

subsidiary shall be ground for canceling the registration of the corporation to which it is so subsidiary.

SEC. 11. That in case of revocation of the registration of any corporation the commission may also order that such corporation thereafter shall not engage in interstate commerce. For every day's continuance in such commerce contrary to such order such corporation shall be subject to a fine of not more than one thousand dollars. The district courts of the United States, upon the application of said commission, alleging a failure to comply with such order of the commission, or alleging a failure to comply with or a violation of any of the provisions of this act, by any corporation subject thereto, shall have jurisdiction to issue a writ or writs of mandamus or injunction, or other order enforcing such order of the commission or commanding such corporation to comply with the provisions of this act.

SEC. 12. That the said commission may at any time, upon application by a corporation whose registration has been previously canceled, reinstate said corporation for registration and grant it registration anew: *Provided*, That the said commission is satisfied that the cause or causes for which registration was revoked no longer exist and that the commission shall find that all the requirements for registration as set forth in section four shall have been complied with anew as of the date of the new application for registration.

SEC. 13. That the said commission may at any time, if in the opinion of the commission public necessity requires such action, order and require any corporation engaged in commerce among the several States or with foreign nations, except corporations subject to the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, but including pipe-line companies, to make such statements and give such information as is prescribed in sections four and eight of this act, which information shall be published in accordance with the provisions of section nine hereof. The commission may also obtain from any such corporation, through the powers granted in section fourteen hereof, such information as shall enable said commission to determine whether such corporation is subject to the terms of this act. The decisions of the said commission made under the powers conferred upon it in this act shall be final except as to matters involving the taking of private property without due process of law and involving the extent and character of the said powers so conferred herein: *Provided, however*, That an appeal may be taken in equity to any district court of the United States from any order or decision of the said commission made under section eleven of this act.

SEC. 14. That in order to accomplish the purposes declared in sections eight and thirteen of this act the said commission shall have and exercise the same power and authority in respect to corporations subject to this act as is conferred on the Interstate Commerce Commission in said act to regulate commerce and the amendments thereto in respect to common carriers, so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said act to regulate commerce and by an act in relation to testimony before the Interstate Commerce Commission, and so forth, approved February eleventh, eighteen hundred and ninety-three, supplementary to said act to regulate commerce, and the act defining immunity, approved June thirtieth, nineteen hundred and six, shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by sections eight and thirteen hereof.

SEC. 15. That the said commission shall, on or before the _____ day of _____ in each year, make a report, which shall be transmitted to Congress. This report shall contain such information and data collected by the commission as it may deem of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the commission may deem necessary.

SEC. 16. That any corporation engaged in commerce among the several States or with foreign nations the amount of whose gross annual receipts, inclusive of those of its subsidiaries, shall be less than five million dollars and more than one million dollars may also, by complying and continuing to comply with the terms of sections four, eight, and nine hereof, acquire and maintain United States registration as provided in sections five and six, subject to the provision for cancellation thereof prescribed in section ten; and the information furnished by such corporation shall be subject to the provisions of section nine.

SEC. 17. That the said commission shall have power to make any and all regulations necessary and proper to carry out the purposes of this act, and at any time to alter, amend, or repeal the same or any part thereof.

SEC. 18. That any person willfully making or furnishing to said commission any statement, return, or record required by this act, when knowing such statement, return, or record to be false in any material particular, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Mr. NEWLANDS. Gentlemen of the committee, for some years I have been giving consideration to this particular question and have frequently expressed the conviction that it was imperatively necessary to create an administrative tribunal vested with the powers of investigation, publicity, correction, and recommendation in the case of large industrial corporations similar to those exercised by the Interstate Commerce Commission over railroads. On several occasions I have spoken upon this subject on the floor of the Senate; particularly just before the decision in the Standard Oil case was rendered. (The decisions in the Standard Oil and American Tobacco Co. cases were handed down May 15 and May 29, 1911, respectively.)

In a speech in the Senate on January 11, 1911, upon the Tariff Commission I outlined my views as to an Interstate Trade Commission. With the permission of the committee, I will insert these remarks in the printed hearing. (See Mr. Newlands's views in Cummins's report, appendix, p. 35.)

After the call of the extra session, but before its convening, I wrote to the Hon. Champ Clark, who was destined to be the Speaker of the House of Representatives at the extra session, a letter, which appears in the Senate proceedings (Congressional Record) of May 15, 1911, and in which I outlined a legislative program for the extra session.

The purpose of the program and the necessity for thorough legislation upon the question of interstate transportation, or the railroads; interstate trade, or the trusts; and interstate exchange, or banking—all of them interrelated as parts of interstate commerce—were referred to in this letter; but I will insert in the record simply that part which is relevant to this present discussion and to interstate trade:

UNITED STATES SENATE,
Washington, D. C., March 15, 1911.

Hon. CHAMP CLARK,
House of Representatives, Washington, D. C.

MY DEAR MR. CLARK: The extra session is now approaching; the House is Democratic, the Senate and the Executive department are Republican. Under this condition of divided responsibility the question arises as to what policy the Democratic Party shall pursue. It has already been practically determined that the House will take up, in addition to the reciprocity treaty, the tariff; and the question is whether it will take up other matters of reform and constructive legislation, and, with a view thereto, select the committees necessary to the consideration of such measures. The Senate will probably follow the lead of the House in this particular.

I hope, therefore, that it will not be regarded as intrusive if I, in common with other Democrats venture a few suggestions on this score, as the question is of the highest importance to Democracy generally. * * *

INTERSTATE TRADE, OR THE TRUSTS.

The interstate-commerce act for the regulation of railroads and the antitrust act for the prohibition of trusts were passed about the same time. The administration of the former was given to a quasi judicial board; the administration of the latter was given to the Attorney General's Office. After about 23 years

of operation, through a gradual process of evolution, the regulation of railroads engaged in interstate commerce has practically been accomplished. * * *

The administration of the antitrust act, on the contrary, has been lame and halting, changing with the shifting incumbents of the Attorney General's Office, and according to requirements of political exigencies. As a result, practically no progress has been made in the control of the trusts, and whilst a few suits have been prosecuted to a successful result and others are now in process of prosecution, there exist to-day over 800 trust organizations of enormous capitalization practically without regulation or control. Experience should teach us that with reference to interstate trade a commission or board should be organized similar to the Interstate Commerce Commission, with powers of investigation, of condemnation, and of recommendation, and with a view, whilst preserving the good arising from commercial combination, to curing the pernicious practices connected therewith. Such legislation should include among the powers of the commission the power, upon complaint or its own initiative, to inquire into the organization of all corporations engaged in interstate trade, and upon finding that any such organization is unlawful under the terms of the antitrust act, to call upon the Attorney General to prosecute the same.

The interstate trade commission should have a power similar to that of the Interstate Commerce Commission of appearing in litigation by its own counsel. * * *

Such legislation will be necessary whatever may be the action of the Supreme Court upon the pending cases. If such combinations are held to be legal, the regulation of their prices and practices becomes a public necessity; if they are held to be illegal, then there should be some law which, while permitting large capitalization and the ownership of many plants by a single corporation engaged in interstate trade, will protect the public from the abuses attendant upon such large capitalization and the oppression exercised by it. * * *

Sincerely, yours,

FRANCIS G. NEWLANDS.

During the extra session, on May 11, 1911, I presented in the Senate a program of legislation to be enacted or considered during the extra session. This program provided for nine questions upon which legislative action should be taken before adjournment, and for seven questions upon which the action of committees was desirable, with a view to early action during the next regular session.

Under this latter heading, namely, committee consideration, in the second subdivision, I suggested the consideration of legislation as follows:

(2) Providing, in connection with the Bureau of Corporations, for a board of interstate trade, with powers of examination, condemnation, and recommendation regarding interstate trade similar to those conferred upon the Interstate Commerce Commission regarding interstate transportation.

Later, on May 15, 1911, on the very day that the Standard Oil decision was being delivered in the Supreme Court, I spoke in the Senate upon the question of a legislative program for the extra session, and shall insert in the printed hearings an extract from this speech. The matter referred to is as follows: (See Appendix, p. 37.)

On May 16, after the Supreme Court had rendered its decision in the Standard Oil case, I continued my remarks of the day previous. Addressing myself to the decision of the court, I urged still further the necessity for organizing an administrative tribunal for the regulation of corporations engaged in interstate trade. I shall quote quite freely from this speech, as it contains quotations from the President, and his opinion that to leave the courts to say what is a reasonable restraint of trade, what is a reasonable suppression of competition, what is a reasonable monopoly, would be "to thrust upon the courts a burden that they have no precedents to enable them to carry, and to

give them a power approaching the arbitrary, the abuse of which might involve our judicial system in disaster."

I concur emphatically in this view that the courts are not the proper medium for exercising such a function. Because, therefore, we have clearly reached a point where some branch of the Government must do this sort of work, and because, as the President correctly states, the courts are not the proper place for it, I am advocating the establishment, as in this interstate trade commission bill, of an administrative agency that can perform this duty.

Again, in a speech upon the subject of a self-governing Senate, delivered in the Senate on June 22, 1911, in alluding to the program of legislation which I had been urging, I spoke regarding a board of interstate trade, and shall insert an excerpt in the record. (See appendix, p. 38.)

Later I drew up this bill and introduced the original on the 5th day of July, 1911. During the time I had this bill under consideration I discussed the matter with various persons whom I regarded as experts, particularly with members of the Interstate Commerce Commission, the Attorney General, the Commissioner of Corporations, the Solicitor General, and lawyers who were engaged in the trust prosecutions. I have also talked with men connected with these industrial corporations and with eminent economists, and I have found everywhere a general acquiescence in the view that something in the way of supplemental legislation was required.

It will be impossible to administer this great and necessary system of regulation through the courts. We all know that just as soon as these corporations are reorganized under these decisions they will, for a time at least, take the form of a large number of corporations, limited either in the character of the commodity with which they deal or in the area over which they operate. The management of these corporations is generally satisfactory to the stockholders; they have confidence in the existing management, and in the great financial interests and institutions that usually control that management. These stockholders will, by their proxies, practically give to those controlling interests their votes on anything they desire. So that we will eventually have, in these industrial corporations, just as we have with railroads, the practical control of all these subdivided corporations in the hands of a few great financial institutions or groups in New York, and they will dictate the membership of the boards and the general policy of all these corporations. There will be an effective unity of policy, and it will take such a form as to defeat the law officers in reaching it as a combination in restraint of trade. A mere nod, a mere suggestion, will accomplish what is desired.

The question is, Shall we wait until the courts shall go through their slow processes in the existing cases and re-create and reorganize these corporations and others against which undecided suits are now pending, and also in the numerous suits that will be brought? Or shall we organize an administrative tribunal which, vested with the powers of investigation, publicity, and correction, will, by continuous supervision, prevent the growth of these abuses which the courts are now called upon sporadically and intermittently to correct by their slow processes?

Certain fundamental considerations are thus raised, which I will present seriatim.

(1) The first question is: Shall an interstate trade commission of some kind be organized? I imagine that there can hardly be any difference of opinion on the point that there should be an administrative tribunal of high character, nonpartisan, or, rather, bipartisan, and independent of any department of the Government. I assume also that there should be a commission rather than one executive official, because there are powers of judgment and powers of discretion to be exercised. The organization should be quasi judicial in character. We want traditions; we want a fixed policy; we want trained experts; we want precedents; we want a body of administrative law built up. This can not be well done by the single occupant of an office, subject to constant changes in its incumbency and subject to higher executive authority. Such work must be done by a board or commission of dignity, permanence, and ability, independent of executive authority, except in its selection, and independent in character.

Of course, in performing any purely executive work one man is preferable to a commission. If only powers of investigation and publicity are given, a single-headed organization, like the Bureau of Corporations, might be the best for the work; but if judgment and discretion are to be exercised, or if we have in contemplation the exercise of any corrective power hereafter, or if the broad ends above outlined are to be attained, it seems to me that a commission is required.

(2) The next question is, What shall be done with the Bureau of Corporations, with its 120 experts who are full of interest in their duties, who have had long training in just this sort of work, and who have shown their capacity to do good work? Shall that bureau be entirely done away with, or shall it be merged in this new organization? And then what shall become of the chief of that bureau and his deputy, both of whom have acquired a large experience and both of whom have the confidence of the country? The Bureau of Corporations would hardly be necessary, as a separate organization, if such a commission should be created. But shall we lose the momentum, the long experience, and trained personnel that this bureau has acquired?

To avoid this loss it is obviously desirable that we merge the Bureau of Corporations—as this bill does—with all its officials, funds, and powers, in this commission, and that we make, for the first two years, the Commissioner of Corporations one of the new commissioners, and make him, for the first year, the chairman of the commission, afterwards giving the power to the commission to select its own chairman. Thus the executive work as at present organized would go on without a break, and the difficulties usual to the period of early organization would be largely obviated. My idea, also, is to utilize the Deputy Commissioner of Corporations as the secretary of the commission.

(3) The term of office of the commissioners is to be 10 years. The salary is to be \$10,000. I should favor a much larger salary than that, but I do not know whether Congress would look with favor upon it.

(4) The next question is, What shall be the test of the applicability of the act to corporations engaged in interstate trade? Shall it be size, as indicated, say, by its capital or its gross annual receipts,

or shall it be the character of the business in which the corporations are engaged, namely, the production of certain great staple articles?

I have inquired with great particularity of the Commissioner of Corporations and of the Solicitor General regarding this, and they say that they think the best test would be, for the present, the gross receipts of the corporations. If this test, provided in the bill, were applied, the jurisdiction of the commission would be probably confined to between 300 and 500 corporations.

Both the Solicitor General and the Commissioner of Corporations have very carefully considered this question of a test based on the character of the production of the corporation, or of the commerce or commodity in which it deals, and they came to the conclusion that it would be very difficult to do that; that it would necessitate refinements and subrefinements with reference to the different articles.

One suggestion was made which I think would improve the bill, that all corporations whose gross receipts exceed \$1,000,000 should make certain reports to be called for by the commission, which reports can be classified by the commission for the purpose of statistical information, and that these reports shall be given with a view largely to determining what are the corporations that have \$5,000,000 of gross receipts; but that only the corporations that have \$5,000,000 of gross receipts or above that shall be subject to the general provisions of the bill.

(5) The next question is: What shall be the powers of the commission? Shall they be confined to investigation, requirement of statements, publicity, and recommendation to the President and to Congress, or shall they go further?

I would deem it very beneficial even if we could get a bill that would go no further than that, because we would then have five men of high ability and character who would immediately start upon this as their life work—not the kind of work that we do, broken up by thousands of other considerations and by other duties, but whose specialty it would be to ascertain the facts and the abuses requiring correction, and to give publicity regarding them and then to make their recommendation to Congress.

(6) The next question is: Shall we provide the additional requirement of registration, granting to the commission the accompanying power of denying or canceling registration for certain prescribed offenses, or for violation of the regulations of the commission? And shall the punishment of a recalcitrant corporation be confined simply to a cancellation of registration?

I had a provision in the bill which I originally drew, that for disobeying the law or the regulations made in pursuance thereof a recalcitrant corporation could be prevented from engaging in interstate commerce. I am inclined to think that this is a rather extreme power and had better be left out for the present.

We must also consider as to the preciseness with which the grounds for denial or cancellation should be stated in the law and whether the commission shall have the power to make regulations, lack of compliance with which will result either in a denial of registration or a cancellation. Registration being compulsory, the denial of registration or the cancellation of registration would have simply a moral effect. The Solicitor General and the Commissioner of Corporations insist that that moral effect would be very great, though it involves

no substantial right of property, but that all these corporations will be able to secure public confidence by securing the confidence of the commission itself.

Senator CUMMINS. You do not propose any rules. The thing would have simply a moral effect if the board or commission did not have the power to determine how the corporation should be organized and how it should carry on its business.

Senator NEWLANDS. That raises the next question. If you desire to provide for registration of corporations, how far will you wish to define the powers?

As the power to regulate interstate commerce is a legislative power, the fundamental law requires that an act turning over the administration of such power to a commission or board shall prescribe the rules or standards under which the power is to be exercised. Would this apply to a mere registration in which no substantial property right is involved? For instance, would it be necessary for the law to define what are "unfair or oppressive methods of competition," what constitutes "overcapitalization" or "improper financial organization"; or could these matters be left to the judgment and discretion of the commissioners without precise legal definition?

Senator CUMMINS. What do you say about that?

Senator NEWLANDS. I am inclined to think that any general phrase intended to give them such powers as will prevent excessive capitalization or unfair or oppressive methods of competition would be upheld by the courts, particularly with reference to the denial or cancellation of the mere privilege of registration, which affects no substantial property right.

Senator CUMMINS. Without taking up the question of the constitutional power of Congress to do the thing that is suggested here, you know that there is the widest difference among Members of the Senate with regard to what constitutes proper capitalization. We debated that at some length in the railroad bill, and we could not agree even upon the subject as limited to the railways.

Senator NEWLANDS. For that very reason, it seems to me, the suggestion of our chairman, Senator Clapp, is a very reasonable one, that we should confine our present exercise of legislation at this extra session to the appointment of an interstate trade commission and the merger in such commission of the Bureau of Corporations, such commission to have simply powers of publicity, inquest, and recommendation; particularly in view of the fact that the Bureau of Corporations is not a bureau of complete publicity at present. On the contrary, it is instructed by the law to withhold from the public facts ascertained by public officers, unless the President gives his assent to publication.

Senator CUMMINS. I agree with you regarding the weakness in the organization of the Bureau of Corporations. But publicity is of no value unless the facts that are discovered can be compared with some rule of conduct which the law has laid down for the government of the corporations. It is bringing the force of public opinion to bear upon corporations to induce them or compel them to obey the law, and if you have no law, publicity is of minor importance. The facts which must underlie all this legislation are perfectly well known—well known to every student of the subject or observer of the subject; that is, the facts that are necessary to declare the law or rule of

conduct. A great many facts can be collected, as we have seen here all around, that are very curious and interesting, but they are not fundamental, they are not material, really, to the organization of the law. And it occurs to me—that is my view only—that your plan, while it leads in the right direction and we must have eventually, I think, some such tribunal, it would seem to me before we organize a commission we should be able to determine what kind of law it will all administer. You know the facts just as well now as you will then. You want to know just how every company is capitalized, how it is organized, and just how its business is done or has been done. These things are merely interesting as history; they are not essential to the conclusion that you want to reach as to how corporations should be organized and how they should conduct themselves.

Senator NEWLANDS. I agree with you as to that, that it is unnecessary in order to shape the law to have further investigation. We know to-day all the abuses that exist in corporate management. * * * But I will not pursue the question of immediate action further. I want to get through. I shall complete my statement in a very few minutes, and then I shall be very glad to take up this discussion with you, but I would like to get my statement in the record in a compact form as the basis for further hearings at the next session.

(7) In considering the powers which should be covered by this bill we shall have to take up the question as to whether the power to condemn unreasonable and extortionate prices should be included, and, if so, what should be the form of the rule or standard fixed. Shall it be analogous to that applied to the railroad companies, namely, that prices shall be reasonable and the same to all? And shall the power be given, as originally in the railroad act, to condemn only an unfair or unreasonable price, or, as was later done with the railroad act, shall the power now also include that of fixing a reasonable price? Personally, I am opposed to any attempt at present to fix prices.

(8) Next, shall the provisions regarding registration be simply persuasive or compulsory, and if compulsory as to the large corporations, shall permissive registration be granted to the smaller corporations? I incline to the view that it is better to make them compulsory, at least for the large corporations, in order to insure the effective operation of the system.

(9) Shall the commission, in case of revocation of registration, have power to order that the offending corporation shall not engage in interstate commerce? My own view is that such power should not at present be granted. Therefore I would not urge the retention of section 11, which gives the commission power, in case of revocation of registration, to forbid the offending corporation to engage in interstate commerce.

I do not think it advisable to overload the commission at this time, and yet we must bear in mind that our experience with the interstate-commerce act shows the great difficulty of adding needed amendments later on. We all know what obstructions needed amendments of the interstate-commerce act met with, and it took nearly 20 years to get that act into really workable shape.

The Commissioner of Corporations attaches great importance to registration, to the moral effect of refusing or canceling registration. He has since modified also his views somewhat as to the desirability

of a commission, an idea which he at first opposed, and I think that he is now substantially in accord with this bill. The Solicitor General has expressed himself very emphatically in favor of legislation on these lines.

I shall append to my remarks quotations from a letter from Mr. Herbert Knox Smith, in response to a series of questions which I put to him and after he had consulted with the Solicitor General.

I have consulted the Secretary of Commerce and Labor. I have also consulted the Attorney General. Both the Secretary of Commerce and Labor and the Attorney General were strong advocates of a national incorporation act, believing that national incorporation should cover interstate commerce, and that the act itself should contain all the necessary restrictions upon these corporations as to capitalization, the area of their operations, etc.

Senator BRANDEGEE. I want to understand clearly whether in favoring a national incorporation act they meant to favor that and to pass what you propose.

Senator NEWLANDS. No. In my discussions with them I stated that, so far as I was individually concerned, I had tested the sentiment of Congress regarding a national incorporation act, and particularly the sentiment of my own party; that whilst I had advocated national incorporation with reference to great transportation companies whose functions are largely national, and with a view to taking away from such States as New Jersey the jurisdiction which they had usurped over interstate commerce in the organization of corporations national in scope, I was never able to make much headway with my own party, clinging, as it does, to the exercise of State functions and guarding against Federal encroachment. Therefore my argument was addressed to them, not in opposition to their view as to national incorporation, but as to the possibility of passing a national incorporation bill, and particularly in view of the present political status, the administration having drifted from one of powerful Republican control, a control entirely in sympathy with the broad exercise of national powers, to one of divided control. I think both of them, whilst they adhere to the view that a national incorporation act would be the best method, acquiesce in the view that at present it is difficult, if not impossible, to secure the passage of such a bill. I have heard no expression from Secretary Nagel as to whether, that being the situation, he would be willing to favor a bill for an administrative commission such as this is, but the Attorney General has expressed himself regarding it, and he has indicated a disposition even to go further. I will append quotations to this effect from his recent speech at Duluth.

Finally, I wish to point out one broad consideration. In the present status of our public policy as to the great corporate problem we have at least two leading and divergent schools of thought, two tendencies, each toward a different method of procedure. The one desires to maintain by governmental action if need be, the full competitive system and to rely chiefly on competition as the regulator of corporate business. The Sherman antitrust law strongly presents this principle.

The other school inclines rather—to state the extremes—toward freely allowing combinations, both present and future, applying

thereto governmental supervision and direction as the prime regulator.

In my opinion it is too early to say which of these opposing tendencies should, or will, ultimately prevail.

Holding such a view, I am urging this bill, because the system it embodies is exactly adapted to the undeveloped situation I have just described. It is available for either tendency; it can be made to serve either principle; it will help to show which is the correct one; and it does not commit us permanently to either of these two main lines of action.

Its primary result will be to furnish both to Congress and to the public the accurate and broad information on corporate conditions that is necessary to determine the line of further advance. It neither legalizes nor forbids combination; it in no way affects the operation of the Sherman law; its work of publicity and supervision will tend strongly to promote fair competition and keep equally open to all the highways of commerce.

On the other hand, it takes the situation as it is; it recognizes that there is a large degree of combination already existing, and it makes that condition a subject for supervision, study, and report to Congress.

In short, it is a step upon which all can unite, as eminently fitted by its moderation and, indeed, by its own frankly tentative character to do what is imperatively needed for the present without prejudicing the future.

(The quotations from the address of Attorney General Wickersham, delivered at Duluth, Minn., July 19, 1911, above referred to, are as follows:)

The gradual interpretation of the act of July 2, 1890, resulting in the decisions and decrees rendered by the Supreme Court at its last term, has at last clearly demonstrated the effectiveness of that law to destroy existing combinations in restraint of interstate or international commerce and attempts to monopolize any part of it and to prevent renewed combination or monopolistic effort. * * *

But the question remains, can the great end and object of the Sherman law—namely, that the normal course of trade and commerce among the States shall not be impeded by undue restraints and monopolies—be realized through the operation of that law alone?

In dealing with transportation, Congress was not content to rely simply on the process of injunction to restrain and indictment to punish violations of the antitrust law. It also established an administrative commission clothed with powers—greatly enlarged from time to time—over those engaged in the transportation business. * * *

Within what limits is legislation to regulate corporations engaged in interstate commerce other than transportation expedient and practicable? Should the analogy of the interstate commerce law and commission be followed? * * *

That some further regulation over corporations carrying on commerce among the States may be necessary is a matter of current comment. * * *

The Federal Department of Justice is not organized or equipped to maintain constant supervision and control over business organizations. It deals only with cases of violation of law. The activities of an administrative board or commission would be directed to preventing such violations and in aiding business men to maintain a continued status of harmony with the requirements of law.

Moreover, unless Congress shall provide for the establishment of corporations drawing their life and powers only from the National Government and subject only to its control, or shall confer specific powers on State corporations which will enable them to carry on commerce away from the State of their creation without the interference of States into which they go, the present unsatisfactory condition of carrying on business in the different States by means of many different corporations owned or controlled through stock ownership by a parent

company created by some one State will continue, and in the natural, normal, healthy, and legitimate growth of such business questions of the application of the Sherman law must arise which can not be properly settled with the district attorney or the Department of Justice, but which should be dealt with by an administrative body having appropriate jurisdiction.

(The letter from the Commissioner of Corporations, Mr. Herbert Knox Smith, above referred to, follows:)

HON. FRANCIS G. NEWLANDS,
United States Senate, Washington.

DEAR SENATOR: Your letter of the 2d instant was received, raising certain questions on the bill for an interstate trade commission (S. 2941) introduced by you. * * *

Taking up your questions in order:

(1) "Shall an interstate trade commission be organized?"

If the work is to be simply that of investigation and publicity, my experience would indicate that an organization under a single head would be decidedly more efficient. For purely executive or administrative action such form of organization is preferable. If, however, judicial or semijudicial powers are to be exercised the commission form has important advantages; it is better adapted for judicial decision, its judicial rulings would probably carry more weight, and, in any event, it tends to secure stability, continuity of policy, and greater independence of action.

(2) "Shall the Bureau of Corporations be merged in the commission?"

If the interstate trade commission is to exercise substantially the powers now used by the Bureau of Corporations it seems almost necessary that the bureau should be merged in that commission, as the bureau would have little reason for further separate existence. There is also, however, the very important consideration that the bureau is very necessary to the commission; the bureau is the one unit in the Government service which can immediately supply the experience, trained force, knowledge, and traditions which the commission must have for its work.

(3) "Shall the test of the applicability of the acts to corporations engaged in interstate trade be the annual gross receipts, or the character of the business in which the corporations are engaged—namely, the production of great staple articles?"

The question here is a debatable one, but experience with corporate business leads me to doubt the feasibility of a classification based on kinds of business or staple commodities. Such lines of demarcation are too vague. For example, certain companies deal wholly in the manufacture of lumber, others in its sale, others in the manufacture of goods primarily made out of other materials but having a certain proportion of lumber. Similarly with the steel industry and many others. It would be almost impossible to draw the line in many cases so as to say whether a corporation was engaged in a given industry or not. Many great wholesale houses sell a large amount of hardware. Would they be included, for example, as engaged in the steel industry?

(4) "Shall the power of the commission be confined to investigation and request, requirement of statements and publicity, and recommendation to the President and to Congress?"

"If not, shall the additional requirement of registration be made with the accompanying power of denying or canceling registration for certain prescribed offenses or for violation of the regulations of the commission; and shall the punishment of a recalcitrant corporation be confined simply to a cancellation of registration?"

Investigation, publicity, and recommendation should be in any event parts of the system. Personally, I favor strongly registration of corporation with power of cancellation. This gives a very practical means of control, which at the same time has the great advantage that it does not actually attempt the positive regulation of business. It allows credit for proper business conduct and imposes discredit for the reverse, but assumes no power of direction and simply leaves the public to apply corrective pressure through public opinion and the investment of the public's money.

Answering also the last part of the question, it is probably better for the present to provide cancellation of registration as the only penalty for improper business conduct. I feel entirely satisfied that such United States registration would shortly become a valuable business and financial privilege for any large

corporation. The standing of the company with that public opinion that underlies legislative action and the financial status of its securities with the investing public would be affected in a very practical way by the possession or cancellation of such registry. The approval now granted to corporate transactions through existing State public-service commissions has already a very definite market effect on the price of securities and on the attitude of public opinion.

(5) "The preciseness with which the grounds for denial or cancellation should be stated in the law, and whether the commission shall have the power to make regulations, lack of compliance with which will result either in a denial or cancellation?"

The grounds of cancellation should be broadly stated, leaving the commission to apply in specific cases the general rules prescribed by Congress. If power of making regulations be conferred on the commission, it should be simply for such regulations as will carry out the terms of the act and make effective the rules laid down therein.

(6) "As the power to regulate interstate commerce is a legislative power, it has been held that the law turning over the administration of such power to a commission or board shall prescribe the rules or standards under which the power is to be exercised. Would this apply to a mere registration in which no substantial property right is involved?"

The question of whether the delegation of a power is constitutional depends wholly on the nature of the power. Legislative power, strictly speaking, can not be delegated, but executive power can, of course, be conferred by legislation, and there can also be given quite broad power of executive administration in ascertaining facts and applying to them the rule established by legislation. It seems probable that the powers granted in this bill come under the latter head and are constitutional.

An excellent case on the subject is *Union Bridge Co. v. United States* (201 U. S., 364), where the earlier cases are reviewed in detail. The case itself involved the question of whether an act of Congress granting to the Secretary of War power to order the removal of the bridge over a navigable stream "whenever the Secretary of War shall have reason to believe that any * * * bridge * * * over any of the navigable waters * * * is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise," was a delegation of legislative power.

The court held that this was not an objectionable delegation of power, and quoted, with approval from *Lock's appeal* (72 Pa. St., 491), as follows:

"The legislature can not delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend."

See also other cases cited in this decision.

An excellent legislative precedent is in the steamboat-inspection law, where, by section 4403, Revised Statutes, a board is given power to "establish all necessary regulations required to carry out in the most effective manner the provisions of this title." These regulations now cover over 100 pages.

In the same law, also, the inspectors are given broad power over the licenses of steamboat officers, as follows: "But such license shall be suspended or revoked upon satisfactory proof of bad conduct * * *," a power obviously closely analogous to the power of cancellation provided in your bill.

It should be noted also that the only power delegated is the mere revocation of registration. Registration is not a property right. It is simply a privilege granted through the commission and revocable by it.

Thus, as stated in paragraph 5 above, rules of action and grounds for cancellation of registration should be set forth in the bill itself, with sufficient definition to make clear the intention of Congress as to the class of acts to be covered thereby. For example, the word "overcapitalization" is perhaps sufficiently definite in itself, while "unfair or oppressive methods of competition" would perhaps be too indefinite.

(7) "In case the power to fix prices should be included," etc.

I would prefer not to discuss the form of such power, as I personally believe it unwise to confer any such power on the commission, and do not consider myself competent to treat the subject properly.

In considering any such treatment of our commercial problem as is attempted in this bill, it seems to me, at least, that the Government should not, at present, commit itself, by way of general policy, either to the theory of "unlimited competition" or of "unlimited combination." We are not, I feel, sufficiently advanced to justify us in taking a definite position in favor of either one of

these opposing ideas. Any system we adopt now should be so framed as to be alike available for either development. To give the power to fix prices would tend to commit us to a policy of industrial combination.

(8) "Shall the provision regarding registration be simply persuasive, or compulsory; and if compulsory as to the large corporations, shall permissive registration be granted to the smaller corporations?"

I believe that the system would be entirely workable, if the publicity, etc., were simply permissive, and that some complications would thus be avoided. But a compulsory system for large corporations should also bring much the same results, especially if coupled with permissive registration for smaller concerns. The permissive feature for smaller companies seems decidedly desirable.

(9) "Shall the commission, in case of revocation of registration, have power to order that the offending corporation shall not engage in interstate commerce?"

This power is a peculiarly drastic one, and would require rather elaborate machinery for its enforcement. I doubt both the wisdom and the necessity here.

I take the liberty of adding some general considerations, which may be relevant to the discussion of such a system as is proposed by your bill. These views are based on an experience of eight years in the Bureau of Corporations.

(10) The one imperative change now required in our policy toward the "corporate problem," is a change from our present system of treating that problem through occasional prosecution, to a system which will treat it with continuous administrative action. We should advance from a negative policy to a positive constructive policy; from mere occasional prohibition to permanent regulation and prevention.

(11) One of the primary objects of the commission is the providing of proper publicity. This should not be combined with the administration of the Sherman law. It is probably true that efficient publicity is inconsistent with prosecution, at least as administered by the same office. The Bureau of Corporations, the present agent of corporate publicity, secures now at least nine-tenths of its information by voluntary cooperation. The interstate trade commission would continue this work, but should the function of prosecution under the Sherman law be combined with publicity, it is obvious that the present voluntary cooperation of corporations, the main source of information, will very largely be destroyed.

There are of course exceptions to this general principle. At times it would be necessary for the information obtained by the commission and indicating a clear and flagrant violation of law to be turned over to the Department of Justice. The Bureau of Corporations has in this manner given much assistance to the Department of Justice. The numerous prosecutions of the Standard Oil Co. since 1906 for railway rate discriminations were all based on the report of that bureau, and the agents of the bureau furnished much of the evidence and assisted largely in the preparation of the cases.

Similarly, in the recent prosecution of that company under the Sherman law, the case was instituted as a result of the investigations of the bureau, was largely prepared by its agents, and, I venture to say, would not have been successfully presented without their aid. Some of the ablest men in the bureau gave over a year of their time to this case.

But in general such connection with prosecution should be wholly incidental and secondary, and the publicity work of the commission should be directed primarily at furnishing reliable economic and financial information for the general public and not at securing evidence for prosecution.

(12) One of the most important features of such an administrative system of corporate regulation is its provision, as above referred to, for broad corporate publicity. The effects of such publicity have been well shown by the past work of the Bureau of Corporations, as set forth in the Annual Report of the Commissioner of Corporations for 1910.

The report of the bureau on the transportation of petroleum, published in May, 1906, effected a sweeping decrease in the granting of railway rebates throughout the country. Practically every railroad involved in the railway discriminations described in this report canceled the objectionable rates within six months after the issuance of the report.

The report of the bureau on cotton exchanges resulted within a few months in a marked improvement in the regulations of the New Orleans Cotton Exchange, and while the New York Cotton Exchange has not yet made any changes in its system, that exchange, on March 23, 1911, voted "that it is the sense of this meeting that since * * * the Department of Commerce and

Labor has made an exhaustive investigation of the business methods of the cotton exchanges and has criticized the methods and by-laws of the New York Cotton Exchange * * * it will be good judgment on the part of this exchange to, * * * so far as possible, adopt the suggestions made by the Government."

In the tobacco industry the independent manufacturers have in many instances stated that the work of the bureau has caused the cessation of various objectionable methods of competition.

In the problem of waterways, the reports of the bureau, three in number, have very widely influenced public opinion by showing the real questions to be solved and the real advantages to be attained in waterway transportation.

A Federal administrative system of publicity and registration should develop both strength and elasticity. The administration of such a system should result in a definite and broadening policy, based on exact information, establishing definite standards of business action, of public economics, and of Government regulation, in themselves highly effective, and valuable also as the raw material for further statutory enactment.

We may fairly hope to get from it a gradual rise in the standard of business conduct, closer relationship between large business and public authorities, marked improvement in corporate accounting and in the standing of our industrial securities, and the elimination of unfair practice and business privilege. All of this without any disturbance of properly conducted business.

The time seems ripe for such action. It has been obvious since the Supreme Court decisions on the Standard Oil and Tobacco Co. cases that the public is ready and anxious for an advance to some such administrative system of regulation by the Federal Government. It seems to be true that corporate managers concede more and more the necessity for such regulation and publicity, recognizing both its public necessity and its advantage to fair business.

Very sincerely, yours,

HERBERT KNOX SMITH, *Commissioner.*

EXTRACTS FROM REPORT OF THE SENATE COMMITTEE ON INTERSTATE COMMERCE ON SENATE RESOLUTION NO. 98, FEBRUARY 26, 1913.

[S. Rept. 1326, 62d Cong., 3d sess.]

FROM MR. CUMMINS'S REPORT.

On the 26th day of July, 1911, the Senate adopted the foregoing resolution, and acting under the authority and in pursuance thereof the Committee on Interstate Commerce provided for open hearings upon the subject matter of the resolution. The hearings began on the 15th day of November, 1911, and were continued from day to day for more than three months, during which time 103 men appeared before the committee, and their statements, together with the exhibits and documents submitted by them, fill 2,799 printed pages. A printed copy of these statements, exhibits, and documents, including an index, laws and reference concerning industrial combinations in foreign countries, and a collection of judicial decisions touching the power of Congress in the regulation of commerce among the States, in all, five volumes, is herewith presented to the Senate.

While the committee is conscious that some of the matter adduced at the hearings and submitted as a part of this report is not relevant to the questions under consideration and of little worth, it believes that, upon the whole, the hearings have furnished one of the most valuable contributions that can be found in the literature of the subject. It is not yet ready to report any of the bills which are now before it, and which propose specific modifications of or additions to the existing statute; nor is it prepared at this time to report a substitute for them. It hopes that it may be able before the close of

the present session to act finally upon these bills and recommend in definite form the legislation which it may think necessary or wise to meet modern business conditions. It is, however, prepared to answer the general inquiries propounded in the resolution, and in view of the overwhelming importance of the subject it ventures to add to the direct response some observations upon the origin, purpose, and effect of the enactment commonly known as the antitrust law, to indicate wherein it is inadequate, and to suggest the general scope of further regulation.

The committee is of the opinion:

First. That the statute should stand as the fundamental law upon the subject, and that any supplemental legislation for more effectual control and regulation of interstate and foreign commerce should be in harmony with the purpose of the existing statute.

Second. That whatever may be our views respecting the power of Congress to enact a general Federal incorporation law, it is neither necessary nor desirable at this time to provide for the organization under act of Congress of industrial corporations which propose to engage in commerce among the States and with foreign nations.

Third. That it is desirable to impose upon corporations now or hereafter organized under State law, and engaged or proposing to engage in such commerce, further conditions or regulations affecting both their organization and the conduct of their business, and also to impose further conditions or regulations upon persons, copartnerships, and other associations now engaged, or hereafter engaging, in such commerce, the general character of such regulation to be the same as those laid upon corporations, except such conditions or regulations as are in their very nature peculiar to the corporate form of commercial activity.

* * * * *

There are three general fields in which the commission could work to the great advantage both of the people for whose protection the law exists and the people against whom it is directed.

First. If the Bureau of Corporations were converted into an independent commission composed of trained, skillful men, and clothed with adequate authority, there could be gathered more complete and accurate knowledge of the organization, management, and practices of the corporations and associations engaged in national and international commerce than we now have. In saying this the committee does not mean to disparage the work of the Bureau of Corporations as hitherto carried on, but, valuable as the work has been, it is believed that a greater service could be rendered by a commission with a distinct organization with adequate appropriations and added authority. Moreover, it is clear that the constant inquiry into and investigation of interstate commerce in order to ascertain whether the law is being violated should be more closely connected with prosecutions for violations, when found to exist, than at the present time.

Second. When the conditions upon the fulfillment of which persons and corporations may engage in commerce among the States and with foreign nations are imposed, as the committee has heretofore recommended, there will be some of them upon which the Government must act with administrative promptness rather than with

judicial deliberation and delay. For instance, suppose Congress were to declare, as the committee thinks it ought to declare, that no corporation should be permitted to engage in interstate or international commerce unless it be honestly capitalized, and that when anything but money is accepted for its stock that the value at which the property is so taken must be its fair, reasonable value. It seems clear that a corporation proposing to enter business should have an opportunity to come to some governmental tribunal and say, here is the property purposed to be taken for stock, and here is the price at which it is to be taken, and thereupon ask for approval or disapproval of the proposition. It would be most unjust in such a case to allow the corporation to go on for years and then be told that it must cease to do business because the value of the property was less than the par value of the stock issued for it.

And, again, suppose that 10 out of 20 manufacturing establishments heretofore in competition with each other desire to consolidate into one enterprise. There ought to be a way in which the men in such a venture could submit their plan to the Government and an inquiry made as to the legality of such a transaction, and if the Government was of the opinion that competitive conditions would not be substantially impaired there should be an approval, and in so far as the lawfulness of the exact thing proposed is concerned there should be a decision, and if favorable to the proposal there should be an end of that particular controversy for all time. Such results as these can be attained in no other way than through a commission which, though administrative in its character, would, in some instances, exercise quasi judicial functions. It is believed that through the intervention of such a body of men the legislative policy with respect to combinations and monopolies could be vastly more effectual than through the courts alone, which in most cases will take no cognizance of violations of the law for months or years after the violations occurred and when the difficulty of awarding reparation for the wrong is almost insurmountable.

The committee has not attempted to be comprehensive as to the usefulness of the commission in this field, and has made these suggestions only to indicate in the most general way the assistance that could be rendered in the enforcement of the law.

Third. One of the most serious problems in connection with suits brought under the antitrust act is to find the proper method of disintegrating combinations that have been adjudged unlawful. The dissolution of a corporation or a series of associated corporations must often involve the consideration of plans for reorganization in order that the property which has been unlawfully employed may thereafter be lawfully used in commerce. The courts are not fitted for the work of reconstruction, and whatever jurisdiction they now have, or that may hereafter be conferred upon them with respect to such matters, it can not be gainsaid that a commission, the members of which are in close touch with business affairs, and who are intimately acquainted with the commercial situation, might be extremely helpful in the required readjustment.

Respectfully submitted.

ADDITIONAL VIEWS OF MR. POMERENE.

With the report in general I am in accord. But there is one feature of it about which I desire to be more explicit, and that is the paragraph discussing the certainty of the provisions of the Sherman law as applicable to certain cases and its uncertainty as applicable to others.

I approve the view that—

There are many forms of combination and many practices in business which have been so unequivocally condemned by the Supreme Court that as to them and their like the statute is so clear that no person can be in any doubt respecting what is lawful and what is unlawful.

There are other forms of organization and acts which seriously interfere with competition, such as interlocking directories, watering of stock, selling of merchandise in one locality at a less price than in another, and other practices which are so contrary to sound business principles and good morals that they can and should be specifically controlled or prohibited by statute. As to these, in the interest of certainty, there should be other and further legislation. But, whatever may be the additional legislation, there will be many other contracts, combinations, and practices in "undue and unreasonable restraint of trade," which it is impossible for Congress to define by statute, because any attempt to so define them will, in practice, be found to exclude many other contracts, combinations, and practices which are equally inimical to the public good. As to these, we must always depend upon the sound wisdom and discretion of courts and juries for relief, just as in the past we have been obliged to trust to their judicial administration.

To illustrate: We know that legislatures and courts have constantly refused to define fraud because the multiplicity of acts and circumstances involved in human affairs make it impossible of definition.

The same may be said with equal truth as to what constitutes "undue or unreasonable restraint of trade."

It is said with a great deal of force that men are not always able to tell in advance whether certain acts are in "undue or unreasonable restraint of trade." But however difficult this may be, it is no reason why they should be left for decision to the selfishness of interested parties uncontrolled by judicial decision under the principles of the common law or under the broad provisions of the Sherman law.

In criminal cases it is often difficult to say in advance whether a given state of facts constitutes a reasonable doubt. But is that a reason why courts and juries should not attempt to say in a specific case whether there was, in fact, a reasonable doubt or not?

In negligence cases it is equally difficult to say whether a given state of facts constitutes contributory negligence on the part of the plaintiff or reasonable care on the part of the defendant. But can this be urged as a reason for not leaving special cases to the judgment of the court and jury?

In my judgment, what is "undue or unreasonable restraint of trade" must, in many cases if not in most cases, be left largely for judicial determination and sound judgment and good morals will be

a sufficient guide for those who are actuated by a proper public spirit rather than by selfish motives.

While I believe there can be some additional legislation along the lines indicated, I am firmly of the opinion that the Sherman law is a clear and certain guide for reasonable men who desire to comply with the law and do not exert themselves to evade its provisions.

ATLEE POMERENE.

ADDITIONAL VIEWS OF MR. TILLMAN.

The undersigned is not now prepared to say that a new national commission should be established for the better administration of the antitrust law. He is inclined to believe that we have too many commissions now, composed largely of so-called "lame ducks," both Democrats and Republicans, who have been defeated at the polls and are given these places mainly as a compensation and means of support. He thinks Congress ought to perform its own functions rather than surrender them to commissions thus created by Executive appointment.

He does not assent to the particular language used on any point in the report of the committee, except where he has specifically so stated.

As the committee is not now ready to propose specific measures of legislation, he prefers to wait and to listen to the recommendations of the incoming President of the United States.

B. R. TILLMAN.

ADDITIONAL VIEWS OF MR. GORE.

I concur in the main body of the report and in the conclusions arrived at, except as to the specific recommendation looking to the establishment of a commission. Upon that recommendation I reserve my judgment for the present. I could not yield my assent to this proposition without first considering both the principles and details of any measure proposing such a commission. My ultimate assent would depend upon the constitution and character of the commission and upon the extent and limitation of its powers and purposes. It may be possible that a commission could with propriety be vested with power to pass upon the form of a proposed organization, but no commission should have authority to grant indulgences as to the methods, conduct, and operations of any such organization.

T. P. GORE.

Mr. Newlands confined himself entirely to the question of a trade commission bill, and included in his observations his original interstate trade commission bill as tentatively amended and approved by the Interstate Commerce Committee. His views are as follows:

ADDITIONAL VIEWS OF MR. NEWLANDS.

Whilst I agree with the general conclusion reached by Mr. Cummins in his report, I have not been able to study with sufficient care the decisions of the Supreme Court relating to the trusts to enable

me to form an independent opinion as to his analysis of them. For years I have contended that if at the time the Sherman Act was passed (the date of its passage being almost contemporaneous with that of the interstate-commerce act regarding the railroads) we had organized an interstate trade commission similar to the Interstate Commerce Commission, and with somewhat similar powers of investigation and correction, we would have prevented or remedied many of the abuses which have since grown up, and that we would have gradually evolved a system of commercial law through administrative process, as complete as that which has been built up regarding our system of transportation.

I presented my views relating to this matter at the first hearing of this committee regarding the control of corporations on the 4th day of August, 1911, and on the 16th of November, 1911 (hearings, pp. 1 to 26, inclusive). I then discussed a bill for the organization of an interstate trade commission (Senate bill No. 2941), which was introduced by me on the 5th of July, 1911, and a substitute bill of the same number, introduced by me August 21, 1911.

As a result of the additional light shed upon this subject by the hearings, I introduced in the Senate, on February 26, 1912, a bill (Senate bill 5485, 62d Cong., 2d sess.) entitled "A bill to create an Interstate Trade Commission," etc.

Later on, as a result of subsequent consideration, this bill has been amended, and I present it with the alterations as a tentative proposal for criticism and suggestion. The bill as amended is annexed hereto.

Whilst I believe that the Sherman Antitrust Act should not be altered, I believe that it should be supplemented by such legislation as is shown to be necessary by the experience of the time. Such variety of views exists as to what this supplementary legislation shall be that I do not believe early legislation on this line is practicable. But I do believe that all can agree upon an Interstate Trade Commission with powers of investigation and correction, and with the power to aid the courts in the administration of the Sherman Act and other supplementary legislation; and I believe that such a commission should be organized immediately, so that Congress can soon have the benefit of the recommendations which it will make as the result of its experience.

I shall not enter into any labored argument upon this question. I shall simply content myself with quoting from previous utterances in the Senate.

In the Senate, January 11, 1911:

Mr. NEWLANDS. * * * The railroad commission bill furnishes a model for the action of Congress upon matters involving minute and scientific investigation. Had we followed the same method regarding trusts that we followed regarding railroads, we would have made much better progress in trust regulation. The antitrust act was passed 21 years ago, about the same time that the railroad commission was organized. The railroad question is practically settled; the settlement of the trust question has hardly been commenced. Had we submitted the administration of the antitrust act to an impartial quasi judicial tribunal similar to the Interstate Commerce Commission instead of to the Attorney General's office, with its shifting officials, its varying policies, its lack of tradition, record, and precedent, we would by this time have made gratifying progress in the regulation and control of trusts, through the quasi judicial investigations of a competent commission and through legislation based upon its recommendations. As it is, with the evasive and shifting incumbency and administration of the Attorney General's office, oftentimes purely political

in character, we find that the trusts are more powerful to-day than when the antitrust act was passed, and that evils have grown up so interwoven with the general business of the country as to make men tremble at the consequence of their disruption.

In the Senate, May 16, 1911:

Mr. NEWLANDS. Mr. President, whilst I was addressing the Senate yesterday upon the importance of taking up immediately certain questions upon which public opinion has been formed, and crystallizing them into legislation, I referred, among others, to the great questions of the combinations of capital called trusts which have assumed of late years so powerful and menacing an aspect. * * *

The Supreme Court yesterday acted upon this matter with reference to one of the great trusts in a decision which applies to them all, and, as the result probably of the inertia and the inaction of Congress, has taken upon itself what the dissenting member of that court, Mr. Justice Harlan, declared to be judicial legislation, and has written into the statute words which Congress never put there; and so to-day we have a decision upholding the antitrust act so far as it applies to unreasonable restraint of trade.

The question, therefore, presents itself to us whether we are to permit in the future the administration regarding these great combinations to drift practically into the hands of the courts and subject the question as to the reasonableness or unreasonableness of any restraint upon trade imposed by these corporations now existing and to be brought into existence in the future to the varying judgments of different courts upon the facts and the law, or whether we will organize, as the servant of Congress, an administrative tribunal similar to the Interstate Commerce Commission, with powers of recommendation, with powers of condemnation, with powers of correction similar to those enjoyed by the Interstate Commerce Commission over interstate transportation.

* * * What has been our experience regarding that branch of interstate commerce which covers transportation? Our experience has been that 20 years ago, just about the time the antitrust act was passed, Congress passed the interstate-commerce act, creating a commission as its servant to attend to its duties under rules prescribed by Congress. The regulation of interstate commerce belonged to Congress. Congress wisely saw that it could not undertake that regulation in all its details; that it could not pass rate bills which would be satisfactory to every section of the country; that it could not reduce rates that were claimed to be excessive and increase rates that were claimed to be too low; that it could not correct the varying abuses which creep into the administration of every great enterprise. Therefore it created this commission as its servant, to carry out its will under rules established by it.

The history of the last 23 years proves the wisdom of our action. By a gradual process of evolution this commission, as the result of gradual improvements in legislation and as the result of constantly increasing powers recommended by it and affirmed by Congress, has become a tribunal second in importance only to the Supreme Court of the land. It has made transportation a science. It has studied all the intricate questions relating to it, and in a recent illuminating decision has formulated a great state paper that has impressed the country and the world with its wisdom.

Now, contrast that action with other action taken by Congress regarding the trusts. It would have been possible 23 years ago, when the interstate-commerce act was passed, with reference to interstate trade, to have established an industrial or trade commission or board similar to the Interstate Commerce Commission with reference to transportation. If we had done so and had put upon that commission the same class of men who have been appointed upon the Interstate Commerce Commission, we would have had the constant corrective power of that commission applied both to the existing trade corporations and to the trade corporation afterwards created. Many abuses would have been prevented. Many abuses would have been corrected. As a result of the constant study and inquiry of a competent board engaged in this work as a specialization recommendations would have been made to Congress which would have been accepted, as were those recommendations made with reference to interstate transportation, and a great body of administrative law would have been built up and combinations of capital would have been effected without the abuses which have existed during the past 23 years. * * *

In the Senate, June 22, 1911:

Mr. NEWLANDS. What is the second one which I suggested? I suggested legislation providing, in connection with the Bureau of Corporations, for a board of interstate trade, with powers of examination, correction, and recommendation with regard to interstate trade similar to those conferred upon the Interstate Commerce Commission regarding interstate transportation. This resolution was offered before the recent decision of the Supreme Court regarding the trusts, and I then declared that, whatever might be the decision of that court, the creation of such a commission was essential. Interstate trade is just as much a part of interstate commerce as interstate transportation. The abuses of interstate trade have become just as great as the abuses of interstate transportation in the past have been. Obviously the teachings of experience lead us to the organization of a commission or board similar to the Interstate Commerce Commission, with a view of taking hold of the great combinations of capital and making them obedient to the law, giving such a commission powers of examination, recommendation, and condemnation similar to those enjoyed by the Interstate Commerce Commission.

Since that decision the trust managers themselves have seen a great light, and in public examinations have stated that in their judgment the time has come for as complete regulation of corporations engaged in interstate trade as of corporations engaged in interstate transportation. Whether that regulation will ever extend so far as the regulation of the price itself is a matter to be determined in the future, for Congress will be called upon to decide how great these corporations shall be, what the extent of their capital shall be, what number of plants they shall own, and what shall be the extent of their operations. If they conclude to maintain the principle of competition, even though it leads to destruction, there will then, of course, be no necessity of regulating prices. But if they recognize the principle of helpful cooperation instead of destructive competition, then it will be necessary for them in extreme cases to face the question of the regulation of prices just as the prices of any public utility are regulated.

I do not venture to express an opinion now as to what course should be pursued with reference to this great question, but it is time that the Interstate Commerce Committee of the Senate were entering upon an inquiry of the most important question in economics that has engaged the attention of the country since the railroad question was first presented to it.

Quotation from Mr. Newlands's statement before the committee on the 15th day of November, 1911 (hearings, p. 25):

Senator NEWLANDS. Mr. Chairman, during the late extra session I introduced Senate bill 2941, for the creation of an interstate trade commission with powers over corporations engaged in interstate trade similar in many respects to those possessed by the Interstate Commerce Commission over interstate transportation. On the 4th of August, toward the close of the extra session, this committee, of which I am a member, gave me a hearing on the bill and I made a preliminary statement, explaining its terms and the conditions it was intended to meet. That statement, together with quotations from the President, the Attorney General, and the Commissioner of Corporations, has been printed as the first part of the hearings under the resolution introduced by the chairman.

The bill provides that all interstate corporations (except railroads) whose gross annual receipts exceed \$5,000,000 shall make regular reports to the commission as to their business transactions, shall be subject at will to the examination of the commission, and shall, upon complying with such requirements, have the exclusive right to use the title "United States registered." The bill also provides that for violation of the Sherman law, improper capitalization, unfair methods of competition, acceptance of railway rebates, or other improper business transactions the commission may at will cancel such registration. It is recognized that the right of a cor-

poration to publish the fact of such registration will shortly become a valuable financial privilege, and that the fear of cancellation of such right will be a strong restraining influence against improper transactions.

The bill provides a permanent administrative body of trained experts, who shall have as their sole specialty the supervision and registration of large corporations and supply accurate information thereon to the public, and shall make recommendations to Congress for any further legislation that may seem necessary.

I may later on have something further to say before this committee regarding this bill; but I wish to state at present that since the bill was introduced there has been a wide discussion throughout the country upon two divergent lines of thought, one insisting on absolutely free and unrestricted competition as the regulator of corporate business, and the other inclining toward allowing large combinations of capital and applying thereto Government supervision and direction as the prime regulator. It is difficult to say now which of these opposing tendencies should or will ultimately prevail. The bill which I have introduced is, in my judgment, adapted to this undeveloped situation. It will help us to determine which of these theories is the correct one; it will furnish to Congress and to the public the accurate and broad information on corporate conditions that is necessary to determine the line of further advance. It does not affect the operation or the enforcement of the Sherman law; its work of publicity and supervision will tend to promote fair competition and keep equally open to all the highways of commerce. On the other hand, it takes the situation as it is, recognizes that there is a large degree of combination already existing, and makes that condition a subject for supervision, study, and report to Congress. Its frankly tentative character and its moderation recommend it as a step upon which all can unite in doing what is imperatively needed for the present without prejudicing the future.

I trust that the committee will see the wisdom, without waiting for the end of this investigation, of recommending this tentative measure, which will be an aid in the final solution of all the pressing questions relating to trade corporations.

The following is the Interstate Trade Commission bill introduced by Mr. Newlands as tentatively amended by the Senate Committee on Interstate Commerce.

The committee took no final action upon it:

[S. 5485, Sixty-second Congress, second session.]

A BILL To create an Interstate Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be referred to and cited as the Interstate Trade Commission act. Corporations a majority of whose voting securities is held or owned by any corporation subject to the terms of this act are referred to herein as subsidiaries of such holding or owning corporation.

Sec. 2. That there is hereby created a body to be known as the Interstate Trade Commission, which shall consist of three members of whom no more than two shall belong to the same political party. The commission shall be appointed by the President, by and with the advice and consent of the Senate, and the terms of such commissioners so first appointed shall be three, six, and nine years, respectively, and shall be so designated by the President in making

such appointments; and thereafter all the commissioners shall hold office for the term of nine years, and shall be appointed by the President, by and with the advice and consent of the Senate. Vacancies shall be filled by like appointment and confirmation for the unexpired term. Each member of said commission shall receive a salary of \$10,000 a year. The office of the commission shall be at Washington, in the District of Columbia, but the commission may hold meetings elsewhere when necessary and convenient.

Sec. 3. That the Bureau of Corporations is hereby transferred to and merged in said commission, and all of the powers, duties, records, papers, and funds belonging or pertaining to the Bureau of Corporations shall hereafter belong and pertain to the Interstate Trade Commission, and all the officers and employees of said bureau shall thereupon be officers and employees of the Interstate Trade Commission. The said commission shall also have a secretary, a chief clerk, and such clerks, inspectors, examiners, experts, messengers, and other assistants as from time to time may be necessary and as may be appropriated for by Congress.

Sec. 4. That all corporations engaged in commerce among the several States or with foreign nations, excepting common carriers, shall from time to time furnish to the commission such information, statement, and records of their organization, business, financial condition, conduct, and management and the organization, business, financial condition, conduct, and management of their subsidiaries at such time, to such degree and extent, and in such form as may be prescribed by the commission; and the commission at all reasonable times, or its duly authorized agent or agents, shall have complete access to all records, accounts, minutes, books, and papers of such corporations and their subsidiaries, including the records of any of their executive or other committees. Failure or neglect on the part of any corporation subject to this act, or of any of its subsidiaries, to comply with the terms of this section within such time after written demand shall have been made upon such corporation by the commission requiring such compliance, as shall be fixed by the commission, shall constitute a misdemeanor, and upon conviction such corporation shall be subject to a fine of not more than \$1,000 for every day of such failure or neglect.

Sec. 5. The information so obtained shall be public records, and the commission shall from time to time make public such information in such form and to such extent as it may deem necessary.

Sec. 6. That the district courts of the United States, upon the application of the commission alleging a failure to comply with any order of the commission or alleging a failure to comply with or a violation of any of the provisions of this act by any corporation subject thereto, shall have jurisdiction to issue a writ or writs of mandamus or injunction or other order enforcing such order of the commission or commanding such corporation, its officers and employees, to comply with the provisions of this act.

Sec. 7. That for the purposes of this act the commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, contracts, agreements, documents, or other things of every kind and nature whatsoever relating to any matter under investigation by the commission. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing, and in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation subject to the provisions of this act, or other person, issue an order requiring such corporation, or other person, to appear before said commission (and produce books, documents, and papers, if so ordered) and give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. This claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying.

The testimony of any witness may be taken at the instance of a party in any proceeding or investigation pending before the commission by deposition at any time after the inquiry is instituted. The commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such deposition

may be taken before any person authorized so to do by the commission and who has power to administer oaths.

Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided. Such testimony shall be reduced to writing.

Witnesses whose testimony is taken under the provisions of this act shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying, or from producing books, papers, documents, or other things before this commission or in obedience to the subpoena of the commission whether such subpoena be signed or issued by one or more of the commissioners on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify under oath or produce evidence, documentary or otherwise, before said commission in obedience to a subpoena issued by it in a proceeding instituted upon its own initiative: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. The purpose of this provision is to give immunity only to natural persons who under oath testify in response to a subpoena of the commission in an inquiry instituted by the commission.

Sec. 8. That the said commission shall, on or before the first day of January in each year, make a report, which shall be transmitted to Congress. This report shall contain such information and data collected by the commission as it may deem of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the commission may deem necessary.

Sec. 9. That any person willfully making or furnishing to said commission any statement, return, or record required by this act, when knowing such statement, return, or record to be false in any material particular, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Sec. 10. That in case a final decree shall be issued against any corporation under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, or under sections seventy-three to seventy-seven, inclusive, of "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which became a law August twenty-seventh, eighteen hundred and ninety-four, the court entering such decree may, in its discretion, refer to the commission its decree, with instructions to take evidence, consider such facts, and report to the court the findings as to method of dissolution or reorganization as the commission shall consider best fitted to carry out such decree; if a reorganization takes place under a decree, the commission shall inform itself respecting the reorganization, and if it is of the opinion that it is not in harmony with the decree it shall, through counsel, inform the court for such action as the court may take.

Sec. 11. That the said commission may at any time, upon complaint of any person or corporation, or upon its own initiative, or upon the request of the Attorney General, or of the corporation affected, investigate any corporation subject to the provisions of this act for the purpose of determining whether such corporation has been guilty of a violation of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, or under sections seventy-three to seventy-seven inclusive, of an "Act to reduce taxation," and so forth, which became a law August twenty-seventh, eighteen hundred and ninety-four, or of any of the provisions of this act, and may hold such hearings and take such evidence as it may deem necessary; and in case the commission shall find that such corporation has been guilty of a violation of the provisions of said acts or of this act it shall make a finding, stating the facts, and prescribing the acts, transactions, and readjustments necessary in order that said corporation may thereafter comply with the terms of said acts and of this act, and shall transmit a copy of the said finding in full to such corporation. If within sixty days after transmitting said finding, or such extension thereof as shall be given by the commission, the corporation shall not have complied with the terms of the

finding, and shall not have performed the acts prescribed as necessary to make it comply with the said acts or with this act, the commission shall report the fact of noncompliance to the Attorney General, together with a copy of such finding, for his action under the said acts or of this act. But the commission may, if it deems it proper, report the facts to the Attorney General without calling upon such corporation for compliance with said acts or with this act.

Nothing contained in this act shall be construed to prevent or interfere with the Attorney General in enforcing the provisions of the act to protect commerce, and so forth, approved July second, eighteen hundred and ninety.

Messrs. Crane, Brandegee, Oliver, and Lippitt expressed themselves as follows:

MINORITY VIEWS.

The undersigned members of the Senate Committee on Interstate Commerce are unable to agree to the report of the majority of the committee on Senate resolution 98, as to "what changes are necessary or desirable in the laws of the United States relating to the creation and control of corporations engaged in interstate commerce and what changes are necessary or desirable in the laws of the United States relating to persons or firms engaged in interstate commerce."

While certain features of the report are commendable, there are several conclusions therein which do not accord with our views, and therefore we are prevented from approving the report as a whole.

W. M. CRANE.

FRANK B. BRANDEGEE.

GEORGE T. OLIVER.

HENRY F. LIPPITT.

○

Exhibit B

FEDERAL TRADE COMMISSION.

SEPTEMBER 4, 1914.—Ordered to be printed.

Mr. ADAMSON, from the committee of conference, submitted the following

CONFERENCE REPORT.

[To accompany H. R. 15613.]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15613) to create an interstate trade commission, to define its powers and duties, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment as follows:

In lieu of the matter inserted by said amendment insert:

That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking-effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the

courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employes as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employes of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employes under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Sec. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employes of the said bureau shall be transferred to and become clerks and employes of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sec. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or be-

between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requir-

ing such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust Acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Wherever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings

and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Sec. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such a decree as the nature of the case may in its judgment require.

Sec. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

Sec. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas,

and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: Provided, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary

evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the anti-trust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

And the Senate agree to the same.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The House bill as it passed on June 5 last and went to the Senate was not considered for amendments in the Senate Committee on Interstate Commerce, but instead there was reported to the Senate an entirely new bill, which was substituted for the House bill, and which, with various amendments adopted in the Senate, passed that body on August 5 last.

The conferees have brought the original House and Senate bills into harmony by drafting a measure, within the limits of conference, the provisions of which embody the essential features of both bills. These two bills are for purposes of comparison with the conference bill here set forth:

HOUSE BILL.

AN ACT To create an Interstate Trade Commission, to define its powers and duties, and for other purposes.

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,~~ That a commission is hereby created and established, to be known as the Interstate Trade Commission (hereinafter referred to as the commission), which shall be composed of three commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of two, four, and six years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.
SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such other officials, clerks, and employees as it may find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

Until otherwise provided by law the commission may rent suitable offices for its use.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. That upon the organization of the commission and election of its chairman all the existing powers, authority, and duties of the Bureau of Corporations and of the Commissioner of Corporations conferred upon them by the act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and all amendments thereto, and also those conferred upon them by resolutions of the United States Senate passed on March first, nineteen hundred and thirteen, on May twenty-seventh, nineteen hundred and thirteen, and on June eighteenth, nineteen hundred and thirteen, shall be vested in the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this act.

That the Bureau of Corporations and the offices of Commissioner of Corporations and Deputy Commissioner of Corporations are upon the organization of the commission and the election of its chairman, abolished, and their powers, authority, and duties shall be exercised by the commission free from the direction or control of the Secretary of Commerce.

The information obtained by the commission in the exercise of the powers, authority, and duties conferred upon it by this section may be made public, in the discretion of the commission.

SEC. 4. That the principal office of the commission shall be in the city of Washington, where its general sessions shall be held; but whenever the interest of the public may be promoted, or delay or expense prevented, the commission may hold special sessions in any part of the United States. The commission may, by one or more of its members, or by such officers as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 5. That, with the exception of the secretary and a clerk to each commissioner, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

SEC. 6. That the words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means such commerce as Congress has the power to regulate under the Constitution.

"Corporation" means a body incorporated under law, and also joint-stock associations and all other associations having shares of capital or capital stock or organized to carry on business with a view to profit.

"Capital" means the stocks and bonds issued and the surplus owned by a corporation.

"Antitrust acts" means the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

"Acts to regulate commerce" means the act entitled "An act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all amendments thereto.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this act.

SEC. 7. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 8. That the commission may from time to time make rules and regulations and classifications of corporations for the purpose of carrying out the provisions of this act.

The commission may from time to time employ such special attorneys and experts as it may find necessary for the conduct of its work or for proper representation of the public interest in investigations made by it; and the expenses of such employment shall be paid out of the appropriation for the commission.

Any member of the commission may administer oaths and affirmations and sign subpoenas.

The commission may also order testimony to be taken by deposition in any proceeding or investigation pending under this act. Such depositions may be taken before any official authorized to take depositions by the acts to regulate commerce.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this act or any order of the commission made in pursuance thereof.

Sec. 9. That every corporation engaged in commerce, excepting corporations subject to the acts to regulate commerce, which, by itself or with one or more other corporations owned, operated, controlled, or organized in conjunction with it so as to constitute substantially a business unit, has a capital of not less than \$5,000,000, or, having a less capital, belongs to a class of corporations which the commission may designate, shall furnish to the commission annually such information, statements, and records of its organization, bondholders and stockholders, and financial condition, and also such information, statements, and records of its relation to other corporations and its business and practices while engaged in commerce as the commission shall require; and to enable it the better to carry out the purposes of this act the commission may prescribe as near as may be a uniform system of annual reports. The said annual reports shall contain all the required information and statistics for the period of twelve months ending with the fiscal year of each corporation's report, and they shall be made out under oath or otherwise, in the discretion of the commission, and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission. The commission may also require such special reports as it may deem advisable.

If any corporation subject to this section of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make and file any special report within the time fixed by the order of the commission, such corporation shall forfeit to the United States the sum of \$100 for each and every day it shall continue in default in making or filing said annual or special reports. Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of the acts to regulate commerce.

Sec. 10. That upon the direction of the President, the Attorney General, or either House of Congress the commission shall investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation. The report of the commission may include recommendations for readjustment of business in order that the corporation investigated may thereafter maintain its organization, management, and conduct of business in accordance with law. Reports made after investigation under this section may be made public in the discretion of the commission.

For the purpose of prosecuting any investigation or proceeding authorized by this section the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against.

Sec. 11. That when in the course of any investigation made under this act the commission shall obtain information concerning any unfair competition or practice in commerce not necessarily constituting a violation of law by the corporation investigated, it shall make report thereof to the President, to aid him in making recommendations to Congress for legislation in relation to the regulation of commerce, and the information so obtained and the report thereof shall be made public by the commission.

Sec. 12. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the com-

plaintant is entitled to relief, refer said suit to the commission to ascertain and report an appropriate form of decree therein; and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 13. That wherever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, the commission shall have power, and it shall be its duty, upon its own initiative or upon the application of the Attorney General, to make investigation of the manner in which the decree has been or is being carried out. It shall transmit to the Attorney General a report embodying its findings as a result of any such investigation, and the report shall be made public in the discretion of the commission.

SEC. 14. That any person who shall willfully make any false entry or statement in any report required to be made under this act shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$5,000, or to imprisonment for not more than three years, or both fine and imprisonment.

SEC. 15. That any officer or employee of the commission who shall make public any information obtained by the commission without its authority, or as directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 16. That for the purposes of this act, and in aid of its powers of investigation herein granted, the commission shall have and exercise the same powers conferred upon the Interstate Commerce Commission in the acts to regulate commerce to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence, and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said acts to regulate commerce and by the act in relation to testimony before the Interstate Commerce Commission, approved February eleventh, eighteen hundred and ninety-three, and the act defining immunity, approved June thirtieth, nineteen hundred and six, shall apply to witnesses, testimony, and documentary evidence before the commission.

SEC. 17. That the commission shall on or before the first day of December in each year make a report, which shall be transmitted to Congress. This report shall contain such facts and statistics collected by the commission as may be considered of value in the determination of questions connected with the conduct of commerce by corporations, excepting corporations subject to the acts to regulate commerce, including an abstract of the annual and special reports of corporations made to the commission under section nine of this act: *Provided*, That no trade secrets or private lists of customers shall be embraced in any such abstract. The report shall also include such recommendations as to additional legislation as the commission may deem necessary. The commission may also from time to time publish such additional reports or bulletins of facts and statistics relating to corporations engaged in commerce as may be deemed useful and do not violate the provisions of this act.

SEC. 18. That nothing contained in this act shall be construed to prevent or interfere with the Attorney General in enforcing the provisions of the antitrust acts or the acts to regulate commerce.

SENATE BILL.

AN ACT To create an Interstate Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission, composed of five members, not more than three of whom shall be members of the same political party, and the said Federal Trade Commission is referred to hereinafter as "the commission."

The words defined in this section shall have the following meaning when found in this act, to wit:

"Commerce" means such commerce as Congress has the power to regulate under the Constitution.

The term "corporation" or "corporations" shall include joint-stock associations and all other associations having shares of capital or capital stock, organized to carry on business for profit.

"Antitrust acts" means the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also sections seventy-three to seventy-seven, inclusive, of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; and also the act entitled "An act to amend sections seventy-three and seventy-six of the act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

SEC. 2. Upon the organization of the commission, the Bureau of Corporations, and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist, and the employees of said bureau shall become employees of the commission in such capacity as it may designate. The commission shall take over all the records, furniture, and equipment of said bureau. All work and proceedings pending before the bureau may be continued by the commission free from the direction or control of the Secretary of Commerce. All appropriations heretofore made for the support and maintenance of the bureau and its work are hereby authorized to be expended by the commission for said purposes.

Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The terms of office of the commissioners shall be seven years each. The terms of those first appointed by the President shall date from the taking effect of this act, and shall be as follows:

One shall be appointed for a term of three years, one for a term of four years, one for a term of five years, one for a term of six years, and one for a term of seven years; and after said commissioners shall have been so first appointed all appointments, except to fill vacancies, shall be for terms of seven years each. The commission shall elect one of its members chairman for such period as it may determine. The commission shall elect a secretary and may elect an assistant secretary. Said secretary and assistant secretary shall hold their offices or connection with the commission at the pleasure of the commission. Each commissioner shall receive a salary of \$10,000 per annum. The secretary of the commission shall receive a salary of \$5,000 per annum. The assistant secretary shall receive a salary of \$4,000 per annum. In case of a vacancy in the office of any commissioner during his term, an appointment shall be made by the President, by and with the advice and consent of the Senate, to fill such vacancy, for the unexpired term. The office of the commission shall be in the city of Washington, but the commission may at its pleasure meet and exercise all its powers at any other place, and may authorize one or more of its members to prosecute any investigation, and for the purposes thereof to exercise the powers herein given the commission.

The commission shall have such attorneys, accountants, experts, examiners, special agents, and other employees as may, from time to time, be appropriated for by Congress, and shall have authority to audit their bills and fix their compensation. With the exception of the secretary and assistant secretary and one clerk to each of the commissioners, and such attorneys and experts as may be employed, all employees of the commission shall be a part of the classified civil service. The commission shall also have the power to adopt a seal, which shall be judicially noticed, and to rent suitable rooms for the conduct of its work.

All the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other place than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor, approved by the commission.

The Auditor for the State and other Departments shall receive and examine all accounts of expenditures of the commission.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Sec. 3. The commission shall have power among others—

(a) To investigate from time to time, and as often as the commission may deem advisable, the organization, business, financial condition, conduct, practices, and management, of any corporation engaged in commerce, relating to or in any way affecting the commerce in which such corporation under inquiry is engaged.

(b) To require any corporation subject to the provisions of this act which the commission may designate to furnish to the commission from time to time information, statements, and records concerning its organization, business, financial condition, conduct, practices, management, and relation to other corporations, or to individuals, associations, or partnerships, and to require the production for examination of all books, documents, correspondence, contracts, memoranda, or other papers relating to or in any way affecting the commerce in which such corporation under inquiry is engaged, and to make copies of the same.

(c) To prescribe as near as may be a uniform system of annual reports from such corporations or classes of corporations subject to the provisions of this act, as the commission may designate, and to fix the time for the filing of such reports, and to require such reports, or any special report, to be made under oath, or otherwise in the discretion of the commission.

(d) To make public, in the discretion of the commission, any information obtained by it in the exercise of the powers, authority, and duties conferred upon it by this act, except so far as may be necessary to protect trade processes, names of customers, and such other matters as the commission may deem not to be of public importance, and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation.

(e) In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust acts if the court finds for the complainant it may, upon its own motion or the motion of any party to such suit, refer the matter of the form of the decree to be entered to the commission as a master in chancery; whereupon the commission shall proceed in that capacity upon such notice to the parties and upon such hearing as the court may prescribe, and shall as speedily as practicable make report with its findings to the court, which report and findings having been made and filed shall be subject to the judicial procedure established for the consideration and disposition of a master's report and findings in equity cases.

(f) Wherever a restraining order or an interlocutory or final decree has heretofore been entered or shall hereafter be entered against any defendant or defendants in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, the commission shall have power, and it shall be its duty, upon the application of the Attorney General, to make investigation of the manner in which the order or decree has been or is being carried out, and as to whether the same has been or is being violated and what, if any, further order, decree, or relief is advisable. It shall transmit to the Attorney General a report embodying its findings as a result of any such investigation, with such recommendations for further action as it may deem advisable, and the report shall be made public in the discretion of the commission.

(g) If the commission believes from its inquiries and investigations, instituted upon its own initiative or at the suggestion of the President, the Attorney General, or either House of Congress that any corporation, individual, association, or partnership has violated any law of the United States regulating commerce, it shall report its findings and the evidence in relation thereto to the Attorney General with its recommendations.

For the purpose of prosecuting any investigation or proceeding authorized by this section the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documents or writings of any corporation being investigated or proceeded against.

(h) The commission is hereby directed to investigate, as expeditiously as may be, trade conditions in foreign countries where associations, combinations, or practices of buyers, dealers, or traders may injuriously affect the export trade of the United States, and to report to Congress thereon from time to time.

Sec. 4. The powers and jurisdiction herein conferred upon the commission shall extend over all trade associations, corporate combinations, and corporations as hereinbefore defined engaged in or affecting commerce, except banks and common carriers.

SEC. 5. That unfair competition in commerce is hereby declared unlawful.

The commission shall have authority to prevent such unfair competition in commerce in the manner following, to wit:

Whenever it shall have reason to believe that any person, partnership, or corporation is violating the provisions of this section it shall issue and serve upon the defendant a complaint stating its charges in that behalf and at the same time a notice of hearing upon a day and at a place therein fixed. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint.

Upon such hearing the commission shall make and file its findings, and if the commission shall find that the person, partnership, or corporation named in the complaint is practicing such unfair competition it shall thereupon enter its findings of record and issue and serve upon the offender an order requiring that within a reasonable time to be stated in said order that the offender shall cease and desist from such unfair competition. The commission may at any time set aside, in whole or in part, or modify its findings or order so entered or made. Any suit brought by any such person, partnership, or corporation to annul, suspend, or set aside, in whole or in part, any such order of the commission shall be brought against the commission in a district court of the United States in the judicial district of the residence of the person or of the district in which the principal office or place of business is located and the procedure set forth in the act of Congress making appropriations to supply urgent deficiencies and insufficient appropriations for the fiscal year of nineteen hundred and thirteen, and for other purposes, relating to suits brought to suspend or set aside, in whole or in part, an order of the Interstate Commerce Commission shall apply.

Persons, partnerships, or corporations filing or causing to be filed complaints before the commission shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

If within the time so fixed in the order of the commission the person, partnership, or corporation against which the order is made shall not cease and desist from such unfair competition, and if in the meantime such order is not annulled, suspended, or set aside by a court, the commission may bring a suit in equity in a district court in any district wherein such person or persons reside or wherein such corporation has its principal office or place of business to enforce its said order, and jurisdiction is hereby conferred upon said court to hear and determine any such suit and to enforce obedience thereto according to the law and rules applicable to suits in equity. All the provisions of the law relating to appeals and advancement for speedy hearing in suits brought to suspend or set aside an order of the Interstate Commerce Commission shall apply in suits brought under this section: *Provided*, That no order or finding of the court or commission in the enforcement of this section shall be admissible as evidence in any suit, civil or criminal, brought under the antitrust acts: *Provided further*, That neither the orders of the commission nor the judgment of the court to enforce the same shall in any wise relieve or absolve any person or corporation from any liability under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety.

SEC. 6. That if any corporation subject to this act shall fail to file any annual or special report, as provided in subdivision (b) of section three hereof, within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 7. Any person who shall willfully destroy, alter, mutilate, or remove out of the jurisdiction of the United States or authorize, assist in, or be privy to the willful destruction, alteration, mutilation, or removal out of the jurisdiction of the United States of any book, letter, paper, or document containing an entry

or memorandum relating to commerce, with the intent to prevent the production thereof, or who shall willfully make any false entry relating to commerce in any book of accounts or record of any trade association, corporate combination, or corporation, subject to the provisions of this act, or who shall willfully make or furnish to said commission or to its agent any false statement, return, or record, knowing the same to be false in any material particular, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Any employee of the commission who divulges any fact or information which may come to his knowledge during the course of his employment by the commission, except in so far as it has been made public by the commission, or as he may be directed by the commission or by a court, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 8. The commission shall have and exercise the powers possessed by the Interstate Commerce Commission to subpoena and compel the attendance and testimony of witnesses and the production of evidence, and to administer oaths. All the powers, requirements, obligations, liabilities, and immunities imposed or conferred by the Act to regulate commerce, as amended in relation to testimony before the Interstate Commerce Commission, shall apply to witnesses, testimony, and evidence before the commission.

Each corporation having a capital of \$5,000,000, to determine which fact the amount of its capital stock, surplus, bonded indebtedness, and undivided profits shall be combined, subject to the provisions of this Act shall, within ninety days after the taking effect of this Act, designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices, orders, and processes issued by the commission may be made for and on behalf of said corporation, and file such designation in the office of the commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices, orders, or processes issued by the commission may be made upon such corporation by leaving a copy thereof with such designated agent at his or its office in the city of Washington with like effect as if made personally upon such corporation, and in default of such designation of such agent service of any notice, order, or other process may be made by posting such notice, order, or process in a conspicuous place in the office of the commission.

All notices, orders, or other process to be served upon individuals or other corporations than those having such capital shall be duly served personally on such individuals and upon the president, chief executive officer, or a director of such other corporations, respectively, unless they shall have designated, as they are hereby authorized to do, an agent as aforesaid with power and authority to accept service of such notices, orders, or other process.

SEC. 9. The district courts of the United States, upon the application of the commission alleging a failure by any corporation, or by any of its officers or employees, or by any witness, to comply with any order of the commission for the furnishing of information, shall have jurisdiction to issue such writs, orders, or other process as may be necessary to enforce any order of the commission and to punish disobedience thereof.

SEC. 10. The several departments and bureaus of the Government, when directed by the President, shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any trade association, corporate combination, or corporation, subject to any of the provisions of this Act.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

The amended bill as agreed to in conference changes the name of the proposed trade commission from "Interstate Trade Commission" to "Federal Trade Commission." This is desirable to prevent confusion of name with the Interstate Commerce Commission. Because of certain administrative work not contemplated by the House

bill, the number of commissioners has been changed from three to five. In all other respects the organization of the commission is as provided in sections 1 and 2 of the House bill.

The Bureau of Corporations is abolished, as in the House bill, and its powers are conferred on the commission. Instead of transferring them by reference to the original act creating the bureau, as in section 3 of the House bill, they are explicitly set out in section 6, paragraph (a), of the bill as agreed to by the conferees. This has been done because the bill now gives to the commission certain powers which so continuously and directly concern the business interests of the country that it is desirable to have the law show on its face its exact extent and application.

The definitions respecting "commerce," etc., remain substantially as in section 4 of the House bill.

The provision of section 9, paragraph 1, of the House bill requiring annual reports from all corporations engaged in commerce having a capital of over \$5,000,000 has been changed to meet the Senate provision leaving the classes of corporations to make such reports to the discretion of the commission. In view of the large number of corporations with a capital of over \$5,000,000 which are not necessarily engaged in any commerce potential for combination or monopoly this seemed a desirable change.

The commission is required to make the investigations relating to alleged violations of the antitrust acts as provided in section 10 of the House bill, except that the expression "direction of the Attorney General" is eliminated. He is the head of an executive department and the direction of the President is deemed sufficient. The reports of such investigations do not include, at the discretion of the commission, recommendations for readjustments of business, so that the corporations investigated may operate lawfully, but a new subsection is added, section 6, paragraph (e), requiring the commission to make recommendations of this character on the application of the Attorney General.

The powers conferred upon the commission in sections 12 and 13 of the House bill to assist the Department of Justice, upon direction of the courts, in solving the difficult economic problems connected with trust dissolutions under the antitrust law, and upon the initiative of the commission itself to supervise the compliance with decrees of dissolutions are retained in the conference bill in section 6, paragraph (c), and in section 7.

The conference bill contains a provision, section 6, paragraph (h), authorizing the commission to make investigations respecting practices which may affect the foreign trade of the United States. This was in the Senate bill substantially as it now appears.

The publicity of the facts which ought to be the common property of the American business man provided for practically as in the House bill, and the administrative processes for conducting investigations, summoning witnesses, and punishing violations is substantially as in the House bill.

Section 5 declares unfair methods of competition to be unlawful and empowers the commission, after hearing, to order the discontinuance of the use of such methods.

It is now generally recognized that the only effective means of establishing and maintaining monopoly, where there is no control of

a natural resource as of transportation, is the use of unfair competition. The most certain way to stop monopoly at the threshold is to prevent unfair competition. This can be best accomplished through the action of an administrative body of practical men thoroughly informed in regard to business, who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations.

It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would undertake an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. Whether competition is unfair or not generally depends upon the surrounding circumstances of the particular case. What is harmful under certain circumstances may be beneficial under different circumstances.

The orders of the commission will be enforceable only through the courts. In order to obtain the speediest settlement of disputed questions, it is provided that the commission shall apply for the enforcement of its orders directly to the circuit court of appeals. The findings of the commission as to the facts are to be conclusive. The court's function is restricted to passing on questions of law. The court will determine such questions on the record in the proceeding before the commission. No new evidence may be adduced on the hearing in court except upon good cause shown, and if the court permits the introduction of additional evidence, such evidence will be taken by the commission and then filed in court with its new or modified findings based thereon. The judgment of the court of appeals will be final, subject only to review by the Supreme Court upon writ of certiorari.

This section is entirely new to the House bill, but it appeared in a somewhat similar form in the Senate bill, and the managers on the part of the House believed it wise to accept the provision in the form in which it now appears.

W. C. ADAMSON,
THETUS W. SIMS,
J. HARRY COVINGTON,
F. C. STEVENS,
JOHN J. ESCH,

Managers on the part of the House.

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2013, I filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system. The electronic copy sent to the Office of the Secretary is a true and correct copy of the paper original.

I also certify that I caused a paper copy of the foregoing document with an original signature to be filed with the Office of the Secretary.

I also certify that I caused twelve (12) copies of the foregoing document to be delivered to the Office of the Secretary, Room H-113.

I also certify that I caused a copy of the foregoing document to be delivered *via* electronic mail and by hand to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be served *via* electronic mail to:

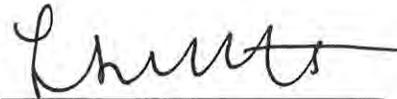
Michael D. Pepson
Regulatory Counsel
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006
michael.pepson@causeofaction.org

Reed Rubinstein
William Sherman, II
Dinsmore & Shohl, LLP
801 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20004
reed.rubinstein@dinsmore.com
william.sherman@dinsmore.com

Counsel for Respondent LabMD, Inc.

November 22, 2013

By:



Laura Riposo VanDruff
Federal Trade Commission
Bureau of Consumer Protection

EXHIBIT

30

**THE PRIVACY CHALLENGES OF BIG DATA:
A VIEW FROM THE LIFEGUARD'S CHAIR**

**Keynote Address by FTC Chairwoman Edith Ramirez
(As Prepared for Delivery)
Technology Policy Institute Aspen Forum
Aspen, Colorado
August 19, 2013**

I want to thank all of you for coming this afternoon. The temptation to skip this talk and hike up to the Maroon Bells must have been nearly overwhelming. I am glad that you did not succumb, though I would have understood. As Oscar Wilde once quipped, "I can resist anything except temptation."

My topic today is "big data" and the privacy challenges it may pose to consumers. I want to explore how we can reap the benefits of big data without falling prey to possible pitfalls.

There is little doubt that the skyrocketing ability of business to store and analyze vast quantities of data will bring about seismic changes in ways that may be unimaginable today. Unlocking the potential of big data can, for instance, improve the quality of health care while cutting costs. It can enable forecasters to make increasingly precise predictions about weather, crop yields, and spikes in the consumption of electricity. And big data can improve industrial efficiency, helping to deliver better products and services to consumers at lower costs.

But one might ask: Can the Federal Trade Commission or any governmental entity safeguard consumer privacy given the breakneck pace of technological innovation? In my view, the answer is "yes." The fact that "big data" may be transformative does not mean that the challenges it poses are, as some claim, novel or beyond the ability of our legal institutions to respond. Take the beautiful leaves of the Aspen trees. In late summer, they turn from green to bright yellow and the forest takes on a golden glow. That transformation is a breathtaking one; it is one of the wonders of the West. But not everything breathtaking is new. The transformation of the Aspen trees happens every year.

The emergence of big data is similarly breathtaking and potentially game changing. But the challenges it poses to consumer privacy are familiar, even though they may be of a magnitude we have yet to see. The solutions are also familiar. And, with the advent of big data, they are now more important than ever. Addressing the privacy challenges of big data is first and foremost the responsibility of those collecting and using consumer information. The time has come for businesses to move their data collection and use practices out of the shadows and into the sunlight. But the FTC has a critical role to play as well. This afternoon, I will address both how businesses should approach big data to protect consumer privacy and how the FTC will work to ensure companies live up to that obligation.

I. THE FTC'S ROLE IN BIG DATA

Let me begin with my vision of the FTC and its role in light of the emergence of big data. I grew up in a beach town in Southern California. To me, the FTC is like the lifeguard on a beach. Like a vigilant lifeguard, the FTC's job is not to spoil anyone's fun but to make sure that no one gets hurt. With big data, the FTC's job is to get out of the way of innovation while making sure that consumer privacy is respected.

Congress gave us several tools to do just that. Under the FTC Act, it tasked the Commission with preventing unfair or deceptive acts or practices that may affect interstate commerce. This mandate gives the FTC authority over deceptive claims about matters that are important to consumers, including privacy and data security. For instance, in the FTC's actions against Google, Facebook, Myspace and others, we alleged that each of these companies deceived consumers by breaching commitments to keep their data confidential.¹ That isn't OK, and it is the FTC's responsibility to make sure that companies live up to their commitments.

Congress also assigned the FTC the responsibility to prevent "unfair" commercial practices — that is, conduct that substantially harms consumers, or threatens to substantially harm consumers, which consumers cannot reasonably avoid, and where the harm outweighs the benefits. The FTC has used its unfairness authority against companies that fail to provide reasonable data security. Take one example: Last year, we sued the Wyndham hotel chain for poor data security practices that led to three data breaches in an 18-month period.² Over a half-million credit card files ended up in the hands of an identity-theft ring operating through domains registered in Russia. All told, the FTC has brought over 40 data security cases under our unfairness and deception authority, many against very large data companies, including LexisNexis,³ ChoicePoint,⁴ and Twitter,⁵ for failing to provide reasonable security safeguards.

¹ *United States v. Google, Inc.*, No. 5:12-cv-04177 (N.D. Cal. filed Aug. 8, 2012), available at <http://www.ftc.gov/os/caselist/c4336/120809googlecmptexhibits.pdf>; *Google, Inc.*, No. C-4336 (F.T.C. Oct. 24 2011), available at <http://www.ftc.gov/os/caselist/1023136/111024googlebuzzcmpt.pdf>; *Facebook, Inc.*, No. C-4365 (F.T.C. Aug. 10, 2012), available at <http://www.ftc.gov/os/caselist/0923184/120810facebookcmpt.pdf>; *Myspace, Inc.*, No. C-4369 (F.T.C. Sept. 11, 2012), available at <http://ftc.gov/os/caselist/1023058/120911myspacecmpt.pdf>.

² *FTC v. Wyndham Worldwide Corp.*, No. CV 12-1365 (D. Ariz. filed Jun 26, 2012), available at <http://www.ftc.gov/os/caselist/1023142/120809wyndhamcmpt.pdf>.

³ *Reed Elseveir, Inc.*, No. C-4226 (F.T.C. Aug. 1, 2008), available at <http://www.ftc.gov/os/caselist/0523094/080801reedcomplaint.pdf>.

⁴ *United States v. ChoicePoint, Inc.*, No. 1:06-cv-0198 (N.D. Ga. Feb. 15, 2006), available at <http://www.ftc.gov/os/caselist/choicepoint/0523069complaint.pdf>.

⁵ *Twitter, Inc.*, No. C-4316 (F.T.C. Mar. 11, 2011), available at <http://www.ftc.gov/os/caselist/0923093/110311twitterdo.pdf>.

Congress has also charged the FTC with enforcing a number of sector-specific privacy laws, including the Fair Credit Reporting Act or “FCRA,” which can be seen as the first “big data” privacy law. Congress enacted the FCRA because it was worried that growing databases — the “big data” of the 1970s — could be used in ways that were invisible and harmful to consumers.

The FCRA sets out rules for companies that use data to determine creditworthiness, insurance eligibility, suitability for employment, and to screen tenants. When companies obtain this data from a credit bureau or other consumer reporting agency, they must notify consumers when the information contributed to decisions that adversely affect them — for example, denying them access to credit or giving them less-than-favorable credit terms, or turning them down for a job or insurance.

Another statute the FTC enforces is the Children’s Online Privacy Protection Act, or “COPPA,” which requires companies to get a parent’s consent before collecting personal information from kids under 13. We recently updated our rule implementing COPPA to respond to collection practices made possible by new technology, namely, data-gathering tools like social media and mobile applications.

So let’s turn to the key big data questions. The term “big data” refers to datasets whose size is beyond the ability of typical database software tools to capture, store, manage and analyze.⁶ And it’s no surprise that datasets are expanding exponentially. Under “Moore’s Law,” the ability to store, aggregate and combine data and conduct deep analyses has skyrocketed.⁷ McKinsey reports that in 2011, a consumer could purchase a disk to store all of the world’s music for under \$600.⁸ If Moore is right, the cost today would be less than \$300.

This phenomenal growth in storage and analytic power means that big data is no longer the province of a few giant companies, like large data brokers, banks, insurers, and health care providers. Big data is now, or soon will become, a tool available to all sectors of the economy.

Of course, many uses of big data bring tangible benefits to consumers and businesses alike. And many uses of big data raise no threats to consumer privacy. For example, many firms use big data analytics for purposes that have nothing to do with individuals — forecasting weather and stock and commodity prices; upgrading network security systems; and improving manufacturing supply chains.

⁶ See MCKINSEY & CO., *BIG DATA: THE NEXT FRONTIER FOR INNOVATION, COMPETITION AND PRODUCTIVITY* 1 (June 2011), available at http://www.mckinsey.com/insights/business_technology/big_data_the_next_frontier_for_innovation.

⁷ See *id.* at 2 & n.3.

⁸ *Id.* at 2.

On the other hand, many firms use big data in ways that implicate individual privacy. That data may reflect an individual's health concerns, browsing history, purchasing habits, social, religious and political preferences, financial data and more. They may do so in the service of innovation and efficiencies that confer substantial benefits on consumers. As I have said, the FTC's role isn't to stand in the way of innovation; it is to ensure that these advances are accompanied by sufficiently rigorous privacy safeguards.

II. ADDRESSING THE RISKS OF BIG DATA

Earlier I mentioned the possible pitfalls associated with big data. Let me address the hazards we must avoid:

A. Indiscriminate collection of data

One risk is that the lure of "big data" leads to the indiscriminate collection of personal information. Some big data proponents argue that data is now the raw material of innovation, and therefore more data is always better. We are told that during the Industrial Revolution, there was no such thing as too much coal and iron ore. The resulting steel sparked the innovation that transformed the world — skyscrapers, high speed trains, and so on. Today's raw material, the argument goes, is data, and we need as much of it as we can collect.

That's a bridge — maybe even a steel bridge — I wouldn't buy. The indiscriminate collection of data violates the First Commandment of data hygiene: Thou shall not collect and hold onto personal information unnecessary to an identified purpose. Keeping data on the off-chance that it might prove useful is not consistent with privacy best practices. And remember, not all data is created equally. Just as there is low quality iron ore and coal, there is low quality, unreliable data. And old data is of little value. Is there really any worth to my law school search history when I was struggling to understand the rule against perpetuities? Should that data be held in perpetuity?

B. The Need to Ensure Meaningful Consumer Choice

A related concern is that some big data advocates insist that, because more data is always better, and because providing consumer choice may be especially challenging when it comes to big data, the time has come to reconsider limits on data collection. They contend that, to the extent that privacy protection is needed, the focus should be on after-the-fact *use* restrictions, not on limiting *collection*.

That argument stands privacy protection on its head. Let's go back to basics. Big data doesn't start as big data. Rather it is assembled, bit-by-bit, from little data and becomes "big" only when compiled into enormous databases. The little data often reflects deeply personal information about individuals: the medical treatment they receive; the products and services they buy; their physical location; the websites they surf; their intimate communications with family