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"EXCLUSIVE DEALING"

REMARKS OF

EARL W. KINTNER, GENERAL COUNSEL FEDERAL TRADE COMMISSION

Before

The Association of the Bar of the City of New York. April 11, 1956.

According to my private instructions tonight, I am to speak briefly.

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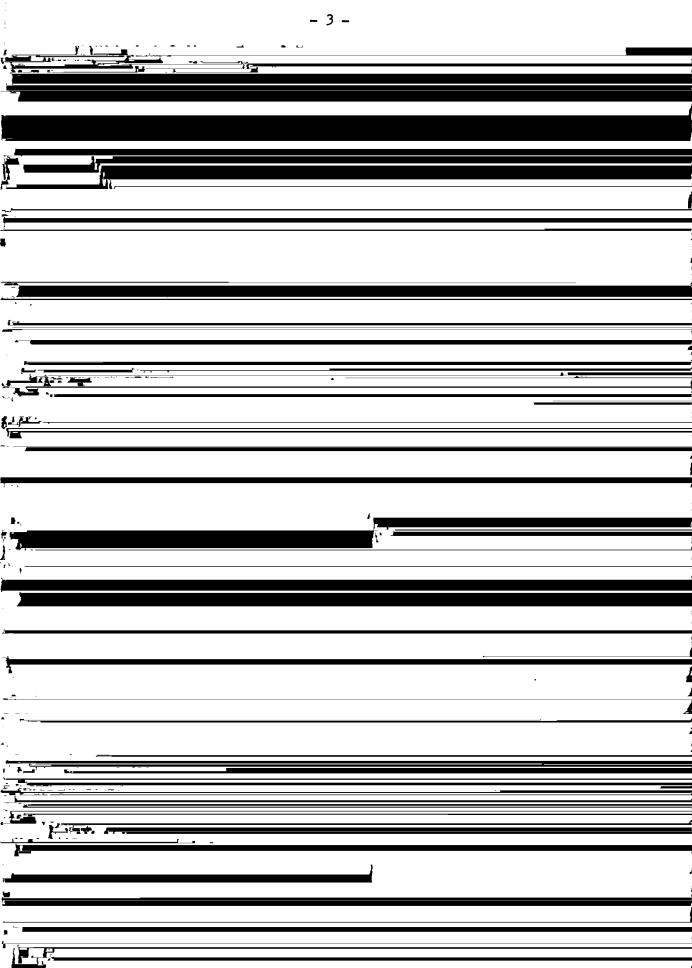
being needlessly grim about the subject, I point out in passing that one Federal Trade Commission trial attorney recently told me that he wouldn't take another exclusive dealing case unless he were given hazardous duty pay. I hasten to add at this point that any opinions which I express tonight are not necessarily those of the Federal Trade Commission.

Since my topic relates primarily to <u>current</u> problems of exclusive dealing,

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the buyer or lessee agrees to take all or a specified amount of a product exclusively from a seller or lessor are a type of exclusive dealing agreement.

Although the illegality of both tying and exclusive arrangements under the statute are conditioned upon a showing that the practices' effect "may



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sider this a restrained characterization. In Standard Stations, it is argued, the Supreme Court laid down the simple, forthright equation of "quantitative substantiality" with the statutory requirement of injury. In other words, proof that a substantial volume of commerce was blanketed by the contracts equalled competitive injury. Or did it?

From all of this, <u>I</u> dissect not a simple quantitative substantiality standard but a test of substantial market foreclosure, though I add honestly that a distinguished array of authority would take issue with me.

Yet. <u>I</u>	think my contentions are strengthened by the Supreme Court	a any-
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decisions indicate a disquieting reversion to <u>per se</u> theories. Perhaps apropos is the statement of one commentator last week in Washington that <u>per se</u> rules, like the old Bolsheviks, are coming back.

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