



Bob Pitofsky and Public Policy: The Early Years

**Remarks of J. Thomas Rosch
Commissioner, Federal Trade Commission**

at the

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I've been asked to say a few words about Bob Pitofsky's contributions to the consumer protection and antitrust bars from 1970-73 when he was the BCP Director and from 1978-81, when he was a Commissioner. In a word, they were immeasurable.

As you know, Bob's contributions to the Commission predated his tenure as BCP Director. More specifically, they followed the Nader report on the FTC.¹ That Report was based on an investigation by Nader's Raiders that began in 1968 and culminated in publication of the Report in 1969. In the wake of that Report (some might call it a screed) Bob was asked by Miles

The views stated here are my own and do not necessarily reflect the views of the Commission or other Commissioners.

Kirkpatrick to write a more dispassionate, but critically important, Report on the FTC for the ABA's Antitrust Section.² That Report focused for the most part on the FTC's consumer protection mission. For his troubles, Bob was asked by Miles to head up that mission, and he became BCP Bureau Director in 1970.

I was having a wonderful time trying antitrust cases in San Francisco at the time. All I knew about what was happening in D.C. was what I read in the *San Francisco Chronicle*, which I doubt even knew what was happening in Washington. But in the Fall of 1973, I came back to Washington as the "new" BCP Bureau Director, succeeding Jim Halverson and Jodie Bernstein, who had served as Acting Bureau Directors. I quickly came to realize what Bob had done.

First, I think he (and Jodie as Acting) were the first to really understand advertising. That was probably because they took the time to travel up to Madison Avenue in New York. There they met with advertisers and their agencies (and focused not on the antics of the agencies that we see portrayed on *Mad Men* today, but on what these folks could really do with advertising.) To be sure, the famous "shaving cream" ad, portraying the shaving of sandpaper, predated those travels.³ But so did the Commission's insistence that each advertising statement be literally true.⁴

Second, based on what Bob and Jodie learned from Madison Avenue, the first of the ABC Mad Men (the "deception" art isogMad Men) should read f

product (or service's) claimed benefits may also be deceptive.⁸ I reflect on this standard of deception now when I see a "privacy disclosure" that is a half-truth like "X collects your private data to serve you relevant advertising" instead of disclosing that X's principal use of your data is to attract advertising that supports its business model. I have to ask myself whether, in view of the way that the Commission has interpreted "deception," we need a new paradigm respecting privacy that contradicts what we told Congress in the early

When Bob came back to the Commission as a Commissioner in 1978, his restless mind turned largely to restraining Chairman Pertschuck. Possibly his most significant contribution was not participating in the Kid-Vid Crusade, which the Chairman, following Chairman Engman, waged. I only wish that Jodie and I had been so prescient in the 1973-75 period. You all will recall that that crusade ended up in an editorial in the *Washington Post* excoriating the Commission for trying to act as a “National Nanny” in trying to police Saturday morning television. But arguably a more significant, if comparatively unnoticed, achievement was his opinion in *Borden, Inc.*¹¹ where he departed from Chairman Pertschuck’s view that compulsory licensing of the Real Lemon trademark was the appropriate remedy for monopolization. Bob found in that case that restrictions on monopoly pricing of the product were sufficient.

That said, I consider Bob’s main contributions to the agency to be unsung. They started with mentoring. Within a few weeks after I got back here in 1973, he called and introduced himself, and he was a maker of ever so soft suggestions about how the consumer protection mission might be improved. As time went on, my wife, Kitzi, and I were entertained royally by Bob and Sally in their suburban Maryland home. And I won’t soon forget the “pickle parties” that Bob and Sally and Jodie began hosting just before Kitzi and I and the kids left to go back to San Francisco in 1975.

I’m supposed to cover only the “early” Pitofsky years, but I’d be remiss if I didn’t mention that Bob told me they’d have to “carry

But maybe Bob's greatest contribution to the Commission was that he bequeathed Jodie to me as my Deputy in 1973. She had a mind like a steel trap. And she could strategize like no one else. I remember our trip to the Hill to see Senator Stone of Southern Florida. He had taken his door off its hinges to show how "open" he was. I whispered to Jodie that he was going to try to micromanage the consumer protection mission. She just whispered back that that would be no problem; we'd just "out last" him. And we did.

Jodi once introduced me as the "penultimate" Bureau Director with whom she worked in the early years. I didn't even know what the word meant at the time. But as time went on, I realized she'd paid me a high complement – because we both know who the "ultimate" Bureau Director was.

Thank you Bob (and Sally and Jodie).