Dr. MUELLER. I think we have to make a distinction between industries and individual companies making very high profits. Some industries earning below average industry profits, say in meat packing which happens to be a very competitive, low return industry averaging 6 percent on equity in many years. In meat packing there are some companies, however, that are extremely efficient and better managed and more aggressive, and they make high profits. Iowa beef packers is the prime example. They are up here with the average of drug companies, 20 percent. On the other hand, other companies make considerably less, the ones for one reason or another just are not able to cut it. But that is the way things are in a competitive industry. And as long as the average return in the industry is adequate to attract capital, the system works well.

So it is not that some companies are making a profit, no one objects to that, but it is the persistently high profits for the entire industry that are an indicator of poor performance.

Senator SCOTT. I am probing to find out whether there is any law or regulation which says that a company can't make a profit, even a high profit.

Dr. MUELLER. Certainly not.

Senator SCOTT. Therefore, why is a Government agency anxious to show that it is critical of some companies making profits higher than other companies?

Why does that become a matter of Government policy?

Dr. MUELLER. The only point that is relevant here is that high profits are indicative of the presence of market power, and upon analysis of the reason for the high profits we find that they are due to a certain clog on competition.

Senator SCOTT. Now, if there is any fault in the area of market power, is that not covered by the antitrust statutes?

Dr. MUELLER. I think not. I think, as I explained in the beginning of my statement, the consensus of economists is that the source of market power is a combination of the patent law and the vast amounts spent on promotion and advertising, which in this industry create the so-called product differentiation entry barrier. So that insofar as there are solutions, it is something outside of the existing antitrust law.

Senator SCOTT. This is the strongest country economically in the world, and the strength of this country economically is built, in part, upon advertising, upon promotional genius, and upon management. Why, then, would a Government agency come in and be critical of the consequences of these elements which in other areas we rush up to praise?

Dr. MUELLER. First, since this area of advertising is especially a sensitive one for anyone in public office, I want to make clear that I am not here speaking for five Federal Trade Commissioners who have emphasized many times that they are not critical of advertising. I am here as Chief Economist, the Bureau of Economics. And I am not being critical of advertising as such either. Public policy has long been concerned with advertising, as has the advertising profession. The advertising profession now claims the major credit for helping to get the Federal Trade Commission started, and I think they did play some