

GABRIEL KOLKO VS. THE FEDERAL TRADE COMMISSION:

A REEVALUATION

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In the last decade there has been a heated debate over the origins and accomplishments of the Progressive era. Perhaps the most divergent interpretation of this period is that advanced by Gabriel Kolko. In his The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916, this member of the New Left contends that federal legislation in these ten and one-half years achieved the goals and aspirations of the leading business class. His views of the newly created Federal Trade Commission complement his over-all premise and imply it did not in reality perform an antitrust function. Kolko's thesis, however, is not supported by the FTC records he cites. The commission's papers, and other pertinent sources, suggest that the FTC followed a policy which renders Kolko's concept of the later Progressive period largely incorrect.

Kolko believes the goal of the business community during the Roosevelt, Taft, and Wilson years was the preservation of the "existing power and social relationships" of American society.¹ Political means were required to achieve this dominance, because of the fact that most of the large corporations were inefficient. They, therefore, could not prevent the entrance of new and efficient competitors into markets that they supposedly controlled. As a consequence, they were unable to rationalize conditions in major industries, and the inefficiency of big business made it necessary for large corporation owners to use the federal government to achieve economic rationalization.²

During Woodrow Wilson's administration, according to Kolko, the aim of the capitalists was achieved by the following methods. First, vague legislation was passed which created administrative agencies and granted them extensive powers. Then, "pro-business" individuals, who were judiciously selected to head these agencies, administered the loosely drawn laws in a manner acceptable to the business sphere as a whole.³

The FTC administered most of the new antitrust legislation passed in the Wilson Administration. Consequently, an essential requirement of Kolko's thesis is that the Federal Trade Commission conduct itself in a manner acceptable to the dominant Wilsonian legislation, contends that "the provisions of the new laws attacking unfair competitors and price discrim-

ination meant that the government would now make it possible for trade associations to stabilize, for the first time, prices within their industries, and to make effective oligopoly a new phase of the economy.⁴ Since the FTC was empowered to enforce the laws against unfair competition and price discrimination, Kolko's statement seems to mean that the commission interpreted the legislation in such a manner as to allow the stabilization of prices by trade associations and the promotion of oligopoly.

Kolko's history of the Federal Trade Commission supports the implications of his statement about the effect of the provisions of the new laws. The FTC, according to his interpretation, was composed of "pro-business" individuals, who made rulings in advance, undertook activities for the purpose of saving businessmen money, and supported trade associations. This advocacy of trade associations, Kolko implies, would aid their twin goals of price stabilization and the elimination of internecine competition. Never in his discussion of the commission does Kolko see the FTC as engaging in antitrust activities against the newsprint manufacturers or the meat packers. Such conduct is not congruous with Kolko's conception of the commission's motive for supporting trade associations, and it is not an activity that one would expect from a group of "pro-business" appointees. This policy of the FTC, Kolko asserts, was endorsed by Woodrow Wilson, and it was followed until the end of the First World War.⁵

Very little of this thesis is supported by commission records. Careful examination of such records reveals that Kolko's label of "pro-business" is inapplicable to most of the commissioners whom he discusses and that the FTC itself did not adhere to a policy which pleased all major business interests.

Kolko discusses the attitudes of only three of the five original appointees, Edward N. Hurley, George Rublee, and Joseph E. Davies.⁶ In my opinion Hurley was "pro-business," but Rublee and Davies were not. Kolko's appraisal of the latter two men is either misleading or incorrect.

There is no doubt that George Rublee was the sole commissioner to actively oppose the commission's granting advance rulings concerning the Sherman Anti-Trust Act. Such rulings were desired by the business community, and Rublee's failure to approve the bestowing of them suggests that he had ideas that were contrary to those that a "pro-business" appointee should have. Kolko eliminates this menace to his concept by ascribing Rublee's lack of support to the fact that he "was quite literal-minded in evaluating the [Federal Trade Commission] law and could not find a convenient loophole."⁷ Such an explanation overlooks the fact that it was Rublee who wrote a major portion of the Federal Trade Commission Act and that the law met with his complete approval.⁸ In fact, Rublee's efforts probably prevented the act from granting the commission the right to make advance rulings. Rublee saw the failure of the bill to grant the commission this power as being a positive achievement. This failure, Rublee wrote, eliminated the danger that the FTC could make activities legal.⁹ Thus, Rublee's opposition to the FTC's assumption of this power was based upon a conviction that it could weaken the antitrust laws. Such a belief is inconsistent with Kolko's label of "pro-business."

Kolko supports his contention that Joseph E. Davies was "pro-business" by concentrating on the one activity of Davies that is most complementary to his assertion.¹⁰ In doing this Kolko makes no false statements, but he does write in such a manner as to lead the reader to conclude that Davies and Arthur Jerome Eddy, a trade association promotor and author of The New Competition, supported the same policy. The activity that Kolko focuses on is Davies' proposal that the commission should make advance rulings. Davies was in favor of the commission's following such a policy, and he did make a proposal that the Federal Trade Commission Act should be amended to grant the commission this power.¹¹ Eddy also was in favor of having the FTC grant advance rulings, but his actual proposal was very different from the amendment proposed by Davies.¹²

For special cases, Davies believed, the commission ought to make rulings as to whether proposed activities violated the Sherman law. It should do this, he reasoned, because businessmen who had obviously legal and socially beneficial programs might be inhibited from implementing them because of unjustified fears of antitrust law prosecutions. His proposal provided for a Justice Department veto power over FTC rulings concerning the provisions of the antitrust laws that the commission was not empowered to enforce. Under his amendment commission approval of proposals would only grant the recipients of such rulings a limited immunity against Justice Department litigation. This immunity would provide protection from the criminal penalties of the Sherman law. Rulings, however, would not grant businessmen protection against any civil proceedings by the Justice Department. In short, Davies' proposal would not protect those who received commission approval from dissolution suits by the Justice Department.¹³

On the other hand, Eddy's advance ruling concept would have given businessmen much more by granting them the right to obtain rulings in advance from the commission on any proposal that they were about to undertake. The rulings would have to state that the proposal was either legal or illegal. Once businessmen received positive rulings from the commission, they could assume that the Justice Department would not move against them.¹⁴

Kolko avoids discussing Davies' actual business regulatory actions by claiming that he resigned from the FTC in June 1916.¹⁵ In fact, Davies did not leave the commission until March 1918.¹⁶ This error is much more than a simple confusion of dates. For if Davies had resigned in June 1916, the approximate date the commission chairmanship passed from him to Edward N. Hurley, the FTC might have conducted itself in a manner prescribed by Kolko's thesis. Instead, Davies remained on the commission and played the major role in opposing the attempts of Hurley to conduct a "pro-business" policy. Davies vigorously attacked Hurley's attempt in December, 1916. Twice in that month he reported in commission meetings that Chairman Hurley was conducting activities that were unauthorized by the commission. Davies' criticism resulted in Hurley's being required to make reports to the commission on his activities and in his being reminded that

he did not possess the power to speak for the commission.¹⁷ In addition, Davies was also the proponent of the FTC's taking an active role in anti-trust prosecutions against newsprint manufacturers.¹⁸ It was after Hurley had been twice humiliated by Davies, and shortly after the commission had made the basic decision to take an active part in legal proceedings against the newsprint manufacturers, that Hurley submitted his resignation.¹⁹

Kolko, by quoting a portion of Hurley's resignation letter, indicates that Hurley's departure was entirely due to his private business affairs.²⁰ The events just discussed, however, suggest that the departure may have been due to the fact that Hurley realized that the commission was moving towards an active antitrust policy which was incompatible with his view of its functions. Specific events that occurred between the time Hurley submitted his resignation and its effective date support the view that Hurley did not resign solely because of private business considerations. Hurley ardently attempted to prevent the commission from becoming involved in an antitrust investigation of the meat packing industry. According to commission regulations, being chairman did not give Hurley the right to speak for the commission. It did, however, make him the individual to whom inquiries were addressed. Hurley used this fact to negotiate alone with Woodrow Wilson and a group of congressmen who desired a meat packing investigation. The congressmen were dissatisfied with Hurley's attitude, which they assumed was the commission's. During a conference with the FTC they discovered, to both their and the commissioners' surprise, that Chairman Hurley had been presenting his individual view as that of the commission.²¹

The fact that Hurley would deliberately misrepresent the other commissioners' viewpoint indicates the degree to which he was opposed to anti-trust investigations. Such opposition is compatible with Kolko's contention that Hurley was "pro-business." The other commissioners' favor towards antitrust activities, however, is incongruous with Kolko's assertions about them.²²

Kolko's contention that all the commissioners were "pro-business" is in harmony with his assertion that the FTC followed a "pro-business" policy. According to Kolko, a major part of this policy was the practice of making rulings in advance. He implies that these rulings involved laws which the commission was not empowered to enforce, and he discusses the commission's conference rulings in such a manner as to suggest that all or most of them were advance rulings. Finally, he states that both the commission's conference rulings and its cease and desist decisions were part of what he labels the "new policy."²³

All of the above implications and assertions that Kolko sets forth about the commission's rulings in advance, conference decisions, and cease and desist orders, are incorrect. The commission's original policy, which deviated somewhat from Kolko's presentation, did not antagonize businessmen. It did, however, change drastically in 1917, but this shift is not perceived by Kolko.²⁴

The commission never made rulings in advance concerning laws which it was not empowered to enforce. It debated the question as to whether it should, and failed to adopt a policy statement about this until the spring of 1917. That statement declared that the FTC would not issue any advance rulings.²⁵ From the time the question arose until the time the commission adopted this statement it did not give any rulings concerning laws it was not empowered to enforce.²⁶ On infrequent occasions it made rulings as to whether specific acts--the use of a particular contract, or the giving of a price discount to a farmers' organization--would be a violation of laws it was empowered to enforce; and some or all of these decisions were published as conference rulings.²⁷

Most conference rulings, however, were not rulings in advance but were instead rulings about actual practices. They were the end product of a process the FTC originally had adopted to fulfill the provisions of the Federal Trade Commission law, which charged it to prevent unfair methods of competition. Under this procedure it would investigate complaints. If it decided a complaint was valid, it would acquaint the accused party with its opinion. Usually the party would promise to cease the practice which had been the cause of the complaint, and sometimes it would make promises of restitution to the victims of its practices. Under such circumstances the commission would accept the accused party's promise and not do anything further except possibly issue a conference ruling.²⁸ Such a ruling did not give the specifics of the case, but it supposedly stated the principle of law established in the handling of the case. At times, however, the commission decided that it did not have jurisdiction, or that the use of a specific practice was not unfair. In these cases it sometimes issued a conference ruling to establish a point of law.²⁹

Conference rulings were not provided for by the FTC Act, and they had no legal validity. The act provided a formal procedure of complaints and cease and desist orders to prevent unfair methods of competition. If the recipient of a cease and desist order failed to obey, the commission could apply to a federal circuit court to enforce it. If the court ruled that the commission was justified in issuing the order, it could rule that the party would be in contempt of court if it continued to ignore the order.³⁰

During the commission's first two years the complaint and cease and desist order process was used infrequently. Then, in 1917, the FTC adopted a new policy to deal with all accusations of violations of laws it was empowered to enforce. If a preliminary investigation revealed that a charge might have validity, the commission issued a public complaint. After holding hearings, it made public its ruling to either dismiss the complaint or to issue a cease and desist order.³¹

This policy change of 1917 was a basic one. Before, the commission had informally and privately asked businessmen to stop what it considered to be unfair methods of competition. Now, it formally and publicly or-

dered that they should cease such practices. This change in direction meant that the only nonpublic part of the commission's dealings with an accused firm would be in its initial investigation. If this investigation gave the commission reason to believe unfair competition was being used, the firm would suffer the adverse publicity of being the recipient of a commission complaint and possibly a cease and desist order.³²

Kolko fails to understand that the issuance of conference rulings and the general issuance of cease and desist orders were the results of two separate policies which were not followed at the same time, and that the general issuance of cease and desist orders was not approved by many elements in the business community. He uses a passage from a 1920 commission publication to imply that the commission was issuing conference rulings and cease and desist orders to meet the desires of the business community.³³ The passage Kolko quotes had appeared earlier in the October 1918 issue of The Nation's Business, a United States Chamber of Commerce publication. It was there a part of a report highly critical of the Federal Trade Commission. One of the report's specific criticisms was that the commission had ceased following the procedure which had resulted in the issuance of conference rulings, and had begun a policy of issuing formal complaints and cease and desist orders. This change in policy, the chamber's report implied, was one of the reasons why the commission was failing to fulfill the expectations created by a January 1914 speech of President Wilson. A portion of Wilson's speech, in which he had urged Congress to create a federal trade commission, was cited in the report. It declared that such a commission would make "explicit and intelligible" the meaning of the antitrust laws.³⁴ The FTC made an apparent attempt to refute the implication that it had failed to fulfill the expectations of the President. It used a portion of Wilson's 1914 message in a declaration about the effect of its legal proceedings. The commission statement asserted that its conference rulings and its cease and desist orders were furnishing the "definite guidance and information" which both Congress and the President had in mind when the Federal Trade Commission was established.³⁵ At the time it made this declaration the commission had long since ceased issuing conference rulings and had instead instituted a policy of issuing formal complaints and cease and desist orders.³⁶ It is, nevertheless, this declaration by the commission that Kolko uses to imply that what he believed to be an FTC policy of issuing conference rulings and cease and desist orders was fulfilling the desires of the business community.³⁷

The other activities of the FTC that Gabriel Kolko discusses in a manner consistent with his contention that the commission followed a "pro-business" policy are the commission's promotion of money saving practices and its promotion of trade associations. The advocacy of trade associations, Kolko implies, would save businessmen money, because the associations would attempt to achieve price stabilization and to eliminate internecine competition.³⁸

The commission did promote trade associations. It also advocated cost accounting practices which would save businessmen money; but it had a motivation for undertaking these activities that is not discussed by Kolko. The motive was to promote intelligent competition. The FTC attempted to do this by undertaking activities which would provide businessmen with two types of knowledge that it believed they needed to compete efficiently with one another. The first type was a knowledge of good cost accounting. The commission could help individual businessmen obtain this by making them aware of the types of techniques necessary to enable them to know the cost of the products that they manufactured or services that they offered. The second type was industry wide statistics concerning total production, total demand, general rates of profits, and possibly total industry capacity. The commission attempted to make this knowledge available by encouraging and undertaking the publication of data gathered from the individual firms of a specific industry.

The commission hoped to promote publication of both types of information through cooperation with trade associations. Its attitude was that the promotion of these activities would be a main function of trade associations. These organizations, it believed, could adopt and promote standardized accounting methods for their industries and they could compile and publish relevant data about their industries.

Promotion of intelligent competition, the commission reasoned, would make the economic system operate more efficiently. Individual businessmen should know what it cost them to produce items and have a good idea about supply and demand for their products. This information would enable them to make intelligent production decisions, and therefore, the result would be a more efficient economic system.

In addition, information concerning the rates of profits in different industries would enable investors to make better decisions and thus secure a higher rate of return. The decisions would also be better for the community as a whole, because they would lead to investments in industries which were enjoying abnormally high rates of return. These investments would have a tendency to increase the supply of goods and services and this should cause prices and rates of return to decrease.

Investment in an industry with a low rate of profit, the commission believed, might result in a loss to both society and the investor. Increased investment in such an industry would probably increase production and cause both price and profit rates to fall even lower. The profit rate might fall so low as to result in the abandonment of either the new production facilities or other production facilities in the industry. When these facilities were abandoned, production would fall and prices would increase. Thus the end result of bad investment decisions could be that society would be left with useless production facilities.³⁹

Kolko, while discussing the commission's favoritism to trade associations and activities which would save businessmen money, implies

that Woodrow Wilson supported the commission's activities for the reason that they would save businessmen money. To suggest this he quotes a portion of a letter signed by Wilson in May 1916 which supported the commission's efforts to promote intelligent competition. The section of the letter Kolko quotes is "that trade associations . . . and other similar organizations should be encouraged in every feasible way" ⁴⁰ This quotation of part of Wilson's letter comes shortly after Kolko's assertion that the advantages of trade associations were price stabilization and the elimination of internecine competition. ⁴¹ Wilson's letter to Hurley, however, contains a sentence which is not consistent with Kolko's implication about Wilson's motives for supporting the commission's activities. That sentence reads: "These associations, when organized for the purpose of improving conditions in their particular industry, such as unifying cost accounting and bookkeeping methods, standardizing products and process of manufacture, should meet with the approval of every man interested in the business progress of the country." ⁴² Trade associations organized for these purposes would not bring about price stabilization, and they would have only a limited effect on internecine competition. The promotion of cost accounting by trade associations could make individual manufacturers more aware of their unit costs. Such knowledge might inhibit them from selling their products at less than these costs.

Whatever inhibitions the promotion of cost accounting would have on price cutting were more than offset by the commission's attempts to prevent collusion among trade associations' members aimed at stabilizing prices and eliminating competition. ⁴³ These attempts by the commission were basically supported by Wilson. ⁴⁴ They began in December 1916, when the commission discovered evidence that members of the Newsprint Manufacturers' Association were using their association to limit the production of newsprint, establish price agreements, and disseminate false information about newsprint production. The commission attacked this conspiracy, and it issued a general warning that other conspiracy, and it issued a general warning that other trade associations might also turn into price fixing conspiracies. To alleviate this danger it recommended legislation which would make trade association files public. ⁴⁵

The hostility of the commission to price conspiracies through trade associations and President Wilson's support of its hostility are incompatible with Kolko's implication that the commission and Wilson supported trade associations because they could maintain prices and eliminate internecine competition. Only through agreements among members could such associations achieve these goals. Yet the commission and Wilson clearly indicated that they considered such agreements to be conspiracies against the public interest. The conclusion to be gathered from this attitude of Wilson and the commission is that they did not support either price agreements or the elimination of internecine competition.

In his discussion of the commission's supposed policy of promoting activities which would save businessmen money Kolko indicates that the

legislation of retail price maintenance through fair trade pricing laws would be of benefit to business.⁴⁶ In doing so he indicates that an attack on retail price maintenance would be something a "pro-business" commission would not undertake. In the spring of 1918, however, the commission did just that when it declared that attempts by corporations to determine the retail price that purchasers of their products could charge was an unfair method of competition, and it conducted an active campaign against manufacturers who attempted to do this.⁴⁷

It was only after the First World War, Kolko asserts, that the commission ceased to follow what from a business viewpoint had been "a safe, reliable path."⁴⁸ As has been already shown, by late 1916 the commission was not following a policy that satisfied many major business interests. This fact was publicized by the anti-commission report in the October 1918 issue of The Nation's Business. That article criticized policies already discussed in this paper such as the commission's 1917 policy of issuing complaints and cease and desist orders and its antitrust activities, which included its hostility to the use of trade associations as price fixing conspiracies. The chamber's report also disapproved of the commission's attempt to establish wartime price regulation procedures which would more effectively regulate industry profit.⁴⁹

Saying that the commission was not following a "pro-business" policy after late 1916 is not to say that the commission was following such a policy before that date. It did have a member, Edward N. Hurley, who adopted such a policy and who convinced many businessmen and Gabriel Kolko that the commission was positively moving in this direction. The other members of the commission, however, eventually learned of some of Hurley's activities and reminded him that he did not possess authority to speak for the FTC. They also committed the commission to antitrust activities which are obviously incompatible with Hurley's and Kolko's vision of the FTC's functions.

The fact that the commission did not follow a policy that was approved by many major business interests suggests questions as to the validity of Kolko's interpretation of the Wilson Administration. That interpretation depends on Wilson's appointing a group of men to the commission who would interpret the vague antitrust laws in a manner compatible with the goals of the major business interests. Yet, by 1917, the commission was administering these laws in a manner that was inimical to the nation's leading business organization, the United States Chamber of Commerce.

The activities of the commission would not suggest serious questions about Kolko's thesis if Woodrow Wilson had in some manner censured the commission for administering the laws in a manner obnoxious to many of the nation's leading businessmen. Wilson, however, did not do so but instead supported the commission when the Chamber of Commerce issued its hostile report. His support included such things as avoiding the appear-

ance of even discussing the report with the chamber's president, encouraging commission officials to publish unfavorable information about the chamber, and reappointing a commissioner to a seven year term who was heartily disliked by the chamber.⁵⁰

In concluding the narrative portion of The Triumph of Conservatism Gabriel Kolko asserts that "the administrative outcome of the New Freedom was the logical conclusion of the premises of its initiators."⁵¹ By "administrative outcome" Kolko apparently means the policies of the Federal Trade Commission and perhaps the Federal Reserve Board. If that assertion be true in regard to the Federal Trade Commission, then Kolko's thesis concerning the Wilson Administration is incorrect.

Footnotes

¹ Gabriel Kolko, The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916 (New York: The Free Press of Glencoe, 1963), p. 2. For a discussion which treats this work as part of the New Left see Irwin Unger, "The 'New Left' and American History: Some Recent Trends in United States Historiography," American Historical Review, LXXII (July 1967), 1237-63.

² Kolko, Triumph of Conservatism, pp. 3-5.

³ Ibid., pp. 6, 217-78.

⁴ Ibid., p. 268.

⁵ Ibid., p. 270-78.

⁶ Ibid., pp. 270-75.

⁷ Ibid., pp. 271-72. Actually Kolko does not state that Rublee opposed the practice. Instead, he indicates that Rublee was of "very little assistance" in helping to find a rational for justifying advance rulings by the FTC.

⁸ Arthur S. Link, The New Freedom (Princeton: Princeton University Press, 1956), pp. 436-41; George Rublee, "The Original Plan and Early History of the Federal Trade Commission," Annals of the American Academy of Political and Social Science, X (January 1926), 115-17; Rublee, "The Reminiscences of George Rublee," transcripts of interviews conducted in 1950-1951 (New York Times microfiche publication of the Columbia University Oral History Project, 1972), pp. 101-19.

⁹ Rublee, "Memorandum concerning Section 5 of the bill to create a Federal Trade Commission," p. 22, enclosed in F. K. Lane to Woodrow Wilson, July 10, 1914, "July 10-11, 1914," Series 2, Woodrow Wilson Papers (Manuscript Division, Library of Congress).

¹⁰ Kolko, Triumph of Conservatism, pp. 271-72.

¹¹ Joseph E. Davies, "In re suggested powers of trade commission to pass upon proposed contracts, agreements and combinations," no date, File No. 8106-1, General Records, Records of the Federal Trade Commission, Record Group 122, National Archives Building. (Hereinafter records located in the National Archives Building are indicated by the symbol NA).

¹² Arthur Jerome Eddy, "Certain powers of the commission," no date, File No. 8106-13, ibid.; and "Statement of Arthur Jerome Eddy," May 4, 1915, File No. 40-2-25-1, General Records of the Docket Section, ibid.

¹³ Davies, "In re suggested powers of trade commission. . .," General Records, ibid.

¹⁴ Eddy, "Certain powers of the commission," ibid.; and "Statement" of May 4, 1915, General Records of the Docket Section, ibid.

¹⁵ Kolko, Triumph of Conservatism, p. 274.

¹⁶ FTC, Federal Trade Commission Decisions: Findings, Orders and Conference Rulings of the Federal Trade Commission, March 16, 1915 to June 30, 1919 (Washington, D. C.: Government Printing Office, 1920), I, 4.

¹⁷ FTC, "Minutes," December 5, 18, 1916, I, 383, 392, Federal Trade Commission Building, Washington, D. C. (hereinafter records located in the Federal Trade Commission Building are indicated by the symbol FTCEB); Edward N. Hurley, "Report to the Federal Trade Commission," December 11, 1916, File No. 8116-3, General Records, RG 122, NA.

¹⁸ Joseph E. Davies, "Memorandum of conference with A. E. Wright, formerly of the International Paper Company," November 25, 1916, File No. 8236-24-3, ibid.; FTC, "Minutes," November 28, December 18, 22, 27, 1916, I, 379, 392, 402, 404-405, FTCEB.

¹⁹ FTC, "Minutes," I, 404-405; Edward N. Hurley to Woodrow Wilson, January 6, 1917, "Federal Trade Commission," Case File 1105B, Series 4, Woodrow Wilson Papers. For a contemporary article ascribing Hurley's resignation to, among other things, disharmony among the commissioners see, "Baker's Ousting Raises Storm," New York Evening Sun, January 29, 1917, "FTC General, 1917," FTC Press Clippings, RG 122, NA.

²⁰ Kolko, Triumph of Conservatism, p. 277.

²¹ FTC, "Minutes," February 2, 1917, I, 420-21.

²² The other commissioners' favor towards antitrust activity brings into question Kolko's assertion that "had Hurley remained with the F.T.C., his influence over Wilson would have continued, if not grown" (Kolko, Triumph of Conservatism, p. 277). Hurley's resignation of February 1 limited his associates' opportunity to censure him for activities they discovered on February 2. Whether Hurley could have maintained his chairmanship after his fellow commissioners had learned of his use of it to misrepresent their position is questionable. A censured Hurley might not have been able to maintain his influence on the President.

²³ Kolko, Triumph of Conservatism, pp. 272-73.

²⁴ The commission made no announcement of a policy change, but a comparison of its 1917 Annual Report with its report for the subsequent year, and its pre-August 1917 "Press Notices," with its releases from that date until June 30, 1918, makes it clear that one had occurred. The approaches of the two annual reports to the commission's legal proceedings are radically different. From March 1916 to August 1917 the commission issued no press releases concerning complaints it had issued, whereas from the latter date to the end of that fiscal year the commission issued approximately sixty press notices. Annual Report for the Federal Trade Commission for the Fiscal Year Ended June 30, 1917, p. 3 (hereinafter cited as FTC, Annual Report, 1917); Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1918, p. 6 (hereinafter cited as FTC, Annual Report, 1918); FTC, Press Notices, "Serial Nos. 8890-1 to 8890-7, Vols. I-II, RG 122, NA.

²⁵ Rublee, "Original Plan and Early History of the Federal Trade Commission," p. 119, and "Intra commission memoranda," April 20, 1917, File No. 8181-1-1, General Records, RG 122, NA.

²⁶ The commission placed requests for rulings and opinions along with its replies to them in the following files: "Opinions Requested," File No. 8501-20-1 to 8501-194, ibid.; and "Rulings Requested," Files Nos. 42-3 to 42-472, General Records of the Docket Section, ibid.

²⁷ Leonidas L. Bracken (Secretary of FTC) to Louis Salinger, June 24, 1916, File No. 8501-97, General Records, ibid.; Bracken to Delose Brothers, October 28, 1916, File No. 42-412, General Records of the Docket Section, ibid.

²⁸ See report of Davies speech in "Trade Body Works to Aid Business," Philadelphia Enquirer, December 22, 1915, "General, October-December, 1915," Press Clippings, ibid.; Gilson Gardner, "Big Corporation Does Reform Act," Wichita, Kansas, Beacon, February 5, 1917, "General, 1917," ibid.

²⁹ For a listing of the conference ruling the commission issued see, FTC, Decisions, I, 540-61. These rulings, however, are not dated.

³⁰ Federal Trade Commission Act (1914), Statutes at Large, XXXVIII, Sec. 5, 719-21.

³¹ See supra, n. 24.

³² Rush C. Butler, William C. Coffin, Alfred B. Koch William J. Dean, W. L. Saunders, Henry R. Seager, Alexander W. Smith, and I. C. White, "The Case of the Federal Trade Commission: Originally designed for impartial investigation the Commission is charged with bias and abuse," The Nation's Business, VI (October 1918, 10-11. (Hereinafter referred to as "The Case of the FTC").

³³ Kolko, Triumph of Conservatism, p. 273.

³⁴ Butler, et. al., "The Case of the FTC," pp. 9-11, 36.

³⁵ FTC, Decisions, I, 3. Kolko refers to this as a 1919 publication. No copies of it, however, seem to have been published until 1920. See, U. S., Superintendent of the Documents, Catalogue of the Public Documents of the Sixty Fifth Congress and of all Departments of the Government of the United States for the period from July 1, 1917 to June 30, 1919 (Washington, D. C.: Government Printing Office, 1925), p. 878.

³⁶ See supra, n. 24.

³⁷ Kolko, Triumph of Conservatism, p. 330.

³⁸ Ibid., pp. 274-75.

³⁹ E. N. Hurley to Woodrow Wilson, December 16, 1916, and Speech of Hurley delivered December 6, 1916, "December 16, 1916," Series 2, Woodrow Wilson Papers; Speech of Hurley, May 26, 1916, Serial No. 8890-3, Vol. I. 103-105, FTC "Press Notices," RG 122. NA; Speech of Hurley, July 1916, File No. 8213-2-79, General Records, ibid.; Speech of Robert E. Belt (chief accountant of the commission), November 8, 1916, File No. 8309-2-79, General Records, ibid.; Statement of Francis W. Walker (chief economist of the commission), September 1920, File No. 40-1-3-21, p. 279, General Records of the Docket Section, ibid.; U. S. Congress, House, Federal Trade Commission, Helpful Activities to Strengthen American Business, H. Doc. 1356, 64th Cong., 1st Sess., 1916, Serial No. 7099; FTC, Annual Report, 1917, p. 22.

⁴⁰ Kolko, Triumph of Conservatism, p. 275.

⁴¹ Ibid.

⁴² Woodrow Wilson to Edward N. Hurley, May 12, 1916, "Federal Trade Commission," Case File 1105B, Series 4, Woodrow Wilson Papers. This letter might have been written by either Hurley or his assistant William S. Culbertson. See, Burton I. Kaufman, "The Organizational Dimensions of United States Foreign Policy, 1900-1920," Business History Review, XLVI (Spring 1972), 35.

⁴³ FTC, Annual Report, 1917, pp. 14-16; FTC, Annual Report, 1918, p. 18; Federal Trade Commission vs. Bureau of Statistics of the Book Paper Manufacturers, Charles F. Moore, Secretary of the Bureau of Statistics, Et. Al. (November 8, 1917); FTC, Decisions, I, 38-44.

⁴⁴ Woodrow Wilson to Robert Lansing (Secretary of State), October 2, 1917, "Print Paper," Case File 3392,) Series 4, Woodrow Wilson Papers.

⁴⁵ FTC, Annual Report, 1917, pp. 14-16, 31; FTC, Annual Report, 1918, p. 18.

⁴⁶ Kolko, Triumph of Conservatism, p. 275.

⁴⁷ FTC, Annual Report, 1918, p. 7; Federal Trade Commission vs. Chester Clark and Co., Inc. (April 30, 1918); FTC, Decisions, I, 149-54; Federal Trade Commission vs. The Cudahy Packing Co. (July 26, 1918); FTC, Decisions, I, 199-212; FTC "Press Notices," Serial No. 8890-7, Vol. II, 2, RG 122, NA; Waldon Fawcett, "Federal Trade Board Outlines Policy on Price Maintenance," Advertising Age, June 21, 1918, "Price Agreements, Retail Prices," Press Clippings, ibid.

⁴⁸ Kolko, Triumph of Conservatism, p. 277.

⁴⁹ Butler, et. al., "The Case of the FTC."

⁵⁰ Woodrow Wilson to J. P. Tumulty, September 6, 1918, and Woodrow Wilson to William B. Colver (Chairman FTC), September 26, 1918, "Chamber of Commerce of the United States," Case File 1019, Series 4, Woodrow Wilson Papers; "Mr. Murdock Reappointed," Chattanooga Times, September 22, 1918, "FTC General, 1918, part 1," Press Clippings, RG 122, NA.

⁵¹ Kolko, Triumph of Conservatism, p. 278.