleging that 2 corporations were in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act in the trade and commerce in reticulated polyurethane foam. The complaint states that the alleged acquisition of one defendant's patent rights by the other defendant may lessen competition substantially and tend to create a monopoly.

The complaint asks that the defendants be found in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act; that the court permanently enjoin the defendants from engaging in practices which would have the effect of continuing the aforesaid violation of the Sherman and the Clayton Acts;

and to have the court require defendants to grant to each *bona fide* applicant therefor a reasonable royalty under all existing patents relating to the manufacture, treatment, and fabrication of reticulated foam. The case is pending.

2029. *United States* v. *Gannett Co., Inc., et al.*, Civ. 68 C 48 (N.D. Ill.). On December 5, 1968, a complaint and proposed judgment requiring the usual 30-day waiting period were filed against 3 corporations alleging a violation of Section 7 of the Clayton Act in the field of advertising. The complaint alleges that defendants acquisition of the shares of common stock may be substantially to lessen competition or tend to create a monopoly in the sale of advertising.

The complaint was premised on the theory that "local mass media engaged in the sale of advertising and the dissemination of news and advertising" constitutes a line of commerce under Section 7 of the Clayton Act.

The complaint seeks divestiture of the major newspapers in Rockford, Illinois by Gannett Co. The case is pending.

2030. *United States* v. *Independent Towel Supply Company, et al.*, Cr. 68–432 (N.D. Ohio).

2031. *United States* v. *Independent Towel Supply Company, et al.*, Civ. 68–935 (N.D. Ohio). On December 11, 1968, an indictment and complaint were filed charging 4 corporations and 1 trade association with violation of Section 1 of the Sherman Act. The indictment and complaint charge defendants with having entered into a conspiracy to fix prices and to allocate among themselves customers for linen supplies in the Cleveland area.

The complaint asks that the court adjudge the defendants to be in violation of Section 1 of the Sherman Act, and that each defendant be perpetually enjoined from entering into agreements with other linen supply companies to fix prices; and that defendant institute be dissolved within 60 days of entry of such decree. The cases are pending.

2032. *United States* v. *Circle Floor Co., Inc., et al.*, 68 CR 440 (E.D. N.Y.). On December 12, 1968, an indictment was returned charging 4 corporations and 4 individuals with violation of Section 1 of the Sherman Act. The indictment charges defendants with engaging in a conspiracy to allocate maple flooring jobs among themselves and to submit collusive and noncompetitive bids on maple flooring jobs in the state of New York and northern New Jersey. The case is pending.

2033. *United States* v. *W. R. Grace & Company, et al.*, 68 CR 236(2) (E.D. Mo.). An indictment was filed December 18, 1968, by the United States Attorney for Missouri charging 5 corporations with violation of Section 1 of the Sherman Act. The indictment charges that defendants conspired to raise and maintain prices of anhydrous ammonia and to fix and stabilize other terms and conditions for the sale of anhydrous ammonia to consumer-farmers in Perry County, Missouri. The case is pending.

2034. *United States* v. *Beatrice Foods Co., et al.*, NCR 5168 (D. Utah). On December 18, 1968, an indictment was returned charging 3 corporations and 6 individuals with violation of Section 1 of the Sherman Act. The indictment charges defendants conspired to fix, raise, maintain and stabilize wholesale and retail prices for the sale of dairy products, and with submitting collusive and rigged bids to federal, state and private institutions in Utah, southeastern Idaho and northwestern Colorado. It is also charged that defendants rotated and divided the business of such institutions among themselves. The case is pending.

2035. *United States* v. *Campanella & Cardi Ready-Mix Concrete Co., et al.*, Cr. Ind. 7549 (D. R.I.). On December 19, 1968, an indictment was returned charging 8 corporations with violation of Section 1 of the Sherman Act. The indictment charges defendants with having conspired to raise and stabilize prices of ready-mix concrete in Rhode Island and Massachusetts. The case is pending.

2036. *United States* v. *The Globe Chemical Co., Inc., et al.*, Cr. 11428 (S.D. Ohio). On December 20, 1968, an indictment was returned charging 5 corporations and 2 individuals with violation of Section 1 of the Sherman Act. The indictment charges that defendants have conspired to fix, raise, and maintain the prices of industrial chemicals and to fix and maintain other terms and conditions of sale, such as transportation charges in the Cincinnati area. The case is pending.

2037. *United States* v. *Automobile Manufacturers Association, Inc., et al.*, Civ. 69–76 JWC (C.D. Calif.). On January 10, 1969, a complaint was filed alleging that the 4 major automobile producers and their trade associations have been parties to unlawful agreements which delayed development and installation of

anti-pollution devices for motor vehicles in violation of Section 1 of the Sherman Act.

The complaint asks that the cross-licensing agreement be cancelled, that the defendants be permanently enjoined from continuing or reviving agreements involving restrictions on the installation or publicity of anti-pollution technology, and the joint assessment and licensing of patents relating to such technology on a most-favored-purchaser basis as well as other relief incident to the action. The case is pending.

2038. *United States* v. *Atlantic Richfield Company, et al.*, 69 CIV 162 (S.D. N.Y.). On January 15, 1969, a complaint was filed charging 2 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Atlantic Richfield and Sinclair Oil Corporation may substantially lessen competition or tend to create a monopoly in the sale of gasoline.

The complaint asks that the proposed merger be adjudged in violation of Section 7 of the Clayton Act; that a preliminary injunction be issued against Atlantic and Sinclair preventing them from taking any action in furtherance of the agreement and that defendants be perpetually enjoined from carrying out the agreement. The case is pending.

2039. *United States* v. *International Business Machines Corporation*, 69 CIV 200 (S.D. N.Y.). On January 17, 1969, a complaint was filed under Section 2 of the Sherman Act, alleging that IBM was monopolizing the general purpose digital computer industry.

The complaint asks that IBM be required to price, sell and lease separately its computer systems, programing know-how and other customer support. The Government also seeks provisions barring IBM from setting prices which fail to reflect reasonable returns and from granting special allowances that unreasonably inhibit the entry and growth of competitors. In addition, the complaint asks for any divorcement, divestiture or reorganization of IBM necessary to dissipate the effects of the allegedly illegal activities. The case is pending.

2040. *United States* v. *The Virginia National Bank, et al., Civ.* 33-69-N (E.D. Va.). On January 20, 1969, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of Hampton Bank with Virginia National may substantially lessen competition or tend to create a monopoly in the commercial banking industry.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect. The case is pending.

2041. *United States* v. *Idaho First National Bank, et al.*, Civ. 1 69 9 (D. Idaho). On February 13, 1969, a complaint was filed under Section 7 of the Clayton Act challenging the proposed merger of 2 defendant banks. The complaint alleges that the proposed merger may be to substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the merger agreement be adjudged in violation of Section 7 of the Clayton Act, and that the defendants be enjoined from carrying out the aforesaid merger agreement. The case is pending.

2042. *United States* v. *Western Farmers Association*, Civ. 8150 (W.D. Wash.). A complaint was filed February 19, 1969, under Section 7 of the Clayton Act challenging the merger of the 2 largest chicken fryer processing firms in the State of Washington. The complaint alleges that the acquisition by Western Farmers Association of Pederson Fryer Farms eliminated all actual and potential competition between the firms and that competition in the state-wide industry may be substantially lessened.

The complaint asks that the Association be required to sell the assets it had acquired and take all necessary steps to set up Pederson as a going business. The case is pending.

2043. *United States* v. *Iowa Beef Packers, Inc., et al.*, Civ. 65——— (W.D. Iowa). On February 24, 1969, a complaint was filed under Section 7 of the Clayton Act challenging the proposed merger of Iowa Beef Packers, Inc., and Blue Ribbon Beef Pack, Inc. The complaint alleges that the merger would result in the elimination of actual and potential competition between the 2 defendant corporations in the purchase of fed cattle. The complaint also alleges that potential competition in the sale of primal and fabricated beef cuts will be eliminated.

The complaint asks that the merger agreement be adjudged in violation of Section 7 of the Clayton Act and that the defendants be enjoined from carrying out the merger agreement.

A motion for a TRO and an application for a preliminary injunction were filed with the complaint. On February 24, 1969, the TRO was entered *ex parte*, and it was extended on March 6, 1969, pending determination of the complaint on its merits. The case is pending.

2044. *United States* v. *Crocker-Citizens National Bank, et al.*, Civ. 51086 (N.D. Calif.). On April 3, 1969, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleged that the proposed merger between Crocker-Citizens and Sonoma Bank may substantially lessen competition or tend to create a monopoly in the commercial banking field.

The complaint asks that defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect.

On May 12, 1969, the court approved and ordered the dismissal of this action without prejudice, as the merger had been abandoned.

2045. *United States* v. *Ling-Temco-Vought, Inc., et al.*, Civ. 69–438 (W.D. Pa.). On April 14, 1969, a complaint was filed charging 3 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that LTV's acquisition of J&L Steel threatens to diminish their potential independent competition in the steel industry and other metals markets, to diminish their potential independent competition in other diversified industries, to enhance their power to engage in reciprocal dealing, to increase substantially the concentration of control of the nation's manufacturing assets, and to encourage the trend to further concentration by merger.

The complaint asks that LTV and J&L Industries divest themselves of all ownership interest in J&L Steel. The case is pending.

2046. *United States* v. *Continental Bank and Trust Company, et al.*, Civ. 69–890 (E.D. Pa.). On April 24, 1969, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleged that the proposed merger between Continental Bank and Merchants National may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

On June 4, 1969, the court approved and ordered the dismissal of this action without prejudice, as the merger was abandoned.

2047. *United States* v. *International Telephone and Telegraph Corporation*, Civ. 69 C 924 (N.D. Ill.). On April 28, 1969, a complaint was filed charging 1 corporation with violation of Section 7 of the Clayton Act. The complaint alleges that the merger of ITT and Canteen may substantially lessen competition or tend to create a monopoly in the field of food and vending services.

The complaint asks that ITT divest itself of all interests in Canteen Corporation and that the court order a preliminary relief requiring ITT to maintain Canteen business and financial operations completely separate from ITT pending the final disposition. The case is pending.

2048. *United States* v. *Martin Linen Supply Company*, et al., Civ. SA 69 CA 114 (W.D. Texas). On April 30, 1969, a complaint was filed charging 3 corporations and 1 individual with violation of Sections 1 and 2 of the Sherman Act. The complaint alleges that defendants have engaged in an unlawful conspiracy to restrain and to monopolize, and attempt to monopolize the linen rental supply business in the State of Texas.

On June 2, 1969, the case was terminated by the entry of a final judgment pursuant to a stipulation filed the same day as the complaint requiring a 30-day waiting period.

The judgment which is nationwide enjoins defendants from entering into agreements to fix prices, allocate markets, or cause sellers to boycott linen rental supply purchasers. The judgment further states that the corporate defendants be required, for a period of 3 years, to give the Antitrust Division 30 days advance notice of any proposed acquisition of a linen rental supplier, if the company to be acquired grosses in excess of $400 per week.

2049. *United States* v. *Continental Oil Company, et al.*, Civ. 8026 (D. N.Mex.). On April 30, 1969, a complaint was filed charging 3 corporations with violation of Section 1 of the Sherman Act challenging a joint marketing arrangement between two asphalt producers and an asphalt broker. The complaint alleges that defendants have conspired to fix prices in the sale of paving asphalt for new highway construction in New Mexico.

The complaint asks that the court adjudge defendants in violation Section 1 of the Sherman Act and that a court order be issued enjoining the producers and broker from continuing the alleged conspiracy. The case is pending.

2050. *United States* v. *The Connecticut National Bank, et al.*, Civ. 13138 (D. Conn.). On May 9, 1969, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger of The Connecticut Bank and Trust Company into the Connecticut National Bank may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

The complaint asks that the defendants be enjoined from carrying out the proposed merger and any similar plan having the same effect. The case is pending.

2051. *United States* v. *First Virginia Bankshares Corporation, et al.*, Civ. 176–69–A (E.D. Va.). On May 14, 1969, a complaint was filed charging 2 banking associations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed acquisition by The National Bank of Manassas of The First National Bank of Quantico may substantially lessen competition or tend to create a monopoly in the field of commercial banking.

On June 11, 1969, the court approved and ordered the dismissal of this action without prejudice, as the merger was abandoned.

2052. *United States* v. *Northwest Industries, Inc., et al.*, Civ. 69 C 1102 (N.D. Ill.). On May 21, 1969, a complaint was filed charging 2 corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the acquisition of B. F. Goodrich Company by Northwest Industries may eliminate actual and potential competition between the defendants and substantially enhance the power of the firms and their suppliers to benefit from reciprocity in the field of railroad operations and various other industries.

The complaint asks that a preliminary injunction be issued; and that Northwest be ordered to divest itself of all ownership interest in Goodrich and be perpetually enjoined from acquiring any such interest. The case is pending.

2053. *United States* v. *United States Steel Corporation*, Civ. 69–728 (W.D. Pa.). On June 13, 1969, a complaint and proposed final judgment requiring the usual 30-day waiting period were filed against 1 corporation under Sections 1 and 2 of the Sherman Act. The complaint alleges combinations with suppliers and an attempt to monopolize the requirements of actual and potential supplier customers for steel, steel products and other products including cement and chemicals.

The complaint asks that defendant be adjudged in violation of Sections 1 and 2 of the Sherman Act. The case is pending.

2054. *United States* v. *Dunham Concrete Products, Inc., et al.*, Cr. 1842 (E.D. La.). A 5 count indictment was returned June 20, 1969, charging 3 corporations and 2 individuals with violation of Section 1 of the Sherman Act and the Hobbs Act. The indictment charged the defendants with coercing industrial purchasers of concrete products to deal exclusively with the Dunham companies through strikes, work stoppages, and property damage at construction sites.

The indictment also charged that the defendants conspired to obstruct and delay construction projects which used competitors' concrete products, to supply truckdrivers and equipment operators to concrete suppliers at higher wage rates and upon less favorable terms than those extended to Dunham companies, and to fix prices and prescribe areas of sale of concrete products.

The defendants were also charged with 2 counts of extortion in violation of the labor racketeering provisions of the Hobbs Act through strikes, work stoppages, and physical violence at construction sites at Donaldsonville and Plaquemine, Louisiana. The case is pending.

2055. *United States* v. *Quaker State Oil Refining Corporation, et al.*, Civ. 56–69 Erie (W.D. Pa.). On June 23, 1969, a complaint and a proposed judgment requiring the usual 30-day waiting period were filed charging 1 corporation with violation of Section 1 of the Sherman Act in the marketing of motor oils, motor detergents, greases and undercoatings. The complaint charges defendant with conspiring with distribution outlets to fix prices, allocate customers and territories, and prevent sale of its brand name products to discount sellers. The complaint also charges that the defendant and its subsidiaries, and distributors entered into a series of contracts which fixed resale prices and limited distribution areas, and restricted the customers to whom distributors could sell.

The complaint asks that the court adjudge defendants have violated Section 1 of the Sherman Act. The case is pending.

2056. *United States* v. *Beatrice Foods Co., et al.*, Civ. NC 3869 (D. Utah). On June 26, 1969, a 3 count complaint was filed charging 3 leading dairies with violation of Section 1 of the Sherman Act and Section 4A of the Clayton Act. The complaint alleges that the Government was denied the benefit of unrestricted price competition and was compelled to pay higher prices for dairy products.

The complaint asks for double damages in an unspecified amount plus a forfeiture of $2,000 per false claim under the False Claims Act or, in the alternative, actual damages under Section 4A of the Clayton Act.

The complaint also asks that the defendants be enjoined from further violation of Section 1 of the Sherman Act. The case is pending.

2057. *United States* v. *Bardahl Manufacturing Corporation, et al.*, Civ. 8371 (W.D. Wash.). On June 30, 1969, a complaint and proposed final judgment requiring the usual 30-day waiting period were filed charging 5 corporations with violation of Section 1 of the Sherman Act. The complaint alleges that the defendants conspired to fix the prices at which Bardahl products are sold at various levels of distribution and allocate sales, territories in the sale of motor oils, greases, and lubricants.

The complaint asks that the defendants be adjudged in violation of Section 1 of the Sherman Act. The case is pending.

2058. *United States* v. *Ciba Corporation*, Civ. 791–69 (D. N.J.).

2059. *United States* v. *Ciba Corporation, et al.*, Civ. 792–69 (D. N.J.).

On July 9, 1969, 2 complaints were filed under Section 1 of the Sherman Act, alleging that Ciba and CPC had restrained the sale of prescription drug products through restricting licensing arrangements.

The first complaint alleged that Ciba entered into various patent license agreements involving drugs known as benzothiadiazines, which are used as diuretics and antihypertensives. Each agreement expressly prohibits the licensees from selling the licensed product in bulk.

The complaint further alleged that Ciba agreed with certain of its hydrochlorothiazide licensees that such licensees would sell hydrochlorothiazide only as a combination product containing other therapeutically active ingredients approved by Ciba. The complaint charges that such agreements prevent competition among Ciba's licensees in sales of hydrochlorothiazide in particular combinations and competition between Ciba, which sells hydrochlorothiazide alone and in particular combinations, and its licensees.

The second complaint alleged that Ciba entered into an agreement with S. B. Penick & Co. in restraint of trade of a drug know as deserpidine, which is used as a tranquilizer and antihypertensive (Penick was subsequently acquired by CPC's predecessor, Corn Products Company).

Ciba agreed to license Penick to make and sell deserpidine in bulk form only and to grant no additional deserpidine licenses, unless such licenses restricted sales of deserpidine-containing products to dosage form. Ciba subsequently authorized Penick to grant a license to Abbott Laboratories to make and sell deserpidine only in dosage form and only under Abbott's label. The complaint maintained that the bulk sales restriction has the same anticompetitive effect as alleged in previous complaints. The complaint further challenged the provision in the license whereby Abbott agreed not to contest the validity of the licensed patent.

The first complaint asks that Ciba be enjoined from entering into agreements in which licensees are prevented from selling drugs in bulk form or only in specified combinations and from challenging the validity of any patent.

The complaint asked that Ciba and CPC be enjoined from entering into any agreement prohibiting the sale of any pharmaceutical product in bulk or under any other than a specified trade name.

The complaint further asked that the deserpidine patent be declared invalid because it covers only a purified product of nature extracted from the plant of the Rauwolfia species, which has long been used for antihypertensive and tranquilizing purposes. The cases are pending.

2060. *United States* v. *Ilco Corporation*, Civ. 13261 (D. Conn.),

2061. *United States* v. *Emhart Corporation*, Civ. 13262 (D. Conn.),

2062. *United States* v. *Sargent & Company*, Civ. 13263 (D. Conn.),

2063. *United States* v. *Eaton Yale & Towne, Inc.*, Civ. 13264 (D. Conn.).

On July 11, 1969, 4 complaints were filed under Section 1 of the Sherman Act, against the manufacturers of MASTER KEY SYSTEMS.

The complaints alleged each of the manufacturers and distributors entered into agreements not to sell master key systems and extensions outside of allocated territories, not to compete against any other distributor who had written the specifications for a master key system, and not to bid on or sell extensions to master key systems originally sold by another distributor.

Each suit asks the court for an injunctioon to halt the alleged conspiracies and to order each manufacturer to inform its distributors that they may sell

master key systems and extensions in such areas and to such persons as they see fit.

On October 6, 1969, the case against Ilco Corporation was terminated by the entry of a final judgment pursuant to a stipulation filed September 5, 1969, requiring a 30-day waiting period.

The judgment enjoins the defendant from participating in any agreement, understanding, or plan to allocate or assign territories or markets for the distribution or sale of master key systems, and from refusing to sell or discriminating the sale of such systems to any reseller. Three cases are pending.

2064. *United States* v. *Toro Manufacturing Corporation*, 4–69 CIV 243 (D. Minn.). On July 11, 1969, a complaint was filed under Sections 1 and 3 of the Sherman Act against 1 corporation alleging that the defendant fixed prices at which lawn care products are sold to the public and with allocating the geographic territories in which its wholesale distributors may sell.

The complaint asks for an injunction to prevent the defendant from imposing any restriction on the prices at which, the persons to whom, or the territories within which, distributors or dealers of Toro Lawn care products may sell such products. The complaint also seeks to require the defendant to revise its distributor and dealer contracts to conform to the provision of any judgment to be entered. The case is pending.

2065. *United States* v. *Otter Tail Power Company*, 6–69 CIV 139 (D. Minn.). On July 14, 1969, a complaint was filed charging 1 company with violating Section 2 of the Sherman Act. The complaint alleges that the defendant has monopolized and attempted to monopolize the sale of electric power in the area it serves by seeking to prevent municipalities from shifting local electric service from Otter Tail to other power systems.

The complaint asks that the defendant be permanently enjoined from engaging in and continuing the alleged practices. The case is pending.

2066. *United States* v. *Chas. Pfizer & Co., Inc., et al.*, Civ. 1966–69 (D. D.C.). On July 15, 1969, a 3 count complaint was filed charging 7 corporations with violation of Sections 1 and 2 of the Sherman Act and Section 4A of the Clayton Act in the sale of antibiotics. Counts 1 and 2 of the complaint charges Pfizer with obtaining the tetracycline patent by knowingly making false and misleading statements to the U.S. Patent Office and withholding information. The complaint charges Cyanamid with aiding and abetting Pfizer in obtaining the patent. Pfizer is also charged with limiting the number of suppliers of tetracycline to the government, which was damaged by paying non-competitive prices for the drug. Count 3 of the complaint charges all defendants with conspiring to monopolize and to monopolize the manufacture and sale of tetracycline.

The complaint asks that defendants be found to have violated Sections 1 and 2 of the Sherman Act and to assess damages, which are presently undetermined. The case is pending.

2067. *United States* v. *Fisons Limited, et al.*, Civ. 69 C 1530 (N.D. Ill.). On July 23, 1969, a complaint was filed charging 5 corporations (2 foreign and 3 American drug manufacturers) with violation of Section 1 of the Sherman Act. The complaint alleged that Fisons entered into license agreements with the American firms relating to its U.S. patented drug, iron dextran, which is used for the treatment of iron deficiency anemia in humans and in animals. Colgate was granted an exclusive right to manufacture and sell iron dextran in dosage form only for human use under the trademark Imferon. Armour was granted a license to manufacture and sell iron dextran in dosage form for use in animals. American Home was granted a license, with Armour's approval, to resell iron dextran in dosage form for animal use through licensed veterinarians.

The complaint also charges that Fisons' agreed with all the licensees to transfer to Fisons all the iron dextran trademarks, whether owned by Fisons or by one of its licensees, upon the expiration of the license agreements.

The complaint further challenges the agreements of all licensees not to contest the validity of Fisons' trademarks or the transfer of their trademarks to Fisons.

The suit asked that the companies be prohibited from making agreements on use of patents if such agreements required approval of another licensee under the same patent.

The complaint asked that the defendants be enjoined from making agreements which in effect restrict the resale of pharmaceutical products in bulk, divide or allocate any markets for the distribution and sale of any pharmaceutical products, or restrict the persons to whom, or the channels of distribution through which, any pharmaceutical products may be sold.

The suit also asked that defendants be enjoined from making agreements which require any person to use only specified trademarks on a pharmaceutical product which such person purchases or manufactures, or which require any person to transfer back any pharmaceutical product trademark, which was not originally conveyed by the licensor, and not to contest the validity or use of any trademarks.

The court was also asked to order Fisons to grant licenses on reasonable terms to all bona fide applicants, on all United States patents it has the right to license which relate to iron dextran, and that it make available any know-how relating to iron dextran manufacture in its possession or control. The court was further asked to require Fisons, for 5 years, to sell iron dextran on non-discriminatory terms to each bona fide applicant. The case is pending.

2068. *United States* v. *Witco Chemical Corporation*, Civ. 60–69 Erie (W.D. Pa.). On July 24, 1969, a complaint was filed charging 1 corporation with violating Section 1 of the Sherman Act. The complaint charges the defendant with engaging in an unreasonable restraint of trade in the sale and distribution of petroleum products.

The complaint seeks to have the alleged conspiracy declared unlawful and to enjoin the continuation or resumption of it or any similar plan or program. In addition the court is asked to direct Witco to notify distributors of Kendall products that they may sell such products at such prices, to such persons, and in such areas as they may freely choose. The case is pending.

2060. *United States* v. *Gould, Inc.*, Civ. C 69–590 (N.D. Ohio). On August 1, 1969, a complaint was filed charging 1 corporation with violating Section 7 of the Clayton Act. The complaint alleges that the defendant's acquisition of promissory notes from Business Funds, Inc. a competitor, may substantially lessen competition or tend to create a monopoly in the zinc-carbon, sealed nickel-cadmium and magnesium battery market.

Filed simultaneously with the complaint was a proposed consent judgment requiring the usual 30-day waiting period. The judgment entered September 3, 1969, provides that the defendant must sell the promissory notes within 12 months from the date of their receipt and that defendant refrain from holding any debt or obligation of Business Funds, Inc., thus terminating the case.

2070. *United States* v. *International Telephone & Telegraph Corporation, et al.*, Civ. 13319 (D. Conn.). On August 1, 1969, a suit was filed to prevent International Telephone & Telegraph Corporation (ITT) from acquiring the Grinnell Corporation. The complaint claimed that the proposed merger would violate Section 7 of the Clayton Act (a) by encouraging illegal reciprocity; (b) by discouraging actual and potential competition between the two firms and (c) by tending to trigger mergers by other companies to protect themselves from the impact of the merger or to obtain similar competitive advantages.

Grinnell is the largest manufacturer and installer of automatic sprinkler fire protection systems in the United States.

The suit alleges that the merger will entrench Grinnell's already leading position in several concentrated markets. The power of ITT and Grinnell to employ reciprocity and benefit from reciprocity effect in these markets will be substantially increased and the market for Grinnell's competitors will be correspondingly narrowed. Thus, the merger will raise barriers to entry, discourage smaller firms from competition in those markets as well as trigger other mergers by competitors.

The complaint further alleges that the merger will increase the current trend of acquisitions of dominant firms in concentrated markets by larger companies, thereby (i) increasing the concentration of control of manufacturing assets; (ii) increasing the barriers to entry in concentrated markets; and (iii) diminishing the vigor of competition by increasing actual and potentials customer-supplier relationships among leading firms in concentrated markets.

The suit asks for a preliminary injunction to prevent ITT's proposed acquisition; a protective order to insure the independent operation of Grinnell during the litigation, should the court deny the preliminary injunction; and a permanent order preventing the acquisition.

2071. *United States* v. *International Telephone & Telegraph Corporation, et al.*, Civ. 13320 (D. Conn.) On August 1, 1969, a suit was filed to prevent International Telephone & Telegraph Corporation from acquiring the Hartford Fire Insurance Company. The Company claimed that the proposed merger would violate Section 7 of the Clayton Act (a) by encouraging illegal reciprocity; (b) by discouraging actual and potential competition and (c) by tending to trigger mergers by other companies seeking to protect themselves from the impact of the merger or to obtain similar competitive advantages in the insurance filed.

The complaint alleges more specifically that the merger will foreclose competitors of Hartford from competing for the insurance purchases of ITT and ITT's customers and increase the power of ITT and Hartford to benefit from the reciprocity effect in selling insurance as well as to trigger future mergers by competitors and to reduce the actual and potential competition between them.

The suit asks for a premilinary injunction to prevent ITT's proposed acquisition; a protective order to insure the independent operation of Hartford during the litigation, should the court deny the preliminary injunction; and a permanent order preventing the acquisition. The case is pending.

2072. *United States* v. *Virgin Islands Gift and Fashion Shop Association, Inc., et al.*, Civ. 295–1969 (D. V.I.). On September 10, 1969, a complaint was filed charging 1 association, 16 corporations and 6 individuals with violation of Section 3 of the Sherman Act. The complaint alleges that the retailers, through the Association have participated in a combination and conspiracy to fix prices, limit discounts, and to cut off supplies of gift shop items to those retailers who refuse to abide by the schedule of agreed upon prices.

The complaint seeks to enjoin the continuation of price fixing conspiracy and to dissolve the defendant association. The complaint also seeks to require the retailers to revise their existing price lists and discount price schedules and independently compile new lists and schedules. The case is pending.

2073. *United States* v. *Standard Oil Company of California*, Civ. 52334 (N.D. Calif.). On September 30, 1969, a complaint was filed charging 1 corporation with violating Section 3 of the Sherman Act. The complaint charges that the defendant monopolized and restrained trade in the distribution and sale of petroleum products in the Territory of American Samoa.

The suit seeks to enjoin the defendant from continuing or renewing the alleged violations, and to terminate or modify both SoCal's 50 year exclusive lease or the Territory's petroleum storage facilities and its long-term requirements contracts with the 2 tuna canneries (Van Camp and Star-Kist) as necessary to restore competition. The case is pending.

2074. *United States* v. *Kelsey-Hayes Company, et al.*, Cr. Supp. to Civ. 10–655 (E.D. Mich.). On October 20, 1969, a petition was filed for an order to show cause why 3 corporations and 2 individuals should not be held in criminal contempt for violation of a final judgment of that court entered July 1, 1955.

The petition alleges that the manufacturers and executives have violated the judgment, by (1) entering into agreements with distributors to fix the resale price of wheels; (2) collaborating in the compilation, publication, and distribution of composite schedules and catalogues describing wheels made by all three manufacturers; and (3) participating in the direction of the National Wheel and Rim Association. The case is pending.

2075. *United States* v. *The First National Bank of Sunbury, et al.* Civ. 69–434 (M.D. Pa.). On October 24, 1969, a complaint was filed charging 2 banking corporations with violation of Section 7 of the Clayton Act. The complaint alleges that the proposed merger would permanently eliminate competition between the 2 banks, would substantially lessen competition, and would increase concentration in commercial banking in the Susquehanna area.

The complaint asks that the defendants be held in violation of Section 7 of the Clayton Act. The case is pending.

2076. *United States* v. *The Standard Oil Company, an Ohio Corporation, et al.*, Civ. C–69–954 (N.D. Ohio). On December 1, 1969, a civil action together with a proposed consent judgment to be final in 30 days was filed charging that the acquisition of BP Oil Corporation by the Standard Oil Company, an Ohio Corporation, was illegal under Section 7 of the Clayton Act. Because of the nature of the merger agreement, the British Petroleum Company, Ltd., British Petroleum (Overzee), N.V., and British Petroleum (Holdings), Inc., were also named defendants.

The suit alleges that Sohio's acquisition of BP would eliminate actual and potential competition between them and would generally lessen competition in the sale of gasoline. The case is pending.

2077. *United States* v. *National Bank & Trust Company of Central Pennsylvania, et al.* Civ. 69–2902 (E.D. Pa.). On December 11, 1969, a complaint was filed challenging the proposed consolidation of 3 southeastern Pennsylvania banks with violation of Section 7 of the Clayton Act in the commercial banking industry.

The complaint alleged that the consolidation would permanently eliminate potential competition among the 3 banks, would permanently eliminate compe-

tition between 2 of them, thereby increasing banking concentration in a tri-county area consisting of York, Dauphin and Lancaster Counties, and may result in the entrenchment of substantial market shares presently held by 2 of the banks which are the largest commercial banks headquartered in their respective counties.

The complaint asks that the agreement be adjudged unlawful and be enjoined from carrying out the agreement. The case is pending.

2078. *United States* v. *Prince George's County Board of Realtors, Inc.* Civ. 21545 (D. Md.). On December 18, 1969, a complaint was filed charging the Prince George's County Board of Realtors (the Board) with violating Section 1 of the Sherman Act by conspiring to fix commission rates for the sale of real estate in Prince George's County.

The complaint charges that the Board has circulated published schedules of recommended commission rates, which are adhered to by its members, and the Board and its members have agreed that no listing will be accepted by the Prince George's Multiple Listing Service at a commission rate less than that recommended by the Board.

The suit seeks to enjoin the Board and its members from continuing or renewing the alleged violations of the Sherman Act which contributed to the fixing of commission rates. The case is pending.

2079. *United States* v. *The Higbee Company*, Civ. C–69–1017 (N.D. Ohio). On December 22, 1969, a complaint was filed charging that the acquisition of Burrows Brothers Company by the Higbee Company was in violation of Section 7 of the Clayton Act. The suit alleges that the acquisition may substantially lessen competition or tend to create a monopoly in the retail sale of trade books in the Cleveland area.

The suit seeks to require Higbee to divest itself of all interest in and control over Burrows. The case is pending.

2080. *United States* v. *First At Orlando Corporation, et al.*, Civ. 69–281–ORL (M.D. Fla.). On December 23, 1969, a complaint was filed against First at Orlando Corporation (First) charging that its acquisition of 3 affiliated Florida banks was in violation of Section 7 of the Clayton Act in the commercial banking industry.

The complaint alleges that the merger would eliminate First as a potential competitor in Volusia County and in the Daytona Beach area. The 3 banks accounted for about 20 per cent of total commercial bank deposits in Volusia County and about 28 per cent of such deposits in the Daytona Beach area.

The suit seeks to have the acquisition declared unlawful and to have a permanent injunction issued. The case is pending.

2081. *United States* v. *Wisconsin Alumni Research Foundation*, Civ. 69–C–316 (W.D. Wisc.). On December 30, 1969, a complaint was filed against Wisconsin Alumni Research Foundation ("WARF") charging it with the use of restrictive patent licensing in violation of Section 1 of the Sherman Act. A proposed consent judgment was filed at the same time requiring the usual 30-day waiting period.

The complaint alleges that WARF owns a group of United States and foreign patents covering the Wurster process for coating pharmaceutical products. The license agreements for these patents contain so-called "grantback" clauses that are said to be in violation of the Sherman Act. The case is pending.

2082. *United States* v. *Federation De Transporte De Puerto Rico, et al.*, Cr. 870 (D. Puerto Rico). An indictment was returned on February 4, 1970 under Section 1 of the Sherman Act charging 4 associations of trucking companies, their Federation, their principal Officers and a Teamster official with a conspiracy to fix and maintain rates for trucking services in Puerto Rico; requiring and coercing all members of defendant Associations to charge agreed upon rates; and coercing customers to pay higher rates to members of defendant associations by means of actual and threatened work stoppages and actual and threatened damage to machinery. The case is pending.

2083. *United States* v. *Crowell Collier, et al.*, 70–Civ–460 (S.D. N.Y.). The complaint charges 3 corporations with violation of Section 7 of the Clayton Act. The complaint filed on February 4, 1970 alleges that the merger may substantially lessen competition or tend to create a monopoly in the following ways: Potential competition between Conn and Crowell in the manufacture and sale of wind instruments will be eliminated. Conn will be entrenched in its position in the wind instrument market, barriers to new companies in the market may increase; and other mergers and acquisitions between companies engaged in the manufacture and sale of Wind Instruments and uniforms may be fostered.

The relief asked for is that the defendants be adjudged in violation of Section 7 of the Clayton Act; and that Crowell be required to divest itself of all its interests in and control over Conn and Ostwald and that for a period of 5 years, except with the approval of the government or a court that Crowell or any one acting for Crowell be enjoined from acquiring. The case is pending.

2084. *United States* v. *Viking Carpets, Inc.*, Civ. C–70–160 (N.D. Ohio). On February 19, 1970 a complaint was filed charging 1 corporation with violation of Section 1 of the Sherman Act. The complaint alleges that the defendant has entered into agreements with its distributors allocating sales territories and fixing the resale prices at which Viking carpets may be sold. The complaint charges Viking with agreeing with its distributors that: each distributor will not sell Viking Carpets outside a specified geographical area; dealers will be required to purchase Viking Carpets exclusively from distributors assigned, distributors will refuse to sell Viking Carpets to dealers assigned to another distributor, and defendant and his distributors will maintain the wholesale price of Viking Carpets and not to sell to persons who do not maintain the established resale prices of Viking Carpets.

The case was terminated March 23, 1970 by a final judgment pursuant to a stipulation filed February 19, 1970 requiring thhe customary 30 day waiting period.

Under the judgment Viking is enjoined from fixing prices and allocating territories or customers among distributors the resale prices at which Viking Carpets may be sold.

In addition the defendant is required to serve a copy of the final judgment on its distributors within 60 days after the final judgment is entered, and for a period of 5 years defendant must notify the Government of any distributorships which are cancelled along with the reasons therefor.

2085. *United States* v. *Times Printing Company*, Civ. 5836 (E.D. Tenn.). On February 24, 1970 a civil case was filed under Section 2 of the Sherman Act charging the Times Printing Company of Chattanooga, Tennessee with attempting to monopolize the daily newspaper market by eliminating the Chattanooga News-Free Press. Filed at the same time was a proposed consent decree which would terminate the case.

The methods which the complaint says the defendant publisher of the Chattanooga Morning and Sunday Times and The Evening Post used in the attempt to monopolize include intentional below cost operations resulting in a $7 million dollar loss during a 3 year period, unreasonably low advertising and circulation rates, discriminatory pricing, and forced combination sales of classified advertising.

The complaint alleges that the publication of the Post was for the sale purpose of eliminating the Free Press as a competitor. Times Printing announced on the day the case was filed that it was terminating publication of the Post immediately.

The case was terminated March 27, 1970 by a final judgment pursuant to a stipulation filed February 24, 1970 requiring the customary 30 day waiting period.

Under the judgment the Times will be enjoined from below cost operations for a 3-year period except as it revises its advertising and circulation rates in order not to substantially undercut those of the Free Press.

The Times will also be enjoined, except in response to rate reductions by the Free Press, from dropping its advertising and circulation rates during this 3 year period so long as it is operating at a loss.

Another provision of the judgment enjoins the Times from intentional below cost operation of any newspaper in Chatanooga for the purpose or with the probable effect of eliminating a competitor for 13 years.

Finally should the defendant resume publication of an evening paper during the term of the judgment, it will be subject to certain additional restrictions. These include a ban on selling combination advertising in its morning and evening paper at a reduced rate during the first 3 years following entry of the decree and, for a period of 10 years thereafter, from selling such combination advertising except on a cost justified basis. The judgment also bans any forced combination advertising sales.

2086. *United States* v. *United Virginia Bankshares, et al.*, Civ. 85–70–A (E.D. Va.). Complaint was filed February 27, 1970, which charges 1 holding and 2 banking associations with violation of Setcion 7 of the Clayton Act. The complaint alleges that the defendants United Virginia Bankshares and Peoples National Bank have entered into an agreement which will result in the acquisition by United Virginia Bankshares of a controlling interest in Peoples National Bank.

This is too be accomplished by the creation of Manassas Bank, NA., its acquisition of United Virginia Bankshares and its subsequent merger with Peoples National Bank. The complaint also alleges that the acquisition may be to substantially lessen competition or tend to create a monopoly in the commercial banking industry. The relief asked for is that the defendant be enjoined from carrying out any similar plan or the acquisition. The case is pending.

2087. *United States* v. *Evans Products Company*, 70–Civ–540 (N.D. Ill.). The complaint filed on March 6, 1970 charging 1 corporation with violation of Section 1 and 2 of the Sherman Act. The complaint charges the defendant with making reciprocal purchasing and selling arrangements with railroads. The complaint also charges that the defendant has used its purchasing power in an attempt to monopolize the requirements of actual and potential supplier-cutomers of the railroad.

The complaint alleges that the Evans' activities have had the effect of foreclosing competitors of Evans from selling substantial quantities of railway equipment to railroads that are supplier-customers of Evans, and preventing actual and potential railroad suppliers of quantities of such shipping by Evans.

The suit requests that Evans, reciprocal arrangements and attempts to monopolize be declared unlawful; that Evans take action to eliminate the means by which the reciprocal practices were carried out; and that Evans be enjoined from engaging in reciprocal practices with respect to all actual and potential supplier-customers. The case is pending.

2088. *United States* v. *Bristol-Meyers Company, et al.*, Civ. 822–70 (D. D.C.). Complaint filed March 19, 1970 under Sections 1 and 2 of the Sherman Act and Section 4a of the Clayton Act against Bristol-Meyers Company Beecham Group Limited of England and its United States subsidiary Beecham, Inc. of Clifton, New Jersey. The complaint was filed in the District of Columbia under the patent code long arm provision, 35 U.S.C. § 293 alleges that the defendants combined and conspired in unreasonable restraint of trade in semisynethic penicillins and have monopolized trade and commerce in ampicillin by fraudulently procuring and enforcing Beechams patent covering ampicillin and restraining and preventing the sale of the drugs in bulk form or under other than specified trade names. The suit charges that the defendants, in procuring Beecham's ampicillin patent, committed fraudulent and inequitable impositions upon the Patent Office by, among other things, failing to bring certain prior art to the attention of the Patent Examiner despite their knowledge that it was closer reference to the invention than the prior art being considered, delaying the publication of an article that explained the significance of the reference until after the issuance of the ampicillin patent, and reporting in a deceptive manner the results of experiments conducted at the request of the Patent Examiner. The complaint also charges that Beecham and Bristol entered into a series of agreements with one another and with other drug companies limiting sales in the United States to dosage form products to be sold under specified trademarks.

The complaint seeks cancellation of Beechams patent for ampicillin and a patent owned by Bristol covering a variant of ampicillin known as ampicillin trihydrate, which was described in an older patent prior to Bristol's claimed invention. The complaint in addition seeks money damages resulting from the Government paying higher prices because of the alleged violations. The case is pending.

2089. *United States* v. *The Cleveland Trust Company*, Civ. 70–301 (N.D. Ohio). On March 26, 1970, a civil complaint was filed alleging violations of Sections 7 and 8 of the Clayton Act. According to the complaint, Cleveland Trust has acquired substantial parts of the stock of Acme Cleveland Corporation, Pneumo-Dynamics Corporation, Warner & Swasey Company and White Consolidated Industries, Inc., each of whom is a major manufacturer of automatic Machine Tools. The complaint alleges that Cleveland Trust does not hold such stock solely for investment purposes because it consistently exercises voting rights to such shares to elect directors and influence management and does substantial banking business with Acme, Pneumo, Warner & Swasey and White.

The complaint asks that the acquisition, retention and use by the defendant of the acquired stock be adjudged and decreed to be in violation of Section 7 of the Clayton Act; that the defendant be required to divest itself of its stock in all but one of the aforesaid companies; that the defendant be ordered to withdraw from participation in the direction, control, or management of all but 1 of the aforesaid companies; that it be adjudged that the defendant has violated Section 8 of the Clayton Act; that the defendant be ordered and directed

to order its agents to resign from directorships in all but 1 of the aforesaid companies; that the defendant and anyone acting on its behalf be enjoined from permitting any of its agents from serving as a director of 2 or more competing corporations which are each engaged in interstate commerce and having capital, surplus, and undivided profits of more than $1,000,000. The case is pending.

2090. *United States* v. *Charles W. Bengimina, et al.* Cr. 23078 (W.D. Mo.)

2091. *United States* v. *Kansas City Music Operators Association, et al.* Civ. 18238–4 (W.D. Mo.) An indictment and complaint were filed March 30, 1970 charging 1 trade association, 1 corporation, 2 partnerships and 2 individuals with violating Section 1 of the Sherman Act of vending machine products in the Kansas City Area.

The suits charge that the defendants & co-conspirators used threats, coercion and persuasion to prevent an attempt to stop vending machine operators from expanding their vending machine businesses and to prevent or attempt to prevent location owners or managers from discontinuing the use of the vending machines and the vending machine products of the defendants. The suits also allege that the defendants & coconspirators refrained from soliciting or accepting vending machine business from each other's locations except during the 30-day period following a change of location ownership; and that they increased and fixed the prices at which cigarettes were sold in vending machines and at which records were played in juke boxes.

The civil suit seeks dissolution of the Kansas City Music Operators Association and an injunction against continuation of the alleged conspiratorial activities of the defendants. The cases are pending.

2092. *Uited States* v. *Northern Natural Gas Company*, Civ. 5–70–20; (D. Minn.). On March 31, 1970, a complaint was filed charging 1 corporation with violation of Sections 1 and 2 of the Sherman Act. The complaint charges defendant with monopolizing the sale of natural gas to industrial customers in the iron ore-producing areas of northern Minnesota and the upper peninsula of Michigan, and with having entered into unlawful contracts for the sale of Natural Gas to industrial customers in those regions.

The judgment enjoins Northern from directly entering into, renewing, or enforcing any prior rights, contractual provisions or agreement with any industrial customer pursuant to which Northern has or will have the prior right to sell or contract to sell any additional volumes of natural gas in excess of the maximum daily contract demand specified in any existing contract between Northern and such industrial customer.

Northern is also enjoined from directly or indirectly selling natural gas to any natural gas distribution company in the iron ore-producing areas on condition that the gas will not be resold to industrial customers in the region, or to anyone who may become such an industrial customer.

2093. *United States* v. *Healthcare Corporation*, Civ. 70–1312; (S.D. N.Y.). Complaint filed on April 2, 1970 charging 1 corporation with violation of Section 7 of the Clayton Act. The complaint alleges that the defendant's acquisitions of 4 dental dealers may be substantially to lessen competition or tend to create a monopoly in the sale of dental products in the Metropolitan New York area.

Relief asks that the acquistions be declared unlawful; that the defendant be required to divest itself of all its interests in each of the 4 companies; and that the defendant be enjoined for a period of 5 years from acquiring any dental dealer without the approval of the department or the court. The case is pending.

2094. *United States* v. *Yoder Bros., Inc., et al.*, Civ. C70–825 (N.D. Calif.). On April 20, 1970, a complaint was filed charging 3 corporations with violating Sections 1 and 2 of the Sherman Act in the chrysanthemum cutting business. The complaint alleges that Yoder required purchahers of new cuttings to sign agreements restricting their use and disposition of said cuttings and to pay royalties on cuttings that were not patented.

Relief asked for is that the defendants be enjoined from violating Sections 1 and 2 of the Sherman Act and that such relief be granted as is necessary to restore competition in the breeding of chrysanthemums and propagation of chrysanthemums cuttings. The case is pending.

2095. *United States* v. *Westinghouse Electric Corp., et al.* Civ. 70–852–SAW (N.D. Calif.). Complaint filed April 22, 1970, against 3 corporations (2 Japanese and 1 American) under Section 1 of the Sherman Act. The complaint alleges that Westinghouse maintains agreements with each of the Japanese companies for the

exchange of patent and technology licenses relating to a large number of electrical equipment and other products. The complaint alleges that Westinghouse and Mitsubishi have agreed not to sell the licensed products in each other's home country, regardless of whether such products are patented or not; Westinghouse required the Japanese companies to accept a broader license than they desired, thus extending the territorial restrictions to additional products; Westinghouse and the Japanese companies agreed to make royalty payments to each other irrespective of whether the products on which royalties were payable were patented or were produced by using the licensed technology. Finally it is alleged that the agreements prevented Mitsubishi Electric from bidding on the sale of electrical equipment on projects for the Sacramento Municipal Utility District, the California Department of Water Resources, and the United States Bureau of Reclamation.

The suit asked the court to terminate the agreements between Westinghouse and the Japanese companies. In addition, it asked that the defendants be ordered to grant reasonable royalty licensed under their respective U.S. and Japanese patents in order to permit Westinghouse to sell the licensed products in Japan and to permit the Japanese companies to sell the licensed products in the United States. The complaint also asked for an injunction against Westinghouse maintaining any similar licensing agreements which prevent foreign parties from selling in the United States or which prevent Westinghouse from selling in foreign countries. The case is pending.

2096. *United States* v. *The Wachovia Corporation, et al.*, Civ. 2656 (W.D. N.C.). On April 24, 1970, a complaint was filed charging Wachovia Corporation with a violation of the Clayton Act, Section 7, in bank financing. The complaint alleges that Wachovia's proposed acquisition of American may substantially lessen competition in a number of financial product lines in North Carolina. These include (1) elimination of existing competition in retail automobile financing and credit life insurance; (2) elimination of potential competition in factoring and general consumer lending; (3) creation of a danger of leverage vis-a-vis customers and smaller competitors in products offered by Wachovia and American Credit in North Carolina; and (4) triggering other large bank acquisitions of leaders in other financial fields.

The complaint asks that the agreement of Wachovia to acquire the stock of American be adjudged in violation of Section 7 of the Clayton Act; that the defendants be permanently enjoined from effectuating said agreement; and that a preliminary injunction be issued preventing and restraining the defendants from taking any action in furtherance of the acquisition or any similar plan or agreement. The case is pending.

2097. *United States* v. *Karl Ziegler, et al.*, Civ. 1255–70 (D. D.C.). Complaint filed April 24, 1970, under Sections 1 and 2 of the Sherman Act charging that 3 corporations, chemical manufacturers and the owner of patents on chemical products have engaged in a combination to restrain trade and commerce and secure a monopoly in aluminum trialkyls. It is alleged that defendants used the patent monopoly over the process for making the unpatented products to control the sale and distribution of the end products, which are themselves unpatented.

The complaint seeks an injunction against the defendants' attempting in any way to interfere with the sale by others of aluminum trialkyls, or from attempting in any way to interfere with the use or disposition by any person of the unpatented products of a patented process. The complaint also seeks reasonable royalty licensing of patents and know-how relating to aluminum trialkyls. The case is pending.

2098. *United States* v. *Simmons Co.*, Civ. 70–121 (S.D. Ohio). Complaint and proposed judgment requiring the usual thirty day waiting period, filed May 4, 1970, charging 1 corporation with violating Section 1 of the Sherman Act. The complaint alleges that the defendant entered into a series of contracts with distributors to establish, fix, and maintain the prices of hospital furnishings to be charged by said distributors and to fix the bids of said hospitals and related institutions.

On June 4, 1970, the case was terminated by the entry of a consent judgment pursuant to the stipulation.

The judgment prohibits Simmons from fixing prices and bids of hospital furnishings throughout its distribution system, and from restricting or limiting the territories in which or the persons to whom its distributors may sell its hospital furnishings.

Also Simmons may not for a period of 1 year suggest to its distributors prices at which its hospital furnishings shall be sold to other persons.

2099. *United States* v. *Hilton Hotels Corporation, et al.*, Cr. 70–123 (D. Ore.).

2100. *United States* v. *Greater Portland Convention Association, et al.*, Civ. 70–310 (D. Ore.).

An indictment and complaint were filed on May 12, 1970. The indictment charges 4 corporations and 5 individuals and an association with violating Section 1 of the Sherman Act, by boycotting and threatening to boycott hotel suppliers in Portland, Oregon.

The complaint is against the 4 corporations and the association. The suits charge the defendants & co-conspirators conspired to fix annual cash assessments to be paid as contributions to the Greater Portland Convention Association; give or promise to give preferential treatment in purchasing hotel supplies to suppliers who paid or substantially paid the assessments, and curtail purchases of hotel supplies from suppliers who failed to pay or substantially failed to pay such assessments.

The complaint asks that the defendants be perpetually enjoined from further boycott activities. The cases are pending.

2101. *United States* v. *P. R. Mallory & Co., et al.* Civ. 34893 (E.D. Mich.). Complaint filed May 18, 1970, against 2 corporations for violating Section 7 of the Clayton Act. The complaint alleges that the defendants entered into an agreement and plan of reorganization providing for the merger and was approved by the shareholders, which may substantially lessen competition or tend to create a monopoly in the manufacture and sale of resistance welding alloy products.

Prior to the hearing set for June 1, 1970, on a preliminary injunction defendants cancelled the acquisition agreement.

On June 18, 1970, a stipulation and order dismissing the complaint without prejudice was signed thus terminating the case.

2102. *United States* v. *Nederlandsche Combinatie Voor Chemische Industrie, et al.*, Civ. 70–C–2079, (S.D. N.Y.). On May 21, 1970, a complaint was filed charging 18 corporations with violating Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act in the manufacture and sale of quinine and quinidine drugs. The complaint alleges that defendants conspired to fix, stabilize quinine, quinidine and other cinchona products; to fix resale prices of bulk quinine, quinidine and other cinchona products; to allocate territorial markets for the sale of quinine, quinidine and other cinchona products; to establish quotas for the sale of quinine, quinidine and other cinchona products to allow Nedchem (and its affiliates) to manufacture synthetic quinidine; to eliminate other producers of cinchona products in part using selective price cuts; to allocate, divide and share purchased of cinchona bark; to rig the market for the sale of the U.S. government's stockpile of cinchona products by temporarily maintaining prices at a fixed level and designating Nedchem to purchase the stockpile on behalf of defendant manufacturers.

The relief asks that the court adjudge and decree that defendants have violated Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act; that each of the defendants be enjoined from carrying out any similar practice having a similar effect; and that each of the defendants be enjoined from dealing with any customer agent in the United States on an exclusive basis and that each of the defendant importer-dealers be enjoined from acting as exclusive agent or customer for any defendant manufacturer and that all financially responsible customers be allowed to purchase cinchona products on equal terms.

Four defendants have entered a proposed consent judgment which becomes final in July. The case is pending as to 14 defendants.

2103. *United States* v. *Nederlandsche Combinatie Voor Chemische Industrie, et al.*, Civ. 70–C–2080 (S.D. N.Y.). A 3 count complaint was filed on May 21, 1970, charging 19 corporations with violating Section 4A of the Clayton Act and for fraud in connection with the disposition of property of the U.S. and common law fraud. Count I alleges that the defendants and co-conspirators used or engaged in fraudulent schemes for the purpose of securing or obtaining quinine and quinidine and other cinchona products from the U.S. Stockpile. Count I further alleges that the defendants conspired to refrain from competing with Nedchem in bidding for the purchase of the United States Stockpile.

Count II seeks damages sustained by the United States as a seller of quinine, quinidine and other cinchona products, alleges that the acts of defendants stated in Count I, above, were restraints of trade which caused the United States to receive less money for the sales of its stockpile.

Count III is for damages sustained by the United States as a purchaser of quinine, quinidine and other cinchona products. As a result of the alleged activities of defendants such as fixing, stabilizing and raising bulk prices, territorial allocation; and rigging the market for the sale of the United States Stockpile, the United States had to pay substantially higher prices for the purchase of quinine, quinidine and other cinchona products than it would have but for the violations of the antitrust laws.

The relief demands judgment against the defendants jointly and severally, for double the amount of damages it has sustained and for forfeiture as are allowable by the law provided for by 40 U.S.C. 489, 31 U.S.C. 231–233 together with such interest thereon as is permitted by law and the cast of this suit, for fraud; Count II demands judgment against the defendant, jointly and severally, for the damages suffered by it as a result of the defendants violations of the antitrust laws as provided for in the Clayton Act together with such interest thereon as is permitted by law and the cost of this suit; and Count III demands that the court adjudge the defendants have violated Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act; and also it demands judgment against the defendants for damages.

Four defendants agreed to settle the damages for an aggregate of $175,000. The case was dismissed against these defendants June 4, 1970. The U.S. has preserved pretrial rights of discovery as if the corporation were still defendants and require them to retain and preserve documents for five years. The case is pending as to the other defendants.

2104. *United States* v. *Frito-Lay, Inc., et al.*, Cr. 6072 (C.D. Calif.).

2105. *United States* v. *Frito-Lay, Inc., et al.*, Civ. 70–1175FW (C.D. Calif.).

An indictment and a 3-count complaint was filed May 26, 1970, charging 4 corporations with violating Section 1 of the Sherman Act, Section 4A of the Clayton Act and the False Claims Act. The indictment charges that the defendants conspired to raise, fix and maintain retail prices of snack food products sold in California, Arizona and Nevada.

Count I of the complaint alleges that the defendants conspired to raise, fix, maintain prices of snack food products sold in California, Arizona and Nevada. Count 2 seeks to recover damages which were sustained due to violation of Section 1 of the Sherman Act. Count 3 brings suit under the false claims act.

The complaint asks that the defendants be perpetually enjoined from continuing or renewing the alleged conspiracy; also it seeks single damages under Section 4A of the Clayton Act or in the alternative double damage plus $2000 forfeiture for every false claim under the false claims act, resulting from overcharging the federal agencies, such as military installations. The cases are pending.

2106. *United States* v. *Inland Steel Company*, Civ. 70–C–1305 (N.D. Ill.). Complaint filed on June 1, 1970, together with a proposed consent judgment requiring the usual thirty day waiting period, charging 1 corporation with violating Sections 1 and 2 of the Sherman Act. The complaint alleged that since 1957 Inland Steel has entered into combinations with various suppliers to restrain trade by reciprocating purchases in violation of Section 1. It also alleged that Inland Steel has used its purchasing power since 1957 to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for steel and steel products as well as other products sold by Inland.

The complaint charged that Inland utilized comparative purchase and sales data in discussing its relative sales and purchase position with actual and potential suppliers and purchased goods on the understanding that suppliers would reciprocate by purchasing from Inland. In addition to the allegations concerning primary reciprocity, the complaint charged that Inland caused or induced particular suppliers to buy from its customers and caused its suppliers to persuade other companies to buy from Inland.

The complaint alleged the dual effect of excluding competitors of Inland from the sale of goods and services to supplier-customers of Inland and of excluding actual and potential suppliers of goods and services required by Inland from selling substantial quantities thereof to Inland.

The relief asks that the defendant be adjudged in violation of Section 1 of the Sherman Act; in their reciprocal purchasing arrangements; that the defendant be adjudged in violation of Section 2 of the Sherman Act and that it be enjoined perpetually from entering into or adhering to any contract, agreement or understanding with any actual or potential customer or supplier involving reciprocal

purchasing arrangements; communicating to actual or potential customers or suppliers that it will place its purchases with or give preferential treatment to suppliers who purchase from the defendant; and continuing the practice of compiling statistics which compare Inland's purchases of goods or services from companies with sales by the defendant to such companies. The case is pending.

2107. *United States* v. *Archer-Daniels-Midland Co., et al.*, Civ. 70–1545 (E.D. La.).

2108. *United States v. Bunge Corporation* Civ. 70–1546 (E.D .La.).

2109. *United States* v. *Continental Grain Co.*, Civ .6733 (E.D. Texas).

On June 15, 1970, we filed 3 civil complaints charging 4 grain exporting companies with entering into unlawful agreements providing for exclusive stevedoring services at their grain elevators in Gulf Coast Ports, together with proposed judgment requiring the usual 30 day waiting period in each case. The complaint against Archer-Daniels and Garnac, joint owners and operators of the only grain elevator in Destrehan, charged that since 1963 the companies have required all ship owners who are entitled to select stevedores to enter into contracts obligating them to hire T. Smith & Sons, Inc., a New Orleans based stevedoring company as stevedore as a condition of accepting the ship at the elevator for loading.

The Bunge complaint alleged that since 1962 the company and Southern Stevedoring Company, Inc. of New Orleans named as a co-conspirator in the complaint have engaged in a conspiracy to monopolize and unreasonably restrain the stevedoring of grain at the Bunge export grain elevator at Destrehan, Louisiana, the principal grain export location in the United States. Pursuant to contract, Bunge granted to Southern the right to act as the exclusive stevedore at the elevator and Bunge has undertaken by various means to persuade and induce ship owners and charters loading at the Bunge elevator to designate Southern as stevedore. The suit also charged that Bunge has taken steps to make it impossible for outside stevedores to compete with Southern at the Bunge elevator and as a condition of accepting a ship at its elevator for loading, Bunge required ship owners who are entitled to select stevedores to agree to designate Southern for grain-loading.

The complaint against Continental charged that since 1965 the company has required the hiring of Atlantic & Grain Stevedoring Associates for stevedoring work at its Beaumont elevator.

The complaint ask that the defendants be adjudged in violation of the Sherman Act and discontinue all illegal practices. The cases are pending.

2110. *United States* v. *American Steamship, et al.*, Civ. 1970–283, (W.D. N.Y.). On June 22, 1970, a civil action was filed charging that American Steamship and Oswego Shipping Corporation violated the Clayton Act Section 7 in the acquisition of 2 steamship companies operating cargo ships on the Great Lakes.

The complaint and the proposed judgment requiring the usual 30 day waiting period were filed together. The complaint charged the 2 defendants had violated Section 7 of the Clayton Act by acquiring Gartland Steamship Company in March 1969, and Reiss Steamship Company in June 1969.

The complaint asks that the defendants be adjudged in violation of Section 7 of the Clayton Act and that they be perpetually enjoined from acquiring any interest in bulk cargo shipping. The case is pending.

2111. *United States* v. *Republic Steel Corporation*, Civ. C70–609, (E.D. Ohio). A complaint against Republic Steel Corporation together with a proposed consent judgment requiring the usual 30 day waiting period were filed on June 29, 1970 charging violation of Sections 1 and 2 of the Sherman Act. The complaint charges that since at least as early as 1963, Republic has entered into reciprocal purchasing arrangements with various suppliers in violation of Section 1 of the Sherman Act and has attempted to monopolize the requirement of actual and potential supplier-customers for steel products in violation of Section 2 of the Sherman Act.

The complaint asks that the defendant be adjudged in violation of Sections 1 and 2 of the Sherman Act. The case is pending.

2112. *United States* v. *Springs Mills Inc.* 70 CIV 2826 (S.D. N.Y.).

2113. *United States* v. *Cannon Mills Co.*, 70 CIV 2827 (S.D. N.Y.).

2114. *United States* v. *West-Point-Pepperell, Inc.*, 70 CIV 2828 (S.D. N.Y).

2115. *United States* v. *J. P. Stevens & Co., Inc.*, 70 CIV 2829 (S.D. N.Y.

2116. *United States* v. *M. Lowenstein & Sons, Inc.*, 70 CIV 2830 (S.D. N.Y.).

On June 30, 1970, 5 complaints were filed alleging violation of Section 1 of the Sherman Act in the manufacture of sheets and pillowcases together with proposed judgments requiring the usual 30 day waiting period, The complaints

charge the defendants with engaging in an illegal conspiracy with their wholesalers and retailers to eliminate competition in the retail sales of prime line sheets and pillowcases.

Stevens is charged with stabilizing retail prices of its prime line sheets and pillowcases in the national market, and with conspiring with its wholesalers and retailers to restrict the sale of prime line sheets by discount retailers.

Lowenstein is charged with stabilizing retail prices of its prime line sheets and pillowcases in the national market.

Spring Mills is charged with stabilizing retail prices of its prime line sheets and pillowcases in the New York-Connecticut area, and with conspiring with its wholesalers and retailers to restrict the sale of prime line sheets by discount retailers.

Cannon Mills is charged with stabilizing retail prices of its prime line sheets and pillowcases in the New York metropolitan area and with conspiring with its wholesalers and retailers to restrict the sale of prime line sheets by discount retailers.

West-Point-Pepperell is charged with stabilizing retail prices of its prime line sheets and pillowcases in the national market, and with conspiring with its wholesalers and retailers to restrict the sale of prime line sheets by discount retailers.

The complaints ask that the defendants be adjudged in violation of Section 1 of the Sherman Act. The cases are pending.

2117. *United States* v. *First Bancorporation, Inc., et al.*, Civ. C–2413 (D. Colo.). On July 8, 1970, a complaint was filed under Section 7 of the Clayton Act against 2 banking concerns, alleging that the acquisition of the First National Bank of Greeley by First National Bancorporation of Denver would eliminate potential competition between the 2 banks, eliminate Bancorporation as a potential competitor in Greeley and the Greeley area and eliminate the Greely Bank as a potential member of a new holding company capable of entering commercial banking in other areas in Colorado.

The complaint seeks to have the merger declared unlawful and a permanent injunction issued. The case is pending.

2118. *United States* v. *Ciba Corporation, et al.*, 70 CIV 3078 (S.D. N.Y.). On July 17, 1970, a complaint and proposed consent decree were filed under Section 7 of the Clayton Act against 5 corporations alleging that the proposed merger of the 2 Swiss diversified chemical companies that have large subsidiaries in New York and New Jersey would substantially lessen competition in the United States between their wholly owned subsidiaries. The complaint also alleges that the proposed merger would eliminate competition between the United States subsidiaries in the manufacture and sale of dyestuffs, certain anti-hypertensive drugs, herbicides, and chemicals known as optical brightening agents.

Prior to the entry of the judgment Spray-Rite Service Corporation and Boehringer Ingelheim filed petitions to intervene. On September 8, 1970, the court denied intervention and entered the judgment as proposed.

The judgment requires the defendants to establish a new corporation and to transfer to it CIBA's dyestuffs and detergent optical brightening agent businesses, including personnel, inventories, central headquarters and office buildings, and branch offices in 6 locations, together with accounts receivable and orders in process, licenses under certain patents, and exclusive rights to use certain trademarks, manufacturing know-how, and technical assistance in the construction of a dyestuffs plant.

It also requires the defendants to supply the new company for periods of 10 and 5 years, respectively, its requirements of unpatented and patented dyestuffs sold by Ciba-Geigy in the United States.

The new company must be sold by Ciba-Geigy within 2 years.

Boehringer Ingelheim has appealed to the Supreme Court from denial of its motion to intervene.

2119. *United States* v. *Movielab, Inc.*, 70 CIV 3100 (S.D. N.Y.). On July 20, 1970, a complaint was filed under Section 7 of the Clayton Act charging that Movielab's acquisition of the professional film processing business of Berkey would eliminate actual and potential competition between the 2 companies, would result in the increased concentration of the processing of professional film, theatrical film, and TV-educational film in the New York metropolitan area.

The complaint asks that, pending final adjudication of the merits, a preliminary injunction be issued enjoining Movielab from further integrating the acquired Berkey properties into its processing operations. The complaint also seeks

divestiture of the business operations acquired and an injunction against Movielab or anybody acting on its behalf from acquiring the stock or assets of any professional film processing business for 5 years, except with the approval of the Government or the court. The case is pending.

2120. *United States* v. *The American Society of Mechanical Engineers, Inc., et al.*, 70 CIV 3141 (S.D. N.Y.). On July 22, 1970, a complaint was filed under Sections 1 and 2 of the Sherman Act against 2 corporations alleging that the rules, regulations and activities of defendants restrained importation of foreign made boilers and pressure vessels into the United States.

The complaint alleges that the defendants have consistently refused to authorize use of their respective stamps (seals of approval) to qualified foreign manufacturers of boilers and pressure vessels. The complaint also alleges that the Board consistently refused to register foreign-made boilers and pressure vessels. Registration with the Board facilitates the reciprocal acceptance of vessels which have been approved by one state and then moved to another.

The complaint seeks a permanent injunction to end this discrimination. The case is pending.

2121. *United States* v. *The Cleveland Real Estate Board*, Civ. C70.731 (N.D. Ohio). On July 29, 1970, a complaint was filed under Section 1 of the Sherman Act against 1 association alleging that defendant conspired to fix commission rates for the sale, lease, and management of real estate in Cuyahoga County.

The complaint seeks to enjoin CREB and its members from continuing or renewing the violations of the Sherman Act and from publishing or otherwise communicating rates of commission to its members. CREB and its members are enjoined from continuing or renewing any agreement to take exclusive listings only. The case is pending.

2122. *United States* v. *Armco Steel Corporation*, Civ. 7–604 (S.D. Ohio). On July 31, 1970, a complaint and proposed judgment were filed under Section 2 of the Sherman Act against 1 corporation alleging that since 1958 defendant has entered into combinations with various suppliers to restrain trade by reciprocating purchases. It is also alleged that defendant has used its purchasing power since 1958 to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for steel and steel products as well as other products sold by defendant.

The judgment which became final August 31, 1970, prohibits the purchase of sale of products on the condition or understanding that the supplier or the customer will purchase from the defendant. The judgment also prohibits Armco from communicating to suppliers or contractors that it will give preference to those who purchase from Armco; from preparing or exchanging statistical data with any supplier or contractor to facilitate any reciprocity arrangement; or from engaging in the practice of discussing with suppliers, contractors or customers the relationship between purchases and sales between them.

The judgment contains prohibitions designed to prevent Armco from exercising its power over joint ventures, in which it has a partial interest, by prohibiting it from directing or suggesting to such a joint venture that it shall purchase from any of Armco's customers in order to reciprocate for purchases made by such customers from Armco. The judgment also prohibits Armco from communicating to its suppliers or to its customers the fact that purchases have been made from them by a joint venture in which Armco has a partial interest.

"Tertiary" reciprocity is prohibited by the judgment in that it orders Armco to refrain from agreeing with suppliers (1) that the suppliers will purchase from defendant's customers to reciprocate for purchases by Armco from such suppliers, or (2) that the suppliers shall attempt to persuade other companies to buy from Armco in order to reciprocate for purchases made by Armco from such suppliers.

The judgment also enjoins Armco from requiring of any of its suppliers, that in manufacturing a product or performing construction work for defendant's use, the supplier shall buy from defendant tonnage equivalent to the amount of steel or other products used in manufacturing the product or performing the construction if such supplier finds that he cannot use steel or other products supplied by defendant to manufacture the requested product or to perform the agreed-upon construction or other service. Armco is also enjoined from preparing statistical compilations which compare purchases by Armco with sales by Armco to suppliers; from engaging in the practice of issuing to personnel with primary purchasing responsibilities any types of notices which

identify customers and their purchases from Armco or which specify or recommend that purchases be made from any of such customers. and is likewise enjoined from issuing to personnel with primary sales responsibilities any type of notices which pertain to purchases that have been made by Armco from particular customers. Armco is also restrained from referring lists of bids received on capital expenditures to any personnel having primary sales responsibilities for recommendations for job placements.

The judgment orders Armco Steel to refrain from reestablishing any office or position to perform the duties carried out by its former Commercial Relations Department and to refrain from establishing successor offices or positions or any offices having the same or similar duties.

Armco Steel is ordered to furnish a copy of the final judgment to each supplier and customer from who it has purchases or to whom it has sold more than $50,000 of products, goods or service during any of the years 1967 through 1969. By written notice Armco must also advise each supplier and customer that it has abolished certain offices which administered its trade relations program, and that its officers and employees are prohibited from purchasing or selling on the basis of reciprocity.

The judgment is to be in effect for 10 years.

2123. *United States* v. *Navajo Freight Lines, Inc., et al.*, Civ. C2468 (D. Colo.). On August 3, 1970, a complaint was filed under Sections 7 and 8 of the Clayton Act against 3 corporations and 2 individuals charging that the acquisition of 26% of the common stock of Garrett by Navajo may substantially lessen actual competition between Navajo and Garrett and that competition generally may be substantially lessened and concentration increased in the transportation of general freight by motor common carriers. The 2 individuals are alleged to have violated Section 8 of the Clayton Act by contemporaneously serving as directors of both Navajo and Garrett.

The complaint asks the court to enjoin Navajo and its affiliated companies from acquiring any more stock of Garrett; to have Navajo and its affiliated companies divest the Garrett stock presently owned; and to have the 2 Navajo directors resign their position from the board of directors of Garrett. The case is pending.

2124. *United States* v. *Metro Denver Concrete Association, et al.*, 70–CR–181 (D. Colo.).

2125. *United States* v. *Metro Denver Concrete Association, et al.*, Civ. C2478 (D. Colo.). On August 6, 1970, an indictment and complaint were filed under Section 1 of the Sherman Act alleging a conspiracy to fix prices for ready-mix concrete.

The indictment charges 1 association, 5 individuals, and 6 corporations, while the complaint was just against the 6 corporations.

The defendants also were charged with conspiring to allocate customers and with dividing up the market for ready-mix concrete sales in the Denver area.

The complaint seeks to dissolve Metro Denver, to enjoin its 6 ready-mix concrete company members from further conspiring to fix prices and allocate customers or sales, and to require each of the defendant companies to certify for a period of 5 years that sealed bids for its sales of ready-mix concrete are free of any agreement between it and any other producer of ready-mix concrete. The cases are pending.

2126. *United States* v. *Air Conditioning and Refrigeration Wholesalers, et al.*, Cr. 70–491 (N.D. Ohio)

2127. *United States* v. *Air Conditioning and Refrigeration Wholesalers, et al.*, Civ. C70–829 (N.D. Ohio). An indictment and complaint filed August 28, 1970, under Sections 1 and 2 of the Sherman Act alleging a conspiracy to monopolize the replacement market for refrigerant gases and unreasonably restraining trade in the distribution of such gas in the replacement market.

The indictment charges 1 association and 2 individuals, agreed to exclude business concerns other than air conditioning and refrigeration wholesalers from competing with ARW members in the sale of refrigerant gas for replacement purposes and restrain competition, including price competition in the field.

The complaint which is against 7 corporations and 1 association seeks to make the manufacturers take certain steps to restore competition in the distribution and sale of refrigerant gas for replacement purposes. It also seeks to abolish the association. The cases are pending.

2128. *United States* v. *Combustion Engineering, Inc.*, Civ. 13998 (D. Conn.). On September 1, 1970, a complaint was filed under Section 7 of the Clayton Act against 1 corporation alleging that defendant's acquisition of the Wickes Boiler Division of the Wickes Corporation has substantially lessened the production and sale of industrial boilers. The complaint also alleges that actual and potential competition between the 2 have been eliminated; actual and potential competition in the manufacture and sale of industrial boilers has been substantially lessened; and concentration in the manufacture and sale of industrial boilers has been substantially increased.

The complaint asks that defendant be directed to divest itself of the assets and business acquired from Wickes and that Combustion be enjoined from acquiring the stock or assets of any firm that is engaged in the manufacture and sale of industrial boilers. The case is pending.

2129. *United States* v. *Combustion Engineering, Inc.*, Civ. 13999 (D. Conn.). On September 1, 1970, a complaint was filed under Section 7 of the Clayton Act against 1 corporation alleging that the acquisition of Bauer may substantially lessen competition in that Bauer may be entrenched in its dominant position in the manufacture and sale of pulp making equipment and stock preparation equipment; that barriers to enter into the manufacture and sale of pulp making equipment and stock preparation equipment may be substantially increased; and that potential competition between Combustion and Bauer in the manufacture and sale of pulp making equipment and stock preparation equipment has been eliminated.

The complaint asks that defendant be directed to divest itself of all the stock and assets acquired from Bauer and that Combustion be enjoined from acquiring the stock or assets of any other firm engaged in the manufacture and sale of pulp making equipment or stock preparation equipment. The case is pending.

2130. *United States* v. *The Standard Oil Company (an Ohio Corporation)*, Civ. C70–895 (N.D. Ohio). On September 18, 1970, a complaint was filed under Section 1 of the Sherman Act charging 1 corporation with fixing prices of gasoline and other products and services sold at stations operated by its commission managers.

The complaint charged that the agreements provided that the commission managers will sell gasoline and other service station products obtained from Sohio only at prices fixed by Sohio. In addition, the complaint said, Sohio charged the same prices in its company-owned stations that it fixed for the commission manager stations. The agreements also restrict the commission managers to purchasing for resale only products approved by Sohio.

The complaint asked for an injunction restraining Sohio from fixing the service stations not operated by it, and from restricting the products or services such stations can offer for sale. The case is pending.

2131. *United States* v. *Ross Trucking, Inc., et al.*, Civ. C70–1228 (E.D. N.Y.). On September 28, 1970, a complaint was filed under Section 1 of the Sherman Act against 2 corporations alleging that defendants conspired to eliminate competition in the carting of bananas in the metropolitan New York area. The complaint charges that the importer and truckers have agreed to require jobbers and supermarkets in the New York City area, as a condition of purchasing bananas from Standard, to hire Ross to cart the bananas from piers in the Port of New York to the purchasers.

The complaint seeks to enjoin the importer and trucker from continuing the alleged agreement, from requiring or attempting to require any jobber or supermarket to hire a designated carting company, and from preventing any jobber or supermarket from using its own trucks or any other trucker to cart bananas. The case is pending.

2132. *United States* v. *Manufacturers' Association of the Relocatable Building Industry, et al.*, CR–70–945–SAW (N.D. Calif.). On November 4, 1970, an indictment was filed under Section 1 of the Sherman Act charging 1 trade association and 4 companies with conspiring to eliminate and suppress competition in the sale and lease of portable buildings.

The indictment charges included the adoption and use of an association code provision binding members not to reduce their bids on a rebid within 60 days of the original bid, and the agreement by the manufacturers to regard all rejections of prior bids followed by another invitation to bid for the same relocatable buildings within 60 days as a rebid situation governed by the code, unless there were substantial modifications in specifications. The case is pending.

2133. *United States* v. *County National Bank of Bennington, et al.*, Civ. 6088 (D. Vt.). On November 5, 1970, a complaint was filed under Section 7 of the

Clayton Act alleging that the merger of County National Bank of Bennington by Catamount National Bank would eliminate existing competition between the 2 banks and substantially increase concentration in commercial banking in the Bennington, Vermont area.

The complaint seeks to have the merger declared unlawful and a permanent injunction issued. The case is pending.

2134. *United States* v. *PPG Industries, Inc.*, Civ. 70–1273 (W.D. Pa.). On November 6, 1970, a complaint and proposed judgment were filed under Sections 1 and 2 of the Sherman Act charging 1 corporation with using reciprocal purchasing arrangements with customers and suppliers dealing with plate glass.

The Complaint also charges the defendant used its purchasing power to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for products produced by the defendant.

The judgment which became final December 9, 1970, is to be in effect for 10 years, prohibits PPG Industries from purchasing products or services from any suppliers on the condition that such purchases will be based on PPG Industries' sales to the supplier.

The judgment also prohibits PPG Industries from discussing with any supplier or contractor the relationship of purchases and sales between them or from comparing statistical data to further such a relationship. The firm is further prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers.

PPG Industries is also prohibited from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on PPG Industries' sales to them.

In addition, PPG Industries is prohibited from agreeing with any supplier that such supplier will buy from certain customers of PPG Industries in order to obtain purchases by PPG Industries from such supplier or from agreeing with any supplier that such supplier shall attempt to persuade other companies to buy from PPG Industries in order to obtain purchases by PPG Industries from such supplier.

PPG Industries is directed by the judgment to refrain from continuing or establishing any office or position whose activities, programs, or objectives are to promote trade relations involving reciprocal purchasing arrangements.

2135. *United States* v. *Bethlehem Steel Corporation*, Civ. 70–3102 (E.D. Pa.). On November 10, 1970, a complaint and proposed final judgment were filed under Sections 1 and 2 of the Sherman Act, charging 1 steel producer with using reciprocal purchase arrangements with suppliers and customers.

The complaint charges that defendant used its purchasing power to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for products manufactured or fabricated as well as services rendered by defendant.

The judgment which became final December 11, 1970, is to be in effect for 10 years, prohibits Bethlehem Steel from purchasing products or services from any supplier on the condition that such purchases will be based on Bethlehem Steel's sales to the supplier.

The judgment also prohibits Bethlehem Steel from discussing with any supplier, contractor or customer the relationship of purchases and sales between them or from comparing statistical data to further such a relationship. The firm is further prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers.

Bethlehem Steel is also prohibited from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on Bethlehem Steel's sales to them.

Bethlehem Steel is directed by the judgment to abolish any office or position whose duties involve reciprocal purchasing arrangements and to refrain from establishing or maintaining any similar office or position.

2136. *United States* v. *Richter Concrete Corporation, et al.*, Cr. 11–700 (S.D. Ohio).

2137. *United States* v. *Richter Concrete Corporation, et al.*, Civ. 7755 (S.D. Ohio). An indictment and complaint were filed November 16, 1970, charging 2 companies and 1 officer with violating Section 1 of the Sherman Act by conspiring to fix prices of ready-mix concrete. The complaint was only against the 2 companies.

The indictment and complaint both charges the defendants with conspiring to raise and stabilize the price of ready-mix concrete in the Cincinnati area. The complaint seeks to enjoin the 2 defendants from further conspiring to fix prices. The cases are pending.

2138. *United States* v. *Long Island Board of Realtors, Inc.*, Civ. 70 C 1418 (E.D. N.Y.). A complaint was filed November 17, 1970, charging 1 Board of Realtors with violating Section 1 of the Sherman Act by fixing commission rates for property sales. The complaint alleges that the Board and those of its realtor members that belong to the Board's multiple listing service with conspiring to fix commission rates for the sale of real estate in Queens, Nassau and Suffolk Counties in New York.

The complaint also charges that the Board has circulated published commission rates which are adhered to by its members, and that the Board's multiple listing service and its members have refused to accept a listing containing a rate of commission less than that recommended by the Board.

The complaint asks for an injunction against the Board and its members, restraining them from agreeing upon, publishing or adhering to recommended commission rates. The case is pending.

2139. *United States* v. *The Owensboro National Bank, et al.*, Civ. 6779 (W.D. Ky.). A complaint was filed November 18, 1970, charging 1 banking association and 3 directors with violating Sections 1 and 2 of the Sherman Act. The complaint charges that the defendants conspired to restrain and monopolize the commercial banking business in Owensboro, Kentucky.

The complaint asks the court to order the individuals to divest all of the stock of Owensboro National owned or held by them. It also asked for permanent injunction enjoining them from acquiring any stock or assets of any commercial bank in the Owensboro area so long as they control any stock in a competing bank. The case is pending.

2140. *United States* v. *United Banks of Colorado, Inc., et al.*, Civ. C–2744 (D. Colo.). A complaint filed November 25, 1970, against 1 bank holding company and 1 banking association for violating Section 7 of the Clayton Act in the field of commercial banking.

The complaint charges that effect of the acquisition may be substantially to lessen competition by: eliminating potential competition between United and CSNB in the Colorado Springs SMSA; eliminating United as a potential entrant into the Colorado Springs SMSA either through chartering a new bank or acquiring a small existing competitor therein; reducing potential competition by eliminating CSNB as a potential member of a new holding company capable of entering commercial banking in other areas in the State of Colorado; reducing competition for correspondent bank services for the independent banks in the Colorado Springs SMSA; triggering similar acquisitions of leading local banks by the leading banking organizations in the State; reducing potential competition in commercial banking by the continuation of a trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the State, thereby reducing diversity in banking choices and promoting parallel policies among leading banks in local markets; further concentrating banking resources in the State of Colorado in the leading banking organizations in the State, thereby enhancing the power of these organizations in the banking markets in which they operate; and substantially reducing existing competition in providing correspondent banking services in Colorado, increasing barriers to new entry into corresponding banking in Colorado, and foreclosing the remaining independent banks in many markets from access to correspondent banking services in Colorado, all as a result of this acquisition combined with the trend of acquisitions by leading banking organizations in Colorado of independent banks with substantial positions in markets throughout many parts of the State. The case is pending.

2141. *United States* v. *First National Bancorporation, et al.*, Civ. C–2754 (D. Colo.). On December 2, 1970, a complaint was filed under Section 7 of the Clayton Act charging 2 banks with eliminating potential competition in the field of commercial banking.

The complaint alleged that competition for correspondent bank services for the remaining independent banks in Logan County may be reduced and that banking resources in Colorado may be further concentrated, thereby enhancing the power of leading banking organizations in banking markets in which they operate. The case is pending.

2142. *United States* v. *Asiatic Petroleum Corporation, et al.*, Civ. 70-1807-M (D. Mass.). On December 8, 1970, a complaint was filed under Section 7 of the Clayton Act charging 3 corporations that the acquisition of Sprague by Asiatic would eliminate competition between the companies in the fuel oil business.

The complaint also alleged that the acquisition foreclosed fuel oil suppliers from a substantial share of the market, foreclosed fuel oil purchasers from a source of supply and increased concentration in the marketing of fuel oil in the New England States.

The complaint asked that the defendants be ordered to rescind the purchase agreements and leases and to take all appropriate action for the complete restoration of Sprague as substantial independent marketer of fuel oil. Pending final adjudication of the merits, the complaint requests that the court issue a preliminary injunction enjoining the defendants from further consolidating or intermingling the business operations and assets of the acquired business with those of Asiatic, and from selling or disposing of any of Sprague's operations or assets. The case is pending.

2143. *United States* v. *Odom Company, et al.*, Cr. A-100-70 (D. Alaska). On December 9, 1970, an indictment was returned under Section 1 of the Sherman Act charging 3 corporations and 2 individuals with fixing the prices at which certain alcoholic beverages were sold to retainers in Alaska.

The indictment charges that the defendants and coconspirators agreed to eliminate the giving of discounts other than those agreed upon in advance in connection with the sale of Seagram's products to retailers in Alaska, and to eliminate all discounts in connection with wholesale purchases of Seagram's V.O. Seagram's Crown Royal, and Canadian Club by retailers. The case is pending.

2144. *United States* v. *R. J. Reynolds Tobacco Company, et al.*, Civ. 1668-70 (D. N.J.). On December 15, 1970, a complaint was filed under Section 7 of the Clayton Act and Section 1 of the Sherman Act charging 5 corporations with eliminating competition in the container shipping system.

The complaint charged that Reynolds' agreement last month with Walter Kidde & Company, Inc., owner of the United States Line, would, if consummated, eliminate competition between the 2 containerized shippers.

The complaint also charged that, as a result of a further agreement by Reynolds and Kidde to otherwise dispose of U.S. Lines in the event its acquisition by Reynolds is frustrated, the 2 companies combined and contracted to unreasonably restrain interstate and foreign trade and commerce in the marine transportation of freight by full containership systems.

According to the complaint, Reynolds, Sea-Land, Kidde, U.S. Lines, and RJI Corporation, a Reynolds subsidiary formed for the purpose of bringing about the acquisition, entered into a merger agreement, whereby Reynolds will acquire sole ownership and control of U.S. Lines.

The suit also charged that Reynolds and Kidde entered into another agreement which supplemented the merger agreement and under which Reynolds undertakes to provide for the sale of U.S. Lines in the event it fails in its attempt to acquire the Kidde subsidiary.

The suit asked the court to permanently enjoin Reynolds, Sea-Land, Kidde, U.S. Lines, and RJI Corporation from carrying out their merger agreement and asked that the supplemental agreement between Reynolds and Kidde be ordered rescinded. Pending a final disposition of the case, the suit asked for a preliminary injunction preventing the defendants from taking any action in furtherance of either the agreement of merger or the supplemental agreement. The case is pending.

2145. *United States* v. *Darling-Delaware, Inc., et al.*, 70 CR 1078 (S.D. N.Y.).

2146. *United States* v. *Darling-Delaware, Inc., et al.*, 70 CIV 5536 (S.D. N.Y.). On December 17, 1970, an indictment and complaint were filed charging several corporations and individuals with violating Section 1 of the Sherman Act in the rendering raw materials industry. The indictment charged 12 corporations and 12 individuals, whereas the complaint was only against the 12 corporations, with conspiring to allocate accounts in the New York metropolitan area.

The indictment and complaint charged that the defendants and co-conspirators conspired to allocate suppliers of inedible fats, bones, unrefined grease, suet and meat trimmings among themselves and that they refrained from competing for those suppliers.

The complaint asked that the defendants be perpetually enjoined from future supplier allocation activities. The cases are pending.

2147. *United States* v. *Los Angeles Realty Board, et al.*, Civ. 70-2855-CC (C.D. Calif.). On December 18, 1970, a complaint was filed under Section 1 of the Sherman Act charging 1 Realty Board and 4 of its branches with fixing commission rates for property sales.

The complaint charged the defendants with combining to fix commission rates for the sale, rental and management of real estate and for acting as agents in obtaining financing for real estate sales in Los Angeles County.

The complaint also charged that the defendants have circulated published commission rates which are adhered to by their members, and that the defendants' multiple listing services and their members have refused to accept a listing containing a rate of commission less than that recommended by defendants.

The complaint asks for an injunction against the defendants and their members, restraining them from agreeing upon, publishing or adhering to recommended commission rates. The case is pending.

2148. *United States* v. *Burlington Northern, Inc.*, Civ. 3-70-361 (D. Minn.). On December 22, 1970, a complaint and proposed judgment to become final after the usual 30 day waiting period were filed under Section 1 of the Sherman Act charging 1 corporation with restricting traffic provisions in more than 8,000 spur track agreements and leases of real property to shippers in the rail carriers industy.

The complaint charged that 2 of defendant's predecessor companies, used provisions, sometimes referred to as "traffic clauses," in spur track agreements with shippers.

The complaint also charged that Great Northern used these traffic provisions in certain agreements for the lease or sale of property which it owned, including portions of its right of way, to shippers and receivers of freight.

The complaint asks that defendant be prohibited from directly or indirectly entering into, renewing, enforcing or claiming any rights under any spur track agreement and lease or sale agreement which contains these restrictive traffic provisions. The case is pending.

2149. *United States* v. *American Building Maintenance Industries*, Civ. 71-55-JWC (C.D. Calif.). On January 8, 1971, a complaint was filed alleging that the defendants' merger with Benton Maintenance Company and its acquisition of the janitorial service business of J. E. Benton Management Corporation violated Section 7 of the Clayton Act. The complaint alleges that the merger and acquisition would eliminate actual and potential competition in the sale of janitorial services in Southern California and the Los Angeles area and increase the level of concentration in those markets.

The complaint asks that the marger and acquisition be declared unlawful and that the defendant be required to divest both Benton Maintenance Company and the janitorial services business of J. E. Benton Management Corporation. The case is pending.

2150. *United States* v. *Kennecott Copper Corporation*, 71 CIV 119 (S.D. N.Y.). On January 11, 1971, a complaint and proposed final judgment were filed alleging the largest domestic producer of copper, with using reciprocal purchasing arrangements with customers and suppliers in violation of Sections 1 and 2 of the Sherman Act. The complaint also alleges the defendant used its purchasing power to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for products by the company in violation of Section 2.

The judgment which was entered February 17, 1971, is to be in effect 10 years, prohibits Kennecott from purchasing products or services from any supplier on the condition that such purchases will be based on defendant's sales to the supplier.

It also prohibits Kennecott from discussing with any supplier or contractor the relationship of purchases and sales between them or from comparing statistical data to further such a relationship. The firm is further prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers.

The judgment also prohibited the defendant from communicating to actual or potential suppliers or contractors that preference will be given in purchasing product or services from them based on Kennecott's sales to them.

In addition, Kennecott is prohibited from agreeing with any supplier that such supplier will buy from certain customers of Kennecott. The judgment also prohibits the firm from agreeing with any supplier that the supplier shall attempt to persuade other companies to buy from Kennecott.

Kennecott is directed by the consent judgment to refrain from continuing or establishing any office or position whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing arrangements.

2151. *United States* v. *White Consolidated Industries, Inc., et al.*, Civ. 71–91 (N.D. Ohio). On January 27, 1971, a complaint was filed charging 2 corporations with violating Section 7 of the Clayton Act in the farm machinery and equipment field. The complaint charges that the proposed merger would eliminate actual competition between White Motor and Allis-Chalmers by foreclosing competitors of White Consolidated from selling to the merged firms, and by creating an industry structure conducive to the employment of reciprocal trading practices.

The complaint also charges that the merger will encourage the trend of mergers of large firms.

On February 24, 1971, the court granted a preliminary injunction barring the defendants White Consolidated Industries, Inc. and White Motor Corp. from consummating their merger.

The complaint asks for a permanent injunction against a merger of 2 firms. The case is pending.

2152. *United States* v. *The Atlanta Real Estate Board*, Civ. 14,744 (N.D. Ga.). On February 17, 1971, a complaint was filed charging 1 real estate board with fixing commission rates on the sale of property in the Atlanta area, in violation of Section 1 of the Sherman Act. The complaint also charges that the Board and its members have agreed to uniform rates of commissions and fees which are published, circulated and adhered to by the members, and that they have used standard contracts incorporating the agreed upon uniform rates of commissions and fees.

The complaint asks for an injunction against the Board and its members, restraining them from agreeing upon, publishing or adhering to recommended commission rates. The case is pending.

2153. *United States* v. *First National Bank of Atlanta, et al.*, Civ. 14748 (N.D. Ga.). On February 18, 1971, a complaint was filed charging 3 banks and 2 directors with violating Section 1 of the Sherman Act and Section 7 of the Clayton Act. The complaint challenges the acquisition of stock in 2 banks in DeKalb County, Georgia, by First National Bank of Atlanta, and seeking to block the merger of the banks.

The suit charged that the stock acquisition and merger agreements would substantially lessen competition or tend to create a monopoly in the commercial banking field.

The complaint asks that the court require the 2 directors to divest all of the stock of Glenwood Bank & Tucker Bank which they had acquired. It also asked for a permanent injunction enjoining First National of Atlanta, Glenwood Bank, Tucker Bank, and all persons acting on their behalf from carrying out the merger or any similar plan. The complaint also sought an order enjoining First National of Atlanta from acquiring control over or merging with any other commercial banking organization operating in DeKalb County for a period of 10 years from the date of judgment of this action. The case is pending.

2154. *United States* v. *National Steel Corporation*, Civ. 71–189 (W.D. Pa.). On February 26, 1971, a complaint and proposed final judgment were filed charging 1 corporation with using reciprocal purchasing arrangements with suppliers and customers in violation of Section 1 of the Sherman Act in the steel industry.

The judgment which became final March 29, 1971, which will be in effect for 10 years, forbids National Steel from purchasing products or services from any supplier on the condition that such purchases will be based on National Steel's sales to the supplier.

The judgment also forbids the defendant from discussing with any supplier, contractor, or customer the relationship of purchases and sales between them or from comparing statistical data to further such a relationship.

National Steel is further prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers and from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on National Steel's sales to them.

National Steel is prohibited from agreeing with particular suppliers that the suppliers will buy from certain of its customers in order to reciprocate for purchases by National from such suppliers or to agree with particular suppliers to persuade other companies to buy from National in order to reciprocate for purchases made by National Steel from those suppliers.

National Steel is directed by the judgment to abolish any office or position whose duties involve reciprocal purchasing arrangements and to refrain from establishing or maintaining any similar office of position.

Notice is to be given by National Steel to its suppliers and customers that its personnel are prohibited by the judgment from purchasing goods and services or soliciting bids for capital expenditures based on National Steel's sales, and are prohibited from entering into any agreement or understanding to that effect.

National Steel is also required to notify its suppliers and customers that all of its personnel are prohibited from referring to its personnel having primary sales responsibilities any customer or supplier who inquires concerning his purchase and sales relationship with National.

2155. *United States* v. *General Adjustment Bureau, Inc.*, 71 Civ. 1109 (S.D. N.Y.). On March 11, 1971, a complaint and proposed final judgment were filed against the nation's largest insurance adjusting organization, charging it with illegally restraining trade in the business of adjustment and settlement of property damage insurance claims in violation of Section 1 and 3 of the Sherman Act. The complaint alleges that the defendant combined and conspired with its shareholders to cause them to utilize defendant's adjusting facilities, boycott independent adjusters, coerce and intimidate agents to channel claims to defendant, and adhere to defendant's billing schedules in dealing with independent adjusters.

The complaint also alleges that the defendant and its shareholders formulated uniform price lists for labor and material used in the replacement and repair of damaged property and established uniform practices and procedures to be used in the adjustment and settlement of property damage claims.

The judgment which became final April 15, 1971, requires that 62 shareholders owning or controlling 82 percent of the total outstanding stock in defendant must, within 90 days from the date of entry of the judgment, place their defendant stock in trust, and the trustee is required to divest the stock within 4 years.

The judgment forbids defendants, after 4 years, from doing business with any of its present shareholders who to the knowledge of defendant own or control any shares of defendant's stock or have any other financial interest in defendant and prohibits defendant from making services available to its shareholders at rates lower than those offered to any other person.

The judgment also prohibits defendant from acting in concert with any insurance company to coerce firms to do business with defendant or to boycott other adjusters. The judgment further provides that defendant and insurance companies may not agree that fees paid to any other adjuster shall be based defendant's charges.

With certain specified exceptions, defendant is also prohibited from acting in concert with others to establish uniform practices and procedures to be used in the adjustment and settlement of claims and from acting in concert with any supplier of labor and materials to fix the price paid for materials and labor used in the repair and replacement of damaged property.

2156. *United States* v. *Independent Garage Owners of Athens, et al.*, Cr. 2388 (M.D. Ga.)

2157. *United States* v. *Heyward Allen Motor Company, Inc., et al.*, Civ. 771 (M.D. Ga.). On April 8, 1971, an indictment and complaint were filed charging that defendants conspired to fix estimating fees and labor charges for automobile repairs in Clarke County, Georgia in violation of Section 1 of the Sherman Act.

The indictment charges 2 associations and the complaint also charges 9 association members.

The suits also charge that the defendants agreed to eliminate price discounts on parts which had previously been granted on automobile repairs covered by automobile casualty insurance.

The complaint asks that the defendants be perpetually enjoined from continuing the conspiracy or from engaging in practices having a similar purpose or effect. The cases are pending.

2158. *United States* v. *Parker-Hannifin Corporation, et al.*, Civ. 71-1011-FW (C.D. Calif.). On April 27, 1971, a complaint was filed under Section 7 of the Clayton Act charging that acquisition of Schulz Tool and Manufacturing Company of San Gabriel, California, by Parker-Hannifin Corporation of Cleveland, Ohio eliminated actual and potential competition between these 2 companies in the design, manufacture and sale of functional fuel system components for military aircraft.

The complaint also charged that Parker-Hannifin's relative size and production capability in the design and manufacture of such components has been increased as a result of the acquisition to such a point that its advantage over competitors is decisive.

The suit asks that the acquisition be declared unlawful and that Parker-Hannifin be ordered to divest itself of all ownership interest in Schulz, and that Parker-Hannifin be enjoined from voting its stock in Schulz or taking any other action that would alter the present business operations of Schulz. The case is pending.

2159. *United States* v. *First National Bancorporation, Inc., et al.*, Civ. C–3077 (D. Colo.). On April 28, 1971, a complaint was filed under Section 7 of the Clayton Act alleging that the acquisition of the Exchange National Bank of Colorado Springs, by the First National Bancorporation, Inc., of Denver would eliminate potential competition in commercial banking between the 2 banks in various areas of Colorado.

The suit further alleged that competition for correspondent bank services for the remaining independent banks in the Colorado Springs area may be reduced and that banking resources in Colorado may be further concentrated, thereby enhancing the power of leading banking organizations in banking markets in which they operate. The complaint further alleged that the acquisition may also trigger similar acquisitions of leading local banks by the lending banking organizations in the state.

The complaint asks that the agreements described in the complaint be adjudged to be unlawful, and that defendants and all persons acting on their behalf be enjoined from carrying out the aforesaid agreements. The case is pending.

2160. *United States* v. *Harvey-Hubbell, Incorporated*, Civ. B285 (D. Conn.). On April 28, 1971, a complaint was filed under Section 7 of the Clayton Act attacking the acquisition of The Pyle-National Company, Chicago, Illinois by Harvey-Hubbell, Inc., Bridgeport, Connecticut.

The complaint asked that the acquisition and merger be declared unlawful and entrench Hubbell and Pyle-National in their respective dominant positions in these markets. As a result of the acquisition Hubbell will be the only manufacturer in the nation able to offer a full line of both specification grade electrical devices, and pin and sleeve electrical devices. The complaint also alleges that prior to the acquisition of Pyle-National, Hubbell had a strong incentive to expand its production of pin and sleeve devices, having the expertise and reputation to do so.

The complaint asked that the acquisition and merger be declared unlawful and that Hubbell be required to divest itself of all interest in and control over Pyle-National. The case is pending.

2161. *United States* v. *Webster Electric Company, Inc.*, Civ. 71–C–197 (E.D. Wisc.). On May 3, 1971, a complaint and proposed final judgment were filed under Section 1 of the Sherman Act charging the Webster Company with conspiring with its distributors to allocate territories for the sale of the company's sound equipment.

The complaint also charged that distributors refrained from selling Webster sound equipment to customers who shipped such equipment into the market territory of another distributor for resale.

The judgment which became final on June 2, 1971, forbids Webster from assigning the person to whom or the territories in which any distributor may sell Webster sound equipment.

2162. *United States* v. *Airfreight Transportation Corp., et al.*, 71 CR 485 (E.D. N.Y.).

2163. *United States* v. *National Association for Air Freight, Inc., et al.*, 71 CR487 (E.D. N.Y.).

2164. *United States* v. *National Association for Air Freight, Inc., et al.*, Civ. 71 C 563 (E.D. N.Y.). On May 13, 1971, a grand jury returned 2 indictments charging conspiracy in violation of Section 1 of the Sherman Act in connection with the delivery of air freight coming into JFK from abroad. Named as defendants in the first indictment was an air freight trucking association, 12 corporate members of the association and 4 individuals. In the second indictment 3 air freight trucking companies and 2 individuals were named.

The first indictment charges a continuing conspiracy to allocate customers, to impose a uniform fixed surcharge, and to refuse to pick up import air freight of some or all of the international air carriers at JFK International.

The second indictment charged a price fixing conspiracy involving the trucking of import air freight to New Jersey from JFK.

The companion civil suit was also filed naming only the association and the corporations as defendants.

The civil suit asked that the defendants be perpetually enjoined from continuing the conspiracy and that the association be dissolved. The cases are pending.

2165. *United States* v. *Tandy Corporation, et al.*, Civ. 71 C 1167 (N.D. Ill.). On May 14, 1971, a complaint was filed under Section 7 of the Clayton Act charging that the acquisition by the Tandy Corporation of the electronic products business previously owned by the Allied Radio Corporation of Chicago, Illinois, may substantially lessen competition in the electronic specialty retail field by eliminating actual and potential competition between the firms, by eliminating Allied Radio as an independent competitive factor.

The complaint also charged that the acquisition may have the effect of raising barriers to entry and increasing the level of concentration in the electronic specialty retail market, and encouraging similar mergers among other firms engaged in this business.

The complaint asks that the acquisition be declared unlawful, that Tandy be required to divest the Allied Radio assets which it acquired, and that an injunction be issued enjoining Tandy for a period of 5 years from acquiring any other specialty retailer of electronic products without prior approval of the Department of Justice or the court. The case is pending.

2166. *United States* v. *Leggett & Platt, Incorporated*, Civ. 7976 (S.D. Ohio). On May 28, 1971, a suit was filed under Section 7 of the Clayton Act charging that Leggett & Platt's acquisition of Motor City Spring Company of Detroit, Michigan and J. R. Greeno Company of Cincinnati, Ohio, may substantially lessen competition in the manufacture and sale of steel wire innersprings and box springs in the area east of the Rocky Mountains; by eliminating actual and potential competition among the companies, by enhancing Leggett & Platt's marketing advantage over its competitor, and by increasing the levels of market concentration.

The complaint asked that the acquisition be declared unlawful and that Leggett & Platt be required to divest all of the assets and interest acquired from Motor City and Greeno. The case is pending.

2167. *United States* v. *United Artists Theatre Circuit, Inc.*, Civ. 71 C 609 (E.D. N.Y.). On May 20, 1971, a suit was filed under section 7 of the Clayton Act seeking to have United Artists Theatre Circuit, Inc., of New York City divest itself of the Prudential Theatre Corporation of Merrick, New York.

The complaint charged that the acquisition of substantially all of the assets of the Prudential by United Artists increases concentration and eliminates actual and potential competition between the 2 theatre circuits in the bidding for, and acquisition of, motion picture features in the New York Metropolitan area and in Queens, Nassau and Suffolk Counties of New York.

The complaint seeks to have the acquisition declared illegal and to obtain an order requiring United Artists to divest itself of all assets acquired from Prudential. The case is pending.

2168. *United States* v. *The New York Times Company, et al.*, Civ. 71 C 615 (E.D. N.Y.). On May 21, 1971, a complaint was filed under Section 1 of the Sherman Act charging that an agreement between the New York Times and the Chicago Daily News/Sun Times to share a single wire and single sales force substantially lessen competition between the 2 news services.

The suit seeks to have the agreement terminated and to enjoin the defendants from entering into any similar agreement in the future. The case is pending.

2169. *United States* v. *Trust Company of Georgia, et al.*, Civ. 15–164 (N.D. Ga.). On May 24, 1971, a complaint was filed under Section 7 of the Clayton Act charging the proposed merger of Peachtree Bank and Trust Company of Chamblee, Georgia with the Trust Company of Georgia, would eliminate competition between the banks' offices in DeKalb County, Georgia by substantially increasing concentration in commercial banking in DeKalb County.

The complaint asked for a permanent injunction enjoining Trust Company of Georgia and Peachtree Bank from carrying out the merger agreement. It also sought an order requiring Trust Company of Georgia Associates, a wholly owned subsidiary of Trust Company of Georgia to divest a 5 percent stock interest it had acquired in Peachtree Bank in 1960. The complaint further asked that the Trust Company of Georgia be enjoined from acquiring control over or merging

with any other commercial banking organization operating in DeKalb County for a period of 10 years from the date of judgment. The case is pending.

2170. *United States* v. *United Aircraft Corporation*, Civ. 14, 126 (D. Conn.). On May 24, 1971, a complaint was filed under Section 2 of the Sherman Act charging United Aircraft of East Hartford, Connecticut with attempting to monopolize research and development of fuel cells used in Apollo spacecraft.

The complaint alleges that United used its position as a major customer of TRW, Inc. of Cleveland to suppress the competition of TRW as a potential fuel cell supplier.

The suit seeks to permanently enjoin United from entering into exclusive fuel cell development contracts, and also asks that United be required to dedicate all of its existing fuel cell technology to the public. The case is pending.

2171. *United States* v. *Washington Bancshares, Inc., et al.*, Civ. 3505 (E.D. Wash.). On May 25, 1971, a complaint was filed under Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act charging that the merger of Old National Bank of Washington, a subsidiary of Washington Bancshares and Oroville State Bank of Oroville would create a combination to restrain and monopolize banking services in the Tonasket-Oroville area of Washington.

Since Washington state law prohibits other state banks from opening offices in this area, a merger of Old National and Oroville banks would create a complete monopoly for Washington Bancshares and permanently eliminate all competition in the area.

The complaint asks that the proposed merger be adjudged unlawful and that defendants or anyone acting on their behalf be enjoined from carrying out this acquisition or any similar plan. The case is pending.

2172. *United States* v. *Aluminum Company of America*, Civ. 71–491 (W.D. Pa.). On May 26, 1971, a complaint was filed under Sections 1 and 2 of the Sherman Act charging the Aluminum Company of America with entering into arrangements with various suppliers of aluminum to restrain trade through reciprocal purchasing. It is also alleged that Alcoa has used its purchasing power to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for aluminum and other products sold by the company in violation of Section 2 of the Sherman Act.

The proposed judgment filed the same day became final June 28, 1971. The judgment prohibits Alcoa from purchasing products or services from any supplier on the condition that such supplier make purchases from Alcoa. The judgment also directs Alcoa to refrain from establishing or maintaining any office or position whose activities, programs, or objectives are to promote trade relation involving reciprocal purchasing arrangements.

2173. *United States* v. *Insilco Corporation*, Civ. B–304 (D. Conn.). On May 26, 1971, a complaint was filed under Section 7 of the Clayton Act charging that Insilco's acquisition of substantially all of the capital stock of Stanley Roberts on June 25, 1969, increased concentration and substantially lessened competition in the sale of stainless steel flatware in the United States.

The suit asked that the acquisition be declared unlawful and that Insilco be required to divest itself of all of the stock and all assets of Stanley Roberts which it has acquired. The case is pending.

2174. *United States* v. *The Wachovia Bank and Trust Company, N. A.*, Civ. C–135–WS–71 (M.D. N.C.). On June 22, 1971, a complaint was filed under Section 1 of the Sherman Act charging that the Wachovia Bank entered into an anticompetitive arrangement to lease a night banking facility in Burlington, North Carolina.

The complaint charged that Wachovia entered a lease agreeemnt with the rental agent for the Holly Hill Mall Shopping Center in July, 1969 which granted Wachovia the right to install and maintain a night depository within the shopping center's enclosed mall. The shopping center also agreed to prohibit certain other commercial banks from installing similar facilities.

The complaint asked that the restrictive lease agreement be declared an unlawful contract in restraint of trade and that Wachovia be perpetually enjoined from continuing the agreement or from entering into any similar contracts. The case is pending.

2175. *United States* v. *The Greyhound Corporation, et al.*, Cr. (N.D. Ill.).

2176. *United States* v. *The Greyhound Corporation, et al.*, Civ. 69–C–1148 (N.D. Ill.). On June 22, 1971, criminal and civil contempt petitions were filed charging the Greyhound Bus System with disobeying a 1970 federal court order

prohibiting it from engaging in destructive competitive practices against a western bus company. Named as respondents in both petitions were Greyhound Lines, Inc., and the Greyhound Corporation.

The civil contempt also named the presidents of each corporation and the president of Greyhound Line-West.

The respondents were charged with disobeying various provisions of an order entered by a three-judge federal court in Chicago on February 5, 1970. The order, which arose out of an Interstate Commerce Commission proceeding, enjoined Greyhound from engaging in destructive competition with Mount Hood Stages, Inc., which operates the Pacific Trailways bus line out of Bend, Oregon, into Washington and Idaho. The order also directed Greyhound to restore and maintain specific traffic patterns between it and Mount Hood.

The criminal contempt petition charged violations of 3 sections of the court order dealing with Greyhound's refusal to direct passengers over a shorter joint route with Mount Hood rather than over a longer all-Greyhound route; to establish joint through fares with Mount Hood; and to accurately inform passengers as to Mount Hood's schedules.

In addition, the civil contempt petition charged that the respondents had violated the court order by omitting and distorting Mount Hood's schedules in Greyhound folders; by refusing to negotiate in good faith with Mount Hood to establish bus schedules most advantageous to the public; by omitting and distorting Mount Hood's routes on Greyhound maps; and by discriminating against Mount Hood in depots jointly occupied by Greyhound and Mount Hood.

The criminal contempt petition asked the court to impose a fine on the corporate respondents for their prior failure to comply with the court order.

The civil contempt petition asked that the corporate and individual respondents be directed to comply immediately with the court order, and that a fine be imposed on all the respondents and the individual respondents be imprisoned for so long as they continue in violation of the order. The cases are pending.

2177. *United States* v. *Baker Commodities Inc., et al.*, Cr. 8295 (C.D. Calif.).

2178. *United States* v. *Baker Commodities Inc., et al.*, Civ. 71–1473–FW (C.D. Calif.). On June 23, 1971, an indictment and complaint were filed charging 2 Southern California rendering firms and 4 of their officers with conspiracy to fix prices paid to raw material suppliers in the Los Angeles area, in violation of Section 1 of the Sherman Act. The complaint also charged 1 of the rendering firms with a violation of Section 7 of the Clayton Act alleging that acquisition of the California Rendering Company by Baker Commodities eliminates actual and potential competition between the 2 firms.

The indictment and complaint both charged that the defendants and their co-conspirators had conspired since at least as early as 1957 to fix, reduce and stabilize prices paid for inedible fat and bones to non-bulk street accounts in the Los Angeles area.

The complaint asked that the defendant be permanently enjoined from engaging in price fixing activities similar to those charged in the Sherman Act offense. It also asked that the acquisition of California Rendering be declared illegal, that Baker Commodities be required to divest all of its ownership in California Rendering and that Baker Commodities be enjoined from acquiring an interest in any other company engaged in the rendering business in the Los Angeles area. The cases are pending.

2179. *United States* v. *R & G. Sloane Manufacturing Company, Inc., et al.*, Cr. 8379 (C.D. Calif.).

2180. *United States* v. *R & G Sloane Manufacturing Company, Inc., et al.*, Civ. 71–1522–ALS (C.D. Calif.). On June 29, 1971, an indictment and complaint were filed charging 4 manufacturers of plumbing supplies, the parent corporations of one of the companies and executives of 2 of the manufacturers on charges of conspiring to fix prices of plastic pipe fittings in violation of Section 1 of the Sherman Act.

Both the indictment and the complaint charged that the defendants and their co-conspirators have conspired since at least January, 1966, to fix, maintain and stabilize prices and discounts for DWV plastic pipe fittings, the effect of the conspiracy has been to suppress price competition among the defendant and co-conspirator manufacturers in the sale of DWV plastic pipe fittings and to deprive their customers of the opportunity to purchase the fittings at competitive prices.

The complaint asked that the corporate defendants be permanently enjoined from continuing the conspiracy or engaging in any activities having a similar purpose of effect. The cases are pending.

2181. *United States* v. *Reynolds Metal Company*, Civ. 281–71–A (E.D. Va.). On July 14, 1971, a complaint and proposed final judgment were filed alleging that the country's second largest aluminum producer's reciprocal dealing violates Sections 1 and 2 of the Sherman Act. The complaint alleges that Reynolds has used its purchasing power to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for aluminum and other products sold by the company.

Final judgment was entered August 16, 1971, to be in effect for 10 years, which prohibits Reynolds from purchasing products or services from any supplier on the condition that such purchases will be based on Reynolds' sales to the supplier.

It also prohibits Reynolds from discussing with any supplier or contractor the relationship of purchases and sales between them or from comparing statistical compilations that compare sales to and purchases from suppliers.

Reynolds is also prohibited from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on Reynolds' sales to them.

In addition, Reynolds is prohibited from agreeing with any supplier that such supplier will buy from certain customers of Reynolds, or will attempt to persuade other companies to buy from Reynolds.

Reynolds is directed by the judgment to refrain from establishing or maintaining any office or position whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing arrangements.

2182. *United States* v. *Sweetheart Bakers, Inc., et al.*, Cr. 71–0316 (D. Md.).

2183. *United States* v. *Sweetheart Bakers, Inc., et al.*, Civ. 71–821–T (D. Md.).

2184. *United States* v. *The E. H. Koester Bakery Company, et al.*, Cr. 71–0315 (D. Md.).

2185. *United States* v. *The E. H. Koester Bakery Company, et al.*, Civ. 71–822–T (D. Md.). On July 29, 1971, two indictments and 2 companion civil cases were filed alleging that the defendants conspired to fix bread prices in Baltimore and the Eastern Shore area of Delaware, Maryland and Virginia, in violation of Section 1 of the Sherman Act.

The Koester indictment charges 3 baking companies and 2 individuals while the complaint is only against the 3 companies.

The Sweetheart indictment and complaint only name 3 baking companies.

The complaints asks that the defendants be permanently enjoined from continuing the alleged conspiracies or from following any practice having a similar purpose or effect; enjoin the defendants from exchanging or communicating pricing information; and to require each baking firm to independently establish new prices for its bakery products. The cases are pending.

2186. *United States* v. *The Connecticut National Bank, et al.*, Civ. 14583 (D. Conn.). On August 23, 1971, a complaint was filed charging 2 banks with violating Section 7 of the Clayton Act in the commercial banking field.

The complaint alleges that the proposed consolidation would eliminate actual and potential competition between the 2 banks in the Bridgeport and New Haven areas, in New Haven County, and in the area between New Haven and Bridgeport, which includes the towns of Orange, Melford, Ansonia, and Derby.

The suit also alleges that the consolidation would entrench the leading positions held by both banks in local Connecticut markets, would reduce the number of Connecticut banks capable of expanding into statewide competitors, and would trigger other mergers between leading banks in Connecticut.

The complaint seeks to have the merger declared unlawful and a permanent injunction issued. The case is pending.

2187. *United States* v. *General Cinema Corporation*, 4–71–CIV–473 (D. Minn.). On September 13, 1971, a complaint was filed charging 1 corporation with violating Section 7 of the Clayton Act.

The complaint alleges that the defendants acquisitions would increase concentration and eliminate actual and potential competition in the bidding for feature motion pictures in the Minneapolis-St. Paul area.

The complaint seeks to have the acquisitions declared illegal and to obtain an order requiring the defendant to divest itself of all of the acquired theatres. The case is pending.

2188. *United States* v. *The Fort Worth National Corporation, et al.*, Civ. CA–4–1827 (N.D. Texas). On September 14, 1971, a complaint was filed charging 1 savings and loan association and 1 commercial bank with violating Section 7 of the Clayton Act.

The complaint alleges that the merger would eliminate competition for savings deposits, for specific types of such deposits, for real estate mortgage loans and for specific types of such loans in Fort Worth, Tarrant County, and in the Fort Worth Standard Metropolitan Statistical Area.

The suit also alleged that, as a result of the proposed acquisition, concentration in the markets for savings deposits and for real estate mortgage loans in the Fort Worth area will be substantially increased and similar acquisitions of leading savings and loan associations by leading commercial banks in the Fort Worth area may be triggered.

The suit seeks to have the acquisition declared unlawful and an injunction issued permanently prohibiting its consummation. The case is pending.

2189. *United States* v. *Arden-Mayfair, Inc., et al.*, Cr. 47–71 D2 (W.D. Wash.).

2190. *United States* v. *Arden-Mayfair, Inc., et al.*, Civ. 189–71 C2 (W.D. Wash.). On September 29, 1971, an indictment and a companion civil complaint were filed charging 4 milk processing firms and 3 officers with conspiring to fix the price of dairy products in the states of Washington and Alaska, in violation of Section 1 of the Sherman Act.

The complaint asks that the defendants be permanently enjoined from continuing the alleged conspiracy or from engaging in any practice having a similar purpose or effect. The complaint also seeks to enjoin the defendants from exchanging pricing information and to require each company to independently establish new prices for its dairy products. The cases are pending.

2191. *United States* v. *KDI Corporation, et al.*, Civ. 71–2363–AAH (C.D. Calif.). On October 1, 1971, a complaint was filed charging 2 corporations with violating Section 7 of the Clayton Act. The complaint alleges that the acqusition would substantially lessen competition in the sale of residential swimming pools in Southern California.

The complaint seeks to have the acquisition of Royal by Aqua Systems declared illegal, and to require KDI Aqua Systems to divest all of its ownership interest to Royal. The suit also asks the court to enjoin KDI Corporation and its wholly-owned subsidiary KDI Aqua Systems, for a period of 10 years, from acquiring the stock or assets of any other company engaged in the sale or installation of swimming pools in Southern California. The case is pending.

2192. *United States* v. *Wohl Shoe Company, et al.*, Cr. 24475 (D. N. Mex.).

2193. *United States* v. *Wohl Shoe Company, et al.*, Civ. 9187 (D. N. Mex.). On October 19, 1971, an indictment and complaint were filed charging a violation of Section 1 of the Sherman Act. The indictment is against 3 companies while the complaint charges 4 companies.

Both suits charge that the companies have conspired to raise, fix and stabilize the prices of shoes in the Albuquerque area. They are also charged with inducing and persuading certain manufacturers of shoes, to refuse to sell to retailers that failed to adopt the agreed upon uniform prices.

The civil suit asks that the defendants be permanently enjoined from continuing the alleged conspiracy or from engaging in any practices having a similar purpose or effect. It sought to enjoin the retailer defendants from exchanging pricing information or seeking to persuade any manufacturer not to sell shoes to a competing retailer.

The suit also asks that Penobscot be prohibited from selling to any retailer of shoes on the condition that the retailer adhere to any particular resale price. The cases are pending.

2194. *United States* v. *Wolverine World Wide, Inc.*, Civ. 9186 (D. N. Mex.). On October 19, 1971, a complaint was filed charging 1 company with violating Section 1 of the Sherman Act. The complaint alleges that the company has conspired with various retailers of shoes in the Southwest to eliminate competition in the sale of shoes manufactured by the defendant by fixing the retail prices of shoes.

The suit sought an injunction against continuation of the conspiracy and asked that Wolverine be prohibited from soliciting agreement from any retailer to sell shoes at prices recommended by Wolverine or any other prices. The case is pending.

2195. *United States* v. *Marine Bancorporation, et al.*, Civ. 237–71C2 (D.W. Wash.). On October 22, 1971, a complaint was filed charging 2 banking associations with violating Section 7 of the Clayton Act. The complaint alleges that the merger would eliminate actual and potential competition between the 2 banks.

The merger would also eliminate National Bank of Commerce as a potential substantial competitive factor in commercial banking in the Spokane Metro-

politan area and would eliminate Washington Trust Bank as a potential substantial competitive factor in commercial banking in that part of Spokane County which is outside the Spokane Metropolitan area and in banking markets in other parts of eastern Washington.

The suit also alleges that the merger would reduce competition and would eliminate actual and potential competition between the 2 banks in supplying correspondent banking services in eastern Washington. The case is pending.

2196. *United States* v. *Citizens and Southern National Bank, et al.*, Civ. 15823 (N.D. Ga.). On November 2, 1971, a complaint was filed seeking to prevent the merger of 5 Atlanta area banks into 2 subsidiaries of Citizens and Southern National Bank in the State of Georgia.

The complaint charges that the merger would violate Section 7 of the Clayton Act by substantially lessening competition and increasing concentration in commercial banking.

In addition, the complaint charges that the defendants have conspired to restrain banking competition unreasonably, in the Atlanta area in violation of Section 1 of the Sherman Act, by entering into operating relationships which include the joint determination of competitive strategy in the conduct of each bank's business.

The complaint asks for a permanent injunction enjoining C&S National, its subsidiaries, and the suburban banks from carrying out the merger agreements or any plan or agreement which would have a similar purpose or effect. In addition, the suit asked for a permanent injunction terminating certain operating relationships which exist among the banks.

The suit also sought an order enjoining C&S National, any of its subsidiaries, and all persons controlled either directly or indirectly by C&S National, from acquiring control over or merging with any other commercial banking organization in the Atlanta area for a period of 10 years from the date of judgment in the action. The case is pending.

2197. *United States* v. *Associated Credit Bureaus, Inc., et al.*, Civ. 71 C 716(A) (E.D. Mo.). On November 16, 1971, a civil contempt petition was filed charging 1 credit bureau, 1 trade association and 11 of its officers and directors with violating a 1933 consent decree prohibiting it from acting to monopolize credit reporting services.

The petition charged the respondents with violating the decree in connection with ACB's operation of an inter-bureau credit reporting service pursuant to which its member bureaus exchange credit reports and credit information.

It is alleged, ACB has required its members, under a threat of expulsion from the association to exclusively use the ACB inter-bureau credit reporting service. The petition charged that this requirement precludes ACB members, the most significant credit bureau group in the nation, from utilizing the inter-bureau credit reporting service of an ACB competitor, with the purpose and effect of maintaining ACB's monopoly in inter-bureau credit reporting services.

The petition asks that the respondents be directed to cease and desist from cancelling or threatening to cancel membership in ACB because of the use by a member of any other credit reporting organization. The petition also asked that a fine be imposed on ACB for each day, after further order of the court, that it fails to carry out the court's directions. The case is pending.

2198. *United States* v. *Seattle-First National Bank, et al.*, Civ. 313-71C2 (W.D. Wash.). On November 24, 1971, a complaint was filed charging 2 banking corporations with violating Section 7 of the Clayton Act. The complaint alleges that the merger would eliminate actual and potential competition between the 2 banks in the Ferndale-Bellingham Area of Washington in the commercial banking field.

The suit seeks to have the acquisition permanently enjoined. The case is pending.

2199. *United States* v. *Board of Trade of the City of Chicago, Inc.*, Civ. 71 C 2875 (N.D. Ill.). On December 1, 1971, a complaint was filed to prohibit the nation's largest commodity exchange, from fixing the commission rates and brokerage fees charged by brokers trading commodity future contracts, in violation of Section 1 of the Sherman Act.

The complaint alleges that the Board of Trade and its members jointly fixed and maintained minimum rates of commission, floor brokerage and other fees for the purchase and sale of commodity futures contracts through the exchange.

The complaint asks that the defendants and its member be permanently enjoined from fixing commission rates or other fees for brokerage services and from engaging in any other practice having a similar purpose or effect. The case is pending.

2200. *United States* v. *Martin Linen Supply Company, et al.*, SA 71 CR 419 (W.D. Texas).

2201. *United States* v. *Martin Linen Supply Company, et al.*, Civ. SA 69–CA–114 (W.D. Texas). On December 9, 1971, criminal and civil contempt petitions were filed charging 2 corporations and 1 individual with violating a 1969 consent judgment prohibiting them from suppressing competition in the linen rental supply business.

The petitions charged the respondents with violating the judgment by conducting retaliatory sales campaigns against competitors in an effort to induce competitors to refrain from soliciting customers of Martin Linen Supply Company and Texas Sanitary Towel Supply Corp.

The respondents also violated the judgment by threatening to put competitors out of business, trailing the delivery trucks of competitors, temporarily augmenting their sales forces, and offering free services to customers with the purpose or effect of eliminating competitors.

The criminal petition asks that the respondents be punished for their past violations of the judgment.

The civil petition asks that the respondents be ordered to cease and desist from carrying out retaliatory sales campaigns against competitors. The petition also asks that the court provide for daily fines and imprisonment in the event that any respondent should fail to carry out the court's directions. The cases are pending.

2202. *United States* v. *Archer Daniels Midland Company, et al.*, Civ. KC 3454 (D. Kans.) On December 13, 1971, a complaint was filed charging 3 corporations with violating Section 7 of the Clayton Act. The complaint alleges that the merger would eliminate competition between the companies in the purchase of soybeans and in the production and sale of soybean meal and other soybean products in Kansas and Nebraska.

The complaint asks that the acquisitions be declared unlawful and that the acquisition agreements be rescinded. It also seeks to enjoin ADM, for a period of 10 years, from acquiring any other soybean processing plant located within 150 miles of the States of Kansas and Nebraska. The case is pending.

2203. *United States* v. *Amsted Industries, Incorporated, et al.*, Civ. 71 C 3124 (N.D. Ill.). On December 29, 1971, a complaint was filed charging 2 corporations with violating Section 7 of the Clayton Act. The complaint alleges that the merger would eliminate actual and potential competition between defendants and increase concentration in the manufacture and sale of cast iron pressure pipe used in the construction of water mains and storm sewers.

The complaint asks that the defendants be held in violation of Section 7 of the Clayton Act and that a preliminary injunction be issued. The case is pending.

2204. *United States* v. *United States Gypsum Company, et al.*, Civ. C–71–2467–AJZ (N.D. Calif.). On December 30, 1971, a complaint was filed charging 7 corporations with violating Section 1 of the Clayton Act and Section 4A of the Sherman Act. The complaint alleges that defendants conspired to raise, fix, maintain and stabilize the prices of gypsum board and plaster.

The complaint asks that defendants be held in violation of Section 1 of the Sherman Act and demands damages suffered by the United States by reason of violation of Section 4A of the Clayton Act. The case is pending.

2205. *United States* v. *Wells Fargo Bank, National Association, et al.*, Civ. C–72–98–RHS (N.D. Calif.) On January 17, 1972, a complaint was filed charging 2 banks and their holding company parent corporations, Wells Fargo & Company and Worldwide American Investors Corporation with violating Section 7 of the Clayton Act by agreeing to a merger which would eliminate actual and potential competition between the banks in California as a whole as well as in local banking markets within the state. The complaint also alleges loss of actual competition between the banks in furnishing correspondent banking services to smaller California banks and banks outside the state of California and loss of competition in commercial and industrial lending to small and intermediate sized borrowers in California.

The suit seeks to have the merger permanently enjoined. The case is pending.

2206. *United States* v. *Airco, Inc.*, 72 Civ. 265 (S.D. N.Y.) on January 20, 1972, a complaint was filed charging that Airco had engaged in a trade relations program resulting in reciprocal purchasing and selling arrangements violating Section 1 of the Sherman Act and an illegal use of purchasing power violating Section 2 of the Sherman Act. The complaint alleges that Airco's program involved combinations with supplier-customers in restraint of trade and a misuse

of purchasing power which attempted to monopolize the requirements of supplier-customers for ferroalloys industrial gases and other products sold by the defendant.

The complaint asked that Airco be enjoined from continuing any reciprocal purchasing arrangement, from communicating to suppliers that they will receive preference if they purchase products from Airco, and from compiling statistics which compare Airco's purchases from companies with sales by Airco to such companies. The complaint also asked that Airco be prohibited from discussing with any supplier the relationship of purchases and sales between them or from compiling approved lists of suppliers based upon suppliers' purchases from Airco. The complaint further asked that Airco abolish any duties that are assigned to any of its officials or employees which relate to the promotion of reciprocal purchasing arrangements. The case is pending.

2207. *United States* v. *M & T Chemicals, Inc.*, 72 Civ. 368 (S.D. N.Y.)

2208. *United States* v. *Kewanee Oil Company*, 72 Civ. 369 (S.D. N.Y.)

2209. *United States* v. *Udylite Corp.*, 72 Civ. 370 (S.D. N.Y.) On January 26, 1972, separate complaints were filed against 3 of the nation's largest distributors of nickel to the electroplating industry. The suits charge that each of the defendants has violated Section 1 of the Sherman Act and Section 3 of the Clayton Act by selling nickel to its customers on the condition that its customers purchase electroplating materials from the defendant.

The complaints asks that each defendant be permanently enjoined from conditioning the sale of any product or service on the purchase of any other product or service by its customers. The complaints also seek permanent injunctions against all three barring them from discriminating or allocating any product or service among its customers on the basis of purchases of other goods or services by such customers. The cases are pending.

2210. *United States* v. *Multiple Listing Service, et al.*, Civ. 72–68 (D. Ore.) On January 26, 1972 a complaint was filed charging 3 Portland area real estate boards and their separately incorporated multiple listing service with conspiring to fix real estate commissions and restrict access to members' real estate listings in violation of Section 1 of the Sherman Act.

The complaint alleges that the conspiracy has raised commsision rates for the sale of real estate in 3 Oregon counties and to deny real estate brokers licensed by the state a reasonable opportunity to compete in the sale of real estate listed with the listing service.

The suit asks that the defendants be permanently enjoined from adopting or suggesting any rates of commission or fees to be charged in connection with the sale of real estate and from adhering or agreeing to adhere to any rule, agreement or understanding which would unreasonably exclude any licensed real estate broker from membership in the defendant real estate board or the multiple listing service. The case is pending.

2211. *United States* v. *The Overhead Door Distributors' Association of Greater Delaware Valley*, Cr. 27–46 (E.D. Pa.)

2212. *United States* v. *The Overhead Door Distributors' Association of Greater Delaware Valley*, Civ. 72–198 (E.D. Pa.)

2213. *United States* v. *Garage Door Manufacturers Association, Inc., et al.*, Cr. 27–47 (E.D. Pa.)

2214. *United States* v. *Garage Door Manufacturers Association, Inc., et al.*, Civ. 72–199 (E.D. Pa.) On January 27, 1972, 2 indictments were returned and 2 complaints were filed charging violations of Section 1 of the Sherman Act. The first indictment charged a trade association of garage door manufacturers, 6 overhead door manufacturers, and 4 individuals with a conspiracy to raise, fix, maintain, and stabilize prices of overhead doors and accessories sold by the defendant manufacturers in the eastern half of the United States, and to refuse to sell overhead doors and accessories to certain specified distributors and customers in this same area. A companion civil case was filed on the same date against the trade associations and the 6 corporate defendants, and alleged the same conspiracy as charged in the indictment.

The second criminal case named a trade association, The Overhead Door Distributors' Association of Greater Delaware Valley as the only defendant. It charged a conspiracy to raise, fix, stabilize and maintain prices sold by overhead door distributors in the Delaware Valley area, and to refuse to sell overhead doors to unauthorized distributors or other specified customers. A companion civil case was filed on the same date against the association and alleges the same conspiracy as charged in the indictment.

The complaint seeks to enjoin the continuation of the conspiracy and asks that the court direct the association to notify each of its members of the entry of any judgment. Dissolution of the association is also sought.

On March 7, 1972 a fine of $10,000 was imposed by the district court thus terminating the case against defendant Overhead Door Distributors' Association after acceptance of a *nolo contendere* plea. Two cases are pending.

On June 26, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed May 16, 1972, requiring a 30-day waiting period.

The judgment, as to Overhead Door, requires the Association to distribute a copy of the final judgment to each of its members and to thereafter dissolve itself.

2215. *United States* v. *Jackson's Atlanta Ready Mix Concrete Company, Inc., et al.*, Civ. 16-139 (N.D. Ga.). On January 28, 1972 a complaint and proposed final judgment requiring the usual 30-day waiting period were filed charging 2 ready mix concrete companies and a bank with conspiring to use the concrete companies' purchasing power to induce reciprocity in violation of Section 1 of the Sherman Act. The complaint charged that the 2 Jackson concrete companies agreed to use their purchasing power to coerce and persuade certain of their actual and potential suppliers to maintain demand deposits with Citizens Bank of Hapeville or to purchase savings certificates or certificates of deposit from the bank.

The judgment, which was entered on March 1, 1972, prohibits the defendants from purchasing goods or services from any actual or potential supplier on the understanding or condition that the supplier would use the services of the Citizens Bank of Hapeville. It also prohibits the defendants from indicating to any supplier that preference in purchasing by a defendant will be based upon the supplier's use of services of the Citizens Bank of Hapevills. Finally, it prohibits the defendants from discussing with a supplier or customer the relationship between purchases by any defendant from such supplier or customer and use of the services of the bank by such supplier or customer.

2216. *United States* v. *Owens-Illinois, Inc.* Civ. 72-22 (N.D. Ohio). On January 28, 1972, a complaint and proposed final judgment requiring the usual 30-day waiting period were filed charging Owens-Illinois with reciprocal dealing, in violation of Sections 1 and 2 of the Sherman Act. Specifically, the suit charged the defendant with violating Section 1 by entering into arrangements to purchase goods and services from suppliers on the understanding that such suppliers would purchase goods from the defendant. A Section 2 violation was alleged in the charge that defendant used its purchasing power to promote sales in an attempt to monopolize the requirements of its actual and potential customer-suppliers for packaging products and other products defendants produces.

The judgment, which was entered on March 1, 1972, prohibits Owens-Illinois from purchasing products or services from any supplier on the condition or understanding that such supplier will make purchases from Owens-Illinois. It also prohibits Owens-Illinois from communicating to any actual or potential supplier or contractor that preference in purchasing by Owens-Illinois will be given to such supplier or contractor based upon Owens-Illinois' sales to that supplier or contractor. In addition, Owens-Illinois is prohibited from maintaining statistical compilations that compare sales to and purchases from a particular supplier or group of suppliers, and ordered to refrain from establishing or maintaining any office or position which has as its program or objective and promotion of trade relations involving reciprocal purchasing agreements.

2217. *United States* v. *W. R. Grace & Company, et al.* 72 Civ. 414 (S.D. N.Y.). On January 28, 1972 a complaint and proposed final judgment requiring the usual 30-day waiting period were filed charging W. R. Grace & Company, 1 of the largest producers of chemicals in the nation, with entering into reciprocal purchasing arrangements with its customers and suppliers in violation of Sections 1 and 2 of the Sherman Act.

The judgment, which was entered on February 29, 1972 enjoins defendant from, among other things: purchasing from any supplier on the understanding that purchases will be conditioned upon defendant's sales to such supplier; communicating to actual or potential suppliers that preferences will be given to any supplier based upon defendant's sales to such supplier; and preparing statistical compilations which compare purchases from with sales to any supplier. It also orders and directs defednant to: refrain from establishing or maintaining any offices or positions designed to promote trade relations involving reciprocal purchase arrangements; furnish a copy of the consent decree and advise each supplier

from whom defendant has purchased more than $25,000, or customer to whom it has sold more than $50,000 of products or services, that defendant will refrain from doing certain things which promote reciprocal purchasing; file an annual report with the plaintiff setting forth the steps it has taken during the prior year to advise its officers, directors and employees of its and their obligations under the decree.

2218. *United States* v. *Odom Company, et al.* Civ. A–13–72 (D. Alaska) On January 28, 1972 a complaint was filed charging 3 wholesalers of alcoholic beverages with violating Section 1 of the Sherman Act by conspiring to raise and stabilize the wholesale prices of Seagram's and Canadian Club products.

The complaint asks as relief that each of the defendants be permanently enjoined from divulging information regarding prices, discount terms, or pricing intentions with respect to liquor products to any competitor, and that each defendant be required to independently determine and adopt new prices for the Seagram's and Canadian Club products which it sells. The case is pending.

2219. *United States* v. *Associated Milk Producers, Inc.*, Civ. SA 72 CA 49 (W.D. Tex.) On February 1, 1972, a complaint was filed charging AMPI, a cooperative marketing association with more than 40,000 dairy farmer members, with conspiring with milk haulers and processors in violation of Sections 1 and 2 of the Sherman Act.

The complaint asked that AMPI be prohibited from continuing the practices cited in the complaint, and also asked that AMPI be enjoined from using threats or coercion to induce dairy farmers to join AMPI or to induce independent milk haulers and processors to refuse to haul or process milk for non-members of AMPI. The case is pending.

2220. *United States* v. *National Bank of Georgia, et al.*, Civ. 16178 (N.D. Ga.) On February 8, 1972 a complaint was filed to block the merger of the Bank of Fulton County, of East Point, Georgia into the National Bank of Georgia, Atlanta. The suit charged that the proposed merger would violate section 7 of the Clayton Act by eliminating actual and potential competition between the 2 banks in Fulton County where they are both based.

On March 21, 1972, a stipulation and order were entered dismissing the action without prejudice and certifying that the defendants have withdrawn from the agreement to merge.

2221. *United States* v. *Martin Marietta Corp.*, Civ. 72–210 (D. Md.). On February 28, 1972, a complaint and proposed final judgment requiring the usual 30-day waiting period were filed charging Martin Marietta Corp. with violating Section 1 of the Sherman Act by entering into arrangements to purchase goods and services from its suppliers on the understanding that such suppliers would purchase goods and services from Martin Marietta. The suit also charged that Martin Marietta has used its purchasing power to promote sales in an attempt to monopolize the requirements of its actual and potential supplier-customers for building materials, chemicals and other products in violation of Section 2 of the Sherman Act.

The judgment, which was entered on April 4, 1972, prohibits Martin Marietta for a period of 10 years from: purchasing products or services from any supplier on the condition that such supplier makes purchases from Martin Marietta; discussing with any supplier or contractor the relationship of purchases and sales between them or from comparing statistical data to further such a relationship, maintaining statistical compilations that compare sales to and purchases from suppliers; communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on Martin Marietta's sales to them; and agreeing with any supplier that the supplier will buy from certain customers of Martin Marietta, or will attempt to persuade other companies to buy from Martin Marietta.

2222. *United States* v. *Texaco, Inc., et al.*, Civ. 72–676–HP (C.D. Calif.). On March 27, 1972 a complaint was filed challenging the acquisition by Texaco, Inc. of almost half of the service stations owned or leased by Douglas Oil Co. of California in the western United States. The suit charged that the acquisition of 222 Douglas service stations by Texaco, violated Section 7 of the Clayton Act by eliminating actual and potential competition between the 2 companies in the retail marketing of gasoline in the Pacific Coast area, in California, and other markets.

The suit asks that the acquisition be declared unlawful and that the acquisition agreements be rescinded. The suit also seeks to enjoin Texaco for a period

of 10 years, from acquiring the stock or assets of any company engaged in the refining, distribution or marketing of gasoline in the Pacific Coast Area. The case is pending.

2223. *United States* v. *Manufacturers Aircraft Association, Inc., et al.*, Civ. 72 CIV 1307 (S.D. N.Y.) On March 29, 1972 a complaint was filed charging the nation's major manufacturers of airplanes and airplane parts and accessories with eliminating competition in research and development of patentable inventions relating to airplane production. The suit charged that, as a result of a patent pooling and cross licensing agreement first entered into by the association and its members in 1928, the group has engaged in a contract and combination to eliminate competition in research and development of airplane patents and patentable inventions, in the manufacture of such inventions, and in the purchase of airplane patents from other parties, in violation of Section 1 of the Sherman Act.

The suit asks that the Association be dissolved, that the patent pooling agreement be cancelled and that the defendants be enjoined from entering into any similar agreement in the future. The case is pending.

2224. *United States* v. *Trans Texas Bancorporation, Inc., et al.*, Civ. EP–72–CA–83 (W.D. Tex.) On March 29, 1972 a complaint was filed to prevent the acquisition of 4 banks by a bank holding company. The suit charged that the proposed acquisition would violate Section 7 of the Clayton Act by eliminating actual and potential competition among the banks and by increasing concentration in commercial banking in El Paso County.

The complaint asks that the proposed acquisition or any similar merger plan be permanently enjoined. The case is pending.

2225. *United States* v. *County National Bancorporation, et al.*, Civ. 72 C 219 (1) (E.D. Mo.) On April 7, 1972, a complaint was filed under Section 7 of the Clayton Act to prevent the proposed acquisition of Big Bend Bank by County National Bancorporation. The complaint alleges that the proposed acquisition will eliminate actual and potential competition between County National and Big Bend in East Central St. Louis County. It further alleges that the acquisition would substantially increase concentration in commercial banking in 14 suburban communities in East Central St. Louis County.

The suit asked that the proposed acquisition be declared unlawful and that a permanent injunction against its consummation be issued. The case is pending.

2226. *United States* v. *M.P.M., Inc., et al.*, Civ. C–3917 (D. Colo.) On April 11, 1972 a complaint was filed challenging the combination of two ready-mixed concrete producers. The complaint charged that the acquisition of the assets of Pre-Mix by M.P.M. and Pre-Mix's subsequent acquisition of the stock of Mobile violated Section 7 of the Clayton Act by eliminating actual and potential competition and by increasing concentration in the production and sale of ready-mixed concrete in the Denver metropolitan area.

The complaint asks that the acquisition of assets and exchange of stock be declared unlawful and that M.P.M. and Pre-Mix be ordered to divest themselves of all assets and control of Mobile. The case is pending.

2227. *United States* v. *Great Lakes Coal & Dock Company, et al.*, 72 CR 61 (E.D. Wisc.)

2228. *United States* v. *Great Lakes Coal & Dock Company, et al.*, Civ. 72–C–211 (E.D. Wisc.)

2229. *United States* v. *The C. Reiss Coal Company, et al.*, 72 CR 62 (E.D. Wisc.)

2230. *United States* v. *The C. Reiss Coal Company, et al.*, Civ. 72–C–210 (E.D. Wisc.) On April 11, 1972, a federal grand jury returned 2 indictments charging 5 coal companies with fixing prices and allocating customers in the sale of coal in violation of Section 1 of the Sherman Act.

One indictment and companion civil complaint named Great Lakes Coal & Dock Company and Hometown, Inc., both of Milwaukee, and Youghiogheny & Ohio Coal Company of Cleveland, as defendants, and charged these firms with conspiring to fix prices, rig bids, and allocate customers of dock coal sold in Milwaukee County, Wisconsin.

The other indictment and companion civil complaint named, in addition to Great Lakes Coal & Dock Company, The C. Reiss Coal Company, and Pickands Mather & Co. as defendants, and charged these firms with conspiring to fix the prices of coal, to allocate customers, and to rig bids.

The 2 civil suits asked for permanent injunctions against continuation of the defendants' price fixing and customer allocating activities. The suits also asked that the companies be enjoined from communicating information relating to coal

prices to any competitor prior to the release of such information to the trade generally. The cases are pending.

2231. *United States* v. *H. K. Porter Company, Inc.*, Civ. 72-285 (W.D. Pa.) On April 12, 1972 a complaint and proposed final judgment requiring the usual 30-day waiting period, were filed charging Porter with practicing trade relations in violation of Sections 1 and 2 of the Sherman Act. The complaint charged that Porter's systematic use of purchases to promote sales of steel and metal products, and its consideration of sales to particular suppliers as a factor in purchasing decisions, was an attempt to monopolize, in violation of Section 2 of the Sherman Act, and resulted in combinations in restraint of trade, in violation of Section 1 of the Sherman Act.

The provisions of the final judgment, which was entered on May 17, 1972, expressly enjoins Porter from using purchases to promote sales to its suppliers, and from considering sales to suppliers as a factor in selecting suppliers. The judgment affirmatively requires that Porter purchase on the basis of price, quality, and service, and even if the price, quality and service of alternative suppliers are equal, Porter may not consider its sales to one of the suppliers as a factor in selecting the supplier. The judgment also contains a provision forbidding Porter's data processing units from giving sales information to purchasing agents or purchasing information to salesmen. In addition, it also contains thhe usual provisions against reciprocal dealing.

2232. *United States* v. *National Broadcasting Company, Inc.*, Civ. 72-819-RJK (C.D. Calif.)

2233. *United States* v. *Columbia Broadcasting System, Inc., et al.*, Civ. 72-820-WMB (C.D. Calif.)

2234. *United States* v. *American Broadcasting Companies, Inc.*, Civ. 72-821-LTL (C.D. Calif.) On April 14, 1972, complaints were filed charging the 3 national television networks and Viacom International, Inc. with monopolizing prime time television entertainment programming and obtaining valuable interests in such programming. The alleged violations of Sections 1 and 2 of the Sherman Act have deprived independent program suppliers, advertisers and the viewing public of the benefits of free competition. The complaint charges that ownership and control of network prime time television programs have been concentrated in the networks, distribution and sale of such programs has been restrained, and that prices have been controlled for television exhibition rights to motion picture feature films.

The suits ask that the networks be prohibited from carrying network-produced entertainment programs, including feature films, and from obtaining financial interests in independently produced entertainment programs. The networks would continue to exercise responsibility for programs they accept for broadcast. The cases are pending.

2235. *United States* v. *G. Heileman Brewing Co., Inc., et al.*, Civ. 38162 (E.D. Mich.) On April 17, 1972 a complaint was filed to block the acquisition by Heileman of the 3 western breweries owned by the Associated Brewing Company. The complaint charged that the proposed acquisition would violate Section 7 of the Clayton Act by eliminating competition between Associated and Heileman and by increasing concentration in the production and sale of beer in the United States.

The suit asked that the proposed acquisition be declared unlawful and that a permanent injunction against its consummation be issued. The suit also asked that a preliminary injunction be issued enjoining Heileman and Associated from taking any further action in connection with the proposed sale pending final adjudication. The case is pending.

2236. *United States* v. *American Society of Civil Engineers*, 72 Civ. 1776 (S.D. N.Y.) On May 1, 1972 a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging the Society with violating Section 1 of the Sherman Act by eliminating price competition among its members in the sale of engineering services. The complaint charged that the society and its members agreed to refrain from inviting or submitting price proposals or quotations of fees under conditions that constituted price competition and that they adopted and enforce a Code of Ethics which expressly prohibited such practices.

A final consent judgment was entered on June 1, 1972 which enjoined the Society from adopting any plan, resolution, or policy statement which prohibits or in any way limits members from freely submitting price quotations. The

judgment also directs the Society to amend its Code of Ethics and other policy statements which presently limit members free submission of price quotations or which imply that such practices are unethical or unprofessional.

2237. *United States* v. *General Motors Corporation, et al.*, Cr. 47–140 (E.D. Mich.)

2238. *United States v. General Motors Corporation, et al.*, Civ. 38219 (E.D. Mich.) On May 1, 1972 an indictment and complaint were filed against GM and Ford, charging both with violating Sections 1 and 2 of the Sherman Act. The indictment and complaint charged that GM and Ford had conspired to restrain and monopolize the manufacture, sale, and distribution of automobiles for the fleet market by: selectively eliminating or substantially reducing price concessions; making statements and disseminating information concerning their willingness to discontinue price concessions; and by communicating to the industy that each would retaliate if other competitors did not follow their actions.

The civil suit asks for a permanent injunction against any continuation or renewal of the defendant's activities to eliminate fleet market competition. Both cases are pending.

2239. *United States* v. *Wayne Corporation*, Civ. IP–72–C–215 (S.D. Ind.) On May 4, 1972 a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging Wayne with conspiring with its distributors to allocate territories and maintain resale prices for the sale of professional vehicles. The suit charged that each distributor was allocated a a certain market territory, confined his sales or leases to customers within that territory, and refrained from selling or leasing to customers in other territories, in violation of Section 1 of the Sherman Act. The complaint also charged that Wayne and its distributors agreed to refrain from advertising the resale prices of professional vehicles and that Wayne has at times determined its distributor's resale prices.

A final consent judgment was entered on June 6, 1972 which enjoins Wayne from assigning to its distributors, customers, territories or the prices at which professional vehicles may be resold or leased.

2240. *United States* v. *Parker-Hannifin Corporation, et al.*, Civ. C72–493 (N.D. Ohio) On May 15, 1972 a complaint was filed to block the merger of Parker-Hannifin with Ideal Corporation. The complaint charged that the merger violated Section 7 of the Clayton Act by eliminating actual and potential competition between the defendants in the manufacture and sale of automotive replacement parts, eliminating potential competition between the defendants in the sale of a specialized kind of automotive hose fastener, and by establishing Ideal in an entrenched position to the exclusion of other manufacturers of that type of hose fastener.

The suit asked that Parker-Hannifin be required to divest itself of Ideal and that it be enjoined from taking any action which would impair the independent and viable existence or operation of Ideal. The case is pending.

2241. *United States* v. *The American Institute of Architects*, Civ. 992–72 (D. D.C.). On May 17, 1972, a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging the Institute with violating Section 1 of the Sherman Act by eliminating price competition among its members in the sale of architectural services. The suit charged that the Institute and its members had adopted and abided by Standards of Ethical Practice which prohibited members from submitting competitive bids for their services.

A final consent judgment was entered on June 19, 1972 enjoining the Institute from adopting or disseminating any plan, rule or resolution which prohibits or discourages members from submitting price quotations for architectural services. The judgment also directs the Institute to amend its Standards of Ethical Practice to conform to other terms of the judgment.

2242. *United States* v. *General Electric Company*, Civ. 72–CV–255 (N.D. N.Y.). On May 18, 1972, a complaint was filed charging G.E. with violating Section 1 of the Sherman Act by using reciprocal purchasing arrangements with customers and suppliers since at least 1965. G.E. is the nation's largest manufacturer of electrical equipment and related products.

The complaint asks that G.E. be enjoined from entering into or continuing any reciprocal purchasing arrangements, from communicating to suppliers that they will receive preference if they purchase from G.E., and from compiling statistics which compare purchase and sales data of G.E. and its customer-suppliers. The complaint also asks the court to order G.E. to abolish any duties of its officials or

employees which relate to reciprocal purchasing, and to notify its customer-suppliers that it will not enter into reciprocal purchasing arrangements. The case is pending.

2243. *United States* v. *Clark Mechanical Contractors, Inc., et al.*, Cr. 27–837 (W.D. Ky.)

2244. *United States* v. *Clark Mechanical Contractors, Inc., et al.*, Civ. 7264 (W.D. Ky.). On May 22, 1972, a federal grand jury indicted 8 mechanical contracting firms and six officers on charges of conspiring to rig bids and allocate customers. The complaint named only the mechanical contracting firms as defendants. The indictment and the complaint charged the defendants with conspiring to rig bids on the installation of mechanical contracting suppliers and the rendering of mechanical contracting services, and allocating customers for those supplies and services.

The complaint asks that the companies be permanently enjoined from continuing or resuming any plan to rig bids, allocate customers, or otherwise eliminate competition in the sale of mechanical contracting suppliers and services. Both cases are pending.

2245. *United States* v. *Safety First Products Corporation*, Civ. 72–CIV–2233 (S.D. N.Y.). On May 23, 1972 a complaint was filed charging Safety First with violating Sections 1 and 3 of the Sherman Act by combining and conspiring with its distributors to allocate territories and customers for the sale of the company's fire protection equipment. The suit also alleged that certain customers and classes of customers were allocated by Safety First to its distributors, and that those distributors were restrained from selling equipment to certain accounts reserved to Safety First.

The complaint asks that the defendant be enjoined from maintaining or renewing the conspiracy and from imposing any limitation respecting the territories in which and the customers to whom any distributor may sell. The case is pending.

2246. *United States* v. *Dunn Glass Company, Inc., et al.*, Cr. 12686–N (M.D. Ala.).

2247. *United States* v. *Capital Glass & Trim Co., Inc., et al.*, Civ. 3679–N (M.D. Ala.). On May 25, 1972 a criminal information was filed against 6 automobile glass shops on charges of conspiring to fix prices on the sale and installation of automobile glass replacement parts in violation of Section 1 of the Sherman Act.

A civil suit named 5 of the shops from the criminal information plus one additional glass replacement shop. Both the information and the complaint charged that the defendants have conspired to fix, raise, and maintain the prices of automobile glass parts and the rates charged for labor performed in replacing such parts.

The civil suit asks that the defendants be permanently enjoined from continuing or reviving the conspiracy and from engaging in any practices having a similar purpose or affect. Both cases are pending.

2248. *United States* v. *Central Michigan Gasoline Dealers Association*, Cr. G175–72–CR (W.D. Mich.).

2249. *United States* v. *Central Michigan Gasoline Dealers Association*, Civ. G153–72–CA5 (W.D. Mich.).

2250. *United States* v. *Professional Petroleum Merchants Association*, Cr. G176–72–CR (W.D. Mich.).

2251. *United States* v. *Professional Petroleum Merchants Association*, Civ. G152–72–CA1 (W.D. Mich.). On May 30, 1972 2 indictments and companion civil complaints were filed against 2 retail gasoline trade associations from the Grand Rapids and Lansing, Michigan areas. The indictments and complaints charge that the defendants conspired to raise and stabilize retail gasoline prices in their respective areas in violation of Section 1 of the Sherman Act. The conspiracies consisted of agreements to refrain from advertising gasoline prices, to solicit and persuade other retail suppliers to cooperate with the defendants, and to harass non-cooperating service stations.

The complaints asks for permanent injunctions against the price stabilization activities and also asked that the trade associations be dissolved. All 4 cases are pending.

2252. *United States* v. *American Institute of Certified Public Accountants, Inc.*, Civ. 1091–72 (D.D.C.) On June 1, 1972, a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging that the CPA's had violated Section 1 of the Sherman Act by eliminating price compe-

tition among its members in the sale of accounting services. The complaint charged specifically that the defendant and its members had adopted, published, and abided by a Code of Professional Ethics which prohibited members from submitting competitive bids for their services.

The proposed consent judgment would enjoin the Institute from adopting or disseminating any plan, Code of Ethics, rule or policy statement which prohibits or discourages members from submitting price quotations for accounting services. The proposed judgment also declares null and void the Institute's rule which currently prohibits members for submitting competitive bids and directs the Institute to delete that provision and any other similar provision from its Code. The case is pending.

2253. *United States* v. *Greater Pittsburgh Board of Realtors, et al.*, Civ. 72-499 (W.D. Pa.) On June 21, 1972, a complaint was filed charging 5 associations of real estate brokers with violating Section 1 of the Sherman Act. The complaint charges that the defendants and co-conspirator members conspired to fix real estate commissions on the sale of property in the Pittsburgh area. The defendants published, circulated, and adhered to uniform rates; agreed to persuade banks and other financial institutions to pay increased rates of commission; and agreed not to accept listings for multiple listing services at rates less than those fixed by the members of the defendants.

The complaint asked that the fixing of brokerage commission rates be prohibited and that the defendants be enjoined from recommending or suggesting that its members adhere to any particular schedule of fees or rates of commission. The complaint also sought to prohibit the defendants from adopting or publishing any schedule or other recommendation regarding commissions to be charged by its members, and from conducting any surveys designed to determine prevailing commission rates. The case is pending.

2254. *United States* v. *Westinghouse Electric Corporation*, Civ. 72-507 (W.D. Pa.) On June 23, 1972 a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed against Westinghouse, charging that it had engaged in reciprocal purchasing arrangements in violation of Section 1 of the Sherman Act. The complaint charged that Westinghouse had entered into arrangements to purchase goods and services from its suppliers on the understanding that such suppliers would purchase goods and services from the defendant. Westinghouse is a leading manufacturer of electrical equipment.

The proposed consent judgment would prohibit Westinghouse from purchasing from or selling to customer-suppliers upon the understanding that Westinghouse's purchases will be conditioned upon its sales to such customer or supplier; from communicating to or discussing with any customer-supplier the relationship or purchases and sales between them; and from maintaining statistical compilations that compare sales to and purchases from suppliers. The judgment also directs Westinghouse to refrain from establishing or maintaining any office or position whose objectives are to promote trade relations involving reciprocal purchasing arrangements. The case is pending.

2255. *United States* v. *Bird Corporation, et al.*, Civ. 72C-860 (E.D. N.Y.) On June 27, 1972 a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging Bird and Instrumentation Associates, Inc., (IA) Bird's exclusive distributor in the greater New York area, of violating Section 1 of the Sherman Act. The complaint alleged that the defendants have conspired to fix the prices for respirators and to divide and allocate market territories and customers.

The proposed consent judgment would prohibit the defendants from fixing the resale prices of respirators, and from allocating territories or customers; from limiting IA to selling only Bird respirators; and from fair trading respirators for a period of 5 years from the date of entry. In addition, the defendants are required to send a copy of the final judgment to each of their distributors. The case is pending.

2256. *United States* v. *Memphis Board of Realtors*, Civ. 72-218 (W.D. Tenn.) On June 27, 1972 a complaint and proposed consent judgment requiring the usual 30-day waiting period were filed charging the defendant with violating Section 1 of the Sherman Act. The complaint alleged that the board and its members agreed to uniform rates of real estate commissions and fees which were published and circulated to the Board's members and agreed to the use of standard contracts incorporating the agreed fees and rates of commission.

The proposed consent judgment prohibits the fixing or maintaining of rates and fees to be charged by the Board's members and directs the Board to insert in all by-laws, rules, and regulations which previously contained a set or recommended commission rate, a provision that commission rates for the sale, lease or management of property shall be negotiable. The case is pending.

2257. *United States* v. *Colley Enterprises, Inc., et al.*, Cr. W–72–CR–34 (W.D. Tex.).

2258. *United States* v. *Colley Enterprises, Inc., et al.*, Civ. W–72–CA–44 (W.D. Tex.). On June 28, 1972 an indictment was returned against 5 retail liquor concerns and 7 individuals on charges of conspiring to fix prices in the sale of liquor in the Waco, Texas area in violation of Section 1 of the Sherman Act. A companion civil suit named as defendants the 5 retail concerns and 3 of the 7 individuals named in the indictment.

The civil suit asked for a permanent injunction against continuation or renewal of the defendants' price-fixing activities and that they be enjoined from exchanging information concerning liquor prices. Both cases are pending.

2259. *United States* v. *Tulsa Bottlers Association, et al.*, Civ. 72 C 230 (N.D. Okla.) On June 29, 1972, a complaint was filed charging 3 soft drink bottlers and their trade association with violating Section 1 of the Sherman Act. The suit charged that the bottlers had restrained competition by conspiring to raise, and stabilize the prices of soft drinks; to establish deposit charges for bottles, cartons and hulls; and to discuss and exchange economic facts and information concerning competitive practices.

The complaint asked that the defendants be permanently enjoined from continuing any of the activities charged in the complaint and from giving prior notice of any contemplated change in prices, terms, and conditions in the sale of soft drinks. The complaint also asked that the defendant trade association be dissolved. The case is pending.

2260. *United States* v. *Bally Manufacturing Corporation*, Civ. 72 C 1597 (N.D. Ill.). On June 29, 1972, a complaint was filed charging the defendant with violating Section 1 of the Sherman Act by conspiring with its distributors to allocate territories for the sale or lease of the company's amusement and gaming equipment. The suit alleged that since 1967 Bally has allocated to its distributors exclusive market territories and required its distributors to refrain from selling or leasing Bally equipment to customers in other distributor's territories; and that Bally has enforced adherence to these territorial arrangements.

The complaint asked for a permanent injunction against the continuation of Bally's territorial allocation practices and that Bally be ordered to notify all its distributors that they are free at such prices, to such persons, and in such areas as they may freely choose. The case is pending.

2261. *United States* v. *Technical Tape, Inc., et al.*, Civ. 72 C 1602 (N.D. Ill.). A complaint was filed on June 29, 1972 challenging the acquisition by a New York innerspring and box spring manufacturer of a Chicago firm which also produces springs. The suit charged that the 1971 acquisition of a 30 percent stock interest in Nachman Corporation by Technical Tape, Inc. and its subsidiary violated Section 7 of the Clayton Act by eliminating actual and potential competition between the defendants and by increasing concentration in the inner and box spring markets.

The complaint asked that the Technical Tape companies and Steadley be ordered to divest themselves of the Nachman stock, and that the defendants be enjoined from taking any action for the purpose of combining the operations of Nachman and Steadley. The case is pending.

2262. *United States* v. *Uniroyal, Inc.*, 72 CIV 2793 (S.D. N.Y.) On June 29, 1972, a complaint and proposed consent judgment requiring the usual 30-day waiting period, were filed charging Uniroyal with using reciprocal purchasing arrangements in violation of Sections 1 and 2 of the Sherman Act. Uniroyal is an industrial goods conglomerate which produces a wide variety of RUBBER and CHEMICAL products. The complaint alleged that Uniroyal has violated Section 1 of the Sherman Act by entering into arrangements to purchase goods and services from suppliers on the understanding that such suppliers would purchase from Uniroyal and that Uniroyal has violated Section 2 of the Sherman Act by using its purchasing power in an attempt to monopolize the requirements of its suppliers for the products sold by Uniroyal.

The proposed consent judgment would prohibit Uniroyal from: purchasing or selling products or services to any customer or supplier on a reciprocal basis;

communicating to or discussing with any supplier or customer the relationship or purchases and sales between them; maintaining statistical compilations that compare sales to and purchases from suppliers; and from agreeing with any supplier that the supplier will buy from certain customers of Uniroyal. Uniroyal is also directed to refrain from assigning any trade relations duty or function to any employee. The case is pending.

2263. *United States* v. *United Foam Corporation, et al.*, Civ. 72–1490–CC (C.D. Calif.) On June 29, 1972, a complaint was filed challenging the acquisition by United Foam of 3 flexible urethane foam manufacturing plants from Stauffer. The complaint charged that actual and potential competition between the defendants had been eliminated by the acquisition and that concentration in the production and sale of flexible urethane foam had been substantially increased in the western United States in violation of Section 7 of the Clayton Act.

The suit asked that the acquisition be declared unlawful and that United be required to divest itself of the plants acquired from Stauffer. The suit also asked for a preliminary injunction enjoining United from taking any action that would impair its ability to divest the acquired plants and that United be enjoined for 10 years from acquiring the stock or assets of any other manufacturer of flexible urethane foam. The case is pending.

2264. *United States* v. *Southwestern Peanut Shellers Association*, Civ. CA–3–6028–C (N.D. Tex.) On June 30, 1972 a complaint was filed charging one trade association with violating Section 1 of the Sherman Act. The suit alleged that the trade association and their members conspired to fix commission rates paid to peanut brokers. The complaint charged that the association and their members had agreed on uniform commission rates for the sale of peanuts, agreed on contract price changes, and agreed to other uniform terms and conditions for the sale of shelled peanuts.

The suit asked that the combinations and agreements be declared unlawful and that the defendant and their members be enjoined from continuing or renewing the combinations. The case is pending.

2265. *United States* v. *T.I.M.E.–DC. Inc.*, Civ. 5–1063 (N.D. Tex.) On June 30, 1972, a complaint and proposed consent judgment requiring the usual 30-day waiting period, were filed charging the defendant with using reciprocal purchasing arrangements in violation of the Sherman Act. The complaint charged that since 1962, the defendant has violated Section 1 of the Sherman Act by entering into arrangements to purchase products and services from its suppliers from the understanding they would purchase services from the defendant. The suit also charged that the defendant has used its purchasing power in an attempt to monopolize the requirements of its actual and potential suppliers for trucking services provided by the company in violation of Section 2 of the Sherman Act.

The proposed consent judgment would be in effect for 15 years and would prohibit T.I.M.E.-DC. from: using its purchases to aid, influence, or promote its sales to suppliers; purchasing or selling products, goods or services on a reciprocal basis; maintaining statistical compilations comparing sales to and purchases from suppliers; and communicating to any customer that its sales to such customer are a factor in its purchasing decisions. The judgment would also require the defendant to refrain from assigning any trade relations functions or duty to any employee and to invite competitive bids for major purchases of equipment and supplies. The case is pending.

2266. *United States* v. *Nissan Motor Corporation in U.S.A.*, Civ. C–72–1212–RHS (N.D. Calif.) On June 30, 1972 a complaint was filed charging an American subsidiary of a Japanese auto company with violating Section 1 of the Sherman Act in the sale of Datsun automobiles in the United States. The suit charged that Nissan conspired with its dealers to fix the prices at which Datsuns are sold to consumers and agreed with its dealers that the dealers would refrain from selling to or through automobile brokers or discount houses and would confine their sales efforts to marketing areas designated by Nissan.

The complaint asked the court to require Nissan to end its price fixing and to inform its dealers that they are free to determine their own prices and the customers to whom they will sell. The case is pending.

2267. *United States* v. *Southeastern Peanut Association*, Civ. 777 (M.D. Ga.) On June 30, 1972 a complaint was filed charging one trade association with violating Section 1 of the Sherman Act. The suit alleged that the trade association

and their members conspired to fix commission rates paid to peanut brokers. The complaint charged that the association and their members had agreed on uniform commission rates for the sale of peanuts, agreed on contract price changes, and agreed to other uniform terms and conditions for the sale of shelled peanuts.

The suit asked that the combinations and agreements be declared unlawful and that the defendant and their members be enjoined from continuing or renewing the combinations. The case is pending.

2268. *United States* v. *Converse Rubber Corporation, et al.*, Civ. 72-2075-J (D. Mass.). On July 3, 1972, a complaint was filed alleging violation of Section 7 of the Clayton Act. The suit challenged Converse's 12 year lease, with an option to purchase, of the rubber canvas footwear operations of the B. F. Goodrich Company.

On August 29, the case was terminated with the entry of a consent judgment pursuant to a stipulation filed on July 25, 1972. The judgment requires Converse to divest itself of facilities capable of producing 7 million pairs of canvas shoes annually. Alternatively, if no sale can be made, the company may place plants with equivalent production capability under the control of a trustee for sale within the following 2 years. Converse must also sell the "Jack Purcell", "PF" and "PF Flyer" trademarks acquired from Goodrich. Additionally, Converse must continue for 3 years to supply J. C. Penney Company, Inc. with canvas footwear in an amount equal to 50 percent of its purchase from Goodrich under the Penney brand in 1971. Also, J. C. Penney must be offered the option of assuming lease interest in a shoe warehouse formerly used by Goodrich to service the Penney footwear account. Further, Converse is enjoined for 10 years from acquiring any manufacturer or distributor of canvas footwear.

2269. *United States* v. *Bankers Trust of South Carolina*, Civ. 72-830 (D. S.C.). On July 11, 1972, a complaint was filed to block the consolidation of Bankers Trust of South Carolina and the Peoples National Bank of Greenville, South Carolina. The suit alleged that the consolidation would violate Section 7 of the Clayton Act by permanently eliminating actual and potential competition between the 2 banks in Greenville County and much of the northwestern region of the state. Because they are the fourth and sixth largest commercial banks in the state such consolidation would eliminate one of the few South Carolina banks capable of becoming a full statewide competitor and would trigger other mergers between leading South Carolina banks and banks with leading positions in local markets.

The suit asks that the consolidation agreements be adjudged in violation of Section 7 of the Clayton Act, and that the defendants be enjoined from carrying out the acquisition or any similar plans to combine the businesses of the defendants. The case is pending.

2270. *United States* v. *The Material Handling Institute, Inc., et al.*, Civ. 72-659 (W.D. Pa.). A complaint was filed on August 10, 1972, charging 6 trade associations with conspiring to restrain competition in domestic sales of material handling equipment manufactured in the United States and foreign countries. The complaint alleges that the members of the defendant associations have agreed in violation of Section 1 of the Sherman Act to refrain from manufacturing material handling equipment in foreign countries or from acquiring for sale such equipment which was manufactured abroad and to refrain from displaying or promoting foreign-made equipment at trade shows sponsored by MHI. This agreement included restricting eligibility from membership in MHI to firms which manufacture at least 75% of their equipment within the United States and also imposing the same restrictions of membership within the other individual defendants. The conspiracy also consisted of an agreement by a conspirator professional society to refrain from conducting or endorsing trade shows for the exhibition or promotion of foreign equipment.

The suit asks that each of the defendants be perpetually enjoined from carrying out the present conspiracy or from engaging in any other conspiracy having a similar purpose; that the court order each of the defendants to eliminate illegal membership eligibility restrictions contained in their by-laws, to furnish a copy of any final judgment to its officers and members, and to furnish a copy of its revised by-laws to the Antitrust Division. The case is pending.

2271. *United States* v. *Empire Gas Corporation, et al.*, Cr. 2391-1 (W.D. Mo.).

2272. *United States* v. *Empire Gas Corporation*, Civ. 20485-1 (W.D. Mo.). On August 14, 1972, a 4 count indictment and complaint were filed charging 1 of the

largest liquified petroleum gas distributors in the United States and 2 individuals with violating Section 2 of the Sherman Act and conspiring to violate federal firearms laws in connection with an unsuccessful attempt to dynamite a truck belonging to a competitor. The indictment charges all 3 defendants with attempting to monopolize the distribution and sale of liquified petroleum gas in various local markets within the state of Missouri and in certain other states where Empire does business in violation of the Sherman Act and federal firearms laws by aiding and abetting the possession of an unregistered explosive device. In addition, the 2 individuals were charged with conspiracy to commit 2 federal firearms violations.

The civil suit names only Empire as a defendant. It alleges an attempt to monopolize in violation of Section 2 of the Sherman Act.

The complaint asks that the defendant be perpetually enjoined from carrying out in any way the practices alleged or any similar acts or practices; that the defendant be enjoined from communicating with other LP Gas distributors for the purpose of influencing gas prices or conditions of sale; that the defendant be required to dispose of all assets and stock acquired from its competitors and be enjoined from further acquiring such assets or stock; and that the court require the defendant to eliminate from its contracts any terms which restrict other firms from competing with Empire. The cases are pending.

2273. *United States* v. *Colorado Milling & Elevator Company, et al.*, Cr. 287–7D2 (W.D. Wash.). An indictment was filed on August 15, 1972, in the District of Colorado and later transferred to the Western District of Washington, charging 4 corporations and 3 of their executives with conspiring to fix, raise, and stabilize the price of bakery flour sold to commercial bakers located on the West Coast, in violation of Section 1 of the Sherman Act. The indictment also charges that the defendants have exchanged information on prices, attempted to induce a competing miller to limit production, and utilized a uniform formula for pricing bakery flour. The case is pending.

2274. *United States* v. *A. Levy & J. Zentner Co., et al.*, Cr. R–14476 (D. Nev.).

2275. *United States* v. *A. Levy & J. Zentner Co., et al.*, Civ. R–2724 (D. Nev.). On August 15, 1972, an indictment and complaint were filed charging 2 wholesale produce corporations with price fixing and collusive bidding in violation of Section 1 of the Sherman Act in Reno, Nevada and the Lake Tahoe region of Nevada and California. The indictment also names 2 corporate officers as defendants. The suits charge that the defendants conspired to raise, stabilize and manitain prices of produce sold, to suppress and restrain competition between the wholesalers in the sale of produce, and to deprive customers of the opportunity to purchase produce in an open and competitive market.

The complaint which names only the 2 produce companies as defendants asks that the court adjudge the defendants in violation of Section 1 of the Sherman Act, and that the defendants be perpetually enjoined from renewing the conspiracy or from engaging in any other action having a similar purpose or effect.

On November 17, 1972, two of the defendants were fined a total of $18,000 after entering pleas of nolo contendere. The remaining 2 defendants entered *nolo* pleas and were fined a total of $31,500 on November 21, 1972, thus terminating the criminal case. The civil case is pending.

2276. *United States* v. *American Ship Building Company, et al.*, Civ. C–72–859 (N.D. Ohio). On August 16, 1972, a complaint was filed to block the acquisition by the American Ship Building Company of all the Great Lakes bulk carrier vessels of Litton Systems, Inc., in violation of Section 7 of the Clayton Act. The combined fleet would operate about 28 percent of the non-captive U.S. ships on the Great Lakes. Non-captive vessels are those not owned or operated by the owners of the transported commodity. The acquisition may substantially lessen competition between the 2 companies and increase concentration in interstate transportation of bulk commodities by non-captive carrier vessels on the Great Lakes.

The complaint asks that the acquisition be adjudged to be in violation of Section 7 of the Clayton Act; that pending final adjudication, a preliminary injunction be issued; that the purchase agreements be rescinded; and that for a period of 5 years, Amship be enjoined from acquiring the stock or assets of any other company engaged in transporting bulk commodities on the Great Lakes. The case is pending.

2277. *United States* v. *American Bakeries Company, et al.*, 72–CR–1010 (S.D. N.Y.). On September 12, 1972, an indictment was returned against 4 corporations charging violation of Section 1 of the Sherman Act. The defendants are

the principal producers of bread for retail grocers in the New York region. The indictment charges that the defendants fixed and maintained the price of non-premium branded bread and bread-type rolls in the New York region at artificial, non-competitive levels and restrained price competition among the defendants in the sale of bread, and deprived purchasers of the benefits of free and open competition in the New York region.

The case was terminated on December 15, 1972, with the imposition of $175,000 in fines on *nolo* pleas by all 4 defendants.

2278. *United States* v. *Blue Ribbon Meat Co., et al.*, Cr.–R–14,482 (D. Nev.).

2279. *United States* v. *Len Harris Wholesale Meats, Inc., et al.* Civ. R–2735 (D. Nev.). An indictment and complaint were filed on September 12, 1972, against 4 wholesale meat companies and 2 officials charging price fixing and collusive bidding in violation of Section 1 of the Sherman Act in the Reno, Nevada and Lake Tahoe regions of Nevada and California. The complaint names only the 4 corporations and a sole proprietorship. The defendants are the principal wholesalers of meat in the Reno, Nevada and Lake Tahoe area. Both the complaint and indictment charged that the defendants have conspired to submit collusive and rigged bids for the sale of ground beef and frankfurters to the Washoe County, Nevada School District, to submit collusive and rigged bids to their other customers, and to raise and maintain the prices of ground beef.

The complaint asks that the court adjudge the conspiracy to be in violation of Section 1 of the Sherman Act; that each of the defendants and their officers be perpetually enjoined from continuing or renewing the conspiracy and from adopting any similar program having a similar purpose or effect. The cases are pending.

2280. *United States* v. *Gonnella Baking Co., et al.*, 72 CR 769 (N.D. Ill.).

2281. *United States* v. *Gonnella Baking Co., et al.*, Civ. 72 C 2484 (N.D. Ill.). An indictment and complaint were filed on October 4, 1972, charging 2 Chicago baking companies with fixing prices and allocating customers in the sale of Italian, French and Vienna style bread in the Chicago area in violation of Section 1 of the Sherman Act. The indictment also names 3 of the companies' officers, while the complaint names only the 2 baking companies. Both the indictment and the complaint charge that the defendants had conspired to fix wholesale and retail prices, to refrain from soliciting each other's wholesale customers and to require adherence to the prices agreed upon.

The complaint asks that the court adjudge the conspiracy to be in violation of Section 1 of the Sherman Act; that the defendants and their officers be enjoined from continuing or renewing the alleged conspiracy or from engaging in any similar conduct; that the defendants be enjoined from joining or organizing any association having a purpose similar to that of the conspiracy; and that the defendants be required to distribute a copy of any final judgment or decree to each of their wholesale customers. The cases are pending.

2282. *United States* v. *Yellow Freight System, Inc.*, Civ. 20632–2 (W.D. Mo.). A complaint was filed on October 26, 1972, alleging violation of Sections 1 and 2 of the Sherman Act by a corporation engaged in providing transportation services. Violation of Section 1 has entailed reciprocal agreements by suppliers. Violation of Section 2 has entailed use by Yellow Freight of its purchasing power to monopolize the trucking requirements of its actual and potential suppliers. The illegal program included designation of trade relations managers and participation in the activities of Trade Relations Associates, Inc. Other aspects include the policy of buying from those who would purchase transportation services from the defendant, maintaining comparative purchase and sales records and making suppliers aware of Yellow Freight's reciprocal policies.

The complaint asks that the defendant be adjudged in violation of Sections 1 and 2 of the Sherman Act; that the defendant and anyone acting on its behalf be permanently enjoined from entering into or adhering to any contract, agreement or understanding with any supplier involving reciprocal purchase agreements; communicating to suppliers that it will place its purchases with or give preference to suppliers who purchase from the defendant; engaging in the practice of compiling statistics comparing defendant's purchases of goods or services from companies with sales by the defendant to such companies; discussing with suppliers comparative purchase and sales data of such companies relative to defendant, designating approved suppliers based entirely or in part on suppliers' purchases from the defendant; transmitting to personnel with sales or purchasing responsibilities information concerning purchases from or

sales to particular companies, or otherwise implementing any program involving reciprocity; utilizing purchases from particular suppliers to promote sales to such suppliers by the defendant; and that the defendant be required to advise all of its suppliers by written notice that it no longer engages in reciprocal purchasing. The case is pending.

2283. *United States* v. *Atomic Fire Equipment Co., et al.*, Cr. 72–737 (N.D. Ohio).

2284. *United States* v. *Atomic Fire Equipment Co., et al.*, Civ. 72–1185 (N.D. Ohio). An indictment and complaint were filed on November 2, 1972, charging 5 corporations and 7 individuals with violation of Section 1 of the Sherman Act. The complaint names the 5 corporations and 2 unincorporated businesses. Both the indictment and complaint charged that the defendants had engaged in a conspiracy to fix, raise and maintain the price of sale and service of fire extinguishers sold and owned by commercial, retail and governmental customers in the Cleveland area.

The complaint asks that the defendants be adjudged in violation of Section 1 of the Sherman Act; that each defendant, and anyone acting on their behalf be perpetually enjoined from participating in any conspiracy to fix, raise or maintain prices, allocate customers, or otherwise eliminate competition in the sale or service of fire extinguishers in the Cleveland area or elsewhere in the United States. The cases are pending.

2285. *United States* v. *The Federal Company*, Civ. 72–382 (W.D. Tenn.). A complaint was filed on November 13, 1972, challenging the acquisition of Great Western Foods Company by The Federal Company in violation of Section 7 of the Clayton Act. The suit alleged that the acquisition would eliminate actual and potential competition between the 2 companies in the production, distribution, and sale of wheat flour, bakery flour and family flour in the southeastern United States.

The complaint asks that the acquisition be adjudged in violation of Section 7 of the Clayton Act. That Federal be required to divest itself of all its interests in and control over GWF. That for a period of 10 years Federal be enjoined from acquiring the stock or the assets of any company engaged in the production and sale of wheat flour, bakery flour or family flour in the southeastern United States. That the court order such preliminary relief as will insure that, pending final adjudication of this litigation, the business and financial operations of GWF shall be maintained completely separate and independent from those of Federal and that Federal shall take no action that would impair the ability of Federal to comply with any court order that required divestiture, in whole or in part, of its interest in GWF. The case is pending.

2286. *United States* v. *Wachovia Corporation, et al.*, Civ. St–C–72–40 (W.D. N.C.). A complaint was filed on December 1, 1972, challenging the acquisition of Bank of Granite by The Wachovia Corporation in violation of Section 7 of the Clayton Act. The complaint alleges that the acquisition would substantially lessen competition or tend to create a monopoly by eliminating existing and potential competition in commercial banking, automobile financing, and consumer lending in the Western Urban Complex of North Carolina.

The suit was terminated on December 29, 1972, without prejudice, and the parties were dismissed as the proposed merger was abandoned.

2287. *United States* v. *National Society of Professional Engineers*, Civ. 2412–72 (D. D.C.). A complaint was filed on December 5, 1972, alleging that the defendant violated Section 1 of the Sherman Act. The complaint alleges that for some time the defendant has engaged in an unlawful restraint of trade by agreeing to adopt, publish and distribute a Code of Ethics containing a provision prohibiting members of NSPE from submitting competitive bids for engineering service, that the members of NSPE abide by the provisions of the Code of Ethics, and that the defendant police said provisions of the Code of Ethics.

The complaint asks that the conspiracy be adjudged to be in violation of Section 1 of the Sherman Act and that the defendant and those acting on its behalf cease and desist from continuing in the above actions and that a text of the final judgment be published and submitted to all members and future members. The case is pending.

2288. *United States* v. *Pacific Southwest Airlines, et al.*, Civ. 72–2901 (C.D. Calif.). A complaint was filed on December 5, 1972 to prevent the merger of 2 major California air passenger carriers in violation of Section 7 of the Clayton Act. The complaint alleges that PSA was to acquire Westgate's stock in AirCal,

thus giving them control of 81 percent of the AirCal common stock. Such acquisition would reduce competition among air passenger carriers in the California air corridor.

The complaint asks that the merger be declared in violation of Section 7 of the Clayton Act and that a permanent injunction be issued. Further, a temporary injunction was requested pending termination of the suit. The case is pending.

2289. *United States* v. *Brownell & Co., Inc., et al.*, Cr. 72–258 (W.D. Tenn.).

2290. *United States* v. *Brownell & Co., Inc., et al.*, Civ. 72–427 (W.D. Tenn.). On December 11, 1972, an indictment and complaint were filed charging five corporations with violation of Section 1 of the Sherman Act. The indictment also names 5 individuals. Both the complaint and the indictment charge that the defendants conspired to fix prices of nylon seine twine which is sold primarily to hardware wholesalers and netting manufacturers.

The complaint asks that the defendants be adjudged in violation of Section 1 of the Sherman Act and that each of the defendants be permanently enjoined from participating in any like conspiracy. The cases are pending.

2291. *United States* v. *Bayside Net & Twine Co., Inc., et al.*, Cr. 72–259 (W.D. Tenn.). On December 11, 1972, an indictment was returned charging 4 corporations and 2 individuals with violating Section 1 of the Sherman Act. The indictment charges that the defendants have fixed prices in nylon seine netting which is sold in the Gulf Coast area and is used primarily in the commercial shrimp fishing industry. The case is pending.

2292. *United States* v. *First Washington Net Factory, Inc., et al.*, Cr. 72–452–E (N.D. Ala.).

2293. *United States* v. *First Washington Net Factory, Inc., et al.*, Civ. 72–1099 (N.D. Ala.). On December 11, 1972, an information and complaint were filed against 3 corporations for violation of Section 1 of the Sherman Act. The information also named 2 individuals. Both charge that defendants conspired to fix prices of fish netting sold in the Pacific Northwest principally for use in the commercial fishing industry.

The complaint asks that the defendants be adjudged in violation of Section 1 of the Sherman Act, and that an injunction be issued against this and any similar conspiracy. The cases are pending.

2294. *United States* v. *St. Petersburg Automobile Dealers Association*, 72–337–CR–T–H (M.D. Fla.).

2295. *United States* v. *St. Petersburg Automobile Dealers Association*, 72–725–CIV–T (M.D. Fla.). An indictment and complaint were filed on December 14, 1972, charging the defendant trade association with violation of Section 1 of the Sherman Act. Both charged that the Association has conspired to establish and maintain a schedule of fees for estimating auto repairs, and to eliminate discounts on parts prices. These discounts had previously been granted on repairs covered by automobile casualty insurance.

The complaint asks that the conspiracy be adjudged in violation of Section 1 of the Sherman Act and that the defendant and all those acting on its behalf be perpetually enjoined from continuing or reviving such a conspiracy. The cases are pending.

2296. *United States* v. *Marathon Enterprises, Inc., et al.*, Civ. 197–872 (D. N.J.). A complaint was filed on December 12, 1972, to block the merger of 2 large manufacturers of frankfurters in the New York metropolitan area in violation of Section 7 of the Clayton Act. The complaint alleges that competition in the manufacture and sale of all-beef casing frankfurters in the New York area will be impaired.

The complaint asks that the merger be adjudged in violation of Section 7 of the Clayton Act, that a permanent injunction be issued, and pending final adjudication, that a preliminary injunction be granted. The case is pending.

2297. *United States* v. *Champaign Asphalt Company, et al.*, 72 CR 67 C (E.D. Ill.). An indictment was returned on December 19, 1972, charging 9 contracting firms and 4 of their executives with rigging bids in violation of Section 1 of the Sherman Act. The indictment charges that the defendant agreed to submit collusive, noncompetiitve and rigged bids to the State of Illinois in connection with the construction of Interstate 74, and to allocate among themselves specific projects let by the State in connection with the said highway construction. The case is pending.

2298. *United States* v. *American Television and Communications Corporation, et al.*, Civ. 17573 (N.D. Ga.). On December 20, 1972, a complaint was filed to

block the merger of 2 cable television systems through the acquisition of one by the other in violation of Section 7 of the Clayton Act. The complaint alleges that both ATC and Cox Cable Enterprises, Inc., were active and successful competitors to operate cable television franchises in major television markets and that recent mergers have eliminated some other of the limited number of companies capable of competing for these franchises.

The complaint asks that a preliminary injunction be issued to restrain ATC and Cox from effectuating the merger pending final adjudication on the merits. It also asks that the acquisition of the Cox stock by ATC be considered to be in violation of Section 7 of the Clayton Act, and that the injunction be made permanent as to the defendants and all those acting on their behalf. The case is pending.

2299. *United States* v. *Real Estate Board of Metropolitan St. Louis*, Civ. 72 C 793(3) (E.D. Mo.). On December 22, 1972, a complaint was filed alleging violation of Section 1 of the Sherman Act by the defendant incorporated association. It alleges that the defendant had conspired to maintain uniform commissions and fees provided in connection with the sale, management and rental of real estate in the city and county of St. Louis, to restrict the membership of the Board, and to adopt other rules and regulations which limit competition among the members of the Board.

The complaint asks that the court adjudge the defendants to be in violation of Section 1 of the Sherman Act. That the defendant and those acting on its behalf be enjoined from in any manner, maintaining or renewing such a conspiracy. That the defendant be enjoined from publishing, adopting or distributing and from adhering to any schedule of or other recommendation concerning amounts of commissions or other fees for the sale, lease or management of real estate; from convincing or attempting to convince any person to adhere to any such fee schedule; from establishing, maintaining or enforcing by-laws, rules or regulation which arbitrarily or unreasonably exclude from Board membership any real estate broker or salesman licensed by the State of Missouri. That the defendant be required to abrogate, nullify or amend such of its by-laws, rules, and regulations as have contributed to the alleged violations. The case is pending.

2300. *United States* v. *Eagle Fuel Company, et al.*, Cr. 748–72 (D. N.J.). On December 22, 1972, an indictment was returned charging 2 corporations with violating Section 1 of the Sherman Act. Said violations arose through: discussions about the submission of prospective fuel oil bids to Union City and the Board of Education of Union City, designation of the successful bidder on the fuel oil contracts let by Union City and the Board of Education, submission of intentionally high, or complementary bids where a co-conspirator had been designated as the successful low bidder on a specific fuel contract, and agreement not to submit a bid on specific fuel oil contracts let by government purchasers. The case is pending.

2301. *United States* v. *The First National Bank of Platteville, et al.*, Civ. 73–C–11 (W.D. Wisc.). On January 12, 1973, a complaint was filed alleging violation of Section 7 of the Clayton Act. The suit alleges that the merger between the First National Bank of Platteville and the Mound City Bank, two of the three commercial banks in the city of Platteville, would have the effect of eliminating competition in commercial banking in the Platteville area.

On March 29, 1973, the case was dismissed without prejudice as the merger was abandoned.

2303. *United States* v. *The AAV Companies, et al.*, Civ. 8698 (S.D. Ohio). On January 16, 1973, a complaint and an indictment were filed against three cigarette vending machine companies in Cincinnati, Ohio alleging violation of Section 1 of the Sherman Act. The alleged conspiracy consisted of an agreement to allocate customers and locations among themselves and to fix, maintain, and raise the prices of cigarettes sold in vending machines and the commissions paid to location owners.

The civil suit asks that the defendants and all those acting on their behalf be perpetually enjoined and restrained from directly or indirectly continuing the conspiracy to restrain interstate trade and commerce as alleged.

The criminal case was terminated on June 21, 1973, with the fining of the defendants which totalled $85,000. The fines were levied upon the entry of their pleas of *nolo contendere*.

The civil suit is still pending.

2304. *United States* v. *Crane Co.*, 73 Civil 347 (S.D. N.Y.) On January 23, 1973, a complaint and proposed consent judgment, requiring the thirty day waiting

period, were filed alleging that the defendant had entered into reciprocal purchasing agreements with its customers and suppliers in violation of Sections 1 & 2 of the Sherman Act. The defendant is a diversified manufacturing corporation engaged in the production of a wide variety of plumbing and other fluid control and treatment products. Crane also owns a majority and the stock of CF&I Steel Corporation, a manufacturer and fabricator of steel products.

On March 1 the case was terminated pursuant to the stipulation filed on January 23. The judgment prohibits Crane and its subsidiary, CF&I Steel Corporation, from: using its purchases to aid, influence or promote its sales to suppliers; purchasing or selling goods or services on the condition that purchases by it from any supplier will be based or conditioned upon its sales to such supplier; communicating to anyone that its sales to any firm are a factor in any decision to purchase from that firm; maintaining statistical compilations that compare sales to and purchases from suppliers; and assigning any trade relations function or duty to any employee. The judgment also orders Crane to disregard its sales to any supplier as a factor in its purchasing decisions.

2305. *United States* v. *Jahncke Service, Incorporated, et al.* Cr. 73-48-F (E.D. La.). On January 26, 1973, an indictment was returned against 4 corporations and 3 individuals charging violation of Section 1 of the Sherman Act. The indictment charged that the defendants and the co-conspirators have entered into a combination and conspiracy to raise and stabilize the price of ready mix concrete in the New Orleans area. The case is pending.

2306. *United States* v. *The National Association of Securities Dealers, Inc., et al.* Civ. 338-73 (D. D.C.). An 8-count complaint was filed on February 21, 1973, alleging violation of Section 1 of the Sherman Act by 9 corporate underwriters, 3 corporate broker/dealers, 3 mutual funds, and 1 association. The complaint alleges the defendants conspired to prevent brokers from dealing in mutual fund shares among themselves or from processing sales between customers at competitive brokerage rates and it is alleged that this has effectively prevented the development of a secondary market in mutuals. Such a secondary market, which could involve brokers handling sales between brokers or between customers, would involve competition in commission rates which does not exist under the present system.

It is alleged that the conspiracy consisted of: the establishing and maintaining of NASD rules which inhibited the development of a secondary market, the inducement of principal underwriters to include restrictive provisions in their distribution agreements with securities dealers, discouraging interested persons from participating in brokerage markets in fund shares and distributing misleading information concerning the legality of such markets, and suppressing market quotations for secondary dealer markets.

The complaint asks that the above actions be declared to be in violation of Section 1 of the Sherman Act and that the defendants and all those acting on their behalf be perpetually enjoined from continuing such activities. It is also asked that each mutual fund, each broker/dealer and the association be required to make clear to their respective purchasers and members that mutual fund shares may be purchased at less than the public offering price if the broker/dealer acts as agent rather than principal. The case is pending.

2307. *United States* v. *Ed. Phillips & Sons Co.* Civ. 73-O-144 (D. Neb.). On February 22, 1973, a complaint was filed alleging violations of Section 1 of the Sherman Act. The complaint alleges that Phillips, a liquor wholesaler, has conspired with its retailers to eliminate the advertisement of brands distributed by Phillips at prices less than Phillips' suggested retail prices. It is also alleged that Phillips had refused to fill orders from retail liquor dealers until they agreed to discontinue the advertising of liquor distributed by Phillips at prices lower than those suggested by Phillips.

The suit asks that the defendant be adjudged in violation of Section 1 of the Sherman Act, and that the defendant and all those acting in its behalf be perpetually enjoined from engaging in conduct which has the purpose or effect of restraining competition between liquor dealers. It is also asked that defendant be required to notify all Nebraska liquor retailers that they may advertise and sell brands distributed by the defendant at prices of their own determination so long as they don't violate state or federal law. The case is pending.

2308. *United States* v. *Swift Instruments, Inc.* Cr. 73-0139-SC (N.D. Cal.).

2309. *United States* v. *Swift Instruments, Inc.* Civ. 73-0300-CBR (N.D. Cal.).

2310. *United States* v. *United Scientific Co., Inc.* Cr. 73-0140-SAW (N.D. Cal.).

2311. *United States* v. *United Scientific Co., Inc.* Civ. C–73–0209–ACW (N.D. Cal.). On February 26, 1973, 2 indictments and 2 complaints were filed against 2 Massachusetts firms on separate charges of fixing the price of miscroscopes, many of which are sold to educational institutions. The indictments allege no conspiracy between the 2 manufacturers. Both the indictments and the complaints charge that each defendant conspired separately with its dealers; to fix the prices at which each defendant and its dealers would bid to educational institutions and other public agencies; to require dealers who submitted bids below fixed prices to modify or withdraw such bids; and to cut off or threaten to cut off, dealers who continued to bid or sell at less than fixed prices; and to allocate customers among their dealers by allowing only certain designated dealers to sell to schools and colleges.

The civil suits ask that each of the conspiracies be declared unlawful and in violation of Section 1 of the Sherman Act and that each of the defendants be permanently enjoined from continuing in or renewing the conspiracy and from engaging in similar practices.

On June 29, 1973, the Swift criminal case was terminated when Swift was fined $10,000 upon the entry of its plea of *nolo contendere*. The other cases are pending.

2312. *United States* v. *Dairymen, Inc.*, Civ. 7635–B (W.D. Ky.). On March 29, 1973, a complaint was filed alleging violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act by Dairymen, Inc., a major dairy marketing cooperative in the Southeast. The complaint alleges a variety of practices designed to eliminate the competition of independent producers of milk. These practices include: requiring their milk haulers to haul only Dairymen milk, requiring processors to purchase only Dairymen milk, manipulating the supply of milk by flooding the market to reduce prices, coercing producers into becoming members of Dairymen and unreasonably restricting members' rights of withdrawal in order to compete with Dairymen.

The suit asks that the defendant cooperative be perpetually enjoined from continuing in or renewing any of the above arrangements. The case is pending.

2313. *United States* v. *National Broiler Marketing Association*, Civ. 18173 (N.D. Ga.). A complaint was filed on April 16, 1973, alleging NBMA violated Section 1 of the Sherman Act by fixing prices of broiler chickens at artificially high levels. It is alleged that this was done through a conspiracy to exchange price information and establish and disseminate broiler prices, to sell lower grade broilers at agreed-upon discounts, to withhold broiler parts from the market to increase their price, to establish and disseminate broiler production guidelines and to reduce the number of broilers available for marketing in accordance with those guidelines, and to sell surplus broilers to customers in foreign countries.

The suit asks that the defendant and all those acting on its behalf be perpetually enjoined from continuing in such a conspiracy and that the defendant be ordered to make any necessary changes in its organization and operation to insure compliance with the final judgment. The case is pending.

2314. *United States* v. *Guardian Industries Corp.*, Civ. 73–383 (N.D. Ohio). On April 26, 1973, a complaint was filed challenging the acquisition of Glass For Car, Inc., a leading Cleveland area auto glass dealer, Guardian Industries of Detroit, a leading manufacturer of auto glass. Guardian is also in the business of glass installation in the Cleveland area. It is alleged that such an acquisition would not only reduce competition while increasing the concentration of the auto glass replacement market in the Cleveland area, but that it would also trigger further acquisitions in the area.

The suit asks that Guardian be adjudged to be in violation of Section 7 of the Clayton Act and that Guardian be required to divest itself of all its interest in and control over B & B, a Glass For Cars subsidiary. The case is pending.

2315. *United States* v. *Ampress Brick Company, Inc., et al.*, 73 CR 312 (N.D. Ill.).

2316. *United States* v. *Ampress Brick Company, Inc., et al.*, Civ. 73 C 1016 (N.D. Ill.). On April 19, 1973, an indictment and a complaint were filed against 11 Illinois concrete block companies alleging violation of Section 1 of the Sherman Act through a conspiracy to fix prices of concrete block in the Chicago area. Seven individuals were also named in the indictment.

The civil suit asks that the defendants and all those acting on their behalf be perpetually enjoined from continuing in the above combination and conspiracy. It is also asked that the defendants be required to distribute a copy of the final decree or judgment to each of their customers within 60 days of the entry of such a decree. The cases are pending.

2317. *United States* v. *Halliburton Company*, 73 CIV 1806 (S.D. N.Y.). On April 24, 1973, a complaint was filed challenging the acquisition of Ebasco Services, Inc. by Halliburton in violation of Section 7 of the Clayton Act. Both Ebasco and Halliburton, through its wholly owned subsidiary Brown & Root, Inc., are leading consulting engineering and construction firms specializing in the design and construction of electrical power generating facilities throughout the United States.

The suit asks for temporary injunction pending the final outcome of the action and that Halliburton be ordered to divest itself of Ebasco. The case is pending.

2318. *United States* v. *Blue Bell, Inc., et al.* Civ. 7004 (M.D. Tenn.). On April 25, 1973, a complaint was filed challenging the acquisition of the Hayes Company Division of Genesco, Inc. by Blue Bell. The complaint alleges that the merger between 2 of the largest manufacturers and sellers of industrial rental garments is in violation of Section 7 of the Clayton Act.

The suit asks that Blue Bell be required to divest the acquired assets either by sale to a third party or by returning them to Genesco, in which event Genesco would be required to receive back and operate the assets and to return to Blue Bell the money it received for them. The case is pending.

2319. *United States* v. *Chicago Board Options Exchange, Inc.* Civ. 73 C 1085 (N.D. Ill.). On April 26, 1973, a complaint was filed against the CBOE, an unincorporated association, alleging violation of Section 1 of the Sherman Act. The complaint states that CBOE and its members have fixed and maintained the minimum rates of commission, floor brokerage & other fees for the trading of securities options on the CBOE. A securities option is a contract for the right to purchase or sell shares for a set period of time at a price determined at the time the contract is entered into. These options have traditionally been traded over-the-counter, without fixed brokerage commissions.

The suit asks that the exchange and its members be permanently enjoined from fixing commission rates or other fees for brokerage services, or from engaging in any other practices having a similar purpose or effect. The case is pending.

2320. *United States* v. *American Technical Industries, Inc.* Civ. 73–246 (M.D. Pa.). On May 7, 1973 a complaint was filed challenging the acquisition of Masterpiece, Inc. by American Technical Industries. The complaint alleges that the merger of two of the largest producers of artificial Christmas trees in the country is in violation of Section 7 of the Clayton Act.

The suit asks that the acquisition be declared unlawful and that ATI be required to divest itself of all interest in Masterpiece. The case is pending.

2321. *United States* v. *Norris Industries, Inc.* Civ. 73–1036–WPG (C.D. Cal.). A complaint was filed on May 9, 1973, challenging the acquisition of Pressed Steel Tank Company, Inc. by Norris Industries. The complaint alleges that the acquisition will eliminate competition between two of the nation's leading producers of acetylene cylinders and high pressure compressed gas cylinders. Compressed gas cylinders are metal containers used to store and transport compressed and liquifiable gases such as oxygen, argon, nitrogen, carbon dioxide, acetylene, and medical and refrigerant gases. Acetylene cylinders are manufactured to contain explosive acetylene gas.

The suit asks that the acquisition be adjudged in violation of Section 7 of the Clayton Act and that Norris be ordered to divest itself of all the stock or assets of PST. The case is pending.

2322. *United States* v. *Metro MLS, Inc.* Civ. 210–73N (E.D. Va.). A complaint was filed on May 21, 1973, alleging a Virginia Beach multiple listing real estate service with unlawfully fixing commission fees on real estate transactions in violation of Section 1 of the Sherman Act. The complaint alleges a conspiracy to fix commission fees, to restrict membership in Metro, and to enforce rules and regulations restricting competition between brokers and salesmen engaged in the business of selling real estate in the Tidewater area. In doing this the defendant and its members have established and adhered to schedules of commissions, agreed to accept net listings, agreed to increase the minimum rate of commission and to refuse property for listing which does not meet the rate, agreed not to advertise non-exclusive listings, agreed that Metro members should not belong to any other listing service, set the price for Metro stock, and agreed on minimal membership standards.

The suit asks that the defendant be required to establish fees, dues, and stock prices that approximate the cost of operating Metro and the accumulation and

maintenance of reasonable reserves for developing, maintaining and improving defendant as a going concern. It is further asked that the defendant and its members be enjoined from the above practices which they conspired to do. The case is pending.

2323. *United States* v. *Jackson Hole Service Station Association* CR 8668 (D. Wyo.).

2324. *United States* v. *Jackson Hole Service Station Association, et al.* Civ 5872 (D. Wyo.). An indictment and complaint were filed charging the service station association with fixing the retail prices of gasoline and automotive services in violation of Section 1 of the Sherman Act. The complaint also names 10 service station operators in Jackson, Wyoming. The indictment and the complaint allege that this was done by eliminating discounts to consumers on the retail sale of gasoline and automotive service, discouraging the posting of price signs, and closing all but a few of the service stations in the area on Sundays.

The civil suit asks that the Association be dissolved and that the defendants be permanently enjoined from continuing or reviving the conspiracy and from engaging in any practices having a similar purpose or effect. The cases are pending.

2325. *United States* v. *Finis P. Ernest, Inc., et al.*, Cr. 7366-E (E.D. Ill.). An indictment was filed by the U.S. Attorney's Office against Modern Asphalt Paving and Construction Company and Finis P. Ernest, Inc., charging them with conspiring to submit collusive, noncompetitive and rigged bids to the city of East St. Louis, Illinois on a sanitary sewers construction project in violation of Section 1 of the Sherman Act. The project is in connection with urban renewal work being funded by grants distributed by the Department of Housing and Urban Development. The case is pending.

2326. *United States* v. *Hercules Incorporated, et al.*, Civ. 4667, (D. Dela.) On May 31, 1973, a complaint and a proposed judgment, requiring the usual 30-day waiting period, were filed alleging violation of Section 7 of the Clayton Act. The suit challenges the formation of a partnership between Hercules and the American and Japanese divisions of Mitsui Petrochemical Industries. The partnership was formed to manufacture and sell polyethylene and polypropylene and to exchange patents and technology in relation to the manufacture of polypropylene.

The suit asks that the court adjudge and decree the defendants in violation of Section 1 of the Sherman Act and Section 7 of the Clayton Act. That the defendants also be permanently enjoined from engaging in any similar conspiracy. The case is pending.

2327. *United States* v. *Texaco, Inc., et al.*, 73 CIV 2608 (S.D. N.Y.). On June 12, 1973, a complaint was filed alleging an agreement between Texaco, one of the largest gasoline retailers in the country, and the Coastal States Gas Producing Company, the second largest independent refinery in the country, whereby Coastal would sell increasing amounts of refined petroleum to Texaco and Texaco would sell crude oil to Coastal at Texaco's option. Texaco was also granted an option to make "phantom exchanges" of foreign for domestic crude oil thereby giving them the benefit of crude oil imported by Coastal. Texaco was also granted an option to buy Coastal's Corpus Christi refinery. The complaint alleges that this agreement violates Section 1 of the Sherman Act and Section 7 of the Clayton Act by eliminating a substantial source of supply and thereby limiting price competition. It is further alleged that the market would become even more concentrated than it already is by eliminating one of the few remaining independents.

The suit asks that Texaco be permanently enjoined from making any reciprocal agreements regarding crude oil, that Coastal be restored as a supply source for independent marketers of petroleum products, and that for 10 years Texaco be enjoined from acquiring stock or assets of any person, firm or corporation involved in the refining of crude oil in the United States. The case is pending.

2328. *United States* v. *The Real Estate Board of New York, Inc., et al.*, 73 CIV 2719 (S.D. N.Y.). On June 19, 1973, a complaint was filed alleging violation of Section 1 of the Sherman Act by the Real Estate Board and by the Tenant-Owned Apartment Association, Inc. The complaint alleges a conspiracy to raise, fix, and maintain the commissions and fees for services provided in connection with the management of cooperative apartments in New York County. Cooperative buildings are buildings in which the tenants, in addition to their leaseholds, own shares of stock in the corporation which owns the building. Management-brokers and other real estate brokers actively engage in the sale or resale of such apartments.

The suit asks that the defendants be enjoined from engaging in the above activities and that they be enjoined from publishing, adopting, distributing and adhering to any schedule of commissions or other fees to be charged for the sale or resale or management of cooperative apartments and from inducing others to adhere to such a schedule. It is also asked that Rebny and all those acting on its behalf be enjoined from publishing, adopting or distributing any schedule of or other recommendation concerning mounts of commissions or other fees to be charged for the lease or sale of other real property. The case is pending.

2329. *United States* v. *Industrial Electronic Engineers, Incorporated*, Civ. 73-1472-WPG (D.C. Calif.). On June 27, 1973, a complaint was filed alleging violation of Section 2 of the Sherman Act by IEE, a maker of electronic projection devices used to project various images on the rear of a translucent screen for front viewing. The complaint alleges that IEE has monopolized interstate trade and commerce in the product through a series of acts including: acquisition of the patents, trademarks, designs, or brand names of competitors to eliminate competition; filing or threatening to file patent infringement suits for purpose of imposing financial burdens on competitors and injuring their business reputation; manufacturing and selling their product at extremely low prices to customers considering purchase from a competitor; and employment of a propaganda campaign to discredit and injure competitors.

The suit asks that the defendant and all those acting on its behalf be perpetually enjoined from continuing in the above activities, and that the court order the defendant to restore competitive conditions among existing and potential producers of the devices. It is further asked that the defendants be enjoined for a period of time from acquiring the patents, trademarks, trade names, designs or know-how relating to these devices except from a person in defendant's employ, and from acquiring any stocks, bonds, notes or capital assets of any rear projection readout competitor or potential competitor. The case is pending.

2330. *United States* v. *Morgan Drive Away, Inc., et al.*, Cr. 697-73 (D. D.C.). On August 2, 1973, a 3 count indictment was returned charging 3 leading United States transporters of mobile homes, and 6 individuals with monopolizing the transporting of mobile homes in violation of Sections 1 and 2 of the Sherman Act.

The indictment charges that the defendants conspired to monopolize, and have monopolized the business of transporting mobile homes within the United States. The indictment also charges that the defendants conspired to raise their rates to levels charged by the defendants, and to fix and stabilize rates for transporting mobile homes within individual states, without authorization of state law. The case is pending.

2331. *United States* v. *United Parcel Service of America, Inc.*, Cr. 73-409 (E.D. Pa.).

2332. *United States* v. *United Parcel Service of America, Inc.*, Civ. 73-1773 (E.D. Pa.). On August 3, 1973, an indictment and complaint were filed charging 1 corporation with violating Section 1 of the Sherman Act in the wholesale package delivery business. The suits charge that the defendant conspired to allocate customers and territories in the Philadelphia-Camden Metropolitan area.

The complaint asks that the defendant be enjoined from agreeing with any other carrier to limit the freedom of UPS or the other carrier to file future protests or applications with any state regulatory commission or the Interstate Commerce Commission. Also to enjoin UPS from entering into any agreement with another carrier which restricts UPS or that carrier from soliciting, or rendering service to, any customers, and in regard to any commodity or area, which UPS or the other carrier is authorized by law to serve.

On November 28, 1973, a fine of $10,000 was imposed on a *nolo* plea, thus terminating the criminal case. The civil case is pending.

2333. *United States* v. *Georgia Automatic Merchandising, Inc., et al.*, Cr. 28-327 (N.D. Ga.).

2334. *United States* v. *Georgia Automatic Merchandising, Inc., et al.*, Civ. 187-56 (N.D. Ga.). On August 8, 1973, an indictment and complaint were filed charging the defendants with violating Section 1 of the Sherman Act. The indictment charges 1 trade association, 7 corporations and 6 individuals, while the complaint did not name the individuals, with conspiring to fix prices on the sales of hot and cold beverages sold in cups through vending machines in the Atlanta, Georgia area.

The complaint asks for a permanent injunction prohibiting the defendants from engaging in the same kind of conspiracy. The cases are pending.

2335. *United States* v. *The Goodyear Tire and Rubber Company*, Civ. C–73–835 (N.D. Ohio).

2336. *United States* v. *The Firestone Tire and Rubber Company*, Civ. C–73–836 (N.D. Ohio). On August 9, 1973, two separate complaints were filed charging 1 corporation each with violating Section 2 of the Sherman Act and Section 7 of the Clayton Act. The compalints allege that each defendant attempted to monopolize the manufacture and sale of replacement tires and that the defendants also made a series of acquisitions of competing tire manufacturers and distributors.

Both complaints asks that the court order the defendants to divest manufacturing, distributing and retailing facilities in order to dissipate the market power resulting from the alleged violations and to restore competitive conditions in the tire industry. The cases are pending.

2337. *United States* v. *Armco Steel Corporation, et al.*, Cr. 73–H–336 (S.D. Texas).

2338. *United States* v. *Austin Steel Co., Inc., et al.*, Cr. 73–H–337 (S.D. Texas).

2339. *United States* v. *Austin Steel Co., Inc., et al.*, Cr. 3–3245 (N.D. Texas). On August 30, 1973, two separate indictments and a criminal information were returned charging violation of the Sherman Act in connection with the sale of reinforcing steel bars in Texas.

The first indictment containing 2 counts charged violation of Sections 1 and 2 of the Sherman Act by 9 corporations and 9 individuals with a conspiracy in restraint of trade and a conspiracy to monopolize the market for large contracts of reinforcing steel bars in Texas. The indictment also charged price fixing, bid rigging and contract allocation by the defendants.

The second indictment charges 4 corporations and 3 individuals and the information charges 5 corporations and 4 individuals. The indictment and information charge that the defendants in the Houston and Dallas area conspired separately to allocate among themselves construction contracts for re-bar materials in violation of Section 1 of the Sherman Act. Also that the conspiracy among the defendant mills has increased prices of re-bar materials in Texas and eliminated competition between the mills and the independent fabricators in the Houston and Dallas-Fort Worth areas.

On October 26, 1973, fines were imposed totalling $100,000 pursuant to the court's acceptance of the defendants' pleas of *nolo contendere*, thus terminating the Austin Steel case. The 3 individual defendants were also sentenced to 1 year in prison and 18 months probation. The first two cases are still pending.

2340. *United States* v. *Aviation Specialties Co., Inc., et al.*, Cr. 3–3272 (N.D. Texas).

2341. *United States* v. *Aviation Specialties Co., Inc., et al.*, Civ. 3–7722 E (N.D. Texas). On September 26, 1973, an indictment and complaint were filed charging 4 corporations with violating Section 1 of the Sherman Act. The suits charge that the defendants had engaged in a conspiracy to allocate among themselves government crop dusting contracts, to submit rigged bids on such contracts, and to cooperate in discouraging other companies from entering bids.

The complaint asks for a permanent injunction against continuation or renewal of the alleged violations. The cases are pending.

2342. *United States* v. *The Black and Decker Manufacturing Company, et al.*, Civ. 73–964–B (D. Md.). On September 28, 1973, a complaint was filed charging 2 corporations with violating Section 7 of the Clayton Act. The complaint alleges that the proposed acquisition would substantially lessen and eliminate potential competition between the 2 companies in the manufacture and sale of gasoline-powered chain saws.

The complaint asks that the acquisition be declared illegal, and that pending final adjudication a preliminary injunction be issued preventing the defendants from taking any further action to consummate the proposed acquisition. The case is pending.

2343. *United States* v. *American Metal Products Corporation, et al.*, Cr. 13263 (C.D. Calif.). On October 4, 1973, an indictment was returned charging 5 corporations with violating Section 1 of the Sherman Act. The indictment charges that the defendants conspired to fix, maintain and stabilize prices and discounts in connection with the sale of gas vent pipe.

This case was terminated on December 3, 1973, with the imposition of fines totalling $102,500 pursuant to the defendant's pleas of *nolo contendere*.

2344. *United States* v. *Roofing Metal and Heating Associates, Inc.*, Civ. 73–2301 (E.D. Pa.). On October 11, 1973, a complaint and proposed consent judgment

were filed charging 1 association with violating Section 1 of the Sherman Act. The complaint alleges that the association and its members entered into an agreement to fix, stabilize and maintain guarantees by members on replacement roof at 2 years.

The judgment was entered November 13, 1973, after the usual 30 day waiting period. The judgment enjoins the defendant from fixing, establishing, stabilizing, or maintaining the length, or other terms, of guarantees for the sale and installation of replacement roofs. Also from fixing, establishing, stabilizing, or maintaining prices or other terms or conditions of sale in connection with the sale and installation of replacement roofs or for performing other related services.

2345. *United States* v. *Alan Molasky, et al.*, Cr. 73–514B (E.D. La.). On October 11, 1973, an indictment was returned charging 1 corporation and 2 individuals with violating Section 2 of the Sherman Act. The indictment charges that the defendants attempted to monopolize by trying to acquire almost all of the wholesale distribution of magazines and paperback books in the area between Victoria, Texas and Pensacola, Florida. The indictment also charges that the defendnts induced wholesalers to sell their businesses by threatening to put them out of business or otherwise to injure them economically. The case is pending.

2346. *United States* v. *Interstate Gopher News, Inc., et al.*, Cr. 73–HV383 (S.D. Texas). On October 15, 1973, an information was filed charging 2 corporations with violating Section 1 of the Sherman Act. The information charges that the defendants agreed that they would not compete with each other in the local wholesale distribution of publications in the areas in and around Houston, Bryan, Beaumont, Galveston and San Antonio, Texas. The case is pending.

2347. *United States* v. *Armco Steel Corporation, et al.*, Civ. 73–H–1427 (S.D. Texas). On October 15, 1973, a complaint was filed charging 9 corporations with violating Sections 1 and 2 of the Sherman Act in connection with the sale of reinforcing steel bars in Texas. See BB 2337 for details.

The complaint asks for injunctive relief against the companies. The case is pending.

2348. *United States* v. *Combustion Engineering, Inc., et al., Cr.* 73–612 (E.D. Pa.).

2349. *United States* v. *Combustion Engineering, Inc., et al.*, Civ. 73–2500 (E.D. Pa.). On November 2, 1973, an indictment and complaint were filed charging 2 corporations and 1 individual with violating Section 1 of the Sherman Act. (The complaint only named the 2 corporations) The suits charge that the defendants conspired to raise, fix, stabilize and maintain prices of chromite sand and to allocate customers for chromite sand and to refrain from competing for customers so allocated.

The complaint asks that the defendants be permanently enjoined from continuing or reviving the terms of the alleged conspiracy and from engaging in any agreement for a similar purpose or effect. The cases are pending.

2350. *United States* v. *Michigan National Corporation, et al.*, Civ. 4–70665 (E.D. Mich.).

2351. *United States* v. *Michigan National Corporation, et al.*, Civ. 4–70666 (E.D. Mich.).

2352. *United States* v. *Michigan National Corporation, et al.*, Civ. 4–70667 (E.D. Mich.). On November 14, 1973, three separate complaints were filed charging the defendants with violating Section 7 of the Clayton Act.

The suits charged that the proposed purchases would eliminate competition between Michigan National Corporation and the banks to be purchased and could increase concentration in commercial banking in the Lansing-East Lansing, Saginaw and Grand Rapids banking markets.

One suit challenged Michigan National Corporation proposed purchase of First National Bank of East Lansing, in East Lansing, Michigan; another suit challenged the acquisition of Valley National Bank, in Saginaw, Michigan; and the third opposed the purchase of the Central Bank, N.A. in Grand Rapids, Michigan and the First National Bank of Wyoming, in Wyoming, Michigan.

The suits seek to have the acquisitions declared unlawful and enjoined. The cases are pending.

2353. *United States* v. *The Merchants National Bank of Burlington, et al.*, Civ. 73–336 (D. Vt.). On November 29, 1973, a complaint was filed charging 2 banking associations with violating Section 7 of the Clayton Act.

The complaint alleges that the proposed acquisition would eliminate competition between the 2 banks and that concentration in commercial banking in the Montpelier-Barre area of Vermont would be substantially increased.

The suit asks that the proposed merger be declared unlawful, and that the defendants be enjoined from carrying out such merger or consolidation. The case is pending.

2354. *United States* v. *Patrick M. King*, Cr. 28264 (W.D. Ky.).

2355. *United States* v. *George F. Duthie*, Cr. 28265 (W.D. Ky.). On December 18, 1973, two separate indictments were returned against 2 officials of a mechanical contracting firm in Louisville, Kentucky, on charges of giving perjured testimony before the grand jurors, in violation of Title IV of the Organized Crime Control Act of 1970.

The indictments charged that the defendants knowingly made false declarations under oath before a federal grand jury about their knowledge of any involvement of themselves or Stewart Mechanical Enterprises, Inc., regarding bid rigging, customer allocation or price fixing.

The indictment against King charged him, in a separate count, with knowingly making false statements under oath before a federal grand jury concerning his attendance at a specific meeting held to discuss bids to be submitted on the Ford Motor Company Truck Plant.

Both defendants had been called to testify and had given the alleged perjured testimony before the federal grand jury which subsequently returned indictments against 8 mechanical contracting firms and 6 individuals on May 22, 1972, charging violation of Section 1 of the Sherman Act. The cases are pending.

2356. *United States* v. *United States Gypsum Company, et al.*, Cr. 1042–73 (D. D.C.).

2357. *United States* v. *United States Gypsum Company, et al.*, Cr. 73–347 (W.D. Pa.). On December 27, 1973, an indictment and a criminal contempt petition were filed. The indictment charges 6 manufacturers and 10 individuals with conspiring to restrain the trade of gypsum board in violation of Section 1 of the Sherman Act. The petition charges 4 companies and 4 individuals with violating a 1951 judgment prohibiting the firms from agreeing to raise, fix, or stabilize prices of gypsum board.

Both the indictment and petition charge the defendants and respondents with conspiring to raise, fix, maintain and stabilize the prices and terms and conditions of sale of gypsum board, and to adopt and maintain uniform methods of packaging and handling of the product.

The petition asks the court to issue an order to show cause why the respondents should not be held in criminal contempt of court. The cases are pending.

2358. *United States* v. *Mid-America Dairymen, Inc.*, Civ. 73–Cv–681–W3 (W.D. Mo.). On December 27, 1973, a complaint was filed charging violation of Sections 1 and 2 of the Sherman Act.

The complaint alleges that the defendant had attempted to monopolize the sale of milk in its marketing area, by a number of practices designed to eliminate competition from independent producers. The complaint also alleges that the defendant had entered into agreements with milk haulers which restrain the ability of competing independent producers to transport their milk to processors.

The complaint asks that the defendants be prohibited from continuing the practices cited in the complaint. The case is pending.

2359. *United States* v. *Amateur Softball Association of America, et al.*, Civ. 73–883–D (W.D. Okla.). On December 28, 1973, a complaint and proposed consent judgment requiring the 30 day waiting period were filed charging 1 association and 2 corporations with violating Section 1 of the Sherman Act.

The complaint alleges that the defendants conspired to restrain the production and sale of top grade softballs. The complaint also alleges that the conspiracy had foreclosed purchasers from a large segment of the top grade softball market and forced these purchasers to pay noncompetitive prices for the equipment.

The complaint asks that the defendants be enjoined from continuing such practices. The case is pending.

2360. *United States* v. *Goodpasture, Inc.*, Civ. 73–H–1765 (S.D. Texas). On December 28, 1973, a complaint was filed charging 1 corporation with violating Section 1 of the Sherman Act.

The complaint alleges that the defendants had required all ship owners to enter into agreements with the defendant obligating them to hire Shippers Stevedoring as a condition of accepting the ship at the grain elevator for loading located at Galena Park, Texas, a Houston suburb.

The complaint asks that the defendant be enjoined from continuing such practices. The case is pending.

2361. *United States* v. *Huckaba & Son Construction Co., et al.*, S–CR–74–3 (S.D. Ill.).

2362. *United States* v. *The Standard Paving Company, et al.*, S–CR–74–4 (S.D. Ill.).

2363. *United States* v. *Sangamo Construction Company, et al.*, S–CR–74–5 (S.D. Ill.).

2364. *United States* v. *Calhoun County Contracting Corporation, et al.*, S–CR–74–6 (S.D. Ill.).

2365. *United States* v. *E. T. Simonds Construction Company, et al.*, S–CR–74–7 (S.D. Ill.)

2366. *United States* v. *Howell Asphalt Company, et al.*, S–CR–74–8 (S.D. Ill.).

2367. *United States* v. *Contracting & Material Company, et al.*, S–CR–74–9 (S.D. Ill.). On January 17, 1974 indictments were returned against 22 contracting firms & 4 of their executives charging them with bid rigging in connection with the construction of federally assisted highway projects in Illinois in violation of Section 1 of the Sherman Act.

The 7 indictments involve 11 highway construction projects throughout Illinois on which the state received bids. The indictments allege that the defendants agreed to allocate among themselves specific projects let by the State and to submit collusive, noncompetitive and rigged bids in connection with those projects. The cases are pending.

2368. *United States* v. *Rambo Baking Company of Phoenix, et al.*, Cr. 74–53 (PHX) (D. Ariz.).

2369. *United States v. Holsum Bakery, Inc., et al.*, Civ. 74–102 (PHXWEC) (D. Ariz.). On February 14, 1974 an indictment and a complaint were filed charging 5 Arizona baking companies with conspiring to fix prices and rig bids on bakery products in Arizona, in violation of Section 1 of the Sherman Act. The indictment also includes 6 of the companies' former and current executives. The suits allege that the defendants have conspired to fix, raise and maintain prices of bakery products sold wholesale to retail outlets in Arizona, that they have rigged bids to governmental and other institutions, including schools and hospitals, and that they have allocated customers among themselves.

The complaint asks for an unspecified amount in damages sustained by the Government or, alternatively, for a judgment under the False Claims Act which can give double damages and a forfeiture of $2000 per claim, and for an injunction against future price fixing, bid rigging and market allocation agreements.

On May 13, 1974, fines were imposed on *nolo* pleas over government objection totalling $126,500 by Judge Muecke.

In addition, 4 individuals were given suspended sentences and one year probation. Two individuals were sentenced to 30 days in prison and one year probation. The Holsum Bakery case is pending.

2370. *United States* v. *Mrs. Smith's Pie Company*, Civ. 74–419 (E.D. Pa.). On February 21, 1974 a complaint was filed challenging the acquisition by Mrs. Smith's of 4 related companies known collectively as the "Harriss Company". The complaint, alleging a violation of Section 7 of the Clayton Act, charges that the acquisition of the nation's fourth largest producer of frozen dessert pies by the nation's largest producer was an unlawful concentration of an already concentrated industry.

The complaint asks that the defendant be required to divest itself of the 4 acquired companies and that they be enjoined from acquiring the stock or assets of any company engaged in the production of frozen dessert pies. The case is pending.

2371. *United States* v. *Certain-teed Products Corporation et al.*, Civ. 74–471 (E.D. Pa.). On February 27, 1974 a complaint was filed alleging that Certain-teed violated Section 7 of the Clayton Act by acquiring an industrial fiberglass insulation material plant in Shelbyville, Indiana from PPG Industries. This acquisition leaves only 3 competitors in the highly concentrated industry.

The complaint asks that Certain-teed be ordered to divest the plant either by sale to a third party or by returning ownership and control to PPG, and that they be enjoined from acquiring the stock or assets of any company engaged in the production and sale of industrial fiberglass insulation products. The case is pending.

2372. *United States* v. *H. S. Crocker Co., Inc., et al.*, Cr. 74–182–CBR (N.D. Calif.).

2373. *United States* v. *H. S. Crocker Co., Inc., et al.*, Civ. 74–0560–RFP (N.D. Calif.)

2374. *United States* v. *H. S. Crocker Co., Inc., et al.*, Cr. 2424–R (N.D. Calif.) On March 12, 1974 an indictment and a complaint were filed charging 9 manufacturers of paper labels with illegally fixing prices in violation of Section 1 of the Sherman Act The indictment also includes 8 of the companies' former and current top executives. In addition, a criminal contempt petition charged Crocker & Stecher-Traung-Schmidt Corporation with violating a 1942 court order prohibiting them from agreeing to fix prices or allocate markets on lithographic products and from engaging in certain specified practices.

The complaint and indictment charge a conspiracy to fix, raise, maintain and stabilize the price and condition of sale of labels, to obtain prior to submitting a bid or price quotation to a particular account, information regarding bids, price quotations or prices currently in effect at that account from the member of the conspiracy who has previously submitted bids or price quotations to, or is currently supplying, that account, and to refrain from competing for the label business of customers supplied by other competitors.

The complaint asks that the conspiracy and acts arising therefrom be enjoined, that all the defendant's accounts be reviewed for non-competitive pricing, that records be maintained of meetings and communications with other label manufacturers, and that each defendant annually advise all officers, directors and employees of their duties and obligations under the antitrust laws.

The comtempt petition requests a show cause order regarding the 1942 order in *U.S.* v. *Schmidt Lithograph Co., et al.*, which will cause the defendants to be held in contempt if the behavior involved in the criminal and civil suits cannot be successfully defended. The cases are pending.

2375. *United States* v. *American Cyanamid Company*, Cr. (S.D. N.Y.). On March 19, 1974 the Government filed a petition for an order to show cause why Cyanamid should not be held in criminal contempt for producing more than the 30 million pounds of melamine in 1972 allowed by a consent order entered on August 4, 1964. That judgment limited Cyanamid's production of melamine, a chemical compound used in producing unbreakable dinnerware and formica surfaces, to 30 million pounds until November 1, 1974 or until such time as national production of the chemical increases by 25 million pounds a year. The case is pending.

2376. *United States* v. *Climatrol Corporation, et al.*, FL–74–16, Cr. NCR, Jr. (S.D. Fla.).

2377. *United States* v. *Climatrol Corporation, et al.*, FL–74–78, Civ. JLK (S.D. Fla.). On March 21, 1974 an indictment and complaint were filed charging 2 Florida building material firms with conspiring to allocate customers between the firms in a three-country area in Florida in violation of Section 1 of the Sherman Act. The indictment also includes the presidents of the corporations. The suits allege that the defendants, the 2 largest manufacturers of screen enclosures in Southern Florida, have conspired to allocate screen enclosure projects by refraining from submitting bids, or submitting intentionally high bids where the other conspirator was the low bidder.

The complaint asks an injunction against continuation of the aforesaid actions. The cases are pending.

2378. *United States* v. *Greater Los Angeles Solid Wastes Management Association, et al.*, Civ. 74–809 RJK (C.D. Calif.). On March 27, 1974 a complaint and a proposed consent judgment were filed charging 5 trade associations with allocation of trash hauling customers, in violation of Section 1 of the Sherman Act.

The judgment was entered on April 29, 1974 following the usual 30 day waiting period. The judgment orders each of the associations to delete any provision restraining members from encroaching upon or competing for other members' customers and routes from its charter, by-laws, constitution, rules and regulations or code of ethics. The defendant's are also enjoined from entering agreements to refrain from soliciting or competing for each other's customers, and from fixing prices.

2379. *United States* v. *Copper Development Association, Inc., et al.*, 74 Civ. 1712 (S.D. N.Y.). A complaint was filed on April 17, 1974, against 12 corporations for violating Section 1 of the Sherman Act. The complaint alleges that the defendants conspired to exclude manufacturers and sellers of fittings and plumbing pipe and tubing made from non-copper materials from the market for the Sovent system by jointly acquiring and owning patent rights in the

United States to the Sovent system. The defendants are also charged with restricting the assignment and licensing of United States patents relating to the Sovent system to manufacturers who will use copper and copper base alloy in the production of Sovent aerator and deaerator fittings, thereby restricting competition.

The complaint asks that the court adjudge and decree that the defendants be in violation of Section 1 of the Sherman Act; that the defendants or anyone acting on their behalf be enjoined from entering into any agreement which limits the licensing or assignments of United States patents 3,287,885 and 3,346,887; that defendants be ordered to grant licenses on reasonable terms and at reasonable nondiscriminatory rates to all applicants on all U.S. patents which they now own or control or may own or control in the future, relating to the manufacture, use or sale of Sovent systems or components thereof. The case is pending.

2380. *United States* v. *Albertson's Inc., et al.*, Civ. 1–74–66 (D. Idaho). Complaint was filed against 2 corporations on April 19, 1974 for violation of Section 7 of the Clayton Act. The complaint charges that Albertson's, an Idaho retail grocery chain, acquisition of Mountain States, an Idaho grocery wholesale firm may substantially lessen competition or tend to create a monopoly. The complaint alleges that competitors of Mountain States in the wholesale distribution of groceries and related products have been forecolsed from access to Mountain States as a supplier; barriers to entry into wholesale distribution of groceries in the southern Idaho-eastern Oregon market have been raised; competition between Albertson's and Mountain States' group of affiliated grocery stores in the retail distribution of groceries has been permanently eliminated.

The complaint asks that Albertson's be required to divest itself of Mountain States; that defendants take such action as is necessary to restore the competition eliminated in the retail sale of groceries; that Albertson's be enjoined for 10 years from acquiring any wholesale or retail distribution of groceries. The case is pending.

2381. *United States* v. *Armco Steel Corporation, et al.*, Cr. 74–192 Sec. G (E.D. La.). An indictment was returned on April 23, 1974 charging 5 corporations and 5 individuals, with violating Section 1 of the Sherman Act. The indictment charges that the defendants had agreed that construction contracts in Louisiana requiring the use of reinforcing steel bars be allocated among the defendant companies. The indictment also charges that defendants agreed at meetings to allocate specific contracts for the sale of re-bar materials among the participants; agreed that the participants who were not designated as low bidder on a particular contract would either refrain from bidding or would submit higher complementary bids; and telephoned each other to exchange price and tonnage information. The case is pending.

2382. *United States* v. *Martin Linen Supply Company, et al.*, Cr. SA 71 Cr. 419 (W.D. Tex.). Criminal contempt petition filed on May 3, 1974 against 3 parties charging wilful disobedience of provisions of Consent Judgment entered on June 2, 1969. Charges include allocation of customers, purposeful attempts to destroy the business of competitors, trailing the trucks of competitors, hiring of new salesmen for the purpose of eliminating competitors, and furnishing free service and other similar inducements for the purpose of eliminating competitors, all of which are in violation of the express provisions of the consent decree. The case is pending.

2383. *United States* v. *Oregon State Bar*, Civ. 74–362 (D. Ore.). The complaint filed on May 9, 1974 charges the professional association with violation of Section 1 of the Sherman Act. The complaint alleges that the defendant has adopted uniform minimum fee schedules and suggested fee schedules, and published and circulated and utilized uniform minimum and uniform suggested fee schedules.

It is asked that an injunction be issued to restrain the defendant from in any manner continuing its fee schedule for legal fees to be charged by attorneys in Oregon. The case is pending.

2384. *United States* v. *American Building Maintenance Corp., et al.*, Cr. 74–170 (D. N.J.).

2385. *United States* v. *American Building Maintenance Corp., et al.*, Civ. 74–719 (D. N.J.). An indictment and complaint were filed on May 16, 1974, charging violation of Section 1 of the Sherman Act by 12 companies and 5 individuals. The indictment and complaint alleges that the defendants allocated customers, imposed requirements of compensation on building maintenance companies who fail to conform to the terms of the conspiracy, and submitted noncompetitive,

collusive, and rigged bids for building maintenance services to customers or potential customers.

The complaint charging 11 corporations, 1 partnership and 1 sole proprietor, asks that each of the defendants and all acting on their behalf be enjoined from continuing, maintaining or renewing the above conspiracy. The cases are pending.

2386. *United States* v. *Samuel S. Usdin*, Cir. 74–171 (D. N.J.). An indictment was returned on May 16, 1974 against 1 individual under 18 U.S.C. § 1623 (a)—the Organized Crime Control Act of 1970. The indictment charges that the defendant committed perjury by falsely testifying before a Grand Jury investigating, among other things, violations of Section 1 of the Sherman Act of the building maintenance services. The case is pending.

2387. *United States* v. *Samuel Turen*, Cr. 74–172 (D. N.J.). A 2 count indictment was returned on May 16, 1974 against 1 individual, charges a conspiracy to obstruct justice in violation of 18 U.S.C. §§ 371 & 1503. It is alleged that the conspirators conspired to withhold records dealing with customer allocation and compenation payments from the Grand Jury investigating, among other things, violations of Section 1 of the Sherman Act. The case is pending.

2388. *United States* v. *Litton Business Systems, Inc.*, Cr. 74–367 OJC (N.D. Calif.) The information, filed on June 7, 1974, charged that 1 corporation and other co-conspirators, not defendants in the action, have fixed the prices of lithographic labels, as well as other terms of sale in violation of Section 1 of the Sherman Act. The conspirators are alleged to have exchanged information on prices, and refrained from competing for accounts held by another conspirator. The case is pending.

2389. *United States* v. *Michigan National Corporation, et al.*, Civ. 4–71882 (E.D. Mich.).

2390. *United States* v. *Michigan National Corporation, et al.*, Civ. 4–71883 (E.D. Mich.). On June 13, 1974, two complaints were filed alleging violation of Section 7 of the Clayton Act in the field of commercial banking.

The first complaint involves the proposed acquisition of Valley National Bank by Michigan National while the second involves the proposed acquisition of Central Bank by Michigan National.

The complaints ask that the acquisitions be declared unlawful and enjoined. The cases are pending.

2391. *United States* v. *Beatrice Foods Co., et al.*, Cr. 4–82165 (E.D. Mich.).

2392. *United States* v. *Beatrice Foods Co., et al*, Civ 4–71922 (E.D. Mich.). An indictment and complaint were filed June 19, 1974, charging 4 major toilet seat manufacturers and 3 of their executives with price fixing of popular priced wood seats. The complaint only charges the 4 manufacturers. The defendants conspired to issue identical price lists, stagger price increases and agreed to police the price increases.

The complaint asks that the defendants be enjoined from continuing or renewing the conspiracy or from entering into any other similar conspiracy. Also to keep a record of all meetings attended by any of its personnel and representatives of other toilet seat manufacturers. The complaint also asks that defendants withdraw present price lists and adopt new individual prices. The cases are pending.

2393. *United States* v. *Continental Can Company, Inc.*, 74 Civ. 2783 (S.D. N.Y.). A complaint and proposed consent judgment were filed on June 27, 1974, alleging that 1 corporation entered into reciprocal purchasing arrangements with its customers and suppliers in violation of Sections 1 and 2 of the Sherman Act in the sale of containers. It is alleged that Continental has tried to monopolize the requirements of its suppliers and prevent other suppliers from selling materials and services to it.

The complaint asks that the defendant be enjoined from making further reciprocal purchasing agreements, and be required to terminate any new in effect, upon the declaration that such agreements are unlawful. The case is pending.

2394. *United States* v. *Grow Chemical Corporation*, 74 Civ. 2784 (S.D. N.Y.). A complaint and proposed consent judgment were filed on June 27, 1974 against 1 corporation alleging that it entered into reciprocal purchasing agreements with suppliers in violation of Sections 1 and 2 of the Sherman Act. The agreements concerned both chemicals and containers. The complaint charges that the defendant has attempted to monopolize the requirements of its suppliers for products sold by the defendant.

It is prayed that these actions be declared unlawful, and enjoined. It is further asked that the defendant be required to notify its suppliers of the injunction. The case is pending.

2395. *United States* v. *Leggett & Platt, Incorporated*, 74 Civ. 18-SW (S.W. Mo.). On June 28, 1974, a complaint was filed alleging that the defendant's acquisition of Metal Bed Rail violates Section 7 of the Clayton Act. It is alleged that the acquisition has increased concentration of the metal bed frame industry east of the Rocky Mountains and enhanced the defendant's competitive position to the detriment of competition.

It is prayed that the acquisition be declared unlawful and the defendant be required to divest itself of Metal Bed Rail. It is also asked that the defendant be enjoined from acquiring any other company in the home furnishings industry. The case is pending.

2396. *United States* v. *Foote Mineral Company, et al.*, 74-1652 (E.D. Pa.). On June 28, 1974, a complaint was filed alleging that the 2 corporate defendants had conspired to divide the world market in Lithium into exclusive territories and to allocate the exclusive territories between themselves, in violation of Section 1 of the Sherman Act.

It is asked that the agreement be declared unlawful and that the defendants be required to cancel it and be enjoined from entering into any similar combination. It is further asked that Metallgesellschaft, a West German corporation, be commanded to appear pursuant to Section 5 of the Sherman Act. The case is pending.

2397. *United States* v. *Ambrose Printing Company, Inc., et al.*, 74-170-NA-CR (M.D. Tenn.). On July 17, 1974, an indictment was returned under Section 1 of the Sherman Act. The indictment charges 4 corporations with conspiring to fix and maintain prices in connection with the sale of printed matter to the State of Tennessee. The indictment also charged the defendants allocated contracts among themselves for the sale of printing services, offices supplies and furniture and submitted rigged bids to the agency purchasing the services or supplies. The case is pending.

2398. *United States* v. *E. I. du Pont de Nemours and Company, et al.*, Cr. 74-279 (D. N.J.).

2399. *United States* v *E. I. du Pont de Nemours and Company, et al.*, Civ. 74-1086 (D. N.J.). On July 18, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act, charging 9 corporations with conspiring to fix prices of dyes in the United Sttaes. The indictment and complaint charges that the officials of du Pont undertook discussions of a proposed across-the-board increase in the prices of dyes with each of the other defendants and sought their reaction to proposed price increase, which they got and then announced a 10 percent increase. Each of the other defendants announced price increases which were substantially the same as du Pont.

The civil suit asks that the companies be permanently enjoined from continuing the alleged price fixing scheme and from engaging in any similar purpose. The cases are pending.

2400. *United States* v. *Bethlehem Steel Corporation, et al.*, 74-148-CR-T-K (M.D. Fla.).

2401. *United States* v. *Bethlehem Steel Corporation, et al.*, 74-435-CIV-T-K (M.D. Fla.). On Augst 5, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act. The indictment charges 4 corporations and 4 individuals, while the complaint only named 4 corporations. The suits charge that the defendants conspired to rig bids and allocate contracts involving reinforcing steel bars.

The complaint asks that the defendants be enjoined from continuing the conspiracy or entering into any other similar arrangement. The cases are pending.

2402. *United States* v. *Borden, Inc., et al.*, Cr. 74-319-PHX-CAM (D. Ariz.).

2403. *United States* v. *Borden, Inc., et al.*, Civ. 74-560-PHX-CAM (D. Ariz.). On August 16, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act. The indictment charges 4 corporations and 6 individuals while the complaint only charges 4 corporations. The suits charged the defendants with conspiring to fix and raise prices of dairy products sold to wholesale customers; to fix and reduce discounts for dairy products; to submit rigged bids to schools, hospitals, military installations and other Government agencies; and to allocate customers.

The complaint seeks an unspecified amount in damages sustained by the Government as the result of the alleged violation.

The suit also alleges, as an alternative claim, that the conspiracy resulted in the filing of false claims in connection with the sale of dairy products to the Government and seeks double damages and a forfeiture of $2,000 per claim as provided in the False Claims Act.

The complaint asks that the defendants be enjoined from further violations of this type. The cases are pending.

2404. *United States* v. *Hughes Tool Company, et al.*, Civ. 74–2544 (C.D. Calif.). On August 30, 1974, a complaint was filed charging 3 corporations with violating Section 7 of the Clayton Act. The complaint alleges that the acquisition would eliminate potential competition in the sale of oil field handling tools throughout the United States and Byron Jackson's dominant position in that industry will be entrenched.

The complaint asks to have the acquisition declared unlawful and enjoined. The case is pending.

2405. *United States* v. *Champion International Corporation, et al.*, Cr. 74–183 (D. Ore.).

2406. *United States* v. *Champion International Corporation, et al.*, Civ. 74–698 (D. Ore.). On September 6, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act. The indictment charges 6 corporations and 4 individuals while the complaint named 6 corporations. The suits charged the defendants with conspiring to eliminate competitive bidding for U.S. Forest Service timber and to divide the timber among themselves, thus fixing and reducing prices they paid.

The complaint asked for an unspecified amount in damages sustained by the government as a result of the alleged violation.

The complaint also said the conspiracy resulted in the filing of false claims by the defendants in connection with their purchases of public timber, and seeks as an alternative claim double damages and a forfeiture of $2,000 for each claim under the False Claims Act.

The complaint asks that the defendants be enjoined from further violation of the Sherman Act. The cases are pending.

2407. *United States* v. *Slide-Rite Mfg. Corp., et al.*, 74 CR 858 (S.D. N.Y.).

2408. *United States* v *Slide-Rite Mfg Corp., et al.*, 74 CIV 3927 (S.D. N.Y.). On September 10, 1974, an indictment and complaint were filed charging a violation of Section 1 of the Sherman Act. The indictment charges 3 corporations and 1 individual and the complaint is only against 3 corporations. The suits charged that the defendants conspired to fix the prices of zipper sliders.

The complaint asks that the court prohibit any conspiracy to fix prices in the near future.

On November 25, 1974, defendants pleaded *nolo* and fines totalling $75,000 were imposed, thus terminating the criminal case. The civil case is pending.

2409. *United States* v. *Clovis Retail Liquor Dealers Trade Association, et al.*, Cr. 74–273 (D. N.M.).

2410. *United States* v. *Clovis Retail Liquor Dealers Trade Association, et al.*, Civ. 74–477 (D. N.M.). On September 27, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act. The indictment charged 1 trade association, 4 corporations and 11 individuals while the complaint only charged 1 trade association, 4 corporations and 5 individuals. The suits charged the defendants with conspiring to raise, fix and stabilize the retail prices and other terms and conditions of sale of alcoholic beverages in the Clovis, New Mexico area.

The complaint asks that the court permanently enjoin the defendants from engaging in any future conspiracy to fix prices and to order the dissolution of the association. The cases are pending.

2411. *United States* v. *Saks & Company, et al.*, 74 CR 940 (S.D. N.Y.).

2412. *United States* v. *Saks & Company, et al.*, 74 CIV 4391 (S.D. N.Y.). On October 7, 1974, an indictment and complaint were filed under Section 1 of the Sherman Act. The indictment charges 3 corporations and 2 individuals and the complaint charges only the 3 corporations. The suits charged that the defendants fixed retail prices for ready-to-wear women's clothing by adopting uniform markup lists.

The defendants were also charged with inducing clothing manufacturers to use the uniform retail prices as manufactured suggested retail prices and not to supply retailers which sold below those prices. In addition, the defendants established clearance sale dates when the uniform prices were reduced.

The complaint asks the court to permanently enjoin the defendants from continuing the alleged conspiracy. The cases are pending.

2413. *United States* v. *Real Estate Board of Rochester, N.Y., Inc.*, Civ. 74-535 (W.D. N.Y.). On November 19, 1974, a complaint and proposed judgment requiring the usual 30-day waiting period were filed against 1 real estate board. The complaint alleges that the Board and its members have conspired to establish and adhere to schedules of fixed real estate commissions and fees.

In addition, the complaint alleged that the Board had established arbitrary and unreasonably restrictive requirements for membership in the board and the multiple listing service.

The complaint asks the alleged violations be declared illegal. The case is pending.

2414. *United States* v. *National Board of Fur Farm Organizations, Inc., et al.*, 17 CR 211 (E.D. Wisc.).

2415. *United States* v. *National Board of Fur Farm Organizations, Inc., et al.*, Civ. 74 C 546 (E.D. Wisc.). On November 19, 1974, an indictment and complaint were filed charging the defendants violated Section 1 of the Sherman Act. The indictment charged 3 corporations and 6 individuals and the complaint charged 3 corporations. The suits charged the defendants and co-conspirators with conspiring to fix prices and establish quotas for the sale of mink pelts.

The complaint asks that the defendants be permanently enjoined from continuing or renewing the alleged conspiracy. The cases are pending.

2416. *United States* v. *American Telephone and Telegraph Company, et al.*, Civ. 74-1698 (D. D.C.). On November 20, 1974, a complaint was filed charging 3 corporations with violating Section 2 of the Sherman Act. The complaint alleged that the defendants conspired to monopolize, attempted to monopolize and monopolized the telecommunications service and equipment markets.

The complaint also alleged that the defendants attempted to prevent, restrict and eliminate competition from private communications systems.

The complaint asks that the decree declare that the defendants have violated Section 2 of the Sherman Act and an injunction preventing the defendants and their agents from any future violations, the suit seeks the divestiture by AT&T of Western Electric.

In addition, it seeks the division of Western Electric into two or more competing firms if necessary to assure competition in the manufacture and sale of telecommunications equipment.

The suit also asks that AT&T be required to separate some or all of its Long Lines Department from some or all of the Bell Operating Companies through divestiture of capital stock interest or other stock. The case is pending.

2417. *United States* v. *Customs Brokers and Forwarders Association*, 74-638-CR-PF (S.D. Fla.).

2418. *United States* v. *Custom Brokers and Forwarders Association*, 74-1526-CIV-JE (S.D. Fla.). On November 21, 1974, an indictment and complaint were filed charging 1 trade association with violating Section 1 of the Sherman Act for freight forwarding and brokerage services. The suits charged that the Association and its members have conspired to establish and maintain a schedule of minimum fees to be charged for the preparation of documents for the import and export of goods.

The complaint asks the court to permanently enjoin the Association from continuing the alleged scheme. The cases are pending.

2419. *United States* v. *Addison-Wesley Publishing Co.*, 74 CIV 5176 (S.D. N.Y.) On November 25, 1974, a complaint was filed charging 21 corporations violated Section 1 of the Sherman Act in the sale of books. The complaint charged that the defendants have entered into agreements to allocate exclusive marketing territories throughout the world except in areas agreed upon as "open territory." In addition they monitored and attempted to suppress actual and attempted breaches of the allocation agreements.

The complaint asks that the defendants be perpetually enjoined from continuing to engage in conduct that has the purpose or effect of restraining competition between American and British publishers. The case is pending.

2420. *United States* v. *E. L. Markham, Cr.* 332-74 (E.D. Va.). On December 2, 1974, a three count indictment was returned charging a Texas lawyer of making false statements to the U.S. Patent Office. The indictment charged the defendant made two false statements to the Patent Office in 1970 and 1972 in connection with an application of two other men for a patent on an inexpensive form of housing construction. Also charged with concealing important facts about the application. The case is pending.

2421. *United States* v. *Morgan Drive Away, Inc., et al.*, Civ. 1781 (D. D.C.). On December 5, 1974, a complaint was filed charging 3 corporations with violating Sections 1 and 2 of the Sherman Act. The complaint charged that the defendants have conspired to restrain and to monopolize, and have monopolized the transportation of mobile homes within the United States. The suit also charged that the defendants conspired to coerce competitors to charge the same rates as they charged, and to fix rates without authorization of state law.

The suit seeks damages and injunctive relief against the defendants including the surrender by Morgan and National of as much mobile home route authority granted by the ICC as may be necessary to dissolve the alleged unlawful monopoly and to prevent the prepetuation of its effects. The case is pending.

2422. *United States* v. *CBS, Inc.*, Civ. 74–3599 HP (S.D. Calif.).

2423. *United States* v. *American Broadcasting Companies, Inc.*, Civ. 74–3600 DWW (S.D. Calif.).

2424. *United States* v. *National Broadcasting Company, Inc.*, Civ. 74–3601 EC (S.D. Calif.). On December 10, 1974, 3 complaints were filed charging the networks with violating Sections 1 and 2 of the Sherman Act. The complaints charged that each of the networks have used and continue to use their control over access to network air time to restrain and monopolize prime time television entertainment programming.

The suits seeks to permanently enjoin the networks from obtaining any interest in television entertainment programs produced by others, except for the first-run right of exhibition; engaging in syndication of any television entertainment programs; transmitting any television entertainment programs produced by any of the defendants; and using their control of access to broadcasting time to foreclose competition in any other field. The cases are pending.

2425. *United States* v. *DeBeers Industrial Diamond Division Limited, et al.*, 74 CR 1151 (S.D. N.Y.).

2426. *United States* v. *DeBeers Industrial Diamond Division Limited, et al.*, 74 CIV 5389 (S.D. N.Y.). On December 10, 1974, an indictment and complaint were filed charging 3 corporations with violating Section 1 of the Sherman Act. The suits charged that the defendants have conspired to restrain domestic and foreign commerce by fixing, stabilizing and raising the retail prices; allocating territorial markets and customers in the sale of diamond grit.

The complaint asks that the alleged conspiracy be permanently enjoined. The cases are pending.

FEDERAL ANTI-TRUST CASES TERMINATED SINCE JAN. 1, 1963

PART 1 (1963–1965)

1090. *United States* v. *The Borden Company, et al.*, Civ. 51–C–947 (N.D. Ill.). On April 24, 1963, the court entered separate final judgments against Bowman and Borden following the proposed judgments submitted by the Government. The final judgment enjoins price discrimination in milk sales based on different quantities, different methods of delivery, or manufacture, or as the result of meeting competition. It is further provided in the judgment that if optional services such as placing the milk in the cooler in the grocery store are granted and used as a reason for different prices or discounts, an opportunity must be afforded the grocery store to elect or refuse to take such services.

On February 19, 1953, in accordance with violations of Sherman Act and Section 2a of the Clayton Act, the district court entered a consent decree against five defendants. On October 19, 1953, the court stayed the operation of such consent decree until the final disposition of the case against the remaining defendants. That case was tried in 1953 and at the conclusion of the Government's case-in-chief, the Sherman Act allegations of the complaint were dismissed by the court on the ground that the Government had failed to show violations of the Sherman Act. At the same time, the court also dismissed the Clayton Act allegations holding that, although the Government had shown *prima facie* evidence that Borden and Bowman had each discriminated in price among its purchasers, a decree entered by the court in a private antitrust suit against The Borden Company, Bowman Dairy Company, and others afforded adequate relief and rendered injunctive relief in this suit unnecessary.

On appeal, the Supreme Court in an opinion dated May 17, 1954, affirmed the Sherman Act phase of the case thus dismissing Beloit Dairy, but reversed and remanded as to the Clayton Act phase on the sole ground that the existence of a private decree does not in itself deprive the Government of its right to a decree when the need for injunctive relief is shown.

After remand, on the motion of plaintiff on April 18, 1955, the court reopened the record for the introduction of further evidence: (a) by plaintiff for the purpose of showing the existence of current Clayton Act violations as to prices charged store customers, restaurants, hotels and other similar wholesale customers, and (b) by the defendant for asserting affirmative defenses. The district court entered findings of fact and conclusions of law and held that, while the plaintiff had established a *prima facie* violation of Section 2a of the Clayton Act, the defendant had cost justified the discriminatory prices. On this basis, the court dismissed the complaint as to Ridgeview and Belmont Dairies on February 9, 1959. Plaintiff did not appeal with respect to the prices charged restaurants, hotels, and other similar wholesale customers. A direct appeal with respect to prices charged store customers was taken from this final judgment and the Supreme Court rendered an opinion on June 25, 1962, reversing the district court's dismissal by holding that the cost justification defense as presented to the Court did not adequately establish a reasonable and proper classification of store customers. The Supreme Court remanded this cause to the district court to determine the need for injunctive relief which resulted in final judgments being entered. The case was terminated June 24, 1963.

1181. *United States* v. *Pan American World Airways, Inc., et al.*, Civ. 90–259 (S.D. N.Y.). A complaint filed January 11, 1954, alleged that the Grace and Pan American interests formed Panagra to exclude the establishment of an independent competitive airline which would compete with Grace's parallel steamship route extending along the West Coast of South America or which would compete with the airlines operated by Pan American World Airways. Pan American was also charged with preventing Panagra from extending its route and operations in competiton with Pan American. Similarly, Grace was charged

with preventing any action by Panagra contrary to the interest of Grace's steamship lines. Pan American and Grace were charged further with conspiring and attempting to monopolize and monopolization of transportation between the eastern coastal areas of the United States and South America.

The suit sought to divest Pan American and Grace of their stock ownership of Panagra and to enjoin each of the defendants from engaging in conduct restraining or monopolizing air transportation. On January 30, 1959, the court rejected a proposed consent decree entered into by Pan American and the Government and ordered the parties to trial. Trial was concluded on May 22, and judgment entered on May 8, 1961. The court dismissed the action against Grace and Panagra holding that the division of territories between Grace and Panagra was not unreasonable and that the joinder of Grace and Pan American to form Panagra was a lawful combination with legitimate ends. However, the court found as to Pan American that its restraints against and continued suppression of Panagra expansion constituted a monopolization of commerce that contravenes Section 2 of the Sherman Act. Pan American was ordered to divest itself of all of its stock in Panagra.

Defendant Pan American appealed to the Supreme Court and the Government filed a cross appeal re Grace's dismissal. On January 14, 1963, the Court reversed the lower court's decision as to Pan American, holding that only the Civil Aeronautics Board, acting under the Federal Aviation Act, may enjoin anti-competitive practices in air transportation which involve matters with the Board's regulatory authority. The case was terminated on February 8, 1963.

1325. *United States* v. *United Scenic Artists Local 820*, Civ. 118–92 (S.D. N.Y.). On January 21, 1963, this case was terminated by entry of a final judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed December 18, 1962. The judgment prohibits the defendant from requiring scenic and costume designers to be members of the Union in order to have Union members work for them, and from compelling any producer of shows to refrain from contracting with designers who are not members.

As part of the consent settlement, it was additionally stipulated that the price fixing charges of the complaint should be dismissed without prejudice.

1331. *United States* v. *Loew's, Incorporated*, Civ. 119–24 (S.D. N.Y.).

1333. *United States* v. *C & C Super Corporation*, Civ. 119–284 (S.D. N.Y.)

1334. *United States* v. *Screen Gems, Inc.*, Civ. 119–285 (S.D. N.Y.).

1335. *United States* v *Associated Artists Productions, Inc.*, Civ. 119–286 (S.D. N.Y.).

1336. *United States* v. *National Telefilm Associates, Inc.*, Civ. 119–287 (S.D. N.Y.).

1337. *United States* v. *United Artists Corporation*, Civ. 119–288 (S.D. N.Y.).

In 1957, the Government brought six complaints against the major distributors of pre-1948 copyrighted motion pictures feature films for television exhibition, alleging that each defendant had participated in exclusive dealing by forcing television station customers to accept inferior films as a condition of obtaining desirable pictures in violation of Section 1 of the Sherman Act.

After trial in 1960, the court, specifying particular contracts which it found to be illegal, concluded that these actions of the defendants violated Section 1 of the Sherman Act. On February 2, 1961, the court entered separate final judgments enjoining each defendant from conditioning or tying or attempting to condition or tie the purchase or license of the right to exhibit any feature film over any television station upon the purchase or license of any other film, and from using price differentials to effect such conditioning.

Defendants noted appeal to the Supreme Court on April 3, 1961 and on the same day, the Government appealed on the matter of relief. The Supreme Court affirmed the findings of the district court in an opinion dated November 5, 1962, which held that a tie-in contract is illegal so long as the seller has sufficient economic power to appreciably restrain free competition in the market for the tied product, stating that such economic power may be inferred from the tied product's desirability to consumers or from its uniqueness, and that the requisite economic power is presumed when the tied product is patented or copyrighted. The case was remanded to the district court for final judgment, and on January 29, 1963, final judgments were entered. The judgments prohibit permanent and temporary block booking and require each defendant to offer pictures individually, with a separate price for each picture. They also provide that the defendants have the burden of coming forward with evidence to demonstrate that the difference

in prices between films, when offered in packages and when offered separately, are justified by differences in cost. The cases were terminated March 30, 1963.

1384. *United States* v. *American Natural Gas Company, et al.*, Cr. 59-CR-145 (N.D. Ill.). On May 17, 1963, the case was terminated when the court accepted *nolo contendere* pleas from three corporations and entered findings of guilty against each on a four count indictment. Fines in the amount of $300,000.00 were imposed on three counts, after merging the attempt to monopolize the monopolization count. The three individual defendants were dismissed by the court without prejudice on the same day.

1398. *United States* v. *National Alfalfa Dehydrating and Milling Company, et al.*, Civ. 6111 (D. Colo.). On March 15, 1963, this case was terminated by entry of a consent judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed February 12, 1963.

The Government's amended complaint, which was filed on May 11, 1961, added Grain Elevator Warehouse Company as a defendant and charged National Alfalfa and its affiliated company with violating Section 7 of the Clayton Act by their acquisition of Saunders Mills and Midlands Industries, Inc., operators of alfalfa dehydrating mills. The final judgment requires defendant, National, to sell certain listed assets in seven communities to an eligible purchaser within a reasonable time and at a reasonable price. National is required to file annual reports with the court setting forth its efforts to sell the assets. Grain Elevator is required, for a period of five years, to rent to any eligible person at a reasonable rental, 10% of its gas storage facilities. For a period of five years from the date of entry of the final judgment, both defendants are enjoined from acquiring any person engaged in the production, marketing or storage of dehydrated alfalfa.

The final judgment was modified on the same day to read that (1) defendant Grain Elevator shall give reasonable notice to the alfalfa industry by placing two monthly advertisements in the Bulletin of American Dehydrators Association commencing on or before April 1, 1963 of the location and capacity of such gas storage facilities as will be available for rental during the crop year beginning May 1, 1963. (2) Also, if gas storage facilities so offered are not rented by any eligible person(s) by May 30, 1963, defendant Grain Elevator will be free to rent or use such facilities during the remainder of the crop year beginning May 1, 1963, as defendant Grain Elevator may determine.

1411. *United States* v. *Beatrice Foods Company, et al.*, Cr. 0351 (D. Neb.). In February, 1960, two of the defendants pleaded *nolo contendere* and were fined $5,000.00 each. Trial began May 8, 1961, and on July 31, 1961, defendant Beatrice Foods was found guilty by the jury and fined $15,000.00.

The defendant petitioned to the Court of Appeals and on January 2, 1963, the Court affirmed the verdict of the lower court. The defendant then petitioned to the Supreme Court for a writ of *certiorari* and on April 29, 1963, *certiorari* was denied. The mandate from the Court of Appeals affirming the decision of the district court was spread on the record May 6, 1963, thus terminating the case.

1471. *United States* v. *Diebold, Inc., et al.*, Civ. 4485 (S.D. Ohio). On May 10, 1963, this case was terminated by entry of a final judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed April 10, 1963.

The complaint, filed August 24, 1959, sought to enjoin Diebold from acquiring the assets of Herring-Hall-Marvin under Section 7 of the Clayton Act. On January 19, 1961, Diebold moved for summary judgment on the grounds that Herring-Hall-Marvin was in failing financial condition at the time of the acquisition and that Diebold was the only prospective purchaser. Defendant's motion was granted on March 8, 1961, despite the Government's showing that other prospective purchasers existed and that material questions of fact existed as to the issue of Herring-Hall-Marvin's alleged insolvency. These issues were argued before the Supreme Court on appeal, and on May 14, 1962, in a *per curiam* opinion, the Court reversed the judgment of the lower court and remanded the case for trial on the issues of insolvency and the existence of other prospective purchasers.

The consent judgment runs only against Diebold, Herring-Hall-Marvin having been dismissed on motion of the Government to eliminate any question of the finality of the lower court's summary judgment for purposes of the appeal. The final judgment directs Diebold to make an effort for 12 months to sell the acquired assets in a manner that would permit them to be reactivated as an operating business in competition with other firms engaged in the manufacture and sale of bank and protection equipment. The judgment further provides that,

if no purchasers can be found, then Diebold shall no longer be required to divest itself of the acquired assets, but shall be enjoined for the next 10 years from acquiring stock or assets in any other company engaged in the manufacture, sale or distribution of bank equipment.

1491. *United States* v. *San Diego Grocers Association, Inc., et al.*, Civ. 2347–SDK (S.D. Calif.). On March 27, 1963, a memorandum opinion and judgment were filed against the remaining defendants based on the findings of fact and conclusions of law in the criminal case.

On November 11, 1962, the Government filed a motion for a summary judgment based upon the record in the criminal case. Because Safeway Stores, Inc. and Mayfair Markets, who were named as defendants in the civil case had been acquitted in the criminal case, the Government agreed to their dismissal to justify its asking for summary judgment and decided to enter a judgment against the defendants in the civil case who had pleaded *nolo contendere* in the criminal case. The action against Mayfair and Safeway was dismissed December 10, 1962, and DeFalco's Market was dismissed on January 15, 1963.

In accordance with the complaint filed December 31, 1959, which charged price fixing violations on groceries under Section 1 of the Sherman Act, the defendants were found guilty of conspiring to establish and maintain prices that restricted competition, but since the conspiracy has now ended and there is no liklihood that the defendants would re-engage in the conspiracy in the future, the opinion stated an injunction would not be issued. The case was terminated May 23, 1963, after the 60 day appeal period had ended.

1518. *United States* v. *Federal Pacific Electric Company, et al.*, Civ. 28088 (E.D. Pa.)

1559. *United States* v. *Cornell-Dubilier Electric Corporation, et al.*, Civ. 28565 (E.D. Pa.)

The entry of consent judgments in these cases on April 18, 1963, ended the last two of the 19 civil antitrust suits brought as companion cases to the 1960 criminal conspiracy indictments in the electrical industry. The product coverage of the Federal Pacific jdugment is power switching equipment and Cornell-Dubilier judgment covers power capacitators.

The judgments provide that defendants will not participate in any agreement to suppress competition, allocate territories, fix prices, rig bids, exchange information concerning bids or prices or to restrict sales or purchases by third parties. General Electric Company, a defendant in both cases, was dismissed from Civil 28088 on October 1, 1962.

1537. *United States* v. *Los Angeles Meat and Provision Drivers Union, Local 626*, Civ. 682–60–BH (S.D. Calif.). On June 17, 1963, this case was terminated by entry of a consent judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed May 17, 1963.

The judgment enjoins the defendant from entering into any contract or agreement with any packing house or wholesaler which (1) limits the number of meat vendors who can engage in the business of purchasing fresh meats for resale; (2) allocates among meat vendors the butcher shops, retail stores, restaurants or institutions to whom vendors may sell; (3) prevents meat vendors from selling to butcher shops, retail stores, etc. of the vendor's own choice; (4) establishes, maintains or fixes the prices paid by meat vendors to packing houses; (5) fixes prices charged by meat vendors to butcher shops, retail stores and restaurants and (6) prohibits packing houses, jobbers or wholesalers from selling to bona fide meat vendors, whether or not said meat vendors are members of Local 626, or any other labor union.

1538. *United States* v. *Arizona Pharmaceutical Association, et al.*, Civ. 3367–Phx (D. Ariz.). On January 22, 1963, a consent judgment was entered in the above entitled case pursuant to a stipulation which was filed on December 18, 1962, thus terminating the case.

The judgment enjoins the defendant from conspiring to establish and maintain consumer prices for prescription drugs in the State of Arizona, from attempting to influence parties to adhere to a method for pricing and from policing or making contact with any pharmacist to suggest price lists.

1545. *United States* v. *Bliss & Laughlin, Inc.*, Civ. 753–60–TC (S.D. Calif.). Complaint filed June 28, 1960, under Section 7 of the Clayton Act, charged the defendant illegally acquired the Sierra Drawn Steel Corporation, a formerly competitive firm engaged in the production and manufacture of cold finished steel bars in the United States. After trial in 1961, the district court filed an

opinion holding that the Government failed to prove that the acquisition of Sierra had the effect of lessening competition and a final judgment was entered February 28, 1962, dismissing the case for want to equity.

The Government appealed to the Supreme Court. On November 5, 1962, the Court, in a *per curiam* opinion, remanded the case to the district court for reconsideration in the light of Brown Shoe. Following arguments, which took place in December 1962, a judgment for the defendant was filed April 15, 1963, which held that said acquisition of the assets of Sierra had not violated Section 7 of the Clayton Act and dismissed the case again for want of equity. The court stated that Government statistics not merely lacked precision in detail as in Brown Shoe, but that they could not be relied upon for the accuracy of the broad picture which it had purported to present and that it had failed to establish the probable substantial lessening of competition. The case was terminated June 6, 1963.

1553. *United States* v. *Cunningham Drug Stores, Inc.*, Civ. 20266 (E.D. Mich.). On April 11, 1963, pursuant to a stipulation agreed to by Cunningham and the Government, the court dismissed the case without prejudice to either party.

Since the filing of the complaint on June 30, 1960, which alleged that Cunningham's acquisition of Kinsel Drug was a violation of Section 7 of the Clayton Act, defendant Cunningham has shown a substantial increase in competition in health product sales and a corresponding decline in its profits. Also, no interested buyer could be found for the Kinsel stores. The Government therefore concluded that it would be unprofitable to press the case further.

1559. *United States* v. *Cornell-Dubilier Electric Corporation, et al.*, Civ. 28565 (E.D. Pa.). (See #1518)

1580. *United States* v. *Northern California Pharmaceutical Association*, Civ. 39629 (N.D. Calif.). On April 9, 1963 this case was terminated by entry of a consent judgment against the defendant Association, pursuant to a stipulation filed March 5, 1963, the individual defendant having passed away on January 12, 1963.

In the final judgment, the Association agreed not to maintain uniform consumer prices for prescription drugs in any way including the circulation of suggested price lists in connection with the sale of prescription drugs. The judgment also specifically prohibits the Association from recommending the use of a professional fee to be charged in connection with the sale of a prescription drug.

1594. *United States* v. *Idaho Pharmaceutical Association, Inc.*, Civ. 3654 (D. Idaho). On April 5, 1963, the above case was closed by entry of a final judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed March 4, 1963.

In the judgment, the Association is enjoined from maintaining or furthering any program to formulate or suggest the use by any pharmacists of any particular price schedule or in any way influencing any person to use any price schedule.

1598. *United States* v. *Chrysler Corporation, et al.*, Civ. 1297 (N.D. Ind.). On motion of the Government, the court entered an order on April 23, 1963, dismissing the case without prejudice. Under the stipulation filed March 19, 1963, Chrysler agreed to notify all of its automobile dealers that they are free to sell cars made by other manufacturers as well as by defendant Chrysler.

1613. *United States* v. *Hubbard and Company, et al.*, 61 CR 57 (E.D. Wisc.). On May 31, 1963, six corporations involved in the manufacture of pole line hardware and charged with violations of Section 1 of the Sherman Act, pleaded *nolo contendere*. Fines in the amount of $8,750.00 were imposed on the same day, thus terminating the case.

1615. *United States* v. *North American Van Lines, Inc., et al.*, 62 CR 65 (S.D. Ind.). On April 25, 1963, *nolo* pleas were accepted and fines were imposed against two corporations and two individuals in the amount of $114,000.00, of which $57,000.00 was collected. On May 10, 1963, fines were imposed on the remaining defendants in the amount of $116,002.00, of which $58,001.00 was collected, thus terminating the case.

The total fines imposed were $230,002.00. As they are to run concurrently on each of two counts, the actual fines collected were only $115,001.00.

1628. *United States* v. *General Motors Corporation, et al.*, Cr. 30132 (S.D. Calif.). Defendants entered pleas of not guilty. Trial of this two count indictment under Section 1 of the Sherman Act commenced November 20, 1962, and the Government concluded the presentation of its case on March 8, 1963. The defendants filed motions for a verdict of acquittal and, on March 14, 1963, the case was terminated when the court granted the defendants' motions and dismissed the jury.

1630. *United States* v. *Huck Manufacturing Company, et al.*, Cr. 39017 (E.D. Mich.). The two corporate and two individual defendants were acquitted on March 12, 1963, when the court granted their motion for a judgment of acquittal at the conclusion of the Government's case.

In granting the motion, the court declared that under GE doctrine, a patentee could lawfully impose a price fixing condition in a patent license and since the Government failed to prove that the patentee's promise not to license anyone else was unreasonable, there was nothing for the jury to consider. The court also held that the Government failed to prove its conspiracy to monopolize charge because it failed to prove the relevant market.

1632. *United States* v. *Packard-Bell Electronics Corporation, et al.*, Cr. 30158 (S.D. Calif.). Count II of this indictment was dismissed on September 19, 1962. Defendants, who had previously pleaded not guilty, changed their pleas to *nolo contendere* as to the remaining price fixing violation.

During February, March and April, 1963, fines were imposed on all defendants except Jack Carlow and Simpson Timber Company who moved for dismissal. Simpson Timber Company went to trial during April and was acquitted April 19, 1963. The case was closed on May 20, 1963, when Jack Carlow's motion for dismissal was denied and on his previous plea of *nolo contendere*, a fine of $1,000.00 was imposed. Total fines imposed were $26,650.00, of which $1,200.00 was suspended.

1646. *United States* v. *Connecticut Package Stores Association, Inc., et al.*, Civ. 9157 (D. Conn.). On June 4, 1963, the above case was terminated when the court entered a final judgment based on the usual stipulation of the parties filed May 3, 1963, which had initiated the customary thirty days waiting period.

The judgment contains the following provisions: (1) prohibitory injunctions forbidding price discussions or suggestions by the defendants; (2) mandatory provisions which dissolve the trade associations' pricing committees and which purge certain Connecticut Package Stores committees and governing organs from prior price activities; (3) provisions attempting to serve the purpose of a class action against other subordinate trade associations in the same class as New Haven Package Stores in that the defendants are directed to expel and sever all connection with such subordinate bodies unless the latter file written assents to be bound by the decree and (4) provisions requiring Connecticut to submit its bulletins to the Antitrust Division for a period of two years.

1655. *United States* v. *Holiday on Ice Shows, Inc., et al.*, Civ. 62-215 (W.D. Pa.). This case was terminated on January 29, 1963, when the court entered a final judgment, on consent of the parties, pursuant to a thirty day stipulation and proposed final judgment filed December 29, 1962.

By the terms of the judgment, the defendants, which produce, manage and present touring ice shows, agreed to terminate their contract as of June 30, 1963, and agreed not to allocate territories or pool profits among themselves or with any other ice-show producer. Holiday, International, and Ice Capades also agreed to dissolve or sell North American Ice Attractions on or before September 1, 1963.

1671. *United States* v. *Handy and Harman, et al.*, 62 Cr. 588 (S.D. N.Y.). On October 19, 1962, defendant Handy and Harman pleaded guilty and was fined $20,000.00. Engelhard Industries, Inc., entered a plea of not guilty. The court denied Engelhard's application to change its plea to *nolo contendere* and defendant thereupon pleaded guilty. The case was terminated on March 8, 1963, when defendant Engelhard was fined $12,000.00, making the total fines imposed $32,000.00.

1678. *United States* v. *J. L. Hammett Co., et al.*, Cr. 21124 (E.D. Pa.). On November 8, 1962, the court permitted the entry of *nolo contendere* pleas by all the defendants, over the objection of the Government. On February 14, 1963, the case was terminated by the imposition of fines on the corporate and individual defendants totalling $30,750.00.

1679. *United States* v. *Kurtz Bros., et al.*, Cr. 21125 (E.D. Pa.). *Nolo contendere* pleas were entered by all defendants on November 8, 1962, over the objection of the Government. On February 14, 1963, sentences were imposed on the corporate and individual defendants totalling $101,250.00, thus terminating the case.

1689. *United States* v. *Associated Asbestos, Inc., et al.*, Cr. 50514 (W.D. Wash.). On August 27, 1963, four corporations and three individuals who had pleaded *nolo contendere* were fined in the amount of $70,500.00. On the same day, the remaining corporate defendant was dismissed. Sentencing was postponed on the remaining individual defendant since he was in bad health. On June 12, 1963,

the court suspended sentence and placed the defendant on probation for a period of one year because of illness, thus terminating the case.

1690. *United States* v. *Packaging Corporation of America, et al.*, Cr. 6885 (W.D. Mich.). On June 24, 1963, this case was closed when the court granted motion of all defendants for acquittal. Trial on violations of the Sherman Act which alleged that the defendants conspired to stabilize the price of pulpwood in Michigan, began June 17, 1963. In granting the motion of acquittal, the court held that the Government had failed to establish an effect upon interstate commerce and had failed to prove beyond a reasonable doubt that the defendants had agreed to fix prices.

1697. *United States* v. *Parents Magazine Enterprises, Inc., et al.*, Civ. 62–C–1453 (N.D. Ill.). On January 28, 1963, the court entered a judgment, upon stipulation, restraining the acquisition of capital assets or stock of A. C. McClurg & Co., by Parents Magazine Enterprises, Inc., during a period of five years. The defendants are further required to furnish 90 days notice to the Department if any steps are taken during a further period of ten years thereafter for such acquisition. The court then dissolved the temporary injunction entered on August 10, 1962, which had been extended on November 6, 1962.

1703. *United States* v. *Crown Liquors of Fort Lauderdale, Inc., et al.*, Cr. 407–62–M–CR (S.D. Fla.). On July 28, 1963, this case was closed when a jury verdict of acquittal was entered as to all defendants. Trial on the price fixing allegations of this indictment was begun June 24, 1963, and verdict of acquittal was entered four days later. Two individuals and one corporation had been dismissed during June prior to trial.

1712. *United States* v. *Lone Star Cadillac Company*, Civ. 9277 (N.D. Tex.–Dallas). On May 10, 1963, this case was terminated by entry of a final judgment pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed April 10, 1963.

The judgment enjoins the defendant from entering into any contract with any dealer which limits or restricts the persons, prices, or territory within which such dealer may sell Cadillac automobiles; and the defendant is enjoined from imposing or attempting to impose any limitation or condition on any automobile dealer with respect to the terms it uses in the resale of automobiles.

1718. *United States* v. *Band-It Company, et al.*, Cr. 17053 (D. Colo.). The case was terminated on April 11, 1963. Over the Government's objections, the court accepted defendants' pleas of *nolo contendere* and imposed fines totalling $10,000.00.

1719. *United States* v. *Band-It Company, et al.*, Civ. 7796 (D. Colo.). This case was terminated on March 14, 1963, when a consent decree was entered against both defendants, pursuant to a thirty day stipulation and proposed final judgment filed February 12, 1963. In the judgment, the defendants agreed to requirements that they not fix the price or terms of sale at which its distributors resell Band-It products. As a part of the consent settlement, it was additionally stipulated that for a period of five years, defendants are enjoined from issuing suggested resale prices to any of its distributors within the United States.

1746. *United States* v. *Cities Service Company, et al.*, Civ. 2680 (D. Dela.) (See "Cases Instituted")

1266. *United States* v. *Brown Shoe Company, Inc. et al.*, Civ. 10527 (E.D. Mo.). Trial of this case began August 4, 1958 and was concluded January 24, 1959. In an opinion filed November 20, 1959, the court found that Brown Shoe Company's acquisition of G. R. Kinney Company, Inc. violated Section 7 of the Clayton Act. Final judgment in accordance with this opinion was entered December 8, 1959, requiring defendant to relinquish and dispose of all stock, share capital and assets or other interest which Brown might have in either of the other two defendants. Defendants were ordered to file within ninety days a proposed plan of divestiture.

The court also continued its preliminary injunction (granted 1/13/56), holding Brown & Kinney separate and required that the defendants should administer the acquired assets and replacements, heretofore and hereafter made, in good faith as a going shoe business with a view to preserving the assets in good condition.

On appeal to the Supreme Court, the judgment was affirmed June 25, 1962.

In October 1962, the defendant Brown Shoe Company, Inc. filed its "Proposed Plan of Divestiture," in accordance with final judgment, which was opposed by

the Government. In February of 1963, the court handed down an order to guide the parties and secure divestiture as required under the judgment. Brown was ordered to relinquish and dispose of the stock, share capital and assets of Kinney with due diligence to the end that divestiture shall be effected as expeditiously as is reasonably possible and submit by August 21, 1963, a report concerning progress. Pursuant to said order, Brown Shoe Co. submitted a proposed agreement between Brown Shoe, Kinney and F. W. Woolworth Co. for the divestiture. The court on August 26, 1963, approved the agreement as complying with the final judgment and authorized Brown to execute and consummate the agreement and report to the court promptly after the consummation. Jurisdiction is retained to enable any party to apply to the court for any further relief.

1310. *United States* v. *Owens-Illinois Glass Company*, Civ. 7686 (N.D. Ohio). On July 8, 1963, this case was terminated by entry of a consent judgment, pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed June 7, 1963. The judgment requires the defendant to divest itself of a large paper board mill and five fiber box manufacturing plants within a four year period. If divestiture has not yet been accomplished, the Government reserves right to petition the court to require divestiture upon any terms or conditions (including price) which the court deems necessary and appropriate.

1406. *United States* v. *Lever Brothers Company, et al.*, Civ. 135–219 (S.D. N.Y.). In September 1960, Lever Brothers sought to take deposition of Procter and Gamble Co. in the Southern District of Ohio, and also served said company with a motion to produce certain documents. Both were denied by the court. On appeal by Lever to the Circuit Court of Appeals (6th Circuit), these motions were deferred until the Supreme Court ruled on this appeal made to it by Lever. Lever appealed these orders to the Supreme Court and also petitioned for a writ of certiorari as an alternate means for reviewing these orders. The Supreme Court on December 10, 1962 granted the Government's and Procter & Gamble's motion to dismiss the appeal and denied the petition for certiorari. The Government and Procter & Gamble contended that the appeal be dismissed in that the orders were interlocutory and therefore, a final judgment appealable to the Supreme Court was lacking.

On April 30, 1963, after trial which began January 3 and concluded January 21, 1963, the District Court dismissed the complaint in an opinion, holding that the acquisition rather than being a violation, was in accord with Section 7 of the Clayton Act. The evidence failed to establish that in the lines of commerce in question, there was any reasonable probability of substantial anti-competitive effect or a tendency to monopolize as a result of this transfer of assets involved.

The Government noted appeal to the Supreme Court; however, on September 18, 1963, a stipulation was filed dismissing the appeal and terminating the case.

1492. *United States* v. *Southeast Texas Chapter, NEC Association, et al.*, Cr. 13706 (S.D. Texas). On November 29, 1963, the Government filed *nolle prosequi*, terminating this three count indictment against eight corporations and three individuals, as a consent judgment in a case brought by the State of Texas, against a number of these defendants granted the necessary relief.

1589. *United States* v. *The Philadelphia National Bank, et al.*, Civ. 29287 (E.D. Pa.). After limited discovery proceedings conducted chiefly on a voluntary negotiated basis between the parties, trial began on June 5, and concluded on August 3, 1961. On January 15, 1962, the court dismissed the complaint holding that although commercial banking was a relevant line of commerce, amended Section 7 of the Clayton Act did not apply to a statutory merger of banks as they were not stock acquisitions and concluded that the Government had not established that the merger would violate Section 7.

The Government appealed to the Supreme Court and on June 17, 1963, the Court decided that the proposed merger between Philadelphia National Bank and Girard Trust Corn Exchange Bank would violate Section 7 of the Clayton Act, and held that all types of corporate mergers and consolidations were intended to be covered by Section 7, therefore, banks were not to be exempted. The judgment of the District Court was reversed and remanded with direction to enter judgment enjoining the proposed merger.

The mandate from the Supreme Court was received in the lower court July 15, 1963, and on July 16, 1963, judgment was entered decreeing that the defend-

ants be perpetually enjoined from proceeding further with the proposed merger. quiring a thirty day waiting period which were filed September 16, 1963. A

1623. *United States* v. *General Dynamics Corporation, et al.*, Civ. 61–C–615 (E.D. N.Y.). On October 17, 1963, this case was terminated by entry of four separate final judgments, pursuant to stipulations and proposed final judgments rejudgment as to Air Reduction Company was originally entered August 13, 1962, but was amended as of October 17, 1963, *nunc pro tunc as* of August 13, 1962.

The judgments require defendants to sell or lease storage equipment on a non-discriminatory basis, without regard to the customer's source of supply of carbon dioxide. In addition, the defendants are enjoined from entering into any agreements whereby a purchaser of carbon dioxide is provided with storage equipment on condition that he purchase carbon dioxide from the supplier of the equipment. Defendants are also enjoined from entering into requirement contracts for periods in excess of one year. Price fixing, predatory price cutting, and the determining of distributors' resale prices are also enjoined.

1636. *United States* v. *America Corporation, et al.*, Civ. 1542–61–EC (S.D. Calif.). On October 28, 1963, final judgment was entered against Republic Corporation, enjoining Republic from acquiring or holding any interest in America; from acquiring any business other than one located in the Midwest and the New York Metropolitan area and from entering into any agreement with America to allocate, refer or solicit business.

On November 15, 1963, the case was terminated when a final judgment was entered against America enjoining essentially the same practices mentioned in the Republic judgment, but prohibiting America from acquiring any professional file processing business without first obtaining Government approval.

1648. *United States* v. *York Corp. of Delaware*, Civ. 7546 (Mid. D. Pa.). On December 19, 1963, this case was terminated by entry of a consent judgment, pursuant to a stipulation and proposed judgment requiring the thirty day waiting period, which was filed November 15, 1963. York is enjoined from claiming any rights under contract to restrict customers, territories or markets for sale of any York product. The defendant is unilaterally enjoined from restricting the persons to whom, the territories in which, or the use for which any person may sell or put any York product.

1650. *United States* v. *Hubbard and Company, et al.*, Civ. 62–C–49 (E.D. Wisc.). On July 1, 1963, this case was terminated by entry of a final judgment, pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed May 31, 1963. The judgment provides appropriate injunctive relief against collusive activities between defendants to eliminate or suppress unreasonable competition; to fix or maintain prices, discounts, or terms or conditions for the sale thereof; to communicate or exchange prices or discount information, and for a period of five years, requires defendants to submit affidavits of non-collusion in arriving at the amount of bids.

1669. *United States* v. *Armour & Company, et al.*, Cr. 30936 (S.D. Calif.). Trial of this case which began October 1, 1963, was concluded November 20, 1963, when the court granted the motions of all defendants for judgments of acquittal and discharged the jury. The court ruled that the evidence did no more than establish "a conscious parallel business activity."

One individual defendant whose motion for severance was granted on the ground of illness was dismissed by the Government December 11, 1963, thus terminating the case.

1675. *United States* v. *Roehr Products Company, Inc., et al.*, Civ. 9370 (D. Conn.). On December 30, 1963, a consent judgment was entered terminating this case. The judgment enjoins Roehr Products from imposing any limitations or restrictions upon its distributors in the resale of Roehr's hypodermic disposable needles and syringes. Roehr Products is also enjoined from employing the means it used in enforcing the illegal practices under its distributor agreement. The granting of quantity discounts to distributors based upon sales to customers of such distributors is also prohibited. The judgment directs the defendants to cancel the provisions of every contract or agreement with their distributors which are inconsistent with the decree.

1688. *United States* v. *Hawaii Retail Druggists Association*, Civ. 2064 (Hawaii). On November 18, 1963, a final judgment was filed terminating the above case after a stipulated 30 day waiting period beginning October 17, 1963.

The final judgment enjoins the Association from concerted enforcement or policing of fair trade prices or obtaining support of manufacturers and suppliers

to enforce or enter into fair trade contracts. The Association is prohibited from adopting or distributing price schedules and from boycotting manufacturers or expelling Association members for pricing policies.

1702. *United States* v. *The House of Seagram, Inc., et al.*, Cr. 406-62-M-CR (S.D. Fla.). This case went to trial on June 3, 1963. The charge was a conspiracy to fix the wholesale and retail prices at which Seagram brands of alcoholic beverages were sold and the retail prices at which they were advertised. On June 13, 1963, the jury returned a verdict of acquittal against one defendant. The court declared a mistrial after the jury had deliberated three days without reaching a verdict as to the remaining two defendants.

On July 1, 1963, the case was retried and repeated motions for judgment of acquittal were denied by the court as in the earlier trial. The remaining two defendants were acquitted by jury verdict on July 11, 1963, thus terminating the case.

1720. *United States* v. *Minneapolis-Honeywell Regulator Company, et al.*, 462 Cr. 111 (Minn.). On July 11, 1963, a court order permitted defendants to change their pleas of not guilty to *nolo contendere* and the pleas of *nolo* were accepted by the court on July 19, 1963 over objections of the Government. On September 9, 1963, the court imposed fines against the three corporations and five individuals in the amount of $180,000.00, thus terminating the case.

1731. *United States* v. *Stamps-Conhaim-Whitehead, Inc.*, Civ. 1338 (N.D. Iowa). On August 29, 1963, this case was terminated by entry of a final judgment, pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed July 29, 1963.

The judgment enjoins defendant from refusing to sell or license use of its advertising services on a non-discriminatory basis to any newspaper making a written request; entering into any illegal agreement to purchase or license defendant's advertising service; and is directed within nine months of entry of this judgment to terminate all such portions of its contracts which are inconsistent with the judgment and notify its customers and licensees of such cancellation.

1747. *United States* v. *FMC Corporation, et al.*, Civ. 41541 (N.D. Calif.). On October 23, 1963, an order was entered dismissing this case without prejudice, on motion of the Government.

1748. *United States* v. *Nachman Corporation, et al.*, Cr. 63 CR 154 (E.D. Mo.). On November 18, 1963, nine corporations and one individual involved in the manufacture of bed springs and charged with violations of Section 1 of the Sherman Act, pleaded *nolo contendere*. Fines in the amount of $92,000.00 were imposed on the same day, thus terminating the case.

1752. *United States* v. *United Fruit Company, et al.*, Cr. 32416 (S.D. Calif.). See "Cases Instituted".

1754. *United States* v. *Kaynar Mfg. Co., Inc., et al.*, Cr. 32630 (S.D. Calif.). See "Cases Instituted".

1758. *United States* v. *The Calumet National Bank of Hammond, et al.*, Civ. 3723 (N.D. Ind.)
See "Cases Instituted".

1760. *United States* v. *National Diaper Services, Inc.*, Civ. 63-3103 (S.D.N.Y.)
See "Cases Instituted".

1761. *United States* v. *Association of Casualty and Surety Companies, et al.*, Civ. 63 CIV 3106 (S.D.N.Y.)
See "Cases Instituted".

1762. *United States* v. *Simplex Time Recorder Company, et al.*, Civ. 63-878-F (Mass.)
See "Cases Instituted".

1766. *United States* v. *Nassau-Suffolk Pharmaceutical Society, Inc.*, Civ. 63-C-1206 (E.D.N.Y.)

1767. *United States* v. *Nassau-Suffolk Pharmaceutical Society, Inc.*, Civ. 63-C-1207 (E.D.N.Y.)
See "Cases Instituted".

1770. *United States* v. *Cincinnati Insurance Board*, Civ. 5489 (S.D. Ohio)
See "Cases Instituted".

1418. *United States* v. *Standard Oil Company (Ind.), et al.*, Cr. 2199 (N.D. Ind.). On December 30, 1960, a jury verdict of guilty was returned against all defendants except Sun Oil Company, which had been acquitted December 13, 1960. On June 1, 1961, Gulf Oil's motion for acquittal was granted and all other

defendants' motions were denied. Judgment was entered and fines were imposed totalling $425,000 on June 1, 1961.

On appeal by defendants, the Court of Appeals on April 22, 1963, reversed and remanded the case for a new trial and dismissed Phillips Petroleum, as a defendant. The court held that the trial court's restriction on certain defense testimony regarding denial of the fact of agreement, conspiracy, and understandings with their competitors was reversable error, and that the trial judge had shown sufficient bias in favor of the Government to warrant reversal. After a new trial, the jury returned a verdict of not guilty on May 22, 1964.

1574. *United States* v. *Phillips Petroleum Company, et al.*, Civ. 1-378-PH (S.D. Calif.). January 27, 1964, the court approved a stipulation of the parties and an order dismissing without prejudice the action as to all defendants. The stipulation and order included dismissal of a cross-claim by Union against Phillips and vacated a preliminary injunction entered on January 13, 1963. The dismissal followed action taken by Phillips on July 19, 1963, transferring all of its stock in Union to Daniel K. Ludwig, an individual, whose principal business interests were in shipping.

1586. *United States* v. *General Cable Corporation*, 61 Civ. 240 (S.D.N.Y.). On February 28, 1964, this case was terminated by entry of a consent judgment, pursuant to a stipulation and proposed final judgment requiring a thirty day waiting period which was filed January 29, 1964.

The final judgment forbids General Cable from acquiring directly or indirectly any stock or financial interest in any appliance cord or communication wire and cable manufacturer, seller or distributor for a period of eight (8) years after entry of the final judgment.

1596. *United States & TVA* v. *General Electric Company, et al.*, Civ. 29379 (E.D. Pa.)

1600. *United States & TVA* v. *Westinghouse Electric Corporation, et al.*, Civ. 29489 (E.D. Pa.)

1601. *United States & TVA* v. *General Electric Company, et al.*, Civ. 29490 (E.D. Pa.)

1602. *United States* v. *General Electric Company, et al.*, Civ. 29491 (E.D. Pa.).

The above-listed cases are four of a related series of eleven damage cases, arising out of the Philadelphia electrical cases, which were instituted by the Government and Tennessee Valley Authority in 1961. Throughout the pendency of this related series of damage cases, the Government and TVA have been negotiating settlement with most of the defendant companies named in these eleven cases. Settlement negotiations, however, took place on an individual company basis and the negotiations with each defendant related to all of the cases in which that company was involved in as defendant. The negotiations resulted in a series of settlement agreements pursuant to which the settling companies paid substantial sums of money to the United States and TVA and were subsequently dismissed from all lawsuits in which they were involved. Settlement agreements were reached with the following defendants on the dates hereinafter listed and involved the payments of the amounts hereinafter listed: General Electric Company, July 27, 1962, $7,470,000; McGraw-Edison Company, April 26, 1963, $70,000; Moloney Electric Company, April 26, 1963, $60,000; Wagner Electric Company, April 26, 1963, $96,000; Westinghouse Electric Corporation, May 23, 1963, $800,000; Federal Pacific Electric Company, June 28, 1963, $63,000; and Allis-Chalmers Manufacturing Company, March 2, 1964, $185,000.

In addition, the Government and TVA in certain isolated circumstances dismissed some of the defendants from certain damage cases because of *de minimis* purchases from those defendants. The defendants so dismissed and the cases from which they were dismissed on a *de minimis* basis are as follows: Kuhlman Electric Company, Civ. 29491; McGraw-Edison Company, Civ. 29491; Moloney Electric Company, Civ. 29491; Wagner Electric Company, Civ. 29491; and I-T-E Circuit Breaker Company, Civ. 29379.

While dismissal of various defendants from the Government's series of damage cases has been taking place since August 30, 1962, when the first defendant to settle, the General Electric Company, was dismissed from all the cases in which it was involved, no damage case was terminated or could be terminated until all the defendants involved therein had settled, or had been dismissed on a *de minimis* basis. Thus, it was not until March 9, 1964, when orders of dismissal of Allis-Chalmers Manufacturing Company, pursuant to its settlement agreement relating to the four cases in which it was involved, and of I-T-E Circuit Breaker

Company in Civil Action No. 29379, because of its *de minimis* sales in that case, that any cases were able to be dismissed in their entirety. The orders entered on March 9, 1964, terminated the four cases listed above.

The remaining seven cases of this related series of eleven damage cases are still pending inasmuch as I-T-E Circuit Breaker Company, named as defendant in all seven cases has not negotiated a settlement agreement. In addition, three of the cases also involved H. K. Porter Company, which like I-T-E, has not reached a settlement with the Government.

During the pre-trial maneuvering leading up to settlements with a majority of the defendant companies three significant arguments and decisions occurred, in addition to those involving pre-trial discovery: namely, (1) whether the Government can utilize in a Clayton Act civil damage suit grand jury testimony taken during the grand jury investigation which culminated in an indictment involving the same matters covered by the damage suit; (2) whether the Federal doctrine of fraudulent concealment tolls the running of the statute of limitations contained in Section 4(b) of the Clayton Act; and (3) whether the Tennessee Valley Authority is a person within the meaning of Section 4 of the Clayton Act. On each of these questions the Government's position prevailed. The law established by the court's decision in favor of the Government's position has application to and governs any trial of the remaining cases which may be forthcoming.

1611. *United States* v. *A. P. Woodson Company, et al.*, Cr. 375–61 (D.C.). On March 26, 1964, this case was terminated upon imposition of fines in the total of $37,000. The court had previously granted the defendants motions to change their pleas to *nolo contendere*.

1635. *United States* v. *Englehard-Hanovia Inc., et al.*, 61 Cr. 1105 (S.D. N.Y.). On January 18, 1962, 2 corporations pleaded guilty; 5 individual defendants pleaded *nolo contendere*. One corporate defendant was voluntarily dismissed and five individual defendants were voluntarily dismissed as to count one.

March 5, 1962, six individual defendants pleading *nolo contendere* and two corporate defendants pleading guilty were fined a total of $47,500 and on March 23, 1962, one individual defendant was fined $1,500 after entering a plea of *nolo contendere*.

A motion by two individual defendants to dismiss count one was granted April 17, 1962. The Government appealed this dismissal and the Supreme Court on October 8, 1962, by a per curiam opinion reversed the district court's judgment in accordance with the decision in the *Wise* case. Pleas of *nolo contendere* were entered by these two defendants and accepted by the court and a total fine of $1,000 was entered on February 15, 1963. These two defendants were voluntarily dismissed as to count two.

As the court refused to accept a plea of *nolo* the trial of Westinghouse Electric Corporation began November 26, 1963. The trial ended on December 6, 1963, in a mistrial and the judge discharged the jury. March 11, 1964, the court accepted the second application of Westinghouse to enter a plea of *nolo* over the Government's objections, as the second trial was about to begin.

April 3, 1964, Westinghouse on its plea of *nolo* and the only other remaining defendant, which had pleaded guilty were fined a total of $30,000. Total fines $80,000 were imposed in the case.

1644. *United States* v. *Greater Blouse, Skirt and Neckwear Contractors Association, Inc., et al.*, 62–C–377 (S.D. N.Y.). On April 13, 1964, this case was dismissed on motion of the government.

1651. *United States* v. *Gimbel Brothers, Inc., et al.*, Civ. 62–C–60 (E.D. Wisc.). On January 2, 1964, an order was entered dismissing this case without prejudice on stipulation of both parties.

1657. *United States* v. *Columbia Broadcasting System, Inc.*, 62 Civ. 1462 (S.D. N.Y.). On February 20, 1964, the Government dismissed this case without prejudice after defendant CBS had withdrawn three appeals by it from orders of the Federal Communications Commission.

The complaint charged that certain CBS station affiliation contracts restrained trade because they embodied a compensation plan designed to require the CBS affiliates to accept substantially all of the CBS television programs offered by the network. Shortly after the filing of the Government's complaint, the F.C.C. found that the compensation plan of CBS violated its rules and ordered CBS to cancel the aforesaid contracts. With the withdrawal of the CBS appeals, the relief sought by the Government's complaint had been achieved.

1658A. *United States* v. *H. P. Hood, Inc., et al.*, Cr. 62-286-C (D. Mass.). Defendant's motions to dismiss were denied in a memorandum and order on March 27, 1963. The motion to dismiss defendant Weldon was allowed because the court found that defendant's testimony before a congressional committee about the economic practices pursued by Hood Company brought him within the immunity provisions of 15 U.S.C.A. 32.

On April 20, 1964, the Supreme Court reversed and remanded the case and held that the district court erred in holding appellee's testimony before a congressional subcommittee had immunized him from prosecution. Two corporate defendants pleaded guilty to Count 1 and *nolo contendere* to Count 2 and were fined a total of $85,000 on both counts. The other corporate defendant pleaded *nolo contendere* to Count 1, was fined $25,000, and was dismissed as to Count 2. Five individuals pleaded *nolo contendere* to Count 1, were fined a total of $16,000, and were dismissed as to Count 2 on June 16, 1964. Total fines amounted to $126,000.

1673. *United States* v. *Flynn-Learner, et al.*, Cr. 11,735 (Hawaii). On March 23, 1964, this case was terminated by imposition of fines in the amount of $10,000 as to two defendants who had previously entered guilty pleas.

Trial began June 20, 1963, when the court denied the motion to dismiss. Court granted the motion for acquittal as to Learner Co., and Paul Learner at the close of the Government's case on June 26, 1963. Wong and Flynn-Learner were acquitted by the jury on June 28, 1963.

1676. *United States* v. *Ward Baking Company, et al.*, Cr. 21123 (E.D. Pa.). August 15, 1962, the court rejected pleas of *nolo contendere* from six defendants; all defendants then pleaded not guilty.

On August 29, 1963, three corporate and three individual defendants pleaded *nolo contendere* and were fined a total of $30,000. One of the individual defendants was given five years probation. On September 19, 1963, one corporate and one individual pleaded *nolo contendere* and were fined a total of $3,500.

Trial commenced on April 22, 1963, as to five defendants and on May 13, 1963, one corporate and one individual defendant were found not guilty after the Government rested its case. After trial the remaining defendants, one corporation and two individuals, were found guilty and on December 6, 1963, were fined a total of $10,200 bringing the total fines imposed in the case to $43,700. Appeals made by those defendants found guilty were withdrawn January 21, 1964. The fine of an individual defendant was reduced on February 8, 1964.

1682. *United States* v. *Consolidated Papers, Inc., et al.*, Cr. 14087 (W.D. Wis.).

1683. *United States* v. *Consolidated Papers, Inc., et al.*, Civ. 3563 (W.D. Wis.).

July 1, 1963, four defendants were fined $43,000 on pleas of *nolo*. The remaining two defendants were dismissed February 27, 1964. (1682)

Consent judgment was entered February 7, 1963, against four defendants enjoining them from entering into any combination with other consumers of pulpwood or pulpwood dealer to fix prices for the purchase or sale of pulpwood to any third person from communicating the price it is paying for product or plans to pay, from communicating advance information relating to the possible entry of new pulp mill into the purchase of pulpwood, and soliciting information to prevent competition.

Remaining defendants were dismissed, February 27, 1964, and May 27, 1964.

1730. *United States* v. *Metro Associated Services, Inc.*, Civ. 1377 (N.D. Iowa). On April 3, 1964, this case was terminated with entry of final judgment pursuant to a stipulation and proposed judgment filed.

Final judgment enjoins defendant from refusing to sell or license use of its advertising services on a non-discriminatory and non-exclusive basis to any newspaper making a written request therefor or from entering into or carrying out any agreement or understanding to grant to any newspaper the sale or exclusive right to purchase or license defendant's advertising service.

1734. *United States* v. *The Duluth Clearing House Association, et al.*, 5-63 Cr. 6 (D. Minn.).

1735. *United States* v. *The First National Bank of Saint Paul, et al.*, 3-63 Cr. 8 (D. Minn.).

1736. *United States* v. *Northwestern National Bank of Minneapolis, et al.*, 4-63 Cr. 6 (D. Minn.).

On February 11, 1964, the court granted the motions of the defendants in these three criminal bank cases to change their pleas of "not guilty" to "nolo contendere." Since these were the first criminal prosecutions of banks for violations

of Section 1 of the Sherman Act, the Government neither recommended nor opposed the granting of the motions. On the same day the court imposed the following fines: Duluth Clearing House, $57,000; First National, $70,000; and Northwestern (1 defendant dismissed) $126,000, thus terminating the cases.

1737. *United States* v. *Northwestern National Bank of Minneapolis, et al.*, 4–63 Civ. 52 (D. Minn.).

1738. *United States* v. *The First National Bank of Saint Paul, et al.*, 3–63 Civ. 37 (D. Minn.).

1739. *United States* v. *The Duluth Clearing House Association, et al.*, 5–63 Civ. 4 (D. Minn.).

On March 24, 1964, these cases were terminated by entry of consent judgments, pursuant to stipulations and proposed judgments which were filed February 11, 1964.

Final judgment in 1737 enjoins defendants from agreeing to limit the soliciting of business relations, including group insurance, with any correspondent bank, to furnish or refrain from furnishing bank drafts stationery, any other bank supplies or other gifts to any third person, to limit or prevent the absorption of any exchange charges or loss on any securities for any third person.

Final judgment in 1738 enjoins defendants from participating in any agreement to fix, maintain, or make uniform any service charge and from using any schedule of service charges which is not arrived at independently.

Final judgment in 1739 enjoins the defendants from restricting competition in interest rates paid on deposits or installment loans on automobiles, or in service charges, from making agreements with any Commercial Bank or savings and loan or building and loan association to fix rate of interest on deposits made by another person, or rate of interest on or duration or other terms of any installment loans on automobiles or mortgages, or service charges for any other person, or to limit or prevent the advertising of interest or loan rates, service charges or other services rendered bank customers or the media to be used for such advertising.

1740. *United States* v. *Ingersoll-Rand Company, et al.*, Civ. 63–124 (W.D. Pa.). On May 5, 1964, this case was terminated by entry of a final judgment, pursuant to a stipulation and proposed judgment requiring the 30 day waiting period which was filed April 3, 1964.

February 14, 1963, temporary restraining order was entered. March 6, 1963, a preliminary injunction was granted. April 11, 1964, opinion in support of the preliminary injunction holding that the effect of the proposed acquisitions may be substantially to lessen competition or tend to create a monopoly. This was affirmed by the CCA on June 5, 1963.

May 5, 1964, consent judgment was entered imposing various restrictions, including permanently enjoining defendant Ingersoll-Rand from consummating its proposed acquisition or any other acquisitions having similar effect.

1741. *United States* v. *Goldring Packing Co., Inc., et al.*, Cr. 31945 (S.D. Calif.). On April 1, 1964, the case was terminated by a verdict of not guilty returned by the jury after retrial.

1745. *United States* v. *Branch River Wool Combing Co., Inc., et al.*, Civ. 3123 (R.I.). On April 13, 1964, the case was terminated by entry of a final judgment, pursuant to a stipulation and proposed judgment requiring the 30 day waiting period which was filed April 3, 1964.

Consent judgment was filed imposing various restrictions, including requiring Branch River Wool to divest itself of assets acquired from the French Worsted Company and to eliminate the restrictive covenants.

1749. *United States* v. *Sperry Rand Corporation, et al.*, 63 Cr. 352 (N.D. Ill.). On January 24, 1964, the court accepted *nolo* pleas from eleven of the twelve defendants and imposed fines amounting to $138,000.00. On February 7, 1964, a plea of *nolo* was accepted by the court from the 1 remaining defendant and a fine of $2,000.00 was imposed, thus making a total of $140,000.00.

The court accepted the pleas of *nolo contendere* coupled with consents to the entry of a judgment of guilty. The Government opposed the acceptance of *nolo* pleas offered by six of the defendants (primarily on the ground of repeated violations of antitrust laws by some of these defendants) and offered no objection to the acceptance of *nolo* pleas of the other six defendants.

1755. *United States* v. *Kaynar Manufacturing Company, Inc.*, et al., Civ. 63–1036–S (S.D. Calif.). On June 29, 1964, this case was terminated by entry of a consent judgment pursuant to a stipulation and proposed judgment requiring the thirty day waiting period which was filed May 28, 1964.

Final judgment enjoins defendants from agreeing to fix prices or submit noncompetitive or rigged bids.

1756. *United States v. Suburban Gas, et al.*, Cr. 63–183 (D. Ore.). On January 8, 1964, one corporation and one individual engaged in the sale and distribution of liquified petroleum gas (LPG), and were fined a total of $25,000.00 on their pleas of *nolo contendere*, thereby terminating the case.

1768. *United States* v. *International Ore & Ferlizer Corporation, et al.*, 63 Cr. 927 (S.D. N.Y.). On February 20, 1964, two corporations and three individuals were fined a total of $81,500.00 on their pleas of *nolo contendere*.

1778. *United States* v. *Jantzen Inc., et al.*, Cr. 64–25 (D. Ore.). See "Cases Instituted."

1783. *United States* v. *Philadelphia Association of Linen Suppliers, et al.*, Civ. 35168 (E.D. Pa.). See "Cases Instituted."

1785. *United States* v. *American Pipe and Construction Co., et al.*, Cr. 33338 (S.D. Calif.). See "Cases Instituted."

1786. *United States* v. *Kaiser Steel Corporation, et al.*, Cr. 33339 (S.D. Calif.). See "Cases Instituted."

1787. *United States* v. *United Concrete Pipe Corp., et al.*, Cr. 33340 (S.D. Calif.). See "Cases Instituted."

1788. *United States* v. *United States Industries, Inc., et al.*, Cr. 33341 (S.D. Calif.). See "Cases Instituted."

1789. *United States* v. *United States Steel Corporation, et al.*, Cr. 33342. (S.D. Calif.). See "Cases Instituted."

1798. *United States* v. *Standard Oil Company (N.J.) et al.*, Civ. 64–490 HW (S.D. Calif.). See "Cases Instituted."

1301. *United States* v. *Continental Can Company, Inc., et al.*, Civ. 112–387 (S.D. N.Y.). Trial of this case began June 13, 1960, and was concluded December 9, 1960, at which time the court granted defendants' motion to dismiss upon the completion of the Government's case. April 16, 1963, the court handed down an opinion in which it found that the merger did not violate Section 7 of the Clayton Act as glass containers and metal containers were two separate lines of commerce and there was no substantial lessening of competition in either.

On appeal to the Supreme Court, the decision of the district court was reversed June 22, 1964. The Supreme Court, in reversing the lower court held that the Government had made a *prima facie* showing, that the acquisition of Hazel-Atlas Glass Company by Continental Can was in violation of Section 7 of the Clayton Act. The Supreme Court remanded the case to the district court to allow Continental Can to set forth its evidence. On September 11, 1964, Continental rested its case without submitting any testimony or documents. The district court then ruled for the plaintiff and adjudicated the acquisition of Hazel-Atlas by Continental to be a violation of Section 7 of the Clayton Act.

The court on September 23, 1964, approved the sale of eight glass containers plants of the Hazel-Atlas division of Continental Can to the Brockway Glass Company. The court also ordered that Continental dispose of one remaining glass container plant at Plainfield, Illinois, within one year to a qualified purchaser.

Due to the existence of certain economic conditions in West Virginia the court ruled that Continental would be allowed to retain two plants in West Virginia as they were located in an extremely depressed economic area.

1312. *United States* v. *Driver-Harris Company, et al.*, Civ. 942–56 (D. N.J.). On December 2, 1964, this case was terminated by the entry of a final judgment against the last remaining defendant in this case, thus automatically placing into effect a series of judgments previously entered against the other defendants in the case.

The judgments call for compulsory licensing of the patents and disclosure of melting know-how and technical information to qualified newcomers on a reasonable royalty basis. They also prohibit price-fixing for the unpatented processing of the alloys and call for replacement of present price lists with new ones arrived at independently. In addition they contain prohibitions against such things as circulating prices in advance of notice to customers or restricting the distribution or manufacture of electrical resistance products and materials.

1399. *United States* v. *The White Motor Company*, Civ. 34593 (N.D. Ohio). The Government's motion for summary judgment was granted April 21, 1961. The court ruled that each of the challenged restraints is unlawful *per se*, namely (1) that provisions in the dealer and distributor franchise agreements restricted the territory within which the distributors or dealers could resell White trucks;

(2) that the franchise agreements contained restrictions on the person or classes of persons to whom the distributors could sell; and (3) that the franchise agreements contained certain price fixing provisions.

The defendant appealed to the Supreme Court claiming that summary judgment was improperly granted as to the territorial and customer restrictions. The Supreme Court reversed holding "that the legality of the territorial and customer limitation should be determined only after trial". The Court concluded that a trial is necessary to determine whether or not the restraints contained in White's franchise agreements have "no purpose except the stifling of competition." The Court pointed that in a vertical territorial restriction a showing of the actual impact must be made before a conclusion can be reached.

A final judgment was entered at the expiration of the usual thirty day waiting period on September 8, 1964. This judgment enjoins the defendant from agreeing with any distributor, dealer or any other person to limit, allocate or restrict the territories in which or the persons or classes of persons to whom any person may sell trucks. The defendant is also required to conform its contracts to the final judgment.

1434. *United States* v. *Greater Blouse, Skirt & Neckwear Contractors Association, Inc., et al.*, Cr. 158-181 (S.D. N.Y.). On April 13, 1964, all defendants were dismissed on motion of the government.

Slate Belt Apparel appealed to the CCA on April 23, 1964, and on July 20, 1964, the appeal was dismissed thus terminating the case.

1487. *United States* v. *The Singer Manufacturing Company*, Civ. 154-108 (S.D. N.Y.). After trial the court on May 1, 1962, rendered an opinion holding defendant had not conspired with alleged co-conspirators to unreasonably restrain interstate and foreign commerce in violation of Section 1 of the Sherman Act; defendant had conspired with alleged co-conspirator to monopolize or attempted by itself to monopolize interstate and foreign commerce in violation of Section 2 and directed entry of judgment dismissing the complaint on the merits.

On appeal the Supreme Court handed down an opinion June 17, 1963, reversing the district court. The Court found on the basis of a review of the record Singer had engaged in a combination and conspiracy with a Swiss corporation, and an Italian corporation to exclude Japanese zigzag sewing machines from the United States by a course of conduct designed to place the patents of the Swiss corporation in the hands of Singer for use against imports.

After remand the district court on June 2, 1964, in an opinion stated that the judgment is to provide for compulsory reasonable royalty licensing of the five patents involved and that both parties submit an appropriate decree in accordance with this opinion.

Final judgment entered July 2, 1964, holding Singer had unlawfully conspired to exclude from the United States multiple cam, machine carried household sewing machines manufactured in Japan. The judgment orders compulsory nondiscriminatory licensing of these patents but permits Singer to collect a reasonable royalty. The judgment enjoins infringement suits as to machines imported into the United States prior to the date of the judgment.

1544. *United States* v. *Union Carbide Corporation*, Civ. 12881 (W.D. Mo.). October 19, 1964, the case was terminated by the entry of a final judgment, pursuant to a stipulation filed September 4, 1964, requiring a 30-day waiting period.

The consent judgment prohibited the defendant (1) from "fair trade" sales of Prestone for a one year period; (2) for three years from selling through agents at prices fixed by the defendant and (3) from agreeing with distributors limiting the distributors in the selection of their customers or fixing the price for the sale of Prestone to any third person.

1546. *United States* v. *Becton, Dickinson and Company*, Civ. 567-60 (D. N.J.). On July 15, 1964, the case was terminated by entry of a final judgment, pursuant to a stipulation filed June 15, 1964, requiring a 30-day waiting period.

The judgment prohibits the defendant from fixing resale prices on reusable hypodermic syringes, even in states which permit resale price maintenance.

The final judgment also requires the defendant to grant licenses under both existing and five-year future patents and to furnish licensees technological information used by it in its own commercial manufacture of reusable hypodermic syringes. Also contained in the judgment are appropriate injunctive provisions against full-line forcing and refusals to deal with distributors unless distributors purchase other hospital hypodermic syringes.

1565. *United States* v. *American Cyanamid Company*, 60 Civ. 3857 (S.D. N.Y.). On August 4, 1964, after the usual 30 day waiting period a final judgment was entered.

The judgment requires Cyanamid to sell its melamine-producing facilities at Willow Island, West Virginia; to offer certain technical assistance to the buyer and to buy a certain portion of its melamine requirements from the buyer. Cyanamid had already agreed to sell the plant to the Fisher Chemical Company of New York City. In order to give the new company a market and in the hopes of encouraging others to enter the business of manufacturing melamine, the judgment places restrictions on the amount of melamine Cyanamid may manufacture during a ten-year period from the date of entry of the judgment.

The judgment also contains various injunctive provisions which are designed to prevent the reoccurrence of practices such as allocation of customers, territories and markets, agreements not to compete and boycotts. The defandant is enjoined from refusing to sell dicy to any person and from manipulating prices so as to restrain commerce in melamine and melamine resins and to grant patent licenses on both a royalty-free and a reasonable royalty basis.

1568. *United States* v. *A P Parts Corporation, et al.*, Civ. 8541 (N.D. Ohio). On November 9, 1964, after the usual 30 day waiting period a final judgment was entered.

The judgment enjoins the defendants from requiring any wholesaler not to purchase competitive exhaust system parts as a condition for purchasing defendant's exhaust system parts. The defendants are required within 60 days to give written notices of the provisions of the decree to wholesalers now franchised by defendants to purchase for resale defendants replacement exhaust system parts.

1605. *United States* v. *General Motors Corporation*, 61 CR 340 (N.D. Ill.). On December 28, 1964, the court granted Government's motion to *nolle prosequi*.

1656. *United States* v. *M. Klahr, Inc., et al.*, 62 CR. 347 (S.D. N.Y.). On April 27, 1964, the court allowed Klahr, Inc., to change its plea to guilty on all twelve counts of the indictment alleging conspiracies to restrict trade and monopolize commerce in violation of Sections 1 and 2 of the Sherman Act and to pay money to a union representative of their employees in violation of 18 U.S.C. 371, as well as nine actual payments to said representative in violation of Section 302(a) of Section 302(a) of the Taft-Hartley Act. Two officers said stockholders in M. Klahr, Inc. were permitted to change their pleas to *nolo*.

Trial of the remaining defendant began May 7 and concluded May 21, 1964, when the jury returned a verdict of guilty as to all ten counts charged.

May 28, 1964, fines in the total amount of $36,000 were imposed on the Corporation and two individuals on all counts. The two individuals were given suspended jail sentences and placed on probation for one and two years.

On June 18, 1964, the court denied in all respects the motion on the union official, for a judgment of acquittal or in the alternative for a new trial. Fines in the total amount of $5,500 were imposed and six months suspended jail sentence on each count to run concurrently; defendant placed on probation for 2 years. After the conclusion of the appeal period the case was terminated

1659. *United States* v. *M. Klahr, Inc., et al.*, Civ. 62 C 1576 (S.D. N.Y.). Final judgment entered December 22, 1964, after the usual 30 day waiting period.

The judgment enjoins the defendant venetian blind company, two of its officers and a local union president from entering into any contract, agreement, or plan with any manufacturer or seller to fix prices, rig bids or monopolize the venetian blind business in a tri-State New York metropolitan area.

1661. *United States* v. *Johns-Manville Corporation, et al.*, Cr. 21–118 (E.D. Pa.). On April 16, 1964, during the trial the court entered judgments of acquittal on all three counts for an individual, and on the Section 2 counts for the three other defendants. May 21, 1964, a jury returned a verdict of not guilty against two corporate and one individual defendant. The court held that the admitted evidence failed to establish absestos-cement pipe as a revelant product market separate from other types of pipe for water and sewage use.

The Government July 29, 1964, dismissed the three remaining individual defendants who were granted separate trials, thus terminating the case.

1665. *United States* v. *Greater New York Roll Bakers Assn., Inc., et al.*, 62 CIV 2030 (S.D. N.Y.). On November 19, 1964, after the usual 30 day waiting period a final judgment against nine of the ten defendants was entered terminating the case. The other defendant had consented to a judgment entered against it on June 26, 1963, and amended July 11, 1963.

The judgments prohibit the illegal practices and requires dissolution of the trade association. The judgments also prohibit the bakery defendants from belonging to any other organization the activities of which would be contrary to the terms of the judgment.

1670. *United States* v. *Corn Products Company, et al.*, Cr. 30937 (S.D. Calif.). On April 6, 1964, the court granted motion of the Government to dismiss one corporate defendant. The court granted remaining defendants motion to dismiss the indictment on the grounds of double jeopardy and collateral estoppel based on the case against Armour & Co. (BB–1669). Judgment was entered August 18, 1964. The Government noted an appeal to the Supreme Court which was withdrawn by stipulation September 29, 1964.

1680. *United States* v. *Kurtz Bros., et al.*, Civ. 31654 (E.D. UP.).

1681. *United States* v. *J. L. Hammett Company, et al.*, Civ. 31655 (E.D. Pa.). On August 21, 1964, after the usual 30 day waiting period a consent judgment was entered in these cases. The judgments enjoin defendants, with respect to school supplies, from price fixing or imposing restrictions as to the prices to be charged; allocating or dividing territories, markets, or customers; hindering or restricting others from purchasing from or selling to any third person; or entering into any form of exclusive distributorship with any other defendant in either proceeding. Further, all defendants have to notify schools to which they have sold in the past of the provisions of the judgment and provide on major bids or quotes to schools, a certificate of noncollusion, which is to be an affidavit whenever requested.

1708. *United States* v. *Carlon Products Corporation, et al.*, Cr. 8146 (S.D. Ohio). On November 10, 1964, 6 corporations and 5 individuals engaged in the sale of acrylonitrile-butadiene-styrene (ABS plastic pipe) were fined a total of $99,000.00 on their pleas of *nolo contendere*.

1709. *United States* v. *Triangle Conduit & Cable Co., Inc., et al.*, Cr. 8147 (S.D. Ohio). On November 10, 1964, 6 corporations and 6 individuals engaged in the sale of polyethylene plastic pipe were fined a total of $93,000.00 on their pleas of *nolo contendere*.

1711. *United States* v. *Anaconda American Brass Company, et al.*, Cr. 10–725 (D. Conn.). On March 4, 1963, 8 corporations and 5 individuals were fined a total of $158,000.00 on their pleas of *nono contendere*, accepted over the Government's objections.

On May 20, 1963, 1 corporation and 1 individual were fined a total of $40,000.00 on *nolo* pleas then the court directed an entry of finding of guilty. On March 31, 1964, 1 individual was *nolle prosequi*. On April 6, 1964, 1 corporation was fined a total of $5,000.00 on a plea of *nolo contendere*.

On December 28, 1964, the last corporation was *nolle prosequi*, thus terminating the case. Total fines of $203,000.00 were imposed in the case.

1715. *United States* v. *Aluminum Company of America, et al.*, Cr. 21243 (E.D. Pa.). On October 5, 1964, 6 corporations engaged in the sale of aluminum conductor cable were fined a total of $300,000.00 on their pleas of *nolo contendere*, accepted over the Government's objections.

1721. *United States* v. *Honeywell, Inc., et al.*, 462 CIV 348 (D. Minn.). Final judgment entered October 7, 1964, after the usual 30 day waiting period.

The judgment enjoins the defendants from fixing prices, from submitting collusive bids, and from allocating customers, territories or markets. In addition, the defendants are enjoined from exchanging pricing and bidding information and are required for a period of five years to file an affidavit of non-collusion with each bid submitted on a government project. The judgment also provides that the Government may use evidence as to the activities of the defendants occurring prior to entry of the judgment to prosecute antitrust violations alleged to have occurred after the entry of the judgment.

1774A. *United States* v. *Cascadia Lumber Company, et al.*, Cr. 64–73 (D. Ore.). On December 9, 1964, after trial the court granted defendants' motions for acquittal holding that the Government failed to produce sufficient evidence from which a jury could infer a conspiracy.

1775. *United States* v. *Alexander & Baldwin, Ltd., et al.*, Civ. 2235 (D. Hawaii). On August 17, 1964, after the usual 30 day waiting period, a final judgment was entered terminating the case.

The judgment breaks up the control held by four of the "Big Five" Hawaiian companies, (referred to as the "Big Four") named as defendants, over the Matson Navigation Company, aso named as a defendant which carries approximatey

80 percent of the cargo shipped between the mainland and Hawaii. The judgment, in so doing, requires three of the "Big Four" to divest their stock interest in Matson within sixty days. The fifth member of the "Big Five" was not named as a defendant but is enjoined under the judgment from acquiring Matson stock. The judgment further forbids the interlocking directorates and other arrangements by which the companies owning Matson stock assertedly had been able to stifle shipping competition.

The decree also contains a "Sword of Damocles" provision, directed against Alexander & Baldwin. Under this provision, the Government may request an order at any time after ten years from the date of entry of the final judgment requiring that Alexander & Baldwin divest itself of its stock interest in Matson. It is provided that the court shall order divestiture unless (1) Alexander & Baldwin is able to show the court that competition has been restored in Hawaii West Coast shipping, or (2) if competition does not exist, that this lack of competition was not brought about by Alexander & Baldwin's stock ownership in Matson.

1779. *United States* v. *United States Steel Corporation, et al.*, 4–64 Criminal 28 (D. Minn.). On September 16, 1964, 6 corporations and 6 individuals engaged in the sale of structural steel were fined a total of $100,000.00 on their pleas of *nolo contendere*, accepted over the Government's objections.

1801. *United States* v. *J. R. Simplot Company, et al.*, Cr. 33611 (S.D. Calif.). On July 28, 1964, 5 corporations engaged in the sale of fertilizer (dry phosphatic materials) were fined a total of $66,500.00 on their pleas of *nolo contendere*, thereby terminating the case.

1802. *United States* v. *Arcos Corporation, et al.*, Cr. 64–200 (N.D. Ohio). On November 25, 1964, 4 corporations engaged in the sale of stainless steel welding electrodes were fined a total of $25,500.00 on their pleas of *nolo contendere*.

1821. *United States* v. *Commercial Credit Company, et al.*, Civ. 64 C 1605 (N.D. Ill.). See "Cases Instituted".

1207. *United States* v. *The Watchmakers of Switzerland Information Center, Inc., et al.*, Civ. 96–170 (S.D. N.Y.). Twelve importer defendants and an advertising agency, entered consent judgments March 9, 1960. The judgments enjoin the consenting defendants from agreeing to restrict the manufacture of watches and watch parts in the United States and from conspiring to eliminate United States exports and imports of watches, watch parts and watch machinery. The defendants are also restrained from continuing to fix prices, from black-listing companies, from agreeing to offer uniform guarantees, and from otherwise restricting the distribution of watches, watch parts, and watch machinery. On December 20, 1962, after trial of 10 defendants the court found that defendants had conspired in violation of Section 1 of the Sherman Act and Section 73 of the Wilson Tariff Act.

The court had found that the 4 American watch manufacturers involved had conspired with 5 Swiss defendants to eliminate competition in the United States production, import, export and sale of watches, watch parts and watchmaking machinery. The conspiracy had been effectuated through defendants' industry-wide agreements known as the Collective Conventions which were designed to prevent the development and growth of competitive watch industries outside of Switzerland, particularly in the United States.

The court held that through the Collective Convention, defendants had restricted and limited the manufacture of jeweled-lever and cylinder escapement watches and parts in the United States, and the United States import and export of watches, watch parts and watchmaking machinery. The conspiracy was further implemented through agreements among various organizations restricting the import into the United States of Swiss watchmaking machinery and through cartel agreements with the Britsh, French and German watch industries restricting the United States import and export of watch machinery and watch parts. The court found that the American defendants Bulova, Benrus, Gruen and Longines-Wittnauer actively participated in the conspiracy through their adherence to these agreements and through their execution of individual contracts restricting the volume of watches produced in the United States and limiting the United States Export of domestically produced watches and the re-export of Swiss watches. These agreements were also intended to protect American importers from price competition and to eliminate the sale of non-Swiss watches in the United States. Further, defendants had boycotted and black-listed companies engaged in the sale of Swiss watches in the United States who did not comply with the "regulations" promulgated by the Swiss defendants.

Final judgment was entered January 22, 1964. The injunctive provisions of the judgment strike down all the restrictive agreements and regulations so that there will not be any private concerted limitation upon production, imports, exports and sale of watches, watch parts and watchmaking machinery in the United States.

Two of the Swiss defendants, one a trade association and the other a holding company of Swiss watch parts manufacturers, are required, in effect, to assure that United States manufacturers may freely obtain Swiss watch parts and watches if such parts and watches are being sold to anyone outside of Switzerland. Because of the United States manufacturing defendants having Swiss-based plants, the judgment contains rather elaborate provisions seeking to prevent the Swiss defendants from discriminating against those plants for their taking action required or prohibited by the judgment. The judgment, without passing on the legality of conduct required by Swiss law, exempts acts in Switzerland required by Swiss law.

Several defendants filed notices of appeal. On December 4, 1964, the Government filed a motion to modify the final judgment of January 22, 1964. The Government's motion resulted from a series of meetings at the request of the State Department with representatives of the Swiss watch industry and, later, the attorney for the Swiss Government seeking ways to resolve probelms which the Swiss believed were presented by the judgment. At the hearing it was brought out that the changes would not affect the basic antitrust objectives achieved by the original judgment. On January 7, 1965, the court filed an opinion granting the motion of the Plaintiff for modification on the condition that all parties withdraw notices of appeal.

The Government on January 27, 1965, filed a judgment revised to reflect the modifications granted. This judgment became final February 4, 1965, thus terminating the case.

1460. *United States* v. *Kennecott Copper Corporation*, Civ. 147–231 (S.D. N.Y.). On July 2, 1964, the district court filed an opinion, findings of fact and conclusions of law, finding for the Government and ordering divestiture. The court held that Kennecott's acquisition of Okonite violated Section 7 of the Clayton Act in both the refined copper and paper insulated power cable lines of commerce in the United States.

Before entry of the judgment the district court judge died. A new judge was assigned and the case was to proceed upon the trial record, the opinion and findings filed July 2, 1964. Judgment was entered November 24, 1964. The defendant is ordered not merely "to divest itself" of Okonite, but also to accomplish this divestiture so that Okonite "shall be reconstituted as an independent corporation capable of existence as a viable business." The judgment also incorporated an injunction against further acquisitions.

The Supreme Court on June 1, 1965, per curiam affirmed the judgment of the district court.

1609. *United States* v. *Kaiser Aluminum & Chemical Corporation*, Civ. 2795, (D. R.I.). On February 23, 1965, the case was terminated by the entry of a final judgment pursuant to a stipulation filed January 22, 1965, requiring a 30-day waiting period.

The judgment provides for the sale of the Bristol plant within nine months from entry of the judgment, to an eligible purchaser which will keep it in operation. In the event Kaiser is unable to sell the plant within nine months, despite a bona fide effort, Kaiser will then be relieved of its obligation to sell.

The judgment also enjoins Kaiser from acquiring stock or other assets in any company manufacturing electrical conductor wire or cable products, for a period of five years.

1626. *United States* v. *Standard Oil Company (Indiana), et al.*, Civ. 40212 (N.D. Calif.). At the conclusion of the trial on June 19, 1964, the court announced that the acquisition of Honolulu Oil Corporation did not violate either Section 1 of the Sherman Act or Section 7 of the Clayton Act. The court filed a memorandum opinion and findings of fact and conclusions of law holding that the Government had failed to establish violations. Judgment dismissing the complaint with prejudice was entered July 29, 1964.

The Government noted an appeal to the Supreme Court which was dismissed March 25, 1965.

1653. *United States* v. *South Florida Asphalt Company, et al.*, Cr. 108–62–M–CR–EC (S.D. Fla.). The defendants' motions to dismiss the information were granted on March 28, 1962, for failure to allege a restraint of interstate or foreign commerce.

The Government appealed and the Court of Appeals for the fifth circuit reversed the lower court, on March 26, 1964. The appellate court held that the conspiracy in the flow of commerce was sufficiently alleged by the information which was construed to state that bitumen was shipped into Florida with a definite knowledge and understanding on the part of the producers that the defendants would purchase it. These alleged arrangements and understandings were sufficient, even though the shipments were not in response to direct orders. The Court of Appeals also held that the interstate and foreign commerce was not terminated either by the refiners' storage of the bitumen in tanks in Florida; or by the defendants' mixing of the bitumen with local materials in order to make the paving asphalt. Defendants' petition for rehearing was denied on June 10, 1964, and the Supreme Court denied certiorari on October 19, 1964.

One defendant was dismissed on motion of the plaintiff November 25, 1964. All defendants except East Coast Asphalt Co. pleaded *nolo contendere* and were fined $30,000.00, December 18, 1964.

The remaining defendant East Coast Asphalt Co. was fined $12,000.00 on its plea of *nolo contendere* entered January 26, 1965, bringing the total fines imposed in the case to $42,000.00.

1664. *United States* v. *Interborough Delicatessen Dealers Association, Inc., et al.*, 62 CR 515 (S.D. N.Y.). On January 21, 1965, 2 defendants were dismissed. On January 26, 1965, 12 defendants were found not guilty by the jury. The Government on April 12, 1965, entered a *nolle prosequi* order for the 2 remaining defendants.

1699. *United States* v. *The Elgin Corporation, et al.*, Civ. 62 C 1544 (N.D. Ill.). On February 5, 1965, the case was terminated by the entry of a final judgment pursuant to a stipulation filed January 6, 1965, requiring a 30-day waiting period.

The judgment enjoint the defendants from continuing the conspiracy and requires that the defendants advise its distributors that they may sell the product to whomever and wherever the distributors wish.

1700. *United States* v. *H. P. Hood & Sons, Inc., et al.*, Civ. 62–601–C (D. Mass.). On March 22, 1965, the 3 defendants paid a total of $295,000.00 as damages settlement in the case. The complaint was then dismissed thus terminating the case.

1701. *United States* v. *Thrifty Drug Stores, Co., Inc., et al.*, Civ. 1116–62K (S.D. Calif.) On January 7, 1965, the case was dismissed as the term of defendant Straus as director of the Sav-on board expired and he was not reelected. After the complaint was filed Thrifty sold all of its Sav-in stock thus making the case moot.

1724. *United States* v. *Tubesales, et al.*, Cr. 19592 (D. Ore.)., On April 16, 1963, 3 defendants pled *nolo contendere* and were fined a total of $20,000.00. On November 12, 1963, a trial jury returned a verdict of guilty as charged against the remaining defendant Esco Corporation. A fine of $10,000.00 was imposed February 14, 1964, on this defendant after the court denied motions for judgment of acquittal and for a new trial.

On January 20, 1965, the Court of Appeals for the Ninth Circuit sustained the jury conviction of Esco Corporation. The court held that the evidence supported the conclusion that there was a conspiracy among the principal distributors as charged that Esco's participation was established by independent evidence and, accordingly, evidence concerning the acts and declarations of the *nolo* defendants in furtherance of the conspiracy was properly admitted. Upon payment of fine the case was terminated March 22, 1965.

1725. *United States* v. *Tubesales, et al.*, Civ. 62–512 (D. Ore.). Three defendants entered a consent judgment May 16, 1963, pursuant to a stipulation filed April 16, 1963, requiring a 30-day waiting period. These defendants are enjoined and restrained from entering any contract agreement, understanding or conspiracy among themselves or with any other person to fix prices for sale of stainless steel pipe and tubing among themselves or any other person and to submit collusive or rigged bids for the sale of stainless steel pipe or tubing.

The remaining defendant, Esco Corporation entered a similar stipulation March 22, 1965, which became final April 22, 1965. This judgment also contains injunctions against the price-fixing activities charged.

1742. *United States* v. *H. P. Hood & Sons, Inc., et al.*, Cr. 63–110–C (D. Mass.). On March 22, 1965, the court entered judgments of acquittal as to both defendants, after the jury returned a verdict of not guilty on March 19, 1965.

1744. *United States* v. *Taylor Forge and Pipe Works, et al.*, 63 CR 313 (S.D. N.Y.). On November 21, 1963, 1 defendant was fined $20,000 on its plea of *nolo contendere*. On January 18, 1965, the 3 remaining defendants entered pleas of *nolo contendere* and were fined $52,500. Total fines of $72,500 were imposed in the case.

1750. *United States* v. *Sperry Rand Corporate, et al.*, Civ. 63–C–1100 (N.D. Ill.). On January 22, 1965, the case was terminated by the entry of a final judgment, pursuant to a stipulation filed December 23, 1964, requiring a 30-day waiting period.

The judgment enjoins the defendants from allocating customers and from submitting rigged bids and price quotations to prospective purchasers of library shelving and related furniture and equipment used in libraries.

1765. *United States* v. *Studebaker Corporation*, Civ. 01863 (D. Nebr.). On May 7, 1965, the case was terminated by the entry of a final judgment, pursuant to a stipulation filed April 2, 1965, requiring a 30-day waiting period.

The judgment forbids the defendant from entering into any agreement to fix prices or to allocate customers or markets in the sale of the additives, used as lubricating agents. It also prohibits defendant from canceling or threatening to cancel any distributor because of the persons to whom, the territories in which, or the prices at which such distributor sells the products. It order Studebaker to notify each of the distributors of its additives that they are free to sell the products to anyone, anywhere, at any price they determine.

The judgment provides that after two years Studebaker may exercise any legal rights it may have to "fair trade" the products under federal or state legislation.

1792. *United States* v. *Crown Textile Manufacturing Company, Inc., et al.*, Civ. 35420 (E.D. Pa.). On May 24, 1965, the case was terminated by the entry of a final judgment, pursuant to a stipulation filed April 22, 1965, requiring a 30-day waiting period.

The judgment requires the defendants to divest themselves of, Puritan Looms, Inc., and Arel-Dillon Mfg., Co., two other affiliated textile manufacturing and selling firms. The judgments prohibits perpetually any joint acquisitions by the defendants of a competitor for 5 years unilaterally acquiring any competitor and for an additional 5 year period any such acquisition except on obtaining court approval.

1794. *United States* v. *Piper Aircraft Corporation*, Civ. 8447 (M.D. Pa.). On June 16, 1965, the court approved a voluntary stipulation of dismissal without prejudice.

1799. *United States* v. *Allied Chemical Corporation, et al.*, 64 CIV 1175 (S.D. N.Y.). On January 7, 1965, the case was terminated by the entry of a final judgment, pursuant to a stipulation filed December 7, 1964, requiring a 30-day waiting period.

The judgment was designated to restore the status quo prior to the commencement of the acquisition negotiations and to insure that both companies would remain independent in the future. The judgment enjoins defendant Allied Chemical Corporation from acquiring or holding any stock or assets of General Foam or any financial interest in that company. Both defendants are enjoined from retaining or using any of the tangible or intangible assets of the other which they have acquired after the start of the acquisition negotiations and prior to the entry of this judgment. The defendants are also forbidden to have interlocking directorates and to form any type of business association for the commercial production of sale of urethane chemicals or urethane foam.

1803. *United States* v. *Arcos Corporation, et al.*, Civ. 64–334 (N.D. Ohio). On May 11, 1965, 4 defendants were dismissed, satisfaction having been received in full settlement from all defendants by the payment of $160,000.00 damages.

1813. *United States* v. *Price's Creameries, Inc., et al.*, Cr. 21,883 (D. N. Mex.). On June 16, 1965, the court dismissed 1 defendant and the jury acquitted the 3 remaining defendants thus terminating the case.

1818. *United States* v. *Empire Steel Corporation, et al.*, Cr. 174–94 (D. Colorado). On January 15, 1965, 4 defendants were fined a total of $60,000.00 on there pleas of *nolo contendere*, $40,000.00 of which was suspended. The 1 remaining defendant pled *nolo contendere* and was fined $20,000.00 on May 28, 1965. $13,000.00 was suspended. Total fines of $80,000.00 were imposed in the case, of which $53,000.00 was suspended. All corporate defendants, after having been fined, were placed upon probation by the court for a period of two years.

1822. *United States* v. *Burlington Industries, Inc., et al.*, 64 CR 871 (S.D. N.Y.). On November 23, 1964, 1 individual was dismissed, who was deceased. On November 23, 1964, and December 3, 1964, the court imposed fines in the amount of $30,000 on the 4 remaining individuals on their pleas of *nolo contendere*. On January 18, 1965, and March 18, 1965, the 6 corporate defendants were fined $76,000 on their *nolo* please, thus bringing the total fines imposed to $106,000. The court accepted the *nolo* pleas over the objections of the Government.

1826. *United States* v. *The Bridge Construction Corporation, et al.*, Cr. 64–28 (D. Maine). On April 28, 1965, after trial of the 2 defendants the jury returned a verdict of not guilty.

1857. *United States* v. *Russell Stover Candies, Inc., et al.*, Civ. 11,474 (W.D. N.Y.). See "Cases Instituted".

1297. *United States* v. *General Motors Corporation*, Civ. 15816, (E.D. Mich.). On December 31, 1965, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 30, 1965, requiring a 30-day waiting period.

The judgment requires GMC to increase the possibilities for competition in the bus manufacturing field. The judgment provides extensive injunctive relief against General Motors and provides for possible divestiture proceedings against the corporation in the future.

General Motors agreed to make available all the new bus patents it develops over the next 10 years; and for the patents developed within the next 5 years, it cannot charge any royalties at all for a 5 year period. The Government has reserved the right to seek divestiture of part of General Motors' bus operation at such time as market conditions make divestiture more economically feasible than it would be in the present very limited bus market.

The judgment requires General Motors to: sell its buses to all customers without discrimination; make all of its engines, transmissions, and bus parts available for sale to other bus manufacturers; open its financing facilities to bus buyers even if buyers use General Motors financing to buy competitors' buses; and permit other bus manufacturers to use all General Motors' current bus patents freely and without payment of royalties.

1307. *United States* v. *Continental Can Company, Inc.*, Civ. 114–177, (S.D. N.Y.). On September 8, 1965, Judge Bryan on the motion of both parties ordered the dismissal of this action without prejudice, because of changes in circumstances i.e., the success of Hazel-Atlas case and Continental's decrease in the percentage share of the principal lines of commerce.

1607. *United States* v. *Aluminum Company of America, et al.*, Civ. 61–C–147, (E.D. Mo.). On September 22, 1964, after trial the court filed an opinion in the form of findings of fact and conclusions of law, holding that the acquisition of Cupples (a fabricator of aluminum curtain wall and windows) by Alcoa violated Section 7 of the Clayton Act because of its anticompetitive impact in the Aluminum curtain wall line of commerce. The court ordered divestiture of the stock of Cupples. With respect to a new plant in Corona, California, built after the acquisition, which is owned by Alcoa and operated by Cupples, the court ordered a further hearing to determine the method and scope of the divestiture.

Further hearings were held in October and November of 1964. On December 4, 1964, a final judgment was entered which requires Alcoa to divest itself within 1 year of (1) the Corona facility and (2) all interest in Cupples. A plan of divestiture was required to be submitted within 60 days.

On appeal, the Supreme Court on October 11, 1965, affirmed without opinion, the judgment of the district court.

On appeal, the Supreme Court on October 11, 1965, affirmed without opinion, the judgment of the district court.

1616. *United States* v. *Morton Salt Company, et al.*, 461 Civ. 162, (D. Minn.). On March 26, 1962, a final judgment was entered as to 1 defendant, Carey Salt. The judgment enjoins the defendant from eliminating or suppressing competition in the distribution or sale of rock salt; establishing, maintaining stabilizing or fixing prices, pricing methods for sales to any third person; exchanging information concerning any prices of rock salt to be sold to any third person; submitting non-competitive, collusive or rigged bids on quotations to any third person; hindering, restricting or limiting the right of any purchaser to purchase rock salt from any source; or allocating or dividing territories, markets or customers.

On November 4, 1963, a similar final judgment was entered against International Salt Company. On December 4, 1963, it was stipulated that the effectiveness of the judgment be stayed until and including January 4, 1964. On January 4, 1964. On January 5, 1964, the judgment shall be fully effective except for paragraph VI(D) which is stayed until and including February 5, 1964.

This civil case as to the remaining defendants was submitted the record made in the criminal case. On August 6, 1964, the district court ruled that defendants had violated Section 1 of the Sherman Act by fixing prices in the sale of rock salt to public authorities under sealed bids. This ruling is contra to a jury which had previously acquitted the defendants after trial in a criminal case on the same charges.

The court entered a final judgment as to Morton Salt and Diamond Crystal, similar to the consent judgment previously entered with International Salt. On February 19, 1965, court entered an amended final judgment in which it permitted the defendants to maintain exclusive territorial distributorships in selling rock salt.

Defendants appealed, claiming that the evidence showed mere conscious parallelism, that *res judicata* barred the civil action, and that the civil injunctive suit constituted double jeopardy (on the theory that government injunctive actions are punitive because they set the stage for treble damage actions). The Supreme Court on October 25, 1965, however, affirmed *per curiam* holding that a civil action is not barred by prior decision in a criminal prosecution, and that parallel behavior, when accompanied by other evidence of collaboration, will support a conspiracy finding.

1618. *United States* v. *Ward Baking Company, et al.*, 4735–CIV–J, (S.D. Fla.). On May 8, 1962, the count with respect to damages was settled upon the payment of $44,000 by the defendants. As to the count seeking injunctive relief, the court over the Government's objection, on December 10, 1962, entered a judgment proposed by the defendants prior to trial of the case. This judgment was reversed by the Supreme Court on March 9, 1964. It held that the Government might have introduced evidence under this complaint to justify in whole or in part the additional relief sought and that, therefore, under the circumstances of this case, the Court could not resolve whether these items were appropriate without a trial of the facts. The Court stressed the broad scope of potential relief in antitrust cases beyond the specific violations alleged in the complaint. And it held that Section 5 of the Clayton Act did not give defendants "the privilege of rejecting the bona fide demands of the Government and at the same time avoiding an adjudication on the merits of the complaint". The consent judgment entered on September 1, 1965, enjoins the defendants from entering into any agreement to fix or stabilize prices or submit rigged bids or allocate customers for the sale of any bakery products to the United States, its agencies, or instrumentalities. Further, for a period of 3 years, the defendant with the exception of 1 bakery, is enjoined from concerted action to fix prices, or submit rigged bids for the sale of bakery products to any third person in the States of Georgia and Florida, thus terminating the case.

1660. *United States* v. *Bethlehem Steel Company, et al.*, 62 CR 393, (S.D. N.Y.). On October 25, 1962, 5 individual defendants were fined a total of $44,000 on their plea of *nolo contendere*. On July 26, 1965, the 5 corporate defendants with the consent of the Government and the court, changed their pleas to *nolo contendere* and were fined a total of $150,000. Total fines of $194,000 were imposed in the case.

1662. *United States* v. *Greater New York Roll Bakers Assn., Inc., et al.*, 62 CR 513, (S.D. N.Y.). On December 17, 1962, 1 corporation and 1 individual pled *nolo* and fines totalling $12,500 were imposed. On January 6, 1964, January 27, 1964, February 19, 1964, March 19, 1964 and April 6, 1964, the court imposed fines totalling $40,000 on 7 corporations and 7 individuals on their pleas of *nolo*. On November 16, 1965, 1 trade association and 2 individuals were *nolle prossed* thus terminating the case. The fines imposed total $52,500.

1663. *United States* v. *Sabrett Food Products Corp., et al.*, 62 CR 514, (S.D. N.Y.). On October 22, 1965, the case was *nolle prossed* as to all defendants.

1667. *United States* v. *Interborough Delicatessen Dealers Association, Inc., et al.*, 62 CIV 2032, (S.D. N.Y.). On October 15, 1965, the case was dismissed by a stipulation.

1674. *United States* v. *The Learner Company, et al.*, Cr. 11736, (D. Hawaii). On September 1, 1965, the case was dismissed on motion of the Government.

1687. *United States* v. *Ward Baking Company, et al.*, Civ. 31666, (E.D. Pa.). All but 1 defendant had agreed to consent judgments which were entered March 2, 1964, June 26, 1964, and August 21, 1964. These 3 judgments enjoin the defendants from price fixing or imposing restrictions as to the prices to be charged; allocating or dividing territories, markets or customers; hindering or restricting others from purchasing from or selling to any third person; and hindering or restricting others from engaging in the manufacture distribution or sale thereof for resale with respect to bread and bread rolls. The judgment of March 2, 1964, also enjoins the defendant from communicating to or exchanging any prices; threatening, coercing, inducing, or attempting to induce any person to refrain from selling any bakery product to any other person, or to refuse to sell any bakery products to any other person; threatening to discontinue or discontinuing selling and purchasing any bakery product to any other person in order to reduce, prevent, hinder, eliminate, or suppress competition; and threatening to put any person out of the business of manufacturing, distributing or selling any bakery products.

On June 21, 1965, after trial, the court found that Ward Baking had not participated in a conspiracy to increase, fix and maintain the prices of economy bread sold in the Philadelphia, Pennsylvania and Trenton, New Jersey area.

1704. *United States* v. *The House of Seagram, Inc., et al.*, 417-62-CIV-DD, (S.D. Fla.). On March 25, 1965, the district court after trial entered findings of fact and conclusions of law holding that defendants had been parties to an unlawful combination and conspiracy to enforce and maintain resale prices on Seagram brands against individual retail liquor dealers by various acts of threats, intimidation and coercion in violation of Section 1 of the Sherman Act.

The judgment entered September 23, 1965, enjoins Seagram from entering into or claiming any right under any contract, agreement, plan, or program with any manufacturer, wholesaler, or retailer to fix, establish, maintain, or suggest prices or other terms or conditions for the sale of any alcoholic beverages to any third person, to limit the promotion or advertisement of any alcoholic beverages by any retailer, or to police, or otherwise enforce resale price maintenance on alcoholic beverages. Seagram is prohibited from making sales of alcoholic beverages to any wholesaler upon the condition that such wholesaler prescribe resale prices to any retailer or otherwise interfere in the independent business judgments of any retailer. Seagram is precluded from selling alcoholic beverages to any wholesaler who refuses to sell liquor products to any retailer on its regular terms and conditions and is prohibited from acquiring or retailing any financial interest in or participation in the management of any wholesaler.

1710. *United States* v. *The B. F. Goodrich Company, et al.*, Cr. 64-438, (N.D. Ohio). On November 10, 1964, the court imposed fines of $103,500 on 6 corporations and 4 individual defendants who, on September 23, 1964, had changed their pleas to *nolo*.

United States Steel Corporation and Joseph T. Ryerson & Sons, Inc., did not change their pleas to *nolo*. On October 7, 1965, a jury trial began in Youngstown, Ohio. After trial, which lasted four weeks, the jury on October 29, 1965, returned verdicts of not guilty as to these remaining 2 defendants.

1723. *United States* v. *Flynn-Learner, et al.*, Civ. 2109, (D. Hawaii). On October 30, 1964, the court granted Government's motion to strike the demand for a jury trial and denied the alternative motion for a jury trial as a matter of discretion. The court also denied the motion for severance and the motions of Flynn-Learner and its parent grounded on double jeopardy, unusual punishment, and *res judicata* in this civil damage case.

At a hearing November 2, 1964, on motions by defendants for certification to the Ninth Circuit on the adverse rulings on double jeopardy, unusual punishment and *res judicata* questions, the court announced it had doubts of its ability to give defendants a fair trial. The court reversed itself on the jury trial question, the defendants waived their severance motion and withdrew their motion to appeal.

Trial before a jury began December 2, 1964. The Government's principal witness claimed privilege under the Fifth Amendment on the ground that the Antitrust Immunity Statute did not furnish him immunity for possible prior perjury committed in the prior companion criminal action, said prior perjury having been occasioned by Government counsel. The trial court held the witness in contempt, sentenced him to 6 months imprisonment, suspended sentence and recessed the trial to permit appeal. The Ninth Circuit, on March 17, 1965, affirmed the conviction, holding the Antitrust Immunity Statute immunized prior perjury.

On May 19, 1965, trial resumed and the recalcitrant witness purged himself of the contempt citation by taking the stand. The Government educed testimony under the "hostile witness" rule. Witness claimed his prior testimony of price fixing and bid rigging had been induced by Government counsel. The trial court permitted use of the prior testimony of this witness as substantive evidence of the violations charged.

On June 3, 1965, the jury returned verdicts in favor of the defendants on both counts of the complaint. On September 1, 1965, the district court denied the Government's motion for a new trial.

1743. *United States* v. *United States Steel Corporation, et al.*, 63 CR 312, (S.D. N.Y.). On November 21, 1963, 1 corporation was fined $35,000. On January 11, 1965, and January 18, 1965, the court imposed fines on 2 corporations which amounted to $70,000. On August 18, 1965, the remaining 2 corporations were fined a total of $75,000, thus bringing the total amount of fines imposed on *nolo* pleas by all defendants to $180,000.

1751. *United States* v. *Blaw-Knox Company, et al.*, 63 CR 602, (S.D. N.Y.). On November 21, 1962, the court imposed fines in the amount of $46,500 on 1 corporation and 2 individual defendants on their pleas of *nolo contendere*. On December 11, 1964, 1 corporation pled *nolo* and was fined $40,000. On January 4, 1965, and January 18, 1965, the court imposed fines in the amount of $88,500 on 2 corporations and 3 individual defendants on their pleas of *nolo*. On August 18, 1965, and September 28, 1965, 4 corporations and 3 individual defendants pled nolo and total fines imposed were $92,500. On December 2, 1965, 1 individual defendant was fined $1,500 on a plea of *nolo* thus bringing the total fines imposed to $269,000.

1780. *United States* v. *International Ore & Fertilizer Corporation, et al.*, 64–34–Civil–Tampa, (M.D. Fla.). On April 6, 1964, International Ore was dismissed by the court as a defendant as it had been dissolved after its acquisition by Occidental Petroleum Corporation. The remaining defendants were dismissed without prejudice on September 1, 1965, by the Government as the changed industry conditions were such that no competitive effects could be obtained by a decree which would render the industry substantially more competitive.

1781. *United States* v. *American Cyanamid Company, et al.*, 6439–Civil–Tampa, (M.D. Fla.). Because of the merger of The American Agricultural Chemical Company, Virginia Carolina Chemical Corporation and Smith-Douglass Company, Inc. into larger corporations after the filing of the complaint, these defendants and Continental Oil Company and Socony Mobil Oil Company, Inc., were dismissed by the court April 28, 1964 and December 11, 1964, respectively.

On October 28, 1965, a final judgment as to the remaining defendants was filed pursuant to the stipulation filed September 28, 1965, requiring a 30-day waiting period. By this judgment the defendants are prohibited from entering into any contract or agreement to fix prices for the sale of phosphate rock. The defendants were further enjoined for a period of 10 years from the date of the decree from discussing with any other producer of phosphate rock what changes would be made in the sale price of phosphate rock because of the changes in the cost of fuel or labor. The defendants were also enjoined for a period of 5 years from including in any of their standard 1 year contracts either an escalation clause or reopening provision. They are further enjoined for a period of 1 year from carrying out or enforcing any provisions of a contract for the sale of phosphate rock which contained either an escalation clause or reopening provision except upon the specific request of a particular buyer. They are also required to independently issue new prices and terms for the sale of phosphate rock. The judgment is to be in effect for 20 years.

1795. *United States* v. *Beech Aircraft Corporation*, Civ. W3129, (D. Kansas). On November 8, 1965, the case was terminated by the entry of a final judgment pursuant to a stipulation filed October 8, 1965, requiring a 30-day waiting period. The judgment enjoins Beech from conspiring with its distributors and dealers to fix prices and limit the territories within which and the persons to whom the distributors and dealers could sell Beech aircraft.

1796. *United States* v. *United States Steel Corporation, et al.*, 64 CR 344, (S.D. N.Y.). On July 23, 1965, 8 corporate defendants were fined $50,000 each for a total of $400,000 on their pleas of *nolo*. On September 21, 1965, the 2 individual defendants were fined a total of $35,000, having previously entered *nolo* pleas. Total fines imposed in the case were $435,000.

1800. *United States* v. *Archer-Daniels-Midland Company, et al.*, Cr. 86–27C, (W.D. N.Y.). On March 22, 1965, 12 corporations were fined a total of $190,000 on

their pleas of *nolo*. On October 18, 1965, the 6 individuals were fined a total of $15,000 on pleas of *nolo* previously entered. The total fines imposed were $205,000.

1814. *United States* v. *California Chemical Company, et al.*, Civ. 64–873–S. (S.D. Calif.). April 8, 1965, 1 corporate defendant was dismissed. On August 23, 1965, the case was terminated as to the 3 remaining defendants by the entry of a final judgment pursuant to a stipulation filed July 22, 1965, requiring a 30-day waiting period.

The judgment enjoins the defendants, with respect to phosphatic fertilizers, from entering into any agreement with any other producer of the material which has the purpose or effect of fixing the prices, terms or conditions at which or the class or identity of customers to whom phosphatic fertilizer is to be sold. Each of the defendants is individually required to review its published prices and other terms and conditions of sale in accordance with lawful factors and to publish new prices based upon such independent review.

1816. *United States* v. *Chrysler Corporation, et al.*, Civ. 709–64, (D. N.J.). On October 11, 1965, the court entered an order dismissing the complaint on the defendants' stipulation that they had abandoned the acquisition attacked and that they would give the Department notice of any future proposal 30-days before signing any agreement and at least 90-days before the proposed date of consummation.

1827. *United States* v. *The Lima News, et al.*, Civ. 64–178, (W.D. Ohio). On November 30, 1965, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 18, 1965.

Upon publication of a competing newspaper in Lima, the consent judgment would prohibit the Lima News reducing circulation rates; offering discounts or premiums other than those offered in the year preceding publication of the competing paper; and cutting advertising rates below those of the new newspaper. These prohibitions would remain in effect for 1 year after the date of the first publication of the new newspaper or until it achieves a paid circulation of 10,000 for a three-month period, whichever comes first.

The judgment prohibits operation of the Lima News at a loss for the purpose of eliminating a competing paper; discrimination against an advertiser for using a competing newspaper such as refusing to accept his advertising; enforcement of covenants not to compete with the Lima News made with key personnel of the former newspaper, the Lima Citizen, purchased by the defendants; and acquisition of any interest in a competing newspaper.

1834. *United States* v. *Abbott Laboratories, et al.*, Civ. 64–C–2040, (N.D. Ill.). On September 3, 1965, Abbott terminated its agreement to acquire Nuclear-Chicago. On September 7, 1965, the case was dismissed without prejudice by stipulation of all parties.

1845. *United States* v. *Electric Hose and Rubber Company, et al.*, Cr. 41313, (E.D. Mich.). On December 9, 1965, fines totalling $204,500 were imposed on all defendants, *nolo* pleas having been previously entered. The court suspended the imposition of jail sentences and placed the 3 individual defendants on probation for 2 years.

1847. *United States* v. *Northern Virginia Beer Wholesalers, Incorporated, et al.*, Cr. 4181, (E.D. Va.). On April 30, 1965, and June 7, 1965, the court imposed fines on 2 corporations and 2 individual defendants in the amount of $5,000 on their pleas of *nolo*. On July 26, 1965, 1 association, 5 corporations and 6 individuals were fined a total of $15,000 on their pleas of *nolo*, thus bringing the total fines imposed to $20,000 of which $2,500 were suspended on 1 association and 1 individual defendant.

1853. *United States* v. *American Hospital Supply Corporation, et al.*, Civ. CA–3–1018, (N.D. Texas). On December 20, 1965, a final judgment was entered as to American Hospital pursuant to a stipulation filed November 18, 1965, requiring a 30-day waiting period. The judgment perpetually enjoins American Hospital from taking any action to acquire the stock property or business of W. H. Curtin & Company and requires that, for a period of 5 years, American must give the Division 60-days notice prior to the acquisition of any scientific products distributor.

On the same day a order was entered dismissing Curtin as a defendant. Curtin furnished the Government with a letter in which it promised, for a period of 5 years, to give the Division 30-days notice of any acquisition of or sale to a distributor of scientific products, thus terminating the case.

1860. *United States* v. *The American Oil Company, et al.*, 65 CR 150(3), (E.D. Mo.). See "Cases Instituted".

1870. *United States* v. *Bethlehem Steel Company, et al.*, Cr. 35325, (S.D. Calif.). See "Cases Instituted".

1389. *United States* v. *Chas. Pfizer & Co., Inc.*, Civ. 18740 (E.D. N.Y.). On May 5, 1965, the district court dismissed the case after trial on the grounds that the Government has failed to prove the relevant market since it had not shown, statistically, the amount of all acidulants used by all food, beverage and pharmaceutical manufacturers and the exact proportion thereof represented by Pfizer's citric acid. The Section 3 charge was also dismissed on the same grounds. As the opinion did not discuss the attempt charge, the Government made a motion to correct this deficiency. September 7, 1965, this motion was denied.

A protective notice of appeal was filed on November 19, 1965, and the time to docket the case was twice extended to May 16, 1966. A motion was filed on April 4, 1966, dismissing the appeal, thus terminating the case.

1557. *United States* v. *West Virginia Pulp and Paper Company*, 60 CIV 3324 (S.D. N.Y.). On February 10, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed January 11, 1966, requiring a 30-day waiting period.

The judgment enjoins the defendants from selling any paper to the United States Envelope Company, as long as it owns stock in U.S.E. There are two exceptions in the decree: (1) defendant may sell paper to U.S.E. during a 15-month transition period if it does not increase sales made over the past 15 months and (2) the decree provides that if in 5 years defendant still retains any stock in U.S.E., the government may apply for an order of divestiture.

1624. *United States* v. *Continental Illinois National Bank & Trust Company of Chicago, et al.*, Civ. 61 C 1441 (N.D. Ill.). On March 11, 1966, the Government's motion to dismiss the action was granted. The dismissal was based on the enactment on February 21, 1966, of legislation (Public Law 89-356, 80 Stat. 7).

1625. *United States* v. *Manufacturers Hanover Trust Company*, Civ. 61 C 3194 (S.D. N.Y.). On March 7, 1966, the Government's motion to dismiss the action was granted. The dismissal was based on the enactment of February 21, 1966, of legislation (Public Law 89-356, 80 Stat. 7).

1631. *United States* v. *Huck Manufacturing Company, et al.*, Civ. 21-791 (E.D. Mich.). On February 27, 1964, the court granted defendants' motion to dismiss after the Government had stipulated the record of proceedings in the companion criminal case, as its case in chief. The district court ruled that this case fell within the *General Electric* doctrine allowing a patentee to fix his licensee's prices. The district court also ruled that the Government failed to define a relevant market and to establish that customers were restrained from using other fastening devices that could substitute for lockbolts, and that there was no evidence of market impact of the conspiracy on other fastening devices used and useable for the same purposes as lockbolts.

The Government appealed to the Supreme Court, urging the Court to overrule *General Electric*. However, on December 6, 1965, the Supreme Court affirmed 4 to 4, the judgment of the lower court, which was based on the premise that a patentee may, without violating the Sherman Act, condition a license to make and sell a patented article upon the licensee's maintenance of prices set by the patentee, thus terminating the case.

1638. *United States* v. *Minnesota Mining and Manufacturing Company*, Cr. 61-73-D (E.D. Ill.). On January 5, 1966, the defendants' plea of *nolo contendere* was accepted and a fine of $190,000.00 was imposed on 5 counts and the 9 count indictment. After the above sentence, the Government dismissed the remaining 4 counts, thus terminating the case.

1640. *United States* v. *American Optical Company, et al.*, Civ. 62 C 206 (E.D. Wisc.). On June 28, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed May 25, 1966, requiring a 30-day waiting period.

The judgment bars defendants from acquiring any wholesale laboratories over the next 20 years, and from increasing its total number of laboratories through new openings, by more than 5 a year. Defendants are barred for 5 years from engaging in any retail dispensing of their products, and for 15 additional years they must secure the consent of the Department or the court before acquiring any dispenser.

The judgment stipulates that if the defendants enter into any price-fixing agreement over the next 20 years, the Department may ask the court for an order divesting the companies of any laboratory branches involved. Defendants are also required to submit annual financial statements for each of their laboratory branches, in order to prevent the operation of some laboratories at a loss in unfair competition.

Defendants are also prohibited from refusing or threatening to refuse to sell its ophthalmic products to any wholesale laboratory on account of the laboratory's resale prices.

1647. *United States* v. *Anheuser-Busch, Inc., et al.*, Civ. 62 C 45(3) (E.D. Mo.). On June 17, 1966, the case was ordered dismissed without prejudice subsequent to all parties entering into a stipulation to dismiss.

1714. *United States* v. *Richfield Oil Corporation, et al.*, Civ. 62–1374–JWC (S.D. Calif.). On January 11, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 12, 1965.

The judgment provides for the divestiture within 7 years of all interests in Atlantic acquired by Sinclair or Cities Services pursuant to the Atlantic-Richfield merger; that prior to such divestiture, Sinclair and Cities Service will vote their stock interests in Atlantic as recommended by Atlantic management, except under certain limited circumstances, and that no director, officer, employee, or other representatives of Sinclair or Cities Service will serve as a director or officer of Atlantic.

1717. *United States* v. *Chicago Title and Trust Company*, Civ. 63 C 2025 (N.D. Ill.). On May 23, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed April 20, 1966, requiring a 30-day waiting period.

The judgment requires the defendant to dispose of its interest in the Title Insurance Corporation of St. Louis, the Capital Abstract and Title Company of Topeka, Kansas, the Memphis Title Company of Memphis, Tennessee, the title plant of the Missouri Abstract Company of Kansas City, Missouri and the title plant of the Citizens and Securities Abstract Company of Milwaukee, Wisconsin. The purchaser of Title Insurance Corporation of St. Louis would have the option to purchase the other assets. The judgment prohibits defendant for a 5 year period from acquiring any title insurance company doing business in Illinois, Missouri or Wisconsin, and for a 10 year period from acquiring any title insurance company in the United States except on notice to the Government and approval of the court. The judgment requires defendant to cancel all exclusive contracts with abstractors in Illinois and, after disposal of Title Insurance corporation, to end the agency contracts of Kansas City Title Insurance Company in Wisconsin.

The judgment provides that if defendant failed to dispose of the 3 companies within 18 months it would be required to dispose of the Kansas City Title Insurance Company.

1722. *United States* v. *Anaconda American Brass Company, et al.*, Civ. 9543 (D. Conn.). On January 4, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 30, 1966, requiring a 30-day waiting period.

The judgments enjoins defendants from entering into any agreement with respect to brass mill products, to fix or stabilize prices, to submit collusive bids, or to exchange information on prices and buyers unless such information has become public. The defendants are ordered for a 5 year period in connection with sealed bids, to federal, state or local governments to submit written certification that such bids are not collusive.

1732. *United States* v. *Newmont Mining Corporation, et al.*, Civ. 4227 (S.D. N.Y.). On April 14, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed March 4, 1966, requiring a 30-day waiting period.

The judgment requires Newmont to dispose of its stock interest in Phelps Dodge within 3 years and prohibits Newmont from acquiring any Phelps Dodge stock for 10 years. The judgment also permanently enjoins Newmont from having an officer, director or executive employee who simultaneouly serves Phelps Dodge in any such capacity.

1763. *United States* v. *Pennsylvania Refuse Removal Association, et al.*, Cr. 21558 (E.D. Pa.). On October 6, 1964, the defendants were found guilty by a jury.

On June 15, 1965, defendants' motion for judgment of acquittal or for a new trial was denied. The court held that there was ample evidence of *per se* violations of the Sherman Act, and since they occurred within the flow of interstate commerce, the Government was relieved of the burden of showing an effect upon interstate commerce.

On June 30, 1965, fines were imposed on defendants totalling $42,500.00 on the jurys' verdict of guilty. On the individuals the court suspended the imposition of sentence of imprisonment and place them on probation for a period of 2 years.

On March 14, 1966, the Court of Appeals affirmed the conviction of the defendants for violation of Section 1 of the Sherman Act in the refuse removal business in the Philadelphia area. On appeal, the defendants did not challenge the sufficiency of the evidence to establish price-fixing and other illegal conduct but asserted that their conduct was not in restraint of interstate commerce.

The Court of Appeals held that the hauling and disposal of the refuse was an integral part of the removal business and that the interstate movement involved in that "vital element of the one business operation" made it "a proper subject of interstate commerce."

On May 31, 1966, the Supreme Court denied certiorari.

1815. *United States* v. *Price's Creameries, Inc., et al.*, Civ. 5715 (D. N. Mex.). On March 3, 1966, a stipulation was entered dismissing the case on grounds of mootness.

1820. *United States* v. *Johnson & Johnson*, Civ. 840–64 (D. N.J.). On April 18, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed March 16, 1966, requiring a 30-day waiting period.

The judgment enjoins defendant from agreeing with its distributors that they will not purchase, promote or display products not manufactured by J&J, and from conditioning the sales of its products on any agreement that the dealer will only handle or display J&J products and will not handle or display competitors' products. Defendant is also enjoined from interfering with the right of any distributor to allocate his own rack space and from refusing to sell to any distributor because of his failure to purchase or display any one or more J&J products.

1833. *United States* v. *Chas. Pfizer & Co., Inc.*, Civ. 15290–1 (W.D. Mo.). On January 17, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed December 17, 1965, requiring a 30-day waiting period.

The judgment enjoins the defendant from entering into any agreement with any person who sells Coty cosmetics to fix prices in the sale thereof to any third person and from refusing to sell Coty cosmetics to any third person because of the price at which such person has sold such cosmetics. The judgment also enjoins the defendant for a period of 5 years from refusing to sell to any retailer or wholesaler because of the prices at which such persons sell Coty cosmetics.

The judgment permits Pfizer to fair trade Coty products in states with fair-trade statutes but provides that Pfizer will have to give up fair-trading its Coty products even in the fair-trade states for a period of 1 year if the Department obtains relief against fair-trading in the suit still pending against *Revlon*. The judgment also requires that Pfizer advise each of its Coty cosmetic customers of the terms of this judgment.

1867. *United States v. Pennzoil Company, et al.*, Civ. 65–838 (W.D. Pa.). On April 4, 1966, the case was terminated by the entry of a final judgment jursuant to a stipulation filed February 9, 1966, requiring a 30-day waiting period. December 30, 1965, the court granted the Government's motion for a preliminary injunction. The court found that the proposed merger "is or may be" within the proscriptions of Section 7 and therefore should be enjoined until a final hearing on the merits.

The judgment permanently enjoins Pennzoil from acquiring any interest in Kendall and Kendall from transferring to Pennzoil or knowingly permitting Pennzoil to acquire any interest in Kendall. The judgmet declares that the acquisition of Kendall by Pennzoil would, if consummated violate Section 7.

1871. *United States* v. *Armco Steel Corporation, et al.*, Cr. 35326 (S.D. Calif.). On January 10, 1966, over Government's objections the court accepted *nolo* pleas and imposed fines in the amount of $10,150.00 on 3 corporations as to Count II and $1.00 on each of 2 defendants as to Count I. On January 17, 1966, another corporation entered a *nolo* plea and was fined $2,000.00 on Count II and $1.00 as to Count I. January 24, 1966, another corporate defendant was fined $1,300.00 on Count II after entering a *nolo* plea.

The case was called for trial of Count II on February 14, 1966. The court stated that after a further review of the Government's bill of particulars the bill was unresponsive to his order of December 20, 1965, to supply particulars and he was granting defendants' motion to suppress all the evidence. The court called the jury to the box and directed the Government to call its first witness. A witness was sworn and Government asked his name whereupon defense counsel moved to suppress the evidence. The court upheld the defendants' motion to suppress and dismissed the trial of Count II for failure to prosecute.

The court then held that the bill of particulars as to Count I was adequate and for trial to proceed against remaining 4 defendants.

Defendants filed a motion to dismiss Count I on the ground of double jeopardy. After oral argument, the court, on March 4, 1966, granted defendants motion.

The Government filed a notice of appeal to thhe Supreme Court which was later dismissed May 18, 1966, terminating the case.

1877. *United States* v. *Association of American Weighmaster, Inc.*, 65 CIV 3342 (S.D. N.Y.). On April 29, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed March 29, 1966, requiring a 30-day waiting period.

The judgment enjoins the defendant from agreeing with any of its members to fix, determine or maintain prices for the performance of weighmaster services and from collecting or compiling information relating to prices to be charged for weighmaster services. The judgment also requires the defendant to amend its Charter and By-Laws so as to incorporate the prohibitory provisions of the judgment and to require as a condition of membership that all present and future members, directors and officers abide by and be bound by the judgment.

1881. *United States* v. *Pittsburgh Brewing Company, et al.*, Civ. 65–1406 (W.D. Pa.). On May 31, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed April 27, 1966, requiring a 30-day waiting period. Both Pittsburgh Brewing and its board chairman have divested themselves of the Duquesne stock they held.

The judgment requires Pittsburgh Brewing to give the Department 60 days notice of any attempt to acquire any brewer in western Pennsylvania, eastern Ohio, northern West Virginia, western Maryland and western New York.

1885. *United States* v. *International Pipe and Ceramics Corporation, et al.*, Cr. 9–66 (D. N.J.). See "Cases Instituted".

1886. *United States* v. *International Pipe and Ceramics Corporation, et al.*, Cr. 10–66 (D. N.J.). See "Cases Instituted".

1889. *United States* v. *American Honda Motor Company, Inc., et al.*, Cr. 35909 (S.D. Calif.). See "Cases Instituted".

1890. *United States* v. *Ace Drill Bushing Co., Inc., et al.*, Cr. 35941 (S.D. Calif.) See "Cases Instituted".

1898. *United States* v. *Permatex Company, Inc.*, Civ. 66 C 395 (E.D. N.Y.). See "Cases Instituted".

PART 2 (1966–1967)

1267. *United States* v. *Federation Suisse des Associations de Fabricants d'Horlogerie, et al.*, Civ. 105–210 (S.D. N.Y.). On November 21, 1966, the case was dismissed without prejudice by approval of the court of a stipulation entered into between the Government and each defendant.

1599. *United States and TVA* v. *Westinghouse Electric Corporation, et al.*, Civ. 29488 (E.D. Pa.)

1603. *United States* v. *Cutler-Hammer, Inc., et al.*, Civ. 29492 (E.D. Pa.)

1604. *United States* v. *I–T–E Circuit Breaker Co., et al.*, Civ. 29493 (E.D. Pa.)

1627. *United States and TVA* v. *Ohio Brass Company, et al.*, Civ. 30297 (E.D. Pa.)

1692. *United States* v. *I–T–E Circuit Breaker Company, et al.*, Civ. 31730 (E.D. Pa.)

1693. *United States and TVA* v. *Federal Pacific Electric Co., et al.*, Civ. 31731 (E.D. Pa.)

1694. *United States* v. *H. K. Porter Company, et al.*, Civ. 31732 (E.D. Pa.). On August 31, 1966, these cases were terminated by the dismissal of I–T–E, the last remaining defendant. H. K. Porter Company was dismissed on March 30, 1965, from BB# 1627, 1693 and 1694, the only cases in which it remained as a defendant.

The orders of dismissal were pursuant to a settlement agreement between the United States, Tennessee Valley Authority and H. K. Porter Company whereby H. K. Porter agreed to pay $22,000.00; and between the United States, Tennessee Valley Authority and I-T-E Circuit Breaker Company whereby I-T-E agreed to pay $89.200.00. (See also—Cases Terminated 1/1/64—6/30/64, Nos. 1596, 1600, 1601 and 1602).

1620. *United States* v. *American Optical Company, et al.*, 61 CR 82 (E.D. Wisc.). On November 3, 1961, the court granted the motion of the individual defendants to dismiss on the grounds that the charges brought against them under hte Sherman Act should have been brought, if at all, under Section 14 of the Clayton Act. The Supreme Court, in conformity with its decision in *U.S.* v. *Wise*, reversed the lower court's dismissal on June 25, 1962.

Upon continuation of the proceedings in this case, which had been stayed pending termination of the companion civil case the court on October 24, 1966, accepted pleas of *nolo contendere* from all defendants. On December 14, 1966, the court imposed fines totalling $126,000.00.

1684. *United States* v. *American Can Company, et al.*, Civ. 62 C 175 (E.D. Wisc.). On February 27, 1964, 1 corporation was dismissed by the Government. The remaining defendants were dismissed by the Government without prejudice on July 25, 1966, thus terminating the case.

1691. *United States* v. *Packaging Corporation of America, et al.*, Civ. 4343 (W.D. Mich.). On February 7, 1964, the 9 individual defendants were dismissed when an amended complaint was filed. On January 25, 1966, 1 corporation was dismissed by the Government. On July 13, 1966, the remaining 6 corporations were dismissed by the Government without prejudice thus terminating the case.

1707. *United States* v. *General Motors Corporation, et al.*, Civ. 62-1208-CC (S.D. Calif.). On June 16, 1964, trial began and was concluded on June 23, 1964. The evidence having been stipulated on the basis of the record made in the companion criminal case (BB# 1628 dismissed in March 1963). On September 15, 1964, the court adopted substantially all of the defendants' findings of fact and conclusions of law, and entered judgment in favor of all defendants.

The Supreme Court on April 28, 1966, reversed the judgment of the district court and held that GM and its Los Angeles area dealers had engaged in a "classic conspiracy in restraint of trade" in cutting off the sale of Chevrolets through discount houses.

On August 18, 1966, the final judgment was entered by the court. The judgment enjoins defendant for a period of 6 months from unilaterally enforcing its franchise agreements so as to prevent sales by Southern California Chevrolet dealers through discount houses. The judgment also enjoins GM from conspiring with dealers selling Chevrolets in any part of the United States to ban sales through discount houses.

1729. *United States* v. *The Valley National Bank of Arizona, et al.*, Civ. 4550-PHX (D. Ariz.). On November 23, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed October 13, 1966, requiring a 30-day waiting period.

The judgment requires that, Valley National Bank will have no officers, directors, or employees in common with the other two firms, and in addition, Valley National will have no officers or directors who are stockholders of the other two firms—and they in turn cannot have officers or directors who are stockholders in Valley National.

The judgment also provides for eliminating dual control through common stockholdings by persons other than directors and officers. If those common stockholdings have not been reduced to certain specified levels after 10 years, the judgment said the Department may seek further relief—including divestiture by Bancorporation of its stock in Arizona Bank.

Valley National Bank is forbidden for a period of 15 years from acquiring any other banks in Arizona. The other two firms are prohibited from such acquisitions for 5 years.

1753. *United States* v. *Boston and Maine Railroad, et al.*, Cr. 63-252-S (D. Mass.). On December 3, 1963, the court granted defendants' motion to dismiss Count 1 of this 2-count indictment on grounds that it did not state a crime under the statute. The Government appealed to the Supreme Court which reversed and remanded the case to the district court on March 8, 1965, holding that the district court's view of the phrase "any substantial interest in", was too narrow.

Trial began October 5, 1965, and concluded on October 28, 1965. During the

trial the Government moved to dismiss Count 1 on the basis of the lower court's interpretation of the Supreme Court decision in the same case and its rejection of the Government's offer of proof regarding the evidence to be introduced in proving "substantial interest" as defined by the Supreme Court. The Government's motion to dismiss was granted on October 13, 1965.

Trial proceeded on Count II and the jury returned a verdict of guilty as to all defendants. The court on November 15, 1965, imposed sentences of 18 months in jail on each of the 4 individuals and $5,000.00 fine on 3 of the individuals and $2,500.00 on the fourth individual and the corporation.

Defendants appealed to the Court of Appeals and on May 25, 1966, said court affirmed the convictions. Certiorari was denied October 10, 1966.

Motions made by the individuals for reduction or suspension of sentences were denied on November 17, 1966, as to 3 defendants. The fourth individual's prison sentence was suspended and defendant placed on probation for 2 years because of ill health.

1769. *United States* v. *International Minerals & Chemical Corporation, et al.*, 63 CR 928 (S.D. N.Y.). On February 25, 1965, 2 corporations pled *nolo* and fines totalling $17,500.00 were imposed. On August 2, 1966, the remaining 3 corporate defendants pled *nolo* and fines totalling $35,000.00 were imposed thus terminating the case.

1784. *United States* v. *Jantzen, Inc., et al.*, Civ. 64–111 (D. Ore.). On October 21, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed September 20, 1966, requiring a 30-day waiting period.

The judgment forbids each defendant from entering into any agreement with any competing manufacturer to fix prices, to establish dates for clearance sales of swimwear, or to refuse to sell swimwear to any retailer.

The judgment enjoins defendants from entering any agreement with a retailer to fix prices or to join with a retailer in setting dates for clearance sales of swimwear in states which have no "fair trade" laws.

The judgment said that in those states the defendants are prohibited from discussing such "price break dates" with retailers during the next 3 years. And for the next 4 years in those states, it added, the firms cannot refuse to continue to sell swimwear to any retailer because of the retailer's pricing policies.

In states where there are lawful price agreements under "fair trade" legislation, the consent decree said, the swimsuit manufacturers are forbidden from enforcing them during the months of July and August in each of the next 3 years.

1790. *United States* v. *Aluminum Company of America, et al.*, Civ. 35353 (E.D. Pa.). On November 9, 1964, Count I was disposed of by a final judgment entered against the 6 defendants. The judgment enjoined the defendants from price fixing, bid rigging and restricting third persons in purchasing or selling aluminum conductor cable. The judgment also required the defendants for 5 years to submit affidavits of non-collusion with each public bid and for a like period of time to have an officer certify each price change was independently made.

On December 29, 1966, the 6 defendants paid a total of $562,935.00 as damage settlements in the case. Counts 2 and 3 of the complaint were then dismissed thus terminating the case.

1805. *United States* v. *General Telephone and Electronics Corporation, et al.*, 64 CIV 1912 (S.D. N.Y.). On November 14, 1966, the case was dismissed on Government motion thus terminating the case.

1825. *United States* v. *Standard Oil Company, (New Jersey), et al.*, Civ 954–64 (D. N.J.). On October 23, 1964, after argument by both sides, the court entered a temporary restraining order enjoining consumption of the merger. This order was extended by consent of the parties until a decision on the merits.

The trial began February 2, 1965, and concluded February 24, 1965.

On June 28, 1965, defendants moved to set aside the temporary restraining order but on July 13, 1965, the court denied defendant's motion.

On March 31, 1966, the court filed an opinion holding the acquisition agreement in violation of Section 7 of the Clayton Act, and authorizing the entry of a judgment permanently enjoining defendant Jersey from acquiring Potash Company of America.

On May 24, 1966, the final judgment was entered enjoining Jersey for a period of 12 years from acquiring any stock or control of any corporation in commerce in the United States which Jersey knows or should know either owns or has rights in potash deposits or mines or acquiring from any such corporation any potash producing equipment without Government consent licenses with respect to technical data, patents or knowhow relating to the production of potash.

1832. *United States* v. *United Merchants & Manufacturers, Inc.*, 64 CIV 3546 (S.D. N.Y.). On September 14, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation entered July 22, 1966.

The judgment prohibits the defendant from fixing prices, rigging bids or exchanging price information with other weavers or its distributors.

1835. *United States* v. *Broadcast Music, Inc., et al.*, 64 CIV 3787 (S.D. N.Y.). On December 29, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 29, 1966, requiring a 30-day waiting period.

The judgment provides that BMI must license the works of songwriters and publishers who meet certain minimum qualifications; BMI may not contract for more than a 5 year period with writers and publishers, and provisions are included to assure payment to those who terminate their BMI contracts but whose works continued to be licensed by BMI by reason of agreements with co-writers or publishers. BMI must publish periodically the general basis of payment to publishers and songwriters used by it. BMI is permitted to make repayable advances to any writer or publisher and is free to enter into guarantee contracts except to lure writers or publishers from a competing licensing organization that does not offer guarantees. BMI is prohibited from entering into contracts with broadcasters recording companies or performing artists requiring the performance of a specific amount of BMI music.

The judgment also dismissed the case as to the stockholders without prejudice.

1837. *United States* v. *Boston and Maine Corporation, et al.*, Cr. 64–356–S (D. Mass.). On November 17, 1966, 1 corporation was dismissed and the remaining 4 corporations and 4 individuals pled *nolo* and fines totalling $6,600.00 were imposed thus terminating the case.

1864. *United States* v. *United Merchants & Manufacturers, Inc.*, 65 CIV 2296 (S.D. N.Y.). On September 14, 1966, the defendant paid a total of $250,000.00 for damages in this case and BB 1861. The complaint was then dismissed thus terminating the case.

1873. *United States* v. *Bethlehem Steel Company, et al.*, Civ. 65–1426–S (S.D. Calif.). On August 23, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed July 22, 1966, requiring a 30-day waiting period.

The judgment enjoins the defendants from fixing prices or allocating customers, territories or markets for the sale of pumps and enjoins requirement contracts. The judgment also enjoins the defendants from communicating pricing information to other manufacturers or sellers prior to the time that such information is released to the trade generally.

1876. *United States* v. *Pyrotronics, Inc.*, Civ. 1115–65 (D. N.J.). On September 12, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed August 12, 1966, requiring a 30-day waiting period.

The judgment forbids defendant to allocate sales territories and customers to the distributors of its automatic fire and smoke detection equipment. The judgment requires the defendant to rewrite its contracts with distributors before January 1, 1967.

1887. *United States* v. *Associated Cement Contractors of Michigan, Inc.*, Cr. 41932 (E.D. Mich.) On November 22, 1966, defendant pled *nolo* and a fine in the amount of $500.00 was imposed and placed on probation for 5 years thus terminating the case.

1892. *United States* v. *National Cleaning Contractors, Inc., et al.*, 66 CIV 885 (S.D. N.Y.). On July 25, 1966, the case was terminated by the entry of a final judgment pursuant to a stipulation filed June 22, 1966, requiring a 30-day waiting period.

Under the judgment the firms may merge but must divest themselves of business in metropolitan New York City having an annual gross volume of at least $7.8 million. The business will go to a purchaser able to operate as a viable cleaning contractor. The judgment also enjoined the defendants from acquiring during the next 5 years, interest in any other cleaning contractor in metropolitan New York, other than assets received in the normal course of business. During the subsequent 5 years period, they will be required to obtain court approval before acquiring any other cleaning contractor.

1900. *United States* v. *First National Bank of State College, et al.*, Civ. 9433 (M.D. Pa.). On July 19, 1966, the case was dismissed by a stipulation, as defendants had abandoned the agreement to merge.

1907. *United States v. Chicago Linen Supply Association*, 66 CR 575 (N.D. Ill.). See "Cases Instituted."

1913. *United States* v. *World Journal Tribune, Inc., et al.*, Civ. 6-2967 (S.D. N.Y.). See "Cases Instituted."

1915, *United States* v. *Ehrenreich Photo-Optical Industries, Inc.*, Civ. 66-C-929 (E.D. N.Y.). See "Cases Instituted."

1916. *United States* v. *The Bank of Virginia*, Civ. 4959 E.D. Va.). See "Cases Instituted."

1923. *United States* v. *Amfac, Inc., et al.*, Civ. 2576 (D. Hawaii). See "Cases Instituted."

1495. *United States* v. *National Steel Corporation, et al.*, Civ. 13032 (S.D. Texas). On February 5, 1965, after trial the court entered a final judgment dismissing the case on grounds that Government's proof was insufficient to establish a violation of Section 7 of the Clayton Act. The Government appealed and the Supreme Court noted jurisdiction February 21, 1966.

On April 10, 1967, a consent judgment was entered after the usual 30-day waiting period. The judgment requires National and Stran to divest themselves of their interest in Metallic within 1 year. Divestiture in fact was accomplished on the same day the judgment was entered by sale to a group of Houston businessmen. Both National and Metallic are enjoined for a period of 10 years from acquiring any person engaged in the manufacture or sale of prefabricated metal buildings.

On April 13, 1967, an agreement to dismiss the appeal and order of dismissal was filed inthe Supreme Court.

1510. *United States* v. *Von's Grocery Company, et al.*, Civ. 336-69-WM (S.D. Calif.). On September 14, 1964, after trial an opinion was entered directing the dismissal of the complaint, as a violation of Section 7 was not proved. Judgment for defendant in accordance with the opinion was entered December 16, 1964. The Government appealed to the Supreme Court and jurisdiction was noted October 11, 1965.

On May 31, 1966, the Supreme Court held that the acquisition by Von's Grocery Company of all the capital stock and assets of Shopping Bag Food Stores violated Section 7 of the Clayton Act and remanded the case to the district court to order immediate divestiture.

On January 30, 1967, a stipulated final judgment was entered requiring Von's to divest a group of 38 to 44 supermarkets to operate as a unit under the Shopping Bag name. Von's must complete divestiture within 27 months, either by sale to an eligible purchaser or by public financing or spin off.

Von's is further prohibited for a period of 5 years from acquiring the stock or assets of any other grocery chain without the permission of the Government.

1587. *United States* v. *American Smelting and Refining Company, et al.*, 61 Civ. 241 (S.D. N.Y.). On March 14, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed February 10, 1967, requiring a 30-day waiting period.

The judgment forbids American Smelting from having common officers with either General Cable Corporation or Revere Copper and Brass, Inc. and from casting stockholder votes at meetings of the other two firms.

American Smelting is restrained from selling refined copper to the 2 firms at more favorable prices than given to competitors.

Sharp limitations are placed on American Smelting acquiring additional stock in the 2 firms. And as long as it holds any stock in General Cable or Revere, American Smelting is forbidden from acquiring stock in any other producer or seller of fabricated copper products.

During the next 5 years, the Government may ask the court to reopen the case to determine whether American Smelting's stockholdings violate Section 7. If no such request is made, American Smelting may then ask to terminate the consent judgment.

1716. *United States* v. *General Dynamics Corporation*, 62 Civ. 3686 (S.D. N.Y.) On August 26, 1966, after trial, the district court filed an opinion holding defendant had violated both Section 7 of the Clayton Act and Section 1 of the Sherman Act and ordered General Dynamics to restore its liquid Carbonic Division to its previously independent corporate status by severing all common ties of ownership and management, and to then divest that Corporation. Defendant was also ordered to cease and desist from using reciprocity to secure sales of carbon dioxide or other industrial gases. The Government was ordered to submit within 60 days, a plan for divestiture to implement the court's order.

On December 1, 1966, a final judgment was entered in accordance with the opinion, setting out a plan of divestiture, and enforcing defendant from using reciprocity to secure sales of carbon dioxide or other industrial gases.

1726. *United States* v. *The H. E. Koontz Creamery Inc., et al.*, Cr. 26128 (D. Md.). On July 22, 1966, 4 corporations and 4 individuals were dismissed by the court on the ground of double jeopardy. On November 15, 1966, 3 corporations were dismissed by the Government. On March 27, 1967, 2 corporations and 2 individuals pled *nolo* and fines totalling $15,000.00 were imposed thus terminating the case.

1733. *United States* v. *General Motors Corporation*, Civ. 63 C 80 (N.D. Ill.). On June 6, 1967, an order was entered dismissing the action without prejudice after the Government's motion for the order of dismissal.

1772. *United States* v. *Max Factor & Co.*, Civ. 14757–1 (W.D. Mo.). On April 20, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed March 15, 1967, requiring a 30-day waiting period.

The defendant is enjoined from agreeing with anyone selling cosmetics to fix, establish, maintain or adhere to prices in the sale of defendant cosmetics, refuse to sell Max Factor cosmetics to anyone because of the prices at which such third person intends to sell, advertise or display or has sold, advertised or displayed such cosmetics; and refuse to sell Max Factor cosmetics to any retail outlet which maintains facilities for displaying and selling cosmetics which are comparable to the facilities of any competitor of such retail outlet to whom defendant sells cosmetics.

The defendant is enjoined for 5 years, in all but "Fair Trade" states, to refuse to sell to or discriminate against wholesalers and retailers because of their pricing policies.

The judgment permits Max Factor to "Fair Trade" its cosmetics in states which have "Fair Trade" laws.

Following entry of the judgment, the case was transferred to the Northern District of Illinois for any past judgment proceedings.

1782. *United States* v. *Jos. Schlitz Brewing Company, et al.*, Civ. 42127 (N.D. Calif.). On March 24, 1966, after trial, the district court entered an opinion, findings of fact and conclusions of law holding that the acquisition by Schlitz of business and assets of Burgermeister constitutes a violation of Section 7 of the Clayton Act. The acquisition by said defendant of the common capital stock in John Labatt Limited is also a violation of Section 7 of the Clayton Act.

The court ordered that Schlitz divest itself of the Burgermeister assets and the Labatt stock. Schlitz was perpetually enjoined from acquiring the stock of any corporation, or any interest in any brewery, engaged in the brewing of beer in the State of California.

On March 28, 1966, a final judgment and decree was entered in favor of the Government in accordance with the opinion.

On November 7, 1966, the Supreme Court in a *per curiam* order granted the Government's motion to affirm the judgment.

After the Court denied rehearing an order was filed January 17, 1967, by the Supreme Court affirming the judgment.

1797. *United States* v. *Monsanto Company, et al.*, Civ. 64–342 (W.A. Pa.). On March 20, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed February 13, 1967, requiring a 30-day waiting period.

The judgment requires Monsanto to sell its interest in Mobay to Bayer by March 31—and also specified that Bayer may buy it. In addition, Monsanto and Mobay are forbidden from having any common officers or directors.

For a period of 10 years, Bayer and Mobay are forbidden from selling Mobay stock to a competitor unless the Department gives its approval. Similar conditions are placed on Monsanto acquiring facilities which produce the foam or TDI–80–20, its essential ingredient.

The judgment specifies that Monsanto will be free to compete in any line with the other 2 companies, and that any agreements restraining competition are prohibited.

1806. *United States* v. *Bowling Proprietors' Association of America, Inc.*, 64 Civ. 1922 (S.D. N.Y.). On May 19, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed February 20, 1967, requiring a 30-day waiting period.

The judgment prohibits restrictions and the defendant is required to permit bowlers to compete in its tournaments regardless of whether their league bowling occurs in BPAA lanes.

The judgment forbids the defendant from having and agreements or plans which in any way fix, suggest or maintain prices charged by any BPAA affiliated proprietor. The BPAA is required to terminate its affiliation with any state or local association which fails to follow the judgment's provisions.

1817. *United States* v. *Dymo Industries, Inc.*, Civ. 42672 (N.D. Calif.). On June 15, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed May 16, 1967, requiring a 30-day waiting period.

The judgment forbids the defendant to fix prices and to prevent purchasers from reselling the goods at any price, to any customer, or in any area they choose.

The judgment requires the defendant to grant non-exclusive licenses at reasonable royalties of its patents, relating to the embossing tools and tape.

1828. *United States* v. *Coast Manufacturing & Supply Company*, Civ. 43028 (N.D. Calif.).

1829. *United States* v. *Burlington Industries, Inc.*, 64 Civ. 3543 (S.D. N.Y.).

1830. *United States* v. *Clark-Schwebel Fiber Glass Corporation*, 64 Civ. 3544 (S.D. N.Y.).

1831. *United States* v. *J. P. Stevens & Company*, 64 Civ. 3545 (S.D. N.Y.).

On March 20, 1967, the cases were terminated by the entry of separate final judgments pursuant to the stipulations filed February 17, 1967, requiring a 30-day waiting period.

The judgments prohibit the defendants from conspiring with each other to fix prices, and engaging in resale maintenance and other practices with independent distributors in the glass fiber industrial fabrics industry.

1836. *United States* v. *Boston and Maine Corporation, et al.*, Cr. 64–355–S (D. Mass.). On November 17, 1966, 1 corporation and 3 individuals were fined a total of $6,200.00 on *nolo* pleas and guilty pleas.

On April 10, 1967, the case was terminated by the entry of *nolo* pleas and guilty pleas as to the remaining individual. The fine amounted to $25,000.00 thus terminating the case.

1856. *United States* v. *Hat Corporation of America, et al.*, Civ 10980 (D. Conn.). On May 13, 1966, 1 defendant was dismised for improper venue.

On May 16, 1967, the case was terminated, as to the 1 remaining defendant, by entry of a final judgment pursuant to a stipulation filed April 7, 1967, requiring a 30-day waiting period.

The judgment requires Hat Corporation to divest itself of all of the assets acquired from Stylepark within a maximum period of 1 year. If they cannot be sold the judgment permanently enjoins Hat Corporation from using them.

The judgment forbids Hat Corporation from acquiring any hat maker for 5 years. For a 10 year period after that any such acquisition would require court approval.

1861. *United States* v. *Burlington Industries, Inc., et al.*, 65 Civ. 2293 (S.D. N.Y.).

1862. *United States* v. *Burlington Industries, Inc*, 65 Civ. 2294 (S.D. N.Y.).

1863. *United States* v. *J. P. Stevens & Company, Inc*, 65 Civ. 2295 (S.D. N.Y.).

1865. *United States* v. *Clark-Schwebel Fiber Glass Corporation*, 65 Civ. 2297 (S.D. N.Y.).

1866. *United States* v. *Coast Manufacturing and Supply Company*, Civ. 43887 (N.D. Calif.). On March 20, 1967, these cases were terminated by the dismissal of Burlington Industries, Inc.; J. P. Stevens & Company, Inc.; Clark-Schwebel Fiber Glass Corporation; and Coast Manufacturing and Supply Company.

Burlington paid $382,500.00 in BB 1861 and 1862; J. P. Stevens paid $260,000.00 in BB 1861 and 1863; Clark-Schwebel paid $45,000.00 in BB 1861 and 1865; and Coast paid $50,000.00 in BB 1861 and 1866.

The total amount of damages paid totalled $737,500.00.

1872. *United States* v. *Armco Steel Corporation, et al.*, Civ. 65–1425–S (S.D. Calif.). On November 15, 1966, the case was terminated as to all but 1 defendant by the entry of a final judgment pursuant to a stipulation filed October 10, 1966, requiring a 30-day waiting period.

The judgment enjoins the defendants from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement or joint undertaking, plan or program to: fix, establish, determine or adhere to prices, terms or conditions for the sale or any product to any third person; and fix, establish, determine or adhere to price, terms or conditions for the assembly, installation, maintenance or repair of any products for any third person.

On January 11, 1967, the court granted summary judgment in favor of the remaining defendant and entered an order dismissing the complaint. The motion for summary judgment was based on the fact that since the action was instituted the defendant had withdrawn from the subsurface pump business and that the possibility of re-entry was remote.

The Government noticed an appeal to the Supreme Court from the summary judgment, and on May 11, 1967, filed a stipulation and order dismissing the appeal, thus terminating the case.

1875. *United States* v. *Herff Jones Company, et al.*, Civ. IP65–C–465 (S.D. Ind.). On June 14, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed May 9, 1967, requiring a 30-day waiting period.

The judgment requires Herff Jones Company to divest itself of the John Roberts Manufacturing Company within 6 months from the entry of the judgment in a manner acceptable to the Government.

The judgment forbids Herff for a 10-year period from acquiring any interest in any producer or seller of class rings unless Herff receives approval from the court or the Government.

1891. *United States* v. *Ace Drill Bushing Co., Inc., et al.*, Civ. 66–483TC (S.D. Calif.). On January 17, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed December 15, 1966, requiring a 30-day waiting period.

The judgment enjoins the defendants from fixing prices in the sale or for the modification of drill jig bushings, and in addition, enjoins them from agreeing on the cost basis for determining sales prices, and also from communicating price information to other manufacturers or sellers prior to the time such information has been released to the trade generally.

The judgment requires each of the defendants to compile new quantity discount schedules upon the basis of its own desired profits and other market considerations and to issue such new schedules.

1924. *United States* v. *First City National Bank of Houston, et al.*, Civ. 66–H–695 (S.D. Texas). On December 7, 1966, the district court dismissed the complaint which alleged a violation of Section 7 of the Clayton Act, on the ground that it failed to state a cause of action. The court held that the Government had to allege and prove, not only that a merger may substantially lessen competition, but also that the anticompetitive consequences of the merger were not clearly outweighed in the public interest by the banking factors enumerated in the Bank Merger Act of 1966. The court granted the Government the right to amend its complaint which was not done.

Upon appeal by the Government the Supreme Court on March 27, 1967, handed down an opinion reversing the judgment and remanding the case to the district court for further proceedings in conformity with the opinion. Failure of the Government to base the action on the Bank Merger Act of 1966 does not constitute a defect in the pleadings. Section 7 of the Clayton Act condemns mergers where "the effect of such acquisition may be substantially to lessen competition." The Bank Merger Act of 1966, the court noted, does not change that standard, but merely provides a new defense to Section 7 in the "convenience and needs" clause. Banks proposing mergers which the Government proves to be in violation of the competitive standards of Section 7 must carry the burden of establishing that the merger falls within the exception created by the new defense. The Court held that the automatic stay granted by the Bank Merger Act should remain in effect in this case until the antitrust litigation has run its course.

May 31, 1967, the district court, on motion by the Government, entered an order dismissing the case on the ground that the merger agreement had been abandoned.

1931. *United States* v. *Lindsay Schaub Newspapers, Inc.*, Civ. CV 6748 (E.D. Ill.). See "Cases Instituted".

1952. *United States* v. *Marin Independent Service Station Association*, Cr. 41349 (N.D. Calif.). See "Cases Instituted."

1512. *United States* v. *Aluminum Company of America, et al.*, Civ. 8030 (N.D. N.Y.). On January 28, 1963, the district court dismissed this proceeding after trial on the merits finding that competition had not been injured in those markets that it had determined to be the relevant lines of commerce.

On apepal the Supreme Court on June 1, 1964, found, contrary to the district court, that competition had been adversely affected in the aluminum electric

conductor lines of commerce in the nation as a whole, reversed the district court and held the merger to be a violation of Section 7 of the Clayton Act. It remanded the case to the district court and ordered the divestiture of Rome Cable Corporation.

On April 27, 1966, the district court entered its final judgment pursuant to the divestiture mandate. The judgment required Alcoa for a certain period to attempt to sell the Rome facilities to a purchaser approved by the court so as to assure that the properties would be operated by the purchaser in competition with other firms in the relevant product fields. In the event Alcoa was unable to find an eligible purchaser certain alternative relief was provided. The judgment specifically included as possible alternatives (a) the sale of only a part of the Rome assets (b) an injunction against Alcoa's use of the retained Rome properties for certain purposes or (c) relief from the obligation to sell Rome.

On December 21, 1966, on the petition of Alcoa and over the objection of the Government after hearing, the court approved the sale of all of the Rome facilities to the Okonite Company, an 83% owned subsidiary of Ling-Temco-Vought Company. The Government opposed this sale on the grounds (1) that it did not constitute appropriate and adequate relief under Section 7; and (2) that since Ling-Temco-Vought was in competition with Rome in the wire and cable field competition would be adversely affected. On June 2, 1967, the Government appealed the approval to the Supreme Court and Alcoa moved to affirm.

While this appeal was pending, Cyprus Mines Corporation offered to purchase all of the Rome facilities in accordance with the terms of the final judgment. The Department advised the district court that it would have no objection to Cyprus as a purchaser, and the district court accordingly approved the sale. In view of the sale to Cyprus the parties joined in asking the Supreme Court to dismiss the appeal as moot. The Supreme Court granted the joint motion, and sale of the Rome properties to Cyprus was consummated on October 25, 1967.

1606. *United States* v. *Grinnell Corporation, et al.*, Civ. 2785 (D. R.I.). On November 27, 1964, after trial the district court entered an opinion and judgment holding that central station protection service constitutes a clearly identifiable relevant market and that the defendants had, through violations of Sections 1 and 2 of the Sherman Act achieved and preserved a monopolistic position in the market. The decree, however, omitted a number of provisions which the Government believed indispensable to remedy the violations and appealed to the Supreme Court. The defendants also appealed the case on question of liability.

On June 13, 1966, the Supreme Court affirmed the judgment and remanded the case to the district court for further hearings on relief. The Court held that the ingredients of a Section 2 violation were established: (1) defendants possess monopoly power in the relevant market (2) willfully acquired or maintained. It ruled that the mere existence of different services does not in itself detract from the single-market concept.

On July 11, 1967, the district court entered a judgment which reflected the Supreme Court suggestion for more specific relief. In addition to the usual injunctive provisions, the decree permanently enjoins the defandants from acquiring the stock, assets or business of any enterprise engaged in furnishing central station protection service. The court also enjoined the defendants from bidding for the furnishing of service to any governmental body or agency thereof, where the defendant has participated in the preparation of the specifications for the job and such specifications are so drawn as to effectively preclude all other persons furnishing service, except such defendant; and paying any commission or other remuneration to any agent or representative of any insurance company or automatic sprinkler company for leads or information as to prospective customers for service, except to meet in good faith such practice by a competitor.

Some of the specific practices which the defendants are enjoined from are: allocating customers, dividing territories, exchanging information concerning charges and collusive bidding.

The alarm system companies are forbidden to make any horizontal acquisitions, and of particular significance, the court prohibited all defendants from charging a higher rate in cities where defendant is the sole source of service than those rates charged in cities where there is a competitive source. Also, they may not refuse to sell repair and replacement equipment.

Finally, the decree directs Grinnell to divest itself of all its stock in the 3 affiliates and directs ADT to sell over $3.5 million worth of central-station protection service contracts. The judgment sets out a specific amount of service contract divestiture that ADT must make in each of 27 cities.

1649. *United States* v. *Kimberly-Clark Corporation*, Civ. 40529 (N.D. Calif.). On February 17, 1967, after trial the court ruled that the acquisition of Blake, Moffitt & Towne violated Section 7 of the Clayton Act.

On May 11, 1967, the case was terminated by a final judgment directing that defendant dispose of Blake, Moffitt & Towne within 27 months to a Government approved purchaser. In addition the purchaser must state his intention to continue the operation of BMT as a paper merchant and agree to be bound by the final judgment.

The judgment also prohibits for a period of 10 years, beginning 6 months after the date of divestiture, Kimberly-Clark and BMT from having employees, officers and directors in common with each other and in addition the defendant for a period of 10 years is enjoined from acquiring the stock, assets or business of any paper merchant wholesale distributor.

1705. *United States* v. *Carnation Company of Washington, et al.*, Civ. 2297 (E.D. Wash.). On December 12, 1967, after payment of $163,000.00, on damages to the Government the case was terminated by an order of dismissal with prejudice.

1728. *United States* v. *The H. E. Koontz Creamery, Inc., et al.*, Civ. 14308 (D. Md.). On June 19, 1967, Will's Dairy, Inc. and 2 individuals were dismissed by the Government. Will's Dairy had merged into defendant Koontz Creamery, Inc. and the individuals sold all the assets of Aristocrat Dairy to Cloverland Farms Dairy, Inc. a defendant in this case.

On December 12, 1967, the case against the remaining 6 defendants was terminated by the entry of a final judgment pursuant to a stipulation filed November 6, 1967, requiring a 30-day waiting period.

The judgment enjoins the dairies from conspiring on milk prices, discounts, deposits, or other terms or conditions of sale. It also prohibits the milk distributors from exchanging price information prior to releasing that information to the public or the rest of the trade and prohibits them from rigging bids.

1764. *United States* v. *Pennsylvania Refuse Removal Association, et al.*, Civ. 34417 (E.D. Pa.). On June 12, 1967, the case against all the defendants except the association was terminated by the entry of a final judgment pursuant to a stipulation filed May 11, 1967, requiring a 30-day waiting period.

The judgment forbids the defendants from having any agreements or plans which in any way fix prices or allocate customers. In addition each defendant is enjoined from serving as an officer or director of any refuse removal association for 5 years.

On July 5, 1967, the case against the association was terminated pursuant to plaintiff's application for a summary judgment by default.

1793. *United States* v. *Bay West Paper Company*, Civ. 64–C–86 (E.D. Wisc.). On October 9, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed September 8, 1967, requiring a 30-day waiting period.

The final judgment enjoins the defendant Bay West from agreeing with any of its distributors to limit, allocate or restrict the territory in which any distributor may sell paper towels purchased from defendant Bay West.

1855. *United States* v. *Curtis Circulation Company, Inc., et al.*, Civ. 611–65 (D. N.J.). On Decmeber 15, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed November 15, 1967, requiring a 30-day waiting period.

The judgment directs Curtis and Select Magazines, Inc. to dissolve their joint ownerships of National Magazine Service within 2 years and forbids them to hold an interest in any national distributor. They are also forbidden to act jointly in the distribution of any publications. In addition the defendant companies must not place any restrictions on wholesalers and if they should become wholesalers themselves, they must handle publications of other national distributor. The decree also limits the conditions under which Curtis and Select may become wholesalers.

1868. *United States* v. *Associated Aviation Underwriters, et al.*, 65 CIV 2400 (S.D. N.Y.). On December 1, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed October 31, 1967, requiring a 30-day waiting period.

The final judgment enjoins the defendant, which is an association of 17 insurance companies, from preventing the formation of new insurance groups, restraining competing aviation underwriters and preventing members from writing aviation insurance outside the pool.

1883. *United States* v. *D. D. Bean & Sons Co., et al.*, 66 CR 11 (S.D. N.Y.). On October 27, 1967, the case was terminated when the final corporate defendant was fined $1,000, on a *nolo* plea previously accepted by the court.

Fines previously imposed against the other 8 corporate defendants and 4 individual defendants totalled $270,000. The 4 individual defendants also received jail terms which were suspended and defendants placed on 1-day unsupervised probation.

1884. *United States* v. *D. D. Bean & Sons Co., et al.*, 66 CIV 64 (S.D. N.Y.). On November 21, 1967, the case was terminated by the entry of a final judgment pursuant to a stipulation filed October 20, 1967, requiring a 30-day waiting period.

The judgment enjoins each of the defendants from participating in any agreement with a competitor to fix or stabilize prices or production quotas. They are also enjoined from exchanging information relating to sales, inventory or production quantity. In addition, it outlaws knowing participation in an association whose objectives are inconsistent with the judgment.

1901. *United States* v. *Reed International, Inc., et al.* (Formerly Reed Roller Bit Company, et al.), Civ. 66-248 (W.D. Okla.). On June 22, 1967, after trial the court rendered an opinion holding that the acquisition of the assets of AMF American Iron, Inc. by Reed International Inc. was a violation of Section 7 of the Clayton Act. The court rejected the defendant's failing company defense because "Reed had failed to carry its burden of showing that American Iron came within the strict test of International Shoe." The court concluded that Reed should divest itself of the tool joint and drill collar facilities acquired from American Iron.

The judgment entered July 25, 1967, requires the divestiture within 12 months. If the facilities are not sold within the 12-month period the court will either (1) appoint an independent business broker to effectuate the divestiture and/or (2) take such other actions as it deems appropriate at the time. Reed is enjoined for a period of 10 years, except by agreement of the parties, from acquiring any interest in any firm engaged in the manufacture and sale of tool joints and/or drill collars, and for an additional 10-year period is similarly enjoined except with notice to the plaintiff and an affirmative showing to the court that the acquisition will not lessen competition or tend to create a monopoly in the manufacture and sale of tool joints and/or drill collars.

1905. *United States* v. *American Honda Motor Company, Inc., et al.*, Cr. 40956 (N.D. Calif.). On September 1, 1967, American Honda Motor Company was dismissed by the court on the grounds of double jeopardy, lack of due process and harassment by multiple prosecution. On December 15, 1967, the remaining 7 individuals and association indicted in the conspiracy plead *nolo* and fines totalling $5,751, were imposed thus terminating the case.

1911. *United States* v. *Bowling Proprietor's Association of Northern Ohio, Inc., et al.*, Cr. 66-243 (N.D. Ohio). On November 17, 1967, 1 association and 3 individuals were fined a total of $10,500, on *nolo* pleas thereby terminating the case.

1925. *United States* v. *Montana State Food Distributors Association, et al.*, Cr. 344 (D. Montana). On March 17, 1967, 1 corporation and 2 individuals were fined a total of $6,050, on *nolo* pleas.

On July 25, 1967, the case was terminated by the entry of *nolo* pleas as to the remaining individual and assocation and fines of $1,050, was imposed. The total fines paid by the 3 individuals, 1 corporation and 1 association amounted to $7,100.

1926. *United States* v. *Beatrice Foods Co., et al.*, Cr. 345 (D. Montana). On September 15, 1967, the remaining defendant changed its plea from not guilty to *nolo contendere* and was fined $500, thus terminated the case.

Additional defendants in the case were previously arraigned and sentenced on March 17, 1967, and July 25, 1967, pursuant to *nolo* pleas and fined $13,350. Total fines collected from 9 corporations and 8 individuals amounted to $13,850.

1932. *United States* v. *National Farmers' Organization, Inc.*, Civ. 7-1982-C-1 (S.D. Iowa). On December 4, 1967, the case was dismissed without prejudice by a stipulation between the parties. The stipulation provides that for a period of 5 years the NFO will advise the Antitrust Division beforehand of all planned holdings of any agricultural product. And in addition the organization will not contest the entry of a validity obtained preliminary injunction if the Government files a complaint under the Sherman Act.

1955. *United States* v. *Gulf & Western Industries, Inc., et al.*, Civ. 67-1057-CC (C.D. Calif.). See "Cases Instituted".

1959. *United States* v. *Everharp, Inc., et al.*, Civ. 43623 (E.D. Pa.). See "Cases Instituted".

1960. *United States* v. *Peabody Coal Company, et al.*, Civ. 67 C 1621 (N.D. Ill.). See "Cases Instituted".

1967. *United States* v. *Essex Wire Corporation*, Civ. 1927 (N.D. Ind.). See "Cases Instituted".

1976. *United States* v. *The York Bank and Trust Company, et al.*, Civ. 10264 (M.D. Pa.). See "Cases Instituted".

PART 3 (1968)

1163. *United States* v. *Standard Oil Company (N.J.), et al.*, Civ. 86-27 (S.D. N.Y.). Consent judgments were entered against Jersey and Gulf November 14, 1960, by which Standard Oil Co. (N.J.) was required to separate most of the assets of its giant integrated joint company, Standard-Vacuum Oil Co., between the 2 partners, Standard Oil Co. (N.J.) and Socony Mobil Oil Co. The judgment requires that the division of assets be upon such a basis as would enable the 2 partners to compete with each other. Defendant Jersey was further required to use reasonable efforts to compete with Socony in the area formerly served by Standard-Vacuum Co. The consent judgment required Gulf to set aside for the benefit of independent oil companies over a period of 10 years an amount of crude oil of 100,000 barrels per day. The judgments are to continue in force for a period of 25 years.

On July 29, 1963, a consent judgment was also entered against Texaco, Inc., which was to remain in force for 22 years and was patterned substantially after the Jersey and Gulf decrees although Texaco's Eastern Hemisphere joint marketing company with Standard Oil Co. of California—"Caltex"—was left intact. The Government reserved the right to challenge the legality of Caltex operations in either of two ways, however: (1) The Government was left free to proceed against Standard of California in the pending *Cartel* suit with respect to any Caltex involvement in the conspiracy charged in the complaint; (2) the Government was left free to initiate a new antitrust action against Texaco to challenge the legality of Caltex solely as a joint venture, i.e., without regard to the conspiracy heretofore charged.

On January 24, 1968, upon stipulation of Government and defense counsel, an order dismissing complaint without prejudice against defendants, Standard Oil Co. of California and Socony Mobil Oil Corporation was entered, since the main objectives of the suit has been realized.

1405. *United States* v. *Arnold, Schwinn and Co., et al.* Civ. 59 C 489 (N.D. Ill.). Over opposition of the Government the court on March 20, 1959, transferred this case from the Eastern District of Missouri to the Northern District of Illinois.

On October 2, 1962, a consent judgment was entered against defendant B. F. Goodrich Co. enjoining it from agreeing with Schwinn (a) to confine BFG's sales of Schwinn products to BFG outlets only; (b) fix prices or conditions for the sale of any Schwinn product to any third person. BFG was further prohibited from reporting to Schwinn any information concerning any person's failure to adhere to prices, terms or conditions advertised by Schwinn or established by Schwinn for the sale of Schwinn products.

Trial of the 2 remaining defendants began September 10, 1962, and concluded on February 26, 1963. On January 25, 1965, an opinion, findings of fact and judgment holding partially for the Government was filed. The court found the defendants guilty of a conspiracy to divide certain territories among distributors and to confine within such designated territories their respective sales of products which they purchased from Schwinn. The court further found that such conspiracy constituted an unreasonable restraint of interstate trade and commerce and *per se* violation of Section 1 of the Sherman Act.

The defendants and every member of the Association were enjoined and restrained from acting in concert to restrict or limit the territory within which any distributor may sell any Schwinn product which it had purchased. The court ruled that the charge of price fixing had not been proved and that the system of customer restriction was legal under the rule of reason. The United States appealed the holding concerning the legality of the customer restrictions.

On June 12, 1967, the Supreme Court reversed the district judge in part, holding that since it was illegal for Schwinn, having sold certain goods to its distrib-

utors, to restrain the territories in which its distributors might sell, it was equally a restraint upon alienation and equally illegal for Schwinn to enjoin any limitation upon the freedom of distributors to dispose of products which they had purchased from Schwinn to whomever they choose. "If the manufacturer parts with dominion over his product or transfers risk or loss to another, he may not reserve control over its destiny or the condition of its resale."

On May 31, 1968, final judgment was entered in accordance with the mandate of the Supreme Court.

1478. *United States* v. *National Dairy Products Corporation, et al.*, Cr. 20542 (W.D. Mo.). On March 20, 1961, National Dairy motion to dismiss counts 2, 4, 6, 8, 10, 13 and 15 of the indictment was granted. The motion of the defendant Wise to dismiss count 13 of the indictment on the ground that Section 3 of the Robinson-Patman Act is so vague and indefinite in its terms as to violate the Constitution was likewise granted. The Government appealed this ruling.

On June 14, 1961, the court dismissed Wise from charges under Section 1 of the Sherman Act since the acts with which he was charged were done on behalf of and as a representative of the defendant National Dairy. Government also appealed this ruling.

The Supreme Court on June 25, 1962, reversed the district court and held that a corporate officer is subject to prosecution under Section 1 of the Sherman Act. . . regardless of whether he is acting in a representative capacity.

On February 18, 1963, the Supreme Court held that Section 3 of the Robinson-Patman Act is not unconstitutionally vague when applied to sales made below cost for the purpose of destroying competition.

On August 16, 1963, after a lengthy trial, the jury returned a verdict of guilty as to National Dairy on 13 of the 15 counts and a verdict of guilty on all 3 counts against Wise.

May 28, 1964, the court overruled both defendants motions for judgment of acquittal notwithstanding the verdict and in the alternative for a new trial.

June 22, 1964, the court imposed fines in the total amount of $380,000.00 on National Dairy and $52,500.00 on defendant Wise. Wise was given a 3 month suspended jail sentence on each count to run concurrently and 2 years probation.

Both defendants appealed to the Court of Appeals, however, defendant Wise later dismissed his appeal. On August 27, 1965, the Circuit Court affirmed the judgment of conviction as to National Dairy.

On November 22, 1965, a petition for a writ of certiorari to the 8th Circuit Court of Appeals was filed by National Dairy. On June 20, 1966, the Supreme Court granted certiorari but vacated the judgment *per curiam* and remanded for reconsideration in light of the *Dennis* case. The petition for certiorari asserted that defendant was denied a fair trial because the Government used selected portions of the grand jury transcript to refresh the recollection of certain witnesses and the trial judge denied defense counsel inspection of the related portions.

On January 10, 1967, on remand, the district court issued a lengthy and exhaustive opinion denying National's motion for a new trial and re-entering its judgment. National Dairy again appealed to the 8th Circuit Court of Appeals.

On October 27, 1967, the Court of Appeals reversed the district court as to 3 of the 13 counts and affirmed the judgment as to the remaining counts. The court ruled that where the district court permits the Government to use the grand jury transcript to refresh the recollection of certain Government witnesses, a showing of particularized need has been made, and upon request the trial judge must grant defense counsel the right to inspect that portion of the transcript used and other portions relating to the same subject matter.

National Dairy again petitioned the Supreme Court for a writ of certiorari which was denied March 4, 1968.

On May 9, 1968, the district court entered an agreed order dismissing counts 11, 12 and 13 of the indictment as to National Dairy and also entered an agreed order which terminated the period of probation as to defendant Wise and vacated the portion of the sentence Wise to pay his fine.

On May 27, 1968, fines totalling $275,000.00 were paid by National—$50,000.00 each on 5 Sherman Act counts and $5,000.00 each on 5 Robinson-Patman Act counts.

1533. *United States* v. *Sealy, Inc.*, Civ. 60 C 844 (N.D. Ill.). After trial the court on October 6, 1964, entered findings of fact and conclusions of law holding Sealy had fixed prices but that the territorial allocation arrangement does not violate the Sherman Act.

On December 30, 1964, a final judgment was entered. The court found that Sealy, Inc. and its stockholder-licensees conspired to set minimum retail prices in Sealy products and to induce retailers to adhere to these prices. An injunction was entered as to price fixing. The court also held, however, that the defendant and its stockholder-licensees had not illegally territorialized and so dismissed the Government's claim for relief on that particular issue.

The Government appealed to the Supreme Court on the relief issue. July 10, 1967, the Supreme Court reversed the district court's holding with respect to territorialization. The Court found the restraints involved in Sealy to be horizontal in character and accordingly held the territorialization to constitute a *per se* violation of Section 1 of the Sherman Act.

A supplemental final judgment was entered December 27, 1967, in accordance with the Supreme Court opinion. This judgment enjoins and restrains the defendant and consenting manufacturers from limiting or restricting any manufacturer in any substantial way to sales of Sealy products within a prescribed territory.

1583. *United States* v. *Penn-Olin Chemical Company, et al.*, Civ. 2282 (D. Dela.) After trial the court filed an opinion and findings of fact and conclusion of law on May 1, 1963, dismissing the complaint. It held that the joint venture of Pennsalt Chemicals Corporation and Olin Mathieson Chemical Corporation in forming Penn-Olin Chemical Company did not violate the antitrust laws. An order of dismissal was entered May 15, 1963.

The Government appealed. On June 22, 1964, the Supreme Court vacated the district court judgment and remanded the case on the Clayton Act issue.

The district court after trial on remand, in an opinion dated October 12, 1965, once again dismissed the complaint. The district court held that the Government had failed to carry its burden of establishing by a preponderance of the evidence that had Penn-Olin not been formed as a reasonable probability Olin would have constructed a chlorate plant in the southeast. While a possibility of entry by Pennsalt existed, the court could not find entry was a reasonable probability. On November 2, 1965, an order was entered in favor of each defendant and dismissing the complaint. In a *per curiam* opinion (4–4 decision) dated December 11, 1967, the Supreme Court affirmed the judgment of the district court.

1696. *United States* v. *Johns-Manville Corporation, et al.*, Civ. 31791 (E.D. Pa.). Summary judgment as to Keasby and Mattison was granted on December 22, 1964, on the grounds that it had sold its pipe business, had liquidated its assets, was proceeding toward dissolution and was not likely to re-enter the business.

Summary judgment was likewise granted to Certain-Teed on August 10, 1965, essentially on the basis of affidavits filed by Certain-Teed officers denying that Certain-Teed (as a successor to Keasby-Mattison) had knowingly participated in the offenses charged and had instructed all of its personnel to avoid contact with competitors and "to comply with the antitrust laws."

On September 29, 1966, partial summary judgment was granted as to Johns-Manville dismissing those charges which related to price-fixing by the domestic manufacturers and some of the charges of concerted activity by them to eliminate competition from imported asbestos-cement pipe. Also dismissed was the Government's contention that the domestic manufacturers concertedly promoted the adoption of exclusionary product specifications at local levels. The court ruled that this conduct generally involved, approaches to engineers working for municipalities, fell within the protection of the *Noerr* and *Pennington* case as an exercise of the constitutional right of petition for governmental favor or redress.

On September 11, 1967, after a lengthy trial, an order and final judgment in favor of the defendant and dismissing the complaint was filed. The central issue at the trial concerned the joint promotion by Johns-Mansville and Keasbey & Mattison of pipe specifications which would require that all imported asbestos-cement pipe be tested in the United States—principally, specifications to be published by the American Society for Testing Materials (ASTM) and the American Water Works Association (AWWA) whose standards have wide acceptance throughout the water and sewer utility industries.

On January 22, 1968, a stipulation between the Government and defendant dismissing the appeal was filed and the case was closed.

1698. *United States* v. *American Machine and Foundry Company, et al.*, 62 CIV 2650 (S.D. N.Y.). On December 9, 1964, a consent judgment was entered against Brunswick Corporation enjoining and restraining it from agreeing with any bowling equipment manufacturer, the BPAA, or affiliated association from refusing to sell, lease, distribute or finance any other person or to establish any terms or conditions which any bowling equipment manufacturer shall use in the sale or lease of bowling equipment to any other person.

On March 23, 1967, a final consent judgment was entered ordering that defendant Bowling Proprietors' Association of America, Inc., refrain from restricting the construction of new bowling establishments or circulating data to be used in determining whether manufacturers should sell bowling equipment.

These judgments were entered after a 30-day waiting period.

On March 7, 1968, a stipulation and order of dismissal of the action as to defendants American Machine and Foundry and American Machine and Foundry Pinspotters, Inc., was entered. The consent judgment of December 9, 1964, against Brunswick Corporation was also vacated by order on March 7, 1968. The judgment as to the Association remains in effect.

1757. *United States* v. *Crocker-Anglo National Bank, et al.*, Civ. 41808 (N.D. Calif.). On October 30, 1967, after a lengthy trial, the three-judge court entered an opinion and order dismissing the complaint. It was held that even assuming the merger had violated Section 7, it was still not illegal because, pursuant to the Bank Merger Act of 1966, the alleged anticompetitive effects were "clearly outweighed" by the benefits of the merger to the "needs and convenience of the community."

On January 19, 1968, the Government appealed to the Supreme Court. On April 9, 1968, a stipulation under Rule 14(1) of the Supreme Court was entered and the appeal was thereby dismissed.

1771. *United States* v. *Blue Chip Stamp Company, et al.*, Civ. 63-1552 (C.D. Calif.). On July 22, 1966, a proposed consent judgment was lodged with the court, agreed to by the Government, Blue Chip and 7 of the 10 defendants. Thriftmart, Inc., and Market Basket filed briefs in opposition to the proposed judgment. On October 3, 1966, the Government withdrew its consent to this judgment.

A second proposed judgment was lodged with the court on October 28, 1966, which was consented to by 8 of the 10 defendants.

The decree provided for injunctive relief as to the defendant retailers and the Blue Chip Stamp Co. both with respect to monopolistic and trade-restraining practices. The decree also provided that Blue Chip should cause the creation of new trading stamp company to operate in accordance with the decree. The new company was enjoined and restrained from carrying on various practices in restraint of trade which tended to promote the monopoly previously exercised by Blue Chip. A "rollback" provision provided that if by June 30, 1970, the newly established company should be distributing stamps for use in retail food stores in either Northern or Southern California in excess of 30% of the retail food store sales in such market area, the court should grant further relief to the Government in the form of a quota to be imposed on the number of stamps stores could issue for a 1 year period.

On December 15, 1966, the judge announced that he had the power to enter a consent decree in the manner proposed by the Government over the objections of the 2 non-consenting defendants who had filed briefs denying that the court had such power.

He declined, however, to sign the proposed decree mainly because he felt the "roll-back" provisions would not accomplish their objective of orderly reduction of Blue Chip's market position.

The judge stated he would sign a decree which ordered the retailer defendants to divest themselves of control of Blue Chip to a new company which should have the right to carry the name "Blue Chip"; that all of the management and employees of Blue Chip should go to the new company right away; and that the restraining orders contained in the proposed decree be included in any new consent decree.

On April 28, 1967, a third decree was lodged with the court. The decree provided for the formation of a successor company whose shares would be distributed as set out in the judgment.

The entry of the decree was opposed by several companies who filed *amicus* briefs in opposition.

On June 5, 1967, after argument, the final judgment having been consented to by all defendants pursuant to the proposed judgment above was entered.

After oral arguments on July 31, 1967, the judge denied the motions to intervene and issued a detailed written opinion on August 18, 1967, denying motions to intervene and vacate said judgment.

On August 3, 1967, the 3 parties filing motions to intervene noted appeal to the Supreme Court from the order of the court denying their motions to intervene.

On January 15, 1968, the Supreme Court in a *per curiam* opinion granted Government motions to affirm and affirmed the judgment.

On March 4, 1968, the Supreme Court denied rehearing motions made by intervenors.

1807. *United States* v. *American Pipe and Construction Co., et al.*, Civ. 64–832 (S.D. Calif.).

1808. *United States* v. *Kaiser Steel Corporation, et al.*, Civ. 64–833 (S.D. Calif.).

1809. *United States* v. *United Concrete Pipe Corp., et al.*, Civ. 64–834 (S.D. Calif.).

1810. *United States* v. *U.S. Industries, Inc., et al.*, Civ. 64–835 (S.D. Calif.).

1811. *United States* v *United States Steel Corporation, et al.*, Civ 64–836 (S.D. Calif.). On December 8, 1967, identical final judgments were signed in cases 64–833 and 64–836 and identical partial final judgments in cases 64–832, 64–834 and 64–835. The judgments terminate the cases for all defendants except American Pipe and Construction Co. as to Count 3 of the complaints which prays for injunctive relief under Section 4 of the Sherman Act. The judgments enjoin the settling defendants from fixing prices and rigging bids on the sale of concrete and steel pipe. They also restrain the allocation of orders, territories or cuts and the restriction of production.

Count 1 (which prayed for damages under the False Claims Act) and Count 2 (which sued for damages under Section 4a of the Clayton Act) were dismissed in consideration for a monetary settlement with all defendants except American Pipe and Construction Co. An overall monetary settlement was reached between all of the consolidated plaintiffs and all of the defendants except American. The total amount of damages paid by the settling defendants to all plaintiffs was $21.-275,000.00. Of this amount the share for the United States is $1,455,295.87 in cash and $215,447.49 in notes for a total settlement of $1,670,743.36. This overall agreement was reached with the following defendants: United States Industries, Inc., United Concrete Pipe Corp., Kaiser Steel Corporation, United States Steel Corporation and Smith-Scott Co., Inc.

On April 23, 1968, an order dismissing counts 1 and 2 against American Pipe was entered, pursuant to an agreement in which American agreed to $450,000.00 damages ($100,000.00 initial payment and a promissory note of $350,000.00 to be paid off in 6 years at 5% interest.)

On May 24, 1968, a consent judgment against American Pipe as to count 3 was entered identical to the decrees previously entered with the other defendants.

1823. *United States* v. *Burlington Industries, Inc., et al.*, 64 CIV 3090 (S.D. N.Y.). A final judgment was entered on July 11, 1966, prohibiting the defendant Exeter Manufacturing Company, Inc., and Robert E. Spoerl from combining or conspiring with the co-defendants and any weaver of glass fiber industrial fabrics to eliminate or suppress competition, fix prices, or submit collusive or rigged bids or quotations for supplying glass fiber industrial fabrics.

On September 14, 1966, a final judgment was entered against United Merchants and Manufacturers, Inc. prohibiting the above described practices.

On March 20, 1967, a final judgment was entered against Burlington Industries, Inc., Clark-Schwebel Fiber Glass Corporation, J. P. Stevens & Company, Coast Manufacturing and Supply Company, Jack P. Schwebel, Harry P. Goldsmith and Irwin J. Gusman, prohibiting defendants from combining or co-conspiring with co-defendants and any weaver of glass fiber industrial fabrics to eliminate or suppress competition, fix prices, or submit collusive or rigged bids or quotations for supplying glass fiber industrial fabrics.

On July 27, 1967, a final judgment was entered against Bean Fiber Glass Company prohibiting the above described practices.

On March 29, 1968, a final judgment was entered against Fiber Glass Industries, Inc. prohibiting the above described practices. On the same day, a final judgment was entered against Ferro Corporation enjoining the foregoing practices.

On June 14, 1968, a final judgment was entered as to the remaining defendants, Flightex Fabrics, Inc. and Joseph M. P. Ott Manufacturing Company, Inc., enjoining the foregoing practices.

All the above judgments were entered following the 30-day waiting period.

1844. *United States* v. *Aeroquip Corporation, et al.*, Cr. 41312 (E.D. Mich.). On April 30, 1968, after trial, the defendants' motion for acquittal at the close of the Government's case was granted. The judge, after making a review of the Government's circumstantial evidence and contentions, concluded that the Government had not made out a *prima facie* case of conspiracy in violation of Section 1 of the Sherman Act.

1846. *United States* v. *The Times Mirror Company*, Civ. 65–366 (S.D. Calif.). On October 11, 1967, after trial, an opinion, finding of facts and conclusions of law and a judgment were filed by the district court holding that the acquisition by Times Mirror Company, publisher of the Sun, the Evening Telegram and the Sunday Sun-Telegram, violated Section 7 of the Clayton Act. The court granted the Government's prayer for divestiture and ordered defendant to formulate within 60 days a divestiture plan which would provide for the continuation of the Sun Company as a strong and viable entity.

The judgment was appealed to the Supreme Court by the defendant. On April 22, 1968, the Supreme Court summarily affirmed the judgment of the district court and a judgment in accordance with the opinion requiring divestiture was entered on June 27, 1968.

1858. *United States* v. *Mercantile Trust Company National Association, et al.*, Civ. 65–C–241(1) (E.D. Mo.). On April 4, 1968, a consent judgment was entered following expiration of the usual 30-day waiting period.

The consent judgment required Mercantile to take such steps as may be necessary to organize a new Security Bank. Mercantile may organize Security under the judgment as either a state or national bank, and it must give the new bank $1,500,000—in cash as well as title to the building which will house it. In addition, Mercantile must place a demand deposit with the new bank in the amount of $250,000 and an equal amount in a time deposit to bear interest at a rate not to exceed 2% per year. Neither deposit may be withdrawn until the total deposits of the new bank reaches $5,000,000—.

Mercantile must also use its best efforts to obtain well qualified management personnel for the new bank. For a 3 year period Mercantile must offer the new bank, at its option, participation loans free of any charges.

1878. *United States* v. *Rheingold Corporation, et al.*, 65 CIV 3372 (S.D. N.Y.). On March 31, 1966, all parties consented to the dismissal of the complaint as to defendants Ruppert and National Equities and to the retention by all remaining parties of full rights of discovery against the dismissed corporations as if they still were parties.

On June 4, 1968, the Government dismissed the 2 remaining defendants because of changes in the market conditions occurring after the filing of the complaint.

1882. *United States* v. *First National City Bank, et al.*, Civ. 65–3963 (S.D. N.Y.). On May 10, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed April 9, 1968, requiring a 30-day waiting period.

The judgment forbids First National City Bank from reacquiring stock or granting control of the Carte Blanche Corporation which it recently sold.

1893. *United States* v. *Provident National Bank, et al.*, Civ. 40032 (E.D. Pa.). On December 29, 1966, the district court in an opinion and order dismissed the complaint which alleged a violation of Section 7 of the Clayton Act on the ground that it failed to state a cause of action in that the complaint relied solely on Section 1 without making any mention of Bank Merger Act of 1966.

Upon appeal by the Government, the Supreme Court on March 27, 1967, handed down an opinion reversing and remanding the case to the district court for further proceedings in conformity with the opinion. Failure of the Government to base the action on the Bank Merger Act of 1966 does not constitute a defect in the pleadings as the anti-competitive effects of bank mergers were still to be assessed by traditional antitrust criteria. The Bank Merger Act of 1966, the court noted further, merely created a new defense in bank cases, i.e., a bank merger could be justified if the "convenience and needs" of the community to be served "clearly out-weighed" anticompetitive effects. Banks proposing mergers which the Government proves to be in violation of the competitive standards of Section 7 must carry the burden of establishing that the merger falls within the exception created by the new defense.

On February 12, 1968, after a non-jury trial, the district court entered an opinion and order that the merger agreement between Provident National Bank and Central-Penn National Bank of Philadelphia was unlawful and in violation of Section 7 of the Clayton Act and the Bank Merger Act of 1966.

1906. *United States* v. *American Motor Company, Inc., et al.*, 66 CR 574 (N.D. Ill.). American Honda Motor Company's motion to dismiss on grounds of double jeopardy and violation of its due process rights under the Constitution was granted on September 18, 1967, but denied as to the other defendants. The 6 remaining defendants entered *nolo* pleas on November 30, 1967, and fines in the total amount of $13,000—were imposed on January 30, 1968, thus terminating the case.

1909. *United States* v. *Rubino Builders, Inc., et al.*, Cr. 27438 (D. Md.). On May 19, 1967, a defendant entered a plea of *nolo* not opposed by the Government and a fine of $5,000 was imposed.

On December 28, 1967, 2 defendants pled *nolo* and fines totalling $10,000 were imposed.

Trial of the 2 remaining defendants began January 22, 1968, and concluded January 25, 1968. On January 29, 1968, the jury returned a verdict of guilty on 3 counts.

On April 11, 1968, the 2 defendants appealed to the 4th Circuit Court of Appeals and on June 20, 1968, the appeals were dismissed and fines totalling $20,000 were imposed thus terminating the case.

1912. *United States* v. *Bowling Proprietors' Association of Northern Ohio, Inc.* Civ. 66-649 (N.D. Ohio). On June 21, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed May 20, 1968, requiring a 30-day waiting period.

The judgment enjoins the Association from fixing prices for open, league or tournament bowling and from preventing members from offering special price inducements or from giving prices and awards to promote business.

1917. *United States* v. *Pennsalt Chemicals Corporation, et al.*, Civ. 41252 (E.D. Pa.).

1918. *United States* v. *The Dentists' Supply Company of New York*, Civ. 41253 (E.D. Pa.). On January 29, 1968, the cases were terminated by the entry of 2 separate final judgments pursuant to the stipulations filed December 27, 1967, requiring a 30-day waiting period.

Pursuant to the judgments, the dental products manufacturer White is required to divest retail stores whose sales volume for the year 1966 amounted to $4,423,000 of White's total retail sales of dental products. Dentsply is required to divest dental supply houses which accounted for fifty per cent of its total retail sales of dental products during 1966. Both companies are enjoined for a period of 10 years from acquiring dental supply houses.

1922. *United States* v. *Plumbing Fixture Manufacturers Association, et al.*, Cr. 66-296 (W.D. Pa.). On February 1, 1968, the court accepted *nolo* pleas by the defendants without opposition of the Government. The court carefully undertook to satisfy the requirements of amended Rule 11 of Federal Rules of Criminal Procedure. The defendants were informed that the plea of *nolo* is an admission of guilt for purposes of the case and defendants were told a judgment of conviction would be entered upon the acceptance of pleas. Each defendant was required to file a resolution by its board of directors affirming and ratifying the action taken by its attorney at the hearing.

On April 30, and May 21, 1968, the court imposed fines in the total amount of $342,500 on all the defendants.

1933. *United States* v. *Harper and Row, Publishers, Inc.*, Civ. 67 C 612 (N.D. Ill.).

1934. *United States* v. *The Bobbs-Merrill Company, Inc.*, Civ. 67 C 613 (N.D. Ill.).

1935. *United States* v. *Childrens Press, Inc.*, Civ. 67 C 614 (N.D. Ill.).

1936. *United States* v. *Thomas Y. Crowell Company* Civ. 67 C 615 (N.D. Ill.).

1937. *United States* v. *Dodd, Mead and Company, Inc.*, Civ. 67 C 616 (N.D. Ill.).

1938. *United States* v. *E. P. Dutton and Company, Inc.*, Civ. 67 C 617 (N.D. Ill.).

1939. *United States* v. *Golden Press, Inc.*, Civ. 67 C 618 (N.D. Ill.).

1940. *United States* v. *Grosset and Dunlap, Inc.*, Civ. 67 C 619 (N.D. Ill.).

1941. *United States* v. *Holt, Rinehart and Winston, Inc.*, Civ. 67 C 620 (N.D. Ill.).

1942. *United States* v. *Little, Brown and Company, Inc.*, Civ. 67 C 621 (N.D. Ill.).

1943. *United States* v. *The Macmillan Company*, Civ. 67 C 622 (N.D. Ill.).

1944. *United States* v. *William Morrow and Company, Inc.*, Civ. 67 C 623 (N.D. Ill.).

1945. *United States* v. *G. P. Putnam's Sons*, Civ. 67 C 624 (N.D. Ill.).

1946. *United States* v. *Random House, Inc.*, Civ. 67 C 625 (N.D. Ill.).

1947. *United States* v. *Charles Scribner's Sons*, Civ. 67 C 626 (N.D. Ill.).

1948. *United States* v. *The Viking Press, Inc.*, Civ. 67 C 627 (N.D. Ill.).

1949. *United States* v. *Henry L. Walck, Inc.*, Civ. 67 C 628 (N.D. Ill.).

1950. *United States* v. *Franklin Watts, Inc.*, Civ. 67 C 629 (N.D. Ill.). On October 23, 1967, a proposed consent judgment was filed in each case. After the proposed decrees were filed, various states, municipalities, and local school boards sought intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure or, alternatively, discretionary intervention under Rule 24(b).

The parties argued (a) that no decree should be entered unless it contained a so-called "asphalt clause"—i.e. a waiver of right to defend in treble damage cases on the ground that the consent judgment did not constitute *prima facie* evidence of violation—and (b) that the Court grant, by order, access to treble damage plaintiffs to records, books and documents previously obtained by the Government during the course of its investigation and such as might thereafter be obtained in the course of enforcement investigations under the "visitation clause" of the judgment. On November 27, 1967, the Court entered an order denying intervention; refusing to accept the so-called "asphalt clause" but providing that information gathered by the Government in compliance and enforcement investigations which evidences a violation of the judgment adversely affecting the interest of a State or Local Government will be impounded for 1 year, and that a court on a showing of good cause may order disclosure of such information to the State or local Governments for use in a federal antitrust action. The would-be intervenors then appealed to the Supreme Court.

The United States moved to affirm the order of the district court. On April 22, 1968, the Supreme Court granted the motions to affirm and affirmed the judgments of the district court *per curiam* without opinion.

1962. *United States* v. *Hancock Bros., Inc., et al.*, Cr. 41530 (N.D. Calif.). On December 4, 1967, at the arraignment the court accepted Hancock's plea of *nolo* over the Government's objection and a $20,000 fine was imposed on January 26, 1968, which was later reduced to $15,000.

On May 10, 1968, the remaining defendants pled *nolo* without opposition by the Government and fines imposed on June 18, 1968, amounted to $41,500.

1964. *United States* v. *National Bank and Trust Company of Central Pennsylvania, et al.*, Civ. 10214 (M.D. Pa.). On February 2, 1968, an order was entered dismissing this action on Government motion without prejudice, after defendants withdrew their plan to merge.

1965. *United States* v. *Sterling Faucet Company, et al.*, Cr. 67–273 (W.D. Pa.). On February 27, 1968, the 6 corporations pled *nolo contendere* and fines totaling $150,000 were imposed thus terminating the case.

1969. *United States* v. *Cooper Industries, Inc., et al.*, Civ. 67–360 (S.D. Ohio). On March 20, 1968, upon stipulation of the Government and defense counsel reciting that defendants have abandoned the merger and that defendant Cooper has divested itself of all holdings in defendant Waukesha, an order dismissing this action without prejudice was entered.

1978. *United States* v. *Union Camp Corporation, et al.*, Cr. 4558 (E.D. Va.). On April 10, 1968, Union Camp Corporation entered a guilty plea as to count 4 and a *nolo* plea as to count 1 of the indictment. The other defendants entered *nolo* pleas including Bemis Co., which was objected to by the Government. Union then moved to change its guilty plea to *nolo* which was also objected to by the Government.

At the imposition of sentences on May 6, 1968, the court permitted Union to change its plea to *nolo* and fines in the total amount of $135,000 were imposed on counts 1, 4, 5 and 6, the other counts being dismissed orally.

1979. *United States* v. *Thomson-Brush-Moore Newspapers, Inc.*, Civ. C 67–904 (N.D. Ohio). On January 10, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed December 8, 1967, requiring a 30-day waiting period.

The consent judgment requires Thomson to sell the Alliance Review within a year to someone approved by the Department or the court.

1981. *United States* v. *County National Bank, et al.*, 67 CIV 4906 (S.D. N.Y.). On May 14, 1968, after the merger plans were withdrawn, the Government's motion for an order dismissing this action without prejudice was granted.

1985. *United States* v. *New Jersey National Bank and Trust Company, et al.*, Civ. 55–68 (D. N.J.). See "Cases Instituted."

1994. *United States* v. *Independent Body Shop Association of Reno and Sparks, Inc.*, Cr. R–14068 (D. Nev.). See "Cases Instituted."

1995. *United States* v. *Independent Body Shop Association of Reno and Sparks, Inc.*, Civ. R–2041 (D. Nev.). See "Cases Instituted."

1999. *United States* v. *Caterpillar Tractor Company, et al.*, Civ. P–2981 (S.D. Ill.). See "Cases Instituted."

PART 4 (1968)

1483. *United States.* v. *General Motors Corporation*, Civ. 360–32 (N.D. Ill.). On July 1, 1968, a final judgment consented to by the parties was entered pursuant to the Purchase and Sale Agreement between General Motors and the White Motor Corporation pursuant to which specified assets of the Euclid Division of GM were sold to White, thereby completing the divestiture agreed upon between the Justice Department and GM.

Pursuant to an amendment to the GM-White Purchase Agreement of January 31, 1968, the assets were transferred to Euclid, Inc., a newly formed wholly owned subsidiary of White.

1590. *United States* v. *First National Bank and Trust Company of Lexington, et al.*, Civ. Lex. 1424 (E.D. Ky.). The complaint was filed on March 1, 1961, and amended on March 4, 1961, adding the defendant First Security National Bank and Trust Company.

Motions for temporary restraining order and preliminary injunction were made, the TRO was granted March 6, 1961, and after a hearing on March 10, 1961, on the PI, the court permitted the merger but ordered defendant to maintain separate records for the acquired bank in order to facilitate divestiture in the event the Government prevailed on the merits.

On July 27, 1962, after trial, the court held that the merger was not an unlawful combination nor an illegal attempt to monopolize in violation of Section 1 and 2 of the Sherman Act and dismissed the complaint. Order of dismissal was entered July 30, 1962.

On appeal by the Government the Supreme Court on April 6, 1964, rendered an opinion reversing the district court and holding that the elimination of significant competition between the merging banks constituted a violation of Section 1 of the Sherman Act.

At a hearing held on February 16, 1965, for the purpose of receiving a report by the defendants on the steps being taken to comply with the Supreme Court's decision, the Government and defendants jointly presented to the court a proposed interlocutory decree providing for creation of a new bank, the competitive equivalent of the bank which disappeared in the merger. The court rejected the plan but issued an order holding defendants in contempt for having failed to comply with the Supreme Court's mandate. The court levied a fine of $100 on the defendants for each day, to continue until defendants completed divestiture The Judge also issued a second order to defendants to show cause why the court should not appoint a Special Master to take over the books and accounts of the merged bank and divide the business in accordance with the business each of the banks had on the date of the merger. He also ordered defendants to show cause why they should not be held in contempt of the court's order entered in March 1961, requiring separate accounts for each of the merged banks during the pendency of the litigation. Defendants had disclosed in their briefs filed with the Supreme Court that they had not found it practical to comply with that order for some time.

On March 18, 1965, the district court entered an order of divestiture requiring that defendant First Security National Bank and Trust Company "shall without delay take all necessary steps to create a separate, competitive and independent commercial bank which shall be the equivalent of the former First National Bank and Trust Company of Lexington, including, but not limited to its name, its directors, its officers and personnel, its offices, furniture and equipment, its capital surplus and undivided profits, and loans, savings, checking and trust accounts, plus its proportionate share of any increments and improvements since that date. Subject to such limitations on the eligibility of stock to be voted as may

be to insure the independence of operation of the banks, all of the capital stock of the banking association to be created by the defendant, First Security National Bank and Trust Company of Lexington, shall be issued in the name of a corporate trustee to be held by it until directed by order of this court to be distributed to the proper shareholders."

The order further provided that "The purpose of this order is to establish competitive banking between the institutions involved as it existed prior to the unlawful merger on March 1, 1961. Any effort to circumvent that purpose on the part of any individual or corporate institution will be treated as a contempt of this court."

The district court entered a second order sustaining the Government's motion that a master not be appointed and that defendant should not be held in contempt for violating the order of the court of March 6, 1961, since its response to a motion to show cause was deemed sufficient. It left standing the contempt order entered on February 16, 1965, and overruled the plaintiff's motion for entry of an order of divestiture attached to its motion. The court's order of divestiture substantially adopted the order proposed by the Government but in some respects strengthened such order.

This was the first time that a consolidated bank had been ordered to divest itself of assets sufficient to create a competitive entity disappearing as a result of a consolidation held to be unlawful under Section 1 of the Sherman Act.

On the same day defendant's motion to stay the contempt order was overruled by the district court. On March 22, 1965, defendant filed with Mr. Justice Stewart a motion to stay the contempt order pending appeal to the Supreme Court.

On April 2, 1965, the Supreme Court stayed the order of district court of February 16, 1965, imposing fine of $100 a day on appellant pending Supreme Court action, and, in a per curiam opinion rendered October 8, 1965, reversed the judgment of the district court holding the bank in contempt.

On April 29, 1965, the district court entered an order overruling objection of Dages I. Boyle to intervene and objecting to defendant's proposed plan of divestiture.

On April 24, 1966, the Government filed a motion asking the Judge for an adjudication that the merger violated Section 2. On February 1, 1967, the district court ruled that, since it found no patent error in the trial court's earlier finding on Section 2 and since the Supreme Court had not reversed that finding, there was no basis for a further adjudication on the merits of the Section 2 count. In his opinion, Judge Swinford also stated that, in his view, Congress had intended, in passing the Bank Merger Act of 1966, to fully immunize the merger from antitrust attack. A notice of appeal from this decision was filed by the Government on March 30, 1967. However, since the parties were attempting to negotiate a settlement, the appeal was not perfected, and in an August 7, 1967, stipulation, consenting to the entry of a proposed final judgment, the Government agreed to dismiss the appeal upon entry of the consent decree.

The proposed judgment forbids First Security, the bank resulting from the merger, to either merge with or acquire control over any commercial bank in the country during the next 10 years. For the next 5 years the bank cannot open any new branch offices that would give it control over more than ⅓ of all commercial banking offices in the country.

In September 1967, a series of motions were made in the district court by Central Bank and Trust Company of Lexington and Dages Boyles, a stockholder in Security Trust Company and the resulting bank. These motions were bottomed on the claim that the March 18, 1965, divestiture order vested rights in them (basically, the right to have a new bank created) which could not be constitutionally annulled by subsequent legislation and that, since the Bank Merger Act of 1966 was therefore unconstitutional insofar as it purported to deprive them of such rights, the 1965 divestiture order should be enforced. In oral argument on November 2, 1967, the Government and defendant opposed all motions of the intervenors.

In December 29, 1967, the district court denied the relief sought by the intervenors and accepted the proposed consent judgment, the court disposed of the constitutional issue by holding that his March 18, 1965, divestiture order did not finally conclude the litigation and that therefore Congress could constitutionally legislate to settle "a question of fact that was still open and subject further orders of the court. . . ." The court also declined to reconsider its February 1, 1967, refusal to adjudge the merger in violation of Section 2. Finally, the court ruled that "There has been no showing of bad faith on the part of the United States

and the final judgment . . . should be entered . . ." The proposed judgment of August 7, 1967, was entered on December 29, 1967.

On January 17, 1968, pursuant to the August 7, 1967, stipulation accompanying the proposed consent decree, the Government dismissed its pending notice of appeal to the Supreme Court from the Judge's February 1, 1967, Section 2 ruling.

On January 25, 1968, both intervenors filed notice of appeal to the Supreme Court.

On October 14, 1968, the petition for rehearing was denied.

1612. *United States* v. *Continental Oil Company, et al.*, Civ 4763 (D. N. Mex.). On October 23, 1961, an amended complaint adding Hondo Oil & Gas as a defendant on motion previously made by Continental Oil was filed.

On September 27, 1963, an order and judgment was entered granting summary judgment and dismissing the case as to defendants Continental Oil and Hondo Oil and Gas Company.

The Government appealed to the Supreme Court from that part of the judgment which granted Continental's motion for summary judgment and dismissed the amended complaint but did not appeal from the judgment insofar as it dismissed Hondo. The Supreme Court on May 4, 1964, issued a per curiam opinion summarily reversing the decision of the district court granting summary judgment in favor of Continental Oil. The Court remanded the case to the district court for trial on the merits.

Continental thereafter filed various motions in the district court to bring Hondo back into the case as a necessary party or to dismiss the action, all of which were denied.

After trial the court on September 7, 1965, again dismissed the case. The Government again appealed to the Supreme Court. For the second time the Supreme Court reversed and on May 29, 1967, remanded the case for further consideration in light of the *Pabst Brewing Company* case.

On July 11, 1967, a conference was held and additional briefs were ordered to be filed. Both the United States and the defendant filed opening briefs, reply briefs, proposed findings of fact and proposed judgment. On October 11, 1967, oral arguments were heard and the court held for the United States and ordered the parties to attempt to mutually work out terms of the judgment.

On February 21, 1968, a final judgment was entered ordering the defendant Continental within 12 months to divest itself of the Artesia-New Mexico refinery and related properties acquired from Malco Refineries, Inc., on May 1, 1959. The judgment also orders divestiture of a product pipeline from the refinery to El Paso, Taxas, which was constructed after the Malco acquisition.

The defendants appealed to the Supreme Court and the Supreme Court on October 21, 1968, entered a per curiam opinion granting Government's motion to affirm, thus terminating the case.

1804. *United States* v. *The E. W. Scripps Company*, Civ. 5656 (S.D. Ohio). On November 12, 1968, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 27, 1968, with its mandatory 30-day waiting period.

On September 30, 1968 ,the Cincinnati Inquirer ,Inc., filed motion to intervene, contending that *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129 (1967), conferred a virtually unlimited right of intervention in antitrust cases upon persons "affected" by the case. The Government responded with the argument that Cascade did not enunciate a broad now right of intervention in antitrust cases, but rather was confined to its unique fact situation in which motions to intervene were granted to ensure enforcement of a prior Supreme Court mandate. This issue was disposed of at the time the proposed final judgment was entered on November 12, 1968, by any order granting applicants leave to withdraw the motions for intervention and to appear instead as *amici curiae* on those matters properly submitted to the court pursuant to the final judgment.

The judgment requires Scripps Co. to sell its interest in the Cincinnati Enquirer within 18 months after the judgment becomes final, subject to the Department of Justice or court approval.

The purchaser must assure the court that it intends to continue to operate the Enquirer as a going concern. Scripps is forbidden for 5 years to purchase any interest in any daily newspaper in Cincinnati or the 19 county metropolitan area.

1819. *United States* v. *Third National Bank in Nashville, et al.*, Civ. 3849 (M.D. Tenn.). On November 22, 1966, after trial, the district court ruled that the merger of Third National Bank and Nashville Bank and Trust Company was not in re-

straint of trade and not prohibited by the Federal Deposit Insurance Act, as amended by the 1966 Amendment. The court concluded that the effect of the merger will not be substantially to lessen competition or tend to create a monopoly in violation of the 1966 Amendment.

On appeal by the Government the Supreme Court on March 4, 1968, reversed the district court's ruling and remanded, holding that the 1966 Act did not change the antitrust standards previously applicable to banks. Rather, Congress intended bank mergers to be subject to the usual antitrust analysis. The Court held, however, that the trial court must make specific findings denoting how such factors benefit the community and how they outweigh the competitive consequences of the merger. Here, the Court ruled, the district court had failed to make such findings. The Court held that benefits to the community cannot justify a substantially anticompetitive merger unless defendents show that those benefits cannot reasonably be obtained by other means. The acquired bank was not in danger of failing. The Court held that the burden of showing that an anticompetitive bank merger is in the public interest because of benefits to the community rests on the merging banks.

In compliance with the 30-day waiting period subsequent to the filing of a proposed judgment, a consent judgment was entered on September 19, 1968, which required Third National to obtain a charter for a new bank, and to provide it with initial capital of at least $4 million in cash and assets. In addition the judgment requires that there be included with such assets the branch operated by Third National on Nolenville Road. Third National cannot maintain any stock or financial interest in the new bank, nor can any of its directors serve on the new bank's board.

1824. *United States* v. *Gestetner Corporation*, 64 CIV 3121 (S.D. N.Y.). On September 9, 1968, a consent decree was entered terminating this action following the expiration of the usual 30-day waiting period.

The judgment forbids the defendant to fix prices for its goods, limit territories in which they may be sold, or restrict persons who may buy them. The defendant cannot refuse to sell goods to a customer because of the prices or conditions at which he re-sells them or leases them. The defendant may issue suggested list prices, but only if they specify that the goods may be sold at any price the dealer chooses.

1827. *United States* v. *Ohio Honda Dealers Sales Association, Inc., et al.*, Cr. 8890 (S.D. Ohio). On August 2, 1968, the Ohio indictment against American Honda was dismissed on grounds of *res judicata*, based on the San Francisco and Chicago cases.

On November 1, 1968, the court accepted *nolo* pleas from the remaining defendants and on December 20, 1968, fines totalling $4,750 were imposed on the *nolo* pleas.

1841. *United States* v. *Aluminium Limited, et al.*, Civ. 1174–64 (D. N.J.). On November 4, 1966, a judgment was entered, the terms of which Alcan was required to for 9 months offer for sale the entire manufacturing plant at Riverside, California and the Flexalum Division, which produces and sells aluminum siding and components for venetian blinds and awnings. If at the end of that period a purchaser could not be found, Alcan had the right to make application to the court for an order relieving it of any further obligation to sell.

On April 30, 1968, the court after hearing granted the motion of Alcan to be relieved of its obligation to sell the Flexalum Division assets or the Riverside Plant which it acquired from National Distillers and Chemical Corporation in 1965, stemming from the judgment against Alcan. On September 24, 1968, the stipulation and order of dismissal as to the remaining defendant National Distillers and Chemical Corporation was entered thus terminating the case.

1852. *United States* v. *Champion Papers, Inc.*, Civ. 02270 (D. Nebr. On August 28, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed July 29, 1968, requiring a 30-day waiting period.

The judgment orders Champion within 2 years to divest 23 of the acquired merchant houses in such a manner that these merchant houses will be maintained as operating businesses in competition with other paper merchant houses. Within 5 years from the entry of the decree Champion shall divest as viable paper merchant houses one or more paper merchant houses which in the aggregate accounted for sales volume in the 12 months preceding the date of divestiture of seven and one-half million dollars.

Champion is further enjoined for a period of 10 years from acquiring the capital stock and any assets (except products purchased in the normal course of business) of a fine paper merchant.

1869. *United States* v. *United States Aviation Underwriters*, Civ. 65–2401 (S.D. N.Y.). On October 17, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed September 16, 1968, requiring a 30-day waiting period.

The judgment forbids the practices of preventing the formation of new insurance groups and required the group to remove a number of restrictions on admitting new members.

1908. *United States* v. *Chicago Linen Supply Corporation, et al.*, Civ. 66 C 1652 (N.D. Ill.). On April 7, 1967, a final judgment was entered, against 13 defendants, pursuant to a stipulation filed March 8, 1967, requiring a 30-day waiting period.

The defendants are forbidden by the judgment to either stabilize prices or allocate markets or customers. Sixty days from the date of entry of the judgment, the defendants are required to start proceedings to dissolve the association. The association is ordered to destroy its price lists, customers registrations and all books and records relating to arbitration of disputes over customers. The judgment also said that the members will be free to join or organize a lawful association.

On July 23, 1968, the case was terminated by entry of a final judgment against the remaining defendant, pursuant to a stipulation filed May 20, 1968, requiring the usual 30-day waiting period.

The judgment enjoins the defendant from fixing prices and allocating markets and customers. The judgment was similar to the one entered previously, thus terminating the case.

1957. *United States* v. *Globe Ticket Company, et al.*, Cr. 22924 (E.D. Pa.). On July 12, 1968, upon motion of the Government the indictment of the last remaining defendant was dismissed. All of the other defendants, 10 corporations and 13 individuals were sentenced on November 14 and 17, 1967, after the acceptance of pleas of *nolo contendere*, over objection of the Government. The fines amounted to $261,050.

1963 A. *United States* v. *American Bakeries Company, et al.*, Cr. 7656 (W.D. Mich.). On March 15, 1968, court accepted *nolo* pleas of 8 corporate and 8 individual defendants, and rejected *nolo* pleas of 4 corporate and 5 individual defendants. One corporate defendant and 1 trade association did not attempt to plead *nolo*.

On May 8, 1968, the defendants whose *nolo* pleas had been denied filed a petition for a writ of mandamus, alleging that ability to pay treble damages has been the basis for the acceptance of some and the rejection of other *nolo* pleas, and that they had been denied equal protection of the laws. This petition was withdrawn soon thereafter, and the defendants filed a motion to reconsider the rejection of the *nolo* pleas.

On June 4, 1968, court issued an opinion which explained the acceptance of *nolo* pleas of "local" companies and the rejection of *nolo* pleas of "national" companies. The court went on a "public interest" rationale; that being that a *nolo* plea would be a sufficient deterrence to a small local company, but not to a large, national one.

On June 7, 1968, the court heard oral argument on various defense motions, and at their conclusion it accepted the *nolo* pleas of the major companies and the employees because of "close legal questions" presented by the defense's motions, asserting that "the public interest may be served by the expeditious resolution of potentially protracted cases."

On June 24, 1968, the court accepted a *nolo* plea from a trade association which had refrained from pleading *nolo* on March 15, 1968, and imposed fines and suspended jail sentences ranging from 5 to 8 months, and probation ranging from 1 month to 1 year. In addition all except 1 individual defendant were required as a condition to their probation to pay $125 each into a fund to be used to pay the fine and attorney's fees of the defendant association. The fines imposed totalled $206,500.

On September 30, 1968, the last remaining defendant filed a moton to plead *nolo* which was accepted by the court on October 24, 1968, and a fine of $5,000 was imposed. The fines imposed in the case totalled $211,500.

1970. *United States* v. *Laub Baking Company, et al.*, Cr. 67 415 (N.D. Ohio). On January 12, 1968, all defendants entered pleas of not guilty and the 3 individuals moved for a protective order relieving them from being photographed and

fingerprinted by the United States Marshal on grounds that the Marshal had no authority to fingerprint a person charged with a federal misdemeanor in Ohio; fingerprinting would violate their constitutional right against self-incrimination; fingerprinting would constitute an unreasonable search and seizure and fingerprinting would invade their constitutionally protected right of privacy. The court denied said motion April 4, 1968. The defendant appealed to the Circuit Court of Appeals which appeal he later withdrew.

On December 18, 1968, the court imposed fines totalling $111,500 on *nolo* pleas previously accepted over Government opposition, thus terminating the case.

1977. *United States* v. *National Funeral Directors Association of the United States, Inc.*, Civ. 67 C 395 (E.D. Wisc.). On August 19, 1968, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed July 17, 1968, requiring a 30-day waiting period.

The judgment permanently enjoins the defendant from continuing the restraint on advertising of prices for funeral services, and directs that all provisions in the Association's institution, etc., that unit or restrict the advertising of prices of such services be eliminated. The defendant may, however, petition the appropriate State and local Governments for law or regulations, to limit or restrict such advertising.

The Association also is directed to exclude and refuse membership to any funeral directors associations, or any State or local associations which includes as its members any association of funeral directors which limits or restricts the advertising of prices for funeral services.

1990. *United States* v. *Syntex Corporation, et al.*, Civ. 478–68 (D. D.C.). On October 15, 1968, the court without opinion granted defendants motions for summary judgment alleging mootness because they had cancelled the restrictive agreement, thus terminating the case.

2000. *United States* v. *Wilson Sporting Goods Company, et al.*, Civ. 68 C 459 (N.D. Ill.). On October 28, 1968, the case was terminated by the entry of a final judgment pursuant to a stipulation filed September 27, 1968, requiring a 30-day waiting period.

The judgment prevents Wilson, the nation's leading manufacturer and seller of sporting goods, from acquiring the country's leading manufacturer of gymnastic equipment, namely Nissen Company. Wilson is also forbidden from acquiring the stock or assets of any gymnastic equipment manufacturer for the next 5 years without 60 days prior notice to the Government.

On the same day, the Nissen Corporation was dismissed as a party defendant upon the motions of the Government.

2001. *United States* v. *Steiner American Corporation, et al.*, Cr. 1753 (D. Nev.). On July 24, 1968, the court imposed fines totalling $115,000 on *nolo* pleas previously accepted from all defendants, thus terminating the case.

2009. *United States* v. *Wilson Sporting Goods Co., et al.*, Cr. 68–181 (D. Ore.). See "Cases Instituted".

2015. *United States* v. *The Fidelity Bank, et al.*, Civ. 68–1975 (E.D. Pa.). See "Cases Instituted".

2016. *United States* v. *Girard Trust Bank, et al.*, Civ. 68–1976 (E.D. Pa.). See "Cases Instituted".

2021. *United States* v. *Diamond International Corporation, et al.*, Civ. 50151 (N.D. Calif.). See "Cases Instituted".

PART 5 (1968–1969)

1532. *United States* v. *Serta Associates, Inc.*, Civ. 60–C–843 (N.D. Ill.). After the case was set for trial in 1964, the trial was stayed pending the appeal to the Supreme Court of the judgment of the trial court in an essentially similar case, *United States* v. *Sealy, Inc.*

After the trial that ended January 23, 1968, which was on the price maintenance issue, an opinion was handed down holding Serta's price fixing and its territorial allocations constitutes violations of Section 1 of the Sherman Act.

On September 30, 1968, a final judgment was entered in accordance with the opinion. The judgment requires the defendant, which franchises local mattress manufacturers to use the Serta label, to cancel the franchise of any licensee that refuses to file with the court its consent to be bound by the judgment.

The judgment enjoins the defendant and consenting licensees from conspiring to fix retail prices or other terms or conditions of sale for any products

sold under the Serta trademark but allows the use of suggested retail prices for the purpose of national advertising if the designation of such prices as suggested are made a prominent part of the advertising. Also enjoined is the practice of allocating exclusive territories to licensees.

Serta and its licensees are enjoined with respect to Serta trademarked products from resale price maintenance, from limiting or restricting price advertising from preventing trade-in allowances.

The judgment contains a prohibition against Serta and its licensees making any advertising allowances to any person on the condition that he advertise only at the resale prices suggested by the defendant or consenting licensees. This is the only provision covering all mattress products, the other being confined to Serta products.

On February 24, 1969, the Supreme Court in a *per curiam* opinion granting motion of Government to affirm and affirming judgment of the district court.

1666. *United States* v. ——— *Food Products Corp., et al.*, 62 CIV 2031 (S.D. N.Y.). On November 8, 196, trial began and concluded November 21, 1967. A consent judgment was entered December 18, 1967, as to 2 defendants forbidding them to fix prices, allocate customers and territories, and boycott distributors.

On April 5, 1968, in an opinion, the court found for the Government against the Union, Local 627 defendants, and entered a default judgment against Olympia Provision. The court held that the distributor-members of Local 627 are independent contractors; that the activities of Local 627 on behalf of these distributor members served no legitimate labor objectives; that such activities are not exempted from the Sherman Act; that Local 627, the distributor-members, and the three frankfurter manufacturer-defendants combined and conspired to restrain and monopolize the manufacture, sale and distribution of frankfurters by means of price-fixing and boycott agreements, in violation of Sections 1 and 2 of the Sherman Act; that the Union had knowledge of, acquiesed and participated in the arrangements herein; and that the Government was entitled to equitable relief.

On September 26, 1968, settlement between the two defendants was reached and a final judgment entered.

The defendants appealed to the Supreme Court and on March 4, 1969, the petition for rehearing was denied and the judgment affirmed.

1773. *United States* v. *The Brookman Co., Inc., et al.*, Cr. 39462 (N.D. Calif.). An opinion entered May 14, 1964, denied a motion by a partnership to dismiss the indictment against it on the ground that partnerships are not subject to criminal prosecution under the Sherman Act, but holding that the definition of "person" in Section 8 does not exclude partnerships. This was the first adjudication of the criminal liability of a partnership under the Sherman Act.

On June 25, 1964, fines totalling $28,000.00, were imposed on 6 defendants who had previously pled *nolo contendere*. The 3 individuals were given jail sentences to be served.

The defendants then filed motions for a stay of execution of sentences, to withdraw *nolo* pleas and for reduction of sentences. On July 2, 1964, the court denied defendants' motions. The individual defendants immediately filed notices of appeal in the district court, the effect being to stay the service of the jail sentences pending the outcome of the appeals.

On December 21, 1964, the court fined the remaining 2 defendants who had entered *nolo* pleas a total of $12,500.00. The individual was given a 30 day suspended jail sentence.

On June 7, 1965, the Court of Appeals for the Ninth Circuit reversed the judgment of the district court which had imposed jail sentences on 3 individual defendants who had pled *nolo*, remanding the case for a hearing on defendants motions for permission to withdraw their *nolo* pleas for the entry of appropriate findings & conclusions, and resentencing and trial.

Hearings pursuant to this order were held and on August 13, 1965, the court ruled that defendants motions to withdraw their pleas were without foundation. Mancini however, was allowed to withdraw his *nolo* plea in an exercise of discretion, based on the fact that he had proclaimed his personal innocence in post-judgment affidavits. The court stating that in a new plea hearing no plea of guilty or *nolo* could be accepted. Mancini pleaded not guilty and Judge Sweigert disqualified himself from further participation in the case. Co-defendants Cobby and Akerstrom were permitted to plead for a reduction of sentence and the jail sentence of each was suspended, subject to 2 years probation. Fines of $2,000.00, were reimposed on each.

On July 13, 1967, a jury returned a verdict of guilty against Mancini, President of the Brookman Co., Inc., and sole remaining defendant. Upon return of the verdict, the court remanded defendant to jail to await sentencing.

On July 24, 1967, before he was to pass sentence on defendant Judge Mathes (who had succeeded Judge Sweigert after his disqualification of himself), died of a heart attack. Sentencing was deferred to August 15, 1967, with Judge Muecke as a successor judge. Mancini moved for a new trial claiming no successor judge could rule on the motion because only the deceased judge had observed his demeanor as a ground for his credibility.

On January 17, 1969, Judge Muecke denied Mancini's motion for a new trial following the jury verdict of guilty returned on July 13, 1967. On February 14, 1969, Judge Muecke imposed a fine of $2,000.00, on Mancini, thus terminating the case.

1839. *United States* v. *The Concentrated Phosphate Export Association, et al.*, 64 CIV 3914 (S.D. N.Y.). After a non-jury trial Judge Ryan entered an opinion dismissing the complaint against the named Webb-Pomerene Association and its 5 member companies.

On appeal the Supreme Court's opinion of November 25, 1968, reversed the judgment holding that in all relevant aspects, the transactions involved here were American, not Korean, and that they are not "export trade" within the meaning of the Webb-Pomerene Act.

On March 25, 1969, a final judgment was entered permanently forbidding 5 manufacturers and a trade association from fixing or allocating business through a Webb Pomerene Association where the transaction is known to involve financing pursuant to any U.S. foreign aid program.

1842. *United States* v. *Owens-Corning Fiberglas Corporation, et al.*, Cr. 40052 (N.D. Calif.). On February 19, 1965, January 15, 1969, and February 17, 1969, fines were imposed on *nolo contendere* pleas totalling $109,200.00, thus terminating the case.

1880. *United States* v. *Robert G. Venn, et al.*, 65–535–CR–CF, (S.D. Fla.). On January 14, 1969, trial began of the 4 remaining defendants and concluded on January 29, 1969. The jury acquitted all 4 defendants. All other defendants, but 1, who had been severed on October 14, 1966, previously entered *nolo* pleas.

On June 18 and 25, 1969, the court dismissed that 1 defendant and imposed fines on the remaining defendants, who pled *nolo*, totalling $45,000.00, thus terminating the case.

1904. *United States* v. *Florist Transworld Delivery Association*, Civ. 28784 (E.D. Mich.). On March 20, 1969, the case was terminated by entry of a final judgment pursuant to a stipulation filed February 19, 1969, requiring a 30-day waiting period.

The judgment forbids the Association to fix either prices or the transmission and service charges payable by customers purchasing flowers from an association florist. The judgment also enjoins the Association from preventing a member from joining other floral associations or wire services.

1910. *United States* v. *Pioneer Builders, Inc., et al.*, Cr. 27439 (D. Md.).

On October 25, 1966, a defendant entered a plea of *nolo* not opposed by the Government and a fine of $5,000 was imposed.

On January 7, 1969, 2 defendants pled *nolo* and fines totalling $12,500 were imposed.

On March 18, 1969, the remaining defendant was *nolle prossed*, thus terminating the case.

1953. *United States* v. *Automotive Service Dealers Association, et al.*, F–65–CR (E.D. Calif.). On January 6, 1969, an association of service station dealers and its chairman were sentenced and fines of $1,026.03 were imposed for violating Section 1 of the Sherman Act by agreeing to fix retail gasoline prices, remove price signs, and harass nonconforming dealers. The sentencing followed verdicts of guilty returned by a jury against the defendants on November 14, 1968.

1957. *United States* v. *Joseph P. Cuddigan, Inc., et al.*, Cr. Ind. 7408 (D. R.I.). On April 18, May 2, and June 6, 1969, fines were imposed on *nolo contendere* pleas totalling $113,000.00, thus terminating the case.

1966. *United States* v. *United Oil Dealers Associations*, Cr. 1148 (C.D. Calif.). On June 23, 1969 a fine was imposed on a *nolo contendere* plea in the amount of $100, all suspended, and placed the defendant on probation for 2 years, thus terminating the case.

1987. *United States* v. *Globe Ticket Company, et al.*, Civ. 68–176 (E.D. Pa.). On February 11, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed January 9, 1969, requiring a 30-day waiting period.

The judgment enjoins concerted activity to fix prices, allocate customers and submit collusive bids. It also forbids each defendant from communicating prices and other information concerning bids to competitors. Further, each defendant is required to maintain records of meetings and other communications with competitors which occur during the next 7 years; to submit written certification of non-collusion with each sealed bid and with each written quotation in excess of $500 for a period of 7 years; and to publish new price lists based on unilateral review.

1992. *United States* v. *Automatic Fire Alarm Company of Delaware, et al.*, Supp. Civ. 2785 (D. R.I.) On September 30, 1968, the district court entered an opinion dismissing the petition against the respondents and each of them as to alleged violations of Section VII(A) (Count I) of the judgment.

On December 31, 1968, the defendants were found not guilty of either criminal or civil contempt of Section VII(A) (Count I) of the judgment and were found guilty of violating Section VII(C) (Count II) of the judgment. No fine was imposed.

2008. *United States* v. *B & W Market, et al.*, Civ. 5258 (D. Wyo.). On February 25, 1969, the case was terminated by the entry of a final judgment which was signed by the judge without regard to the stipulation requiring a 30-day waiting period.

The judgment forbids the markets and their managers to induce or coerce any distributor to not sell to homes or to vendors who in turn make deliveries. In addition the dairy association for a period of 3 years must either sell and deliver to home customers or make their products available to home vendors.

2010. *United States* v. *Oregon Athletic Equipment Co., Inc., et al.*, Civ. 68–424, (D. Ore.). On June 12, 1969, the case was terminated by entry of a final judgment pursuant to a stipulation filed May 12, 1969, requiring a 30-day waiting period.

The judgment forbids the companies from entering into any agreement, understanding, combination or conspiracy to submit collusive and rigged bids to purchasers of athleitc equipment or from engaging in any other agreement having a similar purpose.

In addition, the judgment sets limitations on exchanges of price information between the athletic equipment companies and other sellers of athletic supplies.

2013. *United* v. *Bank of Las Vegas, et al.*, Civ. R–2100 (D. Nev.). On January 21, 1969, the court approved and ordered the dismissal of this action without prejudice as defendants had terminated their merger agreement.

2017. *United States* v. *Pennsylvania National Bank and Trust Co. et al.*, Civ. 68–2025 (E.D. Pa.). On March 5, 1969, the court granted the motion of the United States for an order dismissing the action without prejudice, as the merger was abandoned.

2025. *United States* v. *F. W. Means & Company, et al.*, 69 Cr 1 (N.D. Ill.). On May 19, 1969, fines were imposed on *nolo contendere* pleas totalling $22,500.00, thus terminating the case.

2027. *United States* v. *Columbus Bowling Proprietor's Association*, (Cr. 9167 (S.D. Ohio). On March 21, 1969, the defendant was fined a total of $2,500, on its plea of *nolo contendere*, thus terminating the case.

2029. *United States* v. *Gannett Co., Inc., et al.*, Civ. 68 C 48 (N.D. Ill.). On January 6 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 5, 1968, requiring a 30-day waiting period.

The judgment requires Gannett to divest itself of its equity interest in either television station WREX or Rockford Newspapers, Inc., at Gannett's option, to an approved purchaser within 18 months from the date of the final judgment.

2030. *United States* v. *Independent Towel Supply Company, et al.*, Cr. 68–432 (N.D. Ohio). On March 21, 1969 1 association and 4 corporations were fined a total of $35,000 on *nolo contendere* pleas previously accepted, thus terminating the case.

2044. *United States* v. *Crocker-Citizens National Bank, et al.*, Civ. 51086 (N.D. Calif.). See "Cases Instituted."

2046. *United States* v. *Continental Bank and Trust Company*, et al., Civ. 69–890 (E.D. Pa.). See "Cases Instituted."

2048. *United States* v. *Martin Linen Supply Company, et al.*, SA 69 CA 114 (W.D. Texas). See "Cases Instituted."

2051. *United States* v. *First Virginia Bankshares Corporation, et al.*, Civ. 176–69–A (E.D. Va.). See "Cases Instituted."

PART 6 (1969)

1187. *United States* v. *Schine Chain Theatres, Inc., et al.* Supp. Civ. 223 (W.D. N.Y.). On August 20, 1969 the case was ordered dismissed without prejudice.

1591. *United States* v. *Marshall & Ilsley Bank Stock Corporation, et al.* (formerly Bank Stock Corporation of Milwaukee, et al.). Civ. 61–C–54 (E.D. Wisc.). Trial began June 24, 1963, until July 2, 1963, 1963. Trial resumed November 19, 1963, and continued until November 26, 1963.

On June 15, 1966 an opinion and order was handed down dismissing the case for lack of jurisdiction. The district court held that the Bank Holding Company Act of 1956, which requires Federal Reserve Board approve of bank holding company acquisitions, confers exclusive jurisdiction on the Board and *pro tanto* deprives the district courts of their jurisdiction under Section 15 of the Clayton Act to enforce Section 7 of the Act.

Supreme Court in a *per curiam* opinion of May 22, 1967, reversed the judgment of the district court in light of Section 11(e) of the Bank Holding Company Act of 1966 and the Houston Bank decision.

The case was terminated December 1, 1969, by a final judgment pursuant to a stipulation filed October 31, 1969, requiring thhe usual 30-day waiting period.

The judgment requires Marshall & Ilsley to dispose of its stock holdings in the Bank of Commerce, the judgment gives court approval to a sales agreement whereby Marshall & Ilsley could comply with the judgment by selling its stock in the Bank of Commerce to Time Holdings, Inc. in exchange for stock in that company.

The judgment prohibits Marshall & Ilsley from holding more than 5% of the stock of Time Holdings and would require Marshall & Ilsley to place the voting rights of its stock in Time Holdings in the hands of an independent trustee who would exercise the voting rights. The stock itself could be held by Marshall & Ilsley only for investment purposes.

1727. *United States* v. *F. & M. Schaefer Brewing Company, et al.* Civ. 62–C–1421 (E.D.N.Y.). On January 30, 1968, a consent judgment was entered against Anheuser-Busch, Inc., pursuant to a stipulation filed October 20, 1967.

The judgment enjoins AB from marketing within the United States the beer of any other brewer or from having its beer marketed by any other brewer. AB is also prohibited from agreeing with another brewer to market their beers through a common distribution in which either brewer has an interest, and from utilizing as a wholesaler a distributor owned or controlled by another brewer.

The proposed decree was objected to by the New York States Brewers Association, but the Judge entered the decree anyway without modification.

On August 19, 1969, the case was terminated by the entry of a consent judgment against Schaefer, pursuant to a stipulation filed June 5, 1969, requiring a 30-day waiting period.

The Schaefer judgment covering the territory in which Schaefer, a regional brewer, does business, enjoins the company for a period of 10 years from entering into marketing agreements with any other brewer without the permission of the Department or the approval of the court. Schaefer also is permanently prohibited from entering into a marketing agreement with AB anywhere in the United States.

1776A. *United States* v. *New Orleans Chapter, Associated General Contractors of America, Inc., et al.* Cr. 31424 (E.D. La.). On December 15, 1969, the defendants were fined a total of $80,000 on their pleas of *nolo contendere*, thus terminating the case.

1791. *United States* v. *The O. M. Scott & Sons Company* Civ. 760–64 (D. D.C.). Trial commenced December 2, 1968, and concluded December 12, 1968. Whereupon defendant made a motion to dismiss which was overruled December 4, 1968.

Trial resumed February 13, 1969, and concluded February 25, 1969.

On August 8, 1969, an opinion was handed down holding defendant not a party to any combination between the defendant and its dealers in non-fair trade jurisdictions to maintain resale prices of its products in violation of the Sherman Act and dismissing the complaint.

The Government dismissed its notice of appeal November 19, 1969.

1812. *United States* v. *Uniroyal, Inc.* (formerly United States Rubber Company), Civ. 1949 (S.D. N.Y.). A non-jury trial commenced March 17, 1969, and concluded April 8, 1969.

On May 5, 1969, an opinion was handed down which held that the defendant had violated Section 1 of the Sherman Act by combining and conspiring to eliminate price competition in "Keds" and "Kadettes" among retail dealers.

A judgment in accordance with the opinion was entered May 23, 1969. The court will retain the case on the docket for future relief from an alleged resumption by Uniroyal of illegal activity and except as so granted the prayers of the Government will be denied.

1848. *United States* v. *R. J. Reynolds Tobacco Company* (formerly Penick & Ford, Ltd., Inc., et al.), Civ. 345–65 (D. N.J.). On September 22, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 21, 1969, requiring a 30-day waiting period.

The judgment requires Reynolds within 2 years to divest itself of its corn starch, corn syrup, and related corn products business, as well as its potato starch business and is enjoined from ever reacquiring Penick & Ford. For a period of 5 years after divestiture, Reynolds is enjoined from acquiring any company engaged in the corn starch or potato starch business. In addition, during the 5-year period after divestiture, Reynolds is enjoined from itself engaging in the manufacture for sale, or the sale of corn starch or potato starch.

1849. *United States* v. *The American Oil Company, et al.* CR. 153–65 (D. N.J.). On December 12 and 23, 1969, the defendants were fined a total of $550,000 on their pleas of *nolo contendere*, thus terminating the case.

1895. *United States* v. *Socony Mobil Oil Company, Inc., et al.* Civ. 2487 (D. Kansas). On July 24, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed June 23, 1969, requiring a 30-day waiting period.

The judgment enjoins the defendants from entering into any agreement, contract, understanding, plan or program to fix prices, to submit collusive bids to purchasers of liquid asphalt, to allocate or divide markets or territories for the distribution or sale of liquid asphalt; to furnish or receive information concerning prices, discounts or other terms or conditions of sale upon which liquid asphalt is to be offered for sale.

The judgment sets limitations on disclosing or communicating price or sealed bid information to any other manufacturer, distributor or seller of liquid asphalt, and required each defendant for a period of 5 years to furnish with each sealed bid to any governmental awarding authority in the States of Montana, North Dakota, South Dakota, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas and Oklahoma an affidavit that such sealed bid was not the result of any collusion between such defendant and any other manufacturer, distributor, or seller of liquid asphalt not a party to such sealed bid.

1896. *United States* v. *Minnesota Mining and Manufacturing Company*, Civ. 66–C–627 (N.D. Ill.). On September 2, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 1, 1969, requiring a 30-day waiting period.

The judgment prevents 3M from claiming damages in patent suits for alleged infringements of 3M patents in the 3 product lines up to the time of the judgment, and from entering into agreements allocating customers or markets or which fix prices. For a period of years, 3M is barred from suing under patents already declared invalid by another court, and from entering into patent license agreements containing various restrictive provisions.

3M is also barred, for a period of years, from acquiring patents from others on an exclusive basis; from acquiring competitors, wholesalers, suppliers, or customers; from submitting bids to a government agency without an affidavit of non-collusion; from selling on condition that the purchaser shall not buy from a competitor; from agreeing with a licensor that other licensees will be charged higher royalty rates than those charged to 3M; and from selling products not identified as 3M products. 3M must also make all new products available on non-discriminatory terms to customers of the same general category.

The judgment further provides that 3M, when requested, must offer patent licenses for a reasonable royalty under its present tape, media, and plate patents, and also on any tape patents it obtains in the next 5 years. 3M must also offer know-how, when requested, on its existing tape products and, with respect to any tape patents obtained in the next 5 years, the know-how needed to practice the invention defined in the patent claims.

1899. *United States* v. *First Hawaiian Bank, et al.* (formerly First National Bank of Hawaii, et al.) Civ. 2540 (D. Hawaii). On November 17, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed October 17, 1969, requiring a 30-day waiting period.

The judgment enjoins First Hawaii, for a period of 10 years from acquiring any part of the business of or other financial interest in any corporation engaged in the trust business in Hawaii. An exception to this injunction was made to permit such an acquisition with court approval where First Hawaiian was requested by the appropriate bank regulatory authority to make the acquisition in order to avert the insolving of the acquired trust company.

1902. *United States* v. *The College of American Pathologists*, Civ. 66–C–1253 (N.D. 111.). On July 14, 1969, the case was terminated by entry of a final judgment pursuant to a stipulation filed June 14, 1969, requiring a 30-day waiting period.

The judgment prohibits the defendant and any persons acting with it, from restricting or preventing any person from organizing, owning or operating any laboratory, from referring specimens or patients to any laboratory, from performing laboratory services for any person, or from associating or affiliating with any laboratory or being employed by any laboratory.

The judgment also prohibits the defendant from establishing any criteria with respect to financial arrangements between hospitals and persons operating laboratories within such hospitals. The defendant is also enjoined from requiring or suggesting that fee schedules of any laboratory conform to that of other laboratories in the locality and from preventing or restricting any laboratory from establishing its own independent prices for laboratory services. The defendant association is required within 6 months to amend its rules and regulations to eliminate practices enjoined by the judgment.

1971. *United States* v. *Laub Baking Company, et al.* Civ. 67–850 (N.D. Ohio). On September 8, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 8, 1969, requiring a 30-day waiting period.

The judgment forbid the bakeries to enter into any agreement, understanding, plan or program to fix prices, submit collusive bids to purchasers of bakery products, or to communicate or exchange prices or other sales information with any other sellers of bakery products before such information is known to the trade.

The judgment sets limitations on the communication of price information between the consenting defendants and other sellers of bakery products.

The consenting defendants are also required for a period of 5 years to certify that each sealed bid or quotation for the sale of bakery products in the Akron-Canton-Cleveland-Mansfield market was not the result of collusive action.

1980. *United States* v. *American Bakeries Company, et al.*, Civ. 5787 (W.D. Mich.). On June 10, 1969, a stipulation, requiring the usual 30-day waiting period, and proposed judgment were filed against 9 defendants.

On June 27, 1969, the association was dismissed.

On June 30, 1969, a stipulation requiring the usual 30-day waiting period and proposed judgment were filed against 4 defendants.

On July 9, 1969, a stipulation, requiring the usual 30-day waiting period, and proposed judgment were filed against 9 defendants. On the same day we withdrew our stipulation and final judgment dated June 10, 1969.

Both final judgments were entered July 31, 1969. The judgments forbids the defendants from entering into any agreement, understanding, plan or program to fix prices, submit collusive bids to purchasers of bakery products, or to communicate or exchange prices or other sales information with any other sellers of bakery products before such information is known to the trade.

In addition, the judgments sets limitations on the communication of price information between the defendants and other sellers of bakery products.

The defendants are also required for a period of 5 years to certify that each stated bid submitted for the sale of bakery products in the State of Michigan was not the result of collusive action.

1933. *United States* v. *Fabenfabriken Bayer A.G., et al.*, Civ. 586–68 (D. D.C.). On October 23, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 24, 1969, requiring a 30-day waiting period.

Chemagro is enjoined from selling Chemagro products in the United States pursuant to any agreement that restricts the use, or formulation to be made of the product or restricts its resale. Chemagro is also prohibited from requiring

use of its trade name by purchasers of its product. The judgment specifically does not prohibit Chemagro from "refusing to sell Chemagro products to a purchaser who handles or markets such products in a manner which endangers the health or safety of human beings or plant or animal life." Bayer is enjoined from causing Chemagro to violate the judgment.

2002. *United States* v. *The First National Bank of Jackson, et al.*, Civ. 4310 (S.D. Miss.). The trial commenced April 28, 1969, and concluded May 7, 1969. On June 29, 1969, an opinion was handed down in favor of the defendants and dismissed the complaint. The Government did not appeal and the case was terminated August 22, 1969.

2003. *United States* v. *Deposit Guaranty National Bank of Jackson, et al.* Civ. 4311 (S.D. Miss.). On December 26, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed November 24, 1969, requiring a 30-day waiting period.

Under the judgment the banks could merge but Deposit Guaranty is enjoined from acquiring control over or merging or consolidating with any other commercial bank in Mississippi for a period of 10 years without prior approval of the Attorney General.

2018. *United States* v. *Intercontinental Fur Corp., et al.* 68–CR–764 (S.D. N.Y.). On July 15 and 22, 1969, the defendants were fined a total of $165,500, on their pleas of *nolo contendere*, thus terminating the case.

2024. *United States* v. *Union Camp Corporation, et al.*, Civ. 5005A (E.D. Va.). On February 24, 1969, a final judgment was entered as to Union, after the usual 30-day waiting period.

The judgment requires Union to dedicate to the public any patents pertaining to paper products or paper making machinery if Union had in its possession information which would have caused the Patent Office to deny application for those patents.

The judgment would enjoin Union from asserting such a patent when believing that the patent was unenforceable. Another provision would prohibit Union from consulting or seeking approval of patent licensees as to whether or not to issue additional patent licenses.

On July 1, 1969, the case was terminated by a final judgment entered against Bemis.

The judgment prohibits Bemis from filing or further prosecuting any patent application and from enforcing or threatening to enforce any patent if Bemis has knowledge of facts which would lead the Patent Office or a court to conclude that the patent is invalid.

The judgment enjoins Bemis from affixing certain patent numbers on any products, and, in addition, restrains Bemis from asserting the validity of these patents in any action which Bemis may bring. Another provision prohibits Bemis from consulting with or seeking approval of its patent licenses as to whether or not to issue additional patent licenses.

2028. *United States* v. *Scott Paper Company, et al.*, Civ. 32049 (E.D. Mich.). On October 24, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 23, 1969, requiring a 30-day waiting period.

The judgment requires Scott to license at reasonable royalties its "know-how" related to the practice of the Chemotronics patents.

The judgment also requires Chemotronics to make available any information it may have concerning the validity or invalidity of Scott's patents.

In addition the judgment prohibits Chemotronics from entering into any agreement with Scott which would prevent Chemotronics from performing research for others with respect to the reticulation of polyurethane foam, and Scott is prohibited for 10 years from acquiring any patent or exclusive rights under any patent relating to the process of reticulating polyurethane foam.

2032. *United States* v. *Circle Floor Co., Inc., et al.*, 68–CR–440 (E.D.N.Y.). On June 12, and September 3, 1969 the defendants were fined a total of $113,000 on their pleas of *nolo contendere*, thus terminating the case.

2034. *United States* v. *Beatrice Foods Co., et al.* NCR 51–68 (D. Utah). On December 16, 1969, the defendants were fined a total of $157,500 on their pleas of *nolo contendere*, thus terminating the case.

2035. *United States* v. *Campanella & Cardi Ready-Mix Concrete Co., et al.* CR. Ind. 7549 (D.R.I.). On October 3, 1969, the defendants were fined a total of $90,000 on their pleas of *nolo contendere*, thus terminating the case.

2040. *United States* v. *The Virginia National Bank, et al.* Civ. 33-69-N (E.D. Va.). On August 4, 1969, the court entered an order dismissing this action without prejudice on the ground that defendant banks had abandoned their proposed merger.

2042. *United States* v. *Western Farmers Association*, Civ. 8150 (W.D. Wash.). On December 8, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed November 6, 1969, requiring a 30-day waiting period.

The judgment requires divestiture of the acquired trade names together with all of the business and good will attached hereto and further prohibits the defendant from utilizing the acquired realty in connection with any phase of the production, processing or sale of fryers.

The judgment also provides for cancellation of certain other agreements entered into at the time of the acquisition; enjoins the defendant from having common officers, directors, or executive employees with other persons engaged in the production, processing, or sale of fryers; and enjoins the defendant for a period of 10 years from acquiring any fryer processing plant except upon 60 days written notice to the Government.

2050. *United States* v. *The Connecticut National Bank, et al.* Civ. 13138 (D. Conn.). On July 14, 1969, the court entered an order dismissing this action without prejudice on the ground that defendant banks had abandoned their proposed merger.

2053. *United States* v. *United States Steel Corporation*, Civ. 69-728 (W.D. Pa.) On June 13, 1969, a stipulation, requiring the usual 30-day waiting period, and a proposed final judgment was filed.

A Trade Relations Association not named in the complaint attempted to intervene as the judgment directed U.S. Steel to prohibit its officers and employees from belonging to or attending any meetings of the Association, or other association of like nature.

On August 5, 1969, parties consent to entry of a final judgment, that said final judgment may be substituted for the one filed June 13, 1969, and that this judgment be entered. The new judgment orders the defendant to refrain from being a member of and prohibits its officers and employees from belonging to or participating in the activities of any association whose objectives are to promote trade relations involving reciprocal purchasing arrangements.

At the time of filing the revised judgment the Government filed a "Notice" reciting the history of the change of language. The Association opposed this notice and again filed a motion to intervene, but made no objection to the new language of the provision of the August 5, 1969, judgment.

The Government filed a revised notice on August 25, 1969. The Association by stipulation withdrew all its pending motions and its opposition to the consent judgment, which was then entered by the court.

The final judgment entered on August 25, 1969, which is to be in effect for 10 years, prohibits U.S. Steel from purchasing products or services from any supplier with the condition that such purchases will be based on U.S. Steel's sales to the supplier. It also prohibits U.S. Steel from discussing with any supplier or contractor the relationship of purchases and sales between them or from comparing statistical data to further such a relationship.

The defendant is prohibited from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on U.S. Steel's sales to them.

U.S. Steel is directed to abolish its Commercial Relations Section, through which it has conducted its trade relations program, and to abolish the position of director of that section. The firm is also prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers.

Notice is to be given by U.S. Steel to its suppliers that its personnel are prohibited by the consent judgment from purchasing or selling goods and service or soliciting bids for capital expenditures based on U.S. Steel's purchases, and are prohibited from entering into any agreement or understanding to that effect.

2055. *United States* v. *Quaker State Oil Refining Corp.*, Civ. 56-69 Erie (W.D. Pa.). On July 24, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed June 23, 1969, requiring a 30-day waiting period.

The judgment forbids the defendant and its subsidiaries from concertedly fixing prices and allocating customers and territories with any seller of its branded products, including commission agents and consignees. The judgment also prohibits the defendant from unilaterally fixing prices, allocating customers and territories, provided, however, that the defendant may fair trade its products after the expiration of 3 years from the entry of the judgment.

The judgment contains a ban on the defendant selling or supplying its branded products on the condition that the buyer not sell or distribute products of a competitor, and forbids the defendant from refusing to continue to sell or supply its products because the buyer handles the product of a competitor.

2057. *United States* v. *Bardahl Manufacturing Corp., et al.* Civ. 8371 (W.D. Wash.). On August 11, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed June 30, 1969, requiring a 30-day waiting period.

The judgment enjoins the defendant from entering into or maintaining any price fixing plan or sales territory allocation program in the sale of Bardahl products.

2060. *United States* v. *Ilco Corporation*, Civ. 13261 (D. Conn.). See "Cases Instituted."

2069. *United States* v. *Gould, Inc.*, Civ. C-69-590 (N.D. Ohio). See "Cases Instituted."

PART 7 (1970)

1759. *United States* v. *Container Corporation of America, et al.* Civ C 180 G 63 (M.D. N.C.). A non-jury trial commenced on January 26, 1966, and both sides rested on January 27, 1966. Final arguments were made on January 11 and 12, 1967.

On August 31, 1967, findings of fact and conclusions of law and a judgment dismissing the complaint were entered by Judge Stanley. The United States appealed the decision and on January 14, 1969 the Supreme Court reversed and remanded the case to the district court.

On February 6, 1970 a final judgment on remand to all defendants except Albermarle Paper Company was entered. The judgment enjoins the defendants from any exchanges of information with other container manufacturers from which a price to a specific customer may be computed for sales of containers in the Southeastern United States. In addition, the defendants are enjoined from exchanges of information with any such manufacturers in any part of the United States where such exchanges have the purpose or effect of reducing price competition. Another provision prohibits price discussions of other types than that specifically involved in this case where such discussions have the purpose or effect of inviting compatible or harmonious pricing practices or otherwise stabilizing prices, or minimizing or restraining competition in price.

The defendants are also enjoined from distributing any pricing materials to other manufacturers unless such materials are made available to customers.

On May 19, 1970 the case was terminated by the entry of final judgment as to Albermarle Paper Company. It was adjudged in violation of Section 1 of the Sherman Act and costs were assessed against it, but injunctive relief was denied for mootness since the company was dissolved into its parent company and no longer was in the paper business.

1838. *United States* v. *American Pipe and Construction Company, et al.* Civ. 64-1775-MP (C.D. Calif.). On February 24, 1970 the case as against defendant American was terminated by the entry of a consent judgment pursuant to a stipulation filed January 20, 1970, requiring a 30-day waiting period. On April 10, 1970 the case was terminated as to the remaining defendant when an order on motion of the plaintiff was entered dismissing the complaint against U.S. Industries without prejudice.

The consent judgment requires American to sell all of the California facilities acquired from U.S. Industries within one year, and pending such sale to maintain and operate the plant so it can be sold as a going concern. It further enjoins American for 5 years from acquiring any facilities for the manufacture of pressure pipe from 4 inches to 48 inches (a) in California, and (b) elsewhere in the United States without giving the plaintiff 60 days notice. Because the Hawaiian facilities were mostly scrap, and had not operated for years before the complaint was filed there is no requirement that they be sold.

1843. *United States* v. *Citizen Publishing Company, et al.* Civil No. 1969–Tucson (D. Arizona). A non-jury trial commenced April 5, 1966 and concluded April 28, 1966.

On January 31, 1968 the district court held that the defendants had engaged in illegal price fixing, profit pooling and market allocation, had monopolized the Tucson daily newspaper market and that the merger of the papers was a violation of Section 7 of the Clayton Act and of Sections 1 & 2 of the Sherman Act. The court enjoined the *per se* restraints it had found and also ordered the defendants to submit a plan of divestiture, and a plan for modification of the operating agreement which would eliminate the illegal restraints. The judgment of the district court was affirmed by the Supreme Court in its opinion of March 10, 1969.

Following the return of the Supreme Court's mandate to the district court an evidentiary hearing on relief was held. Following this hearing the only dispute between the parties was over the question of whether the two newspapers would be allowed to have a common sales force for the sale of combination advertising.

The court ruled that in view of the other restrictions imposed the newspapers should be allowed to have the benefits of the cost savings resulting from the use of a common sales force. Each paper, however will be required to establish its own advertising sales department for the sale of single paper advertising. The court's order of January 26, 1970 requires the modified operating agreement to be put into effect within 90 days and orders divestiture of the Star within 21 months.

1888. *United States* v. *United Concrete Pipe Corporation, et al.* Cr. 3–690 (N.D. Tex.). On motion of the Government the indictment was dismissed as to Lloyd R. Earl the only indiivdual defendant on March 14, 1968. On December 19, 1969 the remaining 2 corporate defendants were fined a total of $40,000 on their pleas of *nolo contendere.*

The case remained open pending disposition of the mandamus proceedings instituted on October 5, 1966 by the government. The defendants filed cross-petitions for writs of mandamus and on June 2, 1969 the Court of Appeals granted defendants' petitions for writs of mandamus and held that corporate defendants in government criminal cases may inspect the grand jury testimony of present and former officers and employees, as testimony of a witness within the meaning of Rule 16(a)(3) and that defendants may inspect grand jury transcripts as "documents" under Rule 16(b) upon a showing of materiality to preparation of the defense, notwithstanding the grand jury secrecy provision of Rule 6(e), which requires demonstration of particularized need.

The government filed a petition for writ of Certiorari on August 20, 1969. Certiorari was granted on December 15, 1969 and on December 19 the defendants pleaded *nolo contendere* and were fined. Subsequently the Government submitted a memorandum suggesting that the judgment of the Court of Appeals be vacated and the case remanded with directions to dismiss the mandamus proceedings. On February 27, 1970 the Supreme Court so ruled and on April 20, 1970 the case was terminated when the Court of Appeals on remand dismissed the mandamus proceedings.

1928. *United States* v. *Fuel Oil Dealers' Division of the Central Montgomery County Chamber of Commerce, et al.* Cr. 22756. (E.D. Pa.). On August 15, 1969, 10 of the defendants were fined a total of $12,000 on their pleas of *nolo contendere.* On March 31, 1970 Old Comfort Company, Inc., was fined $500.00 on its plea of *nolo contendere* thus terminating the case.

1956. *United States* v. *Sonoco Products Company.* Civ. 67–520 (E.D. S.C.). On January 22, 1970, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 22, 1969, requiring a 30-day waiting period.

The judgment enjoins the defendant from entering into any agreement with any other person whereby either person will not engage in the manufacture or sale of cone board, cones or cone making machinery and also enjoins the defendant from selling cones at unreasonably low or discriminatory prices for the purpose of eliminating competition in the manufacture or sale of paper cones.

In addition, the judgment requires the defendant to sell cone board for a period of 5 years to any person submitting an order therefore and the defendant is further required to offer to sell and to sell, within the 3 years, 6 paper cone making machines in its plant at Atlanta, Georgia and to furnish all necessary licenses, plans, drawings, etc. to the purchasers of the machines.

1958. *United States* v. *Joseph P. Cuddigan, Inc., et al.* Civ. 3843 (D. Rhode Island). On June 15, 1970 the case was terminated by the entry of a consent

judgment pursuant to a stipulation filed May 14, 1970, requiring a 30-day waiting period.

The final judgment enjoins the defendants from conspiring or entering into any agreement, understanding, or plan with any other plumbing contractor to allocate plumbing jobs, to fix, stabilize or maintain prices, discounts or any other terms relating to plumbing jobs, or to exchange any information relating to prices and bids on plumbing jobs.

1997. *United States* v. *General Host Corporation, et al.* Cr. 23200 (E.D. Pa.). On December 8, 1969 the 7 corporate defendants and 6 individual defendants were fined a total of $48,500 on their pleas on *nolo contendere*. On April 13, 1970 the remaining 2 defendants were fined $4,000 on their pleas on *nolo contendere* thus terminating the case.

2005. *United States* v. *The Mead Corporation.* Civ. 3576 (S.D. Ohio). On May 14, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed April 13, 1970, requiring a 30-day waiting period.

Under the judgment Mead is required to divest itself of some 22 paper merchant houses, and at Mead's option either 2 or 6 additional paper merchant houses at specified locations throughout the country.

In addition, Mead is enjoined for 10 years from acquiring without the prior approval of the government, any capital stock, assets, business, or goodwill of any paper merchant house having sales of fine paper, during the preceding 12-month period, in excess of (i) $50,000 or (ii) 20% of its total paper sales, whichever is less.

2012. *United States* v. *The First National Bank of Maryland, et al.*, Civ. 19801. (D. Md.). A non-jury trial commenced on September 11, 1969 and concluded on September 19, 1969.

On January 13, 1970 an opinion was handed down which held that the government had failed to prove that the merger of the 2 defendant banks had violated Section 7 of the Clayton Act. The action was dismissed with prejudice. A stay of 60 days was granted to give the government time to appeal.

On March 20, 1970 a notice of appeal to the Supreme Court was filed by the United States. The case was terminated, however, on March 30, 1970 by a stipulation dismissing the appeal.

2020. *United States* v. *Combustion Engineering, Inc.* Civ. 68–4082. (S.D. N.Y.). On May 13, 1970 the case was terminated by the entry of an order dismissing the action without prejudice pursuant to a stipulation of the parties.

2026. *United States* v. *Hart Schaffner & Marx.* Civ. 68–2167. (N.D. Ill.). On June 1, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed April 29, 1970, requiring a 30-day waiting period.

The judgment requires the defendant to divest itself of at least 30 men's retail stores which in the aggregate purchased no less than $52,500 men's better priced suits during the fiscal year ending January 31, 1969.

The judgment also requires that at least 5 of the stores divestitures be made by December 31, 1971, and that all divestitures be completed by October 31, 1973.

The proposed judgment also enjoins Hart Schaffner & Marx from acquiring any men's retail clothing store within 5 years without the consent of the Department and from making any such acquisitions for an additional 5 years without the approval of the Department or the court.

2033. *United States* v. *W. R. Grace & Company, et al.* 68 CR 286 (2). (E.D. Mo.). On March 16, 1970 on oral motion of the U.S. Attorney the indictment as to defendants Agrico Chemical Company, Gulf Oil Corporation and Missouri Farmers Association was dismissed.

On June 5, 1970 the Court entered an order pursuant to Rule 48(a) FRCrP dismissing the indictment against the remaining defendants W. R. Grace & Company and Phillips Petroleum Company and thereby terminating the case.

2036. *United States* v. *Globe Chemical Co., Inc., et al.* Cr. 11428. (S.D. Ohio). On February 24, 1970 and on March 25, 1970 the defendants were fined a total of $65,000 on their pleas of *nolo contendere*, thus terminating the case.

2037. *United States* v. *Automobile Manufacturers Association, Inc., et al.* Civ. 69–75–JWC. (C.D. California). On November 9, 1969, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 11, 1969. Entry of the judgment followed an open hearing on October 28, 1969, at which numerous persons appeared as *amici curiae*, and in support of petitions to intervene. All petitions and motions were denied by the Court (307 F. Supp. 617) and on March 16, 1970 the Supreme Court affirmed the judgment, *sub nom.*,

City of New York v. *United States, et al.*, and dismissed an appeal from the judgment, *sub nom., Grossman* and *Tamkin* v. *United States, et al.* (397 U.S. 248).

The judgment provided for: (1) royalty-free licensing to all applicants of patents, patent rights and technical know-how on emission control devices exchanged by defendants through AMA; (2) cancellation of the AMA agreement whereby these exchanges took place; (3) an injunction against agreements to exchange company confidential information regarding emission control devices with any of the world's 9 largest motor vehicle manufacturers; (4) a prohibition against any agreement to exchange future patent rights covering unborn inventions in this field; (5) specific injunctions against agreements to delay installation of, to restrict individual publicity on research and development concerning, or to employ joint assessment of or most favored purchaser treatment of outsiders' patents on, emission control devices; (6) a general injunction against collusion to impede progress in the developing or marketing of antipollution control devices; (7) a prohibition against agreements to file unauthorized joint statements with any governmental regulatory agency in the United States (Federal or State), which issues emission standards or regulations, or with any Federal agency which issues safety standards or regulations, except in areas where the regulatory agencies felt that they were capable of evaluating the joint statements; and (8) a prohibition against filing with such a regulatory agency any joint statement which discusses the ability of a defendant to comply with a standard, or to do so by a particular time, unless the agency authorizes such a statement. In addition, defendants may not agree *not* to file individual statements with such an agency, and must file individual statements upon agency demand, even if a joint statement already has been filed.

2041. *United States* v. *The Idaho First National Bank, et al.* Civ. 1 69 9. (D. Idaho). A non-jury trial commenced on February 9, 1970 and concluded on March 4, 1970. Final arguments were made on April 13, 1970.

On April 21, 1970 an opinion was filed that ruled the government had failed to prove the merger of the 2 defendant banks violated Section 7 of the Clayton Act. Judgment was entered on April 29th and provided that the injunction against summation of the merger would be lifted on May 10 vacating the automatic statutory stay of 60 days.

2043. *United States* v. *Iowa Beef Packers, Inc., et al.* Civ. 69–C–3008–W. (N.D. Iowa). On March 20, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed February 18, 1970, requiring a 30-day waiting period.

Under the judgment Iowa Beef Packers must divest itself within 2 years of all the assets of Blue Ribbon Beef Pack. Inc., of Mason City, Iowa.

The judgment also prohibits Iowa Beef Packers for 10 years from acquiring any other firm engaged in slaughtering or processing of fed cattle in the 4 state area without approval of the Department of Justice or the court.

2045. *United States* v. *Ling-Temco-Vought, Inc., et al.* Civ. 69–438. (W.D. Pa.). On June 10, 1970 the case was terminated by the entry of a consent judgment following an opinion approving the proposed judgment and stipulation filed March 10, 1970.

On April 10, 1970 the court entered an order requiring all parties to present proper support to show that the proposed decree was in the public interest and in accord with the dictates of Congress. At a hearing on June 1, 1970 held for this purpose, concern was expressed by Jones & Laughlin's employees that the acquisition of J & L by LTV might jeopardize the rights of J & L's employees and former employees in various pension and employee benefit programs. The court in its June 10th opinion conditioned approval of the proposed judgment on the parties consent to the entry of an order preserving the integrity of the trust funds.

The judgment gives LTV the option to divest itself either of its interest in J & L or its interests in Braniff Airways, Inc., and the Okonite Company, a leading wire and cable manufacturer. The judgment provides that until the divestitures are complete, LTV cannot merge J & L's assets with its own.

LTV is also prohibited from acquiring, without approval of the court, any interest in excess of 1 per cent in any corporation that has assets in an amount over one-hundred million dollars. J & L is under the same prohibition so long as it is controlled by LTV.

Finally, LTV, J & L and each of their respective subsidiaries are prohibited from practicing reciprocity, i.e. the use of their purchasing power to promote sales.

2061. *United States* v. *Emhart Corporation*. Civ. 13262 (D. Conn.). On February 24, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed January 22, 1970, requiring a 30-day waiting period.

The final judgement enjoins Emhart from participating in any agreement, understanding or plan to allocate or assign customers, territories or markets for the distribution or sale of master key systems, from imposing any restrictions as to territories in which or persons to whom distributors may sell master key systems, and from refusing to sell or discriminating in the sale of such systems to any reseller, if the reason for such refusal or discrimination is found to be in the person to whom or the territory in which the reseller, if the reason for such refusal or discrimination is found to be in the person to whom or the territory in which the reseller sells the master key systems.

2062. *United States* v. *Sargent & Company*. Civ. 13263. (D. Conn.). On April 8, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 9, 1970, requiring the usual 30-day waiting period.

The final judgment enjoins Sargent from participating in any agreement, understanding or plan to allocate customers, territories or markets for the distribution or sale of master key systems or extensions of such systems to any reseller, if the reason for the refusal or discrimination is found to be in the person to whom or the territory in which the reseller sells the master key system.

2068. *United States* v. *Witco Chemical Corporation*. Civil No. 60–69 (Erie). (W.D. Pa.). On January 12, 1970, the case terminated by the entry of a consent judgment pursuant to a stipulation filed December 12, 1969, requiring a 30-day waiting period.

The judgment prohibits Witco from allocating customers and territories and fixing prices in the sale or distribution of automotive petroleum products through its distribution outlets.

Witco is also prohibited from selling or supplying such products on the condition that the buyer not sell or distribute petroleum products of its competitors, and from refusing to continue to sell or supply such products because the buyer handles the petroleum products of a competitor.

Under the judgment, Witco may not exercise any rights it may have under fair trade laws for 5 years from the entry of the consent judgment.

2075. *United States* v. *The First National Bank of Sunbury, et al.*, Civ. 69–434. (M.D. Pa.). On June 5, 1970 an order of dismissal without prejudice following a motion for voluntary dismissal was entered by the court as the merger was abandoned.

2076. *United States* v. *The Standard Oil Company, an Ohio Corporation, et al.*, Civ. C–69–654. (N.D. Ohio). On January 1, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 1, 1969, requiring a 30-day waiting period.

Under the judgment, Sohio must divest itself within 4 years of the effective date of the judgment of taxable motor fuel volume in Ohio of not less than 400,000,000 gallons annually. This divestiture shall first receive approval of the Department or the court.

The judgment also provides that BP must divest itself of all BP brand retail outlets in Western Pennsylvania.

The judgment enjoins both BP and Sohio, for a period of 10 years from the effective date of the judgment from acquiring more than an aggregate of 1% of the stock of, or any other fininacial interest in, any person engaged in either the State of Ohio or Western Pennsylvania in the retail sale of motor fuel, or any retail outlets or other assets (other than in the ordinary course of business) located in the State of Ohio or Western Pennsylvania, except upon 60 days prior written notice to the Department.

2081. *United States* v. *Wisconsin Alumni Research Foundation*. Civ. 69–C–316. (W.D. Wisc.). On January 30, 1970 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 30, 1969, requiring a 30-day waiting period.

Under the judgment WARF is enjoined from entering into a license agreement, in which any rights in its patents or technology are licensed, that requires the license to license WARF or any person designated by WARF under future patents that relate to improvements on the original patent or technology.

However, nothing in the judgment shall prevent WARF from entering into a license agreement that requires the licensee to grant to another licensee of WARF a nonexclusive royalty license under future patents issued to, or tech-

nology developed by, such licensee that cannot be practiced without infringing the original patent or patents licensed by WARF.

Furthermore the judgment provides that no payment from one licensee to another under the above arrangement, absent an agreement to the contrary, shall reduce royalties payable to WARF by licensees under WARF's patents or technology.

2084. *United States* v. *Viking Carpets, Inc.*, Civ. 70.160 (N.D. Ohio). See "Cases Instituted."

2085. *United States* v. *Times Printing Company*, Civ. 5836 (E.D. Tenn.). See "Cases Instituted."

2092. *United States* v. *Northern Natural Gas Company*, Civ. 5– 70–20 (D. Minn.). See "Cases Instituted."

2098. *United States* v. *Simmons Company*, Civ. 70–121 (S.D. Ohio). See "Cases Instituted."

2101. *United States* v. *P. R. Mallory & Co., Inc.*, Civ. 34893 (E.D. Mich.). See "Cases Instituted"

2112. *United States* v. *Springs Mills, Inc.*, Civ. 70–2826 (S.D. N.Y.). See "Cases Instituted."

2113. *United States* v. *Cannon Mills Company*, Civ. 70–2827 (S.D. N.Y.). See "Cases Instituted."

2114. *United States* v. *West-Point-Pepperell, Inc.*, Civ. 70–2828 (S.D. N.Y.). See "Cases Instituted."

2115. *United States* v. *J. P. Stevens & Company*, Civ. 70–2829 (S.D. N.Y.). See "Cases Instituted."

2116. *United States* v. *M. Lowenstein & Sons*, Civ. 70–2830 (S.D. N.Y.). See "Cases Instituted."

1686. *United States* v. *Arnold Bakers, Inc.*, Civ. 31665 (E.D. Pa.). On August 3, 1970, a consent judgment was entered pursuant to a stipulation filed May 25, 1970.

The judgment prohibits the defendants from entering into, maintaining or enforcing any agreement or understanding with any persons purchasing Arnold products to fix or restrict the territories in which, or the persons or classes of persons to whom, or the prices at which such products may be resold. The judgment also prohibits defendants from selling or offering to sell Arnold products to any person upon any condition or understanding that such persons refrain from selling products other than Arnold products.

The judgment also prohibits for 1 year the exercise of such rights, if any, as may arise under the Fair Trade laws in connection with the sale of Arnold products.

1777. *United States* v. *New Orleans Chapter Associated General Contractors of America, Inc.*, Civ. 14190 (E.D. La.). On July 17, 1970, a consent judgment was entered pursuant to a stipulation filed June 17, 1970.

The judgment requires the expunging of "Bidding Rule C" from the bylaws of the Association and enjoins the Association and its members from agreeing to refuse to bid on any project where bids of subcontractors have been solicited directly by the owner or architect of the construction project.

1840. *United States* v. *Pennsalt Chemicals Corporation*, Civ. 37123 (E.D. Pa.). On January 13, 1967, a consent judgment was filed against 7 defendants pursuant to a stipulation filed December 8, 1966.

The judgment forbids the 7 manufacturers to maintain price fixing agreements for the sale of certain industrial chemicals.

On August 21, 1967, a final judgment was entered as to Columbia-Southern Chemical Corp. and order dismissing with prejudice action as to Pittsburgh Plate Glass.

On August 22, 1969, after trial of the remaining defendant FMC Corporation the court handed down an opinion and findings of fact in favor of the Government . FMC Corporation was found to have violated Section 1 of the Sherman Act by reason of a conspiracy to eliminate price competition in the sale of chlor-alkali products.

On June 29, 1970, judgment was entered enjoining and restraining FMC from entering into, adhering to or claiming any right under any conspiracy agreement, etc.; re allowance of discount or any customer or class of customers re chlor-alkali products, etc.; from communicating, relating [sic] or reporting to any manufacturer information concerning or relating to prices, terms or conditions of sale, etc.; directing FMC to record for 5 years from this judgment each phone call or meeting participated in by any employee having policy making authority

re pricing etc.; directing reasonable access to company's books, etc.; and retaining jurisdiction by the court.

1874. *United States* v. *Allis-Chalmers Manufacturing Company, et al.*, Civ. 65 C 253 (E.D. Wisc.). On September 1, 1970, after trial the Judge filed findings of fact and conclusions of law dismissing the action and entering a judgment in favor of the defendants.

1879. *United States* v. *Anthracite Export Association, et al.*, Civ. 9–71, M.D. Pa.). On November 12, 1970, a consent judgment was entered pursuant to a stipulation filed October 8, 1970.

The judgment enjoins the defendants from jointly controlling or fixing the prices and from allocating the portions of anthracite to be offered or supplied under the Army program.

The judgment forbids the defendants from entering into agreements to refrain from competing in the production, bidding, sale or distribution of anthracite under the Army program, or to sell anthracite through any common selling agent or to any common purchaser for resale under that program.

The judgment also enjoins each defendant and each Association member from agreeing with an exporter or importer to quote or sell anthracite to or through such exporter or importer exclusively under the Army program unless such member enters into such an exclusive agreement with a single exporter or importer which in turn is not a party to such an agreement with any other member.

1894. *United States* v. *Socony Mobil Oil Co., Inc., et al.*,. KC CR 873 (D. Kans.) On March 7, 1967, fines totaling $280,000 were imposed on *nolo* pleas against 9 defendants.

On September 29, 1967, the jury returned a verdict of guilty against the remaining defendant, Wilshire Oil Company.

Wilshire's motion to dismiss the indictment on grounds of double jeopardy was denied October 25, 1968, and a fine of $25,000 was imposed.

Circuit Court affirmed trial court's imposition of fine of $25,000 on March 24, 1970. After denying the petition for rehearing the Circuit Court affirmed judgment of the district court.

The Supreme Court denied certiorari, October 12, 1970, and an order affirming the judgment of the district court was entered October 28, 1970.

1929. *United States* v. *General Tire & Rubber Company, et al.*, Civ. C67155 (N.D. Ohio). On October 21, 1970, a consent judgment was entered pursuant to a stipulation led August 24, 1970, after the judge denied the motion to intervene.

The judgment, to be in effect for 10 years, prohibits the defendants from purchasing products or services from any supplier on the condition that such purchases will be influenced by sale of the defendants, their subsidiaries, or their customers.

The judgment also prohibits defendants from discussing with any supplier or contractors the relationship of purchases and sales between them or from comparing statistical data to further such a relationship. In addition, the defendants are prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers.

Defendants are also prohibited from communicating to actual or potential suppliers or contractors that preference will be given in purchasing products or services from them based on defendants' sales to them.

The judgment also enjoins defendants from furnishing purchasing agents with lists which identify defendants' suppliers.

The decree directs the defendants to require their purchasing agents, consistent with the overall objective of maintaining adequate and reliable sources of supply, to purchase on the basis of price, quality, service, and financial responsibility and to ignore completely any consideration relating to the potential supplier's status as a customer.

The judgment requires that General Tire abolish the position of Director of Trade Relations and RKO abolish the position of Director of Corporate Relations, and forbids the defendants from assigning any trade relations function to any employee. The defendants are also ordered to refrain from membership in the Trade Relations Association or any association or group whose program or objectives are to promote trade relations.

1951. *United States* v. *California Shell Dealers Association, et al.*, Cr. 41348 (N.D. Calif.). On July 24, 1970, the defendants were fined a total of $506.00 on their pleas of *nolo contendere*, thus terminating the case.

1972. *United States* v. *Simmonds Precision Products, Inc.*, 67 CIV 4506 (S.D. N.Y.). On June 24, 1970, a consent judgment was entered pursuant to a stipulation filed May 20, 1970.

Prior to the entry of the judgment, Local 452, International Union of Electrical, Radio & Machine Workers, moved to intervene. After a hearing on said motion the court granted the motion to intervene, but denied the union's application for further relief and entered the judgment.

The judgment requires that the defendant attempt to immediately divest the Liquidometer capacitance fuel gauging business. If immediate sale cannot be made, then Simmonds will be permitted to divest this business pursuant to a schedule which covers a period of 4 years from the entry of the final judgment. Under the terms of the judgment an existing preliminary injunction prohibiting Simmonds from transferring Liquidometer business to other locations is lifted.

The judgment also enjoins Simmonds from acquiring any of the stock or assets of any capacitance or float fuel gauging systems manufacturer for a period of 10 years from entry of the final judgment; from acquiring any of the assets or stock of a manufacturer of any other type of fuel gauging system for an additional 5 years unless notice is given to the Department no later than 60 days prior to such acquisition.

The union then made an application for a preliminary injunction or to vacate the final judgment.

On December 21, 1970, order was handed down denying intervenors motion for a preliminary injunction and to vacate the final judgment.

1983. *United States* v. *American Angus Association*, Civ. 1460 (W.D. Mo.). On August 13, 1970, a consent judgment was entered pursuant to a stipulation filed July 13, 1970.

The judgment requires the Association to permit the registration each year of up to 45 calves sired artificially by untested Angus bulls, although not more than 10 such registrations need be accepted from any member. It also requires that the Association permit the registration of an unlimited number of calves sired artificially by progeny tested Angus bulls, although not more than 150 such registrations per year need be accepted from any member.

1986. *United States* v. *The Phillipsburg National Bank & Trust Company, et al.*, Civ. 56-68 (D. N.J.). After the trial an opinion was entered October 14, 1969, holding the government had failed to establish by a preponderance of evidence that the proposed merger would have any anticompetitive effect in the narrowly drawn market proposed by the government such effect is clearly outweighed by the convenience of needs of the community to be served by the merged bank. Judgment in favor of defendants was entered October 20, 1969.

On June 29, 1970, the Supreme Court reversed the district court on all points and remanded for further proceedings.

On October 21, 1970, an order was entered vacating prior judgment and dismissing the complaint without prejudice as the merger was abandoned.

1989. *United States* v. *Sterling Drugs, Inc., et al.*, Civ. 175-68 (D. N.J.). On November 5, 1970, an order was entered dismissing this case.

2011. *United States* v. *Oregon Restaurant and Beverage Association, et al.*, Cr. 68-162 (D. Ore.). After trial the jury on May 16, 1969, returned a verdict of guilty against all defendants.

On July 30, 1969, fines totalling $11,000 were imposed.

The Circuit Court on July 2, 1970, entered a *per curiam* opinion affirming the judgments of conviction.

On August 25, 1970, petition for rehearing was denied, thus terminating the case.

2014. *United States* v. *The Chelsea Savings Bank, et al.*, Civ. 12733 (D. Conn.). October 1, 1970, an order was entered dismissing the case without prejudice as the defendants had abandoned the merger.

2031. *United States* v. *Independent Towel Supply Company, et al.*, Civ C-68-935 (N.D. Ohio). On September 23, 1970, a consent judgment was entered pursuant to a stipulation filed July 29, 1970.

The judgment enjoins the defendants from directly or indirectly entering into any agreement or understanding with any other linen supplier or association of linen suppliers to establish or maintain prices or other terms and conditions for the furnishing of linen supply services, to divide or allocate markets, territories or customers and to refrain from soliciting customers of another linen supplier. The defendants are further enjoined from communicating to or ex-

changing with any other linen supplier any price or term or condition of furnishing linen supply service prior to communication of such information to the public or trade generally, or any lists of names or location of linen supply customers.

2072. *United States* v. *Virgin Islands Gift and Fashion Shop Association, et al.*, Civ. 295–1969 (D. V.I.). On September 8, 1970, a consent judgment was entered pursuant to a stipulation filed August 6, 1970.

The judgment prohibits the Association and its gift shop members from fixing, maintaining, suggesting or stabilizing the prices, terms or conditions for the sale of gift shop items and forbids the Association and its members from adopting or attempting to enforce any agreed upon price list or discount policy and from policing or reporting the price of discount policies of any gift shop in the Virgin Islands.

The 6 individual retailers who were defendants were dismissed.

2078. *United States* v. *Prince George's County Board of Realtors*, Civ. 21545 (D. Md.). On December 28, 1970, a consent judgment was entered pursuant to a stipulation filed November 25, 1970.

The judgment prohibits the fixing of brokerage commission rates. The judgment also forbids the Board from publishing commission fee schedules, recommending that its members adhere to any suggested fee schedule or taking any punitive action against a member who refuse to adhere to any such recommendation concerning fees.

The judgment prohibits the Board from fixing any percentage division of commissions between a selling and listing broker. The Board is further enjoined from establishing membership fees for the Board or its multiple listing service that are not related to the cost of the services provided by the organization.

The judgment also orders the defendant to insert in all its, by-laws, regulations, contracts, and other forms which previously contained a set commission rate, a provision that commission rates for the sale, lease or management of property shall be negotiable between the broker and his client.

2080. *United States* v. *First at Orlando Corporation, et al.*, Civ. 69–281–ORL (M.D. Fla.). On August 27, 1970, a consent judgment was entered pursuant to a stipulation filed July 27, 1970.

The judgment forbids a bank holding company in Orlando, Florida, from acquiring additional banks in central Florida for 8 years. The decree will allow the company to acquire a Daytona Beach Bank and 2 affiliates.

2106. *United States* v. *Inland Steel Company*, Civ. 70C 1305 (N.D. Ill.). On July 1, 1970, a consent judgment was entered pursuant to a stipulation filed June 1, 1970.

The judgment prohibits the purchase or sale of products on the condition or understanding that the supplier or customer will purchase from the defendant. The judgment also prohibits Inland from communicating to suppliers or contractors that it will give preference to those who purchase from Inland. The judgment further prohibits Inland from preparing or exchanging statistical data with any supplier or contractor to facilitate any reciprocity arrangement or of engaging in the practice of discussing with suppliers, contractors or customers the relationship between purchase and sales between them.

The judgment contains prohibitations designed to prevent Inland from exercising its power over joint ventures in which it has a partial interest, by preventing it from directing or suggesting to such a joint venture that it shall purchase from any of Inland's customers in order to reciprocate for purchases made by such customers from Inland. It also prohibits Inland from communicating to its suppliers to customers the fact that purchases have been made from them by a joint venture in which Inland has a partial interest.

The judgment prohibits "tertiary" reciprocity in that it orders Inland to refrain from agreeing with suppliers (1) that they will purchase from defendant's customers to reciprocate for purchases by Inland from such suppliers, or (2) that they shall attempt to persuade other companies to buy from Inland in order to reciprocate for purchases made by Inland from such suppliers.

In addition to the above relief, the judgment prohibits certain internal activities which have been the means through which Inland conducted its program.

The judgment orders Inland Steel to abolish certain offices which performed the duties carried out in previous years by its then Trade Relations Division and to refrain from establishing successor offices or positions or any offices having the same or similar duties.

Inland Steel is ordered to give a copy of the final judgment to each supplier and customer from whom it has purchased or to whom it has sold more than $25,000 of products goods or service during the past 3 years. This notice must also contain a statement that Inland has abolished certain offices which administered the program, and that its officers and employees are prohibited from purchasing or selling on the basis of reciprocity.

The judgment is to be in effect for 10 years.

2107. *United States* v. *Archer-Daniels-Midland Co., et al.*, Civ. 70–1545 (E.D. La.)

2108. *United States* v. *Bunge Corporation*, Civ. 70–1546 (E.D. La.). On July 15, 1970, 2 consent degrees were entered pursuant to 2 stipulations filed June 15, 1970.

The judgments enjoins the 3 companies from directly or indirectly conditioning the loading of grain at their elevators upon the hiring of a particular stevedore. The judgments extend to all grain elevators owned or operated by the companies in the United States.

2109. *United States* v. *Continental Grain Company*, Civ. CA 6733 (E.D. Tex.). On July 21, 1970, a consent judgment was entered pursuant to a stipulation filed June 15, 1970.

The judgment enjoins the defendant from directly or indirectly conditioning the loading of grain at the elevator upon the hiring of a particular stevedore. The judgment extends to all grain elevators owned or operated by the company in the United States.

2110. *United States* v. *American Steamship Co., et al.*, Civ. 1970–283 (W.D. N.Y.). On July 29, 1970, a consent judgment was entered pursuant to a stipulation filed June 22, 1970.

The judgment requires that the defendants divest themselves of Reiss Steamship Co., within 2 years. The judgment also enjoins the defendants for a period of 5 years from acquiring any interest in any self-propelled dry bulk cargo ship then or therefore operated between United States Great Lakes ports, or from acquiring the stock of any company owning any such ship, without prior approval of the Department or the court.

2111. *United States* v. *Republic Steel Corporation*, Civ. C70–609 (N.D. E.D. Ohio). On July 30, 1970, a consent judgment was entered pursuant to a stipulation filed June 29, 1970.

The judgment, which is to be in effect for 10 years, prohibits Republic from purchasing or selling products on the condition or understanding that purchases will be reciprocated and from communicating to suppliers that preference will be given to those who purchase from Republic. The comparison or exchange of statistical purchase/sales data with any supplier or contractor to further any reciprocal arrangement and the practice of discussing Republic's purchases/sales relationship with any supplier are also prohibited. Republic is prohibited from communicating to any customer or supplier the purchases of any business entity in which Republic has an ownership interest to promote Republic's sales to such customer to supplier and from directing or suggesting that any such business entity purchase from any of Republic's customers in order to reciprocate for purchases made by or to promote sales by Republic to such customers.

The judgment also enjoins Republic from maintaining statistical compilations which compare purchases from any supplier with sales by Republic to such supplier, from engaging in the practice of issuing lists which identify customers and their purchases from Republic or which specify that purchases be made from any such customers to personnel with primary purchasing responsibilities, and engaging in the practice of issuing lists which identify the purchases made by Republic from particular customers to personnel with primary sales responsibilities.

The proposed judgment also prohibits Republic from reestablishing its Business Development Division and the position of Manager thereof and from establishing successor offices or positions or any other office or position having similar duties. The consent judgment also requires Republic to furnish a copy of the final judgment to each supplier from whom Republic purchased or to whom Republic sold more than $25,000 of products in any of the last 3 years and to notify each such supplier that Republic has abolished its Business Development Division and the position of Manager thereof and will refrain from establishing successor offices or positions or any other office or position having similar duties and that all of its officers and employees are prohibited from purchasing or selling products conditioned upon reciprocal purchases.

2112. *United States* v. *Springs Mills, Inc.*, 70 CIV 2826 (S.D. N.Y.)
2113. *United States* v. *Cannon Mills Company*, 70 CIV 2827 (S.D. N.Y.)
2114. *United States* v. *West-Point-Pepperell, Inc.*, 70 CIV 2828 (S.D. N.Y.)
2116. *United States* v. *M. Lowenstein & Sons*, CIV 2830 (S.D. N.Y.). On July 31, 1970, 4 consent judgments were entered pursuant to stipulations filed June 30, 1970.

The judgments enjoins the defendants from making agreements to fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of sheets to any third person, to hinder or prevent resale of such sheets by any person, or to restrict or limit the defendants from selling sheets to any person or specified class of persons. It also enjoins the defendants for 4 years from fair trading, or suggesting, directly or indirectly, retail prices for the sale of defendants sheets to any third person.

2115. *United States* v. *J. P. Stevens & Company*, 70 CIV 2829 (S.D. N.Y.). On July 2, 1970, a consent judgment was entered pursuant to a stipulation filed June 30, 1970.

The judgment enjoins Stevens from making agreements to fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of Stevens sheets to any third person, to hinder or prevent resale of such sheets by any person, or to restrict or limit Stevens from selling sheets to any person or specified class of persons. It also enjoins Stevens for 4 years from fair trading, or suggesting, directly or indirectly, retail price for the sale of Stevens sheets to any third person.

2122. *United States* v. *Armco Steel Corporation*, Civ. 7-604 (S.D. Ohio). See "Cases Instituted."
2134. *United States* v. *PPG Industries, Inc.*, Civ. 70-1273 (W.D. Pa.). See "Cases Instituted."
2135. *United States* v. *Bethlehem Steel Corporation*, Civ. 70-3102 (E.D. Pa.). See "Cases Instituted."

PART 8 (1970)

1479. *United States* v. *Pabst Brewing Company, et al.*, Civ. 59-C-215 (E.D. Wisc.). After initial dismissal in 1964 after trial followed by reversal in the Supreme Court in 1966, the district court entered findings of fact and conclusions of law in 1969, concluding that the Pabst acquisition of Blatz constituted a violation of Section 7 of the Clayton Act and that Pabst had failed to establish a "failing company" defense. On August 6, 1969, after extended hearings on divestiture, the court entered an opinion and a final judgment divesting the Blatz brands of beer to the G. Heileman Brewing Co., LaCrosse, Wisconsin, and concluding that divestiture of the Old Blatz brewery and other real properties could not be accomplished at that time. Instead, the court directed the parties to negotiate and agree upon a decree with respect to the disposition of the Blatz brewery real property.

On February 1, 1971, the court granted the motion of the other 2 defendants for dismissal as no useful purpose could be served by their retention in the case.

On February 11, 1971, the court entered a final judgment employing the agreement of the parties and providing for a 3 year period in which Pabst must try to sell the Blatz brewery property as a brewery only and enjoining Pabst for 5 years from using the property and facilities for brewing purposes. The decree provides for a 5 year injunction against future acquisitions.

1851. *United States* v. *R. L. Polk & Company, et al.*, Cr. 41457 (Supp. Civ. 13135) (E.D. Mich.). After trial the court on December 14, 1967, filed a memorandum opinion adjudging Polk guilty of criminal contempt in one instance of sales below cost, and finding its president and the Association not guilty of criminal contempt. This memorandum was restricted in scope to issues relating to criminal contempt. Questions relating to civil contempt, civil relief, and modification of the 1955 judgment, were specifically reserved for later determination.

On October 29, 1969, a fine of $35,000 for criminal contempt was imposed under the opinion of December 14, 1967, and a supplemental order was issued adjudging respondent Polk guilty of civil contempt on many other violations which had remained open pending review. Polk moved to correct the sentence on the ground that a fine cannot be imposed in excess of $500 absent a jury trial or waiver thereof. Appeal to the Sixth Circuit followed.

The circuit court ruled February 19, 1971, that *Cheff* did encompass corporate contemnors, and, further held that under 18 U.S.C. 1 the fine could not be over $500 under the circumstances of this case. The judgment was vacated and the case remanded with instructions to reduce the fine to $500.

On March 25, 1971, the district court entered an order reducing the penalty imposed on Polk to $500. On this date Polk paid the fine thus terminating the litigation.

1897. *United States* v. *Schenley Industries, Inc., et al.*, Civ. 66–1175 (S.D. N.Y.). On March 29, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed February 25, 1971, requiring the usual 30-day waiting period.

The judgment requires Schenley to divest itself of The Buckingham Corporation by June 30, 1972, and further enjoin it from acquiring an interest in any company that produces or imports and sells Scotch whiskey in the United States, and from acquiring a license to produce or import and sell Scotch whiskey in the United States from another company, for a period of 10 years, without prior approval of the Department or the court.

Also on March 29, an order was entered dismissing the other defendant.

1920. *United States* v. *American Radiator & Standard Sanitary Corporation, et al.*, Cr. 66–295 (W.D. Pa.). On May 2, 1969, after a 72-day trial, guilty verdicts were returned by the jury against the remaining 3 corporations and 3 individual defendants. Between September 18, 1969, and November 8, 1969, the court imposed fines totalling $380,000 and jail sentences ranging from 3 months suspended after serving 24 hours to 1 year suspended after serving 30 days on 11 defendants who had pleaded *nolo contendere*.

Prior to the trial the court denied defendant's motions to suppress evidence and to dismiss the indictment.

August 12, 1969, fines totalling $250,000 were imposed on the guilty verdicts. One individual received a 1 year jail sentence suspended after serving for 60 days and 3 years probation. Another 1 year sentence suspended after serving 1 day and 1 year probation, and 1 defendant 1 year jail sentence suspended except for 30 days to be served and 1 year probation.

September 23, 1970, the Court of Appeals for the Third Circuit affirmed the judgments of conviction. The court rejected claims that the trial judge had manifested a prejudice against the defendants, that the prosecutor had behaved improperly, that erroneous rulings on evidence had been made and that the jury had been charged erroneously. Petitions for rehearing were later denied.

The Supreme Court on March 1, 1971, denied certiorari thus terminating the case.

1921. *United States* v. *American Radiator & Standard Sanitary Corporation, et al.*, Civ. 66–1184 (W.D. Pa.) On May 18, 1971, the case was terminted by a consent judgment which was filed April 15, 1971, with the usual 30 day waiting period.

Final settlement documents were filed relating to damage claims for overcharges to the federal government on its purchases of enameled cast iron and vitreous china plumbing fixtures during the 4 year price-fixing conspiracy.

An order was entered May 17, 1971, granting the Government's motion to amend the complaint alleging a damage count. Upon the entry of this order and the entry of the final judgment, the defendants paid to the United States a total of $355,000 in damages. The Government gave each defendant a covenant not to sue or to sue further on its damage claim.

The judgment enjoins the manufacturers from agreeing on prices, terms or conditions for the sale of plumbing fixtures; from agreeing to exchange information concerning bids, prices, terms or conditions for the sale of plumbing fixtures; and from agreeing to limit, restrict, discontinue or otherwise refrain from manufacturing any plumbing fixtures. The manufacturers are prohibited from communicating any past, present, or future plumbing fixture pricing information to any competitors, and forbids them for 10 years from belonging to any trade association comprised exclusively of plumbing fixture manufacturers.

The judgment also requires dissolution of the trade association.

1930. *United States* v. *L. G. Balfour Company, et al.*, Cr. 25074 (S.D. N.Y.). On March 9, 1971, over the Government's objections the court granted motions to change pleas from not guilty to *nolo contendere* by all defendants and imposed fines totalling $57,500, thus terminating the case.

1998. *United States* v. *General Host Corporation, et al.*, Civ. 68-558 (E.D. Pa.). On March 1, 1971, this case was terminated by a consent decree which was filed on January 27, 1971, with the usual stipulated 30-day waiting period.

The judgment enjoins the defendants from agreeing on prices, terms or conditions for the sale of bread products, from agreeing to submit rigged bids on bread sales, and from agreeing to communicate bread prices or other sales information to any other seller of bakery products before such information is known to the trade generally.

In addition, the judgment prohibits the defendants for a period of 10 years from individually communicating bread prices or other sales information to any other seller of bakery products before such information is known to the trade generally.

The judgment further requires each defendant for a period of 5 years to certify that each sealed bid or quotation made by them for the sale of bakery products in the Philadelphia market was not the result of collusive activity.

2019. *United States* v. *Hobart Manufacturing Company, et al.*, 68-CR-235(2) (E.D. Mo.). On May 14, 1969, fines totalling $15,000 were imposed against 2 defendants after a jury verdict of guilty.

The defendants appealed to the circuit court where the case was reversed and remanded on June 30, 1970. The court held that the admission of hearsay evidence concerning an incident was error. The court ruled that the Government had not laid a sufficient foundation at trial for the admission of the hearsay.

On January 15, 1971, fines totalling $7,500 were imposed by the district court on pleas of *nolo contendere*.

2038. *United States* v. *Atlantic Richfield Company, et al.*, 69 CIV 162 (S.D. N.Y.). On July 28, 1970, a stipulation and proposed judgment were filed with the usual 30 day waiting period. The judgment was entered August 28, 1970.

Under the decree Atlantic Richfield within 3 years must divest the former Sinclair bulk plants, terminals and branded gasoline marketing outlets in 14 western states, a refinery at Sinclair, Wyoming, crude oil reserves, and production in 7 Wyoming oil fields, various related crude oil and refined product pipeline interests, and the Sinclair trademark.

Atlantic Richfield must also divest all contracts for the sale of unbranded automotive gasoline and other petroleum products produced at the Sinclair, Wyoming refinery, and all customer lists, product agreements and other contracts which provide for the sale and delivery of branded Sinclair automotive gasoline completely within the divestiture states.

Prior to the entry of the judgment 2 motions to intervene were denied by the court. One motion to intervene alleged that because of the Sinclair merger Atlantic Richfield gained coast-to-coast marketing and the ensuing brandname change to ARCO was an infringement on ARCO Fuel Oil Company. The court ruled that the trademark infringement claim was too remote from the issues in the merger suit. The other motion was by the Wyoming Oil Jobbers Association which claimed that the divestiture would work a hardship on branded Sinclair jobbers and dealers. An appeal to the Supreme Court was taken from the denial of this motion.

The Supreme Court on March 29, 1971, affirmed without comment the district court's decision denying the jobbers' petition to intervene, thus terminating the case.

2049. *United States* v. *Continental Oil Company, et al.*, Civ. 8026 (D. N. Mex.). On January 20, 1971, a consent judgment was entered pursuant to a stipulation filed December 4, 1970, after a motion for intervention was denied.

The judgment enjoins Continental from using a joint marketing agent with the Cosden or Petrofina companies or whereby any of them has a joint marketing agent with a third party for sales of paving asphalt in New Mexico when that agent sells substantial quantities of paving asphalt in New Mexico.

The judgment also requires Spencer to acquire at least 60 percent of the paving asphalt it sells in New Mexico from Petrofina. Spencer is also enjoined from acting as a marketing agent in the sale of paving asphalt in New Mexico for more than one person selling paying asphalt, and from acting as marketing agent for the sale of paving asphalt in New Mexico for the owner, so long as it is a wholly-owned subsidiary of any company.

2077. *United States* v. *National Bank & Trust Company of Central Pennsylvania, et al.*, Civ. 69-2902 (E.D. Pa.). On December 7, 1970, the final judgment was entered after the usual 30-day waiting period. The judgment permits the

banks to consolidate but requires the sale of 9 offices of the consolidated bank, including 2 each in the metropolitan areas of Lancaster, York and Harrisburg.

The consolidated Bank is enjoined and restrained for a period of 10 years from the date of entry of this final judgment from acquiring any stock or assets of or any other financial interest in any commercial bank operating offices in any of the Pennsylvania counties of Lancaster, York and Dauphin, unless permission is first obtained from the Attorney General.

Before entering the final judgment, the court denied a motion to intervene by a stockholder of Reading Trust (one of the defendants). Petitioner sought intervention because of his private action, alleging violations of the antitrust laws and of the securities laws arising from the proposed consolidation. The court rejected all petitioner's contentions. It held that his proprietary rights were adequately protected in his private action. After the expiration of the appeal period on this motion the case was terminated.

2082. *United States* v. *Federation De Transporte De Puerto Rico, et al.*, Cr. 870 (D. P.R.). At the close of the Government's case, the court granted the motion to dismiss of 1 defendant, stating that the evidence linking the defendant to the alleged conspiracy was equivocal. A motion to acquit the remaining defendants was denied.

On February 10, 1971, a jury returned not guilty verdicts against 10 defendants after trial on the merits.

2087. *United States* v. *Evans Products Company*, Civ. 70–C–540 (N.D. Ill.). On February 25, 1971, a consent judgment was entered pursuant to a stipulation filed January 25, 1971.

The judgment prohibits Evans for 10 years from purchasing products or services from any supplier on the condition or understanding that such purchases will be based upon Evans' sales to the supplier.

It also prohibits Evans from discussing with any supplier the relationship of purchases and sales between them or from comparing statistical data to further such relationship. In addition, Evans is prohibited from maintaining statistical compilations that compare sales to and purchases from suppliers. The judgment also enjoins Evans from furnishing its purchasing agents with lists which identify Evans' customers or its sales personnel with lists which identify Evans' suppliers.

Evans is ordered to refrain from establishing any office of position designed to promote reciprocal purchasing arrangements. Defendant is also ordered to refrain from membership in any association whose program or objectives are to promote reciprocal purchasing practices.

2090. *United States* v. *Charles W. Benjamina, et al.*, Cr. 23078 (W.D. Mo.). On February 2, 1971, fines were imposed totaling $45,000 on *nolo* pleas previously accepted from all defendant over Government's objection.

Two individuals were given jail sentences of 1 year each. One defendant was to serve 3 months and 9 months suspended with 3 years probation. The other defendant was sentenced to 1 year, of which 1 month is to be served and 11 months, suspended, with 3 years probation. Jail sentences commenced March 8, 1971, thus terminating the case.

2118. *United States* v. *Ciba Corporation, et al.*, 70 Civ 3078 (S.D. N.Y.). On July 17, 1970, a stipulation and proposed judgment were filed but not entered by the court until September 8, 1970.

The judgment requires the defendants to establish a new corporation and to transfer to it Ciba's dyestuffs and detergent optical brightening agent businesses, including personnel, inventories, central headquarters and office buildings, and branch offices in 6 locations, together with accounts receivable and orders in process, licenses under certain patents, and exclusive rights to use certain trademarks, manufacturing know-how, and technical assistance in the construction of a dyestuffs plant.

The judgment also requires the defendants to supply the new company for periods of 10 to 5 years, respectively its requirements of unpatented and patented dyestuffs sold by Ciba-Geigy in the United States. The judgment requires that the new company be sold by Ciba-Geigy within 2 years.

With respect to pharmaceuticals, the judgment requires the sale to a single purchaser of all of Geigy's patents relating to pharmaceutical products, certain Geigy trademarks, and all of Geigy's interests in materials and information supplied to the Food and Drug Administration relating to pharmaceutical drugs.

The defendants are required for 5 years to supply to the purchaser of the

pharmaceutical products, to extend to the purchaser an option to purchase the Geigy plant at Cranston, Rhode Island, and to extend to the purchaser certain comanufacturing rights at the Geigy pharmaceutical formulation plant at Suffern, New York.

With respect to agrochemical products, Ciba is required to grant to an eligible purchaser unrestricted licenses under its patents relating to agrochemical products, manufacturing know-how and related technical information, and the right to have access to materials and information filed by Ciba with the United States Food & Drug Administration and the United States Department of Agriculture.

Before the entry of the judgment 2 companies sought to intervene. One company claimed the judgment was not in public interest because it would eliminate competition between 2 research-oriented companies in the herbicide industry. The other company alleged it would be removed as a potential entrant in the United States pharmaceutical products market.

Both motions were denied by the court holding neither party had shown an interest at the center of the controversy.

Notice of appeal to the Supreme Court was filed by Boehringer which was later withdrawn. On February 18, 1971, an order was entered withdrawing and dismissing the objections of said Boehringer to the final judgment, thus terminating the case.

2124. *United States* v. *Metro Denver Concrete Association, et al.*, 70–CR–181 (D. Colo.). On March 10, 1971, the court accepted the pleas of *nolo contendere* over Government's opposition, from all defendants and proceeded to impose fines totalling $52,300. Each of the 5 individual defendants were referred to the Probation Department for pre-sentence investigation and report, at a hearing February 12, 1971, when the defendants tendered *nolo* pleas. The Government submitted its recommendations for sentencing.

In addition to the fines the court imposed a jail sentence of 7 months on each individual and each was placed on probation for 1 year. In each instance, 6 of the 7 months jail sentence was suspended. The court indicated its willingness to authorize a work release program for each individual's 1 month of actual confinement if approved by the Probation Department.

The sentences were served under an authorized work release program. (A "work release program" is understood to permit a qualified prisoner to be absent from jail under strict regulations during specified working hours of the day to attend to his job. All other time is spent in confinement.).

2148. *United States* v. *Burlington Northern, Inc.*, Civ. 3–70–361 (D. Minn.). On January 25, 1971, a consent judgment was entered pursuant to a stipulation filed December 22, 1970.

The consent judgment prohibits Burlington Northern from directly or indirectly entering into, renewing, enforcing or claiming any rights under any spur track agreement and lease or sale agreement which contains these restrictive traffic provisions. Burlington Northern is required to notify all shippers with such agreements that these provisions are being cancelled and deleted from the agreements, and will not be enforced.

2150. *United States* v. *Kennecott Copper Corporation*, 71 CIV 119 (S.D. N.Y.). See "Cases Instituted."

2154. *United States* v. *National Steel Corporation*, Civ. 71–189 (W.D. Pa.). See "Cases Instituted."

2155. *United States* v. *General Adjustment Bureau, Inc.*, 71 CIV 1109 (S.D. N.Y.). See "Cases Instituted."

2161. *United States* v. *Webster Electric Company, Inc.*, Civ. 71–C–197 (E.D. Wisc.). See "Cases Instituted."

2172. *United States* v. *Aluminum Company of America*, Civ. 71–491 (W.D. Pa.). See "Cases Instituted."

PART 9 (1971)

1850. *United States* v. *American Oil Company, et al.*, Civ. 370–65 (D. N.J.). On August 12, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed June 30, 1971, requiring a 30-day waiting period.

The judgment enjoins the defendants from making any agreement with any other refiner to fix prices; to suggest to any refiner, distributor, or dealer, prices or policies under which they shall sell gasoline to third persons; to furnish to competitors pricing information; and to refuse to sell, limit the sale of, or make conditions for sale of gasoline.

Defendants are enjoined from coercing any of its distributors or dealers to adhere to defendants' suggested retail prices and from requesting refiners to refuse to sell, limit the sale, or make conditions for sale of gasoline to third person.

1919. *United States* v. *Sybron Corporation* (formerly Ritter Pfaudler Corporation), Civ. 41254 (E.D. Pa.). A nonjury trial commenced on October 20, 1969, and concluded on October 21, 1969.

The final judgment, filed on August 19, 1971, to terminate the case, had been worked out by agreement of the parties pursuant to the order of the court in its opinion dated June 30, 1971, finding that Sybron had violated Section 7 of the Clayton Act in the dental equipment market.

Sybron is required, within 3 years, to divest itself of all of the 40-odd dental supply houses it owns on such a basis as would permit them to be maintained as operating businesses.

Sybron is enjoined from acquiring any dental supply house, without Government approval, for 7 years plus the time required for complete divestiture.

At the option of purchaser of any of the houses, Sybron would be enjoined for 18 months after disposal from employing personnel formerly with that house, required to recognize the purchaser as an authorized dealer and to supply him on normal terms, and required to abstain from opening another supply house in sales areas of divested one for a reasonable time.

1984. *United States* v. *Tidewater Marine Services, Inc., et al.*, Civ. 69–97 (E.D. La). On October 26, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 27, 1971, requiring a 30-day waiting period.

The judgment requires Tidewater to divest itself within 3 years of at least 8 of the 24 supply and utility boats obtained through its merger with Twenty Grand Marine Service Inc. Purchasers must be approved by the Department of Justice.

Tidewater is prohibited for 5 years from acquiring any firm operating 5 or more supply or utility boats off the Gulf Coast, and from acquiring any of these boats from any company operating in the Gulf of Mexico, without approval of the Department.

2004. *United States* v. *Work Wear Corporation*, Civ. C–68–467 (N.D. Ohio). On September 27, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 26, 1971, requiring a 30-day waiting period.

The judgment requires Work Wear to divest itself within 3 years of either certain work clothes manufacturers or certain industrial laundries. If it divests itself of the former, it is enjoined from acquiring any manufacturer, seller, or distributor of work clothing for a period of 5 years, and for an additional 10 years without consent of the Department or court. If it divests itself of the latter, it is enjoined from acquiring any industrial laundry for 10 years.

2007. *United States* v. *Florida Power Corporation, et al.*, Civ. 68–297–Civ–T (M.D. Fla.). On August 19, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed July 19, 1971, requiring a 30-day waiting period.

The judgment prohibits the defendants from allocating service territories for wholesaling electric bulk power.

Each company is enjoined from entering into any agreement that imposes restriction on purchasers to whom or territories in which electric bulk power for resale may be sold.

The judgment also requires each company to cancel, within 90 days of entry of the judgment, any provision in any existing contract which is inconsistent with the judgment's restrictions.

2047. *United States* v. *International Telephone and Telegraph Corporation*, Civ. 69–C–924 (N.D. Ill.). After trial, Judge Austin on July 2, 1971, rendered an opinion finding the Government had not sustained its burden of establishing that the effect of the acquisition of Canteen Corporation a leading vending and food service company by ITT a major "conglomerate" may be substantially to lessen competition or to tend to create a monopoly in any relevant line of commerce in the United States in violation of Section 7 of the Clayton Act and holding that defendant was entitled to judgment dismissing the complaint. A judgment dismissing the complaint was entered July 9, 1971.

On August 23, 1971, a proposed consent judgment was submitted to the district court together with a motion and stipulation of the parties for an order vacating the final judgment of July 9, 1971. The court vacated its judgment of July 9, and entered the consent judgment on September 24, 1971.

Under the consent judgment ITT is ordered to divest, within 2 years, all of its interest in Canteen, after which time all undivested interest shall be placed in the control of a trustee. The divestiture shall not be made as part of divestiture of Hartford, Avis, Levitt, or Grinnell or to any person acquiring ITT's interest in them except upon approval of plaintiff or court. If ITT receives any securities from one to whom divestiture is made, such (except if issued by ITT) shall not be voted and shall be disposed of no later than 220 days after receipt unless plaintiff consents to postponement and, if divestiture is by way of disposition of assets, it is to be made in the form of a going business. Complete details of divestiture plan shall be submitted to plaintiff who shall have 30 days to object. Prior approval need not be obtained if the plan is with security holders of ITT or a public offering, and consummation may take place after the 30-day period, so long as the plan prohibits any person who controls more than 1% of ITT voting securities from participating until he divests himself of the excess over 1%. ITT shall take no action to impair viability of Canteen or the ability to accomplish divestiture, and no employee of ITT will be allowed to be an officer of Canteen after divestiture without plaintiff's consent.

ITT and Canteen which submitted to the Courts jurisdiction for purposes of the judgment are restrained for 10 years from entering into any agreement that purchasing and selling activities will be based on a supplier's or customer's purchases from them and from giving preferential treatment regarding bid lists, contracts, and statistical data based upon reciprocal purchasing with others.

Each defendant is ordered to refrain from maintaining activities or personnel directed to promoting trade relations involving reciprocal policies and to issue within 60 days to involved employees and furnish to domestic suppliers and purchasers with minimum $20,000 business activities with ITT in 1970, a statement of the anti-reciprocity provisions of the judgment.

2064. *United States* v. *Toro Manufacturing Corporation*, Civ. 4-69 Civ 243 (D. Minn.). On November 12, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed October 12, 1971, requiring a 30-day waiting period.

Toro is enjoined from fixing the prices, or restricting markets and customers at which, where, and to whom distributors and dealers may resell lawn care equipment produced by the company.

With limited exceptions, Toro is enjoined for 5 years from recommending prices, terms or conditions for the retail sale of these products in states having no fair trade laws.

2070. *United States* v. *International Telephone and Telegraph Corporation, et al.*, Civ. 13319 (D. Conn.). Trial of this case began September 15, 1970, and concluded October 20, 1970. On December 31, 1970, Judge Timbers, in a lengthy opinion held that the Government had not sustained its burden under Section 7 of the Clayton Act and awarded judgment to ITT.

The Government noted an appeal to the Supreme Court and filed a jurisdictional statement. The Government later dismissed the appeal when a proposed consent decree was submitted in the district court.

On September 24, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 23, 1971, requiring a 30-day waiting period.

Under the judgment ITT must divest, within 2 years, all of its interest in Hajoca and, to a different person, The Fire Protection Division of Grinnell, after which time all undivested interest shall be placed in the control of a trustee. If ITT receives any securities from one to whom divestiture is made, such (except if issued by ITT) shall not be voted and shall be disposed of no later than 220 days after receipt unless plaintiff consents to postponement and, if divestiture is by way of disposition of assets, it is to be made in the form of a going business. Complete details of divestiture plan shall be submitted to plaintiff who shall have 30 days to object. Prior approval need not be obtained if the plan is with security holders of ITT or a public offering, and consummation may take place after the 30-day period, so long as the plan prohibits any person who controls more than 1% of ITT voting securities from participating until he divests himself of the excess over 1%. ITT shall take no action to impair viability of The Fire Protection Division of Grinnell or the ability to accomplish divestiture.

This judgment shall be in effect for 10 years, even against acquiring individuals, but it shall not prevent ITT during these 10 years, from retaining use of name "ITT Grinnell" except in manufacture of automatic sprinkler devices or fabrication, installation or sale of automatic sprinkler systems.

2071. *United States* v. *International Telephone and Telegraph Corporation, et al.*, (D. Conn.). On September 24, 1971, this case, involving ITT's acquisition of Hartford Fire Insurance Company, was terminated by the entry of a consent judgment pursuant to a stipulation filed August 23, 1971, requiring a 30-day waiting period.

Under the judgment, ITT must divest, within 3 years, all of its interest in ITT Levitt and Sons, Incorporated; ITT Avis, Inc.; and ITT Hamilton Life Insurance Company and ITT Life Insurance Company of New York; or, in the alternative, all of its interest in Hartford Fire Insurance Company, after which time all undivested interest in Hartford, or, alternatively, in Levitt, Avis, and Hamilton Life shall be placed in the control of a trustee. The divestiture of Levitt, Avis and/or Hartford shall not be made as a part of the divestiture of any other of said corporations or the Fire Protection Division of Grinnell Corporation, or to any person acquiring ITT's interest in them or Canteen Corporation except upon approval of plaintiff or court. If ITT receives any securities from one to whom divestiture is made, such (except if issued by ITT) shall not be voted and shall be disposed of no later than 220 days after receipt unless plaintiff consents to postponement and, if divestiture is by way of disposition of assets, it is to be made in the form of a going business. Complete details of divestiture plan shall be submitted to plaintiff who shall have 30 days to object. Prior approval need not be obtained if the plan is with security holders of ITT or a public offering, and consummation may take place after the 30-day period, so long as the plan prohibits any person who controls more than 1% of ITT voting securities from participating until he divests himself of the excess over 1%. ITT shall take no action to impair viability of these enterprises or the ability to accomplish divestiture.

ITT is enjoined, without consent of plaintiff or court, from acquiring 1% or more of voting securities or capital assets in any domestic company with assets in excess of $100,000,000; which, in year before acquisition had total sales over $25,000,000 and had in any section of country in excess of 15% of total sales there where they exceeded $100,000,000 and where 4 companies had combined sales exceeding 50% of total; which is engaged in business of automatic sprinkler devices or systems; or which has insurance assets exceeding $10,000,000. These restraints shall no longer be in effect if ITT divests itself of all interests in Hartford.

The defendants are restrained for 10 years from entering into any agreement that purchasing and selling activities will be based on a supplier's or customer's purchases from them and from giving preferential treatment regarding bid lists, contracts, and statistical data based upon reciprocal purchasing with others.

Each defendant is ordered to refrain from maintaining activities or personnel directed to promoting trade relations involving reciprocal policies and to issue within 60 days to involved employees and furnish to domestic suppliers and purchases with minimum $20,000 business activities with ITT in 1970, a statement of the final judgment as is applicable.

2079. *United States* v. *The Higbee Company*, Civ. C-69-1017 (N.D. Ohio). On October 4, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 1, 1971, requiring a 30-day waiting period.

Higbee is required to divest itself within 30 months of the 12 Burrows Brothers Company bookstores located in Cuyahoga County and is prohibited from acquiring any trade books retailer there for 5 years.

2091. *United States* v. *Kansas City Music Operators Association, et al.*, Civ. 18238-4 (W.D. Mo.). On September 19, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed August 17, 1971, requiring a 30-day waiting period.

The judgment restrains defendants from refraining from purchasing vending machines to restrict their placement and from soliciting business from customers doing business with others; enjoins the defendants from fixing prices, allocating markets, territories and customers; bars defendants from using threats and coercion against other operators and customers.

The judgment also requires dissolution of the defendants' trade association after distribution of judgment to members.

2128. *United States* v. *Combustion Engineering, Inc.*, Civ. 13998 (D. Conn.). On September 8, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed July 30, 1971, requiring a 30-day waiting period.

The judgment requires the defendant to make efforts from the effective date of the judgment to September 1, 1972, to sell the boiler manufacturing plant at Saginaw, Michigan, and other assets acquired from the Wickes Corporation to a purchaser approved by the Department. Combustion is required to continue the normal operation of the plant in the interim.

Combustion is enjoined from acquiring interests in any company engaged in the manufacture and sale of industrial boilers in the United States for 10 years.

2136. *United States* v. *Richter Concrete Corporation, et al.*, Cr. 11–700 (S.D. Ohio). On September 24, 1971, 2 of the defendants were fined a total of $15,000 and 1 defendant was given a suspended sentence and 2 years probation on their pleas of *nolo contendere* thus terminating the case.

2140. *United States* v. *United Banks of Colorado, Inc., et al.*, Civ. C–2744 (D. Colo.). On August 30, 1971, an order of dismissal without prejudice was entered by Judge Arraj as the merger was abandoned.

2142. *United States* v. *Asiatic Petroleum Corporation, et al.*, Civ. 70–1807–M (D. Mass.). On October 4, 1971, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed September 3, 1971, requiring a 30-day waiting period.

The judgment requires Asiatic to divest itself, within 18 months, of all of its C. H. Sprague & Son Company stock or the Sprague oil business, and to supply for up to 3 years the purchaser's requirements of residual fuel oil if he requests. Asiatic must continue normal operations of Sprague pending divestiture.

Asiatic is enjoined for 10 years from acquiring any interest in any company engaged in the distribution or marketing of fuel oil in New England, without approval of the Department.

2143. *United States* v. *Odom Company, et al.*, Cr. A–100–70 (D. Alaska). On December 20, 1971, 5 defendants were fined a total of $85,000 on their pleas of *nolo contendere*, thus terminating the case.

2151. *United States* v. *White Consolidated Industries, et al.*, Civ. C–71–91 (N.D. Ohio). On November 22, 1971, an order of dismissal without prejudice was entered by Judge Battisti as the merger was abandoned. Previously the court had granted the Government's motion for a preliminary injunction.

2156. *United States* v. *Independent Garage Owners of Athens, et al.*, Cr. 2388 (M.D. Ga.). On October 22, 1971, the 2 defendants were fined a total of $6,000 on their pleas of *nolo contendere*, thus terminating the case.

2159. *United States* v. *First National Bancorporation, Inc., et al.*, Civ. C–3077 (D. Colo.). On August 23, 1971, an order of dismissal without prejudice was entered by Judge Arraj as the merger was abandoned.

2169. *United States* v. *Trust Company of Georgia, et al.*, Civ. 15–164 (N.D. Ga.). On August 24, 1971, an order of dismissal without prejudice was entered by Judge Edenfield as the merger was abandoned.

2171. *United States* v. *Washington Bankshares, Inc., et al.*, Civ. 3505 (E.D. Wash.). On July 2, 1971, an order of dismissal without prejudice was entered by Judge Powell as the merger was abandoned.

2177. *United States* v. *Baker Commodities, Inc., et al.*, Cr. 8295 (C.D. Calif.). On September 14, 1971, 6 defendants were fined a total of $70,500 on their pleas of *nolo contendere* and the 4 individuals were placed on probation for 2 years thus terminating the case.

2181. *United States* v. *Reynolds Metals Company*, Civ. 281–71–A (E.D. Va.). See "Cases Instituted."

PART 10 (1972)

1634. *United States* v. *Ford Motor Company, et al.*, Civ. 21911 (E.D. Mich.) The district court opinion was entered on December 18, 1970, and found that the acquisition of Autolite may substantially lessen competition in the manufacture and sale of spark plugs and batteries in the violation of Section 7 of the Clayton Act. The court ordered Ford to divest itself of the spark plug and battery plants and trademark. Additionally, the court enjoined Ford for 10 years to buy one-half of its annual requirements of spark plugs from the divested plant under the Autolite name, during which time it is prohibited from using its own name on spark plus; and ordered Ford to continue for 10 years its policy of selling to its dealers at prices no less than its prevailing minimum suggested jobbers' selling price.

On March 29, 1972, the Supreme Court affirmed the district court decision as to both Ford's liability and relief ordered by the court. Ford did not appeal the court order requiring divestiture of the battery plant. On April 26, 1972, the Supreme Court issued a mandate requiring Ford to divest itself of Autolite pursuant to the final decision of the district court, thus terminating the civil suit.

1968. *United States* v. *Venice Work Vessels, Inc.*, Civ. 67–1623 (E.D. La.) On April 10, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 7, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendants from seeking to induce work vessel owners and companies requiring the services of work vessels to deal with the defendant or from inducing such owners or companies not to deal with competitors of the Venice firm. It also prohibits the defendants from interfering with or inducing others to interfere with the opertions of competitors of Venice Work Vessels.

2022. *United States* v. *Interpace Corporation, et al.*, Civ. 68–1202 (W.D. Pa.) On May 12, 1972 an order for voluntary dismissal was entered upon agreement of both parties, thus terminating the case.

2056. *United States* v. *Beatrice Foods Co., et al.*, Civ. NC–3869 (D. Utah). On April 7, 1972 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed February 2, 1972 requiring a 30-day waiting period.

The judgment prohibits Beatrice from entering into agreements to fix, raise, or stabilize prices of dairy products; submitting collusive bids; allocating sales territories; or communicating with other distributors concerning bids, prices or conditions of sale of dairy products. Beatrice also agreed to pay $115,000 to the United States in damages in settlement of the suit.

A similar settlement involving the other 2 defendants, Federated and Hi-Land, was reached on January 6, 1971. In connection with that settlement, the 2 dairy firms paid a total of $185,000 to the United States.

2063. *United States* v. *Eaton, Yale & Towne, Inc.*, Civ. 13264 (D. Conn.). On March 10, 1972, the district court's decision and order were filed after a trial which concluded on November 11, 1971. The Court found that a *per se* violation of Section 1 of the Sherman Act had been established with respect to Yale's customer restrictions. The judgment enjoins the defendant from imposing or attempting to impose any restrictions upon its distributors of master key systems with respect to the customers to whom those distributors may sell.

On April 27, 1972 the district court issued ruling denying both parties' motions to amend the judgment. The suit was terminated on June 26, 1972 when the defendants' 60-day period for appeal expired.

2094. *United States* v. *Yoder Brothers, Inc.*, Civ. C–70–825–GBH (N.D. Ohio). On March 15, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed January 25, 1972, requiring a 30-day waiting period.

The judgment enjoins the defendants from charging royalties on unpatented chrysanthemum cuttings, limiting the use and disposition of cuttings which they sell, and claiming ownership of new varieties found by purchasers of their cuttings. It also enjoins the defendants from specifying the persons to whom chrysanthemum cuttings may be resold, or the geographical areas where they may be resold; from agreeing to boycott or threaten to boycott any breeder or propagator of cuttings; and from setting the resale prices of chrysanthemum cuttings.

2104. *United States* v. *Frito-Lay, Inc., et al.*, Cr. 6072 (C.D. Calif.). On December 7, 1970, 3 of the corporate defendants were fined $35,000 each after entering pleas of *nolo contendere* over the Government's objections.

BBF, the fourth defendant, had been dismissed as a party by the district court on November 2, 1970. The dismissal was based upon finding that BBF had been dissolved prior to the indictment and could not be considered an "existing" corporation within the meaning of Section 8 of the Sherman Act. The United States appealed the dismissal and the California Court of Appeals reversed and directed the district court to reinstate the indictment. The Supreme Court denied certiorari on April 17, 1972.

On May 26, 1972, BBF plead *nolo contendere* and a fine of $500 was imposed to conclude the criminal action.

2123. *United States* v. *Navajo Freight Lines, Inc., et al.*, Civ. C 2468 (D. Colo.). On April 3, 1972, the Supreme Court dismissed the appeal of defendant Garrett from the district court's opinion of October 26, 1971. The dismissal by the Supreme Court concluded an action brought against Navajo under Sections 7 and 8 of the Clayton Act to halt its take-over of Garrett.

The district court held that the ICC had primary jurisdiction of the matter and dismissed the complaint. The United States did not appeal but Garrett, which had aligned itself with the United States, did appeal under Section 2 of the Expediting Act.

The Supreme Court dismissed the appeal and held that disputes between private parties which are outside the mainstream of the litigation in which the government is directly concerned do not fall within the Expediting Act. Thus, where the government does not appeal an adverse decision, any appeal by a private party aligning itself with the government will be treated as private antitrust litigation.

2125. *United States* v. *Metro Denver Concrete Association et al.*, Civ. C. 2478 (D. Colo.) On February 28, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed January 25, 1972, requiring a 30-day waiting period.

The judgment enjoins each of the companies from entering into any agreement to fix prices, terms or conditions for the sale of ready mix concrete; prohibits the companies from submitting collusive bids or allocating markets, territories or customers for the sale of ready mix concrete; forbids the companies from engaging in price exchanges with any other seller of ready mix concrete before such information is generally communicated to the public or trade; requires each company to certify for a perod of five years that all of its sealed bids on ready mix concrete sales are free of any collusion with other sellers of that product; forbids the companies from belonging to or participating in any trade association whose activities are inconsistent with the terms of the judgment; and orders that the Metro Denver Concrete Association be dissolved within 60 days of the entry of the judgment.

2126. *United States* v. *Air Conditioning and Refrigeration Wholesalers, et al.*, Cr. 70–491 (N.D. Ohio). On June 2, 1972, please of *nolo contendere* were accepted over government objection, and fines totalling $70,000 were imposed, terminating the case.

2139. *United States* v. *The Owensboro National Bank, et al.*, Civ. 2529 (W.D. Ky.). On February 9, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 28, 1971, requiring a 30-day waiting period.

The judgment enjoins each of the individual defendants, so long as he may own any financial interest in The Owensboro National Bank, from acquiring any stock or other financial interest in any of the banks in the Owensboro area. Each individual defendant is also prohibited from being an officer or director of any other bank in the area as long as he has any financial interest in Owensboro National. Additionally, the judgment forbids each of the individual defendants from soliciting the banking business of any person who has been a customer of Central Bank at any time during a 2-year period prior to the entry of the judgment.

On September 16, 1971 the court had sustained a motion for summary judgment dismissing the Owensboro National Bank as a defendant.

2145. *United States* v. *Darling-Delaware, Inc., et al.*, Cr. 70 CR 1078 (S.D. N.Y.). On November 18, 1971 suspended jail sentences and fines totallying $338,500 were imposed by the district court against 22 defendants after acceptance of *nolo contendere* pleas over the Government's objection.

On March 10, 1972 the remaining 2 defendants' pleas of *nolo contendere* were accepted and fines totalling $45,000 were imposed plus one suspended sentence, thus terminating the case.

2146. *United States* v. *Darling-Delaware, Inc., et al.*, Civ. 70 CIV 5536 (S.D. N.Y.). On May 30, 1972 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed April 28, 1972, requiring a 30-day waiting period.

The judgment enjoins the defendants from conspiring to enter into any agreement with any other renderer in connection with the purchase of raw materials, to allocate accounts, to fix prices, to submit collusive bids, or to exchange information relating to these practices.

2152. *United States* v. *Atlanta Real Estate Board*, Civ. 14744 (N.D. Ga.). On February 4, 1972, this case was terminated by the entry of a consent judgment pursuant to a stipulation filed January 4, 1972, requiring a 30-day waiting period.

The judgment enjoins the Board from recommending, fixing, establishing, maintaining, or suggesting rates, fees or commissions to be charged by its

members in connection with the sale, lease or management of real estate in the Atlanta area.

Additionally, the Board is enjoined from taking any punitive action against any person based on that person's failure or refusal to adhere to any schedule or recommendation concerning the rates of commissions or fees to be charged in connection with the sale, lease or management of real estate in the Atlanta area. The judgment orders the Board to eliminate from all by-laws, rules or regulations any schedule of rates or amounts of commissions or fees to be charged by any of its members. The judgment also orders the Board to insert in its by-laws a provision that rates or amounts of commissions or fees to be charged in connection with the sale, lease or management of real estate shall be negotiable with the client.

2153. *United States* v. *First National Bank of Atlanta, et al.*, Civ. 14748 (N.D. Ga.). On May 1, 1972, a stipulation of dismissal without prejudice was entered which terminated the action.

The dismissal stipulation stated that the 2 individual defendants had sold their acquired stock which had been challenged by the United States and that the respective Board of Directors of all the defendant bangs had voted to rescind their merger agreements of May 14, 1970 and had so notified the Comptroller of the Currency of the United States.

2157. *United States* v. *Heyward Allen Motor Company, Inc., et al.*, Civ., 771 (M.D. Ga.). On June 26, 1972 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed May 25, 1972, requiring a 30-day waiting period.

The judgment enjoins the defendants from directly or indirectly agreeing to prices, discounts, or terms at which parts are sold, or to charges for labor involved in performing automobile repairs. The judgment also prohibits the fixing of prices charged or deposits required to estimate the cost of performing automobile repairs.

2165. *United States* v. *Tandy Corporation, et al.*, Civ. 71 1167 (N.D. Ill.). On January 29, 1972 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 28, 1971, requiring a 30-day waiting period.

The judgment orders Tandy Corporation, within 2 years, to divest itself of the former Allied Radio stores, and enjoins Tandy for a period of 5 years from acquiring any electronic specialty store.

2182. *United States* v. *Sweetheart Bankers, Inc., et al.*, Cr. 71–0316 (D. Md.). On January 13, 1972, 2 defendants were fined $5000 each after the acceptance of *nolo contendere* pleas without Government objection. The remaining defendant was fined $5000 on a *nolo plea* entered January 21, 1972, thus terminating the case.

2184. *United States* v. *The E. H. Koester Bakery Company, et al.*, Cr. 71–0315 (D. Md.). On January 13, 1972 the Court accepted noto pleas over Government objections and Imposed fines of $60,000 on 2 defendants.

On March 2, 1972, the district court imposed fines totalling $4,000 against 2 remaining defendants after acceptance of *nolo contendere*, thus terminating the case.

2189. *United States* v. *Arden-Mayfair, Inc., et al.*, Cr. 47–71 D2 (W.D. Wash.). On May 19, 1972, judgments were entered against 4 corporate and 3 individual defendants after they had pleaded *nolo contendere* over Government's objections. Arden-Mayfair was fined $30,000 while the other 3 corporate defendants were each fined $40,000 and the 3 individuals received 90 days suspended sentences. The imposition of sentences and fines terminated the case.

2192. *United States* v. *Wohl Shoe Company, et al.*, Cr. 24475 (D. N.M.). On February 18, 1972 fines totalling $110,000 were imposed by the district court against 3 defendants after acceptance of *nolo contendere* pleas, thus ending the action.

2198. *United States* v. *Seattle-First National Bank, et al.*, Civ. 313–71C2 (W.D. Wash.). In a stipulated order entered on January 18, 1972, First National Bank of Ferndale and Seattle-First National Bank represented that they had rescinded and terminated all contracts and obligations relating to the proposed acquisition. The parties stipulated that the approval of the Comptroller of the Currency is now of no force and effect and agreed to the dismissal of the lawsuit prejudice.

2211. *United States* v. *The Overhead Door Distributors' Association of Greater Delaware Valley*, Cr. 72–46 (E.D. Pa.). See "Cases Instituted."

2212. *United States v. The Overhead Door Distributors' Association of Greater Delaware Valley*, Civ. 72–198 (E.D. Pa.). See "Cases Instituted."

2215. *United States* v. *Jackson's Atlanta Ready Mix Concrete Company, Inc., et al.*, Civ. 16–138 (N.D. Ga.). See "Cases Instituted."

2216. *United States* v. *Owens-Illinois, Inc.*, Civ. 72–22 (N.D. Ohio). See "Cases Instituted."

2217. *United States* v. *W. R. Grace & Co., et al.*, 72 CIV 414 (S.D. N.Y.). See "Cases Instituted."

2220. *United States* v. *National Bank of Georgia, et al.* Civ. 16178 (N.D. Ga.). See "Cases Instituted."

2221. *United States* v. *Martin Marietta Co.*, Civ. 72–210 (D. Md.). See "Cases Instituted."

2231. *United States* v. *H. K. Porter Company, Inc.*, Civ. 72–285 (W.D. Pa.). See "Cases Instituted."

2236. *United States* v. *American Society of Civil Engineers*, Civ. 72 CIV 1776 (S.D. N.Y.). See "Cases Instituted."

2239. *United States* v. *Wayne Corporation*, Civ. IP–72–C–215 (S.D. Ind.). See "Cases Instituted."

2241. *United States* v. *The American Institute of Architects*, Civ. 992–72 (D D.C.). See "Cases Instituted."

1854. *United States* v. *Grinnell Corporation, et al.*, 65 CIV 2486 (S.D. N.Y.) On October 31, 1972, the government entered into a settlement agreement with the defendants for damages of $225,000 arising out of antitrust violations which were terminated by a 1964 judgment in a prior case. The government sought damages for overcharges on central station protection service purchased by the government from April 13, 1957 to the date of the final judgment (November 27, 1964) on the theory that the Statute of Limitations was suspended during the pendency of the government's antitrust action. However, on October 21, 1969, the court ruled that the government was limited to causes of action accruing within 4 years of the damage suit and that the Statute of Limitations in an antitrust damage suit was not suspended during the pendency of the antitrust enforcement action.

2120. *United States* v. *The American Society of Mechanical Engineers, Inc., et al.* 70 CIV 3141 (S.D. N.Y.). On September 11, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on June 13, 1972, requiring a 30-day waiting period.

The judgment requires that the 2 associations make their respective stamps available on a fair, reasonable and non-discriminatory basis to foreign manufacturers who meet the safety and technical standards applicable to American manufacturers. It also requires the National Board to register boilers and pressure vessels which meet the appropriate safety standards, without regard to whether they are made by a domestic or foreign manufacturer.

The judgment also ordered the United States to provide notice of the proposed judgment by publishing an attached Advertisement in The New York Times and the New York Law Journal for 7 days.

2121. *United States* v. *The Cleveland Real Estate Board*, Civ. C 70–731 (N.D. Ohio). On July 17, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed June 6, 1972, requiring a 30-day waiting period.

The judgment prohibits the fixing of brokerage commission rates and forbids the board from publishing commission fee schedules, recommending that its members adhere to any suggested fee schedule and from taking any action against a member who refuses to adhere to any such fees. In addition, the judgment enjoins the board from adopting or enforcing any rule or regulation that members accept only exclusive right to sell, and directs the board to insert in all its rules, by-laws, regulations, contracts, and other forms which previously contained a set commission rate, a provision that commission rates for the sale, lease or management of property are negotiable between the broker and his client.

2132. *United States* v. *Manufacturer's Association of the Relocatable Building Industry, et al.*, Cr. 70–945–SAW (N.D. Calif.). On November 18, 1971, fines totalling $40,500. were imposed against 5 defendants after trial.

Defendants appealed to the Court of Appeals from the denial of a new trial, denial of the motion for acquittal, the judgment and fines imposed. The judgment of the district court was affirmed June 6, 1972, the court rejecting appellants' contention that the *per se* rule as to price fixing is in substance the crea-

tion of a conclusive presumption and denies them due process in a criminal trial.

A petition for rehearing was denied and on August 15, 1972, an order directed the district court to transfer the funds to the Treasury as the time of appeal had run.

2133. *United States* v. *County National Bank of Bennington, et al.*, Civ. 6088 (D. Vt.). On January 27, 1972, an opinion and order were entered granting summary judgment for the Government holding that the "bennington area" was a "section of the country."

On June 23, 1972, a final judgment was entered enjoining each defendant from accomplishing any merger or consolidation of the defendants or from acquiring control over the other defendant. The appeal period ended August 23, 1972, thus terminating the case.

2137. *United States* v. *Richter Concrete Corporation, et al.*, Civ. 7755 (S.D. Ohio). On October 20, 1972, the case was terminated with the entry of a consent judgment pursuant to a stipulation filed on September 12, 1972, requiring a 30-day waiting period.

The judgment enjoins each of the companies from entering into any agreement to fix the prices, terms or conditions for the sale of ready-mix concrete; prohibits the companies from submitting collusive bids; requires each company to certify for a period of 5 years that all sealed bids on ready-mix concrete sales are free from collusion with other sellers of that product; forbids the companies from engaging in price exchanges with any seller of ready-mix concrete before such information is generally communicated to the public or trade.

2138. *United States* v. *Long Island Board of Realtors, Inc.*, Civ. 70 C 1418 (E.D. N.Y.). On August 1, 1972, this case was terminated upon the entry of a consent judgment pursuant to a stipulation filed on June 29, 1972, requiring a 30-day waiting period.

The judgment prohibits the adoption, suggestion, publication or distribution of any schedule or other recommendation concerning any specific rate or amount of commission. The judgment also directs the board to insert in all its regulations and forms which previously contained a set commission rate, a provision that the commission rates for the sale, lease or management of real estate shall be negotiable between the member of the board and his client. The judgment further provides that the board is enjoined for 10 years from conducting, publishing or distributing and survey or study relating to prevailing rates. In addition, the board is directed to admit to membership any duly licensed real estate seller or broker who satisfies reasonable and non-discriminatory requirements adopted by the defendant and not inconsistent with the judgment.

2160. *United States* v. *Harvey Hubbell, Incorporated*, Civ. B–285 (D. Conn.). On July 21, 1972, the case was terminated with the entry of a consent judgment pursuant to a stipulation filed on June 7, 1972, requiring a 30-day waiting period.

The judgment requires Hubbell to sell all the domestic and foreign Plye-National business and assets (other than nonexplosion proof and nonmilitary lighting) including a Chicago factory, to a purchaser approved by the Department. If Hubbell is unable to make such a sale within 18 months of the effective date of the judgment, then during the next 12 months, it must divest itself of this business by a sale to the public through an underwriter or by a distribution of stock on a pro-rata basis to holders of Hubbell stock. Hubbell is required to continue the normal operations of the Pyle-National business until divestiture is accomplished. The judgment also enjoins Hubbell for 10 years from acquiring the stock or assets or any company engaged in the United States in the manufacture and sale of pin and sleeve devices.

2174. *United States* v. *The Wachovia Bank & Trust Company, N.A.*, Civ. C–135–WS–71 (M.D. N.C.). The case was terminated on September 5, 1972, pursuant to a stipulation filed on August 2, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendant from restricting the number or location of banking facilities in enclosed mall shopping centers.

2183. *United States* v. *Sweetheart Bakers, Inc., et al.*, Civ. 71–821–HM (D. Md.). The case was terminated on November 27, 1972, with the entry of a consent judgment pursuant to a stipulation filed on October 25, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendants from fixing prices on the sales of bread, rolls, buns and sweet goods. The defendants are also enjoined from agreeing on prices, terms or conditions for the sale of bakery products, and from agree-

ing to communicate or communicating this kind of information to any person before such information is made known to the public or the trade generally. Each defendant is required to independently and individually review its prices, discounts, and terms and conditions for the sale of bakery products and to issue new price lists based on such a review.

2185. *United States* v. *The E. H. Koester Bakery Company, et al.*, Civ. 71–822–HM (D. Md.). The case was terminated on November 27, 1972, pursuant to a stipulation filed on October 25, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendants from fixing the prices on the sales of bread, rolls, buns and sweet goods. The defendants are also enjoined from agreeing on prices, terms or conditions for the sale of bakery products, and from agreeing to communicate or communicating this kind of information to any other person before such information is made known to the public or trade generally. Each defendant is required to independently and individually review its prices, discounts, and terms and conditions for the sale of bakery products and to issue new price lists based on such review.

2191. *United States* v. *KDI Corporation, et al.*, Civ. 71–2363–AAH (C.D. Calif.). On November 20, 1972, the case was terminated with the entry of a consent judgment pursuant to a stipulation filed on September 11, 1972, requiring a 30-day waiting period.

The judgment requires KDI to divest, at its option, either "Royal Pools", "Blue Haven Pools", or "Sunset Pools", provided that at the time of such divestiture the business of "Blue Haven" or "Sunset" is equivalent to that of "Royal." Divestiture cannot be made to any person or business which has installed more than 5% of the swimming pools installed in Southern California within the 5 years prior to the effective date of the divestiture. If KDI is unable to make the required divestiture within 30 months of the effective date of the judgment, KDI is required to place in the control of a trustee appointed by the Court, KDI's undivested interest in the Southern California business of Royal. The trustee is given 1 year to dispose of this interest.

Further, KDI must continue the normal operations of the businesses that may be divested and is prohibited from taking any action which might affect their continuing viability. The judgment also enjoins KDI for 10 years from acquiring a controlling interest in any business installing or licensing or franchising other to install, swimming pools in Southern California, without first obtaining the Department or approval of the court.

On November 22, 1972, the remaining defendant was dismissed without prejudice.

2194. *United States* v. *Wolverine World Wide, Inc.*, Civ. 9186 (D. N. Mex.). On July 10, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on June 9, 1972, requiring a 30-day waiting period.

The judgment enjoins Wolverine from conspiring with or entering into any agreement, plan, or program with any retailer to fix, establish, maintain, or adhere to prices for the sale of Wolverine shoes at retail. Wolverine is prohibited from refusing to sell Wolverine shoes to any other retailer because of the price at which retailer sells Wolverine Shoes. Wolverine is further enjoined from in any way urging or coercing any retailer to establish, adopt or adhere to any minimum or suggested retail prices, or to police or enforce retailers' adherence to any suggested retail prices. Wolverine is also directed by the judgment to mail a copy of the judgment to each retailer of Wolverine branded shoes within 60 days after the judgment is entered.

2205. *United States* v. *Wells Fargo Bank, National Association, et al.*, Civ. C72–98–RHS (N.D. Calif.). The case was dismissed on November 21, 1972, when the proposed merger between the 2 banking associations and the 2 bank holding companies was abandoned.

2213. *United States* v. *Garage Door Manufacturers Association, Inc., et al.*, Cr. 72–47 (E.D. Pa.). On September 5 and 11, 1972, pleas of *nolo contendere* were accepted from 9 of the 11 defendants in this case. The final 2 pleaded *nolo contendere* and were fined on November 17, 1972. The fines totalled $104,000 and 2 suspended jail sentences were imposed on individual defendants.

2245. *United States* v. *Safety First Products Corporation*, 72–CIV–2233 (S.D. N.Y.). The case was terminated on November 30, 1972, with the entry of a consent judgment pursuant to a stipulation filed on October 31, 1972, requiring a 30-day waiting period.

The judgment prohibits Safety First from restricting the customers and territories of the distributors of its fire protection equipment and system. Safety First is also forbidden from restricting the customers or territories of its distributors who resell Safety First fire protection systems to persons qualified to install and service such systems.

2246. *United States* v. *Dunn Glass Company, Inc., et al.*, Cr. 12686–N (M.D. Ala.). On July 7, 1972, four of the 6 defendants entered pleas of *nolo contendere* and were fined a total of $4,500. On November 24 and December 1 the final 2 defendants entered *nolo* pleas and were fined $500 each, thus terminating the case.

2252. *United States* v. *American Institute of Certified Public Accountants, Inc.*, Civ. 1091–72 (D. D.C.). On July 6, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on June 1, 1972, requiring a 30-day waiting period.

The judgment enjoins the Institute from adopting any plan, program or course of action which prohibits member accountants from submitting price quotations for accounting services to persons seeking such services, and adopting or disseminating, in any of its publications or otherwise, any Code of Ethics, rule, or by-law, resolution or policy statement which prohibits or limits the submission or price quotations for accounting services by members to persons seeking such service or which states or implies that the submission of price quotations for accounting services by members accountants is unethical, unprofessional, or contrary to the Institute policy. The judgment also declares null and void the Institute's rule which provides that a member shall not make a competitive bid for accounting services, and directs the Institute to delete that provision from its Code of Professional Ethics. In addition, the judgment also requires the Institute to delete from its Code of Ethics, rules, by-laws, resolutions and other policy statements, any provision which prohibits or limits the submission of price quotations for accounting services by member or which states or implies that such submission are unethical, unprofessional or contrary to any Institute policy.

2254. *United States* v. *Westinghouse Electric Corporation*, Civ. 72–507 (W.D. Pa.). On August 1, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on June 23, 1972, requiring a 30-day waiting period.

The judgment prohibits Westinghouse from purchasing products or services from, or selling products or services to, any customer or supplier upon the understanding that Westinghouse's purchases of products or services from such customer or supplier will be conditioned upon its sales to such customer or supplier; communicating to any customer, supplier or contractor the relationship of purchases and sales between them or comparing statistical data to further such a relationship; and maintaining statistical compilations that compare sales to and purchases from supplier. Westinghouse is also directed by the judgment to refrain from establishing or maintaining any office or position whose activities, programs or objectives are to promote trade relations involving reciprocal purchasing arrangements.

2255. *United States* v. *Bird Corporation, et al.*, Civ. 72 C–860 (E.D. N.Y.). On July 27, 1972, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on June 27, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendants from fixing the resale prices of respirators, and from allocating territories or customers. The defendants are also enjoined from entering into any agreement which prevents Instrumentation Associates from selling any product other than Bird respirators, and from fair trading respirators for a period of 5 years from the date of entry of the judgment. In addition, the defendants are each required to send a copy of the final judgment to each of their respective distributors.

2256. *United States* v. *Memphis Board of Realtors*, Civ. 72–218 (W.D. Tenn.). The case was terminated on July 27, 1972, with the entry of a consent judgment pursuant to a stipulation filed June 27, 1972, requiring a 30-day waiting period.

The judgment prohibits the fixing or maintaining of rates or fees to be charged by the Board's members in connection with the sale, lease or management of real estate. It also prohibits the fixing, maintaining, suggesting or enforcing percentage division of commission or other fees between selling and listing brokers. The judgment also directs the Board to insert in all by-laws, rules, regulations, contracts, and other forms which previously contained a set or recommended commission rate, a provision that commission rates for the sale, lease or management of property shall be negotiable between the broker and his client.

2259. *United States* v. *Tulsa Bottlers Association, et al.*, Civ. 72 C 230 (N.D. Okla.). The case was terminated on October 11, 1972, with the entry of a consent judgment pursuant to a stipulation filed on September 6, 1972, requiring a 30-day waiting period.

The judgment enjoins the bottlers from: agreeing on prices, discounts, deposits, terms or conditions for the sale of soft drinks; agreeing to advertise uniform or specific terms or conditions for the sale of soft drinks; agreeing to submit rigged bids on the sale of soft drinks; agreeing to exchange information concerning bids, quotations, deposits, discounts, or other terms or conditions for the sale of soft drinks; urging or coercing any person to adhere to uniform or specific terms or conditions for the sale of soft drinks, or to refrain from selling or to refuse to permit the sale of private label soft drinks in vending machines; and communicating to any other bottler past, present or future prices, deposits, discounts or other terms or conditions for the sale of soft drinks. The judgment further requires the dissolution of the Tulsa Bottlers Association and enjoins the bottling companies from belonging to any similar organization with the knowledge that its activities are inconsistent with the provisions of the judgment.

2260. *United States* v. *Bally Manufacturing Corporation*, Civ. 72 C 1597 (N.D. Ill.). The case was terminated on October 2, 1972, pursuant to a consent judgment entered on September 1, 1972, requiring a 30-day waiting period.

The judgment prohibits Bally from allocating customers or territories among the distributors of its amusement and gaming equipment, including slot machines, pinball machines and arcade games.

2262. *United States* v. *Uniroyal, Inc.*, 72 CIV 2793 (S.D. N.Y.). The case was terminated on August 15, 1972, pursuant to a stipulation filed on June 29, 1972, requiring a 30-day waiting period.

The judgment prohibits Uniroyal from purchasing or selling products or services to any customers or supplier upon the understanding that Uniroyal's purchases of products or services from such customer or supplier will be conditioned upon Uniroyal's sales to such customer or supplier, communicating to any customer supplier, or contractor that Uniroyal's sales to any such person is a factor in its purchasing decisions, discussing with any supplier or customer the relationship of purchases and sales between them or from comparing statistical data to further such a relationship, maintaining statistical compilations that compare sales to and purchases from suppliers, and agreeing with any supplier that the supplier will buy from certain customers of Uniroyal, or will attempt to persuade other companies to buy from Uniroyal. Uniroyal is also directed to refrain from assigning any trade relations duty or function to any employee, and to instruct its officers and agents that they must adhere to the policy of basing all purchasing decisions on price, quality, service, and financial responsibility.

2265. *United States* v. *T.I.M.E.–DC., Inc.*, Civ. 5–1063 (N.D. Tex.). On July 31, 1972, the case was terminated pursuant to a stipulation entered on June 30, 1972, requiring a 30-day waiting period.

The judgment prohibits the defendant for 15 years from: using its purchases to aid, influence or promote its sales to suppliers; purchasing or selling products, goods or services on the condition or understanding that purchases by it from any supplier will be based or conditioned upon its sales to such supplier; communicating to any customer that its sales to such customer are a factor in its purchasing decisions; and, maintaining statistical compilations that compare sales to and purchases from suppliers. The judgment also requires T.I.M.E.–DC. to: refrain from assigning any trade relation functions or duty to any employee; instruct its officers and agents that they must adhere to the policy of basing all purchasing decisions on price, quality, service and financial responsibility; and invite competitive bids for major purchases of trucks, trailers, tires, and petroleum products, and certain other equipment and supplies.

2268. *United States* v. *Converse Rubber Corporation, et al.*, Civ. 72–2075–J (D. Mass.). See "Cases Instituted."

2274. *United States* v. *A. Levy & Zentner Company, et al.*, CR–R–14476 (D. Nev.). See "Cases Instituted."

2277. *United States* v. *American Bakeries Company, et al.*, 72–CR–1010 (S.D. N.Y.). See "Cases Instituted."

2285. *United States* v. *The Wachovia Corporation, et al.*, Civ. St.–C–72–40 (W.D. N.C.). See "Cases Instituted."

PART 11 (1973)

1354. *United States* v. *El Paso Natural Gas Company*, Civ. 2626 (D. Colo.). After trial following the Supreme Court ruling in *California* v. *Federal Power Commission* which was handed down April 30, 1962, the court at the conclusion of the oral argument on October 19, 1962, announced that judgment would be for the defendants. Judgment as proposed by the defendants was entered November 20, 1962.

Government appealed this judgment and on April 6, 1964, the Supreme Court held that the acquisition of Pacific Northwest Pipeline Corporation by El Paso Natural Gas Company violated Section 7 of the Clayton Act, the judgment was reversed, and the district court was directed to order divestiture without delay. (*U.S.* v. *El Paso Natural Gas Company*, 376 U.S. 651).

The district court, June 24, 1965, after denying various motions by third parties to intervene, entered a decree of divestiture.

On February 27, 1967, in another appeal by several of the third parties who were denied intervention, the Court ruled that they had been improperly denied intervention of right in the district court proceedings which followed the Court's 1964 decision. The Court again remanded the case to the district court with directions that an order of divestiture be entered without delay conforming to certain guidelines which it laid down and with a further direction that a different district judge be assigned to hear the case.

Hearings on proposed divestiture plans commenced October 16, 1967, after the new district judge granted 26 motions to intervene by various states, state public utility commissions, and industrial and distributor customers of El Paso. El Paso and several intervenors filed plans of divestiture. In 1968, the district court issued a decree in which Colorado Interstate Gas Company was designated as the devestee and a plan of divestiture implemented by El Paso and Colorado Interstate was prescribed.

Following another appeal the Supreme Court on June 16, 1969, vacated the district court's judgment. The Supreme Court held that the decree did not comply with the Court's mandate in that it did not properly apportion the gas reserves to be divested as between El Paso and the divestee and did not provide for complete divestiture. The Supreme Court also directed a reconsideration of the choice of divestee.

After extensive hearings in 1970, 1971 and 1972, the district court adopted a reallocation of El Paso's gas reserves and a plan of divestiture, and again chose Colorado Interstate as divestee. As a second choice in the event the Supreme Court should disapprove Colorado Interstate Gas, the district court chose the so-called Apco Group. A joint venture of 4 corporate groups in which 2 Apco Oil Company and Alaska Interstate Corporation, hold an interest of 37.5 percent each and the other two the balance. The Government supported this group along with three other applicants as candidates for divestee.

Thereafter Coastal States Gas Producing Company, a stranger to the case, acquired about 49 percent of the outstanding shares of Colorado Interstate. No other holder owned as much as 1 percent. The Government asked the district court to disqualify Colorado Interstate and substitute the Apco Group, primarily on the ground that the Colorado Interstate the court had selected no longer existed and the Supreme Court's mandate for divestiture "without delay" precluded any reopening of hearings to determine if Coastal States was qualified to become divestee. On August 30, 1972, after hearing argument from all interested parties the court revoked its choice of Colorado Interstate Corporation and substituted the Apco Group. This judgment was affirmed by the Supreme Court March 5, 1973.

2074. *United States* v. *Kelsey-Hayes Company, et al.*, Cr. 44608 (E.D. Mich.). On October 26, 1971, the court granted Respondents' motion to dismiss criminal contempt charges arising from alleged violations of a final judgment entered upon consent on July 1, 1955.

The Government appealed to the Sixth Circuit which held on April 3, 1973, that the order of dismissal is not appealable under *The Brewster* Case.

2086. *United States* v. *United Virginia Bankshares Incorporated, et al.*, Civ. 85-70-A (E.D. Va.). After trial the court filed an opinion September 8, 1972, holding that the acquisition of The Peoples National Bank by United Virginia Bankshares does not violate Section 7 of the Clayton Act. The court on March 20, 1973, adopted the findings and conclusions submitted by the defendants and intervenor and overruled the objections of the government.

At the expiration of the appeal period the case was terminated.

2099. *United States* v. *Hilton Hotel Corporation, et al.*, Cr. 70–123 (D. Ore.). On October 14 and November 9, 1970, pleas of *nolo contendere* were accepted from 3 corporations, 1 trade association and 4 individual defendants. The fines imposed totalled $29,500 with $4,000 suspended.

After trial, of the 2 remaining defendants, 1 individual was found not guilty by jury and Western International Hotels Company was found guilty and fines of $10,000 were imposed. Western appealed and on September 27, 1972, the Court of Appeals affirmed the lower court's decision. On October 20, 1972, Western petitioned for a writ of certiorari which was denied on January 15, 1973.

2117. *United States* v. *The First National Bancorporation, et al.*, Civ. C–2413 (D. Colo.). After trial, the district court on July 12, 1971, ruled that the government had failed to show that the effect of the merger would be substantially to lessen competition. Relying on both the testimony of bank officials and on objective evidence of market growth, the court found that Bancorporation was not a potential entrant *de novo* or by toehold acquisition. It also found little evidence that Bancorporation's presence in the wings exerted a competitive influence of the market. Finally, the court found no loss of actual competition in correspondent banking because it viewed the foreclosure of FNB as insubstantial. A memorandum opinion and order was filed dismissing the case and granting the government a stay of proceedings for 30 days.

On September 9, 1971, it was stipulated between parties that First National Bancorporation and The First National Bank of Greeley would take no steps to consummate the proposed acquisition of the First National Bank of Greeley and would not consummate said acquisition prior to October 8, 1971. A notice of appeal was filed by the Government on September 24, 1971, and on September 20 the Government filed an application requesting continuing the stay of the proposed acquisition until disposition by the Supreme Court. The Supreme Court granted the stay on October 4, 1971.

On February 23, 1973, the case was terminated when a *per curiam* opinion, was filed by the Supreme Court affirming the judgment of the district court.

2131. *United States* v. *Ross Trucking, Inc., et al.*, Civ. C 70–1228 (E.D. N.Y.). On April 17, 1973, the case was terminated by the entry of consent judgments pursuant to stipulations filed March 6 and 16, 1973, requiring a 30-day waiting period.

In regard to Castle & Cooke, Inc., and Standard Fruit & Steamship Company, the judgment enjoins said defendants from selling bananas to any customer anywhere in the United States on condition that the customer use or hire a specified trucker to transport the bananas without the prior approval of the Department of Justice or the court. The customers are free, under the judgment, to use their own trucks or those of any trucker of their choosing.

Ross is enjoined from entering or participating in any plan, argument, etc., with any banana importer in the United States which would preclude customers from using their own trucks or those of any person of their choosing to cart bananas.

The decrees, however, contain provisions which permit the designation of a specific trucker in the Port of New York for purchases of 300 boxes or less. This provision was included to enable Standard and Castle & Cooke to maintain overall pier efficiency and avoid undue truck congestion at their pier in the Port of New York. Over 76% of the bananas purchased in the Port of New York are in lots of more than 300 boxes.

2141. *United States* v. *First National Bancorporation, Inc., et al.*, Civ. C–2754 (D. Colo.). On June 1, 1973, the case was dismissed by the government because of the earlier ruling by the Supreme Court in the *Greeley* case.

2147. *United States* v. *Los Angeles Realty Board, et al.*, Civ. 70–2855–CC (C.D. Calif.). On March 19, 1973, the case was terminated pursuant to a consent decree requiring a 30-day waiting period that was filed on February 16, 1973.

The judgment prohibits the defendants from fixing, establishing or maintaining any rate or amounts of commissions or fees in connection with the sale, lease or management of real estate. The defendants are also prohibited from recommending that their members adhere to any suggested fee schedule and from taking any action against a member who refuses to adhere to any such fees.

In addition the defendants are forbidden to: fix, maintain, suggest or enforce any percentage division of commissions between the selling and listing broker; adopt, adhere to, maintain, or enforce any by-law, regulation, plan or program

which would prohibit any member from doing business with any person; establish, maintain or enforce any fees for membership in the Board of Multiple Listing Service which are not related to the approximate cost, including reasonable reserves, of maintaining the organization as a going concern.

In addition, each defendant is directed to insert in its rules, by-laws, regulations, contracts and other forms which contain a set commission rate, or division thereof, a provision that commission rates are negotiable between the broker and his client and that commission divisions shall not be influenced by the Los Angeles Realty Board.

2162. *United States* v. *Airfreight Transportation Corp., et al.*, 71 CR 485 (E.D. N.Y.). The case was terminated on March 7, 1973, pursuant to defendants' motions for a judgment of acquittal under Rule 29 of the Federal Criminal Rules after both sides rested. The motion was granted for several reasons: the government's evidence as to rates and rate changes was found to be unclear and confusing; the testimony of the government's only witness may have been motivated by his hostility toward one or both of the defendants; the judge was impressed by character evidence offered on behalf of defendant Wofsy; and it was noted by the lawyer for the government witness that the witness had recently changed his conduct and work habits.

2170. *United States* v. *United Aircraft Corporation*, Civ. 14,426 (D. Conn.). On June 11, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on April 30, 1973, requiring a 30-day waiting period.

The judgment requires the defendant to license patents and technology acquired in connection with its work as a fuel cell contractor on the Apollo spacecraft program. The judgment requires United to license fuel cell patents developed in connection with both the Apollo program and the TRW agreement on royalty free basis. It also requires United to license the Apollo and TRW agreement fuel cell technology at a maximum charge of $25,000 each.

In addition, the judgment enjoins United from using its purchasing power to restrain any persons from engaging in fuel cell research, development or manufacture. It also prohibits United from restricting the right of any of its fuel cell research and development contractors or joint venturers to undertake fuel cell research and development independently or for other persons. The judgment further enjoins United for a period of 10 years from acquiring 10% or more of the stock or any fuel cell assets of a domestic corporation significantly engaged in the manufacture, sale, research, or development of fuel cells, without prior approval of the Department of the court.

2188. *United States* v. *The Fort Worth National Corporation, et al.*, CA–4–1827 (N.D. Tex.). On May 3, 1973, the case was dismissed, pursuant to stipulation, after defendant completed the divestiture of Mutual Savings and Loan Association of Fort Worth.

2190. *United States* v. *Arden-Mayfair, Inc., et al.*, Civ. 189–71 C2 (W.D. Wash.). On March 23, 1973, the case was terminated with the entry of a consent judgment pursuant to a stipulation filed February 20, 1973, requiring a 30-day waiting period.

The judgment enjoins the defendants from fixing wholesale prices of dairy prodoucts and from allocating customers. In addition, the defendants are forbidden from communicating to or exchanging with other processor-distributors any information concerning prices prior to the disclosure of such information to the public or customers generally.

2210. *United States* v. *Multiple Listing Service, et al.*, Civ. 72–68 (D. Ore.). On June 29, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on May 25, 1973. requiring a 30-day waiting period.

Multiple Listing Service entered into a consent decree December 5, 1972, after expiration of the 30-day waiting period, which enjoins it from fixing brokerage fees and commission rates and from refusing to accept for memberships any real estate broker because said broker is not a member of any local, state or national realty board or association.

The judgment of June 29, 1973, prohibits the Boards from adopting, suggesting, publishing, or distributing any rate schedule or other recommendation concerning any specific rate or amount of brokerage commission or fee, or from taking any action against any member who refuses to adhere to such fees. In addition, the proposed judgment enjoins the Boards from:

Adopting or enforcing any rule or by-law which restricts or limits the right of any of the Boards' members to disclose their own listings and to engage in cooperative transactions with other real estate brokers;

And, adopting or enforcing any rule or by-law which prohibits any of the boards' members from joining or belonging to any multiple lisitng service.

2224. *United States* v. *Trans Texas Bancorporation, Inc., et al.*, Civ. EP–72–CA–83 (W.D. Tex.). After trial on November 13, 1972, the court ruled that the acquisition by Trans Texas Bancorporation of 4 El Paso County commercial banks would not substantially lessen or increase competition. The court found that the 3 smaller, newer banks were organized, created and controlled by a group constituting a majority of stockholders of the lead bank in the proposed holding company. The new banks were established "to supplement" the lead bank "for the purpose of corporate growth by internal expansion", as branch banking is not permitted in Texas. Thus, no significant competition existed among the banks involved and concentration would not be increased. The court further found that there has been deconcentration in commercial banking in El Paso since 1931 with an increase in the number of chartered banks from 2 to 13, and that the creation of these new banks stimulated competition. The consummation of the acquisitions, however, was stayed pending appeal. On June 18, 1973, the case was terminated when the Supreme Court affirmed the ruling of the district court.

2225. *United States* v. *County National Bancorporation, et al.*, 72 C 219(1) (E.D. Mo.). After trial the court on December 13, 1972, entered findings of fact, conclusion of law, and judgment for the defendant. The court held that there is no reasonable probability that the acquisition of BB by CNB would result in a substantial lessening of competition in either the east central portion of St. Louis County or the area of the City of St. Louis and St. Louis County or that the acquisition will result in a violation of Section 7 of the Clayton Act. The court also concluded that the relevant market area in which the effect of the acquisition is to be tested consists of the City and County of St. Louis, Missouri, and not the east central portion of St. Louis County made up of 14 communities, as alleged by the Government.

The court further ordered that the automatic statutory stay of the proposed acquisition, as provided in 12 U.S.C. 1849(b), imposed by the filing of the Government's suit be lifted. The court's ruling was made over the Government's objections and brief in opposition to defendant's motion to lift the statutory stay.

The case was terminated February 23, 1973, when it was decided not to appeal.

2243. *Unitel States* v. *Clark Mechanical Contractors, et al.*, Cr. 27–837 (W.D. Ky.). On September 13, 1972, fines totalling $95,000 were imposed on 3 corporations and 2 individuals. The individuals also received jail sentences of 30 days and 9 months. On November 10, 1972, another corporation was fined $10,000. On February 13, 1973, fines were imposed totalling $110,000 on 4 corporations and 4 individuals. The 4 individuals each received a 30 day jail sentence. Three individuals fines of $10,000 were reduced to $2,500, thus terminating the case.

2247. *United States* v. *Capital Glass & Trim Co., et al.*, Civ. 3679–N (M.D. Ala.). On April 6, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on March 7, 1973, requiring a 30-day waiting period.

The judgment prohibits 6 automobile glass shops in Montgomery and Birmingham, Alabama, from fixing prices on the sale and installation of automobile glass replacement parts.

2253. *United States* v. *Greater Pittsburgh Board of Realtors, et al.* Civ. 72–499 (W.D. Pa.). On May 21, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on April 16, 1973.

The judgment prohibits the defendant and 4 multiple listing service organizations from fixing commission rates in connection with the sale, lease or management of real estate. The defendants are also forbidden from recommending that their members adhere to any suggested fee schedule and from taking any action against a member who refuses to adhere to any such fees. In addition, the judgment prohibits each defendant from: fixing, maintaining, suggesting, or enforcing any percentage division of commissions between a selling and listing broker; conducting, publishing or distributing, for a period of 10 years, any survey or study relating to rates or amounts of commissions or other fees; and interfering with or limiting its members from maintaining part-time salesman in their employ. The judgment also directs each defendant to insert in its rules, by-laws, regu-

lations, contracts and other forms, a statement that commission rates shall be negotiable between the broker and his client.

2257. *United States* v. *Colley Enterprises, Inc., et al.* W–72–CR–34 (W.D. Tex.). On October 3, 1972, pleas of *nolo contendere* were accepted from 9 of the 12 defendants. Fines imposed totaled $3,500. The remaining three defendants went to trial on October 16, 1972 after which the Scotchman, Inc. was convicted and fined $12,000. However, the jury could not reach a decision as to Roy L. Power and Woodrow Colley. A new trial based upon alleged jury misconduct was granted as to the three defendants. The second trial began on March 5, 1973, and the jury returned a verdict of acquittal as to each of 3 defendants on March 8, 1973.

2263. *United States* v. *United Foam Corporation*, Civ. 72–1490–CC (C.D. Cal.). On May 30, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on April 30, 1973, requiring a 30-day waiting period.

The judgment requires United Foam Corporation to divest all of its interest in the assets of its Compton, California plant, which serves the market affected by the acquisition. The judgment requires that the divestiture be accomplished within 24 months from the date of entry of the final judgment. The judgment also provides that if the divestiture requirements have not been met within 24 months, United shall place, in the control of a trustee, all of United's interest in the property to be divested, to be sold by the trustee. The trustee is required to dispose of the property within one year after his appointment by the Court, subject to the approval of the Government.

The judgment, also, prohibits United from acquiring any interest in the business of any company engaged in the manufacture or processing of flexible urethane foam without prior notice to the Antitrust Division, for a period of 10 years. In the event the Government objects to such proposed acquisition, United may not make such acquisition without demonstrating to the Court that the acquisition will not substantially lessen competition or tend to create a monopoly.

2264. *United States* v. *Southwestern Peanut Shellers Association* CA–3–6028–C (N.D. Tex.).

2267. *United States* v. *Southeastern Peanut Association* Civ. 777 (M.D. Ga.). The former case was terminated on January 29, 1973, and the latter on January 15, pursuant to stipulations filed on December 15, 1972, requiring a 30-day waiting period.

The judgments enjoin the associations from fixing, establishing, recommending or otherwise attempting to restrict the right of any member to determine, in accordance with his own judgment: the commission or fee to be paid to brokers of shelled peanuts; the amount or percentage by which contract prices for shelled peanuts will be changed in the event of a change in delivery time or an account of damaged, split or broken peanuts; or the use of credit in sales of shelled peanuts.

The judgments further provide that after 10 years the associations would no longer be prohibited from incorporating in their recommended trading rules or otherwise suggesting schedules of discounts by which contract prices may be reduced in the event of damaged, split or broken peanuts, or a provision would be required to state expressly that it may be freely adopted, modified, or disregarded by the parties to the transaction. The judgments also prohibit the associations from boycotting any broker of shelled peanuts or from requiring, urging, or requesting any of their members not to do business with any broker of shelled peanuts.

2266. *United States* v. *Nissan Motor Corporation in U.S.A.* Civ. C–72–1212–RHS (N.D. Cal.). The case was terminated on February 26, 1973, with the entry of a consent judgment pursuant to a stipulation filed on January 26, 1973, requiring a 30-day waiting period.

The judgment prohibits Nissan in U.S.A. from fixing the prices at which Nissan products are sold and from limiting or restricting the sales territories within which, and the persons to whom, Nissan dealers may sell Nissan products. In addition, Nissan is enjoined from refusing to participate in the cost of any cooperative advertising plan of any Nissan dealer or group of dealers because such advertisements contain retail prices other than those suggested by Nissan in U.S.A.

The judgment also prohibits Nissan from discontinuing curtailing or limiting the sale of Nissan products to, or otherwise penalizing any Nissan dealer because of the prices at which, the persons to whom, or the territories in which such dealer has sold or offered to sell Nissan products.

2270. *United States* v. *The Material Handling Institute, Inc. et al.*, Civ. 72–659 (W.D. Pa.). On March 21, 1973, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed on February 16, 1973, requiring a 30-day waiting period.

The judgment prohibits defendants from adopting unreasonable or discriminatory membership requirements. While the defendants may require that members manufacture some material handling equipment in United States facilities, and may require that corporate members be organized in the United States, they may not limit a member's manufacture or sale of material handling equipment produced outside of the United States. The judgment also enjoins the defendants from prohibiting their members from exhibiting their products at trade shows not sponsored by the defendants.

2271. *United States* v. *Empire Gas Corporation, et al.* Cr. 23917–1 (W.D. Mo.). After trial, on March 23, 1973, the three defendants, Empire Gas Corporation, Robert W Plaster and Harold Smith were found not guilty by jury of both counts of aiding and abetting the possession of an unregistered and illegally made bomb. Following the trial, the Court, at the request of the Government, dismissed the bomb conspiracy count which had been severed earlier, on the grounds that the evidence to support it was the same as that introduced by the Government at trial. The Court, also at the Government's request, dismissed the Sherman Act count of attempting to monopolize the liquified petroleum gas industry in various markets in which Empire sold LP gas, without prejudice. This was done in order to avoid prosecution of an indictment which may have been duplicitous. The case was therefore terminated on April 24, 1973.

2273. *United States* v. *Colorado Milling & Elevator Company, et al.* Cr. 287–7D2 (W.D. Wash.). On March 16, 1973, 4 corporations and 3 individuals were fined a total of $43,000 pursuant to he acceptance of their *nolo* pleas on January 26, thus terminating the case

2276. *United States* v. *American Ship Building Company, et al.* Civ. C–72–859 (N.D. Ohio). The case was terminated on January 8, 1973, with the entry of a consent judgment pursuant to a stipulation filed on December 4, 1972, requiring a 30-day waiting period.

The judgment requires American Ship Building to divest 3 of the 7 operative vessels acquired from Litton by December 15, 1975, and it prohibits, for a period of 5 years, American Ship Building and its operative subsidiary, the Kinsman Marine Transit Company, from acquiring, except as a replacement for an existing vessel, any interest in any bulk cargo vessel operated on the Great Lakes.

The judgment is also interpreted by the parties to require that those vessels acquired from Litton and not divested must be used for replacement of existing American Ship Building vessels. Ultimately, the judgment thus requires that American Ship's bulk cargo fleet be no larger than it was prior to the Litton acquisition. Further, Litton Systems, Inc., is required to make a good faith effort to utilize a new design for tug barges which it has been developing and building, in the transportation of bulk commodities on the Great Lakes.

2278. *United States* v. *Blue Ribbon Meat Company, et al.* Cr. R–14, 482 (D. Nev.). Pursuant to pleas of *nolo contendere* 5 wholesale meat firms were fined a total of $58,000 and 1 individual defendant was fined $5,000 and sentenced to 30 days in prison This occurred on January 5, 1973, and the case was thereby terminated.

2282. *United States* v. *Yellow Freight Systems, Inc.* Civ. 20632–2 (W.D. Mo.). The case was terminated on March 6, 1973 with the entry of a consent judgment pursuant to a stipulation filed on January 29, 1973, requiring a 30-day waiting period.

The judgment prohibits the defendant from using its purchases to aid, influence or promote its sales to suppliers, purchasing or selling products, goods or services on the condition or understanding that purchases by it from any supplier will be based or conditioned upon its sales to such supplier, communicating to any person that it will consider sales as a factor in any purchasing decision, maintaining statistical compilations that compare sales to and purchases from suppliers, and assigning any trade relations duties to any employee.

2283. *United States* v. *Atomic Fire Equipment Company, et al.* Cr. 72–737 (N.D. Ohio). Fines totalling $107,000 were levied upon 4 corporate and 7 individual defendants on June 29, 1973, thus terminating the case. The fines were imposed pursuant to defendants' pleas of *nolo contendere*.

Previously another corporate defendant had entered a *nolo contendere* plea and was fined $1,000 making a total of $108,000 fines.

2289. *United States* v. *Brownell & Co., et al.*, Cr. 72–258 (W.D. Tenn.). Fines totalling $128,000 were imposed upon 5 corporate and 5 individual defendants on June 22, 1973, thus terminating the case. The fines were entered pursuant to defendants' pleas of *nolo contendere.*

2292. *United States* v. *First Washington Net Factory, Inc., et al.*, Cr. 72–452–E (N.D. Ala.). Fines totalling $27,000 were imposed upon 3 corporate and 2 individual defendants on May 25, 1973, thus terminating the case. The fines were entered pursuant to defendants' pleas of *nolo contendere.*

2294. *United States* v. *St. Petersburg Automobile Dealers Association*, Cr. 72–337–CR–T–H (M.D. Fla.). The case was terminated on February 16, 1973, when the defendant associate was fined $10,000 upon the acceptance of their plea of *nolo contendere.*

2296. *United States* v. *Marathon Enterprises, Inc., et al.*, Civ. 197–782 (D. N.J.). On March 22, 1973, the case was dismissed as the merger was abandonded, while discovery was being completed.

2297. *United States* v. *Champaign Asphalt Company, et al.*, 72–CR–67–4 (E.D. Ill.). The case was terminated on May 18, 1973, as fines were levied upon the 9 corporations and 4 individuals. The fines totalled $217,500 and were imposed in accordance with Government recommendations. Also imposed were 4 suspended sentences and a 1 year probation on the 4 individual defendants. The sentencing was pursuant to pleas of *nolo contendere.*

2298. *United States* v. *American Television & Communications Corporation, et al.*, Civ. 17573 (N.D. Ga.). On April 20, 1973, the case was dismissed as the merger was abandoned.

2301. *United States* v. *The First National Bank of Platteville, et al.*, Civ. 73–C–11 (W.D. Wisc.). See "Casees Instituted."

2302. *United States* v. *The AAV Companies, et al.*, Cr. 11945 (S.D. Ohio). See "Cases Instituted."

2304. *United States* v. *Crane Company*, 73 CIV 347 (S.D. N.Y.). See "Cases Instituted."

2308. *United States* v. *Swift Instruments, Inc.*, Cr. 73–0139–SC (N.D. Calif.). See "Cases Instituted."

PART 12 (1973)

1582. *United States* v. *Greater Buffalo Press, Incorporated, et al.*, Civ. 9004 (W.D. N.Y.). On October 22, 1973, a stipulation and order by the Supreme Court dismissing the second appeal by the defendant Greater Buffalo in this case was entered thus terminating the case. Said defendant had noted an appeal to the Supreme Court upon the ground that the courts order of reference to Master was not in conformity with the opinion and remand of Supreme Court.

Defendant The Hearst Corporation agreed to a consent judgment which; was finalized on August 31, 1965. The judgment prohibited Hearst from entering into, renewing, adhering to, maintaining or claiming any right under any arrangement with any newspaper for the sale of comic supplements which include any features licensed by Hearst (King Features); i.e. Hearst was prohibited from forcing newspapers buying its features from getting their color supplements from selected printers. Further implementing provisions were to be made effective upon divestiture of a printing plant by Greater Buffalo.

Originally the case was dismissed on May 26, 1970. The government appealed to the Supreme Court as to the dismissal of the Section 7 of the Clayton Act allegation against Greater Buffalo and its subsidiary defendants and the case was remanded on June 1, 1971, on the holding that the District Court had erred in; finding the acquisition of International Color was within the failing company exception and that the acquisition fell within the line of commerce prohibited by the Clayton Act.

On remand the District Court required Greated Buffalo to divest both International Color and Dixie Color in a single business entity order to provide sufficient resources for the acquiring party to become a significant competitor. The court appointed a Special Master to effectuate the divestiture and recommend such ancillary injunctive relief he deems necessary to restore competition with the sale of the 2 divested plants.

1622. *United States* v. *Chas. Pfizer & Co., Inc., et al.*, 61 CR (S.D. N.Y.). On November 30, 1973, the District Court acquitted the 3 corporate defendants on each of the 3 counts of the indictment, following a 3 day nonjury trial on the basis of the record of the first trial. The court held that the government had

failed to meet its burden of proof in attempting to show horizontal price fixing and monopolization agreements between the defendants. The 3 individual defendants had been dismissed on September 9, 1965, under the Antitrust Immunity Act.

Following a jury trial on the merits the corporate defendants were found guilty on all 3 counts of the indictment on December 29, 1967. Defendants' motions for a judgment n.o.v. and new trial were denied on February 2, 1968. Fines totaling $450,000 were imposed on February 28, 1968.

The conviction was reversed by the Court of Appeals on April 16, 1970, because of prejudicial and misleading jury instructions.

The government petitioned for a rehearing. The petition was granted *en banc* on November 12, 1970, but was retracted upon the basis of an amended decision on the original 3 man Circuit Court by the full court on December 1.

A petition to the Supreme Court for Writ of Certiorari to the Court of Appeals was filed on January 29, 1971. Certiorari was granted on May 3 and on January 24, 1972, a *Per Curiam* opinion affirmed the Court of Appeals decision by an equally divided court and the case was remanded to the District Court for a new trial.

The court granted the defendant's Rule 29 motion for acquittal on the grounds that the government had filed to meet its burden in showing a conspiracy to fix prices and monopolize and in showing intent to monopolize. A judgment of dismissal was entered.

1982. *United States* v. *Topco Associations, Inc.*, Civ. 68 C 76 (N.D. Ill.). On October 9, 1973, the Supreme Court affirmed the final judgment of the District Court thus terminating this case.

The complaint, which alleged a horizontal agreement to allocate exclusive territories and classes of customers, was dismissed by the District Court on November 16, 1970, after trial. The judge ruled that this arrangement was governed by the rule of reason and was not a *per se* violation of Section 1 of the Sherman Act. It held that it was reasonable for Topco to allocate territory and customers to improve its competitive position.

The government appealed to the Supreme Court and on March 29, 1972, the District Court decision was reversed and remanded for the entry of an appropriate decree. The opinion held that the Topco scheme of allocating territories and classes of customers to minimize competition at the retail level is a horizontal restraint constituting a *per se* violation of Section 1 of the Sherman Act. The District Court entered its final judgment on September 26, 1972, pursuant to the Supreme Court ruling.

The final judgment requires Topco and all those acting on its behalf to eliminate territorial allocation provisions from its rules, bylaws, etc., to send each member firm a copy of the final judgment, to file with the government a yearly report for 10 years which sets forth Topco's efforts to comply with the judgment, and to allow government access to its books and records in order to secure compliance with the ruling. However, the judgment allowed Topco to create or eliminate areas of prime responsibility of member firms, to designate locations to use trademark licenses, to determine warehouse locations to which products will be shipped, to terminate the membership of any organization not adequately promoting the sale of Topco products, and to formulate procedures for reasonable compensation for good will developed for defendant's trademarks in geographic areas in which another member firm begins to sell trademarked products, so long as none of the foregoing have the effect of allocating territories or customers among the Topco member firms.

The government appealed from the latter section of the judgment on the grounds that the relief granted was incomplete. However, the Supreme Court affirmed the District Court opinion.

2073. *United States* v. *Standard Oil Company of California*, Civ. 5234 (N.D. Calif.). On July 3, 1973, litigation of this case was terminated after the Supreme Court had affirmed the District Court's decision in favor of the government.

The complaint alleged a conspiracy to restrain and monopolize the distribution and sale of petroleum products in the Territory of American Samoa and the entry by defendant into illegal long-term requirements contracts. The complaint was dismissed for lack of jurisdiction on July 15, 1971, on the grounds that Section 3 of the Sherman Act was not applicable in American Samoa, an "unorganized territory" because its civil government had not been established by an Organic Act of Congress. The Supreme Court in a *Per Curiam* opinion on

January 24, 1972, reversed and remanded holding that Congress had the unquestioned power to apply the Sherman Act to Samoa, that it had exercised all the power it possessed in enacting the Sherman Act and that Samoa was therefore a "Territory" within the meaning of Section 3.

On remand after trial the District Court ruled that the defendant had engaged in a conspiracy to unreasonably restrain and monopolize trade in the distribution and sale of petroleum products in American Samoa and had entered into requirements contracts, all in violation of Section 3 of the Sherman Act, and it enjoined continuance of the conspiracy and the illegal contracts. The defendant was ordered to permit other suppliers or distributors of petroleum products to use an adequate portion of the Government of American Samoa petroleum storage facilities on a shared-cost basis so as to enable said suppliers or distributors to compete in the American Samoan market, and was prohibited from entering into or continuing requirement contracts. Standard was given 30 days after the judgment becomes final to propose a plan for sharing the facilities with review by the Court if agreement with the Government had not been reached within 120 days.

On appeal, the Supreme Court on June 4, 1973, affirmed the District Court's judgment of December 13, 1972. A hearing on relief was held in American Samoa, October 23–24, 1973.

2083. *United States* v. *Crowell Collier, et al.*, 70 CIV 460 (S.D. N.Y.). On July 25, 1973, this case was closed by a stipulation for dismissal of the appeal from the May 4, 1973, dismissal of the complaint by the District Court. After trial the court held that the government did not meet its burden of proof of violation of Section 7 of the Clayton Act and denied the government's prayer for divestiture.

2100. *United States* v. *Greater Portland Convention Association, Inc., et al.*, Civ. 70–310 (D. Ore.). On November 29, 1971, a partial final judgment was entered against 4 of the 5 defendants pursuant to a stipulation filed October 26, 1971, which required a 30-day waiting period.

The judgment enjoins the defendants from agreeing with each other or the convention bureau to give or promise to give preferential treatment to any hotel supplier in purchasing hotel supplies and from agreeing to threaten to curtail or terminate purchases of hotel supplies from any hotel supplier. The defendants are also enjoined from soliciting contributions from hotel suppliers on behalf of any convention bureau, threatening to curtail or terminating its purchases from any hotel supplier because of the supplier's failure to make contributions to any convention bureau, and from contributing to or participating in the activities of any convention bureau which encourages hotels to engage in the above conduct.

On September 14, 1973, a final judgment as to the final defendant, Western International Hotels, was entered pursuant to a stipulation filed July 26, 1973, thus terminating the case. The judgment was essentially the same as that entered against the other 4 defendants in 1971.

2130. *United States* v. *The Standard Oil Company (an Ohio Corporation)*, Civ. C 70–895 (N.D. Ohio). On September 10, 1973, a final judgment was entered pursuant to a stipulation filed on May 2, 1973, which required a 30-day waiting period. During the waiting period, Northern Ohio Petroleum Retailers Association moved to intervene as a plaintiff. Both the government and the defendant opposed the motion, but on June 28 the motion was granted and NOPRA filed a brief on July 10.

A hearing was held on whether the court should approve the proposed consent decree and the decree was finalized by a memorandum opinion and order on September 10, 1973.

The judgment prohibits Standard Oil (SOHIO) from fixing prices of gasoline and other products and services at any of its independent service stations, and forbids SOHIO from entering into agreements with non-company stations which require those stations to refrain from dealing in the products of a SOHIO competitor. Company stations are also required to be staffed by employees of SOHIO, and the method of compensating the manager of a company station, beyond a specific minimum amount, is to be left to the option of the company. This is because as of April 1969, 104 of SOHIO's 2000 service stations in Ohio were operated under a commission manager agreement. The judgment requires cancellation of any such agreement still in effect under the previous standard form.

2187. *United States* v. *General Cinema Corporation*, 4–71–CIV–473 (D. Minn.). On August 3, 1973, a final judgment was entered pursuant to a stipulation filed filed on June 29, 1973, which required a 30-day waiting period.

The judgment requires General Cinema to divest 10 theaters acquired in 1970 and 1971 within 24 months, and that General Cinema shall continue to operate the theaters and use its best efforts to sell them until the time of divestiture. At least 60 days in advance of a contract for sale, defendant must supply the government with all relevant information pertaining to the purchase and information about all other persons making offers. Government disapproval of the proposed divestiture will bar its consummation. If divestiture is not completed after 2 years a 12 month extension will be granted. Failure to divest after that time will result in appointment of a trustee upon application of a party.

The judgment further enjoins General Cinema for a period of 10 years from acquiring, without the government's consent, the assets of any operating movie theater in the Minneapolis-St. Paul metropolitan area.

2214. *United States* v. *Garage Door Manufacturers Association, Inc., et al.*, Civ. 72–199 (E.D. Pa.). On September 17, 1973, a final judgment was entered pursuant to a stipulation filed on August 15, 1973, thus terminating the case.

The judgment prohibits the trade association and 6 of its members from fixing the price of overhead garage doors and accessories and from agreeing to refuse to sell overhead doors and accessories to any person. The judgment further requires the dissolution of the trade association within 60 days of the entry of the judgment and enjoins the other defendants from participation in any other trade association whose activities are inconsistent with the terms of the final judgment.

In addition, each defendant is required to independently and individually review, redetermine and put into effect the prices at which it will sell overhead doors and accessories within 90 days of the final judgment unless such action had been taken within the past 12 months.

2218. *United States* v. *Odom Company, et al.*, Civ. A–13–72 (D. Alaska). This case was terminated on November 5, 1973, with the entry of the final judgment pursuant to a stipulation filed on August 30, 1973, which required a 30-day waiting period.

The judgment prohibits the defendants from entering into agreements to fix prices or other terms or conditions relating to the sale of liquor products to any third person and to fix, establish, maintain, or eliminate the giving of discounts in connection with the sale of liquor products.

In addition, the judgment prohibits each defendant from communicating or exchanging with any other liquor wholesaler any information concerning prices prior to the disclosure of such information to the public or customers generally.

2235. *United States* v. *G. Heileman Brewing Co., Inc., et al.*, Civ. 38162 (E.D. Mich.). This case was terminated on July 13, 1973, with the entry of the final judgment pursuant to a stipulation filed June 13, 1973, which required a 30-day waiting period.

The judgment allows Heileman to retain its acquired brewing facilities but requires the divestiture of several of its more than 40 brands so as to account for sales of at least 400,000 barrels of beer in 1972. At least ¾ of the barrels sold by divested brands must represent sales in the affected 8 state area and at least one of the brands must have accounted for sales of over 100,000 barrels in 1972. It is further provided that Heileman is barred for 10 years from acquiring any beer brewery in the 8 state area (Minnesota, Michigan, Indiana, Kentucky, Iowa, Wisconsin, Ohio and Illinois) without the Justice Department's approval.

Heileman is also ordered to give the government 60 days notice of any proposed acquisition of the stock or assets of any brand of beer or any brewery outside the 8 state areas and to furnish the information with respect thereto at least 30 days prior to closing.

2244. *United States* v. *Clark Mechanical Contractors, Inc., et al.*, Civ. 7264 (W.D. Ky.). The case was terminated on September 13, 1973, with the entry of the final judgment pursuant to a stipulation filed on August 13, 1973, which required a 30 day waiting period.

The judgment bars 8 mechanical contracting firms head-quartered in Louisville from fixing prices, allocating or dividing customers and submitting collusive or rigged bids. The defendants are also enjoined from furnishing to or exchanging with any other mechanical contractor any information concerning the terms or other conditions of sale contained in any bid.

Each defendant is further directed for a period of 5 years, to affix to each sealed bid a written certification signed by an officer of the defendant, that such bid was not in any way the result of any agreement or understanding, either formal or informal, between the defendant and any other mechanical contractor.

2258. *United States* v. *Colley Enterprises, Inc., et al.*, Civ. W–72–CA–44 (W.D. Texas). On November 7, 1973, this case was terminated when all of the defendants were dismissed pursuant to a stipulation by the parties.

2261. *United States* v. *Technical Tape, Inc., et al.*, Civ. 72 C 1602 (N.D. Ill.). This case was terminated on August 28, 1973, with the entry of an order and minute order overruling defendant Nachman Corporation's objections to the proposed final judgment which had been filed by stipulation on May 18, 1973.

The judgment requires Technical Tape and its affiliates to dispose of their financial interests in Nachman and prohibits any future reacquisition of such interest. Technical Tape, Inc., are also prohibited from acquiring any financial interest in any other manufacturer of inner-springs and box springs in the United States without 60 days prior notice to the Antitrust Division.

2269. *United States* v. *Bankers Trust of South Carolina, et al.*, Civ. 72–830 (D. S.C.). The case was terminated on October 12, 1973, with the entry of a final judgment pursuant to a stipulation filed on September 11, 1973, which required a 30-day waiting period.

The judgment allows the merger between Bankers Trust and Peoples National Bank but enjoins further acquisitions in the affected area. The defendants are prohibited for 10 years from acquiring any commercial bank located in a county in which they presently have offices or in any adjoining county without the prior approval of the Justice Department. The prohibition covers 31 of South Carolina's 46 countries.

2275. *United States* v. *A. Levy & J. Zentner Co., et al.*, Civ. R–2724 (D. Nev.). On September 20, 1973, a final judgment was entered pursuant to a stipulation filed on August 20, 1973, which required a 30-day waiting period, thus terminating the case.

The judgment prohibits 2 wholesale produce companies in the Reno, Nevada and Lake Tahoe region of Nevada and California from fixing prices and allocating customers. The judgment prohibits the defendants from fixing prices or other terms or conditions relating to the sale of produce to any third person, submitting collusive or rigged bids or quotations for produce to any agency of any local, state or federal government, allocating or rotating customers, territories, or produce business, and communicating or exchanging with any other person selling produce any information concerning prices prior to the disclosure of such information to the public or customer generally.

2280. *United States* v. *Gonnella Baking Co., et al.*, 72 CR 769 (N.D. Ill.). On August 21, 1973, the defendants were fined a total of $100,000 and the 3 individual defendants were placed on 1 year probation. The case was terminated upon the acceptance of the defendants' pleas of *nolo contendere*.

2288. *United States* v. *Pacific Southwest Airlines, et al.*, Civ. 72–2901 (C.D. Calif.). On October 15, 1973, the court entered an order dismissing this action without prejudice upon stipulation by the parties.

2295. *United States* v. *St. Petersburg Automobile Dealers Association*, 72–725–Civ–T (M.D. Fla.). On September 15, 1973, this case was terminated with the entry of the final judgment pursuant to a stipulation filed on August 14, 1973, subject to a required 30 day waiting period.

The judgment prohibits the association from fixing prices on repair parts for automobiles, and enjoins the association and its members from directly or indirectly agreeing on prices, discounts or items at which parts are sold, or prices charged or deposits required to estimate the cost of automobile repairs. The judgment also prohibits any restriction on advertising or promotional activities by members of the association.

2289. *United States* v. *Real Estate Board of Metropolitan St. Louis*, Civ. 72 C 793(3) (E.D. Mo.). On November 21, 1973, this case was terminated with the entry of the final judgment. The judgment was entered pursuant to a stipulation filed on October 19, 1973, which required a 30 day waiting period.

The judgment enjoins the defendant from fixing rates of commissions charged for sale, rental or management of real estate, taking punitive action against any person based on his failure to adhere to a commission rate schedule, adopting any by-law, rule, or plan which would prohibit any member from dealing with another person, fixing or suggesting any percentage division of commissions or other fees between the selling and listing broker, adopting, enforcing or claiming any right under any by-law or rule providing that all members or any group of members must accept any exclusive rights to sell or listings for a specified period of time.

The judgment also requires the defendant to abrogate all contracts inconsistent with the judgment, and that any contract or form used by its members which contains a set commission rate contain a clause stating that the commission is negotiable. Further the Board must admit to membership and duly licensed real estate seller or broker who satisfies reasonable and non-disciminatory requirements adopted by the Board and not inconsistent with the judgment.

2305. *United States* v. *Jahncke Service, Incorporated, et al.*, Cr. 73–48–E (E.D. La.). On April 25, 1973, defendant Jimco, Inc. was fined $2,500 and on October 31, 1973, the other 3 defendant corporations and 3 individuals were fined a total of $140,000. The 3 individuals were also sentenced to 30 days in jail plus 1 year probation. All of the sentences were imposed upon the court's acceptance of *nolo* pleas, thus terminating the case.

2307. *United States* v. *Ed. Phillips & Sons, Co.*, Civ. 73–0–144 (D. Neb.). On August 24, 1973, a final judgment was entered pursuant to a stipulation filed on July 20, 1973, thus terminating the case.

The judgment enjoins Phillips from entering into any agreements to fix prices or other terms or conditions for the sale of its distilled spirit or wines, from refusing to sell its products to any person because of the prices at which that person has advertised Phillips' distilled spirits or wines, and from prohibiting any person from advertising Phillips' distilled spirits at whatever prices they wished.

Phillips is also prohibited from policing or investigating prices at which Phillips' customers sell or offer to sell Phillips' distilled spirits or wines, and is required to inform each of its customers, in writing, of the injunctive provisions of the proposed judgment.

2310. *United States* v. *United Scientific Co., Inc.*, Cr. 73–0140–SAW (N.D. Calif.). On July 6, 1973, a fine of $35,000 was imposed on the defendant pursuant to a plea of *nolo contendere* thus terminating this case.

2323. *United States* v. *Jackson Hole Service Station Association*, Cr. 8668 (D. Wyo.). Trial began on November 12, 1973, and ended on November 14. The court granted defendant's motion for acquittal on November 19 and dismissed the case.

2326. *United States* v. *Hercules Incorporated, et al.*, Civ. 4667 (D. Dela.). On July 3, 1973, this case was terminated with the entry of final judgment pursuant to a stipulation requiring a 30 day waiting period which was filed on May 31, 1973.

The judgment requires Hercules and Mitsui to terminate their partnership within 90 days of the final judgment upon terms and conditions subject to the approval of the government or the court. Such terms may include the sale by one party to the other, or to a third party, of its entire interest in the partnership, or a winding up of the partnership and distribution of its assets to the partners, or sale of such assets to one or more purchasers which may include Hercules or Mitsui.

The judgment also requires the termination of certain license agreements between Hercules and Mitsui related to the manufacture of high density polyethylene and polypropylene, and permanently prohibits them from retaining any joint interest in the manufacture of high density polyethylene and polypropylene.

Hercules is also prohibited from agreeing with anyone to refrain from competing in any line of commerce as a condition of doing business with Hercules in some other field.

2331. *United States* v. *United Parcel Service of America, Inc.*, Cr. 73–409 (E.D. Pa.). See "Cases Instituted."

2339. *United States* v. *Austin Steel Co., Inc., et al.*, Cr. 3–3245 (N.D. Texas). See "Cases Instituted."

2343. *United States* v. *American Metal Products Corporation, et al.*, Cr. 13263 (C.D. Calif.). See "Cases Instituted."

2344. *United States* v. *Roofing Metal and Heating Associates, Inc.*, Civ. 73–2301 (E.D. Pa.). See "Cases Instituted."

PART 13 (1974)

1914. *United States* v. *General Electric Company*, 66 CIV 3118 (S.D. N.Y.). On August 18, 1969, an opinion was entered denying motions of both parties for summary judgment pending further factual development on the patent position of GE in large lamps.

On May 8, 1973, an opinion was entered granting Government's motion for summary judgment. From the stipulation of facts that vertical price fixing is an integral part of GE's consignment agency system, the conduct complained of by the Government is illegal *per se* and violates the Sherman Act.

On February 22, 1974, a final judgment was entered terminating the case. Effective April 23, 1974, the defendant was enjoined and restrained from: making any agreement with any consignment agent to fix prices at which large lamps may be sold or consigned by any consignment agent; selling or supplying large lamps to any consignment agent under such an agreement; and publishing or issuing price lists unless such lists are clearly marked as suggested prices only.

1961. *United States* v. *General Dynamics Corporation et al.*, Civ. 67 C 1632 (N.D. Ill.). On April 13, 1972, a decision on the merits was entered dismissing the complaint after trial.

On March 19, 1974, the case was terminated, when the Supreme Court issued an opinion affirming the judgment of the District Court. The lower court had found no violation of Section 7 of the Clayton Act on the ground, *inter alia*, that the Government's evidence did not support the Government's contention that the acquisition of control by defendant of United Electric Coal Companies, a strip-mining coal producer, substantially lessened competition in the production and sale of coal in either or both of two specified geographic markets.

1991. *United States* v. *Glaxo Group Limited, et al.*, Civ. 558-68 (D. D.C.). On April 30, 1968, order denying Glaxo's motion to quash service of complaint and further ordered that this denial involved a controlling question of law and an appeal may advance the ultimate termination of this litigation.

On June 25, 1968, *per curiam* order of the Court of Appeals denying applicants application for permission to appeal from the April 30, 1968 interlocutory order.

On June 4, 1969, an opinion and order were entered granting motion of the Government for partial summary judgment on the restraint on alienation issue re the ICI-AMHO agreement and denying motion of ICI for a partial summary judgment that the U.S. failed to establish a Sherman Act violation or that the case was moot; granting motion of ICI for a partial judgment under Rule 12(c) as U.S. has no standing to challenge ICI patent; denying motion of U.S. for leave to amend the complaint; sustaining Glaxo's objection to ruling of Pretrial Examiner of November 25, 1968 and overruling Government's objections to the ruling of Pretrial Examiner of November 6 and 15, 1968.

On November 20, 1969, an order was entered that agreements of Glaxo with Johnson, Inc. and Schering Corp. re: resale of bulk form griseofulvin is a *per se* violation of the Sherman Act; Government's motion for a partial summary judgment is granted; Glaxo's motion to quash service of complaint is denied and Glaxo's motion to dismiss Government's motion, for failure to comply with Local Rule 9 is dismissed as moot.

On April 30, 1970, an order, findings of fact and conclusions of law holding agreement of Glaxo & ICI is per se violation of Section 1 of Sherman Act insofar as that agreement applied to U.S. vendees of ICI and that the Government's motion for partial summary judgment as stated is granted.

On June 17, 1971, a memorandum-final judgment was entered.

On August 12, 1971, a Declaration with respect to Article IV(D) of the final judgment was entered.

On January 25, 1972, a temporary order ancillary to final judgment was entered.

On February 9, 1972, an order was filed that temporary restraining order is hereby continued, at which time the court will hear arguments on Government's application for an order permanently modifying the final judgment.

On March 21 1972, an order was entered modifying the final judgment by the addition of a new Article V.

On January 22, 1973, the Supreme Court filed an opinion reversing district court and holding where patents are involved in Antitrust violations and Government presents a substantial cast for relief in form of restrictions on the patents the Government may challenge the validity of the patents regardless of whether the owner relies on the patents in defending the antitrust action. In order to "pry open to competition" the marked closed by the Antitrust violations, an order for mandatory, nondiscriminatory sales to all bonafide applicants is appropriate relief.

On January 25, 1974, a stipulation and proposed judgment was filed terminating the case against ICI and a partial final judgment was filed against Glaxo.

On May 10, 1974, supplemental final judgment was entered requiring Glaxo to grant royalty-free licenses under a patent on improved form of an antibiotic drug. This supplemental judgment terminates the case.

2052. *United States* v. *Northwest Industries, Inc., et al.*, Civ. 69 C 1102 (N.D. Ill.). On July 11, 1969, an opinion was entered denying the Government's motion for a preliminary injunction against Northwest. The court did enter an injunction designed to maintain the status quo between the two conglomerates to the maximum extent possible pending a full hearing on the merits.

On May 3, 1974, an order of dismissal without prejudice was entered pursuant to plaintiff's motion, thus terminating the case. Such motion was made because the circumstances which led to the filing of the case were no longer existent.

2065. *United States* v. *Otter Tail Power Company*, 6-69 Civ. 139 (D. Minn.). On September 9, 1971, an opinion was entered after trial holding that the defendant, by refusing to deal with municipalities and by conducting or sponsoring court litigation, attempted to monopolize the retail distribution of electric power in its service area in violation of Section 2 of the Sherman Act. Defendant was enjoined from any and all conduct, whether expressed in terms of contracts, policies, or practices, having the effect of continuing said violation of the Sherman Act.

On October 2, 1971, a judgment was entered in accordances with the opinion. On November 10, 1971, the judgment was amended.

On February 22, 1973, the Supreme Court affirmed all but one portion of the district court's judgment. The district court had enjoined the defendant from sponsoring litigation to delay or prevent the establishment of municipal power systems. The Supreme Court vacated that phase of the district court's order and remanded the case for reconsideration in the light of *California Motor Transport Co.* v. *Trucking Unlimited*.

On June 22, 1973, upon reconsideration of the record, the district court found that the defendant's repetitive use of litigation was timed and designed principally to prevent the establishment of municipal electric systems and came within the "sham" exception to the *Noerr* doctrine as defined by the Supreme Court in *California Motor Transport* v. *Trucking Unlimited*. The court therefore reaffirmed its previous findings and decisions.

On May 28, 1974, the Supreme Court affirmed the district court's judgment concerning the litigation activities of the defendant.

2119. *United States* v. *Movielab, Inc.*, 70 CIV 3100 (S.D. N.Y.). On June 7, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed May 2, 1974, requiring a 30-day waiting period.

The judgment, requires Movielab Industry in the New York City area to divest all assets including machinery equipment and furniture acquired from Berkey to an approved present or prospective professional film processing laboratory. The judgment also provides that Movielab must assist the purchaser in the selection and design of suitable premises for a laboratory and in hiring and training of essential personnel. In addition, Movielab is required to release—free and clear—any of its employees who wish to work for the purchaser and to supply the purchaser with a list of all known potential customers. In the event Movielab is unable to locate a purchaser within 12 months from the date of entry of the judgment, Movielab is required to hire an independent broker to sell the Berkey properties. The judgment also enjoins Movielab for 10 years from acquiring the stock or assets of any professional film processor located in the Metropolitan New York City area without prior notice to the Department of Justice.

2129. *United States* v. *Combustion Engineering, Inc.*, Civ. 13999 (D. Conn.). On January 17, 1974 this case was terminated by stipulation of the parties. Completion of the market survey in this Section 7 case showed that the acquired company did not have nearly so large a market share as had been indicated by pre-complaint investigations.

2168. *United States* v. *The New York Times Company, et al.*, Civ. 71 C 615 (E.D. N.Y.). On April 1, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed February 26, 1974, requiring a 30-day waiting period.

The judgment ends a joint sales arrangement involving news services operated by the New York Times and by the Chicago Daily News and Chicago Sun-Times. The judgment requires the 2 news services to change the terms of a wire sharing agreement under which they have operated for the past 3 years. The defendants are enjoined from using a common sales agent, and from entering into any agreement with one another relating to the promotion, price, sale or operation of their respective news services. The judgment will permit the services to

continue sharing a wire providing both services have a right to cancel the agreement on six months' notice and a second condition requiring the services to share the cost of the wire facilities in proportion to their use of the wire.

2173. *United States* v. *Insilco Corporation*, Civ. C-304 (D. Conn.). On February 21, 1974 a consent judgment was entered pursuant to a stipulation filed January 22, 1974 requiring a 30-day waiting period.

The judgment requires Insilco to divest all stock, assets and business of Stanley Roberts, Inc. within 1 year to a purchaser approved by the Department of Justice or by the Court. Insilco may retain a security interest in the divested assets, but it is subject to immediate resale to another approved purchaser if Insilco reacquires the assets by the purchaser's default or if they have to operate the purchasing company to protect their security interest.

Insilco is also enjoined from taking in the management of Stanley Roberts (except in the event of a default by the purchaser) and, for a period of 10 years, from acquiring any importer of stainless steel flatware without prior notice to the government.

2176. *United States* v. *The Greyhound Corporation, et al.*, Civ. 69-C-1148 (N.D. Ill.). On June 27, 1973, the court found the 2 corporate defendants and 3 executives of Greyhound guilty of civil contempt. No civil sanctions were imposed inasmuch as Greyhound had embarked upon a compliance program with the order of February 5, 1970. This case was tried with the criminal case which is on appeal.

2178. *United States* v. *Baker Commodities, Inc., et al.*, Civ. 71-1473-FW (C.D. Calif.). On April 2, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed February 25, 1974, requiring a 30-day waiting period.

The judgment prohibits the 2 major rendering companies in the Greater Los Angeles area from fixing the price paid for raw materials. Each defendant is enjoined from entering into any agreement with any other renderer, or other purchaser of rendering raw materials—to fix the prices paid for, or the terms or conditions of the purchase of, rendering raw materials—to establish a prescribed basis or formula for determining prices paid for rendering raw materials—to purchase rendering raw materials through a common purchasing agent. Each defendant is also enjoined from allocating markets.

Baker Commodities is required to divest all of its interest in the business and assets of California Rendering, including real property, physical plant and equipment, and rendering raw material accounts and account stops, within 24 months. If that divestiture has not been accomplished by Baker Commodities within the 24 month period, the assets to be divested will be placed in the control of a trustee for accomplishing the divestiture within a year's time.

Furthermore, the judgment prohibits Baker Commodities from acquiring any interest in any other rendering company for 10 years without either approval of the Government or a showing by Baker, to the court's satisfaction, that the acquisition does not cause the anticompetitive effects under Section 7 of the Clayton Act.

2179. *United States* v. *R & G Sloane Manufacturing Company, Inc., et al.*, Cr. 8379 (C.D. Calif.). On May 13, 1974, fines totalling $70,000 were imposed on *nolo* pleas on the corporate defendants. The 2 individuals were acquitted after trial, thus terminating the case.

2193. *United States* v. *Wohl Shoe Company, et al.*, Civ. 9187 (D. N.Mex.). On August 21, 1972, a final judgment was entered against defendant Nordstrom's Albuquerque, Inc. and Paris Shoe Stores, pursuant to a stipulation filed July 21, 1972, requiring a 30-day waiting period. The judgment enjoins those defendants from continuing the alleged conspiracy or from engaging in any practice having a similar purpose or effect. These defendants were also enjoined from exchanging certain pricing information or seeking to persuade any manufacturer not to sell shoes to a competing retailer because of the retailers refusal to sell shoes at prices suggested by the manufacturer.

On September 5, 1973, a final judgment was entered against Penobscot Shoe, pursuant to the 30-day stipulation filed August 1, 1973. The judgment entered was similar to the prior judgment.

On January 16, 1974, an opinion was entered holding that Wohl Shoe had violated Section 1 of the Sherman Act in the Albuquerque area. The trial lasted 7 days and concluded September 28, 1973.

On February 11, 1974, a final judgment was entered granting the Government injunctive relief.

On May 2, 1974, the case was terminated when the appeal was dismissed.

2279. *United States* v. *Len Harris Wholesale Meats, Inc., et al.*, Civ. R–2735 (D. Nev.). On April 30, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 25, 1974, requiring a 30-day waiting period.

The judgment prohibits 5 Nevada meat wholesalers from price fixing and collusive bidding. The judgment will prevent each of the companies from entering into any agreement with any other person: to fix the prices paid for meat or meat products, or the terms or conditions of the purchase; to submit collusive or rigged bids or quotations for meat products to any agency of any local, state or federal government; and to allocate or rotate customers, territories or meat business. The judgment also prohibits each defendant from sharing any information concerning prices, or terms and conditions of sale, of meat or meat products with any other seller before the information becomes public.

2290. *United States* v. *Brownell and Co., Inc., et al.*, Civ. 72–427 (W.D. Tenn.). On April 9, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 8, 1974, requiring a 30-day waiting period.

The judgment forbids nylon twine manufacturers from fixing prices. Each company is enjoined from entering into any agreement with any other nylon twine manufacturer to fix prices.

2293. *United States* v. *First Washington Net Factory, Inc., et al.*, Civ. 72–1099 (N.D. Ala.). On April 8, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 6, 1974, requiring a 30-day waiting period.

The judgment enjoins each defendant from entering into any agreement, plan or program with any other salmon netting manufacturer to fix the price or any other term or condition of sale of salmon netting.

2300. *United States* v. *Eagle Fuel Oil Company, et al.*, Cr. 748–72 (D. N.J.). On February 1, 1974, the defendants were fined a total of $25,000 on their pleas of *nolo*, thus terminating the case.

2315. *United States* v. *Ampress Brick Company, Inc., et al.*, 73 CR 312 (N.D. Ill.). On December 14, 1973, fines were imposed on *nolo* pleas, on 10 corporations and 7 individuals totalling $106,700. Each of the individuals were given 1 year probation. The payment of the fines were suspended for 6 months pending further information regarding the civil damage cases.

On January 25, 1974, the case was terminated when the government dismissed the last defendant.

2316. *United States* v. *Ampress Brick Company ,et al.*, Civ. 73 C 1016 (N.D. Ill.). On June 21, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed May 21, 1974, requiring a 30-day waiting period.

The judgment enjoins the defendants from agreeing to fix prices of concrete block and to allocate customers. In addition the judgment prohibits the defendants from communicating to or exchanging with other firms that sell concrete blocks any information concerning prices prior to the disclosure of such information to the public or to non-defendant customers generally.

2324. *United States* v. *Jackson Hole Service Station Association, et al.*, Civ. 5872 (D. Wyo.). On December 17, 1973, findings of facts and conclusions acquitting the defendants of fixing prices on gasoline & automobile services in Jackson, Wyoming, and an order dismissing the complaint were entered.

On March 5, 1974, the case was terminated when a decision was made not to appeal.

2327. *United States* v. *Texaco, Inc., et al.*, 73 CIV 2608 (S.D. N.Y.). On January 25, 1974 a consent judgment was entered pursuant to a stipulation filed December 19, 1973, requiring a 30-day waiting period.

The judgment requires termination of all agreements between Texaco and Coastal States Refinery dealing with purchases of Texaco crude by Coastal and of Coastal refined products by Texaco, exchanges of foreign crude oil for domestic crude, and an option for Texaco to purchase the refinery. Texaco is further enjoined for 10 years from purchasing the Coastal refinery without prior approval of the Justice Department, and Texaco and Coastal may not enter into crude oil processing agreements for amounts exceeding 45,000 barrels a day or 25% of Coastal's refinery capacity, whichever is the lesser.

2332. *United States* v. *United Parcel Service of America, Inc.*, Civ. 73–1773 (E.D. Pa.). On April 30, 1974, the case was terminated by the entry of a consent judgment pursuant to a stipulation filed March 25, 1974, requiring a 30-day waiting period.

The judgment, bars UPS from agreeing with competitors to fix prices or allocate customers. Under its terms, Hourly Messengers will limit its business to the transportation of drug, dental, and photo supplies, and refrain from soliciting customers of United Parcel Service. UPS will not solicit the business of drug, dental, and photo supply customers of Hourly Messengers within the Philadelphia-Camden area. Hourly Messengers will withdraw from the Pennsylvania Public Utilities Commission and the Interstate Commerce Commission its applications for new authority and refrain from applying for new authority or protesting any new application by UPS. The judgment will also prohibit UPS from agreeing with other carriers to limit United Parcel or other carriers in their filing of applications with state or federal regulatory authorities.

2333. *United States* v. *Georgia Automatic Merchandising Council, Inc., et al.*, Cr. 28–327 (N.D. Ga.). On March 8, 1974 this case was terminated when the Court imposed fines of $156,500 against 8 companies and 6 individuals. Of the individuals, 1 was given 1 year probation and his $5,000 fine was suspended, 2 received 1 year suspended sentences and 1 year probation on the condition that their fines are paid within 60 days, and 4 received 1 year suspended sentences and 2 years probation on the condition that the fines be paid within 60 days. The sentences were imposed pursuant to pleas of *nolo contendere* which had been accepted by the court.

2338. *United States* v. *Austin Steel Co., Inc., et al.*, Cr. 73–H–337 (S.D. Texas). On May 10, 1974, fines totalling $81,000 were imposed on *nolo* pleas. Two individuals had suspended sentences and placed on probation, thus terminating the case.

2340. *United States* v. *Aviation Specialties Co., Inc., et al.*, Cr. 3–3272 (N.D. Texas).

2341. *United States* v. *Aviation Specialties Co., Inc., et al.*, Civ. 3–7722–E (N.D. Texas). On December 7, 1973, and February 1, 1974, fines totalling $35,000 were imposed pursuant to the acceptance of *nolo* pleas over the government objections, thus terminating the criminal case.

The civil case was terminated on March 13, 1974, with the entry of the consent judgment pursuant to a stipulation filed February 1, 1974, requiring a 30-day waiting period.

The judgment prohibits the defendants from agreeing to allocate aerial service jobs among themselves and from agreeing upon the amount to be charged for such jobs. Further, each bid made by the defendants for the next 5 years must be certified in writing to have been independently determined.

2346. *United States* v. *Interstate Gopher News, Inc., et al.*, Cr. 73–H–383 (S.D. Texas). On April 19, 1974, fines totalling $25,000 were imposed on *nolo* pleas, thus terminating the case.

2348. *United States* v. *Combustion Engineering, Inc., et al.*, Cr. 73–612 (E.D. Pa.). On February 6, 1974, a fine of $25,000 was imposed on a *nolo* plea.

On April 3, 1974, fines of $45,000 were imposed on the remaining 2 defendants on their pleas of *nolo*. The 1 individual was also placed on probation for 1 year on the condition that the fine be paid within 30 days, thus terminating the case.

2359. *United States* v. *Amateur Softball Association, et al.*, Civ. 73–883–D (W.D. Okla.). On January 31, 1974 the case was terminated by the entry of a consent judgment pursuant to a stipulation filed December 28, 1973 requiring a 30-day waiting period.

The judgment provides that the present trademark license agreements between the defendants be terminated and cancelled, that the softballs of the Dudley Sports Division of Athlone Industries and H. Harwood and Sons shall not be referred to in the printed materials of the ASA as the only official or approved softballs for use in ASA play, that unreasonable or discriminatory agreements with respect to the use of ASA's trademark be enjoined, that all qualified top grade softballs may be used in ASA play, whether or not they bear the ASA trademark, and that ASA be enjoined from discriminating against any manufacturer or manufacturers of softballs either through the promulgation of rules, regulations or standards or through the refusal to license its trademark upon the same terms and conditions to all.

2368. *United States* v. *Rainbo Baking Company of Phoenix, et al.*, Cr. 74–53 (PHX) (D. Ariz.). See "Cases Instituted."

2378. *United States* v. *Greater Los Angeles Solid Wastes Management Association, et al.*, Civ. 74–809 FJK (C.D. Calif.). See "Cases Instituted."

1859. *United States* v. *Falstaff Brewing Corporation, et al.*, Civ. 3523 (D. R.I.). On July 14, 1965, the government's motion for preliminary injuction was denied.

Narragansett Brewing was dismissed as a defendant on September 21, 1965. After trial, that was held in October 1970, an opinion dismissing the complaint was entered on October 7, 1971. The court ruled that the 1965 acquisition of the Narragansett Brewing Company by Falstaff Brewing Corporation did not violate Section 7 of the Clayton Act as Falstaff was not a potential entrant into New England.

On appeal the Supreme Court on February 28, 1973, remanded the case to the district court to make the proper assessment of Falstaff as a potential competitor.

On October 23, 1974, an opinion that the government failed to establish by a fair preponderance of evidence that the acquisition of Narragansett by Falstaff would probably lead to substantial lessening of competition in the production and sale of beer in the New England market was entered.

On October 24, 1974, judgment on remand dismissing the complaint was filed, thus terminating the case.

1903. *United States* v. *Phillips Petroleum Company, et al.*, Civ 66–1154–FW (S.D. Calif.). On July 19, 1966, motion for temporary restraining order was denied.

On August 23, 1966, our motion for preliminary injunction was denied but ordered that during pendency of this action all assets acquired by Phillips from Tidewater shall, from a bookkeeping standpoint, be kept segregated in the books and records of Phillips.

Defendant Tidewater Oil Company on April 26, 1971, made a motion from dismissal on ground Section 7 of Clayton Act is directed only against the acquiring corporation and not against the seller. This motion was dismissed June 14, 1971. The circuit court of appeals for the Ninth Circuit denied the petition for leave to appeal July 28, 1971. The Supreme Court denied certiorari November 9, 1971 and on March 20, 1972, granted certiorari thus vacating the earlier ruling.

In affirming the Ninth Circuit, the Supreme Court on December 6, 1972, points out that Congress' aim in enacting the Expediting Atc of 1903 was two fold: (A) avoidance of the delay inherent in piecemeal appeal by conditioning appeal upon the presence of a "final judgment"; and (B) facilitating unifrom interpretation of the antitrust law "which was still in its infancy in 1903." In 1944, the Supreme Court reiterated "that jurisdiction to review District Court decrees was not vested in the Circuit Court of Appeals but solely in this Court, and [the Expediting Act] limited the right of appeal to final decrees."

After trial the court on November 13, 1973, rendered an opinion in favor of the Government holding that the acquisition of the Western Manufacturing and Marketing Division of Tidewater Oil Company by defendant violates Section 7. The court also ruled that Tidewater the seller of the assets, was a proper party "against whom relief may be granted." Divestiture was ordered.

On appeal to the Supreme Court the judgment of the district court was affirmed July 8, 1974, without an opinion. Petitions for rehearing were denied October 15, 1974.

2105. *United States* v. *Frito-Lay, Inc., et al.*, Civ. 70–1175–FW (C.D. Calif.). On October 21, 1974, the case was terminated upon entry of a consent judgment pursuant to a stipulation filed on September 20, 1974, requiring a 30-day waiting period.

The judgment prohibits the defendants from fixing prices and requiring them to pay $607,000 in settlement, which the government suffered in purchases from firms in California, Arizona and Nevada for use in federal installations. The damages were paid on November 1, 1974.

2164. *United States* v. *National Association for Air Freight, Inc., et al.*, Civ. 71 C 563 (E.D. N.Y.). On August 29, 1974, the case was terminated upon the entry of consent judgment pursuant to a stipulation filed on July 18, 1974, requiring a 30-day waiting period.

The judgment prohibits the association and its members from agreeing to allocate customers and fix prices.

The judgment enjoins the defendants from agreeing to refrain from soliciting or accepting business; fix prices or rates for picking up or delivering import air freight; or refuse to pick up at or deliver import air freight from the terminals of air carriers.

In addition, the judgment requires the association to be dissolved within 90 days after the judgment.

2195. *United States* v. *Marine Bancorporation, et al.*, Civ. 237–71C2 (W.D. Wash.). On January 18, 1973, after trial the case was dismissed, as the court held Government had not met the requirement of Section 7 of the Clayton Act.

On June 26, 1974, the Supreme Court upheld the district court's dismissal.

On August 9, 1974, the merger was abandoned.

2281. *United States* v. *Gonnella Banking Co., et al.*, Civ. 72 C 2484 (N.D. Ill.). On September 19, 1974, the case was terminated upon the entry of a consent judgment pursuant to a stipulation filed on August 20, 1974, requiring a 30-day waiting period.

The judgment enjoins the defendants from agreeing to fix prices of bread; agreeing to divide or allocate customers, markets or territories or refrain from soliciting bread business from customers of other engaged in baking or selling bread; communicating or exchanging price information prior to announcement to the trade or the public; using threats or coercion to induce adherence to any wholesale or retail bread prices; and threatening to harm or put out of business any baker or seller of bread.

2322. *United States* v. *Metro MLS, Inc.*, Civ. 210–73N (E.D. Va.). On August 5, 1974, the case was terminated upon the entry of a consent judgment pursuant to a stipulation filed on July 2, 1974, requiring a 30-day waiting period.

The judgment prohibits a Virginia Beach, Virginia real estate association and its member firms from fixing brokerage fees.

The judgment will also prevent the defendant from enforcing a percentage division of fees between listing and selling brokers; prohibiting its members from joining or belonging to another multiple listing service; or requiring them to maintain an established place of business outside their homes.

In addition, the judgment will prohibit any limitation on members advertising their own listing and any requirements that members must list all of the their properties only with Metro MLS.

2330. *United States* v. *Morgan Drive Away, Inc., et al.*, Cr. 697–73 (D. DC.). On September 27, 1974, fines totalling $175,000 were imposed on *nolo* pleas, thus terminating the case.

2353. *United States* v. *The Merchants National Bank of Burlington, et al.*, Civ. 73–336 (D. Vt.). On August 2, 1974, after the merger was abandoned, an order of dismissal without prejudice was entered, thus terminating the case.

2354. *United States* v. *Patrick M. King*, Cr. 28264 (W.D. Ky.). On July 27, 1974, the defendant was found not guilty, after trial, thus terminating the case.

2387. *United States* v. *Samuel Turen*, Cr. 74–172 (D. N.J.). On October 21, 1974, an order was entered dismissing Count one of the indictment. On the same day a fine of $5,000 was imposed on a guilty plead on obstruction of justice count and 6 months suspended jail sentence and a three year period of unsupervised probation to run concurrently with that given this defendant in American Building Maintenance Cr. 74–170.

2393. *United States* v. *Continental Can Company, Inc.*, 74 CIV 2783 (S.D. N.Y.).

2394. *United States* v. *Grow Chemical Corporation*, 74 CIV 2784 (S.D. N.Y.). On July 29, 1974, these cases were terminated upon the entry of consent judgments pursuant to stipulations filed on June 27, 1974, requiring a 30-day waiting period.

The judgments prohibits the defendant from using its purchases to aid influence or promote its sales to suppliers; purchasing or selling products goods or services on the condition or understanding that purchases by it from any supplier will be based or conditioned upon its sales to such supplier; communicating to anyone that its sales to any firm are a factor in its purchasing decisions; maintaining statistical compilations that compare sales to and purchases from suppliers; and assigning any trade relations function or duty to any employee.

2407. *United States* v. *Slide-Rite Mfg. Corp., et al.*, 74 CR 858 (S.D. N.Y.). See "Cases Instituted."

Appendix 2

DEPARTMENT OF JUSTICE,
Washington, D.C., February 27, 1975.

Hon. ABRAHAM A. RIBICOFF,
Committee on Government Operations,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: As Mr. Kauper promised in his letter of January 9, 1975, I am forwarding a list of the Department's filings and appearances with various Federal regulatory agencies.

I apologize once again for the length of time necessary to produce this material and hope that it will be useful in your deliberations.

Sincerely yours,

BRUCE B. WILSON,
Acting Assistant Attorney General, Antitrust Division.

TABLE OF CONTENTS

	Page
I. COMMUNICATIONS (F.C.C.)	526
A. Common Carrier Communications	526
B. Broadcasting	526
1. License Renewals and Transfers	526
2. General proceedings	528
3. Waiver proceedings	528
C. Cable Television	532
II. SURFACE TRANSPORTATION (I.C.C.)	532
A. Mergers and Acquisitions	532
B. Applications to Engage in Common or Contract Carrier Activities	533
C. Tariffs	533
D. Cooperative Working Agreements	533
E. General Proceedings	533
III. AIR TRANSPORTATION (C.A.B.)	534
A. Mergers	534
B. Agreements [except mergers]	534
C. General Proceedings	535
IV. OCEAN TRANSPORTATION (F.M.C.)	536
A. Mergers	536
B. Cooperative Working Agreements	536
V. ELECTRIC POWER	537
A. Nuclear Licensing Proceedings (A.E.C.)	537
B. Holding Company Acquisitions (S.E.C.)	542
C. Restrictive Practices (F.P.C.)	542
VI. NATURAL GAS (F.P.C.)	543
A. Mergers and Acquisitions	543
B. Rates	543
C. Pipeline Certificates & Permits	543
D. Restrictive Practices	543
VII. BANKING AND FINANCE (FRB, FDIC, Comptroller, FHLLB)	543
A. Bank Mergers & Acquisitions	543
B. Bank Holding Company Diversification	543
C. Restrictive Practices	544
VIII. SECURITIES MARKETS (S.E.C.)	544
A. Commission Rates	544
B. Exchange Membership	544
C. Transaction Disclosures	544
IX. COMMODITIES EXCHANGES (Comm. Exch. Auth.)	545
A. Commission Rates	545
X. IMPORT RESTRICTIONS (Treasury, Tariff, Sec. of Agric, et al.)	545
A. Antidumping	545
1. Particular Products	545
2. General Proceedings	545
B. § 337 Tariff Act	545
1. Particular Products	545
2. General Proceedings	545
C. Escape Clause Actions	546
D. § 232 Trade Expansion Act	546
E. Other Import Restrictions	546
XI. CONSUMER PROTECTION (F.T.C.)	546
A. Consumer Installment Sales	546
XII. NARCOTICS AND DANGEROUS DRUGS	546
A. Registration	546

I. Communications (F.C.C.)

A. COMMON CARRIER COMMUNICATIONS

Docket No. 16495 (Domestic Communications Satellites):
5/19/71—Comments of the U.S. Dept. of Justice.
7/12/71—Reply Comments of the U.S. Dept. of Justice.
4/19/72—Comments of the U.S. Dept. of Justice.
Docket No. 16942, 17073 (Interconnection of Customer Supplied Equipment) (*Carter Electronics* v. *AT&T*)
10/13/67—Motion for limited intervention.
8/13/68—Response of the U.S. to Petitions for reconsideration.
10/18/68—Petition of the U.S. for partial rejection & partial suspension of Tariff.
12/ 2/68—Memorandum of the U.S. modifying its prior Petition for partial rejection and partial suspension of Tariff.
1/23/69—Petition for Reconsideration.
Docket No. 18262 (Frequency Band between 806–960 MHZ):
8/ 7/70—Memorandum of the Dept. of Justice in support of Petitions for Reconsideration and Requests for Stay.
Docket No. 18920 (Domestic Public Point-to-Point Microwave Radio Service):
10/10/70—Response of the U.S. Dept. of Justice.
12/29/70—Reply Comments of the U.S. Dept. of Justice.
2/ 2/71—Supplemental Comments of the U.S. Dept. of Justice.
Proposed General Order No. 98 (Public Service Commission of the State of Utah):
3/12/74—Comments of the U.S. Dept. of Justice.

B. BROADCASTING

1. License Renewals and Transfers

Beaumont, Texas (KFDM–TV): no date—Memorandum of the Dept. of Justice in Opposition to the Application for Transfer.
Birmingham, Alabama (WAPI–TV):
2/ 4/74—Supplement to Petition to Deny.
Cheyenne, Wyoming (KFBC–TV):
12/30/68—Petition for a Hearing.
8/28/69—Letter.
3/ 4/70—Notice of Appearance of the Dept. of Justice.
10/13/70—Motion for extension of time.
10/22/70—Opposition of the Dept. of Justice to Petition for Reconsideration, Conditional Grant, and Other Relief.
12/ 9/70—Motion of the Dept. of Justice for Permission to file a Response to Frontier Broadcasting Company's Reply to Dept.'s Opposition to Frontier's Petition for Reconsideration.
4/ 1/71—Response of the Dept. of Justice to the Response of Frontier Broadcasting Company to Memorandum Opinion & Order.
Des Moines, Iowa (KRNT–TV & KRNT–FM):
1/ 2/74—Petition of the Dept. of Justice to Deny Renewal Applications.
2/22/74—Petitioner's Opposition to Applicant's motion to strike.
District of Columbia (WDCA–TV): no date—Petition for Institution of Inquiry.
Festus, Missouri (KJCF):
5/19/72—Petition of Dept. of Justice for Reconsideration of Grant of Consent to Transfer.
6/ 1/72—Opposition to Petition of Dept. of Justice for Reconsideration of Grant of Consent to Transfer of Control.
Fresno, California (KMJ–TV & KMJ–FM):
11/ 1/74—Petition of the Dept. of Justice to deny Renewal Applications.
11/29/74—Letter requesting more time to file responses.
2/14/75—Opposition of McClatchy Newspapers to petition of Dept. of Justice to deny renewal application.
Milwaukee, Wisconsin (WTMJ–TV & WTMJ–FM):
1/10/74—Response of WTMJ, Inc. to informal comments of U.S. Dept. of Justice.
1/24/74—Motion to strike reply of the Dept. of Justice.
no date—Dept. of Justice opposition to WTMJ, Inc. motion to strike reply.

Minneapolis, Minnesota (WCCO):
3/ 1/74—Petition of the Dept. of Justice to Deny Renewal Applications.
4/15/74—Opposition to Petition of Dept. of Justice to deny Renewal Applications.
5/15/74—Reply of Dept. of Justice to opposition of Midwest Radio-Television Inc. to petition to deny Renewal Applications.
Salt Lake City, Utah (KSL-TV & KSL-FM):
9/ 3/74—Petition of the Dept. of Justice to deny Renewal Applications.
9/27/74—Motion for extension of time to file opposition to Justice Dept. Petition to Deny.
10/24/74—Motion for extension of time to file opposition to Justice Dept. Petition to Deny.
11/15/74—Motion for extension of time to file opposition to Justice Dept. Petition to Deny.
12/ 6/74—Petition of Kearne-Tribune Corporation to intervene & opposition to the Dept. of Justice's petition to deny renewal of KSL Licenses.
1/10/75—Motion for extension of time to file opposition to Justice Dept. Petition to Deny.
St. Louis, Missouri (KSD/KSD-TV & KTVI-TV):
1/ 2/74—Petition of the Dept. of Justice to Deny Renewal Applications.
1/11/74—Petition for extension of time to file oppositions to Petitions to Deny.
1/28/74—Amendment to St. Louis Broadcast coalition Petitions to deny & request for waiver of commission multiple ownership rules.
2/ 8/74—Motion to strike "amendment" to petition to deny & "request for waiver of commission multiple ownership rules".
3/11/74—Motion for extension of time.
4/15/74—Opposition of KSD/KSD-TV, Inc, to Petition of the Dept. of Justice to Deny Renewal Applications.
4/15/74—Opposition to Petition to Deny of the Dept. of Justice & to amendment to Petition to Deny of the St. Louis Broadcast Coalition.
5/ 8/74—Opposition to Motion to Strike.
5/16/74—Reply to Newhouse & Pulitzer Concentration of Control Arguments in Opposition to Petition to Deny filed by the St. Louis Broadcast Coalition & the Dept. of Justice.
5/20/74—Reply of the Dept. of Justice to Applicants Oppositions to Petition to Deny Renewal Applications.
San Francisco, California (KRON-TV & KRON-FM):
6/10/74—Brief for the U.S. as Amicus Curiae.
6/12/74—Memorandum for the Solicitor General.
6/19/74—Order granting filing of reply brief in excess of page limitation.
6/19/74—USA's Motion for Permission Belatedly to file Brief as Amicus Curiae.
6/24/74—Consent Motion for Enlargement of Time for Filing of Joint Appendix.
6/25/74—Response to "USA's Motion for Permission Belatedly to File Brief as Amicus Curiae".
7/11/74—Order for filing Joint Appendix is extended for a period of 30 days.
10/ 3/74—Order that the Clerk is directed to file the lodged Amicus Curiae Brief.
10/24/74—Consent Motion for extension of time to file Joint Appendix.
11/ 4/74—Response of Appellee FCC to Amicus Curiae Brief of the U.S.
11/ 4/74—Supplemental Brief for Intervenor.
11/ 6/74—Letter.
11/21/74—Application for extension of time to file a Reply Brief for the U.S. as Amicus Curiae.
11/25/74—Reply Brief for the U.S. as Amicus Curiae.
11/26/74—Motion to accept Reply Brief of the USA, Amicus Curiae.
11/27/74—Response to Motion for leave to file three xeroxed copies of the Joint Appendix.
12/19/74—Motion for leave to file Memorandum.
1/16/75—Order that appellants' aforesaid motion for leave to file memorandum in lieu of a reply brief to appellee's & intervenor's supplementary briefs is granted & the clerk is directed to file appellant's lodged memorandum dated 11/21/74.

Spokane, Washington (KHQ–FM & KHQ–TV):
1/ 2/75—Petition of the Dept. of Justice to Deny Renewal Applications.
Topeka, Kansas (WIBW–FM & WIBW–TV):
5/ 1/74—Petition of the Dept. of Justice to Deny Renewal Applications.
6/ 5/74—Opposition of Stauffer Publications to informal objections of Dept. of Justice.
6/24/74—Reply of Dept. of Justice to opposition of Stauffer to petition to deny Renewal Applications.

2. General Proceedings

Docket No. 18110 (Multiple Ownership):
8/ 1/68—Comments of the U.S. Dept. of Justice.
5/18/71—Comments of the U.S. Dept. of Justice.
5/15/74—Supplemental Comments of the U.S. Dept. of Justice.
6/17/74—Reply Comments of the Post Company.
8/30/74—Memorandum for the Attorney General.
Docket No. 18179 (Exclusivity Agreements):
8/ 4/72—Reply Comments of the Dept. of Justice.
Docket No. 19154 (Broadcast Renewals):
11/11/71—Comments of the U.S. Dept. of Justice.
Docket No. 19540 (FM Broadcast Stations—assignments):
2/28/74—Comments of Pemigewasset Broadcasters, Inc.

3. Waiver Proceedings

File No. 340(X) (Valley Cablevision Corporation—Plymouth CATV Services, Inc.):
3/ 9/73—Petition for Waiver.
5/11/73—Letter & Opposition to Waiver.
5/31/73—Reply to Opposition.
Multiple Listings Petition for Waiver of Cross Ownership Rules:
8/20/73—Motion for acceptance of comments of National Citizens Committee for Broadcasting, Timely served on all parties but completed shortly after the F.C.C.'s close of business.
File No. CSR 341(X) (Uvalde Television Cable Company):
5/18/73—Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of the Commission's Rules.
6/20/73—(Reply to "Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of the Commission's Rules".
7/18/73—Letter granting time extension for filing comments & oppositions.
12/ 6/73—Memorandum Opinion & Order.
File No. CSR 343(X) (Fetzer Cablevision):
4/13/73—Petition of Fetzer Cablevision for Waiver of Section 76.501 of the Rules and Regulations.
7/16/73—Letter denying request for extension of time.
7/16/73—Opposition of Dept. of Justice to Petition for a Waiver of Section 76.501 of the Commission's Rules.
7/26/73—Letter extending time for filing comments & opposition.
10/ 1/73—Reply to "Comments of National Citizens Committee for Broadcasting".
File No. CSR–350(X) (The Thomas Broadcasting Companies, Inc.):
5/23/73—Request for Imposition of Time Limitation in Response to Petition for Waiver of CATV–TV divestiture.
7/ 9/73—Opposition of Dept. of Justice to Petition for a Waiver of Section 76.501 of the Commission's Rules.
7/ 9/73—Letter re: In the matter of sixty-two Petitions for Waiver of Section 76.501 of The Commission's Rules and Regulation: Request for extension of time to Comment under Section 0.289 (c)(5) of the Rules.
7/17/73—Letter granting extension.
12/ 6/73—Memorandum Opinion & Order.
File No. CSR–359(X) (Eastern Oklahoma Television Company, Inc. KTEN Cablevision (a division)):
5/16/73—Petition for Waiver.
7/16/73—Opposition of Dept. of Justice to Petition for a Waiver of Section 76.501 of the Commission's Rules.
7/20/73—Request for extension of time to reply to Opposition of Dept. of Justice.

9/ 6/73—Reply by Eastern Oklahoma Television Company, Inc. to the opposition of the Dept. of Justice to Petition for Waiver of Section 76.501 of the Commission's Rules.

File No. CSR-360(X) (Bob Magness):
5/15/73—Petition for Waiver.
6/25/73—Comments on Petition for Waiver.
7/10/73—Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of the Commission's Rules.

File No. CSR-362(X) (Central All-Channel Cablevision Inc.):

File No. CSR-363(X) (Hamilton County CATV, Inc.):

File No. CSR-365(X) (Lebanon CATV, Inc.):
5/30/73—Petition for a Waiver of Section 76.501 (362).
5/30/73—Petition for a Waiver of Section 76.501 (363).
5/30/73—Petition for a Waiver of Section 76.501 (365).
7/16/73—Comments of Dept. of Justice on Petitions for Waiver of Section 76.501 of the Commission's Rules.
10/ 1/73—Reply.

File No. CSR-364(X) (Midessa Television Co., Inc.):
10/ 1/73—Reply of Midessa Television Co., Inc.

File No. CSR-366(X) (Humboldt Bay Video Company):

File No. CSR-422(X):
8/31/73—Opposition of Dept. of Justice to Petitions for Waiver of Section 76.501 of the Commission's Rules.
10/ 1/73—Reply to Opposition of Dept. of Justice.

File No. CSR-367(X) (Lawton Cablevision, Inc.):
5/30/73—Petition for Waiver of Section 76.501.
7/ 9/73—Opposition to Petition for Waiver.
7/10/73—Letters.
10/ 1/73—Reply of Lawton Cablevision, Inc.

File No. CSR-369(X) (Susquehanna Broadcasting Co.):
5/25/73—Petition for Waiver.
7/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of the Commission's Rules.

File No. CSR-370(X) (Gross Telecasting, Inc.):
5/29/73—Petition for Waiver.
7/ 9/73—Opposition to Petition for Waiver.
7/23/73—Letter requesting extension of time.
10/ 1/73—Reply to Oppositions to Petition for Waiver.

File No. CSR-371(X) (Cable Associates, Inc.):
5/31/73—Petition for Waiver.
7/16/73—Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of The Commission's Rules.
8/14/73—Reply to Opposition.
10/ 1/73—Reply to Comments of NCCB.

File No. CSR-372(X) (South Dakota Cable, Inc.):
5/31/73—Petition for Waiver.
7/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of the Commission's Rules.
10/ 1/73—Reply to "Opposition" to and "Comments" on "Petition for Waiver."

File No. CSR-373(X) (Total Television of Amarillo):
5/31/73—Petition for Waiver.
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of the Commission's Rules.
10/ 1/73—Reply of Total Television of Amarillo.

File No. CSR-374(X) (Quincy Cablevision, Inc):
5/31/73—Petition for Waiver of Section 76.501 Cross-Ownership Rules.
8/ 6/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.

File No. CSR-378(X) (Range Television Cable Co. Inc.—Northland Cable TV, Inc.):
5/17/73—Petition for Waiver of Section 76.501 of the Rules.
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply to Opposition to Petition for Waiver of Section 76.501 of the Rules.

File No. CSR-379(X) (Midcontinent Broadcasting Co.):
5/29/73—Petition of Midcontinent for Waiver of Section 76.501 of the Rules.
7/13/73—Opposition to Petition for Waiver.
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of the Commission's Rules.
9/28/73—Reply to oppositions to Petition for Waiver.
11/ 9/73—Joint Supplemental to Petitions for Waiver of Section 76.501 of the Rules.
File No. CRS-380(X) (Southern Oregon Cable TV):
5/31/73—Request for Waiver of the Mandatory Divestiture Requirement of Section 76.501 of the Commission's Rules and Regulations.
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply to "Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules" & "Comments of National Citizens Committee for Broadcasting".
File No. CSR-381(X) (Wolverine Cablevision, Inc.):
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
File No. CSR-386(X) (United Broadcasting Co., Inc.):
8/30/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply to comments and opposition.
File No. CSR-387(X) (Community Television of Utah, Inc.):
File No. CSR-404(X) (KUTV, Inc.):
8/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules (387 & 404).
10/ 1/73—Reply to opposition (404).
10/12/73—Reply to Opposition to & Comments on Petition for Waiver (387).
File No. CSR-388(X) (Meyer Broadcasting Company (Bismarck Cable TV Division) & Man Dan Cable TV, Inc.):
5/31/73—Petition for Waiver.
8/15/73—Opposition to Waiver.
10/ 1/73—Reply to Comments of NCCB.
File No. CSR-389(X) (King Broadcasting Company):
9/ 7/73—Modification of petition for Waiver & reply to comments of NCCB.
12/14/73—Memorandum Opinion & order.
File No. CSR-391(X) (Southern Cablevision, Inc.):
5/25/73—Request for Waiver of the mandatory divestiture requirements of Section 76.501 of the Commission's Rules & Regulations.
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
12/ 4/73—Supplemental to Petition for Waiver of Section 76.501 of the Cable Television Rules.
File No. CSR-392(X) (Mid-New York Broadcasting Corp.):
8/10/73—Reply to the Opposition of the Dept. of Justice.
10/ 1/73—Reply to Comments of NCCB.
File No. CSR-394(X) (Anton Hulman, Jr. & Joseph R. Cloutier):
8/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
File No. CSR-395(X) (Gill Industries & Gill Cable, Inc.):
5/24/73—Petition for Waiver of Section 76.501 of the Rules & Regulations.
7/17/73—Letter requesting extension.
8/23/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
2/14/74—Letter withdrawing "opposition to petition to waiver".
No date—Affidavits & things.
File No. CSR-396(X) (Rock River Television Corp.):
8/10/73—Letter requesting for a waiver of the divestiture requirement of Section 76.501 of FCC Rules.
8/30/73—Opposition of Dept. of Justice to petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply to Opposition.
File No. CSR-398(X) (Georgia Cablevision Corporation):
5/31/73—Petition for Waiver of Section 76.501 of The Commission's Rules.
7/ /73—Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of The Commission's Rules.

9/24/73—Pre-Amendment Reply to "Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of The Commission's Rules".
11/ 9/73—Amendment to Petition for Waiver of Section 76.501 of The Commission's Rules.
2/ /74—Petition in opposition to the granting of Waiver.

File No. CSR-400(X) (Central California Communications Corporations):
8/31/73—Opposition of Dept. of Justice to Petition for Special Relief for a Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply to Objections to Petition for Waiver of Section 76.501, Cross-Ownership Rules.

File No. CSR-401(X).

File No. CSR-425(X) (Upper Valley Telecable Company, Inc.):
8/31/73—Petition of Dept. of Justice to Petition for a Waiver of Section 76.501 of The Commission's Rules (401 & 425).
9/19/73—Letter applying for extension to file reply (401).
10/12/73—Reply to Comments on & opposition to Petition for Waiver (401).

File No. CSR-403(X) (North Platte Multi-Vue TV Systems, Inc.):
8/ /73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply of North Platte.

File No. CSR-405(X) (Cablevision of Augusta, Inc.):
8/30/73—Opposition to Waiver.
10/ 1/73—Reply of Cablevision of Augusta, Inc. to comments of National Citizens Committee for Broadcasting & Opposition of Dept. of Justice.

File No. CSR-406(X)
File No. CSR-410(X)
File No. CSR-411(X)
File No. CSR-415(X) (Newchannels Corporation):
7/ 6/73—Letter—Newchannels Corporation position paper on Syracuse Market Certificate Applications & Cross-Ownership (406, 410 & 415).
8/31/73—Opposition to Waiver (415).
10/ 1/73—Reply of Newchannels to the opposition of the Dept. of Justice (415).
10/12/73—Reply of Newchannels to the opposition of the Civil Liberties Union of Alabama (411).
10/23/73—Reply to the motion to strike (411).
11/26/73—Supplemental Reply to the motion to strike (411).
12/10/73—Comments of WNYS-TV, Inc. on the Joint supplement to petitions for Waiver of Section 76.501 of the Rules (406 & 410).

File No. CSR-407(X) (Southwestern Improvement and Investment Company d/b/a Nevada Cablevision Company):
8/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/ 1/73—Reply.

File No. CSR-409(X) (Concord TV Cable; County TV Cable; Western TV Cable):
8/31/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules.
10/15/73—Reply of Concord TV Cable, County TV Cable & Western TV Cable.

File No. CSR-420(X) (Hays Cablevision Co.):
File No. CSR-421(X) (KLOE-TV & Goodland Cable TV):
5/30/73—Petition of Hays for Waiver of Section 76.501 of The Rules & Regulations (420).
5/30/73—Petition of Goodland & KLOE for Waiver of Section 76.501 of the Rules (421).
8/30/73—Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules (420 & 421).
9/25/73—Reply to "Opposition of Dept. of Justice to Petition for Waiver of Section 76.501 of The Commission's Rules" (420 & 421).

C. CABLE TELEVISION

Docket No. 17441 (New York Telephone Co. Applications
Docket No. 18525 to operate CATV Channel distribution):
Docket No. 18620:
Docket No. 18623:
Docket No. 18624:
Docket No. 18750:
10/ 5/70—Motion for limited intervention by the Dept. of Justice
12/10/70—Notice of appearance
Docket No. 18891 (Cross Ownership):
Docket No. 18110:
5/18/71—Comments of the U.S. Dept. of Justice (18891)
5/15/74—Supplemental Comments of the U.S. Dept. of Justice (18891)
Docket No. 18397 (Amendment of FCC rules relative to CATV):
4/ 7/69—Comments of the U.S. Dept. of Justice
9/ 5/69—Comments of the U.S. Dept. of Justice
5/ 3/71—Memorandum of the Dept. of Justice in support of Petitions for reconsideration
Docket No. 18397-A (Distant signal importation; Access & channel utilization):
12/ 7/70—Comments of the U.S. Dept. of Justice
Docket No. 18509 (Telephone company operation of CATV facilities):
7/11/69—Comments of the U.S. Dept. of Justice
Docket No. 18892 (State and local regulation):
2/10/71—Reply Comments of the U.S. Dept. of Justice
Docket No. 19554 (Pay-cablecasting):
11/ 1/72—Comments of the Dept. of Justice

II. Surface Transportation (I.C.C.)

A. MERGERS AND ACQUISITIONS [ALSO INCLUDING ICC CONTROL INVESTIGATIONS]

Chicago & North Western—Chicago, Milwaukee, St. Paul & Pacific Consolidation (Fin. Docket Nos. 24182, 24183, 24184):
4/26/68—Memorandum of the U.S. Dept. of Justice.
4/ 1/69—Exceptions of the U.S. Dept. of Justice.
Denver & Rio Grande Western RR Co.—Rock Island & Pacific RR Co. (purchase of property Fin. Docket Nos. 27,521; 27,522):
6/20/74—Petition of U.S.A. for leave to intervene.
Greyhound—Oklahoma Trans. Co., et al. (Investigation of Control, Docket Nos. MC-F-10455, MC-F-10526; MC-F-9281):
2/10/70—Petition of the U.S. Dept. of Justice for an order of the ICC providing for the issuance of subpoenas and interrogatories.
4/10/70—Petition of U.S. Dept. of Justice for reconsideration of Commission Order of 4/1/70, which denied department's Petition of 2/10/70, requesting issuance of subpoenas and interrogatories.
Illinois Central—Gulf, Mobile & Ohio Merger (Fin. Docket Nos. 25103, et al.):
11/ 4/68—Petition of U.S. for leave to intervene.
11/29/68—Reply of the U.S. to the motion to dismiss by the Columbus and Greenville Railway Company.
1/ 9/69—Reply of the U.S. to the Petition for leave to file further pleading by applicant carriers.
3/ 3/69—Reply of U.S. to the motion of Chicago and North Western Railroad Company for discovery.
12/ 5/69—Brief for the U.S.
9/11/70—Exceptions of the U.S. Dept. of Justice to the examiner's recommended report.
Navajo Freight Lines—Garrett Freightlines (Investigation of Control; Docket Nos. MC-F-11094; MC-F-11198):
11/15/71—Notice of appearance by the U.S.
11/15/71—Petition of the U.S. Dept. of Justice for an order of the ICC providing for the issuance of subpoenas and interrogatories.
11/15/71—Request by U.S. Dept. of Justice for postponement of hearing.
11/23/71—Petition for reconsideration by full Commission of order denying requests for month's postponement of hearing, for issuance of subpoenas, and for order directing answering of interrogatories.
1/20/72—Memorandum of the U.S. Dept. of Justice in opposition to the motion of Navajo Freight Lines, Inc., et al, for clarification of the Commission's order dated 11/9/71.

2/ 1/72—Motion to strike.
7/18/72—Memorandum of the Dept. of Justice in opposition to the motion of Navajo Freight Lines, Inc., et al. dated 7/10/72.
9/12/72—Memorandum of the Dept. of Justice in opposition to the motion of Navajo Freight Lines, Inc., et al. dated 9/6/72.
1/22/73—Motion to strike and to correct testimony.
3/19/73—Post-Hearing brief of the U.S. Dept. of Justice.

Norfolk & Western—Chesapeake & Ohio Merger (Fin. Docket No. 23832, et al.):
6/10/68—Memorandum of the U.S.

Northern Pacific—Great Northern Merger (Fin. Docket No. 21478):
2/ 5/68—Reply of U.S. Dept. of Justice to Petitions for reconsideration.

Union Barge Line—Mechling Barge Lines Merger Into Union Mechling Corp. (Fin. Docket No. 26167):
10/19/70—Petition of U.S. Dept. of Justice for leave to intervene.
12/21/70—Brief of the U.S. Dept. of Justice.
5/30/72—Exceptions of the U.S. Dept. of Justice to the examiner's recommended report.

Union Pacific Acquisition of Chicago, Rock Island & Pacific (Fin. Dockets 22688, et al.):
1/27/69—Brief of the U.S.A.
2/28/69—Reply of U.S.A. to Chicago and North Western's motion to strike and petition for leave to file a reply brief.
4/28/69—Reply of U.S.A. to Missouri Pacific's motion for leave to file a reply to the brief of the Dept. of Justice respecting anticompetitive effects.
5/21/69—Reply of U.S.A. to Chicago and North Western's petition for reconsideration of the Commission's order of 4/1/69.
10/13/69—Reply of the U.S.A. to petition of North Western Railway Company for order reopening hearings & requiring evidence by prospective applicant Union Pacific Company.
6/24/70—Reply of the U.S. to the motion to dismiss by the Chicago and North Western Railway Company.

B. APPLICATIONS TO ENGAGE IN COMMON OR CONTRACT CARRIER ACTIVITIES

American Delivery Systems, Inc. (Docket No. FF-376—Freight Forwarder Application):
1/ 9/74—Reply of intervenor U.S. Dept. of Justice to exceptions.

American Farm Lines (Docket No. MC-129908—Common Carrier Application):
4/30/71—Petition of U.S. Dept. of Justice for leave to intervene.
2/ 3/72—Reply of U.S. Dept. of Justice to Petitions for reconsideration.

Southern Railway Co. (Fin. Docket No. 26310—Contract Carrier Application):
12/ 6/71—U.S. Dept. of Justice reply to exceptions by protestants.
12/ 6/71—Petition of U.S. Dept. of Justice for leave to intervene.

C. TARIFFS

Chicago and North Western Railway Co. Freight Tariff 17177:
1/14/69—Petition of the U.S. for leave to file an amicus memorandum.
1/14/69—Memorandum for Dept. of Justice.

D. COOPERATIVE WORKING AGREEMENTS

Rate Bureau Investigation (ICC Ex Parte No. 297)
7/30/73—Notice of the U.S. Dept. of Justice of intention to intervene.
4/10/74—Initial statement of the U.S. Dept. of Justice.
7/19/74—Reply of Dept. of Justice to initial statements.

Western Railroad Traffic Association—Agreement (Section 5a Application No. 2, Amendment No. 17):
1/22/73—Reply of U.S. Dept. of Justice to petition for reconsideration.

E. GENERAL PROCEEDINGS

Motor Common Carriers of Property, Routes and Services (Petition for the Elimination of Gateways by Rulemaking) Ex Parte No. 55 (Sub-No. 8):
12/11/73—Comments of the U.S. Dept. of Justice.

III. Air Transportation (C.A.B.)

A. MERGERS

American—Western Merger (Docket No. 22916):
- 3/ 3/71—Objections of the U.S. Dept. of Justice to the examiner's prehearing conference report.
- 1/26/72—Brief of the U.S. Dept. of Justice to the CAB.

IU International Corp., IU Forwarding Inc. and Airborne Freight Corporation (Docket No. 25204)
- 11/ 2/73—Motion of the Dept. of Justice for leave to file an untimely petition to intervene
- 1/24/74—Answer of the U.S. Dept. of Justice to applicants' motion for confidential treatment of certain documents
- 9/16/74—Brief of the U.S. Dept. of Justice to the CAB.
- 10/ 4/74—Answer to the U.S. Dept. of Justice to motion to strike brief.
- 11/18/74—Answer of Dept. of Justice to motion for vacation of order postponing discretionary review of initial decision.
- 2/24/75—Supplemental Brief of the U.S. Dept. of Justice to the C.A.B.

Northwest—National Merger (Docket No. 23852):
- 10/21/71—Responses requested in the prehearing conference notice dated 9/27/71.
- 10/21/71—Petition to intervene of the U.S. Dept. of Justice.
- 11/23/71—Objections of the Dept. of Justice to the examiner's report of prehearing conference.
- 3/15/72—Brief of the U.S. Dept. of Justice to the hearing examiner.
- no date—Motion of the U.S. Dept. of Justice to strike II–C of applicants' joint brief.

B. AGREEMENTS [EXCEPT MERGERS]

Air Carrier Reorganization Investigation (Docket No. 24283, et al.):
- 4/20/73—Brief of the U.S. Dept. of Justice to the administrative law judge.
- 9/17/73—Exceptions of the U.S. Dept. of Justice to the initial decision of the administrative law judge.
- 8/26/74—Brief of the U.S. Dept. of Justice to the CAB.

Air Freight Forwarders (joint charters—Docket No. 23287):
- 8/30/72—Statement of issues and request for evidence of the U.S. Dept. of Justice.

Air Traffic Conference of America (Agents' Financial Responsibility Resolution—Docket No. 20650):
- 9/ 1/71—Comments of the U.S. Dept. of Justice.

Investigation of Bylaws of Air Traffic Conference of America (Docket No. 23542):
- 4/16/73—Brief of the U.S. Dept. of Justice to the administrative law judge.
- 6/29/73—Supplemental brief of the U.S. Dept. of Justice to administrative law judge Henry Whitehouse.

American Airlines, Inc., et al. (sole source supplier joint negotiating & purchasing agreement—Docket No. 24971):
- 6/15/73—Motion for leave to file an otherwise unauthorized document.

American Airlines, Inc. (Capacity agreements to implement the fuel allocation program—Docket No. 25990):
- 10/26/73—Answer of the U.S. Dept. of Justice to the joint application for approval of agreement.
- 11/27/73—Answer of the U.S. Dept. of Justice to the joint application of United, TEA and Western Air Lines for approval of agreements.
- 1/ 4/74—Answer of the U.S. Dept. of Justice to the joint application of Hughes Air Corp. d/b/a Hughes Airwest and United Air Lines, Inc. for prior board approval of agreement.
- 2/27/74—Answer of U.S. Dept. of Justice to the joint application of American Airlines, Inc., Trans World Airlines, Inc. and United Air Lines, Inc. for approval of agreements.
- 4/26/74—Answer of the U.S. Dept. of Justice to the joint application of American Airlines, Inc., Trans World Airlines, Inc. and United Air Lines, Inc. for approval of agreements.
- 10/ 8/74—Motion for leave to file an otherwise unauthorized document.
- 10/21/74—Consolidated Answer of the U.S. Dept. of Justice to motions of Northwest Airlines Inc. and Delta Air Lines, Inc. to terminate approval of agreements.

12/13/74—Answer of the U.S. Dept. of Justice to the joint application of American Airlines, Inc. Trans World Airlines, Inc. and United Air Lines, Inc. for approval of agreements.
2/ 6/75—Motion of the U.S. Dept. of Justice for a stay of order 75–1–140 pending judicial review.

American-Pan American (Route exchange agreement—Docket No. 26245):
7/26/74—Brief of the U.S. Dept. of Justice to administrative law judge William H. Dapper.

Continental Airlines, Inc. (Application to engage in capacity reduction discussions—Docket No. 25595):
10/23/73—Response of the U.S. Dept. of Justice to application.

Eastern Airlines (Capacity reduction discussions (Newark-San Juan)—Docket Nos. 22908, et al.):
2/ 9/73—Comments of the U.S. Dept. of Justice.
11/ 7/73—Reply to objections to the Report of the Prehearing conference.
2/ 7/75—Brief of the U.S. Dept. of Justice to CAB.

IATA Composite Currency Conference On Currency Adjustment Tariff Agreement (Docket No. 23333, Agreement CAB 23609, Docket 24488, Agreement CAB 23607, Dockets 25054, 25097, 25101, 25396, 23486):
9/11/73—Comments of the U.S. Dept. of Justice.

Application of Pan American to Engage in Capacity Restraint Discussions (Docket No. 25680):
7/23/73—Response of the U.S. Dept. of Justice to application.

Pan American (emergency authorization of carriers discussions—Docket No. 26516):
4/ 2/74—Comments of the U.S. Dept. of Justice.
4/10/74—Answer of the U.S. Dept. of Justice in support of motion for hearing of the Institute for Public Interest Representation.
5/ 7/74—Answer of the U.S. Dept. of Justice in opposition to petition of Trans World Airlines, Inc. for modification of order 74–4–104.
5/24/74—Answer of the U.S. Dept. of Justic's to ALPA's motion for termination of discussion authority.

Pan Am-Trans World Airlines (for approval of agreement—Docket No. 27114):
4/19/74—Petition of the U.S. Dept. of Justice for leave to intervene.

Trans World Airlines, Inc. (capacity reduction agreement—Docket No. 22908):
6/ 9/72—Comments of the U.S. Dept. of Justice.
8/31/72—Comments of the U.S. Dept. of Justice.
6/ 8/73—Response of the U.S. Dept. of Justice to application.
3/14/74—Letter of Dept. of Justice to Judge Seaver.
5/24/74—Rebuttal testimony of the U.S. Dept. of Justice.
6/10/74—Trial brief of the U.S. Dept. of Justice.
8/20/74—Brief for the administrative law judge E. Robert Seaver of the U.S. Dept. of Justice.
9/ 3/74—Reply brief to the administrative law judge E. Robert Seaver of the U.S. Dept. of Justice.

United Air Lines (capacity reduction discussions—Fin. Docket Nos. 22496, et al.):
4/ 9/73—Response of the U.S. Dept. of Justice to application.

Universal Air Travel Plan (Membership restrictions—Docket Nos. 22333, et al.):
1/31/73—Petition of U.S. Dept. of Justice.
3/16/73—Motion for leave to file an otherwise unauthorized document.
3/16/73—Reply of the Dept. of Justice to the answer of the Universal Air Travel Plan.

C. GENERAL PROCEEDINGS

Docket No. 21866–6A (Domestic Passenger Fare Investigation Phase 6–A [Seating Configurations]):
6/20/72—Petition for Reconsideration.
6/15/73—Answer of the U.S. Dept. of Justice to the motion of Continental Air Lines, Inc. for stay and reconsideration.

Docket No. 21866–9 (Domestic Passenger Fare Investigation—Fare Structure Phase 9):
11/12/71—Brief of the U.S. Dept. of Justice.
11/12/71—Motion for leave to intervene.
3/26/73—Comments of the U.S. Dept. of Justice regarding phase 9 rate setting and fare flexibility.

Docket No. 22973 (New England Service Investigation):
7/31/73—Motion of the U.S. Dept. of Justice for leave to intervene for a limited purpose.
9/ 7/73—Brief of the U.S. Dept. of Justice to the board.
Docket No. 23287 (Air Freight Forwarders' Charters):
1/24/75—Brief of the U.S. Dept. of Justice to administrative law judge Richard M. Hartsock.
Docket No. 23542, et al. (ATC Bylaws Investigation):
2/22/74—Brief of the U.S. Dept. of Justice to the CAB.
Docket No. 24283, et al. (Air Carrier Reorganization Investigation):
7/16/73—Supplemental Brief of the U.S. Dept. of Justice to the administrative law judge.
10/16/73—Motion of the Dept. of Justice for leave to file a late filed answer.
8/26/74—Brief of the U.S. Dept. of Justice to the CAB.
Docket No. 24908 (Proposed Termination of "Prior Affinity" Charter Authority):
12/20/74—Comments of the U.S. Sept. of Justice.
Docket No. 25587 (Fare Reductions in Chicago–L.A. Market Proposed by Continental & United Airlines):
10/19/73—Brief of the U.S. Dept. of Justice to the administrative law judge.
1/16/74—Petition of the U.S. Dept. of Justice for review of the initial decision of the administrative law judge.
Docket No. 25795 (36 Household Goods Air Freight Forwarders Application to Amend Exemption):
8/17/73—Motion of Dept. of Justice for extension of time.
Docket No. 25875 (Proposed Regulation 14 CFR § 399.45—Minimum charter rate levels):
11/ 2/73—Comments and alternative motion for hearing of the U.S. Dept. of Justice.
11/19/73—Reply Comments of the Dept. of Justice.
11/11/74—Motion of the Dept. of Justice for stay and petition for reconsideration of regulation PS–57.
Docket No. 25908 (Transatlantic Route Proceedings):
11/19/74—Notice to all parties.
11/19/74—Motion of the U.S. Dept. of Justice for leave to file a document otherwise unauthorized by the board's rules.
11/19/74—Petition of the U.S. Dept. of Justice for leave to intervene.
12/23/74—Statement of position of the U.S. Dept. of Justice.
1/ 6/75—Brief of the U.S. Dept. of Justice to associate chief administrative law judge Ross I. Newmann.
Docket No. 26245 (American-Pan American Route-Exchange Agreement):
1/30/74—Petition to intervene of the U.S. Dept. of Justice.
Docket No. 27135 (Proposed Regulation 14 CFR § 378a Concerning One-stop-inclusive Tour Charters):
12/20/74—Comments of the U.S. Dept. of Justice.
1/ 6/75—Reply Comments of the U.S. Dept. of Justice.
Docket No. 27463 (Air carrier certificates):
2/ 3/75—Petition pursuant to Sections 204(a) and 401 of the Federal Aviation Act of 1958, as amended, for Alteration, Amendment, Modification or suspension in Whole or in Part of Air Carrier Certificates of Public convenience and Necessity.

IV. Ocean Transportation (FMC)

A. MERGERS

R. J. Reynolds, U.S. Lines, Sea-Land Service, et al. (Agreement No. 9827–1; Docket No. 70–51):
3/16/72—U.S. Dept. of Justice Reply to exceptions to the Examiner's Initial Decision.
7/26/72—Reply of the U.S. Dept. of Justice to comments filed pursuant to Commission Order of 6/7/72.

B. COOPERATIVE WORKING AGREEMENTS

American Export Isbrandtsen Lines, et al. (Agreement No. 9899—Docket No.——):
2/12/71—Petition of the Dept. of Justice.

Atlantic Steamship Energy Conservation Agreement (Agreement No. 10118—Docket No.):
3/26/74—Comments of the Dept. of Justice.
Hawaii Rate Agreement (Agreement No. DC–57—Docket No.):
7/11/73—Petition for intervention of the Dept. of Justice.
11/15/73—Post-Hearing Brief of the Dept. of Justice.
12/17/73—Reply Brief of the Dept. of Justice.
North Atlantic Pool (Agreement No. 10,000—Docket No. 72–17):
7/11/72—Motion for order compelling Respondents to Answer the interrogatories of the Dept. of Justice, or in the alternative, an Order setting oral argument on Respondents' objections:
10/11/72—Petition of the Dept. of Justice for Reconsideration of Procedural Order.
10/31/72—Motion by the Dept. of Justice for leave to appeal from the Chief Administrative Law Judge's Revised procedural schedule denying the Dept.'s petition for reconsideration of the procedural order.
10/31/72—Appeal from the Chief Administrative Law Judge's revised procedural schedule.
11/ 8/72—Letter.
12/ 4/72—Letter.
5/ 4/73—Brief & proposed findings of the Dept. of Justice.
6/15/73—Reply Brief of the Dept. of Justice.
2/26/74—Exceptions & brief of the Dept. of Justice.
5/29/74—Petition for intervention of the Dept. of Justice.
Transatlantic Freight Conference, American Export Isbrandtsen Lines, et al. (Agreement No. 9,813—Docket No. 69–58):
10/ 9/69—Petition of Dept. of Justice.
2/ 6/70—Notice of motion & motion for production of documents.
2/ 6/70—Memorandum in support of Dept.'s motion for production of documents.
3/ 9/70—Reply of the Dept. of Justice to Respondents' objections to interrogatories.
3/24/70—Notice of Deposition.
3/31/70—Application for Pre-hearing schedule by the Dept. of Justice.
4/10/70—Motion by the Dept. of Justice for leave to appeal from the presiding examiner's order that all discovery proceedings be deferred until after the respondents' initial case has been heard.
4/27/70—Brief of the Dept. of Justice in opposition to respondents' interlocutory appeal from examiner's discovery ruling & cross-appeal.
1/ 8/71—Dept. of Justice motion for Order compelling production of documents & answers to interrogatories & depositions from witnesses & evidence located in foreign Countries.
1/ 8/71—Dept. of Justice memorandum in support of its motion.
1/ 8/71—Dept. of Justice written cross-examination of respondents concerning amendment to agreement article 7(e)(i) & 7(e)(ii) (Amendment No. 3).
1/25/71—Reply of Dept. of Justice to respondents' objections to discovery.
2/ 2/71—Supplementary interrogatories propounded by the Dept. of Justice to all respondents.
4/28/71—Reply of the Dept. of Justice to respondents' request for extraordinary relief.
United Stevedoring Corporation v. Boston Shipping (Docket No. 70–3):
7/10/72—Opening brief for the U.S. Dept. of Justice.
In the Matter of Agreement No. DC–56 (Docket No. 73–75):
12/12/73—Petition for intervention of the Dept. of Justice.
4/22/74—Direct testimony of Henry A. Einhorn on behalf of Dept. of Justice.

V. Electric Power

A. Nuclear licensing proceedings (AEC)

Alabama Power Company (Docket Nos. 50–348A, 50–364A):
9/ 8/72—Reply of the U.S. Dept. of Justice to the applicant's answer to notice of antitrust hearing & motion to limit the scope of the hearing of 7/31/72.

9/11/72—Statement of legal theory & supporting facts of the Dept. of Justice.
9/25/72—Motion to consolidate of the Dept. of Justice.
11/ 9/72—Reply brief of the U.S. Dept. of Justice to applicant's brief on the jurisdiction of the AEC pursuant to § 105c of the Atomic Energy Act & the scope of pre-license antitrust review.
12/19/72—Supplemental statement of common issues in support of the Dept. of Justice's motion to consolidate.
3/ 5/73—Reply of the Dept. of Justice to applicant's request for certification on the issues of jurisdiction & scope.
3/20/73—Reply of the Dept. of Justice to applicants' motion for reconsideration of order denying request for certification.
3/20/73—Dept's proposed issues of fact to be inserted under board's subissues.
4/ 4/73—Dept. of Justice's response to Alabama Power Company's statement of proposed issues.
5/14/73—Report of the Dept. of Justice.
6/ 1/73—Report of the Dept. of Justice.
6/14/73—Motion of the parties for an extension of time.
7/16/73—Report of the Dept. of Justice & AEC regulatory staff.
8/ 2/73—Report of the Dept. of Justice & AEC regulatory staff.
8/13/73—First response of the Dept. of Justice to the applicant's interrogatories 1(a), 1(b), & 22(a).
8/31/73—Answer of the joint discoveries to applicant's objections to the second joint request of the Dept. of Justice, AEC regulatory staff, & intervenors for production of documents by the applicant.
9/18/73—Motion of the joint discoverers for leave to file a reply.
11/ 5/73—Report of the Dept. of Justice & AEC regulatory staff.
12/ 3/73—Report of the Dept. of Justice & AEC regulatory staff.
1/ 7/74—Report of the Dept. of Justice & AEC regulatory staff.
2/ 8/74—Report of the Dept. of Justice & AEC regulatory staff.
3/ 6/74—Report of the Dept. of Justice & AEC regulatory staff.
3/31/74—Interrogatory of the Dept. of Justice to applicant & request for production of a single document & all copies of that document.
4/ 3/74—Report of the Dept. of Justice & AEC regulatory staff.
4/16/74—Motion of the Dept. of Justice, AEC regulatory staff & the intervenors for a modification of the prehearing schedule.
4/25/74—Reply of other parties to applicant's answer & motion relating to further modification of the prehearing schecule.
5/ 3/74—Response of the Dept. of Justice, AEC regulatory staff & the intervenors opposing applicant's motion to bifurcate the hearing.
5/ 9/74—Report of the Dept. of Justice & AEC regulatory staff.
7/ 8/74—Answer opposing applicant's motion for order modifying the procedure established in 1973 so as to require the dept. to file an additional brief prior to its trial brief.
8/ 2/74—Answer of the Dept. of Justice & Commission staff opposing applicant's motion & modification of prehearing schedule.
9/25/74—Motion of the Dept. of Justice for a modification of the prehearing schedule due to injury of witness.
10/ 7/74—Motion for further extension of time for filing Dr. Wein's testimony & for other modification of procedural schedule.

Carolina Power & Light Company (Docket Nos. 50-400, 50-401, 50-402, 50-403):
8/18/72—Letter from Dept. of Justice to Associate General Counsel, AEC.

Connecticut Light & Power Co. (Docket No. 50-423A):
8/10/73—Letter from Dept. of Justice to Associate General Counsel, AEC.

Consumers Power Company (Docket Nos. 50-329A, 50-330A):
8/16/72—Letter from Dept. of Justice to Keith S. Watson, Esq.
8/16/72—Motion to compel the production of four categories of documents including those which may be dated prior to 1/1/60.
8/30/72—Request for stay of motion to compel the production of four categories of documents.
9/25/72—Information & data desired from applicant.

11/ 2/72—Answer of the Dept. of Justice to applicant's objections to to document requests & motion for protective orders.
12/13/72—Application for issuance of subpoenas duces tecum.
1/ 8/73—Answer of the Dept. of Justice to applicant's motion for order modifying procedural schedule.
2/12/73—Request for admissions & interrogatories as to proposed contentions.
3/ 2/73—First response of the Dept. of Justice to applicant's interrogatories.
3/ 2/73—Answer to applicant's motion to extend time to object to request for admissions & motion to compel applicant's response.
3/22/73—Reply of the Dept. of Justice to applicant's answer to motion to compel response.
4/ 2/73—Supplemental response of the Dept. of Justice to applicant's interrogatories.
4/17/73—Answer of the Dept. of Justice to applicant's motion to compel production of documents & motions of the dept. for protective orders & to compel production of documents by applicant.
6/28/73—Notice of appearance; Answer of the Dept. of Justice to applicant's motion for leave to submit outside experts' direct testimony in written form
7/12/73—Answer of the Dept. of Justice to intervenors' motions for reconsideration & to compel.
8/10/73—Motion to the Board for an order requiring applicant to state the facts expected to be proved by its outstanding requests to nonparties.
8/22/73—Further request for admissions & Interrogatories.
9/ 6/73—Dept. of Justice petition to the Board for order establishing a Michigan location for hearing for taking testimony of Michigan witnesses.
9/20/73—Motion to compel production of Michigan Pool Committee minutes.
10/15/73—Motion of the Dept. of Justice to compel discovery regarding certain computer material.
10/15/73—Brief of the Dept. of Justice to assist Board in determining impact Commission's memorandum & order (Docket 50-382A) upon this proceeding.
10/ 8/74—Brief & proposed findings of fact of the U.S. Dept. of Justice.

Duke Power Company (Docket Nos. 50-269A, 50-270A, 50-287A, 50-369A, 50-730A):

9/ 5/72—First joint request of Dept. of Justice, AEC Regulatory Staff & Intervenors for production of documents by applicant for period since 1/1/60.
10/25/72—Answer of the Dept. of Justice to applicant's objections to document requests & motion for protective orders.
11/16/72—Application for issuance of subpoenas duces tecum.
12/20/72—Answers of the Dept. of Justice to motions of Virginia Electric & Power Company, Carolina Power & Light Company, & South Carolina Electric & Gas Company.
2/ 2/73—New proposed list of subissues of fact submitted by the Dept. of Justice.
2/ 8/73—Affidavit of Wallace Edward Brai d in support of motion for reconsideration of Board's order of 1/8/73.
2/26/73—Reply brief of the Dept. of Justice on relationship between AEC's proceeding under Sec. 105 of the Atomic Energy Act & FPC's proceeding under Sec. 205 of the Federal Power Act; with Dept's proposed issues of fact to be inserted under Board's subissues b. 1-4.
3/30/73—Revised interrogatory of the Dept. of Justice concerning applicant's filing system.
4/23/73—Answer of the Dept. of Justice to motion of VEPCO to quash or to limit subpoena duces tecum.
6/ 6/73—Answer of the Dept. of Justice to applicant's motion to amend par. G of prehearing order #6 & separate motion of the Dept. to amend par. G of prehearing order #6.
7/30/73—Answer of the Dept. of Justice to applicant's motion to amend prehearing order #2.

7/31/73—Answer of the Dept. of Justice to applicant's motion for protective orders.
9/17/73—Interrogatories & document request of joint discoverers & motion to compel response.
9/28/73—Request of the U.S. Dept. of Justice for additional time to reply to interrogatories & document production request of applicant.
10/ 3/73—Answers of joint discoverers to applicant's motion for protective order concerning commencement of depositions.
10/11/73—Answers of the Dept. of Justice to applicant's motion to stay depositions & request for expeditious ruling on that motion.
10/18/73—Answer of Dept. of Justice to applicant's motion to determine procedure for review of attorney-client privilege claims.
10/23/73—Brief of the Dept. of Justice to assist Board in determing impact of Commission's memorandum & order (Docket 50-382A) upon this proceeding.
11/ 8/73—Request of the U.S. Dept. of Justice for additional time to reply to interrogatories & document production request of applicant.
11/19/73—Memorandum of Dept. of Justice on the scope & application of attorney-client privilege.
11/28/73—Request of the U.S. Dept. of Justice for additional time to reply to interrogatories & document production request of applicant.
11/30/73—Answers of the Dept. of Justice to interrogatories of the applicant.
12/ 7/73—Supplemental memorandum of Dept. of Justice on attorney-client privilege.
12/20/73—Joint motion of all parties for a modification of the prehearing schedule.
1/ 4/74—Answer of the Dept. of Justice to applicant's motion for a protective order.
1/10/74—Supplementary answers of the Dept. of Justice to interrogatories of the applicant.
1/22/74—Answer of the Dept. of Justice to applicant's motion to compel.
1/28/74—Answers of the Dept. of Justice to applicant's motion for leave to reply.
2/ 7/74—Joint motion of all parties requesting changes in the schedule of the proceeding.
3/ 7/74—Fourth response of the Dept. of Justice to applicant's interrogatories.
5/13/74—Answer of the Dept. of Justice to intervenors' motion for extension of time.
5/14/74—Motion of the AEC Staff & the Dept. of Justice to amend licenses for Oconee Units 1, 2 & 3 & McGuire Units 1 & 2 by attaching license conditions.
No date—Joint recital of contested issues of fact & law.

Duke Power Company (Docket Nos. 50-413A & 50-414A):
9/12/73—Answer of Dept. of Justice to applicant's objection to consolidation & motion to determine issues for hearing.
5/10/74—Response of the Dept. of Justice to questions posed in board's 4/25/74, notice of hearing & notice for special prehearing conference.
5/23/74—Motion of the Dept. of Justice to limit participation; answer to applicant's motion for full implementation of settlement; advice to Board concerning issues appropriate for hearing.

Georgia Power Company (Docket No. 50-366):
9/25/72—Motion to consolidate of the Dept. of Justice.
12/19/72—Supplemental statement of common issues in support of the Dept. of Justice's motion to consolidate.
1/ 3/73—Notice of appearance.
1/16/73—Statement of the Dept. of Justide with regard to legal theory & supporting facts.
4/ 5/73—Response of the Dept. of Justice to Georgia Power Company's Second recital of contested issues.
5/31/73—Second Joint request of the Dept. of Justice, AEC Regulatory Staff, & intervenors for production of documents by the applicant.
6/14/73—Motion of the parties for an extension of time.
6/15/73—Report of the Dept. of Justice & AEC Regulatory Staff.

7/25/73—Answer of the joint discoverers to applicant's objections to the first joint request for the production of documents.
8/29/73—Answer of the joint discoverers to applicant's objections to the second joint request of the Dept. of Justice, AEC Regulatory Staff, & intervenors for production of documents by the applicant.
9/ 4/73—Answer of the joint discoverers to applicant's objections to the substitute questions for the second joint request for the production of documents by applicant.
10/12/73—Proposed schedule of the Dept. of Justice & AEC Regulatory Staff.
11/ 5/73—Report of the Dept. of Justice & AEC Regulatory Staff.
11/16/73—Joint discoverers' amendments to their second joint discovery request of the applicant & joint discoverers' amended motion to compel discovery of the applicant.
12/ 4/73—Report of the Dept. of Justice & AEC Regulatory Staff.
12/21/73—Motion of the parties for a postponement of procedural dates.
No date—Recital of contested issues of law & fact.

Louisiana Power & Light Co. (Docket No. 50-382A):
No date—Affidavit of Wallace Brand.
11/ 8/72—Statement of the Dept. of Justice concerning matters contained in Louisiana Power & Light Co.'s "motion for expeditious denial" filed 10/30/72.
2/23/73—Memorandum & Order.
3/21/73—Notice of appearance.
3/22/73—Notice of appearance.
3/29/73—Request for extension of time.
4/ 2/73—Answer of AEC Regulatory Staff to Louisiana Power & Light Company's answer to Commission's notice of antitrust hearing on application for construction permit for related motions.
4/ 3/73—Notice of receipt of supplemental antitrust advice from Dept. of Justice.
4/ 4/73—Order granting request of U.S. Dept. of Justice for additional time to reply to answer to notice of antitrust hearing on application for construction permit & related motions.
4/ 5/73—Reply & answer to Dept. of Justice to applicant's papers of 3/20/73.
4/ 6/73—Notice of appearance.
4/ 9/73—Answer of Cities of Lafayette & Plaquemine, Louisiana, to answer of Louisiana Power & Light Co. filed 3/20/73 & related motions.
4/ 9/73—Motion of the Dow Chemical Company for leave to file a reply to applicant's answer to notice of antitrust hearing on application for construction permit & related motions.
4/24/73—Memorandum & opinion of Board with respect to petitions to intervene in an antitrust hearing relating to application for construction permit.
4/27/73—Notice of Dept. of Justice advice.
5/ 4/73—Motion of the Dow Chemical Co. for leave to amend & supplement its petition for leave to intervene & request for hearing.
10/30/73—Answer of Dept. of Justice to motion of applicant for clarification of the Commission's order of 9/28/73.
11/12/73—Memorandum of the Dept. of Justice pursuant to notice & order of 10/30/73.
2/ 8/74—First joint request for the production of documents by application.
7/18/74—Dept. of Justice reply to applicant's motion that the AEC or The Atomic Safety & Licensing & Appeal Board direct certification of the record for appeal.
9/ 5/74—Post-show-cause-hearing brief of the Dept. of Justice.
11/13/74—Motion to modify board's memorandum with respect to appropriate license conditions.
12/ 6/74—Brief of Dept. of Justice on appeal from initial decision of hearing board.

Pacific Gas & Electric Company (Docket Nos. 50-358 & 50-359):
9/ 7/72—Notice of appearance by the Dept. of Justice.
9/20/72—Notice of appearance.

The Toledo Edison Company, The Cleveland Electric Illuminating Company (Docket No. 50-346A); The Cleveland Electric Illuminating Company, et al. (Docket Nos. 50-440A & 50-441A):

1/24/74—Notice of appearance by the Dept. of Justice.
6/19/74—Proposed expedited hearing schedule.
7/12/74—Response of Dept. of Justice to order requesting clarification.
7/15/74—Expedited hearing schedule proposed by the Dept. of Justice.
8/29/74—Notice of appearance by the Dept. of Justice
9/ 9/74—Motion by the Dept. of Justice for a protective order.
10/10/74—Response by the Dept. of Justice to applicant's motion for summary disposition
11/27/74—Response of Dept. of Justice to applicant's first request for production of documents & answers to interrogatories.
12/ 9/74—Motion by Dept. of Justice to compel discovery & to revise time schedule to take into account applicant's noncompliance.
12/12/74—Motion by the Dept. of Justice to quash or modify applicant's subpoena & to enforce the sequence & timing of discovery ordered by the licensing board.
1/ 2/75—Memorandum of the Dept. of Justice in documents production submitted at the request of The Atomic Safety & Licensing Board.
1/ 7/75—Reply memorandum of the Dept. of Justice on document discovery.
2/14/75—Supplemental interrogatories by the Dept. of Justice to The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company & the Toledo Edison Company.
2/18/75—Dept. of Justice proposed transcript corrections.

B. HOLDING COMPANY ACQUISITIONS (SEC)

American Electric Power Co., Inc. (SEC Adm. Proc. File No. 3-1476)

3/17/69—Application of the U.S. Dept. of Justice for leave to submit an amicus statement.
11/12/69—Response to American Electric Power Company, Inc.'s motion to quash subpoena dated 11/3/69.
3/13/70—Reply of Division of Corporate Regulation & Dept. of Justice to petition for review by American Electric Power Company, Inc. ("AEP") of Examiner's Ruling denying AEP motion to terminate cross-examination.
4/24/70—Application for order requiring production of books, papers & documents.
10/19/70—Response to Dept. of Justice to AEP's application of 10/9/70.
11/ 6/70—Statement of the Dept. of Justice with respect to the application for review of the Division of corporate regulation.
2/19/71—Dept. of Justice motion for reconsideration of orders requiring production of documents.
2/ 8/72—Response of the Dept. of Justice to AEP's application for review, dated 1/28/72.
4/11/72—Letter.
6/ 6/72—Answer to Dept. of Justice & Division of Corporate Regulation to application by AEP for interlocutory review of Examiner's order denying motion to omit initial decision.
9/18/72—Brief & proposed findings of fact of the U.S. Dept. of Justice.
10/24/72—Reply Brief of the U.S. Dept. of Justice.
4/ 9/74—Brief of the U.S. Dept. of Justice.

New England Electric System, et al. (SEC Adm. Proc. File No. 3-1698).

6/ 1/71—Brief of the U.S. Dept. of Justice.
1/29/73—Reply Brief on exceptions of the Dept. of Justice.

C. RESTRICTIVE PRACTICES (FPC)

Docket No. R.345 (competitive bids in procurement): *See*, VI. NATURAL GAS (FPC) (Restrictive Practices).

VI. Natural Gas (FPC)

A. MERGERS AND ACQUISITIONS

American Natural 50% acq. of Great Lakes Transmission Company (Docket No.s CP 66-110 et al.):
11/ 3/69—Brief of Dept. of Justice on remand.
12/ 5/69—Reply of Dept. of Justice to initial brief & motion of Michigan Wisconsin Pipe Line Company & Michigan Consolidated Gas Company.
2/ 6/70—Exceptions of the Dept. of Justice to Examiner's initial decision on remand.
8/10/70—Application of the Dept. of Justice for rehearing of opinion No. 580 & accompanying order.

B. RATES

C. PIPELINE CERTIFICATES & PERMITS

Great Lakes Transmission Company (Docket Nos. CP 70-19, CP 70-20); Michigan Wisconsin Pipeline Company (Docket Nos. CP 70-21, CP 70-22); Midwestern Gas Transmission Company (Docket Nos. CP 70-23, CP 70-24) (pipe line interconnection with Great Lakes):
12/16/69—Petition of Dept. of Justice for leave to File a statement of position.
Northwest Pipeline Corporation (Docket Nos. CP 73-331; CP 73-332; CP 73-333):
8/21/73—Joinder in motion for expedited proceedings.
10/23/73—Application of intervenors Arizona Public Service Company, Tucson Gas & Electric Company for rehearing of Commission order issued without public hearing.

D. RESTRICTIVE PRACTICES

Docket No. R.345 (competitive bids in procurement):
3/17/69—Comments of the U.S. Dept. of Justice.

VII. Banking and Finance (FRB, FDIC, Comptroller, FHLLB)

A. BANK MERGERS & ACQUISITIONS

Alabama Bancorporation:
3/19/73—Memorandum of the U.S. Dept. of Justice on the competitive effects of the captioned applications.
American Fletcher Corp. (acq. voting shares of Southwest S & L Assoc):
11/30/73—Comments of the Dept. of Justice.
Trust Co. of Georgia (acq. of Peachtree Bank & Trust, Chamblee, Ga.):
3/ 2/71—Petition for reconsideration of order approving application for acquisition of assets & assumption of liabilities under Bank Merger Act.

B. BANK HOLDING COMPANY DIVERSIFICATION

Armored Car or Courier Services:
5/11/72—Comments of the U.S. Dept. of Justice.
Factors, acquisition of:
12/10/71—Petition for acceptance of late comments.
Finance Companies, Small, acq. of:
12/ 1/72—Memorandum of the U.S. Dept. of Justice.
Investment advisors to investment companies:
9/24/71—Comments of the U.S. Dept. of Justice.
Mortgage Companies, acq. of:
12/ 3/71—Petition for acceptance of late comments.
Nonbanking activities, generally:
2/26/71—Memorandum of the U.S. Dept. of Justice.

C. RESTRICTIVE PRACTICES

Intra Corporate conspiracy Doctrine:
2/22/71—Letter to FRB.
Interlocking Relationships (under the Clayton Act):
3/15/74—Comments of the U.S. Dept. of Justice.
Electric Funds Transfer (proposed amendment of Regulation J & related issues):
5/14/74—Comments of the U.S. Dept. of Justice.

VIII. Securities Markets (S.E.C.)

A. COMMISSION RATES

File No. 10–54–1 (Commission Rate Structure of the Chicago Board Options Exchange):
1/15/73—Comments of the U.S. Dept. of Justice.
File No. 4–144 (Commission Rate Structure of Registered National Securities Exchanges):
1/17/69—Memorandum of the U.S. Dept. of Justice on the fixed minimum commission rate structure.
3/20/70—Response of the U.S. Dept. of Justice to SEC release No. 8791.
File No. 4–164 (Repeal of Sec. 22(d); distribution of mutual funds):
2/ 2/73—Comments of the U.S. Dept. of Justice.
File No. 8239 }
File No. 4–176 } (Commission Rate Structure of the NYSE):
4/ 1/68—Comments of the U.S. Dept. of Justice.
12/10/74—Comments of the U.S. Dept. of Justice.
Civ. 63–C–264 (Fixed brokerage commissions) (Thill):
1/13/72—Memorandum of the Dept. of Justice in Opposition to Def's motion for stay of this action pending reference of Issues to The Securities and Exchange Commission.
1/17/72—Errata Sheet for above Memorandum.
3/15/72—Memorandum of The Dept. of Justice on the Issues to be decided at Trial & the proposed procedure to be followed.
4/28/72—Response of the U.S. to def's Reply to Memorandum of the Antitrust Division on the Issues to be Tried and Trial Procedure to be followed & to Memorandum of Securities and Exchange Commission in response to Positions of Pl., Def., & Dept. of Justice concerning issues to be Tried.
4/28/72—Notice of Motion and Motion of the U.S.A. for leave to intervene.
6/30/72—Def's interrogatories to Pl. Thill Securities Corporation.
7/ /72—First set of interrogatories propounded by U.S.A. to Securities and Exchange Commission.
no date—Affidavit & claim of privilege.
Release No. 10636; File No. S7–510 (proposed Rule 10B–20; Prohibition against additional consideration in securities offerings):
4/15/74—Comments of the U.S. Dept. of Justice on proposed rule 10B–20.

B. EXCHANGE MEMBERSHIP

Release No. 8717 (NYSE proposals to permit public ownership of members):
No date—Comments of the U.S. Dept. of Justice.
Release No. 9716 (proposed rule 196–2; membership for other than public purposes):
10/ 3/72—Comments of the U.S. Dept. of Justice.
Release No. 10490 (intermarket competition between option exchanges):
5/ 9/74—Comments of the U.S. Dept. of Justice on inter-market competition between option exchanges.

C. TRANSACTION DISCLOSURES

File No. 4–172 (NASD anti-reciprocal rule):
9/ 9/74—Comments of the U.S. Dept. of Justice.
File No. S7–433 (Proposed Rule 17a–15):
9/29/72—Comments of the U.S. Dept. of Justice.
File No. S7–522 (Commission inquiry):
8/23/74—Comments of the U.S. Dept. of Justice.

File No. S7-529 (temporary suspension of competitive bid requirements):
8/23/74—Statement of the U.S. Dept. of Justice on the proposal to temporarily suspend the competitive bidding requirements for the sale of common stock of regulated public utilities

IX. Commodities Exchanges (Comm. Exch. Auth.)

A. COMMISSION RATES

Minimum Commission Rate Fixing by Commodities Exchanges (response to invitation in 37 F.R. 4970):
4/14/72—Comments of the U.S. Dept. of Justice on minimum commission rate fixing by commodities exchanges.
7/ 7/72—Additional comments of the Dept. of Justice on minimum rate fixing by commodities exchanges.

X. Import Restrictions (Treasury, Tariff, Sec. of Agric, et al.)

A. ANTIDUMPING

1. Particular Products

Aluminum Ingots from Canada (Invest No. AA 1921-121):
7/17/73—Statement of Stephen Kilgriff, attorney, Antitrust Division, before the U.S. Tariff Commission in the matter of aluminum ingots from Canada, investigation No. AA1921-121 under the Antidumping Act of 1921, as amended.
8/ 1/73—Brief of the Antitrust Division of the Dept. of Justice.
Bleached hardwood kraft pulp from Canada (Tar. Comm. Inv. No. AA1921-105):
11/21/72—Statement of Stephen Kilgriff, attorney, Antitrust Division, before the U.S. Tariff Comm., concerning Northern Bleached hardwood kraft pulp from Canada (inv. no. AA1921-105).
12/12/72—Brief of the Antitrust Division of the Dept. of Justice.
Clear plate & clear float glass from Japan (Tar. Comm. Inv. No. AA1921, et al.):
No date —Statement of the Dept. of Justice.
Elemental Sulphur from Canada:
5/23/73—Submission of the Antitrust Division, U.S. Dept. of Justice.
Potassium Chloride from Canada (Tar. Comm. Inv. No. AA1921-58160):
3/ 3/70—Application to modify or revoke antidumping findings.
Power Transformers from France (Tar. Comm. Inv. No. AA1921-86/90):
4/ 5/72—Brief of the Dept. of Justice.
Primary lead metal from Australia (Tar. Comm. Inv. No. AA1921-134):
12/19/73—Brief of the Antritrust Division of the Dept. of Justice.
Primary lead metal from Canada (Tar. Comm. Inv. No. AA1921-135):
12/21/73—Brief of the Antitrust Division of the Dept. of Justice.
Sheet glass from West Germany, France & Italy (Tar. Comm. Inv. No. AA1921-78/80):
10/ 7/71—Statement of the U.S. Dept. of Justice.

2. General Proceedings

Customs, Commissioner of, 36 F.R. 7012 (suggested revisions to antidumping regulations):
6/14/71—Letter.
Treasury, 37 F.R. 7698 (proposed rule making):
6/19/72—Submission of the U.S. Dept. of Justice Treasury, 37 F.R. 9125, 11475 (Sales below cost of production).
7/ 5/72—Submission of the U.S. Dept. of Justice.

B. §337 TARIFF ACT

1. Particular Products

Ampicillin (Tar. Comm. Inv. No. 337-24):
12/29/70—Memorandum to the special trade representative on whether the president should issue a temporary exclusion order on ampicillin
3/31/71—Statement of the U.S. Dept. of Justice.
Meprobamate (Tar. Comm. Inv. No. 337-27):
9/20/71—Statement of the U.S. Dept. of Justice.

2. General Proceedings

Trade Staff Committee Sec. 337 Study:
1/12/73—Statement of the Dept. of Justice.

C. ESCAPE CLAUSE ACTIONS

Flat Glass (Tea-I-23):
11/15/71—Testimony of Dudley H. Chapman, Asst. Chief Foreign Commerce Section, Antitrust Division, Dept. of Justice before the Tariff Commission concerning the consolidated petitions of ASG Industries, Inc., C–E Glass, Libbey-Owens-Ford Co. & PPG Industries, Inc. under Sec. 351(d)(3) & 301(a) of the Trade Expansion Act of 1962, & Sec. 207.4 of Part 207 & subpart B of part 206 of the rules of practice and procedure of the U.S. Tariff Commission
12/ 8/71—Letter.

D. §232 TRADE EXPANSION ACT

Power Circuit Breakers, etc. (Rept. to OEP on GE application for investigation):
10/30/72—Interim Rept. of the Dept. of Justice on the application of GE under Sec. 232 of The Trade Expansion Act for an investigation of the effect on National Security of imports of EHV Power Circuit Breakers and EHV transformers & refractors.
4/27/73—Final Rept. of the Dept. of Justice on the application of GE under Sec. 232 of The Trade Expansion Act for an investigation of the effect on National Security of imports of EHV Power Circuit Breakers and EHV transformers & refractors.

E. OTHER IMPORT RESTRICTIONS

Tomatoes grown in Florida (Dept. of AG Docket No. AO–265–A3):
5/ 4/72—Application of Dept. of Justice for extension of time within which to file exceptions.

XI. CONSUMER PROTECTION (FTC)

A. CONSUMER INSTALLMENT SALES

Preservation of Buyers' Claims & defenses in consumer installment Sales (Proposed Trade Regulation):
9/13/71—Comments of the U.S. Dept. of Justice.

XII. NARCOTICES AND DANGEROUS DRUGS

A. REGISTRATION

Application Procedures under the Drug Abuse Prevention & Control Act of 1970:
5/17/74—Comments of the Antitrust Division of the Dept. of Justice.
Mallinckrodt Registration to produce Oxycodone (Docket No. 73–4):
4/ 5/73—Memorandum of law relating to the simplification of issues of the Bureau's hearing counsel.

Appendix 3

QUESTIONS SUBMITTED BY SENATOR RIBICOFF TO LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION, WITH RESPONSE

Question: The Ash Council noted that one of the major problems in agencies is in the area of agency review of proceedings. Specifically, it stated that review was slow and cumbersome, that the decisions of hearing examiners were rarely given weight, and that decisions of the Commission were likely to be uninformed because of the large case load. The Ash Council suggested two reforms.

One proposal was to place a time limit of 30 days between a preliminary decision by a hearing examiner and review of an agency head. At the end of this period, if the Commission has not acted, the hearing examiner's decision would automatically become the final agency position.

The second proposal was the creation of an Administrative court responsible only for reviewing the decisions of regulatory agencies.

Would you comment on the Council's analysis of the problem and its proposed solutions?

Answer: The speed with which any agency reviews administrative proceedings is—or certainly ought to be—a constant concern of agency administrators. But the casuses, duration, and cures for delay are as varied as the agencies themselves, and I am therefore doubtful whether any universal prescription such as

that offered by the Ash Council will produce the desired effect. The means best suited for eliminating delay at one agency may not work with another, for the simple reason that agencies differ rather substantially in their missions, customs, and scope of authority. The Federal Trade Commission, for example, in contrast to most of our sister agencies, is primarily a law-enforcement agency, and our rules of procedure are therefore different from what they might be if we were a rate-making or route-setting institution.

Let me now turn to the two specific remedies suggested by the Ash Council. The imposition of a 30-day time limit or any other arbitrary limit between the initial decision of the administrative law judge and final ruling by the Commission could speed up the process, but I believe that it would also probably produce bad decisions. In addition it could adversely affect the law-enforcement mission of the agency in that complex multirespondent cases would probably be avoided.

There are alternative remedies to the problem of delay, and I am pleased to report that the Commission has recently approved a number of substantial changes in our rules of procedure, designed to expedite the handling of litigation. The nature and significance of these and other changes are discussed in some recent remarks I delivered before the Bar Association of the District of Columbia, a copy of which I enclose.

The second proposal of the Ash Council, that calling for the creation of an Administrative Court responsible for reviewing decisions of the transportation, securities, and power agencies, was not, of course, intended to apply to decisions of the FTC. I would therefore yield to the opinions of those who have greater familiarity with these areas than I do.

Question: You suggest on the second page of your testimony that "some aspects of the regulatory system may need overhauling rather than tinkering or fine-tuning."

With respect to the FTC itself, are there specific, major changes that a new study commission should consider?

Answer: In stating that some aspects of the regulatory system may need "overhauling rather than tinkering or fine-tuning," I meant to suggest that we ought to be concerned not only with the way in which certain agencies carry out their statutory missions, but with the very nature of those missions themselves. The relevant question in some cases is not whether a particular kind of regulatory activity is done well, but whether it ought to be done at all. I think the time is ripe for a thorough re-examination of the costs and benefits of regulations. And, as I suggested during the oral testimony, I do not for a moment believe that the FTC ought to be immune from this process of re-examination. I happen to believe—although there are those who may disagree—that the basic statutory mandate of the FTC is essentially sound. To be sure, we have our difficulties. But I believe most of them can be—and are being—resolved by means of rule changes and managerial improvements of the sort described in the attached remarks.

Question: Earlier this month a House subcommittee chaired by Congressman Moss issued a report criticizing the FTC on a number of grounds, including lack of leadership. It claimed that the commissioners did not provide the staff with any policy directives because the commissioners cannot agree among themselves on what the goals and policies of the Commission should be. This is a charge that has been leveled about a number of regulatory agencies.

Do you think it is a problem?

How do you solve it, by changing the organization, or increasing the direction by Congress, or what?

Answer: Congress and this Committee are familiar with the difficulties inherent reaching a consensus when more than one person shares decision-making responsibility. As long as FTC policy and enforcement decisions are made by five Commissioners rather than one, I expect that debate and occasional disagreement will continue to be a fact of life at the Commission, as, I expect, Congress intended it to be. I personally believe that this is a healthy condition and that it is a fair tradeoff for the inevitable loss of efficiency. However, we have made a good deal of progress in improving decision-making processes at the Commission.

These changes, including programmed budgeting, cost-benefit analysis, computerized information retrieval and improved financial management and case-tracking are explained in greater detail in the address which I have attached.[1] In addition, the Commission now meets twice each year—at the beginning and at the midpoint of the fiscal year—to evaluate current programs, to assess new ones and to discuss with the staff the future directions of all of our law-enforcement activity.

[1] See p. 548.

ADDRESS BY LEWIS A. ENGMAN, CHAIRMAN, FEDERAL TRADE COMMISSION

One of the criticisms leveled at the Federal Trade Commission since time immemorial—or at least since 1915—is that the wheels of our justice grind so exceedingly slowly that the public is deprived of responsive resolution of issues and cases however fine our eventual product may be. Certainly there is some merit in that allegation. Over the years, the Commission has been plagued by the problem of delay. Its effects have been apparent at every stage of our process, from investigation to final adjudication.

It is more important to make good law than to make fast law. Nonetheless, the Commission's proceedings have, too often, had a Nuremberg quality, providing the public with more moral compensation than meaningful protection.

As many of you here will appreciate, some of these problems may be attributed to factors outside the Commission. The private bar has, to put it mildly, not been reluctant to take its full measure of due process. Still, much of the fault has been that of the Commission itself. Two years ago, Commissioner Dave Dennison addressed the problem of delay before this very group. His message at that time was that the Commission acknowledged its faults and was working to correct them. My message to you today is that during the time that has elapsed since Dave Dennison made his remarks, much progress has been made.

(Some of you may be bemused by the fact that it has taken us two years to have made some progress toward solving the problems of delay. You are not alone.)

That progress, which is the subject I want to address now, is the result of two separate developments. The first is reform of the Commission's internal rules of procedure. The second is improvement in the planning and management of the Commission's activities. I will deal with these developments in that order.

One of the things we have done in the past two years is to revitalize our Rules Committee in order to take a hard look at the problem of procedural incentives to delay. The Committee's work is not yet complete; but as a result of that Committee's recommendations, two rule changes have recently been adopted by the Commission.

The first rule change eliminates the Commission's cumbersome delay-inviting, so-called Part II procedures which have been in effect for the past 14 years. As many of you know, this procedure—unique to the FTC—provided for a 30-day period after the Commission had determined to issue a complaint during which the proposed respondent could agree to a settlement. This procedure was well intended. In fact, the point of Part II was to avert delay by forcing settlement, where possible, before rather than during litigation.

In practice, Part II turned out to be a time waster rather than a time saver. First, the 30-day period was extended so often by the Commission that its strictures became meaningless. Second, the Commission's stated firm intent not to utilize the consent order procedure during the adjudicative stage except in "exceptional and unusual circumstances" crumbled under the weight of practical considerations. In practice, because of the costly and time-consuming nature of litigation, the Commission continued to withdraw matters from adjudication whenever it became apparent that a satisfactory settlement was possible. The "exceptional and unusual" circumstance became the "ordinary and routine" disposition. Finally, when—in the interest of accountability and openness—the Commission decided a few years back to announce a complaint when it was "proposed" rather than waiting until the commencement of formal proceedings, the proposed respondent was deprived of one incentive to settle during Part II—the incentive to minimize publicity (regardless of how far and evenhanded that publicity might be).

The evidence is now overwhelming that the Part II procedure has served primarily to give respondents three shots at settling a case where before they had only two. It was slowing things down rather than speeding things up. During Fiscal Year 1974, the 27 matters that were eventually settled in Part II consumed an average of six months before the Commission accepted a matter and submitted it for public comment. Not only that, but 31 other matters which eventually proceeded to formal litigation did so only after having languished, fruitlessly, in Part II for an average of more than 5 months. Part II was clearly an idea whose time was costly.

I should emphasize that the elimination of this one stage from the Commission's procedures in no way affects the Commission's established practice of seeking public comment for 60 days prior to final issuance of a consent order.

Nor does it affect the Commission's policy of encouraging settlements and discouraging extensive litigation where an agreed-to order is in the public interest. Companies who wish to negotiate consent orders will have ample opportunity to do so during the investigative stage. In addition, in appropriate circumstances, the Commission will continue to consider consent orders which are negotiated between complaint counsel and respondent after a formal complaint has issued.

The Commission will be publishing in the near future revised rules clarifying these new procedures.

The second major procedural change which the Commission has recently approved is the elimination of the so-called *All-State* doctrine. This doctrine was a Commission requirement that the staff complete virtually all of its investigatory work and present a *prima facie* case prior to Commission consideration of a complaint. Though the rule sprang from good intentions, it was a source of considerable delay since the staff frequently found itself investing large amounts of time and effort assembling evidence during an investigation only to have the respondent settle short of adjudication.

No doubt, in some instances, the large amount of evidence compiled by the staff was responsible for the respondent's willingness to settle. But in some cases, the staff work may have been superfluous, for the respondent might have agreed to the same settlement without it.

Elimination of the Commission's *All-State* rule will restore flexibility to our procedures by allowing each complaint to be examined on its own merits as to whether or not there is "reason to believe" a law violation has occurred; delay may be avoided in some cases by virtue of the fact that the matter may be settled by consent order before the evidence-gathering process has been completed by the staff. In addition, such evidence-gathering that still may be necessary after a complaint issues may take place simultaneously with respondent's discovery rather than preceding it.

In addition to reviewing our rules with an eye to cutting back on delay, the Commission, in the last year and a half, has made at least four basic changes in the way we are planning and managing our operations.

To begin with, we have introduced a concept of Commission programs under which the Commission's activities, for purposes of planning and budgeting, are grouped according to specific objectives. For the first time, we are now able to tell the Congress and the public that the Commission is devoting "X" percentage of its effort to an investigation of competition in the energy area or competition in the food industry and "Y" percentage of its effort to an investigation in some other area. Just as important, for the first time, the Commission itself knows how it is matching up its resources with its objectives. Under our old management system, we could tell you what we were spending on salaries or how much money was being spent for travel or for postage stamps, but there was no way to relate these random facts to substantive Commission activities and accomplishments.

Now, for the first time, as part of the 1976 budget which will be submitted to Congress in the near future, we will be able to tell the public not only how much we propose to spend for gasoline but also how much we intend to spend to enforce honest gasoline advertising.

Which brings me to a second major change in the way the Commission is conducting business and that is our current effort to apply cost/benefit analysis. Charting the flow of resources towards specific objectives—which our program planning and budgeting enables us to do—is only part of intelligent management. In a world of finite resources and seemingly infinite problems, it is also essential that the Commission be able to identify those areas in which our efforts will yield the highest returns. This is true as it applies to the selection of broad objectives and it is equally true as it applies to selection of the individual cases by which we choose to further those objectives.

This will not be easy. Although we can predict with some degree of certainty the probable cost of pursuing a particular investigation or case, it is extremely difficult in most cases to quantify with precision the probable impact of Commission success in a given endeavor. It is difficult because of the paucity of hard economic data. And it is difficult because of imponderables such as the effect of deterrence. How many anticompetitive mergers are not consummated because of *Kennecott*? How many unsubstantiated advertising claims are never made because of *Pfizer*? As practicing lawyers, you can answer those questions better than I.

Not all cases produce easily identifiable benefits. And questions of probable impact are not easy to answer. In fact, sometimes it is hard to identify the right questions to ask. Until recently, the Commission did not believe it necessary to raise such questions, much less to attempt to answer them. Happily, that view belongs to the past.

The third notable change in the management of the Commission today is our new computerized information retrieval and case tracking system. In the old days—not to be confused with the good old days—cases would disappear into the bureaucratic maw and become lodged in the various nooks and crannies of the Commission's digestive tract until one fine day—often years after meaningful action was possible—they would re-emerge as proposed complaints. To illustrate the rudimentary nature of our old system, I was told that when one of our supervising attorneys first came on board and asked for a survey of pending cases, he was handed a shoe box full of 5 x 8 cards. All that has changed. Today cases are programmed to move past each checkpoint in the system on a day certain. If it doesn't happen, the computer kicks it out and we find out what the delay is. I won't say the computer has made us perfect. But I will say that it promises to be a useful purgative for what was once a very clogged system.

Finally, the Commission has made an important change in its control of expenditures within a given program. In the past, the purse strings were tightly held at the top. If a project manager wanted to send an investigator to Cincinnati, he could not do so without clearance from above. Our operational managers had responsibility without authority. It was an arrangement which was harmful not only to efficiency but to morale. It is an arrangement which no longer exists. Within the general constraints of the overall allocation to a project, project managers today have broad discretion as to how funds are used. With that authority, we have also achieved accountability.

All of these administrative changes are recent and much refinement will be necessary. But I believe they have contributed significantly to a more effective Commission. In addition to facilitating intelligent planning reflecting current priorities, they have given the Commission the means to ensure that plans become translated into performance while they are still relevant. In sum, these tools will enable us to give our activities sharper focus, to make more rational case selection and to process those cases faster and with greater effect.

Already we have some tangible results. The Bureau of Competition, which had a head start on the implementation of a computerized case management system, has dramatically reduced its backlog to a manageable number of pending investigations. Over the past twenty months, the Bureau has cut from 200 to less than eighty the number of outstanding investigations without diluting either the number or, in my judgment, the quality of proposed cases.

In addition, the average time for the processing of merger matters, for example, through investigation to complaint, has been cut in half.

I hope that we can match these improvements with further improvements in the year ahead. This week, for the first time in its history, the Commission will conduct a "mid-year review" of its activity. This session is in addition to the normal yearly budget exercise. We will look at where we have come in the first half of Fiscal Year 1975 and match that progress against what was promised. We will re-examine the priorities which seemed appropriate six months ago to see if they hold up today. If changes are warranted, changes will be made.

The procedural reforms and improved management and priority selection efforts I have discussed today have as their single purpose the sharpening of the Commission's tools for doing the public's business. They have been developed and implemented through the efforts of the entire staff. They represent institutional changes—changes in the way we look at ourselves and in the way we do business. They are not the stuff of which banner headlines are made but they are the hard news behind the headlines.

In short, their success can only be measured by the success of the Commission in effectuating its Congressional mandate. By that standard. I am optimistic that the future will prove our efforts to have been worthwhile.

○