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Folder List

Box Number	Folder Number	Document Date	Document Type	Document Description
18	9	N.D.	Other Document	Handwritten note RE: memo pads received from Larry Dunn. 1 pg.
18	9	N.D.	Report	The Consumer and the Federal Trade Commission critique of the consumer protection record of the FTC by Cox, Fellmeth and Schulz pages 64-89 and 101-140. 66 pgs.

JDE - This is
list of those
who received
memo pads
which I got
from Larry
Quam this
morning.
JE

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

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

4. Failure To Seek Effective Resources and Authority

A. The Need

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

There is little doubt that the Commission needs to multiply its staff and budget many times in order to enforce its consumer-protection statutes adequately. There should be no need to demonstrate, for example, that an agency devoting perhaps half* of its total of 1200 staff members and annual budget of a little more than $14,000,000 to consumer protection cannot hope to adequately police the merchandising activities of hundreds of thousands of United States businesses. To take a relatively trivial example, Charles A. Sweeny, until his recent death Program Review Officer at the FTC, said in an interview that home improvement frauds alone are so widespread that to stop them the FTC would have to spend an amount equal to its entire present "deceptive-practices" budget.

Another random statistic which is suggestive of the magnitude of consumer problems is the following figure relating to the incidence of mail fraud in the United States. Speaking at a Seminar on Consumer Protection sponsored by the Los Angeles Federal Executive Board, 17-19 October 1967, p. 58, Mr. C.J. Lerable, a postal inspector from Hollywood stated that

> in 1966 the Postal Inspectors conducted . . . investigations which led to 13,000 arrests. . . (emphasis supplied)

*For purposes of this comparison, it is interesting to note that one of the FTC's traditional concerns in the area of deceptive practices has been retail lotteries. Cf. later discussion of its present endless, actionless study of grocery store and gas station prize games.

B. Failure to Seek Adequate Manpower and Money

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

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

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

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

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

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

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

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

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

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

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

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

Personnel Increases

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

*Note that other indices of appropriate FTC growth, including the merger incidence rate, the growth of advertizing, and the receipt of applications from the public for complaint generally far outstrip the GNP in expansion over this six year period.

C. Failure to Seek Adequate Legislative Authority

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

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

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

The fact is, however, that the Commission has failed to press Congress vigorously for broader powers to seek the imposition of criminal penalties for violations of the deceptive practices

language of the FTC ACT. In fact, the Chairman has recently gone on record specifically as opposing such powers, according to testimony given this year on a Senate consumer deception bill sponsored by Senator Magnuson.

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

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

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

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

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* The 1961, 1962 and 1963 Reports do include a related but greatly inferior proposal to enact a law giving the Commission power to issue temporary cease and desist orders pending the determination of agency proceedings. Even this proposal is lacking in the next three years' Reports. On the Chairman's wavering support of the 1962 proposal, consider the following statement about it made by him in the 1963 Senate Appropriations Hearings at p. 972.

(In answer to a question about delay and consequent harm to business competitors . . .)

> You recall the President endorsed this piece of legislation, not once but twice. . . . It is controversial, sir. I think any time any agency or any arm of the Government is cloaked with any kind of temporary injunction powers, it should only be used in the most extraordinary circumstances and with assurance that due process and safeguards are in the law.

FTC LEGISLATIVE PROPOSALS - 1961 - 1968

A. Number of proposals made by year:

1961	1962	1963	1964	1965	1966	1967	1968
4(2)	2(1)	3(1)	4(1)	4(1)	4(1)	5(3)	4*(4)**

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* Six proposals are claimed in 1968, but two involve statements to the effect that the FTC has "no specific proposals" on a particular topic.

** The number in parentheses designate proposals involving consumer interests, not including textile and fur matters, with the exception of Flammable Fabrics.

B. Nature of Deceptive Practice Proposals and Action Thereon:

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

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* The Commission itself had earlier interpreted this Act not to cover blankets! See discussion below on this incident in the context of interest-group pressure on the agency.

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

(1) On drug legislation:

> The Commission is aware that the problems of drug pricing are currently under consideration by Congress . . .. The Commission has not had any opportunity to study the question[s] . . ..
>
> 'The Commission cannot at this time reasonably propose to Congress the adoption of legislation on the subjects . . . without accompanying such proposals with careful memorandum analyzing in depth the need for such measures . . ..
>
> Statement by the Commission on its Legislative Proposals 1. (hereinafter "Commission Statement").

(2) On statutory product warranties:

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

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

(3) Hazardous Household Products:

> On May 31, 1967, the Commission . . . directed its staff to undertake an investigation of electric shock hazards in household electric appliances . . .
>
> On October 3, 1967 the Commission . . . directed the staff to complete its overall investigation . . . and to report its recommendations to the Commission.
>
> It would be irresponsible for the Commission, therefore, at this time to make any recommendations . . ..
>
> . . . The Commission['s] . . . own studies have not yet been completed.

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

TECHNIQUES OF MASKING FAILURES

1. Commission Misrepresentations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

After listening to one of Mr. Dixon's speeches to a trade association, Sidney Margolius, a respected author and columnist on consumer subjects and a member of the

President's National Commission for Product Safety, wrote the following letter which indicates the tenor of the Chairman's attitude toward the groups which should be its allies.

April 5, 1966

Mr. Paul Rand Dixon
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Dixon:

I am dismayed by the speech you gave before the Kansas City Ad Club. I am concerned about your effort to minimize high pressure selling, and to refer to people seeking legal protection against abuses in the marketplace as "zealots", and your claim that it is only a few businessmen who engage in high pressure methods.

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

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

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

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

I could go on, about whether it's "few" as you maintain, or many. But it seems to me that

you could have made your points about "self restraint" without exaggerating about "zealots" for more and bigger government trumpeting the misdeeds of the few as an argument for more central authority".

Sincerely,

Sidney Margolius

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

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

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

2. Secrecy

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

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

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

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

The Analysis evaluates the implementing regulations of the various agencies required to publish them, focusing on

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* Information which may -- but need not -- be withheld under the act must fall within one of . . . nine specific exemptions are paralleled in the section of the FTC's Rules covering confidential information. See discussion below.

"the degree to which they implement the law in accordance with the intent of the Congress." (Analysis 2). It concluded that

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

It found that the FTC's regulations are among the latter -- and that the agency has given no indication that it is in the process of revising the regulations. Says the Analysis,

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

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

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

(a) Public documents. Sec. 4.9 of the Commission's Rules of Practice designates specific documents as "public.", including annual report, descriptions of FTC organization, etc., cease and desist orders, industry guides, "texts or

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* Technically, the FOI Act is an amendment to Section 30 of the Administrative Procedure Act, which formerly read, in pertinent part

> (c) ...matters of official record shall...be made available to persons properly and directly concerned except information held confidential for good cause shown. (Emphasis supplied)

digests of selected advisory opinions" (emphasis supplied), rules, reports of FTC decisions in adjudicative proceedings (including "initial decisions" of hearing examiners) a record of votes of Commission members on every proceeding, pleadings, motions, orders, transcripts of hearings, exhibits, etc. in adjudicative and court proceedings, published staff and Commission reports, agreements containing consent cease and desist orders, news releaases, copies of laws, approved compliance reports and assurances of voluntary compliance (except where, upon an application showing proper justification, the party filing a compliance report or assurance may have granted his request that it be classified as confidential). The project found several of the above categories of documents to be less public in practice than on paper. Advisory opinions are never printed in full text, for example. Only digests are made public, with no identifying details or background information. This policy is objectionable, for it precludes effective public criticism of important Commission decisions for under the agency's rules, Sec. 1.3, Advisory Opinions are binding on the Commission until revoked. The Commission keeps secret the identity of applicants for advisory opinions because, it says, guaranteed confidentiality is necessary to "attract" businessmen into the program. Now, there are several responses to this. One is that government must not be allowed to engage in secret lawmaking, especially where, as here, it is possible to take financial or political advantage of secret dealings. And to compound the problem, secrecy prevents members of the public who might seek revocation of an advisory opinion because of its background, contents or lack of compliance there-with from knowing about it. This is particularly serious since the checking on such matters. See section on compliance.

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

The FTC frequently explains its reasons for refusing to divulge the identity of and information about applicants in terms of protecting trade secrets, etc. If this were really the case then information should be withheld only in cases in which individual business entities seek advice, not where industry-wide trade associations apply for opinions -- since presumably trade associations, generally interested in self-regulation, have little need to keep information secret. Project requests, however, for access to full texts of advisory opinions given to trade associations were consistently denied, except that one opinion --- given to the National Association of Retail Druggists -- was finally made available to us, but only

> because we [the Commission] have been informed that the requesting party published [the opinion] in its Journal at the time of issuance. (Letter from Chairman Dixon to John Schul z, October 25, 1968)**

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* A grand total of 260 Advisory Opinions were issued between Aug. 1964 and June 25, 1968 -- or about 65 per year.

** This constituted the Commission's reply to the project's formal request for information under Sec. 4.11 of the Commission's Rules. For more on the fate of this request see discussion below.

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

Finally, if protection of trade secrets is a central concern of advisory opinion confidentiality, there should be some sort of statute of limitations on secrecy. There is none, as we were informed by staff in the Division of Advisory Opinions as well as the Chairman himself.

Assurances of voluntary compliance and compliance reports, while generally available to the public in some sense of the word (we were assured by staff interviewed that very few of these documents are held confidential), in fact provide minimal disclosure of information. The agency achieves minimal disclosure-in-fact of these documents in two ways. First, the only text it permits to be made public is extremely general and conclusory--public assurances of voluntary compliance and compliance reports both contain only language like "X.Y.Z. has ceased to carry on its business in the manner disapproved of and will not do so again." All detailed communications from challenged businessmen--the real meat of such cases--are held absolutely confidential (we requested and were refused them by everyone up to and including the Chairman). Second, to say that these texts are made "public" is to stretch the word: a single copy of each is placed in ring-binders in the docket room of the agency's central office building in Washington, D.C. But no copies are made or distributed to anyone and no news

releases on them are issued.* In other words, there is little likelihood that the public will ever learn of a businessman's transgression. The handling of these records provides an example of partial secrecy at the FTC. As such, it permits the agency to proclaim (when challenged) that such information is public while effectively keeping it from the general public.

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

A final example of limited publicity is the Commission's handling of the transcripts of such important "public hearings" as those held earlier this fall on consumer protection. The normal practice (which will be followed in this case too, according to Chairman Dixon) is for the Commission to purchase one copy of a hearing transcript and place it in the Docket Room of its central office in Washington D.C..* Of course, any interested

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* Except that, in the case of assurances, a release appears every few months which summarizes very briefly all assurances accepted in the previous few months. These summaries typically tell only how many assurances have been received -- usually 80 - 90 -- then give about three very brief examples of problems involved, without identifying any respondent.

** In one earlier case, the tire hearings of Jan. 1965, a single additional copy was made available by the agency because of extreme public pressure at its Chicago field office. Chairman Dixon refused to print the hearing record, saying that the FTC's contract with Ward & Paul precluded it. This illustrates the Chairman's talent in turning consensual contracts, entered into at his direction, into immutable force majeure.

(affluent) citizen can purchase his own copy of any hearing transcript from Ward & Paul, stenographers, at only 50¢ a page.

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

> §4.11 Confidential Information.
> (a) The records of the Commission which are exempt from availability for public inspection . . . include
> (1) Records related solely to the internal personnel rules and practices of the Commission
> (2) Trade secrets and names of customers and commercial or financial information obtained from any person which is customarily privileged or which is expressly received by the Commission in confidence, inculding . . . reports of compliance and assurances of voluntary compliance classified as confidential pursuant to §4.9(f);*
> (3) Official minutes of Commission meetings;
> (4) Interagency or intra-agency memorandums which would not be available by law to a private party in litigation with the Commission;
> (5) Personnel and medical files and similar files which would constitute a clearly unwarranted invasion of privacy;
> (b) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party . . .; . . .
> (c) . . . All other records and information of the Commission not clearly identifiable not listed in the current index of the public records of the Commission also constitute a part of its confidential records . . .

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

Trade secrets, commercial and financial information, etc.

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

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* See discussion of these above.

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

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

He then repeated his request, stressing the scholarly nature of his interest:*

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

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

> [P]arties who approach the agency in this posture [voluntarily] are entitled to an even greater degree of protection than those against whom it has been necessary to invoke mandatory procedures for no law compels them to come in and make the disclosures they make. Instead

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* Professor Davis is a foremost authority on administrative law, the author of a four-volume treatise on the subject.

** But making available a larger sample of digests and some statistics.

> they do so of their own free will in order to avail themselves of the services which the agency affords, secure in the knowledge that the secrets which they voluntarily unfold will be held in strictest confidence by the public agency . . ..
>
> Commission letter to Davis, Nov. 27, 1967, 1-z .

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

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

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

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

Once again, Commissioner Elman disagreed, stating that he

> does not regard Professor Davis' letter . . . as carrying any 'threats'. A citizen has the right to bring matters of public concern to the attention of interested committees of Congress. No government agency should feel threatened by such a proposed course of action.
>
> Id. 3.

THE CORE OF THE PROBLEM: PERSONNEL

1. Partisan Political Activity

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

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

As a result of this extremely partisan policy, fourteen highly experienced career FTC men left the commission almost

* Division chiefs were removed under the cover of a general reorganization of the Commission. A similar reoganization took place in 1952 when the Republican came in, but was initiated and planned from outside the agency. Chairman Dixon, however, was the chief architect of the 1961 reorganization.

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

Of the nearly five hundred lawyers working for the Commission only about forty are now Republicans with approximately twenty of these being located in the central office. At the present time only one Republican holds a position of any prominence in the operating bureaus of the FTC: Mr. Charles Moore, who has recently succeeded Sam Williams as Chief of the Bureau of Field Operations. Mr. Moore is a Republican, but in his case there is the extenuating factor of his coming from Johnson City, Tennessee. See p.170 ,below. The extreme partisanship of the higher staff combined with the control they wield over the selection and promotion process has made these results inevitable. See p.180 , below.

In addition to permitting his staff to violate both the spirit and the letter of the Civil Service Law in promotion and hiring practices, Chairman Dixon, himself, has violated the Hatch Act. Highly reliable sources at the FTC revealed to this project that until recently Mr. Dixon was notorious for dunning the agency's personnel down to the GS-14 level for political contributions. This group includes approximately one quarter of the more than 450 lawyers working in the central office in Washington. The chief collector of dues used to be Fletcher Cohn who holds the title of Assistant General

Counsel for Legislation with a salary of $24,477 per year. Mr. Dixon reputation with the democratic fund raisers is reported to be excellent. It is also known in the high echelons of the Commission that Chairman Dixon is openly proud of his fund raising, and well he might be. His methods would make any chairman of an alumni fund raising committee jealous. Members of the staff have testified to receiving solicitation cards from the Democratic National Committee with a code number in the corner which everyone involved knew would indicate to Chairman Dixon who gave and who did not. This outrageous method of soliciation was not well received by those who were being coerced to give against their will. Eventually, the threat of action by the Justice department under the Hatch act forced Chairman Dixon to give up this political exploitation of his employees. He now uses more discreet methds to do his political fund raising inside the FTC. Now, for example, he personally asks his subordinates to buy $100-a-plate tickets to Democratic fund raising dinners. Thus Chairman Dixon persists in playing partisan politics, while neglecting his responsibilities as a public servant.

2. The FTC and Congress

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

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

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

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

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

fact and the unusually high supergrade of GS-16 with a salary of $25,675 occupied by Mr. Shea. Their report stated:

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

Other officers in high positions at the FTC have political contacts or relations similar to Mr. Shea's. John W. Brookfield, (GS-15, $22,695) the Chief of the Division of Food and Drug Advertising in the Bureau of Deceptive Practices, is the nephew of the former Chairman of the House Rules Committee, Rep. Howard W. Smith. Fletcher Cohn (GS-14, $24,477) is a product of the old Memphis political machine of Boss Crump and was retired to the FTC after failing to win a third term to the Tennessee legislature. According to Richard Harwood of The Washington Post, Mr. Cohn is "the FTC's lobbyist and Ambassador to Capitol Hill". Washington Post, March 27, 1966, p. E1. Cecil G. Miles (GS-17, $26,960) is a close acquaintance of his fellow Arkansan, Representative Wilbur D. Mills and also Bureau Chief of the Bureau of Restraint of Trade. Michael J. Vitale (GS-14, $24,477) from Newark, N.J. is sponsored by his Congressman, Rep. Rodino, and at the present time is a Division Chief in the Bureau of Deceptive Practices. And the list goes on.

Perhaps the Congressman with the most influence in the decisions of the FTC is Rep. Joe Evins of Tennessee, who is also Chairman of the House Appropriations subcommittee which approves the FTC's budget. As one staff member of the FTC

put it, "Ambitious staff attorneys at the FTC who are from Tennessee have to know Joe Evins." Thus, when a political friend, Judge Casto C. Geer, desired a job in Tennessee near his home town, the FTC was obliging and set up an office in Oakridge, Tennessee, although the Commission doesn't have offices in such urban areas as Detroit and Philadelphia.

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

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

Unseen influences from other Congressmen, however, have had other effects. Sometimes they amount simply to the misallocation of scarce resources for a small investigation in a Congressman's home district. In other cases, such as

the quiet opening of the Oak Ridge Office to accomodate Rep. Evins' political crony, we have a gross misallocation of public funds. Most horrifying of all, however, were those cases when the influence of a Congressman actually presents a danger to human life. Such was the case with flammable baby blankets when, in the 1950's, Rep. Albert Thomas of Texas was occupying Rep. Joe Evins' present Chairmanship of the House Sub-committee on Appropriations for Independent Agencies. Representative Thomas, on behalf of Texas cotton interests, influenced the Commission to rule that baby blankets were not covered by the flammable fabrics law. Baby blankets, the Commission said, did not qualify as "clothing".

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

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

3. The Collective Background of the FTC

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

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

The Republican years from 1952 to 1960, were lean years for this group at the FTC, but they managed to survive, and, with a democratic administration and Mr. Dixon's appointment, things were back to normal. Most of the top staff now at the Commission either came during the period of the "Tennessee gang" or are club house friends. As one disgruntled observer stated to a Wall Street Journal reporter five years ago, "The atmosphere of the agency was like a southern county courthouse, and it is again." July 23, 1963, p 20. From the project's

* Commissioner Davis distinquished himself by his annual gift to Congress of appropriated funds which had not been utilized. This parsimonious spirit and desire to please Congress with economy is a dubious tradition which continues to manifest itself in Chairman Dixon's testimony to Congress for annual appropriations. See p.

observations the situation has not changed since 1963.

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

> provide for a comprehensive study of the use of the computer in order that it may be brought into full productive use in providing:
>
> 1. Management data essential to manpower control, utilization, and planning.
> 2. Program resource data which will result in either increased productivity or reduced manpower requirements. Evaluation of Personnel Management, 1965, p 9. (Civil Service Report)

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

Priority planning, selection of cases to investigate issuance of complaints, and the tactics and legal weaponry to be used in each case is essentially decided by the staff. Chairman Dixon (Nashville, Tennessee, pop. 170,874) is given by law general responsibility for overseeing and planning the work of the staff. His chief-of-staff is the Executive Director, John Wheelock (Spring City, Tennessee, pop. under 2,500), but the assistant to the Chairman, John Buffington (Castleberry, Alabama, pop. under 2,500) acts as Chairman Dixon's liaison man and watchdog for the work of the Executive Director. Beneath Wheelock are the six Bureau Chiefs. The Bureau of Economics is the only operating bureau which does not hire lawyers for substantially all its staff. It is presently headed by Harrison F. Houghton (Des Moines, Iowa, pop. 282,902) whose appointment has already been discussed. See p. 108. The following is a list of the other five bureau chiefs and their native towns:

> Cecil G Miles (Prairie County, Arkansas, pop. of county 10,515) Bureau of Restraint of Trade.
>
> Frank Hale (Madisonville, Texas, pop. under 2,500) Bureau of Deceptive Practices.

Chalmers D. Yarley (Walterboro, South Carolina, pop. 5,417) Bureau of Industry Guidance.

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

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

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

protection of the poor consumer

This common background of policy making personnel perhaps explains why the Commission did not start to police the exploitation of the ghetto poor of the D.C. area until late 1965, and then only because of constant prodding by Sen. Warren Magnuson (Seattle, Washington) and Commissioner Mary Jones (New York, New York). Even the FTC's efforts since 1965 in the D.C. project have been so small and half-hearted that it can only be called a showcase for publicity purposes. One finds in this case another example of what this report labels "scoping", see p. 4-1 . The D.C. Project opened 98 investigations over a period of three years. From these, 27 formal complaints were issued with only 19 final orders being entered. Of the final orders only seven were accepted as adequate with the others still "under investigation" FTC Report on District of Columbia Consumer Protection Program P. 1 (1968)

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

> Of the 15 final orders for which compliance orders have become due, seven reports of compliance have been accepted by the Commission. Four respondents did not submit any compliance reports and three respondents submitted inadequate reports. All seven cases were accordingly sent into the field for investigation....
> ... the Commission has put itself in a position whereby it can state unequivocally ... that if violations are going on they are known to the Commission and are under active investigation. D.C. Report, p. 12.

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

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

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

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

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

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*This practice was not an exclusive feature of the D.C. riots. According to Sen. Magnuson, "A number of witnesses called before the

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

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

iring from
inority
roups

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

PROPORTION OF NEGROES TO ALL EMPLOYEES
Federal Trade Commission

	GS 9-18	GS 5-8	GS 1-4
June, 1965	0.98%(6/611)	11.0%(33/299)	24.6%(51/207)
June, 1966	1.28% (7/547)	9.5% (25/263)	34.5% (69/200)
November, 1967	0.78% (5/638)	12.0% (33/274)	42.6% (104/244)

As these figures show, the FTC has not been averse to hiring Negroes, but only "in their place," i.e. the lowest GS 1-4 positions.

Governor's Committee investigating the Watts riots did testify that... the prime targets of violence... were the establishments of merchants who engaged in sharp selling practices." And again, "During the catastrophic Detroit riots in June 1967, arsonists... systematically burned stores known to engage in sharp selling and credit practices." The Dark Side of the Market Place, p. 57.

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

In the same report, the Civil Service Commission argued:

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

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

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

The FTC should provide:

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

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

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

problems of the higher staff

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

> Paul Rand Dixon's chief failure ... seems to be that he's been with the Federal Trade Commission far too long. Dixon is so accustomed to doing what he's always done that he finds it difficult to conceive of doing anything very different....
>
> He simply lacks the clarity of conception necessary to give the FTC broad new objectives, as well as the tenacity of spirit needed to build a staff equal to achieving them. Washingtonian, Oct. 1968, p. 82.

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

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

Most young attorneys at the Commission, and a few in high GS levels, are critical of the personnel in the General

Counsel's Office. "It is the office of sinecures," one remarked. And another commented, "there is alot of 'deadwood' on the fifth floor."*

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

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*The fifth floor houses the entire Office of the General Counsel, Chairman Dixon's office, Commissionor MacIntyre's office, and the office of the Executive Director.

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

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

> - A number of key positions have overlapping, duplicative, conflicting assignments of duties and responsibilities.
> - Positions are assigned grade-influencing duties that are not being performed.
> - Attorneys are not assigned work commensurate with their grade level.
> - The head of the agency is not meeting those responsibilities placed upon him by the Classification Act of 1949. Civil Service Report, p. 7.

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

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* GS-10 rank is not applicable to attorneys.

4. Hiring of New Attorneys

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

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

The myth of going after the best available legal talent has been dispelled by Chairman Dixon who has been quoted as saying: "Given

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*Much to his credit, the Director of Personnel is again attempting to minimize the effect of the Bureau Chiefs by using mid-level attorneys instead of Bureau Chiefs for a number of the interviews. The Bureau Chiefs, of course, still have a veto over the offers made for their bureaus, but now it is more difficult for them to raise objections to particular applicants on the basis of an interview. Already, however, a number of the higher-ups at the FTC have objected to this innovation and it will probably go the way of the rating sheet.

a choice between a really bright man, and one who is merely good, take the good man. He'll stay longer." Advertising Age, Nov. 20, 1961, p. 113. Chairman Dixon's well-known prejudice against "Ivy League lawyers" is deeply rooted in southern populist tradition, which is the background of the Commission's ruling clique.* As a result, graduates of prestigious law schools such as Harvard and Pennsylvania, which have very capable anti-trust professors, do badly at the FTC when compared to law schools such as Kentucky and Tennessee. Over the past two years eleven Harvard graduates from the classes of '67 and '68 applied to the FTC and only four were offered appointments. From the University of Pennsylvania, only three of nine applicants were given offers, while at Kentucky it was nine out of eleven and at Tennessee six out of sixteen. It is possible, of course, that on an individual basis the applicants from the latter schools were better than those of the former. The fact is, however, that the system is geared to exclude able young law students who are in the middle of their class at high grade law schools. Although LSAT scores, the only common denominator available, are asked for, they are generally ignored in the admission process. This leaves interviews and law school grades as the basis for choosing attorneys.

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

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*The "eastern conspiracy" of bankers and lawyers has played a prominent role in populist demonology. It is unfortunate that the

Sectionalism and school ties do, however, also play an important role in the acceptance policy of the FTC, as the charts and discussion in Appendix 13 (p.169) demonstrate. These charts were distilled from computerized lists of applicants and offers of appointment which give home state, law school, LSAT score, and, for 1968 graduates, an honors code number which indicates a combination of class standing and extra-curricular activities.

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

situation of the lower staff

Thus we find that for the most part the FTC Bureau Chiefs, either consciously or unconsciously, seek their own image among young lawyers. The process of absorption into the hierarchy, however, only begins here. Within four years 80% of the new lawyers leave the FTC. Their reasons for leaving vary from a better paying job to complete disgust with

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present lethargy of the Commission has drained from its members the intense hatred of monopoly which is one of the good characteristics of southern populism.

the agency. Altogether the project talked with five young attorneys who had either left or were about to leave the Commission. Three were working for law firms in Washington, one was at the Justice Department and one was getting ready to leave the Commission. A brief conversation was held with a sixth, but he subsequently balked at a full interview fearing recriminations in the form of bad recommendations from the FTC. He too was in the process of quitting the FTC.

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

A lawyer who had been at the FTC in the late 1950's and early 1960's stated that the aggressive trial approach of Chairman Kintner was ideal for young lawyers who wanted to take responsibility. He calculated that he had tried 19 cases in his first two and a half years because his boss was a lazy man who liked nothing better than to shift his workload onto willing young attorneys. After those exciting first years, however, things slowed down under Dixon's voluntary compliance approach. The younger lawyers "got pissed," he said, when the higher-ups started to let cases they had prepared for trial sit around for months without any action. This lawyer stated that he had once prepared a memorandum recommending complaint and that 18 months later it had not left his boss' office.

Another lawyer who had been at the FTC during the same period of transition said that there had been a lot of "esprit de corps" in his bureau (Restraint of Trade), but that it had diminished by 1963 because so few cases were being tried. He explained that the young trial lawyers love to fight big companies, but that the hierarchy of the FTC normally ends up going after the little guy at the request of Congressmen. Another frequent complaint -- the existence of too many chiefs interfering with the real work being done by the young attorneys -- has already been mentioned (see p. 7).

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

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

(b) the not so smart lawyers who need the security of the FTC. Most of the career men at the FTC fall into the second category.* An interview with one of the few in the first category showed him to be a frustrated man, working under comparatively inept superiors, and doing his work, now, with more professional pride than idealism.

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

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*According to Robert Sherwood, the Director of Personnel, one of the most important factors in the number of applications to the FTC is the state of the economy. More attorneys apply to the FTC in hard times than in boom times, apparently because of the economic security offered by a government job.

5. Need for Professional Personnel other than Attorneys

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

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

A second example of lack of technical expertise and its consequences is the well known "odometer" case, referred to earlier in our discussion of excessive delay. Briefly, the salient feature of the case is that for some thirty years the FTC failed to act, although it knew that automobile odometers (mileage-registering devices) consistently over-registered to the benefit of auto companies (and car rental concerns) and detriment of car owners. It turns out that the major reason for this delay was that the FTC was duped by an excuse perennially put forth by the auto manufacturers: they claimed they

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* Note: Dr. Moulton's statement is substantiated by FTC Budget Control Records, June 30, 1968, which show all professional personnel in the Division of Food and Drug Advertising (15) to be attorneys, see appendix 15.

had to make odometers register high because state highway officials demanded that they make speedometers register high (to diminish actual driving speeds) and that the two were inseparably connected. Well, the fact of the matter is that odometer and speedometer are not connected, as any mechanical engineer would have known. (Since they work by different mechanisms, the odometer by gears, the speedometer by magnetic induction, it is perfectly feasible to adjust one without affecting the other).

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

FINDINGS AND RECOMMENDATIONS

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

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

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

To remedy this situation, the Commission must begin to investigate consumer problems as such, making maximum use of its compulsory information gathering powers. It should, for

example, focus its attacks on specific pressing problems by mobilizing task - force - scale efforts similar to the recent "Special Project" in Washington D.C. In connection therewith, it should hold frequent public hearings, publishing reports based on them, and pressure other government agencies, such as the Departments of Defense and Agriculture, to divulge information of interest to consumers.

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

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

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

education can also help.

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

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

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

Finally, the FTC fails to perceive and take advantage of the enforcement potential of its most extensive authority -- the power to require disclosure of information and publish it

in the public interest.

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

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

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

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

5/ The Commission has not vigorously pressed for increased statutory authority either across the board or in specific consumer problem areas. In general, it needs authority to seek preliminary injunctions and criminal penalties in cases involving S 5 of the FTC Act. It should also seek changes in

the Act's language regulating its jurisdiction to make it clear that it has power to deal with intrastate matters. In areas of specific problems the Commission should seek various appropriate enforcement tools on the analogy of the SEC's power to stop stock brokers from trading and the FDA's authority to seize offending drugs in condemnation proceedings.

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

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

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

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

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

concrete and informative.

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

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

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

With greater centralization of agency power and authority go commensurately higher levels of responsibility. As the tenure of Mr. Dixon's chairmanship enters its ninth year, more and more of the Commissions problems and defaults are attributable to his failures of leadership and not to the legacy of his predecessors. Unlike his predecessors, Mr. Dixon could have been the beneficiary of the recent upsurge in the consumer movement with its growing constituency at many levels of society, from community organizations in the slums to Congress. Not only has he failed to take advantage of the growing concern for the consumer, but he has chosen to view it skeptically and with not a little disdain. While even the White House has passed him by in delineating new consumer protection horizons, Mr. Dixon has trundled along and

institutionalized mediocrity, rationalized a theory of endemic inaction, delay and secrecy, and transformed the agency into the Government's Better Business Bureau. He has managed the not inconsiderable feat of turning the Federal Trade Commission into a patterned and intricate deceptive practice unto itself.

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

tapped in other fields.

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

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

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

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

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

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

*Disclosed in this report for the first time publically.
See pp. 43, 48, 111, 115, 116, 119 for Civil Service Commission criticisms ignored by Chairman Dixon and his staff.

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

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

APÊNDICES

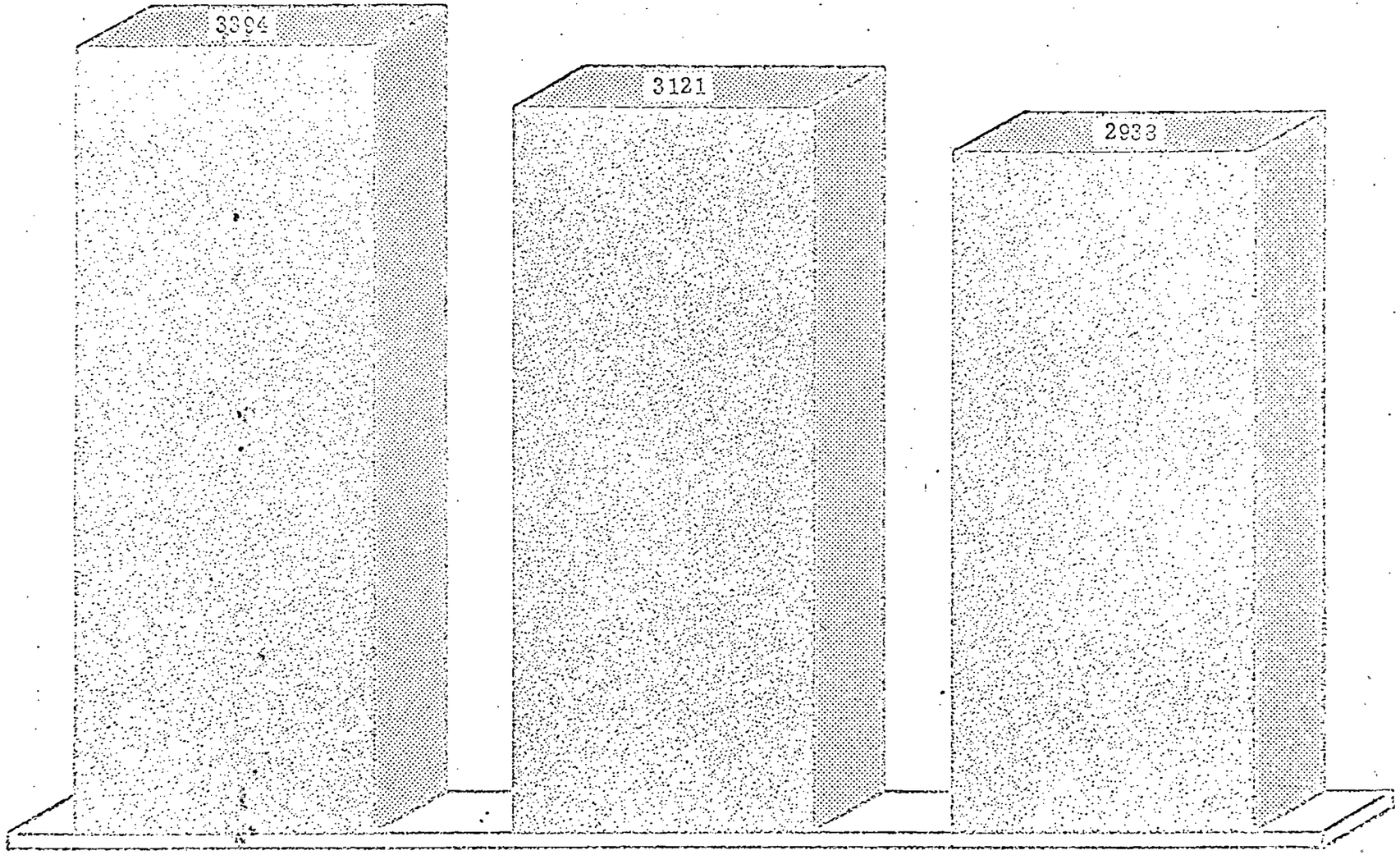
Appendix I

Budget Analysis
($'s)

	1965*	1966*	1967*	1968**
Anti-monopoly				
Investig. & Litigation --	6,246,000	5,937,000	6,258,000	6,468,000
Economic Reports -----	850,000	955,000	992,000	1,052,000
Trade-practice Conferences -	170,000	244,000	282,000	297,000
Deceptive Practices				
Investig. & Litigation --	3,373,000	3,633,000	3,813,000	4,232,000
Conferences -	341,000	490,000	564,000	593,000
Textile & Fur Enforcement -	1,209,000	1,272,000	1,283,000	1,375,000
Executive Direction ---	299,000	325,000	338,000	344,000
Administration	779,000	815,000	848,000	864,000
Total ------	13,410,000	13,671,000	14,378,000	15,225,000
Personnel --	11,362,000	11,705,000	12,376,000	13,026,000
Permanent Personnel --	11,288,000	11,642,000	12,309,000	12,972,000

*Actual **Requested

INFORMAL CORRECTIVE ACTIONS[1/]



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