This transcript has been lightly edited for clarity.

WRAP UP: 90 YEARS AND TWO DAYS IN 45 MINUTES

SPEAKER: STEPHEN CALKINS

MS. BAILEY: Now we come to the last but broadest section of our program. We have Steve Calkins, who is our former general counsel from 1995 to 1997 and is currently a professor at Wayne State University School of Law in Detroit who's going to summarize it all for us -- 90 years in two days and 45 minutes, on what have we learned. Thank you, Steve.

MR. CALKINS: Thank you. Thank you to the audience, and thank you to Bill for inviting me to do this. It's a great pleasure to be here. You could ask, "What is the point at this point of getting up here and having somebody come on and simply summarize what you have already heard?" And why would Kovacic want somebody to come up and simply recap?

The answer is very simple. I'm the junior author on the Antitrust Law and Economics in a Nutshell just on the street about two or three weeks ago -- by Gellhorn, Kovacic and Calkins -- and I think that I'm the junior author, Bill guessed that I would be obliged to put in a plug: "Every lawyer should own this, under $30, a good purchase."
UNIDENTIFIED SPEAKER: Is there an 800 number for that?

MR. CALKINS: www.west.thomson.com. You think I joke, but, actually if you think about that, what other book had all three authors appearing on this program? You know, that's not a coincidence.

I'm going to make three points about this program. First what did I not like? Second, what did I like? And third, I'm going to talk about the fact that the Federal Trade Commission is at risk.

We start with what I did not like. There's not much, but there were one or two things. In particular, this was an odd way to have a party. I mean, I brought down some party hats. I had balloons. I was ready to sing some songs. I actually prepared a couple of questions figuring we would have a game show or something or other.

I've got it right here, suitable for participating in an FTC game. I've got a number of questions for that favorite contest, "Name That Commissioner." Here I'll let you try one. Ready?

Which attractive Commissioner, playing the game Jeopardy in the FTC, when told that the answer was false and deceptive, quickly said that the correct question was, "What is my hair color?" Talk to your friends if you don't remember that one.
Another one, ready? "Which FTC Chairman, called up before the Attorney General, Robert Kennedy, and accused of hiring cronies, quickly (at least reportedly) answered, "They may have been cronies, but they were your brother's cronies."

Which Commissioner is famous at least in legend for having one of those sessions when people come around to pitch their case, or, more specifically, say, "Don't sue me" -- you know those sessions in the Commissioner's office -- the questions is: Which Commissioner is famous during one of those sessions for, in the middle of the pitch, standing up and going and beginning ostentatiously to pack up his ski equipment to take off for the weekend, saying, "Don't mind me, just carry on?" Talk to your friends.

So I missed the fun and games part of the party, and I regret that.

What did I like? Boy, there was an awful lot. It was really a terrific two days of consistent high quality, and people should be very, very proud of organizing it and participating in it.

Let me just go through things that caught my eye, and I'm going to leave out as many great things as I include. Let's see, Mark Winerman, just an amazing article that he published and helped inspire all of this. Just as an example, what a commentary that it was
only in 1950 that the Commission stopped having a
rotating chair -- and how much the structure influenced the
behavior of the agency! The concept is that if you change
the chair every year, it's just a totally different place
than it is today.

Second -- and I've got ten things to give you (sort
of advance warning) as I go through -- the Cigarette Rule
story. What a great story! We heard about this from
Teresa Schwartz. We heard about it again from Judge
Posner and probably others: the concept that you
would have the Surgeon General issue a report on
smoking, and then you would have three Commissioners in
here on a Saturday reading that report thinking about
it, what to do about it (Rand Dixon putting out his
cigarette saying that's the last cigarette he's going to
smoke) and then deciding to do something -- and very
quickly, within a week, coming up with notice of
proposed rule-making, and not long after that coming up with
the Cigarette Rule! Rand Dixon -- villified by some people
-- but in that one, courageously saying, "We're prepared to
stand up to the tobacco industries." Judge Posner told me
last night that he believed that in fact there were calls
from the White House, and Rand stood up to those and
proceeded
ahead in a very courageous way to take on a terribly
important industry and prepare a document that people
still read to this day, and that led indirectly from
that one to the S&H case, to the Kid-Vid Rule and all the
excitement from that, to the 1980s policy statements -- and
all going back. That weekend really must have been an
incredible weekend, and that whole process was quite a great
story and an important part of FTC history, so it was great
to hear it laid out.

Third, for me it was just fun to hear Bob and
Tim at lunch up here carefully showing respect for each
other and trying so hard not to criticize each other.
They would recognize that they had a totally different
approach on privacy, and Bob could cheerfully say
everybody agrees that the right way to go is to have
notice and then choice, and Tim just let it go. We have
on vertical mergers different approaches, and again
folks just let it go. It was just nice to see.

More substantively, a series of different
speakers came up with interesting and potentially useful
categories, I thought. Susan Creighton's "cheap exclusion"
certainly is a useful concept that I think is a nice way
to go thinking about things, but that wasn't all.

John Delacourt on the public interest, public
choice draft of his, putting all these different cases
and statements along there and trying to look at
evolution. I'm not sure it will play out that way, but
it's an interesting way to think about it.
Luke Froeb and John Baker both came up with categories dividing the world. Pauline, in those wonderful kind of charts looking at the difference between the way that the FTC and the FDA approach things, very helpful and interesting.

And then finally you had Bob Pitofsky voice an opinion that he hasn't really voiced that much, which is this notion of access -- saying that he really cared a great deal about access, and talked about Time Warner, Toys "R" Us and the Chrysler case. That's just a somewhat different way to think about antitrust than some others do some of the time, and it was interesting to have him put that particular kind of categorization on the missions that he had done.

Number 5, we have to say that David Balto was certainly interesting, and I'll leave it at that, and move on to number 6.

For number 6, wasn't it good to have Phil Elman get some recognition? He really was one of the talented people in American legal history, and so it was very gratifying to have people tell the story of how he decided that the Cigarette Rule was something that ought to be done -- that it was an important mission for the agency -- and to have people remember the really powerful dissents that he issued about some Commission opinions that may not have been as wise
as they could have. The way that he recruited Judge Posner, and then Judge Posner observing that that may have influenced the course of his life -- that he didn't go into private practice but came down here. That also was sort of inspirational. And then you get into the whole work with the Cigarette Rule. Phil Elman really was remarkable talent, and it's so uplifting to have a non chair commissioner be somebody that can be remembered all these years later, and I think deservedly so. So I like the recognition of Phil Elman.

Number 7, we got some very interesting insights about people that were fun, if nothing else. Those of us from Detroit really sort of felt good when Tom Leary emphatically said he wouldn't be caught dead in a car with a foreign nameplate, God bless him. It really was true. I mean, the auto companies are a huge slice of the American companies, and to be a card carrying left wing liberal claiming that you're worried about unionized workers and then going off and buying a car not made by unionized workers -- I don't think that's wholly consistent. So I think Tom's got his heart in the right place.

Then the idea that he won't wear dungarees unless he's on a horse, what a great concept that is! That he thinks most breakfast cereal is inedible, as he said, that was good. And then also the candid
observation that when it comes to weight loss, there's
enough of a problem out there that at least some in the
Commission are encouraging the industry to engage in
self regulation, perhaps even sort of sending a message
that we can go out and lessen competition a little bit
in order to try to solve a very serious consumer
protection problem. I don't know if you have the kind of
attention that he perceives, but it was an interesting
observation -- to see him thinking about things in that way.
So I thought that was interesting of Tom Leary.

On Tim Muris, it was just wonderful to have the
candid description of Tim going back and abolishing OPP
in order to reclaim the corner office that Bob Reisch
had finagled away from the Bureau early on -- once again,
geography being destiny (and those of us who have been
in the General Counsel's office know all about that --
what a great office!).

Then the wonderful enthusiasm of Ken Elzinga --
who many people cited here as being a teacher or
somebody who had written a seminal article -- but yet the
enthusiasm he showed for just going back and learning a
little more about the Morton Salt case! It's great
to see somebody of that stature having sort of child
like enthusiasm to go out and learn something new, and I
thought that was good, too.

Number eight, we had really terrific insights
from people who were, to reuse the old phrase, "present
at the creation" -- and new things really there. We got
some really nifty contributions. Ed Cox was very
special. The notion that one of Nader's Raiders was
driving around town, unable to use a stick shift, running
red lights and looking over at Ralph Nader right there
without a seat belt, ready to get knocked off, sleeping
four hours a week in his brother's place while they were
madly trying to get this report out -- and then observing
that this was actually the beginning of the whole Nader
empire (which some of us may not think ended up so well
at the end, but for awhile there it was a celebrated
empire). And then his observation that every agency
has DNA from its birth, and I thought that was an
interesting insight with a lot of truth to it -- so I
thought hearing from Ed Cox was a real treat.

For that matter, hearing from Bob talking about
sitting around with the General Counsel and the Chairman
watching those these TV sets and ignoring the programs
but waiting for the commercials to come on, and in a
single evening coming up with several national
advertising cases! Between the networks being the easy
things you can watch and the notion of the three of them
going together and doing that, it was just a wonderful
little slice of where the Commission advertising program
came from.
You can go on. You had David FitzGerald going
back to the beginning of the 13(b) program; Claudia
Higgins talking about the carve-out settlements;
Howard Beales going back on the birth of the deception
and fairness statements; Mary Lou Steptoe going back and
ruminating about Detroit Auto Dealers and the
bulletproof vest cases that may be about choice more
than she realized at the time; David Scheffman going back
and saying he was here when the agency was bringing all of
these creative economics based cases like Ethyl and Cereals
and DuPont and such, and reminding everybody that just
because it's got the word economics on it doesn't mean that
God declared that it was going to work out and be a big
success, and teaching people at least to have a healthy
dose of humility. I'm not sure David got that lesson as
strongly as he stated it.

Bill Baer I thought had a wonderful, wonderful
reminder going back. We hear so much about how the
Commission went off the track in rule-making, and Bill
reminded us that, no, it also got in great trouble on
advocacy, and the buzz storm was about the insurance
industry and about real estate.

He told me afterwards that the moment he liked
was going up on the Hill with Mike Pertschuk and they
were getting yelled at for the insurance effort, and
Howard Cannon called them up and said, "You know, I read
your report about whole life, and, you know, you're really right -- it's a lousy deal -- and thanks a lot, I had a bunch of it and I've gotten rid of my whole life, and I sure appreciate it." Then he went ahead and held the hearing and berated them in public, and on he went.

It was a wonderful juxtaposition to have that paired with Bob Atkinson saying, by golly, the important thing for the Commission to do is to go and take on the car dealers and to go and take on the funeral industry and such, in the world of Internet and real estate, and it's a caution and a reminder that the Commission gets in trouble not just sometimes because it may be overreaching, but also sometimes because it may be taking on politically powerful operations.

It doesn't mean you don't do it, but it does mean you have to do it with a lot of care and you have to make sure that, as our newest Commissioner said, it's a battle that is worth fighting. I say that in the context of somebody who thinks that whole life is something that the Commission should have taken on, and it's too bad it didn't get further, and all that good stuff. Enough on that.

As Mozelle said (getting to my point number 9) a couple of times we sat back and said, Yes, where you stand may depend on where you sit. There were a couple examples of that. In the world of remedies, we
had the fun (for those of us at the FTC) spectacle of a
group of people at the Federal Trade Commission saying,
"Yes, indeed, the Federal Trade Commission has it right
and the Justice Department has it wrong." You just
hope that that's not just because of where we all camp out.

You had the really great fun of watching Jodie
Bernstein get up there and berating Lee for deliberately
rigging the betting by choosing three rules -- and then
going on (actually both Jodie and Cas Hobbs) saying, "By
golly, the Commission did an awful lot of good: take a
look at the Octane Rule, take a look at the Energy Labeling
Rule, go take a look at the Holder in Due Course Rule,
take a look at the Door to Door Cooling Off Rule. By golly,
the Commission did a whole lot of good things in there, not
to mention that back there in the terrible old days that you
had things like the Ad Substantiation Doctrine."

I think Bill Kovacic did say that maybe a Commission
that could come up with the Cigarette Rule wasn't all
bad, and I thought that was a nice reminder that the
world is not simple (the Commission was incompetent,
the Commission was great) but rather it's a much more
complex story, and the Commission actually has a very
rich history in doing a lot of different things.

The same point came out in the GM/Toyota discussion
where you had Kathy Fenton, who had worked for the author
of the opinion, saying: by golly, it was a great opinion
and well deserved and the dissenters were not people who
were really seeing things wisely. Then you had -- leaping
in -- John Kwoka saying: Well, I worked on the case, too,
and the fact of it is that there was an argument that
this was really quite problematic -- GM should have gone
and paired not with Toyota but with Isuzu -- and John Baker
coming in and saying maybe the efficiencies were overstated
anyways.

Myself I think they all missed the boat. I
always interpreted GM/Toyota as one of those very
interesting cases where nobody could talk about what was
really going on, and that was that the Commission (I
thought as an outsider) was saying there's some risk of
anticompetitive harm, but this will let Toyota do an
end run around trade restrictions, and since we hate
trade restrictions and can't take them on in a frontal
way, the advantage of undermining the trade operation of
the U.S. government justifies any risks that might be
there in terms of harming competition. But it all
depends on your point of view.

Finally, in terms of your point of view, we
heard two wonderfully different descriptions of the
Kirkpatrick era Commission. You had Ed Cox saying
that what was going on was that we had a consumer
revolution -- we had a bringing together of the people
in the consumer movement and the people on the Hill and
the people who were in staff positions. It was all
coming together, and it was a consumer revolution, and
wasn't it great! In contrast, you had Judge Posner saying
that what happened was you had a Democratic Commission, and
you had a Republican President who was happy to come in,
knock heads and appoint a bunch of people who totally change
the place. I don't know which one of those two perspectives
was right -- probably some of each -- but it was interesting
that they had such very different perspectives on what was
going on.

Finally -- point number 10 that I liked -- point
number 10 was that we had, over the course of two
days, a series of really nifty lines that you had to
just sort of enjoy. Ones that I jotted down while I
was listening:

You had Marc Winerman quoting Judge Taft
as favoring courts which "are like what we shall meet in
heaven under a just God."

You had Ed Cox quoting Jefferson: "We need a
little revolution every 30 years."

The irrepressible Mary Carter Jones standing up,
"I'm sorry to intervene, but I am 86."

I enjoyed Orson Swindle who came on with the "Law
and Order" music playing, and saying what he thought he
heard was "I heard it Through the Grapevine" -- in a
description of how he learned about these issues!
Bill Kovacic had I thought a great line talking about the importance of measuring the non litigation kind of outcomes, urging us just to think what the NBA would be like if they did not measure assists -- and the NBA's bad enough even when they do measure assists. It is an important point. One of the problems, unfortunately, was that everybody said all this stuff is wonderful, but we still don't do a very good job of measuring things other than case outcomes.

Let's see what else was good. Rob Atkinson: "In America you can buy a computer from Dell but it's illegal to buy a Ford from Ford even in Michigan." And golly, that is silly, isn't it?

Just recently we heard Tom Krattenmaker say, what? "Jefferson lost, Hamilton won." Allan Fels -- just before me -- I enjoyed immensely the line talking about moving to the U.S. standards, saying that if they do, we'll call it convergence, and if they don't, we'll call it wrong headedness.

But in terms of lines that it was a treat to hear, there was one line that stands out as a line that I had never thought that I would hear -- and that was Judge Posner standing up and saying "I'm happy to stand before you contrite."

Point three: the Federal Trade Commission at risk, and now we get serious for a little bit here.
There has been an air of, "this is the best of all possible worlds" that we've been listening to for the last two days. There have been times when everybody agrees with each other so much, and you really do get the sense that we've reached perfection -- so let me just throw a little cold water on that. I have several different points to make.

First, a personnel issue. There was a little talk about economists and whether all of the consulting is starting to make a problem in terms of economists and such. So you've heard that.

Let me raise another slight issue. It's not very polite, but compare, if you would, BCP and BC. They're both great institutions, and I love them both, right? If you look at BCP, you're looking at a bureau where you have two deputies who are perfectly talented people, who have been there long enough to remember a bunch of mistakes that the agency has made, to have some institutional memory and to be able to make a real contribution and to be able to step in easily when somebody leaves. Look at the people in BCP who are heading the different divisions, and they tend to be people who have got a lot of experience, a lot of ability -- they tend to be career people of great talent who are doing a great job.

You compare that with BC, and you've got people
of great ability and great talent, but the reality is
they come in and they leave. They come in and they
leave. I came in and I left -- and I wasn't even in BC,
in fact -- but you do worry at some point. Is there a cost,
too much of having a bureau where people are coming and
leaving and coming and leaving and coming and leaving --
and I don't know for sure if it's a problem, but I worry
about it. I just fret a little bit that it may not be good
for either the career staff on BC. It may not be good
to have leadership that is sort of coming in and leaving
right away, and I just worry sometimes that maybe the BC
model could perhaps benefit from being a little more
like the BCP model -- worrying about that just
slightly.

ALJs: we talked about the Commission having the
alternative way to litigate and such. At least there
has been some suggestion that ALJs coming to the
Commission do not always come here with a really fully
developed expertise in competition and consumer
protection, and it might be possible in a perfect world,
in the best of all worlds, if you would, to recruit ALJs
who are even more excellent. It's important for the
Commission to adjudicate cases basis effectively, and
that requires excellent ALJs.

Last, go back to the cigarette story. Remember
the Cigarette Rule, that great image of the Saturday and
the three Commissioners sitting in there and reading the Surgeon General reports together and deciding what to do? That could not happen today because the Sunshine Rule would make it illegal for three Commissioners to sit there and talk about smoking policy. You couldn't do it.

Now, if you thought about it ahead of time, you probably could come up with some excuse for doing it and putting it on the public record and arranging it, but to do that, you would have had to think about it ahead of time. You would have to do all the paper work. You'd have to figure out who was invited. Pretty soon you'd start inviting more people. Pretty soon there would be press coverage. It just wouldn't happen. It doesn't happen. Commissioners don't get together the way that they used to do in those days -- and so you could put Commissioners of that caliber on this Agency and they would not have the same influence on their fellow Commissioners as took place at the time, and that's really a pity. So I worry that we really don't have the best of all possible worlds.

Next, although we're living in the best of all possible worlds, there is still some disagreement going on, and we still do have issues about which some people are right and some people are wrong. You know, we did have hints of disagreements about privacy and what's the right answer. You had the Averitt/Lande emphasis on
choice and innovations, things that really are not a joinder as to where that should go. You had the Jodie and Cas emphasis on more disclosures, more information going out to consumers, more rule-making, things like that -- so we don't have a world whereby (and you should frankly not pretend that we have a world whereby) everybody is in agreement with everybody.

Third, there are more things that the agency could be doing. I teach consumer law. That means I have to teach the Fair Credit Reporting Act. It is hopeless. It is a completely circular, unintelligible rule, a statute that just cannot be understood by normal human beings. Heck I have trouble understanding it, and I spend a lot of time on it.

The Commission used to be in the business of having both an FCRA official commentary and then a bunch of Staff opinion letters. The Commission now has solved the problem of this indecipherable statute by adopting a new policy that they're not going to give advice on it thereby avoiding having their people understand this non-understandable statute.

It's just a bad way to run a country, and it's not a good thing for an agency to be doing, and it's too bad we don't have a statute that works. You go through all of those statutes and rules that Jodie and Cas talked about, and a bunch of them are nothing to
write home about.

Truth In Lending, which they didn't talk about but it's part of what BCP does, is just an absurd statute whereby when you want to buy a house, you can find out nothing of any use about what kind of interest rates you're going to pay, and then after you have chosen your lender and after you've almost bought the house and after you've sat down and you're at closing, you're hit with a ton of paper when you're not going to look at anything and none of your decisions will be affected. That's a nutty way to run a policy about one of the biggest decisions consumers make, and it's too bad the Federal Trade Commission wasn't able to lead an effort to try to bring sense to that world.

Efficiency labeling: the Commission has tried to the improve our knowledge of the energy efficiency of appliances, and I'm told hope is coming and it will go on the web, but it's taking an awful long time to get there.

National advertising: I don't think all the problems have gone away. I tried to buy telephone service recently, and it was just hopeless because there are all these new disclosures. This is a state fee; this is a federal fee; This is a such and so fee. I don't know which of these fees are required and which are not required. Trying to make an informed decision doesn't work
out very well, and so maybe the Commission should go and
litigate a case and figure out once and for all whether
it can do something about the advertising of these
services -- either it can or it can't, and if it
can't, they could have Congress help fix that -- but
there's lots of things the Agency could do. It's a
problem because the Commission at some point is called
upon: you're doing things related to this, why can't you
make the world better?

Fourth, the real serious biggest worry is that
the Commission will be a victim of its own success. You
can already see that Congress continues to dump problems
on the Commission saying: You've just done such a great
job. Basically, the strategy seems to be to keep giving
enough assignments so that Commission will botch one.

It really is a serious problem. You can see it
in the world of obesity where the clamor is for the
Commission to get involved, and pressure for the
Commission to overreach and do something that's not
sensible there. (And here I am, suggesting there
are other things the Commission should do! It's done a
great job, but there is the problem of overkill.)

There's also the problem of overconfidence, and
that goes back to my worry about the tone that I've
heard over the last two days about how well we're doing
and how good things are, people saying the Commission
has never been this respected before. People sort of
get a little bit overconfident, overdo it a little bit. Tim
Muris said that the Commission now has an unfairness test
that is a rigorous cost benefit test. Well, that's just not
ture. That is how he applies it perhaps, but that's not
how it's written, and it's not how other people may apply
it. You can go on and talk about lots of things --
but we're running out of time.

In terms of being overconfident, you heard a
quick mention about courts, and I just want to remind
folks about courts. Back when I was here, I remember
having a conversation with Baer and Pitofsky (and I've told
some of you this) saying, "By golly -- one of us said, I
forget which -- the legacy of the Pitofsky Commission will
be formed by the Ted Turner Time Warner merger
investigation, which was this massive, important
investigation we were working on -- and we really thought
it was important.

That is not anywhere near the legacy of the
Pitofsky Commission at all in terms of things with a
lasting impact. What did Judge Posner mention that he
thinks the Commission has done well? The first thing he
mentioned was the Staples opinion, which he really
liked, and, for better or worse, Arch Cole is going to be
one of the legacies of the Muris Commission, and then
there are a bunch of other cases that are on appeal or
heading for appeal, and those will be part of the legacy.

If you go and you look at the case books about what the Federal Trade Commission has done to contribute to antitrust law, things that were not mentioned at this conference that are in the Areeda case book (the one I happened to grab to do this little sort of check), cases that were not mentioned around here include Indiana Federation of Dentists, Superior Court Trial Lawyers, Motion Picture Advertising Service, Tenet Health Care, Butterworth Blodgett, Bendix, Borden, AE Staley Manufacturing, A&P, Automatic Canteen and, most importantly, the Fashion Originators Guild case.

And in terms of influencing antitrust law, that's how the Commission historically has had the most influence -- and so we can run this agency beautifully, but if the cases don't come out in a way that improves the world, it's not going to work out very well at all.

Last, the Commission is right now about as respected as it's been in any of our memories. There's a Modernization Commission that Congress created to look at the antitrust laws. (The FTC cynic would say that it tends to be over weighted with people who are alums of the Justice Department Antitrust Division.) The ABA has a task force to create comments to give to the Modernization Commission on what issues to address (and I'm on that body), but there
were people on that group who said in effect, by golly, it's important to abolish the Federal Trade Commission. Now, they don't phrase it that way. They say, Shouldn't we have only a single antitrust agency. But the last time I checked there was not a big constituency for abolishing the Antitrust Division, and if you did get rid of the antitrust part of the FTC, it would not be the same agency, so talking about doing antitrust in any one agency is effectively saying abolishing the FTC as we know it. So also people in that group, talked with great vigor about how terrible it is that there are these massive delays in deciding which agency will investigate this or that merger and which agency will investigate this or that non merger matter. There were complaints about the different legal standards for getting a preliminary injunction. Why should my client in a merger have a different legal standard, depending upon which agency is out there? Shouldn't we do something to get rid of that? For that matter shouldn't we order the FTC to get out of the business of administrative adjudication of mergers, and then have to do all their litigating in court like the Justice Department does, and on and on.

So you've got people, at a high watermark in the reputation of the agency, who are raising serious questions about it. Go back to Judge Posner's speech last night. Judge Posner said: Let's take a look at what's going on the in the agency -- how can one
justify it? Well, you can have substantive law -- not
there. You can have procedural law -- not there. He
glossed over the fact that in fact there is some part III
adjudication going on -- I continue to think
that it's essential to have part III adjudication going
on -- but he said: Is there substantive advantage? No.
Procedural advantage? No. Should we have competition
between two agencies? No.

So therefore, what should we do? He said that
because it is going so well, we should continue it just
because you don't tamper with success. Well, of course the
flipside of that is that when the hard times come, and they
will, and when the Agency is no longer held in as high
respect as has ever been the case, then suddenly the
pressure to abolish it will be much stronger than before,
and if we face this kind of
criticism now when we're doing so well, just think what
it would be like when we're not doing so well.

So, that's why I worry. Is there reason to
hope? Yes, there's reason to hope. Let me give you
very quickly four quick reasons to have hope.

First, we've got this conference and a bunch of
good people asking hard questions and sticking to the
meeting and going back and trying to learn from the
past, and that just is very important.

Second, the agency really has had outstanding
leadership of late, and that makes a big difference, so
it makes it easier to recruit more outstanding
leadership in the future.

One important point came out that Bob did a great
job (I'm biased) I think, but yet by all accounts Muris
came in and emphatically said: We cannot rest on our
laurels, we're only as good as our last game, and you
have to get out there and do better tomorrow than you
did before. You need that kind of an attitude for an
agency like this, which is a vulnerable agency, in order
to be able to thrive and indeed even to survive.

By all accounts now Debbie Majoras is doing a
really fine job of taking advantage of this odd interim
kind of period, and I'm especially glad that BCP is
reaching out and making phone calls to a number of
people out there in the community and asking nice
pointed questions like: What are we doing right and what
are we doing wrong, and trying to get the kind of
criticism that lets an agency constantly be improving
itself. That's a very important thing to do.

Third, the FTC career staff really has a lot of
people with terrific talent and dedication. One
thing that was great about this program was that so many
of them were involved, and it wasn't just outsiders like
myself. By my count there were 13 career Staff people
who participated, and that really in the end is what's
going to make this agency work -- not the leadership but rather the career staff -- and so it's been very good to see that kind of role.

You've all you heard this one before (you've heard me give a farewell) but for the one or two of you that didn't, the career staff story that I like (it's true) was about the time when I was here and the Commission decided to bring the Joe Camel case -- massive case, controversial, politically difficult, all that sort of stuff against a very hard, hard-hitting kind of opponent (including frankly Tim Muris working for the defendants in the case), and the one slight problem -- and my memory faded a little bit, but I have a dim recollection that it was the night before the complaint was going to be issued and suddenly the Commissioners realized that they did not have a lead trial lawyer -- and forgotten that little part of the overall program -- and asked me if I could volunteer somebody from the General Counsel's office.

I proceeded to call David Shanka at home and said, David, it's ten o'clock at night, what's the chance you want to give up the next several years of your life to bitter, unpleasant litigation against the forces of Joe Camel, thereby ruining whatever family life you planned to be having -- think about it overnight and talk to me in the morning.
He came in the morning and said: Well, when you
are a staff lawyer at an agency and your chairman says
he needs you, there's really only one answer you can
give.

And there are just a whole lot of people here who
have that attitude, and that's going to help the
Commission overcome the great threats that it faces.

Last, the FTC is very special. Jay Shaffer has
been a great teacher to me about how different this is
than the Justice Department, and in its own odd quirky
way a place that is more loved, that has more loyal
alums and more enthusiastic staff. The story there
(which also I've told before), is Jay's story, but
it's so wonderful I can't resist telling it one more
time just to close.

There was a time when the Sunshine Rule, going
back to that, came into effect, and the Commission
decided it had to open up the Commission meetings to the
public and to have microphones and let people listen,
and they were concerned perhaps that the equipment would
not work very well, and so they wanted to have someone
in the back get ready to be able to do something if
people could not hear, and it was too quiet. They printed
up and the typist prepared a notice to put in the seats of
the different people out there in the room that explained
who was sitting where, and then just to make sure we can
deal with these problems of inaudibility, they put down a
little notice, and the notice said -- thanks to a slight
typo -- "Please be sure to raise your hand if the discussion
becomes incredible."

Well, the Commission has been doing incredible
things for 90 years, and it's doing incredible things
today, and I am confident it will be doing incredible
things for a long time to come. Thank you very much.
See you at the 100th.

(Applause.)

MS. BAILEY: Thanks, Steve, and that's it. See
you in ten years.

(Time noted: 4:51 p.m.)

CERTIFICATION OF REPORTERS

TITLE: 90TH ANNIVERSARY SYMPOSIUM
SYMPOSIUM DATE: SEPTEMBER 23, 2004

WE HEREBY CERTIFY that the transcript contained
herein is a full and accurate transcript of the tapes
transcribed by us on the above matter before the FEDERAL
TRADE COMMISSION to the best of our knowledge and
belief.

DATED: OCTOBER 6, 2004

SALLY J. BOWLING

DEBRA L. MAHEUX

CERTIFICATION OF PROOFREADER

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

DIANE QUADE