



Department of Justice

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ADVANCE FOR RELEASE AT 7:30 P.M.
THURSDAY, MARCH 27, 1969

ADDRESS

BY

ATTORNEY GENERAL JOHN N. MITCHELL

BEFORE THE

ANTITRUST SECTION

OF THE

AMERICAN BAR ASSOCIATION

SHOREHAM HOTEL

WASHINGTON, D. C.

1. INTRODUCTION

We lawyers have always liked to celebrate occasions. In 1964, this body convened to acknowledge the fiftieth anniversary of the Clayton Act and the Federal Trade Commission Act. The following year, you rendered a similar tribute to the Sherman Act on its seventy-fifth year of service.

1969 doesn't seem to be the year for antitrust commemorations--although you may recall that summer day fifty years ago when the 66th Congress, in its wisdom, enacted that famous Public Law 21. For those few of you who cannot recall the precise terminology of that statute, I am pleased to quote its salient provision. It read: "For the enforcement of antitrust laws---including not exceeding \$15,000 for salaries of necessary employees at the seat of government---\$100,000."

The skeptics among you may not think that particular law has quite enough importance to warrant the plaudits of the antitrust bar. And I am sure that government lawyers don't find the thrifty spirit of Public Law 21

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very amusing. But when it comes to commemorations, the Antitrust Division is quite resourceful. I am reliably informed that, after Dick McLaren said he'd try to use Section 7 to slow down the current merger trend, his Division celebrated the twenty-first anniversary of the Columbia Steel case.

But tonight is a special occasion of sorts. I can say with absolute certainty that this is the first time in its 17-year history that the Annual Spring Meeting of the Antitrust Section has been addressed by an Attorney General in a Republican Administration who used to be a municipal bond attorney.

I can assure you that it is a sobering experience to serve as the 67th Attorney General. In a way, I think I would have liked the original concept of the job first held by my distinguished predecessor, Edmund Randolph of Virginia. It evokes for me a picture of things past, of a simpler life lived at a slower pace. The quilled pen and the standup desk, everything but the powdered wig, would have been congenial. But I must accept the Department as it is today and my responsibilities to it.

Tonight, I would like to share with you my thoughts on at least three subjects which have absorbed much of

my attention in my first two months. The first is Antitrust. The second is crime, and more specifically organized crime. The third is a possible relationship between the two.

2. ANTITRUST

I am sure you all share a belief in the worth of antitrust and in the importance of its goals and objectives. I am also certain that your faith in antitrust does not arise from a narrow personal desire to insure the continued relevance of your own expertise, but from your recognition of the vital role this discipline plays in our economic and political order.

I share your faith in antitrust. I would like to tell you why I regard its effective enforcement as a national need of high priority.

The immediate concern of antitrust, of course, is the protection of the competitive mechanisms in the greatest economy the world has ever known - one which produces nearly \$900 billion in goods and services each year and supports a population of over 200 million people. We depend on competition to promote the economic

progress which all nations desire, while preserving those freedoms--both economic and political--which we believe essential to our democracy.

I suppose we could entrust this enormous economic engine to other philosophies. But in the process we would risk, either the stifling hand of pervasive public regulation, or the grasping appetite of private monopoly. We have rejected both of these choices. We prefer to rely, instead, on the talents, the energy and the inventiveness of our citizens to determine the course of our economic development. Of those who participate in the economic race, we ask only that they be prepared to stand or fall by their own efforts; that they accept the judgment of the market place--the judgment of competition--as the test of their success.

It is significant that the economic thrust of anti-trust has not prevented us from appreciating the other interests which these laws serve. A competitive economy stimulates diversity. It calls forth the best in each of us by assuring an outlet for productive talent. It promotes economic freedom. It preserves individual liberty.

Now, as in the past, there are some who argue that we are pursuing a mirage--that antitrust is ineffectual and irrelevant in today's world. I do not agree.

There is no convincing evidence that we must tolerate the dangers of growing economic concentration in order to enjoy corporate efficiency, sound management, and high quality research and development efforts. On the contrary, there is every indication that competitive markets promote, rather than impede, efficiency; and there is no assurance that a business of enormous size will be directed with greater skill or will conduct more productive research than less swollen organizations. The imperative of competition--rather than the seductive illusion that what is very big must also be very good--is our best guarantee of progress.

Perhaps the best proof that our antitrust labors are not obstacles to economic growth is the continued commitment of the American people to the principles of a free competitive economy.

For as Hamilton observed: "nations pay little regard to rules and maxims calculated in their very nature to run counter to the necessities of society."

Never has there been a more urgent need for vigorous enforcement of our antitrust laws. While we can take justifiable pride in our economic success, we cannot fail to see that the demands of our resources are advancing at a great speed. The legitimate aspirations of our citizens--for decent homes, for an adequate education, for productive jobs, for sufficient food and health care--cannot and will not be fulfilled if a sound economy is not preserved. And those aspirations must be fulfilled if we are to remain true to the heritage of our founding fathers.

Today, the constraints of antitrust play an important role in the daily decisions of the business community. At times, antitrust may seem an uninvited and unwelcome interloper. But I believe that business has come to recognize that the proper administration of antitrust law is not a barrier to progress, but an essential ingredient which makes progress possible. Through competition business markets are expanded. Profit possibilities are directly increased. A premium is placed on efficiency and initiative. Under such principles, the avenues of opportunity for American industry are limitless. Effective competitive principles guarantee that our nation will continue to grow. For competition, however rigorous, is, in reality, the most benign of economic regulators.

We must do all that we can to insure that "competition" remains a vital principle and does not become an outworn slogan. To the extent that we fail to implement antitrust law, we forfeit a measure of that respect for law upon which a civilized society depends.

I do not underestimate the complexity of the task which confronts us. The goal of antitrust may be constant, but the potential dangers to a competitive economy are constantly changing. To perceive and analyze those dangers is a difficult undertaking. We are often plowing new ground. There may be a few beacons to chart our course, and we cannot be certain that the conclusions we reach are always the correct ones.

3. CRIME

And it is in this spirit---the spirit of attempting to fashion new tools to new dangers---that I would like to turn to the subject of crime.

I need hardly tell you that our nation is confronted by a crime problem of major proportions. The tragic statistics are a matter of public record. The most recent FBI Bulletin reports that crime rose 17% in 1968 over 1967 and that the total number of serious crimes reported in 1968 will be about 4.6 million or three-fourths of a million more serious crimes than in 1967.

This year, one out of every fifty citizens will be the victim of a crime and one out of every twenty juveniles will commit a criminal act. Juvenile crime is increasing 300%

faster than the increase in the juvenile population.

Estimates for the future are bleak. The National Crime Commission said that, in the next decade, crime will increase more rapidly than our population. The costs of crime continue to grow. In 1967, it was \$27 billion. In 1968, \$31 billion--- a cold evaluation that does not consider the emotional scar of a disabled victim or a family whose young son must be sent to a penal institution.

The gravity of the problem now reaches out further than the individual victim and the criminal---further than the computerized statistics which cross my desk every day in despondent volume. Fear of crime---by the housewife and the school child, by the merchant and the laborer---fear is forcing us to alter the pattern of our lives. The evidence is conclusive. Crime is crushing us and we are dedicated to fight back with all the resources at our command.

One of our priorities in the war against crime is organized gangsterism. I will spare no effort to attack the nationwide organization of racketeers who corrupt our youth with illegal narcotics, who taint our public officials with bribes and corruption, who pervert the outstanding ideals of the labor union movement, who employ murder and torture to collect their debts, and who, in a very real sense, prey mainly on the poor and less educated segments of our population.

To be effective, we are launching a nationwide campaign against organized crime with all the weapons at our disposal. For example, we are using court approved wiretapping to obtain evidence which we might otherwise not have to prosecute those syndicates which reportedly take in more than \$50 billion a year.

Another tool at our disposal is the Strike Force which we are now reorganizing and greatly strengthening. These Strike Forces are a unique concept of governmental law enforcement. They are composed of representatives from the FBI, several divisions in the Justice Department, the Internal Revenue Service, the Labor Department, Customs and the Secret Service.

The main thrust of the Strike Force concept is to prosecute organized crime by coordinating the dozens of federal criminal laws, including criminal antitrust laws, in an attempt to imprison members of the organized crime syndicate.

But, at this particular meeting, I should like to pose the problem another way to you as antitrust lawyers.

4. ORGANIZED CRIME

Suppose I suggest to you that there is in this country a well-organized major corporation with a carefully selected board of directors, and 22 subsidiary "family" corporations, which employs a management group of 5,000 persons in a highly stratified structure; and that this corporation is America's

principal supplier of such goods and services as illegal gambling, narcotics, usurious loans, prostitution and the numbers game.

In the last decade, this corporation has invested a substantial part of its \$50 billion dollar a year income in a whole realm of small and middle-sized legitimate businesses-- in banks and small loan companies, trucking and transportation, food and health services, in importing and exporting, electronics, construction, real estate, restaurants, juke boxes, vending machines, and labor unions.

This nationwide corporation of gangsters is highly cohesive and maintains frequent communication. It has not been satisfied to compete on an equal basis in a free economy. It has transferred to the legitimate field of business the same strong-arm practices which have proved so successful in the past.

A manufacturer who will not use a gangster-owned trucking firm finds his life in danger. A bar tender who will not rent a gangster-owned juke box finds that his waiters go on strike. A grocery store owner who will not buy a certain type of imported food may be burned out.

Furthermore, in its legitimate business enterprises, organized crime frequently demands a higher price for its goods and services than is generally offered in the market place, and provides a lower quality of products. Because of its internal structure, there is little doubt that markets are

divided among gangsters, and that prices are fixed. In addition, the close internal structure of organized crime makes it quite clear that almost every legitimate enterprise owned by an organized gangster fits, in some way, into the overall organized crime conspiracy.

Is there any question, then, in your mind, that this corporation violates the famous stricture forbidding "every contract, combination... or ... conspiracy, in restraint of trade?"

What I am suggesting is that, the principles of our antitrust law may be used as a powerful weapon against organized crime's corrupt management of so-called legitimate business.

The Department is now studying the possibilities and I must say, quite honestly, that I can make you no promises as to the outcome. But if I am optimistic, my optimism stems from the enormous viability and durability of the Sherman Act theories through which we have, with the Clayton Act additions, effectively protected the free competition rules of the American market place---rules which organized crime cannot and will not obey.

We are studying the whole field of antitrust law in relation to organized crime but, specifically, we are considering the civil aspects of antitrust theory.

What intrigues me is that our antitrust laws may have a panoply of weapons to attack the "property" of organized crime---rather than the unimportant "persons" who technically head up gangster-controlled businesses.

There is the injunction with its powers of contempt and seizure. There are heavy monetary fines and treble damage actions. There could be forfeiture, a penalty which, while incorporated into the original Sherman Act, has not been utilized for more than 40 years.

Furthermore, the case law in this field suggests that additional weapons may be available. You will remember the order fashioned by a Boston judge which forbids an executive of a firealarm company from ever seeking employment with the defendant companies in the conspiracy. You will remember the additional penalties which we are able to levy if we can prove "a pattern of past practices."

You will also remember that, under the theories of the Federal Trade Commission Act and the common law against unfair competition, there are endless varieties of imaginative remedies available in the courts to place limitations on the use of property.

Experience has shown that, in organized crime's ownership of legitimate business, men tend to be a cheaper commodity than property. If we can convict a Mafia lieutenant and place him in jail, another may take his place. Perhaps we should investigate the deterrent of heavy financial loss. If we can levy fines on their real estate corporations, if we can seek treble damages against their trucking firms and banks, if we can seize the liquor in their warehouses, I think we can strike a critical blow at the organized crime conspiracy.

I am not suggesting that we attempt this task only under the Sherman Act and Clayton Acts as they exist today. I think perhaps we would, in any case, need some new legislation aimed specifically at the organized crime conspiracy and, it would be my initial impression, that such legislation should be a complete package rather than, in any way, amending the Sherman or Clayton Acts.

But the principles enunciated in the Sherman Act are principles of a free, competitive economy and I am hopeful that, after our study is completed, we will have some proposal to offer.

Perhaps, you as antitrust lawyers would care to help us and we would welcome any of your suggestions. I am optimistic that the Sherman Act, which has protected our economy so well up to now from a variety of ingenious threats, can be utilized, at least in principle, to protect us once again.