

1 **This transcript has been lightly edited for clarity**

2 AFTERNOON SESSION

3 (Resumed at 12:45 p.m.)

4

5 LUNCH PROGRAM: "A CONVERSATION WITH TIM MURIS AND
6 BOB PITOFISKY."

7

8 SPEAKERS: ROBERT PITOFISKY

9 TIMOTHY J. MURIS

10

11 MODERATOR: CALVIN J. COLLIER

12

13 MR. COLLIER: My name is Cal Collier. I think I'll
14 stand up here just in order to launch the next part of
15 the program, and then we'll be seated, and many of you
16 unfortunately may have to look at our likenesses on the
17 screen, but I know that would be fortunate in my case.

18 It is a great pleasure personally to be able to
19 moderate this panel and absolutely delightful to be
20 among so many old friends. We gather, as several have
21 noted, to look both backward and forward at the
22 Commission's work. We do this at a time, I think, when
23 the stature of the Agency has never been higher and when
24 its achievements, on behalf of consumers, has never been
25 greater.

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1 Surprise, surprise, we have with us, for this
2 program, the two principal architects of these
3 achievements. My task will be an easy one. I'll ask
4 just a few questions to stimulate responses, and
5 they'll be on a broad range of issues, and then I'll
6 let Tim and Bob share with us their thoughts on their
7 own and each others' remarkable achievements.

8 I'll start with this question. Bob, one of the
9 initiatives during your chairmanship was the revival of
10 the use of the public hearings to eliminate wrongful
11 business practices, identify consumer and competitive
12 issues, and explore appropriate regulatory approaches
13 and responses.

14 Can you share with us your thoughts on this
15 approach? How productive were these hearings, and when
16 do you think their use makes the most sense?

MR. PITOFISKY: I thought the ehhen

1 In the 1920s and 1930s, the FTC did some excellent
2 work in that direction, but then somehow through the
3 decades, that approach got lost, and I thought we ought
4 to restore it.

5 I asked people what they thought the first set
6 of hearings ought to be about, and it was virtually
7 unanimous: with respect to antitrust, it should
8 be the globalization of competition with respect to
9 consumer protection, it was the growing importance
10 to consumers of the Internet as a new marketplace.

11 Did the hearing lead to real changes? I believe
12 so. On the antitrust side, it led rather directly
13 to negotiations with the Department of Justice to incorporate
14 an efficiency defense in the horizontal merger guidelines.
15 As Academics, Tim and I had both written on that subject
16 before we came to the Commission, and I had never understood
17 why there wasn't a stronger efficiency defense in the
18 merger guidelines.

19 On the consumer side, it really focused our
20 attention on the Internet, which I thought at the time
21 was virtually a free fire zone. People selling products
22 on the Internet didn't think anybody was watching. As
23 a result, some of the most outrageous frauds I've ever
24 seen were occurring in those early years on the Internet.

25 That's how we got started. Tim carried on in

1 that tradition. I think it is something that the Agency
2 has a comparative advantage in and ought to be continued.

3 MR. COLLIER: Tim, what are your views on this
4 subject because your Commission also used these tools?

5 MR. MURIS: Incidentally, it's great to be back
6 here. Time moves in a funny way. It seems like a long
7 time ago that I was here, and it's only been about five
8 weeks.

9 You're going to hear a lot of agreement and a
10 lot of praise, and I don't know how many times I'm going
11 to say this was one of Bob's best initiatives, but this
12 was one of Bob's best initiatives. It put on the map
13 again a major function of the Commission.

14 We had two sets of hearings. One was suggested
15 by Bob to me, and that was the intellectual property,
16 and we also did the health care hearings. In both of
17 those, Susan DeSanti and her people, and David Hyman with
18 Susan DeSanti and her people in the health care one, just
19 did a spectacular job.

20 Besides these excellent reports, you have
21 5-6,000 pages of transcripts on the public record, which
22 is just a wonderful resource. Just as did the global
23 hearings, they have an effect around Washington in the
24 policy community of influencing the debate. It's an
25 excellent role for the Commission.

1 The Commission is obviously more than an
2 enforcement agency. It's an enforcement agency, of
3 course, and most, in terms of resources, of what the
4 Commission does -- this is probably the first time in
5 five weeks I have managed to not say we -- most of what
6 the Commission does in terms of resources is
7 enforcement, but the other work can be more important,
8 and it's certainly just as important.

9 MR. COLLIER: One area where public attention
10 and I think some hearings were held in a the broad sense
11 is the health care area. Perhaps more importantly in
12 both of your chairmanships, the health care area had
13 significant attention, as it should, and the approaches
14 to addressing some of the issues was not limited to the
15 traditional litigation techniques.

16 I thought it would be interesting to hear from
17 both of you on the variety of tools and how they may
18 have been employed in the health care area and why you
19 felt that those were appropriate so that it's not just
20 bringing a case or, at the other end of the spectrum,
21 employ a very resource consumptive rule-making.

22 MR. PITOFSKY: Well, we -- I still say we you
23 notice.

24 (Laughter.)

25 MR. PITOFSKY: The Commission, when I was there,

1 did make a priority out of health care, rightly so. Tim
2 did even more in that direction and deserves enormous
3 credit for doing that.

4 We brought some cases. First of all, I immediately
5 think of cigarettes when I think of health care, and I
6 thought the decision to challenge the Joe Camel tobacco
7 ads was a health care initiative. We brought other cases
8 as well.

9 Beyond that, Jodie and her group were very
10 energetic in consumer and business education, in trying
11 to facilitate self-regulation and also in initiating
12 guidelines. We followed up Janet Steiger's initiative
13 in weight control guidelines. We put out, not
14 guidelines, but a book of rules about dietary
15 supplements, which I thought was quite successful.
16 Christine Varney and Sheila Anthony were people who were
17 really pushing in that dietary supplement area.

18 So it was a combination of cases, consumer
19 education, business cooperation and guidelines that we
20 tried to put together in the health care area.

21 MR. MURIS: I think the health care area really
22 illustrates the use of the Commission's many tools. One
23 of the reasons to use those tools is if you're going to
24 be a competition policy agency -- and when I say that, I
25 include the consumer issues as well, because to me

1 pharmaceutical area alone, and the health care area
2 more generally, show the tremendous use of the Commission's
3 many tools. I agree, as Bob said, that this represents
4 an institutional advantage of the modern Commission.

5 MR. COLLIER: I can't resist asking the
6 perennial question of two people who have contributed so
7 much to the Agency, which is the question that was
8 touched on earlier in one of the panels: What's the
9 value, what's the public value in having the consumer
10 protection responsibilities in the same agency as the
11 competition responsibilities?

12 This is to both of you, and there's been some
13 discussion on it over and over and over again, and I
14 would love to get your perspectives on it.

15 MR. PITOFSKY: They're not natural partners, and
16 yet the more you're at the FTC, the more you see the
17 virtues of putting these two enforcement initiatives
18 together.

19 On the consumer protection side, if the people
20 who are bringing cases or initiating rules don't
21 understand the market and market forces, consumer
22 protection tends to become protectionist, and it seems
23 to me that the antitrust lawyers and the economists in
24 the Bureau of Economics, who understand the market, can
25 be of great value in leading consumer protection in

1 the direction of a more sensible approach.

2 One of the reasons why the Commission adapted
3 what I think were rather unwise, fictitious pricing
4 rules -- rules that said you have to do a survey before
5 you can say "lowest prices in town," you can't make a claim
6 of a sale unless you have maintained a higher price for 60
7 days or 90 days, is a failure to understand how markets
8 work. Many fictitious pricing rules really amount to a
9 challenge to discounters, and the discounters can be, in
10 many circumstances, friends of consumers.

11 On the antitrust side, now here we may find
12 there is a little space between Tim and me. I don't
13 think antitrust is just economics. I think antitrust is
14 more than that. It's not supply curves and demand
15 curves, and being in an Agency in which people think
16 about consumer welfare not in solely economic terms, I
17 think softens the edges of some antitrust initiatives.

18 Putting the two disciplines together and having
19 a group of economists addressing questions on each side
20 of the FTC, it seems to me makes each side of the agency
21 a more sensible place for enforcement.

22 MR. MURIS: As the only person ever to head both
23 enforcement bureaus, although not at the same time
24 fortunately, it is a winning and complementary combination.

25 Bob started from the antitrust side. Let me start

1 from the consumer side. The fact that the focus is on
2 consumers is extremely important. When you view the history
3 of antitrust -- it's not true anymore -- but too often the
4 history was of protecting competitors and not protecting
5 consumers.

6 Another benefit from the consumer side that runs
7 to the antitrust side has been the focus on institutions.
8 On the consumer side, the Commission has done excellent
9 work on the focus of the institutional role of advertising.

1 those inquiries were stimulated and your evaluation of
2 the benefits that came out of them.

3 MR. PITOFSKY: The examination of ratings on
4 movies, video games and music was very, unusual.
5 The precipitating event was the massacre in Columbine in
6 which some people thought that the young, misguided people
7 who ran around shooting everybody in sight were influenced
8 by violent entertainment materials.

9 I received a phone call, believe me very rare, from
10 the White House asking, would the Commission be willing to
11 examine the rating systems in those three industries and
12 issue a report. I checked with my colleagues. Everybody
13 was enthusiastic about it, and we started that project.

14 It was tricky because I said from the very
15 beginning, the Federal Trade Commission should not be
16 the thought police, and I have no objection to a parent
17 saying to a 14 year old -- it would be good for you to see
18 Saving Private Ryan or even Jaws.

19 On the other hand, I didn't think that Hollywood
20 was acting properly in rating these materials as R and
21 then conducting focus groups with 12-year-olds to figure
22 out how best to convince them through advertising to sneak
23 into the movie theater.

24 I hadn't played a video game in my entire life until
25 this project started. I played a video game, and I was

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1 cases. We brought a couple of cases on an unfairness
2 theory. We issued a report, which I think was useful.

3 I do not believe that, generally speaking,
4 alcohol advertising is out of control. I think sellers
5 are cautious about the way they advertise that product,
6 but there were a few exceptions, and we challenged
7 companies on those exceptions.

8 MR. MURIS: I have a somewhat different
9 experience with violent video games. Given my two
10 teenage boys, when one of my attorney advisors
11 learned that I was about to attend a meeting with
12 critics of these games, he said, "If they ask you to
13 play, don't do well."

14 In part because of my two teenage boys, I became
15 fascinated and depressed by Columbine, and I thought
16 what Bob did there was another one of his most
17 spectacular initiatives. In the '90s, the biggest
18 thing in my life was my boys. I was a single parent,
19 and I managed seriously boys' baseball for the whole
20 decade, and by the time of Columbine it was all teenage
21 boys, my boys having grown up. An issue with Columbine
22 is that culture matters. It has to matter, and I thought
23 what the industries were doing was wrong. The Commission
24 helped clean it up, but the music industry has not advanced.
25 I know Orson is probably here somewhere, and he feels

1 very strongly about that. The Commission, by keeping
2 the pressure on, has been helpful.

3 A problem with Columbine, however, is Columbine
4 is the high school to which everybody wants to send their
5 kids. Harris and Klebold do not follow any patterns. The
6 one kid, I confuse their names, to me it's Rosenkratz
7 and Gildenstern, but the one kid, he had a job, he had a
8 girlfriend, he was getting into a good college, he appeared
9 to be everything you would hope a kid would be.

10 He had a stable home life, but he was a
11 follower, and the other kid, who I think was just evil,
12 was a leader, and they had reacted to the culture in a
13 way where they didn't understand the irony in something
14 like the movie Basketball Diaries. Although I do think
15 the initiative was very positive initiative, I don't
16 know, in the grand scheme of things, what the impact will
17 be on future Columbines.

18 With alcohol, you can also see the FTC's impact.
19 When we released the second report, a follow-up report
20 to what Bob had done, the industry announced moving to a
21 much tougher standard on placement of advertising. They
22 moved to a where the adult population had to be 70 percent.

23 These reports are another example of where the
24 Commission has a very positive impact beyond its law
25 enforcement responsibilities.

1 MR. COLLIER: Which kind of brings to my mind
2 anyway something that's been mentioned in several of the
3 panels here, which is the Commission's work over the
4 decades on consumer fraud. Tim, when you were Bureau
5 Director at the Commission, you emphasized the
6 importance of an effective anti-fraud law enforcement
7 program.

8 Why don't you share what you're thinking was and
9 why you felt that was an important initiative for the
10 Commission, given the tools that the Commission has. And
11 comment a little bit about some of the approaches that
12 you took to make it effective.

13 MR. MURIS: When we came here with Jim Miller in
14 October, 1981 in some ways it was an opportunity to
15 start over. The effort, of which kid-vid was the
16 most notorious, to do rules to rewrite the economy had
17 failed and failed spectacularly.

18 I went back to Bob's first foray into the FTC which
19 was the ABA report. The ABA report had focused on fraud,
20 and there's an interesting article in the latest Antitrust
21 Magazine about the origins of the fraud program in my
22 office. One of the things I did was to abolish the Office
23 of Policy Planning so I could take back the Bureau
24 Director's office because Bob Reich talked Al Kramer out of
25 it.

1 Space and furniture have a lot to do with
2 bureaucracy! Anyway, we were back in the corner office and
3 Dave Fix came in: he knew I wanted to do fraud cases, and he

1 I hope it gets through the House. Fraud is theft, and it's
2 an important role for the Commission.

3 The Commission is the leader in going after
4 fraud. A lot of people can take great pride in the
5 success the Commission has had, but there is a lot more
6 to do.

7 MR. COLLIER: Bob, Tim's commented on your fraud
8 program. Would you like to say anything about it?

9 MR. PITOFSKY: Well, I agree with every word Tim
10 said, but let me address this question in a slightly
11 different way. If there is a single area of
12 Commission responsibility that one would single out as
13 having changed the most between 1970 and 2004, it would
14 be the fraud program.

15 When I first came to the FTC as a Bureau Director
16 in 1970, all the emphasis was on national advertising fraud
17 because companies just didn't think that there was
18 anybody watching what they were doing and saying in ads.

19 One evening in 1970, the Chairman, the General
20 Counsel and I, over dinner, sat in front of three
21 television sets, and we only watched the ads. In that
22 single evening, we came up with four ads worth investigating.
23 There was an ad in which a company claimed that if a driver
24 used their gasoline, his car could pull a locomotive up a
25 hill.

1 There was another ad, in which there were two
2 side-by-side panels of roaches. The advertiser arranged
3 to spray one panel of roaches with a competitive product
4 and then the other panel of roaches with its product. On
5 the one side, all the roaches thrived. They grew big, fat
6 and sassy. On the other panel, they all died. Later,
7 we discovered that the advertiser had used a competitive
8 product in when they knew that the special brand of roaches
9 that they had selected, the German roach, was immune to
10 their competitor's product.

11 That was then. When we came back in 1995, what
12 we found was that national advertising, as a result of
13 the most effective self-regulation that I've ever
14 encountered, was really under control. We brought only
15 a few national advertising cases in seven years.

16 On the other hand, Internet fraud was where the
17 action was, and that's where the most outrageous
18 deceptions and frauds were occurring, and therefore, we
19 changed our priorities, and I think in less than four
20 years, Jodie and her colleagues brought 100 Internet
21 cases, the internet sellers also thought no one was
22 watching, and therefore they could get away with
23 saying virtually anything.

24 So the fraud program, as I started out saying,
25 has changed radically over the 30 or 35 years.

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1 done a lot in educating. There is a lot of street
2 mythology about spam that the Commission has talked about.

3 As the technology proliferates, and as the
4 fraudsters, and spam is one of their favorite tools, use
5 the Internet, the Commission has tried to keep pace.
6 The Commission has actually educated a lot of people, not
7 just in the United States, but around the world about how
8 to detect and go after fraud.

9 Again, fraud is theft, and there will always be this
10 arms race between the fraudsters and the enforcers, and it
11 will continue. It will always be an important role for
12 the Commission.

13 MR. COLLIER: Tim, implied that, the growth of
14 these communications technologies raised a lot of public
15 concern about privacy and the extent to which these
16 technologies could invade personal privacy. Lots of
17 folks turned to the FTC and asked the Commission to
18 address that problem. That occurred initially during
19 your administration and continued in Tim's administration.

20 I would like your comment on what you faced and
21 how you dealt with it.

22 MR. PITOFSKY: The issue in the privacy area is
23 not whether or not there are things going on that are
24 inappropriate. I resent, and I think most people
25 resent, being asked a series of questions in connection

1 with some business transaction, for example, buying a
2 sweater on the Internet, and then the information is
3 accumulated and sold to somebody else without your
4 permission. It's also true that most agree, notice,
5 consent, access, and security are what you're entitled to
6 in terms of privacy.

7 The issue is, what's the best way to deal
8 with that, and I originally felt, and the majority of
9 the Commission felt, that self-regulation was the better
10 way. We issued a report and then another report in which
11 we found very disappointing results in terms of industry
12 self-regulation.

13 I still would prefer that it be done by
14 self-regulators. I think self-regulation is often more
15 flexible, more insightful about business realities and
16 so forth, but eventually under the influence of
17 Christine Varney first and then Sheila Anthony, we came
18 around to the view that, self-regulation wasn't working
19 because there's no law that that kind of behavior violates,
20 and therefore the self-regulators can't say: if you don't
21 stop it, we're going to send our recommendation to the
22 Federal Trade Commission or to somebody else to enforce
23 the law.

24 Therefore, in a very close vote, we finally came
25 around to the view that Congress ought to act in this area.

1 We never took a position on opt-in opt-out because that's
2 the most controversial issue, but we did think that
3 mandatory notice to consumers ought to be required by the
4 law, but Congress has not acted.

5 I'll let Tim describe his approach which was
6 aggressive law enforcement rather than legislation, and
7 my impression is that the situation is better, but there
8 are still problems in that area.

9 MR. MURIS: Well, this is one of the areas where
10 I owe Bob probably one of my greatest debts. On the
11 other hand, it's one of the few areas where we went in a
12 different direction, as Bob was alluding to.

13 I owe him the debt because during my confirmation
14 hearings, this was what most people wanted to talk about
15 on the Hill. They wanted to talk about, whether I supported
16 notice and choice legislation. They would ask, "Do you
17 support privacy?" but they meant this legislation. I
18 thought that was a very odd way to talk about privacy,
19 but I didn't know a lot about it then.

20 So in the summer of 2001, Howard Beales and I,
21 with the staff and a lot of outsiders, headed an
22 extensive education process where we took the Commission
23 in a different direction. I know Orson and Tom hadn't
24 completely agreed with Bob or each other; they both had
25 somewhat different positions from each other on the notice

1 and choice legislation.

1

1 than the notice and choice model.

2 I'll close with my favorite example -- what
3 I call the miracle of instant credit. You can
4 walk in -- you guys have heard this, therefore you're
probably dsf5.1thige00h .5erefore you're

1 probably more importantly, how important do you think it
2 is in connection with the Agency's authority?

3 MR. PITOFSKY: I think it's important on the
4 consumer side. Let me start with antitrust. I think
5 I'm right that we didn't bring a single antitrust case
6 during my seven years based on unfairness.

7 The only role of unfairness is filling the gaps
8 that Congress unintentionally left in statutes like the
9 Robinson-Patman Act. But if you're not going to
10 enforce the Robinson-Patman Act, you don't have to fill
11 in the gaps.

12 On the consumer side, I think that's different.
13 First of all, I would say you use it very cautiously.
14 On the other hand, there are matters that exploit
15 vulnerable consumers that are not fairly characterized
16 as deceptive or misleading. The leading example by far
17 in my years was the Joe Camel campaign. There was
18 nothing deceptive about that.

19 On the other hand, the matter never went to trial,
20 but I think the evidence was fairly clear that the campaign
21 was designed to influence young people toward the Reynolds
22 brands of cigarettes or towards Camels. You couldn't get
23 at it under deception.

24 There are other examples of unfairness
25 jurisdiction like cramming -- putting charges on

1 I agree with Bob. I think both of us are
2 extremely leery of using the FTC Act in the antitrust
3 side beyond the Sherman and Clayton Acts, but in
4 consumer protection it can have a positive role.

5 MR. COLLIER: Let's switch gears for a minute. I
6 actually should have done so about five or ten minutes ago.
7 I'd like to talk about the competition side of the house.

8 First directed at Bob, the number of mergers
9 reported under Hart-Scott increased from I guess 1,500 a
10 year in 1991 to about three times that number in 1998.
11 How did this merger wave affect the Bureau in your
12 tenure, and what did you try to do to address it?

13 MR. PITOFSKY: It was the most significant
14 influence on our priorities of anything else that
15 happened during my years there.

16 As you know merger review has its own deadlines,
17 and while the agency only challenges 3 percent of the
18 mergers that it sees, you still have to look at the other
19 vast numbers of mergers to see if they fall within the 3
20 percent.

21 Also, Bill Baer and his successors rightly believed,
22 that there was no sense in a merger enforcement policy
23 in which you took a quarter of a loaf or half a loaf and
24 let the deal go through and declared victory. If you
25 really thought the merger had anti-competitive effects,

1 that question should be decided by a court. Courts should
2 not be dealt out of the game.

3 The result was that we were in court more often
4 than had been true for a long, long time. I remember I
5 would say to Bill, who is sitting here, I would say, Look,
6 Bill, if we bring this case, do we have lawyers and
7 economists to staff it, and he would say, Don't worry,
8 I'll take care of it.

9 Somehow or the other, cases that were being
10 litigated would fold just about in time to switch
11 the staff over to another case. It was a magic act to
12 find enough people inside the FTC to litigate those
13 merger cases, but the consequence was that while we
14 brought some very important non merger cases, Intel,
15 Toys "R" Us and others, I always felt that we could have
16 done more in the non merger area were it not for the
17 fact that we were buried in some years by 4,500
18 merger proposals.

19 MR. COLLIER: Tim?

20 MR. MURIS: Well, we had what I regarded as the
21 good fortune of not being in the middle of the merger
22 wave. It allowed us to do a lot more in the
23 administrative area. I was astonished at what good
24 shape the Bureau of Competition was in when we arrived.
25 The fact that it was still standing was itself a

1 testament to Bob and Bill and Molly and Rich.

2 This difference does make it actually very
3 hard to compare our tenures in the sense that the focus was
4 so different. But look, for example, at the excellent set
5 of data we released on how the Commission had handled
6 mergers. It was mostly cases, on Bob's tenure because
7 of the merger wave and because Bob was here longer.
8 It showed how sophisticated merger analysis has become.
9 This data was on horizontal mergers. There have been very
10 few vertical merger cases, although there have been a few.

11 We have had a tremendous amount of learning
12 that's occurred in these hundreds of Hart-Scott
13 investigations, and it's one of the many areas -- and may
14 be the best example -- of how there really is a
15 bipartisan shared consensus on how to approach antitrust
16 law.

17 The government has lost three cases recently,
18 including the one that the Commission brought, the Arch
19 Coal case. But most people in the private sector, and

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1 virtually out-of-hand customers' complaints or
2 support of the merger. The government regards that as
3 highly relevant information and I think it will continue
4 to, regardless of what the courts say, unless the
5 Supreme Court happened to say it was irrelevant. I
6 would be highly surprised if that happened.

7 MR. COLLIER: Talk just a bit about vertical
8 mergers, Bob. There was some vertical merger activity
9 during your chairmanship. Vertical mergers have not
10 typically been the core of the merger enforcement
 program. Horizontal mergers have.

1 brought by Tim and me, and a finally by the Department of
2 Justice, over a period of about ten years, and I think
3 all but one of them could not have been brought under
4 the existing vertical merger guidelines, because those
5 guidelines eliminate the concept of foreclosure. All
6 three of its vertical merger cases brought when I
7 was chair depended on the concept of foreclosure.

8 So it's not the most important area of the
9 world, but we ought to get it right, and it seems to
10 me that somebody should take another look at those
11 guidelines.

12 MR. MURIS: Well, I agree that there are useful
13 areas to do and that some marginal improvements could be
14 made in transparency and explaining how the government
15 does mergers.

16 In the vertical area it's more than marginal.
17 The concern I have is I'm not sure that there's a consensus
18 that exists about how to rewrite the vertical
19 guidelines. Unless you try, you're not going to know for
20 sure, so I think that is a worthwhile project.

21 The vertical cases that we brought and a lot of
22 them that Bob and Joel brought did involve a raising
23 rivals' cost theory where there was potential
24 foreclosure, particularly involving the defense industry,
25 the drug industry and areas where the government is an

1 extremely important part of the process. I thought because
2 of the entry barrier there, that the story made sense, and
3 it is certainly an evolving area in the law.

4 MR. COLLIER: We're closing in on the appointed
5 time, but I have to ask the following question of both
6 these fellows: What one or two or three things during
7 your chairmanship and administration do you regard as
8 being the most significant, then and in the future?

9 MR. PITOFSKY: Why don't you start, Tim.

10 MR. MURIS: Someone wrote my obituary while
11 I was chairman and said that they were going to put on
12 my gravestone that I had protected the dinner hour, which
13 is fine. I don't mind that, although I don't think
14 much about what's going to be on my tombstone. Obviously
15 in the general world, my tenure will be most known for
16 Do Not Call. I think that within this room and in the
17 policy community that follows us, I hope what we're known
18 for is -- and I do really believe that Bob's tenure and
19 mine are one of the same pattern -- applying careful
20 analysis in a way that abstracts from politics and
21 contention.

22 Our approach is fact based but uses relevant economics,
23 and it tries to protect the public interest. I think the
24 Commission has become an amazingly successful institution,
25 for which a lot of people in this room, a lot more than just

1 the two of us, deserve the credit.

2 MR. PITOFSKY: I agree that it is
3 remarkable, the convergence that's occurred in 35 years
4 in the antitrust world, especially when so much else in
5 domestic regulation has become polarized: tax policy,
6 environmental policy, health care policy and so forth,
7 and yet you see in Bush One, in the Clinton's
8 Administration years, and in Bush Two very similar
9 antitrust approaches. There are some differences at the
10 margin.

11 In terms of things that would matter, I've
12 already talked a good deal about the Bureau of Consumer
13 Protection and Jodie's creativity in developing an
14 arsenal of approaches to Internet fraud, trying to
15 prevent the fraud while encouraging the marketplace of
16 the Internet. Doing both of those things at the same
17 time is difficult.

18 On antitrust, I thought the cases, especially
19 the merger cases like Staples, showed marked improvement
20 and sophistication. I guess if I were to select a broad
21 theme, it is the emphasis on access. That's what led us
22 to a rather regulatory order in AOL/Time Warner, to
23 protect the access of competitors of Time Warner to
24 AOL's Internet properties. That's what led us to
25 challenge Toys "R" Us because I thought of that as a

1 horizontal case, trying to get the toy manufacturers to
2 preclude developing competition from the price clubs.

3 I thought of "access" as the reason why we were so
4 aggressive in going after the Chrysler dealers for
5 trying to persuade Chrysler to knock Internet car sales
6 out of the marketplace, and I do think that antitrust has
7 a very special role in keeping markets open and keeping
8 access open, and I think that the emphasis in that area
9 was not misplaced.

10 MR. COLLIER: Thank you. Our time is up. I'm
11 going to recognize any questions or a couple of
12 questions. No hands are up so I guess this is it.

13 MR. MURIS: This group of people has never been
14 silent, but that's fine.

15 (Applause.)

16 MS. BAILEY: Just one brief announcement, we'll
17 resume again at two o'clock, but I wanted anyone who has
18 yet to buy a ticket to the ABA dinner who really wants
19 to come, the ABA will be here for 15 more minutes with a
20 few tickets remaining, so I encourage you to take this
21 one last opportunity. See you at two

22 (Break in the proceedings.)

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