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VIGOROUS ANTI-TRUST ENFORCEMENT ASSISTS BUSINESS

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I would like to begin tonight by reading a telegram which I received recently. It said:

"Thanks for a good swift kick in the pocketbook. I knocked myself out helping you in the election. Got in dutch with my boss and other employees and generally took it on the chin with a smile.

"But, oh what a different story after a few months. You pointed the finger at every industry in the country - two of which I have stock in. They are not guilty as charged, but the effect on the stock market cost me and the Government plenty.

"I would vote for you boys again but take it a little easy."

What I would like to know is which one of you wrote that telegram?

And, I hope the sender of that telegram is here tonight because I believe his fears are unfounded and that I can put them to rest. However, the telegram, statements of some financial writers, as well as other newspaper dispatches, have over the last few months reflected a feeling that many persons believe the Kennedy Administration to be anti-business. This is a matter of obvious concern because we believe that a healthy business climate is essential. We believe that business must prosper if our citizens are to have a productive and happy life here in the

United States and if we are to meet our tremendous commitments and responsibilities abroad.

We further believe that this nation can and must do a great deal better than it has in recent years to maintain the vigor and flexibility of our free, competitive economic system. Almost four million of our people are unemployed - 6.8% of the labor population. In terms of those unemployed, a million and a half are married family breadwinners. There are 72 major labor markets with substantial labor surpluses and a good many of those unemployed have been out of work for 15 weeks or longer.

Much has been done by the Government, business and labor to meet this problem. However, the impact of automation and productivity, and the fact that the labor force will increase by thirteen and a half million by 1970 shows only too plainly the challenge of the years ahead. We must find more than 25,000 new jobs every week for the next 10 years to maintain anything like full employment. Furthermore, this country's gross national product has increased on the average by only over a little more than 2% annually since the Korean War. The Soviet Union, which opposes us on every front, is reported to have had a rate of growth considerably greater than that, and less than a month ago Chairman Khrushchev asserted that it would remain high for the next 20 years. These are challenging matters to contemplate.

If we are going to reverse this trend, if we are going to create more jobs and if we are going to expand our economy, as expand it we must, then it is largely the responsibility of you gentlemen and your counterparts throughout the nation. In return, if you are to be successful, expand and develop, you must have encouragement from the Government in Washington. This we recognize. And that is why I am happy to be with you this evening. I believe that we can proceed as partners - united in a national purpose.

Last May 5, I delivered a Law Day address at the University of Georgia Law School in Athens, Georgia. At that time I said:

"You may ask, will we enforce the civil rights statutes. The Answer is, 'Yes, we will.'"

Now, I am sure every man in this room will agree with that statement. You would expect nothing less of me, for I would be derelict in my duty if I did not meet the responsibility of my office to show that we really mean it when we say that all men are created free and equal before the law. After my statement that we would enforce the civil rights statutes, I also said:

"We will also enforce the antitrust laws, the antiracketeering laws, the laws against kidnapping and robbing Federal banks, and transporting stolen automobiles across state lines, the illicit traffic in narcotics and all the rest . . . .

"I hold a constitutional office of the United States Government and I shall perform the duty I have sworn to undertake - to enforce the law, in every field of law and every region without regional bias or political slant."

This is the underlying philosophy of our actions in the Department of Justice. It is our policy in every field, including the enforcement of the antitrust laws which are of special interest to you gentlemen.

This Administration is not anti-business primarily because there is every good reason we should be pro-business. The United States must have a strong and rapidly expanding economy to survive and this Administration and any Administration has no choice but to be "pro-business." An expanding, healthy economy is the backbone of our American system.

This does not mean that we will not enforce the antitrust laws vigorously. As I said at the University of Georgia, I have sworn to uphold these laws and that if I am not prepared to enforce them, I should resign. I believe you would want no less and that if you were in my position you would do no less. Furthermore, I might add I look upon the antitrust laws as being "pro-business." I believe firmly that the purpose of the antitrust laws is to protect and promote the competitive interests of business, small and large, as well as to protect the public.

Fortune Magazine several years ago said:

"Now that socialism and planning have failed wherever they have been tried abroad, it is all the more necessary that Americans look to those institutions which have tended to preserve their own flexible, dynamic and competitive society. Unique among those institutions is the Sherman Antitrust Act, . . . Whatever the difficulties that surround the enforcement of the Sherman Act today, it remains in the words of former Chief Justice Hughes a charter of freedom standing for something precious in American life."

The United States Supreme Court recently summed up the objectives of the anti-trust laws in an opinion which declared:

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as a rule of trade based on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress while at the same time providing an environment conducive to the preservation of our democratic political and social institutions."

Those two statements correctly declare what the antitrust laws are and how they should be used. It follows that what really should come from a vigorous enforcement of the antitrust laws are statements by businessmen that the Department of Justice is pro-business.

Yet, there is talk that enforcement of the antitrust laws is evidence that this Administration is quote anti-business unquote. Much of the criticism has centered on merger cases brought under Section 7 of the Clayton Act. This section is intended to avoid the creation of barriers of entry into the market and the loss

of competitive vigor which may result through excessive concentration in a particular industry. It is not intended to prevent all mergers. Many mergers promote vigorous competition just as some mergers have the opposite effect.

The record shows that mergers have not been attacked indiscriminately. The number of mergers challenged by the government is very small compared with the total number of mergers which are completed. During the first eight months of 1961, the Department has filed only 11 anti-merger cases. In the same period, 757 mergers or acquisitions were recorded by the Federal Trade Commission. Included in the mergers we opposed were 5 bank mergers.

This is a category where there has been a great deal of controversy and criticism. I have seen it written and heard it argued that we should not have challenged any bank mergers; that they are not covered by Section 7 of the Clayton Act; and that since these mergers had been approved by other Government agencies, including the Comptroller of the Currency, that we had no business getting into this field.

I will not attempt to win the legal arguments this evening. However, there are some points I think you should know. Again let's look at the record. First, we have examined some 155 bank mergers since January 20. Of those, we have disapproved of only five. The second point is that when we disapproved, it did not come like a bolt out of the blue to the banks concerned. I did not come into the Department of Justice and say: "Let's attack all bank mergers."

Bank mergers have been a matter of concern to the Antitrust Division since 1955. Several large mergers were under study by the former Administration and in at least one instance a bank merger was abandoned because antitrust action was contemplated. Several suits were filed attacking proposed bank mergers and we have taken action in five cases on the basis of recommendations of officials who were studying this problem long before I became Attorney General. Furthermore,

the banks involved in these five cases had been notified, prior to their merger, that the Department of Justice probably would disapprove.

So, these actions did not come as a surprise to the banks as I have seen some writers contend. In one case, we informed the banks of our opposition and they merged early one morning before we could take any legal action to prevent it. In another case, we went to court to obtain an injunction opposing the merger. The judge, out of courtesy, notified the banks' lawyers that we were coming into court. The lawyers thereupon hurriedly completed the merger within the next few minutes in an attempt to defeat our efforts. These are actions that the bank officials and their lawyers had a right to take. I have no criticism. But I don't think the Federal Government should be criticized as being unfair or unreasonable by seeking to have legitimate legal questions determined in the court and if we are right, have the banks returned to their original state.

An editor of a prominent business magazine wrote in this connection that business is friendless in Washington these days and cited the following example. He said:

"Let a few banks get permission from proper governmental authorities to merge and what happens? Another branch of government rushes in to stop the action - either by hastily-planned gobbledy-gook, or by time-worn courtroom gimmicks."

That statement is just not in accordance with the facts. But the businessman reading the article cannot know the background and because of ignorance or lack of knowledge, Washington becomes "anti-business."

Let me give you just one other example.

A publisher of a large magazine which frequently points out that the Kennedy Administration is "anti-business", called me recently. He said that we could avoid anti-business feeling if we would permit firms, which are planning to merge, to

obtain an indication from the Department of Justice as to whether their action would result in an antitrust lawsuit. He proposed that we put such a practice into effect. I pointed out to him this practice has been in existence for the whole time since I have been Attorney General and for many years prior. His answer was that the businessmen perhaps don't understand and we should get this information out to the public. I hope his magazine feels some responsibility to help.

I believe, however, that despite misunderstandings there are still many businessmen who recognize that the Department of Justice has a role to play in helping and protecting them. Sometimes I wish these gentlemen were more articulate. They have solid facts to which they could refer.

In the five months between May and September of this year, the Antitrust Division received 439 complaints of antitrust violation. Two-thirds of these, almost 300, came from businessmen and these complaints covered almost every conceivable commodity - from concrete pipes and corrugated boxes to rock salt, waste paper, drugs, milk and meat. The list demonstrates that there is probably no area of the business community which at one time or another has not sought the Department's assistance.

Every complaint receives a reply and every lead which may involve a violation of the antitrust laws is investigated. On many occasions, once we have brought a suspected violation to the attention of a company, that company has voluntarily ceased its suspected illegal activities. Such action is taken when the matter is not serious enough to warrant seeking a consent decree in bringing an antitrust suit.

Only five percent of all complaints result in legal action.

Complaints have not come just from small or middle-size businessmen, but from big business as well. The history of antitrust law enforcement shows that

successful antitrust prosecutions have often strengthened and brought vitality to extremely large companies and businesses. We have taken some action involving big business either because competitors are engaged in predatory activities or several competitors are planning a merger which could stifle competition.

We will keep our eyes on the objectives of the antitrust laws and we will not get bogged down in technicalities. I further assure you that the investigative processes will not be used beyond the normal course of exercising our responsibilities to enforce the law. In other words, there has not been and will not be any harassment.

If there is any confusion as to technical interpretations of the antitrust laws, it hardly applies to the area of price-fixing. This is a field which is of particular concern to me. From the records of investigations I have examined since I have been with the Department of Justice, the sad truth is that although price-fixing conspiracies are the exception rather than the rule, in almost every major community in the country, a number of businessmen have conspired or are conspiring in secret not only to fix prices but to make collusive deals with union officials, defraud their customers and even in some instances cheat their own government.

One recent case involved a fixing of prices and rigging of bids in the sale of milk for children in a large public school system. Another involved the sale of bread to the Navy. These are cases that have been brought since the Philadelphia electrical equipment cases.

In almost every instance when we have successfully completed a price-fixing case, competition has been restored; prices to the consumer have dropped; and the competitors, who were not involved in the conspiracy, have received a new lease on life and can begin to do business again.



As an example, in a large Western state prosecution by the Department broke up a price-fixing conspiracy amongst druggists. As a result, there has been a significant drop in prices which consumers are now paying for prescription drugs in this area.

These are serious cases in which men, who are respected in their communities, have conspired consciously to fix prices or rig bids. But I have seen it written and heard it said that they were victims of merely misunderstanding complicated antitrust laws. I disagree.

Of course, some areas of the antitrust laws are complex and, of course, there are areas of law and economics subject to honest differences of view. But in these criminal cases we are not talking about highly complex mergers or highly involved questions of antitrust policy.

We are talking about clearcut questions of right and wrong. I view the businessman who engages in such conspiracies in the same light as I regard the racketeer who siphons off money from the public in crooked gambling or the union official who betrays his union members.

A conspiracy to fix prices or rig bids is simply economic racketeering and the persons involved should be subject to as severe punishment as the courts deem appropriate. When possible, I believe that we should not only take action against the corporations or companies involved, but against the individuals who have participated in these frauds. I am against granting immunity to the individuals, with the result that the cases end with their companies paying a fine. I think those responsible should be held responsible.

I hope I also have made it clear that we in the Department of Justice are available to consult with businessmen and their lawyers with respect to the problems they may encounter in connection with the antitrust laws; that it is our steadfast desire to aid and assist businessmen and that we welcome any suggestions, as well as criticism which is based on the facts.

Any suggestions or criticism will be given careful study and consideration. But in the last analysis the success or failure of our free enterprise system literally is in your hands. It is extremely important that you understand and appreciate the purpose and the aim of the antitrust laws. You are the ones who establish the business policies and it is only by your example and efforts to instill in your subordinates a respect for and an understanding of our laws that our competitive economy can be preserved and expanded.

The problems and difficulties which face us here in the United States are difficult enough to occupy the talents and efforts of any people at any time in history. But overseas and around the world, in every corner, an implacable enemy, which seeks the destruction of our freedom, awaits us.

General MacArthur told the President several months ago: "The chickens are coming home to roost and you live in the chickenhouse."

In a larger sense, we are all in the chickenhouse. For the first time in our history, we are confronted by an enemy which has the power to inflict tremendous damage on the continental United States although for him, because of our power, it would mean self-destruction. And Mr. Khrushchev must understand that while we will make every effort humanly possible to avoid the horrors of nuclear war or the destructiveness of radiation resulting from a spiraling series of nuclear tests, we do not intend to lose our freedom bit by bit or in one fell swoop. Thus, in the months ahead we will be called upon to have steady nerves and cool heads, and we may be called upon to make sacrifices of a nature such as we hardly imagined possible a few years ago.

One of our great poets, Archibald MacLeish, said:

"The American journey has not ended. America is never accomplished. America is always still to build; for men, as long as they are truly men, will dream of man's fulfillment."

It is in this spirit, going back to the founding of our country, that time and time again the American people, facing danger and seemingly insurmountable odds, have mobilized the ingenuity, resourcefulness, strength and bravery to meet the situation and triumph.

We are going to have to expand. We are going to have to have more jobs and a strong, growing competitive economy. The primary responsibility rests with you, but we are prepared to be of whatever assistance we can. Our entire defense establishment, including the most secret and sensitive installations, is the best evidence of business and government bringing together the very best talent and ingenuity to keep this country strong, vigorous and prosperous.

Thus, I am confident that whatever the problem, whatever the test, we are up to it. We have the strength, the courage and the will, and we shall prevail.

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