

REMARKS BY COMMISSIONER WILLIAM C. KERN,
FEDERAL TRADE COMMISSION, BEFORE THE
INDIANAPOLIS BAR ASSOCIATION, MAY 8, 1957

Mr. Chairman and Members of the Indianapolis Bar Association:

Thank you indeed, Mr. Chairman, for your warm words of welcome back to this bar of which I was a member for so many years. You stated in most polite, in most graceful, and in most euphemistic language the old adage that a bad penny always turns up. I find myself asking myself: "Is this the Lord Mayor riding in state to Mansion House, or is it the highwayman Dick marching between the javelin men on his last journey to Tyburn?"

"Put a red coat upon my back, and a gold chain around my neck, and a plum pudding before me, and I shall act the part of the Lord Mayor very well. .

"Pinch my belly with hunger and shrivel my fingers with cold, and put a purse before me on Hounslow Heath, and I shall take it."

I think what Thackeray was saying, if interpreted in terms of my own life, is that it is easier to find laudatory

old friends. And friendship is a word not lightly used by Hoosiers. Nor is a Hoosier ever completely weaned away from his native soil. So this is a homecoming for me tonight in the happiest sense.

And now let me discuss for a few moments the Federal Trade Commission and its place as a part of the administrative process.

Following the Supreme Court decisions in 1911 in the ~~and Old and American Tobacco cases~~ the conviction became

general that existing legislation was ineffective in curbing industrial combinations. There was a persistent public outcry

for additional legislative curbs to stop combinations in restraint of trade in their incipiency and to outlaw unfair methods of

practices in commerce", are very broad terms. Although the ultimate determination of whether a particular practice is

unfair in the light of the facts is for the courts, nevertheless there is a real necessity for continued study by trained experts in order to keep vitality in such broad terminology by constant

and, indeed, one which could not properly be enforced or inter-

When you consider that in the field of false and deceptive

"This Section of the Act admittedly is complicated and vague in itself and even more so in its context. Indeed, the Court of Appeals seems to have thought it almost beyond understanding. By the Act, nothing is commanded to be done or omitted conditionally and no conduct or omission is

Section 7 of the Clayton Act presents one of the Commission's most important responsibilities, the so-called antimerger section of the Act. This section was strengthened by amendment in 1950 and the 84th Congress substantially increased the Commission's appropriation for increased activity in this area. The Commission has issued 18 complaints in the merger field since 1950, three of which have been

contain wool or fur. Failure to label such products properly, or to make certain disclosures as required by rules promulgated by the Commission, is declared to violate the Federal Trade Commission Act, violators being thereby subjected to the regular processes of the Commission. Vigorous policing of the channels of distribution to secure compliance with these Acts has been of vast benefit to the purchasing public. For example, before the Commission's entrance into this field, there were 96 different furs sold under many names but all

derived from the rabbit. (Indeed one especially interesting

rabbit fur was being sold as "Baltic Lion".) Fur advertising now must comply with a name guide for fur products promulgated by the Commission. This Act has been most helpful in cleaning up former unsavory practices in the fur industry.

The last act entrusted to the Commission's jurisdiction

Act. One would at first blush think of such cases as quite
simple. The law relating thereto is crystal clear and

Indeed you here in Indiana have even named one of your

while Chairman of the United States Steel Corporation served as the medium for phenomenal price rigidity in the steel industry. I am referring, of course, to the famous Gary dinners. After the steel tycoons dined with Judge Gary, and agreement reached over the brandy and coffee, the steel prices either remained the same uniformly or went up uniformly, and with a single basing-point system of pricing based on Pittsburgh, establishment and maintenance of uniform prices was simple. By coincidence the trial attorney with whom I officed when I first went with the Commission was Karl Steinhauer, who won the Commission's celebrated case against the steel trust which outlawed the Pittsburgh-plus method of pricing. But just as man is ingenious in the advertising field, so is he ingenious in the price-fixing field. Conspirators in this area have become increasingly adroit in such matters as the stripping of records, the skeletonizing of minutes, etc. Very few tracks are left on the price-fixing sands by skilled modern conspirators. And thus it has been increasingly difficult to prove a price-fixing conspiracy. Yet occasionally one runs across a refreshingly

frank witness in the course of a price-fixing trial. The

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fashion than getting drunk and forgetting it --

is there anything else you want me to tell you now?"

