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This transcript has been lightly edited for clarity

FEDERAL TRADE COMMISSION

90TH ANNIVERSARY SYMPOSIUM

SEPTEMBER 22, 2004 -- DAY 1 OF 2

FEDERAL TRADE COMMISSION
601 NEW JERSEY AVENUE, N.W.
WASHINGTON, D.C.

For The Record, Inc.
Waldorf, Maryland
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P R O C E E D I N G S

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4 INTRODUCTION: JUDITH BAILEY
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6 MS. BAILEY: Good morning, and welcome to the
7 90th Anniversary Symposium of the Federal Trade
8 Commission. It's a beautiful day and it's a wonderful
9 way to begin our celebration of 90 years of a terrific
10 institution. My name is Judith Bailey, and I am the
11 Deputy Executive Director of the Agency and the
12 Chairman of these 90th Anniversary events. This is our
13 flagship event, the symposium, and I want to welcome you
14 once again.

15 Henry Ford said that history is bunk.
16 Well, we clearly don't believe that at the FTC. We
17 think that understanding the past is valuable for
18 charting the course for our future. Since 2001, when
19 Tim Muris became Chairman, we have organized three
20 different events to celebrate historic moments.

21 And September is our month.

22 In September 2001, we marked the 25th
23 Anniversary of the Hart-Scott-Rodino Act. It took over
24 60 years after the 1914 enactment of the Clayton Act to
25 finish the job, but HSR finished it in 1976 and gave the

1 government the tools it needed to investigate, litigate
2 and fashion effective remedies in response to
3 anticompetitive mergers. One of our speakers today,
4 Professor Elzinga, wrote a seminal article that was
5 very influential in the passage of HSR. So we thank you
6 for your contribution to that effort.

7 To celebrate HSR, the FTC held a reception and
8 heard from many people who were there at its birth.
9 Special among those recollections were those sent to us
10 by former Chairman Peter W. Rodino, the lone surviving
11 sponsor of the legislation. Although Chairman Rodino
12 has long since retired as a law maker, you all might be
13 interested to know that he's still active as a law
14 teacher. He is still on the faculty of Seton Hall
15 University School of Law at Newark, now in his mid-nineties.

16 Then in September 2003, we remembered the 100th
17 Anniversary of the Bureau of Corporations, which was
18 formerly part of the Department of Commerce. It's the
19 predecessor organization to the FTC. The duties of the
20 old Bureau of Corporation were to collect information,
21 to conduct industry and policies research and to prepare
22 reports at the request of Congress and the President.
23 Many of those duties have been assumed in the modern FTC
24 by the Bureau of Economics.

25 So, last year in a day-long roundtable discussion,

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1 we highlighted the accomplishments of our own Bureau
2 of Economics. Participating were 13 of the 14 living
3 BE directors.

4 Now, I know when we're talking about a group of
5 economists, the first adjective that comes to mind is
6 not usually "exciting," but this truly was an exciting
7 event. It was clear that the former BE directors were
8 enjoying being in each other's company, and the
9 atmosphere was truly infectious that day. I remember
10 sitting here and just delighting in their delight in
11 being together and going through their span of 50 years
12 of the development of economics as it applied to antitrust
13 and consumer protection law.

14 Well, here we are in September 2004 having the
15 celebration of all celebrations, that is until we get to
16 the 100th, so watch this space. We're observing the
17 90th Anniversary of the Federal Trade Commission. As
18 I'm sure anyone who started to read our materials knows,
19 and we try to tell you this as concisely as we can in this
20 program brochure, President Woodrow Wilson signed the
21 Federal Trade Commission Act, which created us, on
22 September 26th, 1914. So, we're just four days shy
23 of our actual birthday.

24 For the next two days, we intend to look at our
25 whole story. Approximately 50 participants will race

1 through 90 years of history. We'll look at what's
2 worked well and what hasn't worked so well, and what we
3 can learn from it for the future.

4 I got an early peek at the outlines and the
5 papers in progress, and some of them are just truly
6 fascinating. A few teasers of what's ahead. We'll hear
7 about the role played by some college kids who were part
8 of Nader's Raiders back in 1968 which led to the
9 historic Kirkpatrick Commission Report and ultimately to
10 the revitalization of the FTC.

11 In the international arena, we'll learn about
12 the path we have taken in just 14 years to move from
13 conflict among nations over issues of competition law to
14 a great degree of convergence, and we will ponder the
15 challenges that lie ahead.

16 And we'll hear the story behind some of the
17 FTC's biggest consumer initiatives over the past four
18 decades. The big three that we've focused on are
19 Cigarette Labeling, Children's Advertising, ("KidVid"),
20 and the National Do Not Call Registry. Do Not Call is,
21 of course, everyone's new favorite, and that includes
22 humorist Dave Berry, who I'm sure some of you read, has
23 dubbed the Do Not Call Program as the best federal
24 program since the Elvis stamp. We are very proud to
25 be compared with that fine program.

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1 Now, that's just a smattering of the items on
2 our program. I hope you can all stay for the full two
3 days to hear the whole story.

4 Let me just address the administrative details
5 of the symposium before we go any further. First, -- I'm
6 sorry, but we must do this -- a few reminders about
7 security. The fire exits are located in the front
8 door in which you came in, and also there's one through
9 the back that takes you out to G Street. It goes through
10 the pantry area.

11 In the case of any emergency, go out the doors
12 and what we do is collect diagonally across
13 Massachusetts in front of the Union Life Building. If
14 you leave the building for any time during the symposium,
15 you will have to be rescreened through security. You'll
16 have to sign in both days, and please wear your name tag
17 while you're here, that shows that you've been screened
18 and that will take care of it for the day.

19 A few remarks for everybody's enjoyment and
20 comfort. Please turn off the ring on cell phones and
21 pagers. Restrooms are located across the lobby. Finally,
22 we have telephone rooms where you can duck in to make a
23 private cell phone call.

24 Some comments on panel procedures. We're going to
25 try very hard to stick to the schedule. So, please

1 return promptly to the symposium room after the breaks
2 so you won't miss the beginning of the later panels.
3 We're going to allow about ten minutes at the end of each
4 panel for questions, and we've left question cards along
5 the aisles and in the back. If you write down your
6 questions on them, we have someone who will collect
7 them. Heather will collect the cards and bring them
8 to the moderator, who will address them to the
9 panelists.

10 We understand that sometimes if people
11 turn their heads, our mikes don't pick up everything, so
12 if at any time you can't hear the discussion, raise your
13 hand and that will be a cue for people to speak into the
14 mike more clearly or to repeat what has been missed.

15 Finally, a number of our panelists are current
16 members of the FTC staff. On their behalf, I am going
17 to provide the standard disclaimer, which is that their
18 remarks are their own and do not necessarily represent
19 the views of the Commission or any Commissioners. So,
20 that's taken care of.

21 Well, just as we're celebrating the FTC's past
22 today with 90 years of our past, we have also begun a
23 brand new chapter in our future. A little over a month
24 ago, we swore in our newest Chairman, Deborah Platt Majoras.
25 Debbie is the FTC's 52nd permanent Chairman, but she's only

1 the 16th permanent FTC Chairman appointed by the President.
2 Now, those of you who have studied your FTC history, or
3 want to race ahead and look in our program brochure's
4 cheat sheet, you will see that only since 1950 has the FTC's
5 Chairman been selected by the President, and not selected
6 from among the other Commissioners. Since 1950, we've had
7 16 permanent and four acting Chairmen.

8 Debbie came to us most immediately from the Law
9 Firm of Jones Day, but before that, she served at the
10 Department of Justice as the principal Deputy Assistant
11 Attorney General in the Antitrust Division. During her
12 three-year tenure at Justice, she oversaw matters
13 involving software, financial networks, defense, health
14 care, media and entertainment, and banking. She also was
15 deeply involved in international activities and served
16 as the Chair of the International Competition Network's
17 Merger Working Group. We are looking forward to a new
18 era with Chairman Majoras, and I'm pleased to introduce
19 her to you now.

20 Thank you.

21 (Applause.)
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1 **This transcript has been lightly edited for clarity**

2 OPENING REMARKS: CHAIRMAN DEBORAH PLATT MAJORAS

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4 CHAIRMAN PLATT MAJORAS: Good morning. It is my
5 great pleasure to welcome you to our celebration of the
6 90th Anniversary of the Federal Trade Commission. In
7 our daily routine, the urgency to address the immediate
8 crisis or deadline generally presses us to focus on the
9 present, and we hope with the occasional glimpse to the
10 future. This week, however, we have chosen to reflect
11 extensively on the past.

12 Our first aim is to celebrate the Commission's
13 accomplishments, and more important, to honor the many
14 individuals who have built and sustained this Agency
15 over the course of nine decades. A great institution
16 never forgets that it prospers only by the contributions
17 of those who serve it. This week, scholarly, social and
18 ceremonial activities are a modest way for us to show
19 our respect and gratitude for the people who invested
20 years of their lives, sometimes entire careers, to
21 create a better future for consumers.

22 Government officials are often exhorted to pick
23 the low-hanging fruit. This week, we thank the
24 generations of FTC employees who planted the trees.

25 Although the perspective of our symposium is

1 highly historical, its second aim is emphatically
2 forward-looking. We study the past to increase our
3 understanding of what our Agency must do today and
4 tomorrow to improve the well-being of consumers.

5 My predecessor, Tim Muris, who conceived this
6 symposium, often emphasized the continuity of modern
7 antitrust or modern FTC policy and underscored the
8 cumulative nature of good governance. Tim stressed the
9 theme that our greatest achievements have emerged far less
10 from efforts marked by sharp recurring discontinuities
11 in philosophies than by the cumulative progressive
12 search for better practice and policy.

13 Let me offer another metaphor that I believe
14 is true to our history by its power to highlight how
15 successful programs require continuous evolutionary
16 improvement. Properly viewed, those of us fortunate
17 enough to hold government office are members of a relay
18 team, not participants in individual events. From this
19 perspective, success stems from the collective effort of
20 the team, not from individual initiative alone.

21 For several reasons, I find this metaphor
22 appealing, and not just because I just took the baton at
23 the FTC. Rather, it illuminates the characteristics of
24 good policy at the FTC and other government agencies.
25 First, a good relay team demands superior effort from

1 each individual member, but its overall performance is
2 inherently a collaboration. No team member runs exactly
3 the same, and no matter how well each runner performs,
4 the significance of the individual contribution
5 ultimately depends on the performance of the runners who
6 have gone before or follow. And this should ring true
7 to this audience. It does not take long for any public
8 official to realize how much she depends on her
9 predecessor and, ultimately, successor.

10 Good policymaking is frequently and
11 unmistakably cumulative. In the next two days,
12 participants in our symposium will examine, for example,
13 successful and unsuccessful programs in protecting
14 consumers. They will document the progression in
15 antitrust enforcement from a focus on protecting
16 competitors to a focus on protecting competition. They
17 will analyze the continuing formulation and
18 reformulation of the role of economic analysis in FTC
19 thinking.

20 In these and other areas, the cumulative nature
21 of good policymaking stands out. And a recurring
22 admonition in the discrete historical episodes that we
23 will explore is that each leader of this institution
24 must define success in terms of making contributions to
25 the team's performance.

1 A second attractive feature of the relay
2 metaphor is its recognition that success is a product of
3 obvious and non-obvious achievement alike. At some
4 time, I suspect, we have all watched a four by one
5 hundred meter relay. The sprinting ability of
6 individual runners is plainly important to the team's
7 success. The grace and power of each runner naturally
8 seizes our attention in sequence as the race unfolds.
9 But success often does not reside solely in the raw
10 speed of the individual runners, but instead depends
11 vitally on a far more mundane exercise, the hand-off.

12 During the Olympics in Athens, for example, we
13 watched with disappointment as a collection of dazzling
14 athletes faltered because of a botched exchange. This,
15 too, provides a powerful message for public leadership
16 at the FTC and other government agencies. Key elements
17 of good policy-making are not necessarily dramatic or
18 flashy. There is an inevitable tendency for all of us
19 to measure success by the frequency of the big case.

20 I do not denigrate the importance of the big
21 case, no more than I would slight the value of a runner
22 who could cover one hundred meters in nine seconds flat.
23 By the very fact, of course, that the big case attracts
24 substantial public interest or affects the substantial
25 segment of the market makes it very important to us, but

1 the lesson is that too much attention devoted to the big
2 case or to other headline-grabbing initiatives can
3 deflect needed attention away from more subtle but
4 equally necessary steps that agencies must take to
5 achieve good policy results. Like corporate officers
6 who must resist the temptation to focus only on the next
7 quarter's results, we, too, must resist the temptation
8 to become heroes by looking just for the next big case.

9 Our obligation at the FTC is to identify and
10 recognize the equivalence of a good hand-off in the
11 formulation of competition and consumer protection
12 policy. This symposium demonstrates how we have
13 achieved many of our greatest successes more through a
14 series of incremental changes, using all of the policy
15 instruments at our disposal.

16 For example, the pivotal contributions from the
17 application of nonlitigation tools, such as advocacy,
18 education, and policy research and development, have
19 been significant. And not only is this integration of
20 instruments a proven path to improvement, but it is, in
21 fact, a multidimensional approach that is a realization
22 of the model that the Congress conceived of 90 years ago.

23 As any junior lawyer or economist quickly
24 learns, the reward for good work is new challenges.
25 Undoubtedly, our discussions over the next two days will

1 remind us that there is still a great deal of work to be
2 done to address current and oncoming challenges.

3 As adjusted over time, the Commission's design
4 and statutory authority have provided an excellent
5 platform for responding quickly to market changes and
6 confronting the new tactics that harm consumers. What
7 specific challenges does our past experience teach us to
8 anticipate, and what can we distill from our history
9 about how to respond? I hope this symposium will enlighten
10 you, and I offer two observations now.

11 First, we know that the FTC has a vital role to
12 play in speaking for reliance on market processes and
13 standing up for consumer interests. As I mentioned in
14 my confirmation testimony, our aim is to develop
15 policies that recognize and take advantage of the
16 remarkable consumer benefits inherent in the largely
17 decentralized economic organization that is our free
18 market system.

19 To serve their own purposes, however, there are
20 many who would drive a wedge between business and
21 consumers, simply reducing the equation to good and bad,
22 while ignoring the mutuality and complexity inherent in
23 the relationship. That false dichotomy is uniquely
24 uninformative as a basis for deciding how and when the
25 FTC should use its authority.

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1 Our central aim must be to make discriminating
2 judgments that permit us to channel our energies toward
3 challenging private and public measures that injure
4 consumers. To an important degree, successful FTC as
5 well as DOJ efforts to oppose private trade restraints
6 have increased the attractiveness to some entities of
7 pursuing public measures that would protect them from
8 the sometimes harsh competitive consequences of the
9 market.

10 We live in a city to which all manner of folks
11 flock in search of dispensation. Now, they may say they
12 believe in free markets, and that they must serve
13 consumers to achieve their own success, but they, of
14 course, are obliged to pursue their own interests. The
15 FTC, though, has a special charter, to speak for
16 measures that protect the consumer and the vitality of
17 market forces. The challenge to oppose private and
18 public policies and actions that subvert those interests
19 is unending, but we must never lose our focus, despite
20 pressure from all those who seek exceptional treatment.

21 Second, our past informs us that effectively
22 meeting future policy challenges depends on our
23 willingness to invest great effort at improving our base
24 of knowledge and then having the courage to put that
25 knowledge into practice. From the time of its creation

1 to the present, the FTC has existed in a highly dynamic
2 policy environment. Every decade, we have encountered
3 important changes in economic and legal theory,
4 economic phenomena, including technology that virtually
5 changes the complexion of commercial transactions
6 political conditions, and institutional arrangements
7 for economic policymaking here and abroad.

8 Our ability to account for these developments
9 demands conscious continuing efforts to understand them
10 and to devise appropriate policy responses. We must
11 keep up, or better yet, stay ahead. The process of
12 regeneration and improvement demands an unflinching
13 willingness to explore the consequences of our past
14 initiatives, the openness to account for new
15 developments, and a commitment to explore the
16 interdependencies and infrastructure of policymaking
17 within our own country and across jurisdictions.

18 This need to improve our knowledge base and to
19 incorporate that knowledge into our work proceeds with
20 unequaled urgency today. We can take nothing for
21 granted save the need to improve. On countless
22 occasions, by reason of our relatively long and
23 collective experience, foreign competition and consumer
24 protection authorities, especially the newer agencies
25 which are proliferating, use our experience to inform

1 their own choices concerning institutional design and
2 operational practice.

3 To exercise leadership in a world of great
4 jurisdictional complexity and dynamism, we must
5 undertake a continuing process of self-assessment and
6 improvement. Our opinions about competition and
7 consumer policy will be influential only to the extent
8 that foreign observers perceive that the content and
9 implementation of our policies are worthy of emulation.

10 Our capacity to persuade today hinges upon, and
11 will continue to require, superior analysis and
12 demonstrated achievement. Intellectual leadership and
13 proven results, not the sheer volume of experience,
14 comprise the global currency of policymaking of the
15 present and the future in our world.

16 And so, with that, I invite you to join me in
17 the next two days, not only in celebrating what we have
18 accomplished, but in reflecting upon what we must do to
19 continue to serve consumers in the future. Thank you
20 very much.

21 (Applause.)

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