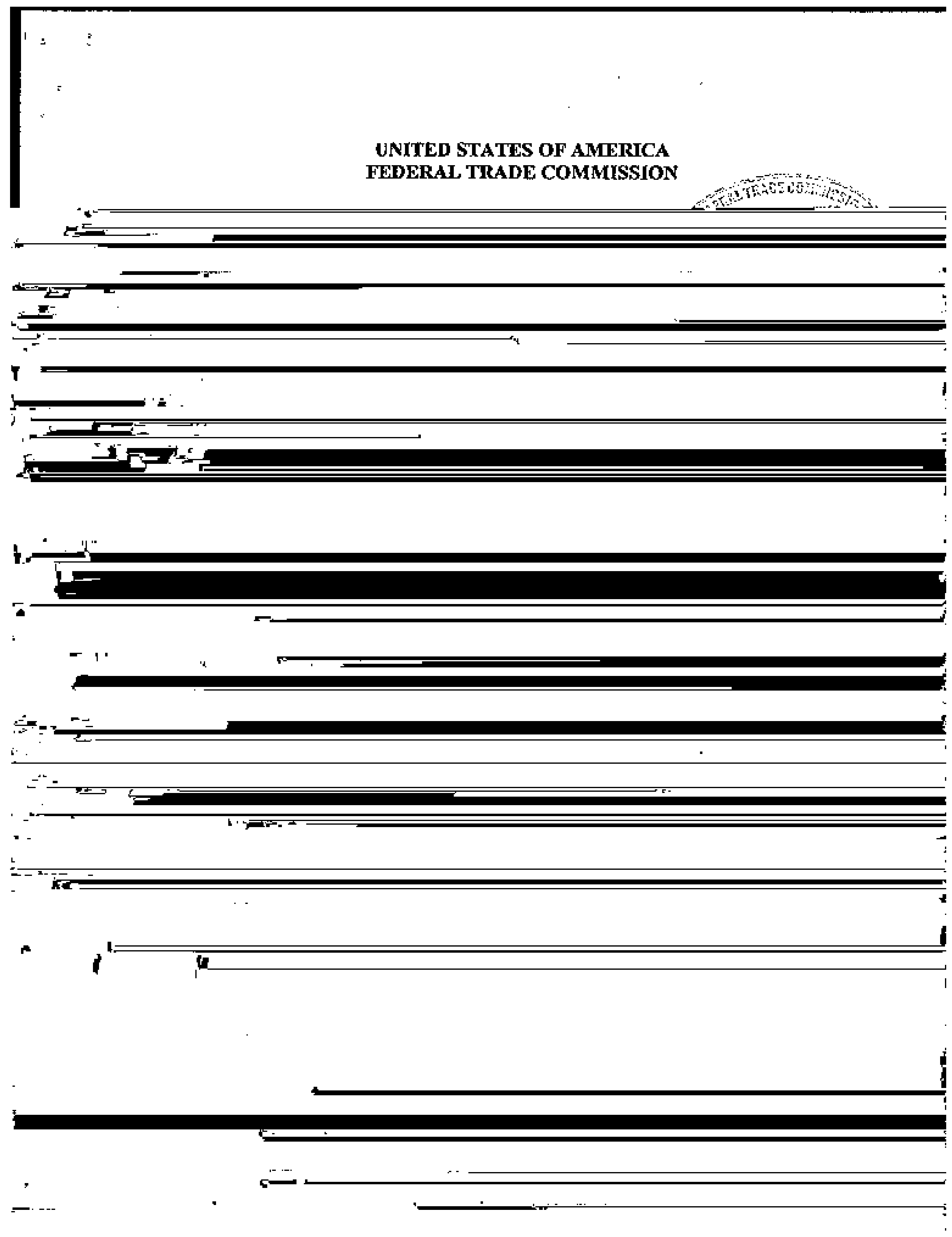
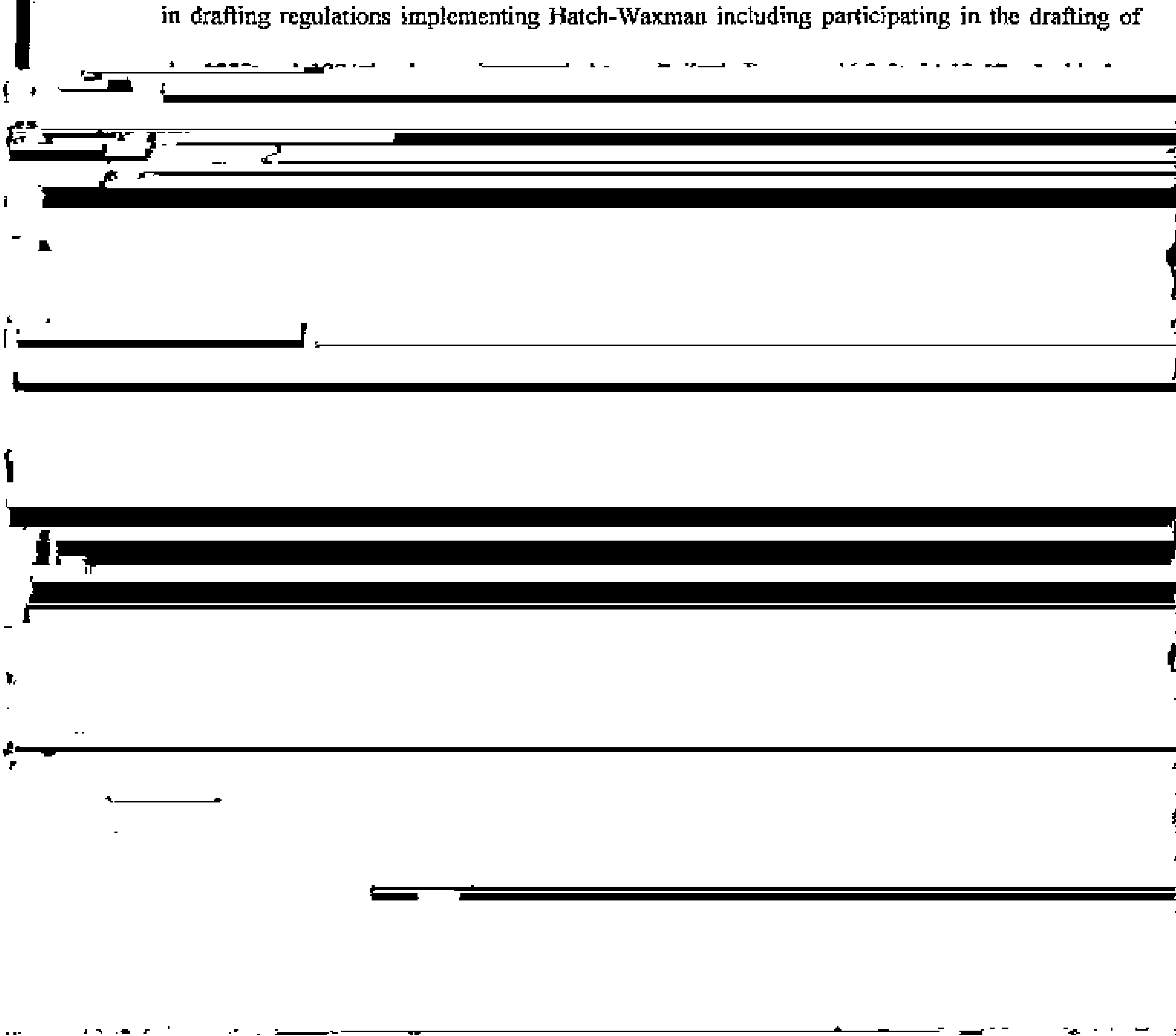
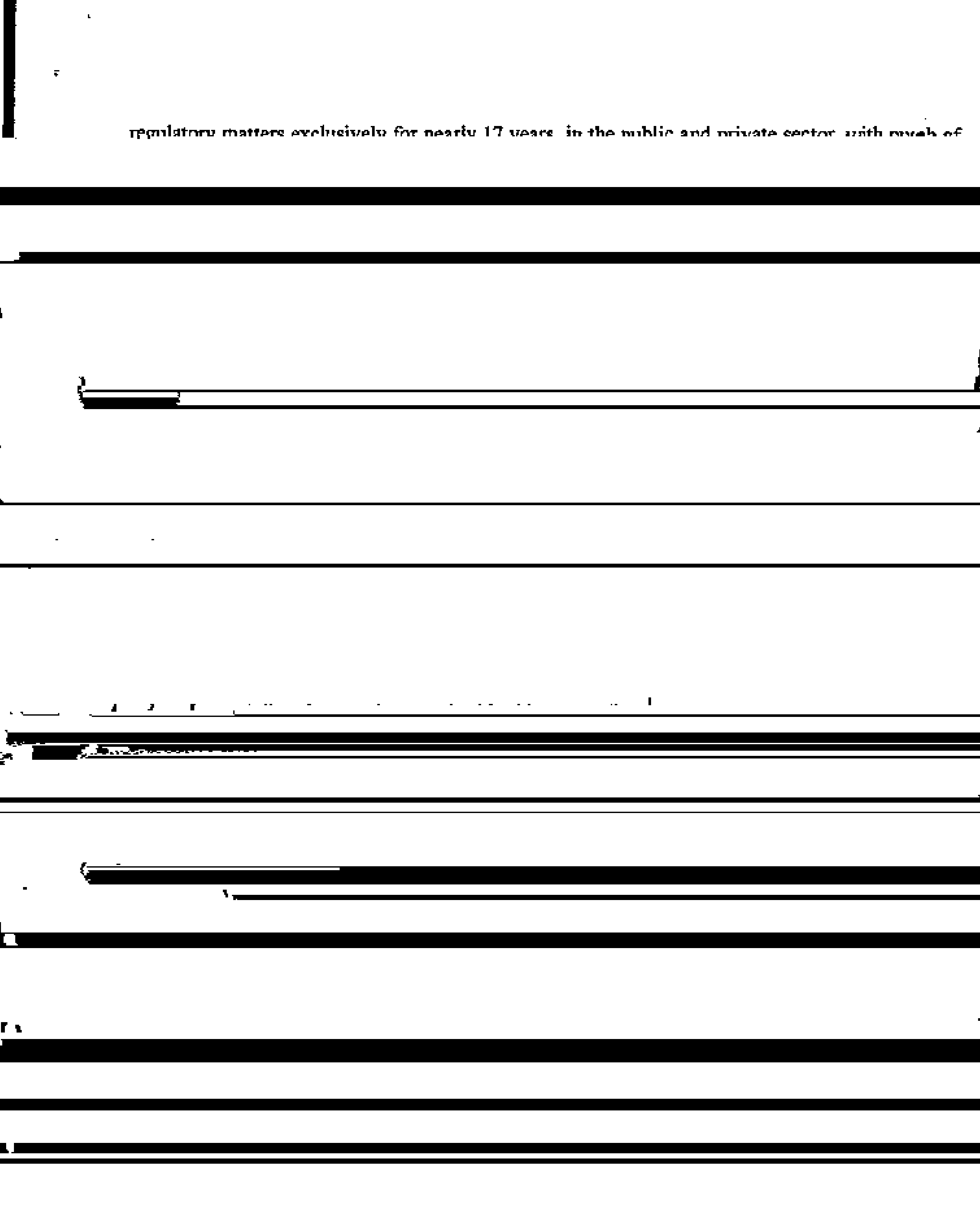

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

the fact testimony of Upsher-Smith witnesses as to their state of mind in June 1997. And Mr. Pollock is eminently qualified to give such testimony.

I. MR. POLLOCK IS WELL-QUALIFIED TO PROVIDE OPINIONS ON FDA POLICIES AND PREVAILING INDUSTRY PERCEPTIONS OF FDA POLICIES

Mr. Pollock spent ten years at the FDA. At the FDA, Mr. Pollock had direct involvement in drafting regulations implementing Hatch-Waxman including participating in the drafting of

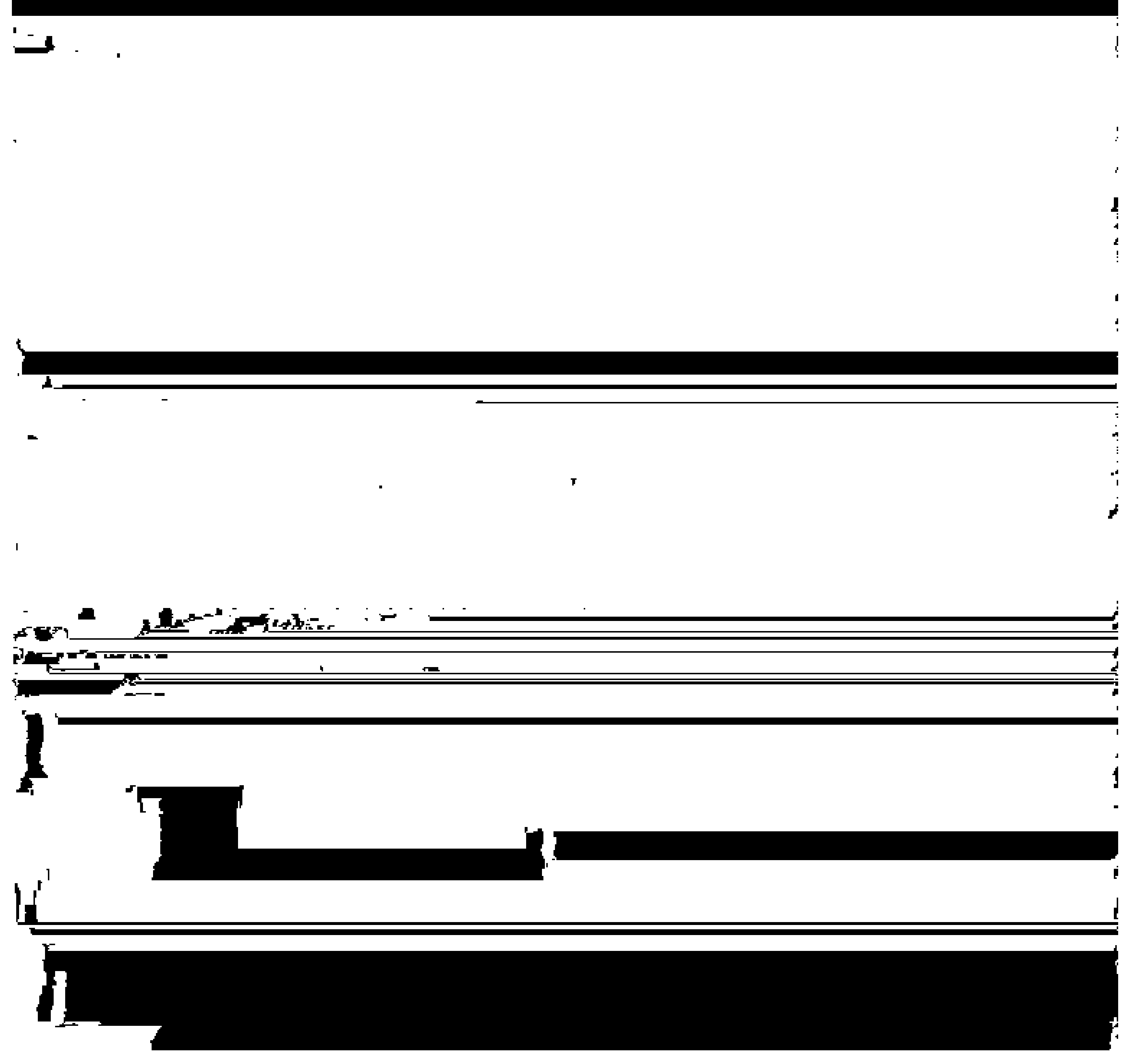




regulatory matters exclusively for nearly 17 years, in the public and private sector, with much of

Mem. at 9. Mr. Hoffman's pre-1997 experience cannot be any more relevant than Mr. Pollock's. Complaint Counsel also assert that Mr. Hoffman has counseled clients on the Hatch-Waxman Act "since its enactment in 1984." Mem. at 9. Again, this pre-1997 experience can be no more relevant than Mr. Pollock's.

At bottom, Complaint Counsel's only quarrel with Mr. Pollock's credentials is his lack of



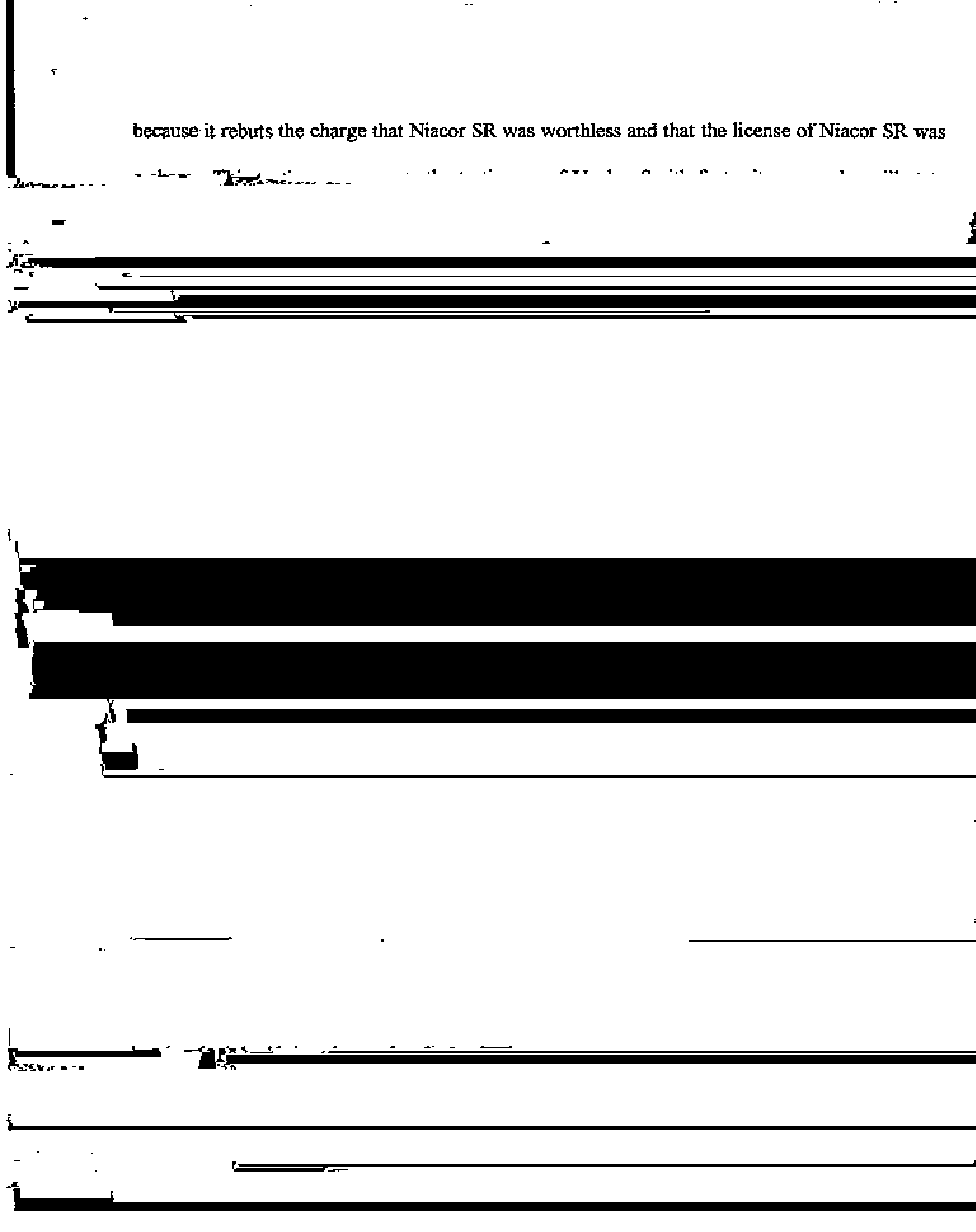
Mr. Pollock's personal experience as an FDA official, and the insight that experience affords, is a much more relevant credential. And it is one that Mr. Hoffman does not possess

delaying the start of Upsher-Smith's 180-day exclusivity period until September 2001, thereby preventing other generic competitors from entering the market until March 2002. *Id.* ¶¶ 47, 66. In order to "specifically intend[]" to maintain Schering's monopoly—Upsher-Smith would have

upon the June 1997 settlement. *See Cavin*, 39 F.3d at 1309 ("the unresolved nature of the law is relevant to show that the defendant may not have been aware of . . . liability") (quoting *Garber*, 607 F.2d at 98-99).

September 5, 2006." Pollock Rep. at 8 (emphasis added). Mr. Pollock's testimony on this point will support the testimony of Upsher-Smith witnesses that they perceived the settlement as a procompetitive agreement.

because it rebuts the charge that Niacor SR was worthless and that the license of Niacor SR was



CERTIFICATE OF SERVICE