Myers, Abram F.

In re resolution by Senator Walsh to censure the Department of Justice and the Federal Trade Commission for the dismissal, without prejudice, of certain proceedings against the Continental Baking Corporation for alleged violation of Section 7 of the Clayton Act.

I. The Resolution.

The resolution proposed by Senator Walsh recites that the action of the Department of Justice and the Federal Trade Commission in dismissing the proceedings in question, under the circumstances set out in a report by Senator Walsh,

> merits public reprehension and constitutes a dereliction of duty on the part of both branches of the service.

There is no suggestion of scandal or corruption in this case. It is purely a question as to whether the Department of Justice and the Federal Trade Commission acted wisely in the conduct of certain litigation under their charge.

Adoption of the resolution would require that the Senate pass judgment on the manner in which extremely intricate and highly technical proceedings were handled in a coordinate branch of the Government.

No Senator, be he lawyer or layman, can conscientiously vote for this resolution without satisfying himself from a careful examination of all that was done that the departments in question did not exercise wisely the discretion vested in them by the Constitution and laws of the United States.

In the absence of any suggestion of dishonesty or the like, is it not unreasonable to censure these departments as proposed in this resolution, even assuming that the Walsh report is a complete and unbiased presentation of the facts, and that all expressions of opinion therein are justified?

The controversy is one as to which lawyers may differ and in fact have differed. The essential question is, whether a difference of opinion as to the acts of Government departments within the sphere of their Constitutional authority can justify a resolution that such acts merit public reprehension and constitute a dereliction of duty.

The resolution offers no alternative save condemnation in the severest terms. Lawyers do not customarily express their dissent from the views of other lawyers in such intemperate language. If it is the wish of the Senate to express disagreement with the conclusions of the departments in question, a more appropriate formula could be devised. What each Senator supporting such a resolution must say, in effect, is this:

> Had I been an officer of the Department of Justice or of the Federal Trade Commission when these transactions took place, instead of a Senator, I would have acted differently.

II. Case against the Continental Co.

The hearings in this inquiry were held in November, 1926, and February, 1927. The commissioners of the Federal Trade Commission, two former commissioners, and certain members of the staff of the Commission were examined. The attorney in charge of the matter in the Department of Justice also was heard. On the question whether the case against the Continental Co. was a strong one or a weak one, the following opinions were expressed:

(a) <u>That it was a strong case</u>.

Mr. A. R. Brindley, trial counsel in the Commission case, in his judgment, it was a strong case (Rec. pp. 159, 160).

Former Commissioner Thompson stated that he understood the Commission's case to be a strong one, but added,

> I must say that second hand. I was taking that from Col. Brindley (Rec. pp. 277, 278).

Commissioners Thompson and Nugent in their dissenting opinion (issued three or four months after the transactions in question, Rec. p. 216) express the view that there was a strong case. Commissioner Nugent was not interrogated on this point; Mr. Thompson, as above stated, had derived his information, "second hand," from Mr. Brindley.

(b) <u>That it was a weak case</u>.

Judge Hainer, chief counsel of the Federal Trade Commission, gave Mr. Myers of the Department of Justice to understand that the Commission had a very weak case (R. pp. 107, 131, 132, 213, 216, 218).

> I was not in a position to pass on the Commission's case, nor would I have, but I did very definitely get the impression from Judge Hainer at that time that the Commission had a bear by the tail and would welcome an opportunity to let go (R. p. 213).

Contrary to the statement in Senator Walsh's report (p. 9), Judge Hainer prepared a careful memorandum, based on the evidence taken in the Commission's case, in which he expressed the view that the complaint could not be sustained, which memorandum will be found in the printed record, pp. 222-225.

Commissioner Humphrey testified that in his judgment the Commission had no case (Rec. 304, 306-7).

Former Assistant to the Attorney General Seymour, considering the status of the Continental Baking Corporation in March, 1925, reached the conclusion that prosecution against it could not be sustained and decided to wait for developments in the direction of a general merger (Rec, pp, 93, 214, 215),

Mr, Myers, special assistant to the Attorney General, in charge of the Department of Justice case, testified that the incidental charge in the Government's petition at Baltimore that the Continental had acquired bakeries in violation of Section 7 of the Clayton Act was based on the complaint issued by the Federal Trade Commission and that the Department had no proof to support the charge (R, pp, 210-211),

Dr. Francis Walker, chief economist of the Commission (not a lawyer), testifying from his knowledge of information available subsequent to the dismissal of the complaint, thought the application of the Clayton Act to the Continental "doubtful" (Rec, pp, 262-263), He also stated:

> I called up Mr, Myers, who was then in the Department of Justice, and asked him about the dismissal of the matter with respect to the Continental, and he expressed the opinion to me which he had also expressed to me some six months or more before, that he did not think the Department of Justice had a good case against the Continental in respect to Section 7 (Rec, p, 261),

Former Commissioner Van Fleet characterized the Commission's case as "trivial" (Rec. p. 269) and stated that the most the Commission could accomplish in that case was to compel the Continental to dispose of probably a half dozen bakeries out of the great number owned by it (Rec, pp, 268),

Whether or not the Continental is violating Section 7 of the Clayton Act (a highly technical provision) does not depend upon the size of the company, the amount of flour that it uses, or the amount of its authorized capital stock, It is purely a question whether it has acquired the capital stocks of substantially competitive interstate bakeries, Bakery products must be delivered fresh and therefore the marketing territory of an individual bakery is confined to a comparatively small radius, The continental's 93 bakeries are scattered throughout the United States (Rec, pp, 69-70). It is apparent that these bakeries were selected with one eye on the Clayton Act,

Mr. Myers in his testimony stated that the resolution of this question depended upon a careful analysis of data relating to the sales by each bakery in every community which it served (Rec. p. 109) and that such information was being assembled by the Commission at that time. The reports to the Senate pursuant to the so-called LaFollette resolution mentioned in Senator Walsh's report give the total interstate sales of the Continental as follows, for bread, 8.4 per cent, for cake, 19.7 per cent. Percentages of total competing sales to total sales for the combination as a whole are for bread 9.1 per cent and for cake 6.8 per cent. The total competing interstate sales to total interstate sales are for bread 13.8 and for cake 14.4; "but", the report adds,

> It is doubtful how far any reliance should be placed on these percentages, because the elements of the comparison are not contemporaneous.

But taking these as the most reliable published figures the competitive interstate sales of the Continental are, for bread, 13.8 per cent of 8.4 per cent of total sales, for cake, 14.4 per cent of 19.7 per cent of total sales. It is to these figures that we must look for a substantial lessening of interstate competition in violation of the Clayton Act.

Even these slender margins must be reduced in the consideration of the problem from a technical legal standpoint. They include interstate competitive sales for all bakeries controlled by the Continental. These bakeries were not acquired singly. A number of multiple-plant baking concerns were acquired. These subsidiaries had in many cases built their bakeries, and in some cases had acquired overlapping bakeries prior to the passage of the Clayton Act, and in most instances such subsidiaries owned not the stock, but the physical assets of its plants. In all such cases the acquisition by the Continental of the capital stocks of such subsidiaries did not affect their legal status under the Clayton Act so far as such inter-plant competition was concerned.

The overlapping bakeries in Mt. Vernon, N. Y. and New York City, mentioned by former Commissioner Thompson in his testimony (Rec. p. 277) were of that class, both belonging to the Shults Bread Company (Rec. p. 69).

Senator Walsh's report, on page 3, contains the following sentence taken from the dissenting opinion of Commissioners Thompson and Nugent (Rec. p. 171):

> The authorized capital stock of the Continental is $600,000,000, while the total capitalization of the bread-making industry, so far as figures available to the Commission showed, is, or at the time in question was, but $400,000,000.

This doubtless is arrived at by assigning to the 2,000,000 shares Common A stock and the 2,000,000 shares Common B stock of the company, which have no par value, an assumed valuation of $100 each. The difference between "authorized" stock and "outstanding" stock, lost sight of in the foregoing statement, is strikingly illustrated by the following table:

CONTINENTAL BAKING CORPORATION

Kind of stock	Amount	Outstanding December 31		
		1925	1926	1927
Pref.	$200,000,000	$51,669,400	$51,882,800	$51,892,800
Com.A	Shs. 2,000,000	Shs. 291,365	Shs. 291,808	Shs. 291,813
Com.B	Shs. 2,000,000	Shs. 2,000,000	Shs. 2,000,000	Shs. 2,000,000

Again Senator Walsh's report, referring to the dismissal of the proceedings against the Continental on April 3, 1926, says:

> The business world treated the transaction as an acquittal of the Continental, which proceeded to expand its holdings until at the time of the hearing before the committee it had secured control of 93 companies (hearings p. 109), such expansion implying the negotiation in the general market, of its stock or other securities, now in all probability in the hands of innocent purchasers, speaking without technical legal accuracy, to the extent at least of tens of millions (p. 8-9).

The failure to distinguish between companies and plants may be overlooked, but the plain implication that the Continental has acquired additional plants since the entry of the decree at Baltimore, and has issued additional stock therefore, is inexcusable. The Continental had acquired the 90-odd bakeries in question prior to the filing of the Government's petition in equity and that fact is set up in the petition (Rec. p. 69-70). Diligent examination has been made of the published reports of the company and other records and it has been ascertained that the Continental has not acquired any bakeries whatever since the entry of the decree at Baltimore.

The foregoing table shows, moreover, that no additional stock has been issued by the Continental since the entry of the decree.

These facts bear out the statement in the minority report by Senator Deneen that the decree has been an effective check on combinations in the baking industry.

It is not the purpose of this memorandum to minimize the importance of the Continental Baking Corporation, but passages in the Walsh report imply, and apparently are intended to imply, that the Continental is in and of itself a monopoly in violation of the antitrust law (pp. 3, 4, 8 and 11). The following figures, compiled from the Federal Trade Commission's report on the baking industry, will serve to keep the matter in balanced perspective:

	Pounds	Per cent of total
Total commercial bread production of the U. S. 1925 based on Census figures [1] [2]	8,637,061,601	100
Production General 1925 [3]	452,500,239	5.24
" Ward 1925	306,320,912	3.55
" Continental 1925	780,172,507	9.03
Total production Ward, General and Continental in 1925 [3]	1,538,993,658	17.82

1/ Production of commercial bakeries, that is, plants producing bread for sale. These amounts do not include the value of bread, rolls, pastry, etc., baked by hotels, restaurants, and boarding houses, but do include the value of the products of bakeries operated in connection with restaurants in all cases where it was possible to segregate the bakery business from the restaurant business, or, if such segregation was impossible, where it was obvious that the income derived from the bakery business constituted the greater part of the total income.

2/ The total production of plants reporting quantities produced was 7,323,703,237 pounds. The balance for plants not reporting quantities is based on value of products reported by such plants.

3/ This figure does not include production of the eight plants of Smith Great Western acquired by General in 1925, these figures not being available. In 1924 these plants produced forty-four million odd pounds.

Prof. Carl L. Alsberg in his book "Combination in the American Bread Baking Industry" (Stanford Univ. 1926), states that the Census of Manufacturers of 1923 disclosed that the commercial bakers used little more than one third of all the flour consumed.

For purposes of comparison it may be remarked that in United States v. United States Steel Corporation, 251 U. S. 417, it was held that the power of the Steel Corporation, controlling over 40 per cent of the nation's steel business, did not constitute monopoly.

There were over 18,000 wholesale bakeries in the United States in 1923 (Rec. p. 65).

It is noteworthy that Senator Walsh does not venture his opinion as a lawyer on the question whether or not the Continental Corporation is violating Section 7 of the Clayton Act. At the bottom of page 3 of his report he says:

It would seem that the chief contention made by Mr. Barber was that there was no substantial competition interstate between the units acquired, the business of each being almost exclusively as to sales to the particular state in which it operated. Some interstate competition was conceded, but undoubtedly as to the great bulk of the business the contention made was in conformity with the facts.

Mr. Walsh then states that the committee did not feel called upon to make an exhaustive study of the information on this point. "That was done for it by counsel for the Commission, or rather, by the board of review, three of whom recommended that the complaint be not dismissed, the other two dissenting". This passage emphasizes the very difference of opinion which characterizes this entire proceeding. Senator Walsh chooses to rely on the opinion of three subordinate attorneys of the Federal Trade Commission, as against the opinion of two others.

The very lengthy majority and dissenting opinions of the board of review of the Federal Trade Commission are in the record pp. 133-153. They differ mainly on two points: (a) Whether the substantial lessening of competition between the acquired bakeries is the test, or whether the acquisition of monopoly power, without regard to the elimination of competition is the test; and (b) whether the test of monopoly under Section 7 of the Clayton Act is different from the test under the Sherman Law. As regards the first point we may look to the statute, the pertinent provisions of which are as follows:

> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in (interstate) commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.
>
> This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition.

As regards the second point, the Sherman Act and the Clayton Act are included in the definition of Federal antitrust laws in the latter act and are in pari materia, and words common to both acts can not have a different meaning.

On this point Mr. Myers testified as follows:

> Now if I may proceed for just a moment. I started to say that monopoly has a popular meaning which may possibly be different from the technical meaning in the Federal statute. I think that it was in the Standard Oil case that Chief Justice White attempted a reconciliation of sections 1 and 2 of the Sherman law. That

was a very beautiful example of the powerful reasoning powers of Chief Justice White. But stripped of its wonderful logic, it really amounts to this, that he was of the opinion that sections 1 and 2 had substantially the same meaning and that the one was added to the other in order to round it out and make it complete and to prevent its being circumscribed by some device or scheme. The Supreme Court later, in the steel case, held that the acquisition, under abnormal circumstances, by the Steel Corporation of over 50 per cent of the steel business of the country did not amount to monopoly. That per centage had declined to something like 41 when the case was actually heard. If you make anything like the same test in the baking industry, you find that they control but a very small part of the baking of the United States, which means that if you look for anything like control or monopoly, you must look to particular territory.

Now whether or not any one of the subsidiaries of the Continental Baking Co. has monopolized, either in the popular or in the technical sense, the baking business in a particular community, requires a rather minute investigation.

III. Analysis of Walsh report.

1. As regards the Department of Justice. The report on page 5 states that the greater, more-inclusive merger having "become an accomplished fact" the Department of Justice filed a suit in the United States District Court at Baltimore charging a consolidation of the Ward, General and Continental companies. The entry of a consent decree at Baltimore on April 3, 1926, is recorded, but only two features of this decree are mentioned in the report: (a) That it provided for the dismissal of an incidental charge against the Continental for alleged violation of Section 7 of the Clayton Act (p. 7); and that "the Continental was indeed to be enjoined from participating in the greater merger, but so far as its own acquisitions were concerned it was to be dismissed out of court" (id.).

The resolution under which Senator Walsh was acting called for a report of the facts with reference to proceedings taken, yet his report makes no mention of the following features of the decree (see minority report by Senator Deneen):

(a) Complete frustration of plan for general merger including cancellation of charter of the Ward Food Products Corp.

(b) Termination of Ward's interest and influence in General Corp. by acquisition of his holdings therein.

(c) Reduction of authorized capital stock of General Corp. and increase in number of directors, liberalizing control.

(d) Injunction against carrying out plan for general merger or any similar plan in the future.

(e) Each of the three great baking companies enjoined from acquiring any of the stock or assets of any of the others or their subsidiaries.

(f) All corporate defendants enjoined from acquiring, directly or indirectly, the whole or any part of the stock of any other baking company whatever where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly.

(g) William B. Ward (of the Ward Co.), Paul Helms (of the General Corp.), and Geo. G. Barber (of the Continental), who were manipulating the plan for a general merger, enjoined from in any manner acquiring, receiving, holding, or voting any of the voting shares of more than one of the corporate defendants or its subsidiaries; and from acquiring any of the physical assets of more than one of said corporations.

(h) The same individuals required to dispossess themselves of all voting shares in any of the corporate defendants and their subsidiaries, except the single corporate defendant and its subsidiaries in which he may elect to retain his holdings.

(i) Complete provision against interlocking directors, etc., as between the three great companies and their subsidiaries; "the purpose of this provision being to insure to the corporations of each group and their subsidiaries a direction and management independent of the direction and management of the corporations of the other groups and their subsidiaries".

(j) Each of the corporate groups enjoined from entering into contracts, agreements or understandings with one or more of the other corporate defendants "for joint purchases of materials, supplies, and equipment, or for common prices or common policies in the marketing and sale of their output".

(k) Retention of jurisdiction "for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree".

These provisions, perhaps the most drastic ever included in an antitrust decree, not only are omitted from the Walsh report, but the whole achievement is disparaged in the following words:

> It is to be born in mind that the whole affair - that is, the big merger - had proven a fluke, it was a confessed failure (Rec. p. 7).

It must be remembered that the Continental had been in existence since November, 1924, (Rec. p. 68) and The United Bakeries Corporation, its principal subsidiary, which controls 31 of the Continental's bakeries, since 1921 (Rec. p. 67), and that the agitation in 1925 and 1926 was caused not so much by the Continental as by the persistent rumor that a giant merger including

Ward, General and Continental was about to be formed (see report by Senator Deneen, p. 22). That was the principal matter discussed by Mr. Basil Manly in his letter to the Commission which received much publicity (Rec. pp. 7, 55-58); that was the matter to which Commissioner Thompson directed the attention of the Commission as set out in Senator Walsh's report, pp. 4, 5.

It may be that this particular plan for merging the three great baking companies into the Ward Food Products Corporation was thwarted for the time being by the mere filing of the suit, and if so, the promptness and timeliness of this action would seem to call for commendation, not reproof. But to suggest that the matter ended there indicates an inadequate view as to the measure of relief proper and necessary in such cases. This merger had been brewing for many months. Three men, one in each company, dominated by the defendant, W. B. Ward, had been "pulling the strings" to this end (Rec. pp. 96, 114, 115). No one can doubt that, had they weathered this storm without an injunction against future activities, they would have renewed their activities at the first favorable opportunity. The decree compelled Ward to relinquish his holdings in General and Continental, and provided for the independent management and operation of the three companies for all time (Rec. pp. 104-107, 114, 115).

Again, Senator Walsh says, speaking of the chief counsel of the Federal Trade Commission (report p. 9):

> But those features are relatively unimportant as compared with his conduct participated in by the majority of the Commission and tacitly assailed by the representative of the Department of Justice in using the proceedings before the Commission as trading stock to get a consent decree in the equity suit to which all parties save the Continental had agreed, rendering its obduracy, if such it should prove, perfectly futile.

Unfortunately the chief counsel was very ill and could not be heard in his own behalf, but passing this characterization of his action we may still consider what is meant by the underlined clause in the foregoing sentence. This, it may be assumed, is a condensation of the view expressed by Senator Walsh in a colloquy with former Commissioner Van Fleet at the hearing (Rec. pp. 270-271):

> Senator Walsh of Montana. Suppose that the Continental did not sign the stipulation? What difference would it make to the Department of Justice?
>
> Mr. Van Fleet, I suppose that if they would not sign, or would not consent to this, they could not have entered the consent decree.
>
> Senator Walsh of Montana. The charge in the petition is that the Ward Food Products Corporation, the Ward Baking Corporation, the Ward Baking Co., the General Baking Corporation, the General Baking Co., the Continental Baking Corporation, and the United Bakeries Corporation were going to combine. Let us suppose that

the Continental Baking Corporation stands out and refuses to sign the decree, but the decree is taken against the rest of them. The combination is destroyed, is it not?

Mr. Van Fleet. It is partly destroyed, of course.

Senator Walsh of Montana. Is it not totally destroyed? Let me read for you. After citing those, it is said (reading):

"are engaged in a combination and conspiracy in undue and unreasonable restraint of trade and commerce among the several States and in the District of Columbia, and between the District of Columbia and the several States, with respect to bread, cake, etc".

It is charged that they proposed to organize themselves into this larger corporation. If the Ward Food Products Corporation was enjoined from doing that kind of thing, and the Ward Baking Corporation was enjoined from doing it, and the Ward Baking Co. was enjoined, and the General Baking Corporation, and every one of the rest of them, except the Continental Baking Corporation, where would the Continental Baking Corporation be?

Mr. Van Fleet. Of course, the Continental could not join with them if they were all enjoined. That is clear enough.

Senator Walsh of Montana. So that really, whether the Continental Baking Corporations signed the decree or not, was a matter of indifference to everybody, was it not, so far as the prosecution is concerned.

It is clear that under the circumstances supposed a decree could have been entered against the Ward and General groups enjoining this or any future combination between those two groups. It is equally clear that the Continental, which was also under Ward's domination, could not have been affected by a decree to which it was not a party. No provision could have been put in such a decree which would have prevented the Continental from buying in the open market all or a controlling interest in the shares of the Ward and General companies. Under the decree as entered every possible form of combination between these three great companies is perpetually enjoined.

The only feature of the Department's suit stressed in the Walsh report is the incidental charge in the petition that the Continental had acquired competing bakeries in violation of Section 7 of the Clayton Act and the section of the decree dismissing that charge without prejudice. One criticism (rep. pp. 9, 10) is that the Department was lax in not having the detailed information necessary to support this charge. This ignores the testimony at no less than three places in the record (93, 122, 214-215) that inquiry was made concerning the organization of the Continental when it was first formed, and that the then Assistant to the Attorney General decided that suit was not warranted. As pointed out in the minority report (pp. 23-24), this charge, based on the Commission's complaint, was included in the

petition for reasons which must appeal to any lawyer. The purpose was to aid the Commission in every way. The obligation assumed was not to hinder or embarrass the Commission in any degree. This obligation was scrupulously adhered to. When the Department decided to dismiss this incidental charge in the preparation of its decree on the main features of the case, it set up the pendency of the proceeding in the Commission and provided that such dismissal should be without prejudice. The Department of Justice had no part whatever in the dismissal of the proceedings in the Commission (see Deneen report pp. 27-29, with citations to the record).

The severest criticism of the Department of Justice revolves around the retention in the decree of paragraph 13, reciting the pendency of the action in the Commission, after it was known that the Commission would dismiss its case coincident with the entry of the decree at Baltimore. Extreme views were expressed by persons having no knowledge of what actually occurred in the Department of Justice, which gave rise to much public agitation. For example, the so-called dissenting opinion of Commissioners Thompson and Nugent (Walsh report, p. 19):

> The only reasonable inference that can be drawn from that language and, unquestionably, the inference that it was intended should be drawn therefrom, is that said charge was dismissed for the reason a complaint involving the same subject matter was then pending and undetermined before the Federal Trade Commission. It is mere camouflage. The consent decree was signed by the judge of the Federal district court at Baltimore and entered on Saturday, April 3, and the Federal Trade Commission, at a regular meeting held on Friday morning, April 2, was informed by its chief counsel that the entry of said decree was subject to the dismissal by the commission of its case against the Continental.

Yet the undisputed facts are that the decree was drawn in this form to avoid a res judicata, and had been signed by at least one counsel who had left the city, before there was any suggestion or intimation that the Commission's case might or would be dismissed.

The matter was mentioned in connection with the presentation of the decree and counsel took full responsibility for the recitals of the decree, all as set forth in the Deneen report pp. 27-29. The proceedings were regularly held, the action taken was fully and satisfactorily explained in the record, and the exceptions taken thereto in the Walsh report can not be regarded as other than hypercritical.

2. As regards the Federal Trade Commission. That this whole controversy grew out of protracted friction in the Federal Trade Commission is admitted at the outset of the Walsh report, which states that the resolution to make this inquiry was induced by the before-mentioned dissenting opinion of Commissioners Thompson and Nugent, which opinion is attached to the Walsh report and is a remarkable account of long continued dissention.

The predominant feature of this case, so far as the Federal Trade Commission is concerned, is that on almost every question that arose the members split, three-to-two, and there is again presented that difference of opinion on questions of law and policy which is the outstanding characteristic of this record.

The Commission had a so-called secrecy rule (Senator Walsh neglects to say that it was repealed before the hearings were had, Rec. p. 321); the majority favored the rule, the minority opposed it; it was a general rule and was not adopted with special reference to the Continental Case; Commissioners Thompson and Nugent violated it in making public the complaint in the Continental case before an answer was filed. Assuming that the rule was a bad one, it broke down in the case in question.

The Commission suspended action in the economic inquiry under the La Follette resolution because of uncertainty as to the effect of a rider on the appropriation bill. The majority submitted the question to the Attorney General, Messrs. Thompson and Nugent dissented from that action (Rec. p. 7). The Attorney General, after some delay, replied that the Commission was authorized to prosecute the inquiries. This is one instance where the action taken appears to have worked out to the satisfaction of all concerned, although criticism of the time required to render the opinion is made on page 11 of the Walsh report, coupled in the same paragraph with a criticism of the Department of Justice for being in too much of a hurry in its handling of the dissolution suit.

The action of the Commission in dismissing its complaint against the Continental is couched in the strongest terms, yet the Commissioners responsible for that action testified that they believed the Commission's case to be weak, or trivial, and that they acted in what they believed to be the best interests of the Government. The statement by former Commissioner Van Fleet, quoted at the end of the Deneen report, has the ring of sincerity; and while, perhaps, judgments may differ as to the wisdom of the course pursued, such difference of opinion can not justify condemnation in the terms of the proposed resolution of censure.