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STATEMENT OF INFORMATION SUBMITTED ON BEHALF OF PRESIDENT NIXON

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803
A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH RICHARD M. NIXON PRESIDENT OF THE UNITED STATES OF AMERICA

BOOK II
DEPARTMENT OF JUSTICE-ITT LITIGATION

MAY-JUNE 1974

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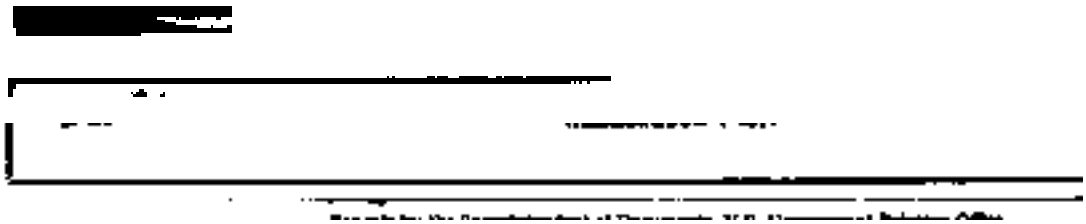

COUNSEL TO THE PRESIDENT

JAMES D. ST. CLAIR, *Special Counsel to the President*
JOHN A, MCCAHILL, *Assistant Special Counsel*
MALCOLM J. HOWARD, *Assistant Special Counsel*

FOREWORD

By Hon. Peter W. Rodino, Jr., Chairman
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper. On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The hearings were convened pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

These Procedures provided that President Nixon should be afforded the opportunity to have his counsel present throughout the hearings and to receive a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the members.

Mr. James D. St. Clair, Special Counsel to the President, was present throughout the initial presentation by the Impeachment Inquiry staff. Following the completion of the initial presentation, the Committee resolved, in accordance with its Procedures, to invite the President's counsel to respond in writing to the Committee's initial evidentiary presentation. The Committee decided that the President's response should be in the manner of the Inquiry staff's initial presentation before the Committee, in accordance with Rule A of the Committee's Impeachment Inquiry Procedures, and should consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President was likewise afforded the opportunity to supplement its written response with an oral presentation to the Committee.

President Nixon's response was presented to the Committee on June 27 and June 28.

One notebook was furnished to the members of the Committee relating to the Department of Justice - ITT litigation. In this notebook a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material which included copies of documents and testimony (much already on the public record) and transcripts of Presidential

conversation s.

The Committee on the Judiciary is working to follow faithfully its mandate to investigate fully and completely "whether or not sufficient grounds exist" to recommend that the House exercise its constitutional power of impeachment.

Consistent with this mandate, the Committee voted to make public the President's response in the same form and manner as the Inquiry staff's initial presentation.

July, 1974

INTRODU(:T0R,Y
NOTE

The material contained in this volume is presented in two sections. Section 1 contains a statement of information footnoted with citations to evidentiary material. Section 2 contains the same statement of information followed by the supporting material.

Each page of supporting evidence is labeled with the footnote number and a description of the document or the name of the witness testifying. Copies of entire pages of documents and testimony are included, with brackets around the portions pertaining to the statement of information.

In the citation of sources, "SSC" has been used as an abbreviation for the Senate Select Committee on Presidential Campaign Activities.

STATEMENT OF INFORMATION

SUBMITTED ON BEHALF

OF THE PRESIDENT

DEPARTMENT OF JUSTICE -- ITT LITIGATION

[redacted]

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1. In December, 1968, Richard W. McLaren was interviewed

for the position of Assistant Attorney General, Antitrust Division, Department of Justice, by John N. Mitchell and Richard G. Kleindienst. As a condition to his acceptance of that position, Mr. McLaren . insisted that antitrust enforcement decisions would be based solely on the merits of any given situation.

2, In 1968, Mr. Nixon appointed a Task Force on Productivity **and** Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969 and recommended against immediate legal action re: conglomerate

me rge rs .

2a _ Stigler Report, 115 Cong. Rec. 15653, 15656 (1969). 26

2b White House "White Paper, " The ITT Anti-Trust Decision, January 8, 1974, 2. 5

2c Remarks of Harold S. Geneen, ITT Chairman and President June 26, 1969, Annual Meeting of ITT Shareholders, 8 •- - 33

(4)

3. Apparently, ill June of 1969, Mr. Geneen sought to meet with President Nix:on about certain financial and economic concerns of ITT, including, but not limited to, the antitrust ~~.|t~~'.~,. John BUT. D Mitchell, for one, thought the meeting would be ina.- ppropriate because of ITT's legal involvement with the Department of Justice. The meeting was not schedule.

3a Letter of June 9, 1969, fro,n **LOI.^~~ A{. Berry** to the President enclosing one co,), of a June 3,

Page

4. In March, 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the United States v. ITT (~rinnell) case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the government's chances of winning were minimal.

5. - After the President's telephone call of April 19, 1971, to Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met, in his office, with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren had no objection to the application for an additional extension of time.

41-566 O - 74 - 2

6. On June 17, 1971, McLaren recommended **to Kleindienst** that the ITT suits be settled. K1eindienst approved **the proposed** settlement by writing: "Approved, G/17/71. RGK. " In affixing his approval, Kleindienst relied on the expertise of McLaren.

7. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Company. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was important for ITT to retain Hartford. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford. As a result of that presentation, in combination with the Ransdem Report from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford.

7a Memorandum of John W.. Poole, **Department of Justice** to Files dated August 7, 1970.....

7b Memorandum of August 18, 1971, authored by Richard W. McLaren*

7c Affidavit of Harold S. Geneen, dated June 12, 1972, **given in** connection with a Securities and Exchange matter

7d Testimony of Richard G. Kleindienst 2 KCH 129 - • • • • • • •-

7e Letter of May 3, 1971, from Felix G. Rohatyn to Richard W. McLaren

7f Testimony of Richard W. McLaren, 2 KCH 165

7g Testimony of Richard G. Kleindienst, 3 KCH 1736.-- •---

8. On July 31, 1971, the ITT cases were finally settled. Whether ITT would have to divest itself completely of Grinnell was a principal matter of consideration between June 17, the date of McLaren's proposal, and July 31, and in ITT's eyes, a matter upon which any settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleindienst did not talk with McLaren about this matter at any time from June 17 until July 30.

Mitchell and McLaren never talked with each other about the cases. **There exists** no testimonial or documentary evidence to Indicate that the President had any part, directly or indirectly, in the settlement of the ITT antitrust cas es .

McLaren was unaware of any financial commitment by ITT in regard to San Diego's hosting of the Republican National Convention until long after the negotiations had terminated. McLaren **has stated** ITT's contribution had nothing to do with the settlement.

Page

8a Affidavit of Harold Geneen, dated June 12, **1972; 4-7..... 105**

8b Testimony of Richard W. McLaren, 2 KCH **113, 361,** 125, **116-117, 144, 174----------.---**
.....

8c Testimony of Richard G. Kleindienst, 2 KCH **142, 99, 3 KCH 1732-33, 1736r------**

8d Testimony of Felix Rohatyn 2 SUCH **119.--**

110

8e Testimony of John N. Mitchell..... **2** KCH **541--------**
[redacted]123

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Page

[redacted]

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9. -ad On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 1972 Republican National Convention. San Diego was the preferred site by William Timmons, who had investigated that city as a potential site and the Attorney General's convention task force, and was the highest regarded city

for security purposes.

F

10. Ad In response to a question at the Senate Select Committee,

concerning Dita Beard's disappearance on the eve of the Kleindienst hearings, E. Howard Hunt stated that he was not aware of any role Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

- - . Page:

-	10a	E. Howard Hunt Testimony,	6
SSC	3791	154	

(13)

[redacted]

11. On June 22, 1974, The New York Times, page 15, carried a story in which Rep. Bob Wilson (R-Calif.) said the Special Prosecutor informed him that no **legal** action was being considered against him in relation to the ITT matter.

- lla _ York Times article, dated June Z0, and carried

in its June 22, newspaper*.....

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[redacted]

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12. On April 4, 1972, the President met with H. R Haldeman and Attorney General Mitchell in the Oval Office from 4:13 p.m. to 4:50 p.m. during which time the ITT matter was mentioned.

13. During the days following the publication of the "Dita Beard" memorandum on February 29, 1973, several of the top White House aides were involved in investigating the allegations contained in that memo random .

The actual settlement of the ITT cases as a qu ~~ quo for an ITT commitlnent to the Republican National Convention was the focal point of the Kleindienst Confirmation Hearings which began on March 2, 1972. Peter Flanigan, a White House aide, was the object

of considerable attention from the Senate Judiciary Committee and press during the coverage of these hearings.

13a Testimony of Charles Colson on June 14, 1973, before the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign

Page

Commerce, page 202 190

13b Statement of Richard G. Kleindienst, dated 10-31-73 191

13c Testimony of Richard G. Kleindienst, 2 KGH 95-96 • • - . . .

13d Memorandum of March 13, 1972, to John Dean from Charles Colson.

13e The Washington Post, April 27, 28, 1972

13f The Boston Globe, April 13, 1972; and The

192

194

198

Washington Post, March 16,.....1972~~ 200

14. The President left for an official visit to the People's Republic of China on February 17, 1972; he returned on February 28, 1972. He spent the weekend following his return at Key Biscayne, I Florida. On May!c;y ZO, 1972, the President went to Moscow, returning on June 1,]972.

14a Weekly Compilation of Presidential Documents,

Pa ge

Volume 8, Number 8, 443-44; Volume 6, Number 9,

14b Weekly Compilation of Presidential Documents,

Volume 8, Number 23, 912, 975, 207

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STATEMENT OF
INFORMATION

AND

SUPPORTING EVIDENCE

SUBMITTED ON BEHALF

OF THE PRESIDENT

DEPARTMENT OF JUSTICE -- ITT
LITIGATION

1. In December, 1968, Richard W.. McLaren was interviewed for the position of Assistant Attorney General Antitrust Division, Department of Justice, by John N. Mitchell and Richard GO **Kieindienst.** As a condition to his acceptance of that position, Mr. McLaren insisted that antitrust enforcement decisions would be based **solely** on the merits of any given situation.

Richard W. McLaren, Testimony

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memorandum allegedly written by Mrs.. Dita Beard. Mr.. IIullle asked whether the subjest of that memorandum(lunl had entered into my' conversations with the Justice Dep)artnzent. I flatly denie(l that anything having to do with the Slsewaton com]nitment had ever l)een discussed by me with Mr.. Kl eindienst or any- other representative of Justice.

Let me say- now that I (70 not know Mrs.. Beard an(l, in fact, had never heard her name before talking with Mr.. Hume. Moreover, I **never knew of an** *ITT* commitment of the San Diego Convention Bureau until December)er 19.1. when!l I read about it in the publ,lis press. This was G month}ls after thc antitrust settlement ha(l been reac]led. **Therefore,** it was literally impossible for me to have particip ated in any conversatio n reg,ardillcr the . commitment.

The settlement requires, so far as I know, the largest divestm ent in the history of world enterprise comp?isillct companies with sales ap)proximatin<> .51 billion in assets. Even a}).llt from force(l sale, I can think of no case in M which a sin(>le ow ner l oluntarily- parted w ith values of this magnitude. As a director of the company, I consi(leled this an estremely- harsh settlement, arrived at after l)iotracle(l an(l difficult negotiations between representatives of Justice an(l ITT.

If I may, sir-, for the record I would(l like to place the dates of my eeting,s with Mr.. Kleindienst.

The first one took I~~I?ee on Apr)ril 20, 1971, where I gave orally':lilV some of the r)olicl considerations +~~ e thought relevant. Mr.. Kleindi(lis ienst stated that since the Attorney General had disqualified himself'. the ultimate decision with respect to any litigation would nec(e<>ari!Rbe his. He said too he would make that dec ision l)ased on Mr. McLaren s Antitrust Division recommendations, and told me any presentation should be made to Mr.. McLaren and the Antitrust Division.

The next meeting took place on 41)ril 99.

This was followed by the meeting of May- 10.

The next meeting was as June 99

The last meeting was July lo.

Thank you, Mr.. Chairman.

The CHAIRMAN. Judge e **McLaren, TOU say you were solely responsib)le for this settlement, with your staff?**

Atr. McLaren;. I'm sorry. I couldn't hear the last sentence.

The CHAIR{AlAN. Did I understand you to S.15- that you were, you and 5 our staff were solely responsible for this settlement?

Mr.. McLaren-. That:xt is m) testimony, yes, sir-.

The CHAIRMAN. Now, did you know anything abpout a 5400,000 contribution from ITT to the city) of San Diego?

Mr.. McLaren- Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I **read about it in the newspapers** where someone tried to ma!;e a connection between an al!erted payment and the settlement of the case.

The CHA,~1R:~~IAs. No w, did Mr.. Klein dienst, :\ Mr.. A l itch hell, or 3 anyone elsc attempt to influence your de(:ision in this settlement?

o Mr.. McLar-&RENT. Th,C direct answer to your question is "No. they- did not." I would like to add this when I was first interviewed by AJ;.

when:l they offered me the job. I made three con(!itiolis: th)at we would have a. vigorous. antitrust l)rotialil; that we would follw)xx my- beliefs with reg ard to what th; S!tT~~iexne Court cases said on conglomerate mergers, and the restructur ing of the ind(ltistry th:lt I thought;. ~~:as coming n})out in an almost i(lost way; and third, that we would decide :1! matters o;} the merits, there would(l be no political decision.

AVX!eCl{AlI;AtAN~~ NO\V,iS that correct in this case?

Mr.. McL.~XtLzz-. That is correct in this case, absolutely. I might add that the Attorney General and A:lr. Kleindienst lived up to their co:wll~~zit mitment.

The C"ltir~~^lAs. **Senator Ervin.**

Senator: ERVIN{V[N. ,-\S I construe your testimony, Jud(lCe McLaren, A1X. Kleindienst did not ac:tisFely })arti£ipale in the negoti tion of the settlement at all?

Att. McLaren. All Alr. Kleindienst did was arramge that one meeting, as far as I am concerned. And during the course of that me(~~ ting, when ITT mades its ~~)rcsentatioll, I was the chairman of the meeting. Mr.. Kleindienst sat off on my left, and listened, so far QS I recall, • and, well, none of us had much to say, but he did not do really anything in any stage of the negotiations)s except arrange for that one one meeting and approve my l)ropos;tl for settling the th!intr after I became convinced that the 250-odd-thousand:td shareholders of I1'T would suffer more than a S1 billion loss if we proceeded and were successful 1 forcing divestiture of Hartford

-_ Senator)r ER VIN. Did he make any **suggestion to you as to what the** details of the negotiations should be, or what the details of the should be?

Mr.. McLaren,s. He did not, and I did not even keep him informed as to what we were doing in the negotiations until!—I think; he is prob)aLly right—I telephoned him t}le night before we actually put the thing out and(l said I think that they me going to cave in on the last couple of points and we will probably announce it tomorrow-\z=. .

CHA:HAIRNIANY. And that was the course you usuallyfollowed to keep him adv ised of matters in y our department?

Atr. McLaren,AREN. Matters of major importance, yes, sir.

Senator EF(YIP>t. I understand from the testimony that has been given that Attorney General Mitchell absolutely disqualified himself from any connection with **these suits** and proposed suits, and(l with the negoti tiations on the settlement, on the grounds that his firm at one time had represented one of the affiliates of ITT?

Mr,. McLaren. Yes, sir, **that** is correct

Senator ERVIN. In other words, your testimony is that you and the members of the Antitrust division staff conducted the investigations , and that the decision of the Government was based solely on the opinions w}ich you and the members of your staff in the Antitrust Division had after considering all of the matters involved, and all of **the** implications of those matters?

Mr. McLaren **That is right,** sir.

Sell a tor ERVIN. Now, Judge, I r)rac ticed law a long time, and I have *participated in compromises in many cases, never* one of any great magnitude(le, but my experience is that when people settle litigation they do so for

approximately the same *reason* that Hamlet stated in his soliloquy: they

are uncertain as to what the courts are t,Oillg to

(23)

and I tools xny bruldanee itl antitrust ~~~ses from Jud<,-e AtcLalen. I am a 1azvyer iror.l Ptloenix, Ariz. I **never had** an nntitrust case in m) life. He svmoolizes tlle hivhest kind of 1a~~~syer [roln the plivtLte sector m-ho is ivilli lg to leave a •-erv lucrative practico and come into tlle Governmellt and give the peo~~~)lc the bel cfit of his arL and 1lis experience. 'rhe @11\ thin.~~~ that got **through to** me W3S Judge WIcLnren.


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Rohatyn, +zr11om I havo come to rewnrd rvith a vcrv high degree of ref,arzl, made a rery persllasive presentation to me but all

2. In 1968, Mr. Nixon appointed a Task Force on Productivity and Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18,

1969 and recommended against mediate legal action re: **conglomerate**

mergers .

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Report June 10 19'-)91 10 **ye3rs irom the date of entry Arsd the ever possible**

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r~~>t*Bt or azozrCucu~ rr AND COssPFrm **Act6 shOUId be renesled and tllebRPO°bmin9'one cOomprtsmTa~^date to exarin productl it**

We present here a 6urJamsry or tpe recom- Patman Ac: substantlally revised pels U5 to brlet examinaUon ot the work or meru:ltlons or the *Task* Force on Productir_ 12. bIr Alexander L Stott dtg6entg from the resulatory commisslons themselves The ItysEd Compet'Uon The6e recommeEdatiolb eertasa parts of the Report nnd trom certain regutated industries comprlse one-eighth or

arc elaborited 3Dd detended in the aecom- p3 sying Rerort
1. We recommend that the President hvSue aL seneral pollcy statement (a\ eStablahing t!xe Antitru3t Dirl610n as the eXeetire agerst o the Ad *nln.str3tlon* **n behalS ot a poucJ of** carnpetitlon v~-lthin the council3 ot the Ad-

Of the above recommendation5 Mr. Raymond It. Alultord di6 ents trom two recornmenda- tion6.
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AND COYPE.TrRION
The Task Force on Productivtty and Com-

more o: tho economy in term6 ot Income and are too important to be omitted rrom our Feport
The tasks arsigned to the rryruiatory agen- cles nre various: to prevent monopoly pric- in6 **(as** with telephone and pipeUnes)- to prevent congfftlon (a6 with radlo and tele

r~traiion end betore the Independent pEtitlon subm'ts its repert on the problem6 vislon rrequencles); to provide sa ety to

rq ultatori- commisslon6: (b) urging those **C; sDrnl3610ns to enlarge the role or competi- Uan in their industrles; (c) marshating pub- liC 6uppore tor the policy ot competition** a We urge the commisslons to permXt free estry In tl o industrles under regulaUon and ttodn ahnd the FPole ot the Antttrust Dlvtston rOr economic re5ulataon There is widesDread to n;bandon minimum rate controls. when- an t e Fe5uiatory Commisstons In ThiJ d'5enchantment with regulatory purposes as ever these steps are possible—and we th nk thir usually sre; and we urge the President VflArn **occasion permits to appoint at least one economist to membership in esich of the r~pr comrnisslons and tnsUtute effectxve p ecedures ror the revlew oX the pertormance Of the commisslons. 3L To cnhance the effectiveness ot the Antl- t~t Dlvislon we urge the Attorney General arad the A3sLstint Attorney General In-Charge**

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which win be contronted hy the new admin- **istration in thls ares and the ste2s which we recommend to be taken The report i5 prffented under three general hearSnp:** 1. The Administratlon s pollcy ot Competl-

P°ItCS
Ir Organi2aUon and Procedure In the An- **titrus vislon.**

III Recommend2iUons tor Change ln An- Utrust Pollcy Individual task force memben would often change the emphasis ot the Fteport and larger difference5 are presented as dissents. 1. Generpl DolW A Antitrust Pollcy

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savers (as wlth iinanclal in3titutions) . **and so on Ir 16 riot pOs6ible rOr w here to examine these purposff critically nithough tt •3 no- torlous that In certain Industnes (such as** motor trucking) there Is no respectable case well as reguiatory processes. and a oeneral belier that excessive rlgidity expen5ive re- **vlew of economically trivial details and fre- quent railure to achieve any Important re- sults have characterl2ed our regulatory efforts. In txvo direcUons we are convinced there should be a maJor reorlentatlon ot the regu- latory policy: 1 Entry ot new hrms should be encrmraged**

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2 Allow much rreedom In pnce competl- m°in=~mThm rer5aUtoatroergy lb°tdlie shohuld abandon

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sible (and lt ls Usually possible) and rely chleffy on maXImum rate regulatlon Where rates are regulated It Is essenUal to

br~ I prtce nxrng conspiracles which we be- ments Sorae oPt the vasht Bbr58ennalc'oro'pupbauy: y controls nre unnecessery and a large pro- p~nt. portlon Or the necessary controls are exces- 6 We cannot endorse on the besis Ot Pres- sively reecictive Or competiuon As one ex- eDt knowledge Or the effects oS oUgopoly on ample the sarety Or financial instituttons ls co npetlUon proposals whether by new le5is- oS course a major pubUc concern but this IzSbn or new Interpretatlons Or esisting law sarety cnn OrteD be achleYed by lnsurance or So rffieconcentrate highly concentn ted lndw- ssmtlar devices and hardly ever requires Sbat tras by dissolving their leadUg firms BUt competXtton be suppressed So the extent that We rTrge the DeparSment to makEtaln unre- the most tncompetently manared instttution rStting rcrutiny of highly oligopollstic In- wsn be DrosperoW and hence sare

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_ achleve at least three mportant purposes:

[e We strongly recommend Shat the De- partment decUne to undertake a program Of the g nctson agalnst conglomerate mergers and co_~lomerare enterprXses pending a con- ~ezence to gather TnSormatSon on the economlc efrects Or the phyeraomenon hIore broadly we urge the De- t t t3t the naturat temptation pO

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Srom The lmplementatton Or the desire tor

more cornpetitron this proposal has a de- cisTve defense: economsc rezulation poses rnore economlc than leoal problems and an economut knows more aDout ecoriomicS tban a non-economist The econom c trtvtadty and trrelevanre Of much acttvgty or the regula- tory commJsslons ss patent and inexcusable. 13-gelY 0t t Or p

~~lng Or mirkets he competitive func role Of competlUon in their respective ~Ve recommend new legislatlon to ln- 3 To revive and strengthen pubUc support b the monetary penaitles at present tor the pollcy Or counpetitton and to estabil3h hxlr the bona f des Or the AdJnin:st~at.on as •ha

decade or t vo et most a comnd3sion wlt tlon should explore methods O! getttng more rne?rdn2rUl and ewecttvo r^vTews tv3n we l ow gec sVe do not wnok w~:etuer ;. e

10 We ur~e a nev pollcy rOr antstru3t de- protectcr of both con3u.ner a: d bus nes-r-?n re~a Thc Dep3rtment ssou d not seek the An executlve order or a r-alor presidersdal nrry Or regulatory decrees: ciecrees that eu- nddress would be an approprlate vehlele for vZsage a continutng reXatlonship wlth the this declaratTon Whether or not n rOrmnl Cerendant Save X excepttonnX cJrcum- Btatement commendY ltself we belleve that st sceJ~ all decrees should contnin a neer the comct pollcy i5 one Of persistent and re-

r:eilood**a** 3n erdar~:c ih N .u o: the B ;dxe settion a nationai conlrr.s.:o l the tLe;L:<lLf Or academic review eornrrulsees or a speclal advtser to tt e Prezsident The best method however Ts surely not **InIrequent part sna** Congressional revlevo The prtsent rule Or the

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Siatory bod'es Is undirected unmeasured.

- unevaluated

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trust division

A The tJtillratlon Or **Economic Knowledge**

lVe wIntlelpate little opposition to the prop_ as tion tl at the Antitrust Division make rldl arid use Or economists and their spec al sic;!ls Tnese skUls are often necessary to understand the efrects Or economic practices Inn eRaruple 13 market-shartng In flxed proportions) to assess the economic importance of individual cases and to assist in devisinrr remedies that will not shatter on eeonorr.!c realities We endorse the policy Or having a highly professional economist servIl:S as r dviser to the head of the Division and a strong permanent stab Or economists

The problem is not the goal or an economically sophisticated antitrust policy but Its lTnplementatlon A division charged v.-lth the enforcement of 3 statute must of course be directed and largely staffed by lav.-yers legless there are substantial IncenUves to the staff to uulize economics— whether by central direction or vrlsuy more pov~-erfully by demonstrated assistance In vinnino cases— the non-lavvyer will often be viewed by the lawyers as a mysteriously necesEary obstacle to smooth operations. The Assistant Attorney General will have succeeded ln making a truly major contribution to nr. titrust policy If he **establishes the relevance Or** economic tcIlowledB'

B The Development Or **Criteria for Classes**
of Cases (GuldelLnes)

When the Antitrust Dlvtsson to conSronted by a large number of similar cases

art it must now be scanning many hundreds c rgers each year—It wlil Inevitably have

•r~ to guide the nx merous men who pass

l individual Cases The question Is not

;hether **to have criteria or guidelines but** how to arrive at them

We believe rOr reasons **we discuss belovt that the present merger gxildellnes are ques—** tunable In Important resp cts **Efere we con** sider the **procedures for formulating guJdelInes**

^ set or rules for a clan or cases wUI be desirable only if two conditions are ruldlled:

I **There are n large number of uncontroverSlal easily Identlded cases** rr there are not the rules **give little help to either buslness or the Division**

2. Controversial or objectionable eases ean not be repackaged to avoid scrutiny

The way to **determine whether mergers for** example meet these conditions is to examine a large number Or them in the lsohe of legal **and economic knowledge The Antl** trust Division **will perform this task vastly better** if it uses the large amount Or professional expertise available outside the Dtvlslon We therefore reemnmend that the Dlvision have seml-pubilc conferences to explore difficult areas Or policy inviting legal and economic experts to propose or discuss **guidelines Some members Or** the task force would prefer to have rormal notice and put)llc hearings in establishing rules If rules are adopted a periodic **review of them by the** same procedure will be a useful method of conferring ftexibillty upon them A specific appilcatlon of this n.ethod Is proposed **below** for mergers

C The Role of the Federal Trade Commission

No review Of antitrust policy would be compl~-^ that Ignored the Federal Trade Comrr an which is charged with enforcement long other statutes the Clayton Act

-ah ch Scetion 2 the Robinson-Patman nendrr ent and Section 7 prohibiting mergers and ncqlllsTttons that may substantially lessen cornpetitlon are particularly Important and the Federal Trade comrniSslon Act whose operative provision Section S forbids

unfair or deceptive acts or practices a term that has been interpreted to embrace even

more than the cast ares of nntScompetitive behavior proscribed by the Shertndn Clayton F.cts as well as consTumer fraud and some immoral sales methods such as lotteries As ls evident the Commission s jurisdlcffon Largely overlaps that of the Antitrust; Dlvlslon

In Its antitrust work the FTC has concentrated on price discrlminstlon on practices believed to oppress or coerce small dealers

and on mervers especially vertical and conglomerate and Dually in industries which by long-estabilshed understanding with the Antitrust Division have been assigned as the Commission s sphere of primary competence

llnbappily lithe that the commission undertakes in the antitrust area can be defended in terms of the ob,ecuve of malnt31nlils and strengthening a compeUtive economv consider price discrimination There Is now ad Impressive body of literature argulng the improbability that a profit-martml23ng seller. even one with monopoly power would or could use below cost seUing to monopolize additional ma-sets Yet not only has the Commis;slon conuDued to bring predatory price discrimination cases but The alleged danger of predatory pricing remains n principal prop of Its vertical and conglomerate satimerger cases As for secondary line

disc-imlDation (that Is giving discounts to some dealers or distributors but not to others who compete with them) the Commission has never attempted to differenUate those cases (if there are any) In which a monopolistic buyer is able to extract unjusUfied price concessions from his suppliers to the prejudlce of his compeUtors from those In which diSrtmtnatlon us employed by oligopollstic sellers who wish to cut prices secreuy—and should be encouraged to do so—and those n which price differences (which the Comma slon tends to equate erroneously with discriminotio7u\ are not in fact d scrirninatory Over The last eight years the Commisston often **under the prnddu3g of reviewing** courts has puued some of the sting from enforcement of the RohinsoD-patman against secondary-llne discrimination. It has de**manded somewhat stronger proof of competAtive Injury: the meeting-competitlon and cost-justificatlon defenses have been reD** dered meanlagful: and The provislonst of the Act relatlDg to adveruslDg allowances and brokerage payrr ents are in general no **longer wed to compel sell0 to compensate for services that are Dot** ecoDomically beneDcial to the seller (SUC 3 as adveruslag by tiny **retail outlets or brokerage WheD a broker 5** services can be dispensed with) . **A1U ough the** retreat from per se **rules against secondary**llne discrlminatloD has led to a general dimtnution Or enforcement. activity by the FTC (private suits continue of course and **are dowsed later) the ComrSsslon stud brings** many cases that Impair rather than promote

compeutloD and erficlenev For example the Commission has In recent years waged vigor**ow war against 4jfunctlonal discounts which** are discounts offered to middlemen who perforrn certain distributive functions (such as warehousing) that other middlemen **who are not given tlae discounts do not perform. Moreover as ezrplatned later In this Report** we can conceive Or no case Or dl~crimtnation In which the Sherman Act would not provide an adequate remedy—adequate that ls. to protect the interest In maintaining an errectively competitive economy—and so we view Robinson-Patman enforcement as In

- herently likely to be pushed beyond proper

S llmltO.

The efforts of the Commission to protect small dealers from allegedly unfair are coercive business practices constitute a dark

• chapter in the Cornmisslon s history NIuch Or this enforcement activity docs not eventuate in formal proceedings What happens is that a dealer who Is terminated for whatever reason is likely to complain to the Commbsion. knowing that the relevant Commission staff Is well disposed ton ard small busl

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ness The staff uses he threat of an ETr proceeding to get the suppiler to reir~state The dealer and Or threats fall—usually thus succeed the FTC may 51e a complamt cnarg

Ing the suppler v lth hexing cut Ott the dealer because he was a price cutter or or some other nef3riotos reason Our impression In sum is that the Co~t3ls5ion espe<331!y at the iriforrral level his evolved an e recall e 13S Go dealer pro ecUon that Is unrelated and often contrary to the obJectives or the antitrust la vs. The Commission Is supported In this endeavor by the Supreme Court S rulings that section S or the FTC Act empov-ers the Comrr.ission

to suppress practices ti at *resemble* antitrust Tlola~:ons

With rest ect to the Commission s enforce_ rr.en; policy in the merger held it is III-.r*:naZing to compare the recent statemen s of Commission merarer policy ;vith the Der)2r-_ ment of Justice Merger Guidelines discussed elsewhere in this iteport The Comxtisslon is even rrore severe Unlike the Department It attaches a good deal of significance to tne; absolute size (Independent Our market share} of merging firr.^s: to the alleged rower that large fi.-ms have over small: and to the dangers of price squeezes

It vvill. for er ample challenge vtrttlailF Qtg acquisition by a cement producer of a readymix concrete company v=-tuaUy any sub~atantial acquisition by a large food chain

etc Tlte Merger Guidelines are models of restraint compared to those promulgated bv the Commission v~-hich are as hard on ecof nomic theory as on mergers

We conclude that substantial retrenchment by the Commission In the antitrust field Is highlv desirable In addition to retrench-ment (at least by stopping the increase of the Commission s appropriations) Its resources devoted to regulating competiuo~w might be redeployed The two principsi pos-sibiliues are (l y consumer protection. and (21 economic studies utilizing the rely bmad fact-gathering powers vested in the Corr~mission by its enabling legislation Unh3ppily either route could be followed tn a way that endangered competition An In-compeLent economic study Can be Induentialon policy makers—witness the infLuenual 194S FTC study **which erroneously suggested** that concentration was on the rise in America can industry Overiealow enforcement of consumer-protecUon legislation Can also hxvc errant results. We note that the application of consumer-protecUon law is almost alw3ysinvokeE not by consumers but by competi**tors whose Interest lies in protecting their** maritet Dot In giViDS Consumers full inf3r-mation: and that elaborate requirements re-laUng to packaging. safety eta can curtail consumer choice limit compeUtion. reduce the consumer s incentive to exercise carc and—what Is most senous—impose subst33 Unit Costs on society

The Federal Trade Commisslon tor~ent y needs a basic reform but this need Wtil be dlmicult to fulfill Quite apart from the f3ctthat there are no vacancies **on the Com** mission any dramatic or far-reaching PrffldenUally-lnspired reforms wonid run up **against the lone tradition of regarding the** independent agencies In general—and tbeFTC In particular—as arms of the Congress S That has at times meant an office of economic opportunity for Congressmen more Important it mealus that a Wrong shovbirg of Presidential interest In the operations of the Commission v lil **not be welcome on the**

Perhaps the best short-run path of Improre.— nt runs through the Omces of the AtEc:~e Gelzernl !^ _< A-. 5:R.~t l=: :=

Genera! irl charm or Ar-~tr.lsr S rice juHswic ions of ti.e Com nigsion and c! :hr .t.ntitrust Division are so largely over upping no one could object to the establishment betv~een the Commission and the Dlrtr-ion of close liaison at the highest levels rndeed~ it is something of a wonder ~thongh explicable in terms of bureaucratic rivalrr) that such Ad

-e, .15 beea wholly llekilzg heretofore

O''Q coordination betiveen the agencies is :. cerv how levers and consists largely of ha~vllnu over who shall sue In cases where both agencies are interested. E3pecla!1y at the b^~lnll:ng Or a new Adm:nlstr2:!0n, it should be r lute re3sibles 15 well as wholly appropn_ ale. 'or the Attorney General and Assistant At!o ney C-cr.er31 to establish n close cooper.€i:e rell''onsp;p VvIth the Cha:rrnan of the C)rllrnlsslon. We thin!; it likely that the comr.i.E:o^. will pay sortie heed to the Depart_ rr.en;',. vie.vs, if forcertllly expressed. on anti or: so and tra:le-regailation policy.

111. Recorornend2d cI:rXnges in antitrust policies

Ye gene. al poileles Of the .\ntlt:rxst DIVI

stotl ore profoundly good. and we propose no Navajo- change In its emphasis or dtrecclons OS ojslisg. In fact, the main thrust of the fol

iowlnt recomvnendatlons Is that certain reeent eevelOprnentS Or policy or doctrine should not be allowed to divert the agency from Its basic task of striking down consplracles and mergers in restraint of trade.

A. Price F'lxlng

The prlce-fillng cases Of the AnUtrust Dlvl

5:0t1 are it. bread and butter, and understandably its staff would prefer more cake. TV. e.mph.asLwe the great economic and social Irr.portanec of continued. vigilant, aggressive seeklng-out and convletlon of conventional prtce-fixers. Every victory weakens the efficler C7 Or tsr.detected coUuslon in that area Or economic life. eve strongly recommend the brhtgln^ of a series of strategic cases against regional contpiracles, vihlch v e believe to be numerous and economically important.

tB. Concentration and OllF50poly

O; oly—the industry composed of a

t. arr.ber of Independent enterprd5e~

sub'edly presents the most diffICUIt prob

h-.ns In a policy for compeUtlon. The dlf3CUI-vles arise because or a combination of three rtrcunr.sta3ces. The first Is factual: there are many important industries In our economy whose structure Is oll,tropollstlc—how laree a nunnber depends upon what a "so number Or firtns" means. The second is interpretive: the econornlsts have not succeeded on Sully IdentlSylng the characterlstles Or an industry vW h!ch determine whether It vtUl behave com-

! pe:ltlvely or mODopolL5ttcaUy. The third ts the matter Or actfon: LS firms In an ollgopUs-tlC Industry are convicted of coUus5ve behav-lor. must one press For a remedy so raddcal .'15 dissolution In order to stop tutute repeff-tin.n5 or the operose? (And should the stand-I ards of permissible concentration he whoUy I dl:>rent for pending mergers than for estab-lL5hed enterprises?)
I The clrcurnstances which dettzmlne wheth-j er or not the Srrr.s In an ollgopollstlc indus-t try ~v:U usually behave more or lem com-pexltlveV (seeklng by Indenendent actions to L>proee ther:r Indlvlduai pronto at the cast of r!va:ss prorlts, With the eventual gen-kr~.l r.~cslon Of unusual protts) are party

1. The easier (quicker and cheaper) new orr_s can enter the Industry, the smaller and P cre short lived vnU be the monopolistic retrlc'dons.

a. Rae more elastic the demand for the

,,.-d :c- is the nllgopoli5tlc Industry the less

-h.^ :^..zba trn n restrletlons or otltput below he ^5.—.~etl::ve level. and hence the less the

::._::cerr.e3 s to act collusively. Th!s In turn uru.a:ly depends upon what alternutttte prod-_c~s the buyers rosy turn to.

3 e ;.~r.,er the errectove number of frrrs S the prs5abillty of contusive be-r—t:::.:31 3 increases In e-Dense (In . ..' rat rrnb.z's L-v cr detection) as num

s:.8* . ::._:r.14e. H.9 vever, a giver number of

::rrr.s as r ore ;.3ely C49 result In collusion he rr.cre cuneer.*rated to production In the

hor.es or a So n.~fl. IS we correct for this ar.d thee the e€eC':re number of rivals to be

the number of rivals of equal size which svottid produce the same competitive situa-tlon as the firms (not or cqu31 size) actually In the Industry the number may be very roughly estl nated at twice the num-**ber there** wolfid be It all firms were as large as the largest In the industry That Is if the largest firm has l j of the lndustry s output and the remaining firrrs rail rfr In size regularly the effective num-ber or firms Is or the order of magnitude or 10 By this ts meant that the concentration ln the Industry Is equivalent to what would exist if there were 10 firms or equal size There are other lnduences which probably but less certainly affect the probability of co npeutive behavior One of these Is the size of buyers larger buvers rOr a variety of reasons including possibility or backward Integration make for more competitive prices.

Numerous statistical studies have been rude of the relationship between concentra-tlon and rates or return on Investment and these studies generally yield positive but loose relat onships: concentration Is not n major determinant or dif erences among In-dusthes In profitabillty although -it may sometimes be a signlficant factor It appears also to be true that somewhere between

.lrar7a:et De,'in:tion. The delineation of a relevant market within v~-hich to apsr3:3e the laArulness of a merger Is crucial for if the market ls drawn narrowly enough v!r-tually any merger can be made to seetn monopolistic ln its enectsz Unrortunatelyp as they are presently d arted the Guidelines seem to Invite a substantial degree of rnar-Net gerrymandering especially In delineating regional Or local n.arkets The Guldeiine test or whether a product Is sold In less than n national remarket is loose Any group of com-peting sellers In the industry ls a relevant market unless the defendant can show that tnere is no economic barrier prcrentino other sellers from selling in the particular area Such a barrier nzay consist Ot fre ^ht costs customer Inconvenience. custo ner preference for the brands presen ly sold ill the area or the absence of good distribution facilities

This Is a misleading test An Industry may be r:ddled with the kind or bamers cited in the Guidelines and yet still nor contain any meaningful local markets An example vsill Illustrate Assume that the price or steel b^rs Is S2 in Allnnesota and S160 in Chicago and the cost or shipping the bars from Chl-cago to i Ilnnesora Is 41 cents On these facts. It Is plain that the Allnr.esota sellers could

five and ten egectite rivals (l e largest tinn Vfith a share of as to as) Fre usually enough to insure subs antlal elimination or the in- duence of concentration upon profitabfilty. Concern with ongopoly has led to orooosal5 to use the antitrust laws perhaps amended) to deconcentrate highly oligopollstic Tndus- t-les by dissolving their leading firms We cannot endorse these proposals on the basis Gil existing knowledge As indicated the core relauon between concentration and rJrofita- billty is weak and many factors besides the number of firnls in a market appear to be **relevant to the competitiveness or their be-** hnvior While n Pat condemnation or oligor>- oly thaw seems to us unwise we commerid to the Antitrust Division n policy of strict and rwremittine scrutiny ot the hi°hly oll- gopollsUc industrl~ If In any or these indus- tries pricing Is found after careful invests gatlon to be substantially noncompetitive the Division w211 have a clear basis for proceeding against the lending firms under Section 1 Collusion that can be ncontro- vertibly Inferred from behavior (such as per- sistent stable price discrimination in the economists senRe) should not bring Im- munity from the Sherman Act and we are confident that structural remedies wlU be sanctioned by the courts In cases where dun to number of firrns and the other conditions Or the market lesser remEdles are likely to be anavalilng In assessing the gain from such structural remedies account should be taken of any reduction Sn eXclency which the remedy entails.

n share

The concern with oUgopoly is also quits visible to the Department or Justices most **recent innovation the Merger Guidelines to** which we now turns

less con-

C Mergers and the Guidelines

P t e ger Guidelines impose **strlnrent restrictions upon the relative eves** permitted to companies which desire to merge The impact of these percentages la reinforced by 3 definitlon of the market (wlthin which shares of companies are reck- oned? so 1003e and unprofesslon31 as to be pOSlnvely embarrassing We propose to rev verse this emphasis: not to teU companies which mergers are rorbiddenf but which mergers are permitted We are persuaded that this orientation better serves the interests of ooth business and the An<str. st Division Before v-e torn to the r2.etbod~~ by vhich more appropriate Guldennes for merzels are achuevable we shall brlefiy discuss the press **ent Guidelines and Indlonte our reasons tOr** dl3satis2act20n with them in their present orientation

but of a

not raise their price significantly without im- mediately losing their business to the Chi- cago sellers blinnesota Is thus not a mean- Ingful local market even though at the exist- lng price freight costs do impose an e festive ecGnom c barrier against the blinneeota sellers Lforeover additional firor vvill es- tablish production or distribution facilities In Minnesota 1! It becomes profiTable to do so The same analysis can be estend3ed to the other barriers discussed in the Guidelines In criticizing the test of economic bar- ner Rae do not mean o deny the diniculty of **devising rules of market definition thaw veal** be at the same time simple and sensible This la most probably not an ares in which Gulde- lines provide n useful enforcement tool if there are to be Guidelines though they should at least not misstate the applicable economic theory It v.-ould accordingly, be a decided improvement If the Guidelines were revised (at a minimum) to explain that n distant seUer of n product must be Included in the local market if a modest pr.ce Increase in the local area—a price Increase unrelated to his costs—would bring him In forthwith *HorzqorLtal* .lferners. The provisions of the Guidelines governing horizontal mergers— that is mergers between direct comDett~ are extrnordinar"y strict fir a market is highly concentrated (defined as where the 4 largest firms account for at least 73 per- cent or the sales in the market) then a merger between two firms each of vhich has a 4 percent market share Sell be chal- Ienged: and if the acquiring Sun has as large as 1S percent then the acquired am need have only n 1 percent share rcr **the merger to be challenged Different levels** of permissible size are stated for centrated Indllstrles and so2ne account Is

We referee with the baste premise of the **horTzontal-merger** provisions of the Guide- fines that market-share percentages are the appropriate touchstone of Illeoallty for sllch mergers We Noted favor levels or concen- tratloll modesty lower than those now used (e2tlt dlErerently structured) with the pur- poses of (1) allowing nil mergers below the Guldellres levels need (2) not prohibiting hut reviewing those above the critical level with an Implied probability that the mere n erepcseKi rr.erger lles above the level or ?.t1- tomatic nonroval. the less the probabiliTv of tr., acceptance We niscxlss below the procr- pure that should be fo.lov-ed better to uti- laze exsting knowledge In fashioning the **Guidelines**

Serf *sect* **Mergers A merger that Involves** the nequlsitlon not or n competAtor

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lafi.;6

suer or a supplier is a vertical merger,
2::. tale DreSent Guldelines conrni.> strict

ble Or entry and on the record lrkely to ..~._ _...._ enter, their Independence should be

pre

• oslrions Smiting stlch mergers For eX-served Tlle identity of potential entrants
unple. I' the stlpplylng firm in the merger
has a 10 percent share of 1+; market and the
purchaslng f rm has 6 percent of the pure
chrses la thee market, the merger V.lU be
challelw-ed.
Our 'ask force 13 or one nllnd on the
undeslrabditv of an extensive and vigorous
pollcy against vertical mergers: vertical In- Air to Y In enumerable respects.
tegrct:on has not been shown to be pre- r Y4e seriously doubt that the Antitrust
Eltmptlvely noncompetitive end the Guide- | Dlvlslon sllolde embark upon an active pro-
Unes err In So treaung It. Within this area | gram of challenging conglomerate enter-
of egreerr.ent there are two posiUons around I proses on the basis Of nebulous fears about
V.-hlCh the task force members cluster.
The one position asserts that many, and
perhaps muse vertical mergers v;hlch do not
leave direct hor'zoll1 al effects are Innocuous
but that In certain situations a vertleni
merger win have antl-compeltltlve effects.
These slDuatlors include: Increases in the
caplt61 or o~her requirements for an Inte-
grated f:m may reduce the possibility of
new entry or price dlscrlmlnatlon may be | the fears entertained by critics Of the con-
lmple.ner;ted m hen n monopolist integrates I glomerate enterprises should be allayed. Vig-
Jorward or bqckvs3rd. A showing that an an- 1 orous action on the basis of our present
ticorr.pet.tive effect of these sorts exists Is Knowledge Is not defensible.
essenUnl before n vertlenl merger Is chal-
enged.
The other position denies that n vertical
merger has the potentiality for economic
harm In the absence of horizontal effects
To some of our members It is wholly im
plausible that vertical Integration places
enterlng fir ns at a disadvantage A seller
who falls to minimize his Input and dtstr~-
button costs will be undersold by his corm
petltors: he cannot afford to sell to or buy
from an a^.llate If there are more emcient
lnatlve means Of supply and distribution
Cable to his competitors (and to him)
iMen If the sewer Us i monopollat, the desire
to maximize profits win lend him to see.
the most effcient methods Of supo'y and disc
trlbuYon, and there Will be ample OppOr_
tunitles for non-affilinted suppliers and out-
lets to compete for his patronage Except In
the case of the monopolist Who cannot dies
crlminate In price effectively without control
of his outlets vertical tnteDrntion will be
Inittnted and maintained only it and so long
no It is justified by the cost savings it per-
mits It Is not n method Of extending monop_
oly power

The two posittons coalesce on one policy

conclusion: vertical mergers- should not he
forbidden no n class
The C071gZ0merrLte Merger The large con-
glomerate enterprise with an aggressive nc-
qulsition policy has only recently become
Erominent and n2wsworth - - *
Antitrust law has seemed to some n con-
venXent weapon with which to attack large
conglomerate mergers If one interprets
fellminatlon of potential competition reck
iprocity end foreclosure as threats to
competition one can always bring and U6U-
ally win a case against the merger of two
large con.panles however diverse their active
ttles nnay be These are often makewelghts
The economic threat to competition from
reeiprocity (reciprocal buying arrangements)
Is either small or nonexistent monopoly
power in one commodity is not effectively
exploited by manipulating the price of an
unrelated commodity The argument ad-
vanced against the simplistic treatment of
vertical nuergers—essentially that one can-
not use the same monopoly power twice—
mso challenges the fears of reciprocity
Potential competition on the Contrary
on be a decisive limitation on the exercise
of rlsar3e: poser and a merger which elinu-
notes an: n.ninent new corr bettor Is an 1-
comperitive L entry Into a rield is relatively
easy hovsever there are a vast number of
potently entrants and the elimination of
one or a few ila6 no effect. If entry is dif-
wdcllit and only a select few firms are caps

should not be established by Introspection.
It the producer of X is truly n lively en-
trant Into the manuSachlre of It, the llke-
llhood Will have been revealed and con-
firmed by entrance Into Y of other pro-
ducers Of X (here or abroad), or by the
entrance of the f rm Into markets very sL£-

size and economic power. These fears should
be either confirmed or dissipated and an
important contribution vaould be made to
this resolution by an early conference on the
subject 1. there Is a genuine securities mar-
ket problem. probably new legislation Is nec-
essary. It there is n real political threat In
giant mergers, then the critical dimension
should be estimated. If there Is no threat,

The central task Of the Antitrust Dlvlslon
s to preserve competition in the American
economy. ,Thls Is n splendid and challenging
task and deserves and requires the fuU re-
sources of the Dlvlsfon. •Ye shall he much
the lesers f we compromise the discharge
of this central task by burdening the DIV1-
slon also ;.-ith tasks such as the combatting
of organized crime or the achievement of
general political goals.
The Use of ConJere7xces. Xve have proposed
that conferences be used to revise the Gulde-
lines and to identity the problems, If any,
created by the large conglomerate enter-
prose. The conference Will allow the Antl-
trust Division to utilize the experUse and
Wide factual knowledge of economists, law-
yers, securities analysts, and other groups
without the laborious machinery of formal
hearings Ve strongly recommend that be-
fore such Conferences are held leading stu-
dents and exponents of particular po61tlons
be asked to prepare position statements
which present explicit and specific theories
and evidence_ Then the conference members
will have specific questions to address **and**
specific views to combat or support

D Antitrust Sanctton6

The cutting edge of law is **not the abstract**
statement of n legal duty but the sanction
provided for its nonperformance and that is
true Or the antitrust laws as of other systems
of legal obligation It is essential that those
laws clearly and accurately define and forbid
the practices that impair compeUtion and
efficiency but It is equally essential that the
sanction for violation be effective in com-
pelling compliance and with a minimurn of
undesirable side effects
In testing the antitrust sanctions by thir.
standard It wail be helpful to distinguish
two purposes of sanctions that of preventing
(or if It has already occurred undoing)
a specific violation and that of deterring
violnUons that might not always be detected.
Sanctions of the first tvpe—remedial sanc-
ttons—suffice where there is no problem of
detection (e > in the case of an illegal
merger) But take the case of price-dxing
Price-ftxing conspiracies can be and one
suspects are successfully concealed A sanc-
tlon that merely prevented the continuation
of the conspiracy such as an injunction or
one that merely restored the 10s3es of the
Injured consumers stich as ordinary damages
could In these circumstances provably He
Insueic:ent~ For In deciding whether to corn-
ply with the law a seller xnolild discount t 2
very modest (or nealiDIblel Injure to him if
his participation in a pnce-ftxinD consDiracy
was detected and he was requred to stop
and to pay actual damages by the consider-

(29)

able probability that he Could escaue detectlon altogether: and he could conclude that he havi little to lose by parilcipa-in¢ That Is why ptinishment by fine or Inlprisonment Is an appropriate sanction for lI:egal price-fi:~tng It provides deterrence as the purely remedial sanction does not

But the deterrent sanction in antitrust Is weak A price fixer can be imprl30ned and fined but Drison terms are al nost never Imposed In prce-fixing cases and when they are thee are nominal In length and the maximum fine ot SSO 000 veal deter only a very small corporatlon The Potsibillty of a private treble-damage suit doubtless pro x Ides ad iitional deterrent effect. but there are serious li notations: judges are reluctant to authorize damage awards that seriously hurt a company; damages are d.ricult to prove in price-

fixin3 eases; and most Important the Injury caused by a price-fi:dag conspiracy is often so widely diffused (for example among rnililons or consumers) tnat no one has an incentive to bring a suit The government itself can sue for damages only when It v as the victim of the unlawful conspiracy.

If concealable offenses under the antitrust lav 3 are to be effectively deterred either **the** resources devoted to the detection of such offenses must be vastly augmented—and there are obvious limitations to this routed or the Ones must be increased to a point where they will give even the larve cordOratloa considerable pause before participat ng in (or condoning its officers individual particiDaUOn in) an Illegal consdiracy Precedent for reach more severe sanctions can be found abroad The European Economic c031murityt for exan ple may impose oenal:les of us to Sl OOO OOO or In the case of willful viola; only up to 10 percent of annual sales We have not attempted to determine the appropriate level of antitrust Ones but we urge the Department of Justice to- accord high priority in its legislative Drogram to the upward revision of these penalties

T Ye creation of a more realistic scheme of antitrust Zones would en able a lon D-overdue reexamination of the punitive aspects of the private antitrust suit It is anomalous that private pisintiffs who have done nothin_ to uncover or prove an antitrust violation (the usual case) should be permitted to Claire

treble damages on the basis of a Judgment **obtained by the .~nti-rust Division In such circumstances the excess over actual dan~**ages and costs represents a **pure windfall to** the private plaintiff Today one can defend this arrangement on the ground that it furnishes an element of added deterrence which is necessary in light of the Inadequacy of the existing criminal ones But that ground would he removed if the finer. were revised to a more appropriate level and a more rational scheme of deterrence would become feasible We are also deeply concerned that

private treble damage suits provide undesirable opoortuniues for harassment and the furtherance of a variety of anticompetitiveD practices

With regard to **remedial sanctions. the prtacipal question involves the undesirable** side effects that frequently accompany B poorly formulated decree Ideally—and it is an attainable ideal—an antitrust decree should be a one shot affair: d:SSolvlug the monopoly, or divesting The acquired assets or terminating the basing-potnt system etc The antitrust laws were never intended to be a system of continuing regulation Antitrust policy has as Its basic principle the preservatlon of a corr.petitive environment within v-hleh individual enterprises are free fone co:l.hl l:rg ,Elpnr:'don. I: e-. ? ;~~

In en ect Let lIs return To e2-e court (r e;:c tne power to the AntlLrw:it Dive ion. o - 1jrLdge the propriety oil arlotis ueh:L ;. . ;i the defendant for years to corn.e one cm l e sure that the suit has failed in its purpose Of restoring corrpeUtsve conditions Nor 13

[redacted]

D wrrr,zrent estopped to fisnctlon as n gula'ory agency and le ls not likely to escape tna' conomon p'tfa:! Or economic reStilitlon, the suppression of compeUtlon. Nenettlelesc. such decrees are frequently entered, espvetaliy by consent Or the parties In cases v here the Departrneret (or the Federal Trade C>rnm.isslon, to which these remarks apply with equip I! not greater, foree) Is u.ns:lre of its llt--atlon prospects and wishes to ialv3go something from the Investment Or en'orcennent resources.

Por the future, we urge that the Department adopt n arm poUcy of not proposing or accep:!r,, decrees that esstisage a contnulDg. real:! >tory reiadonsh!p with the defendant. .t c-rrelltlve policy that we suggest is that e: ery decree contain a definite—and near—termination date, orsiAn3rllv no more than 10 years Srom the ea e the decree Is en'ersvt. S:lell rs principle would comDel the Department to devise decrees that restore competition rather than establish regulstlon. rss veil as pursue that decrees do not remain In effect long aster the relevant industrial conditions have changed Much as wish the 1920 decree against the meat pac}ters3.

Little 13 known or the cltent to which a large n.lrnber of past derrres are still onerat!ve, and !; orre3ltve, of any real value in protecting coShpetlition, B'r recommend. therefore, some such procedure as this In de311Jlg ,vith outstanding decrees:

1. Tree past decrees Still running should be eomp:led, 2rld the tvpes and duration Or prescribed conduct summrs~lzed.

2. The current relevance Or the decrees, or st least those running against large industrles, should be examinedL presumably by the economics section Or the Antitrust

•tvislon

3. The older (say 25 yea s and over) and obsolete younger decrees should be vacated. E. Recornstnended Changes In Antitrust

Statures

Sever_l legislative reform could improve sub,tan;!ally the functioning of the antitrust laws. eve have recommended above a subst2ntlil Increase In the maximum level Or fines. In addition, we recommend immediate repeal Or the Expedleino ~ The low quality Or many Supreme Court aantit ust opinions can be traced In no small measure to the fact that direct appeal frequently requires the Supreme Court to pans an an extensive record without the henedt Or the winnowing and focusing process involved in an intermediate appeal. The Supreme Court inset has noted that direct appeal is unsatisfactory. Ii repeal is politically impossible, then an amendment that would dr. zstlcaily limit the number Or direct appeals would be desirable.

The NVebb-Pomerene Act Should also be repeated. The creation of cartels In foreign commerce 15 antithetical to the underlying theory of the Sherman ACt~ The dancer that exempted cooperation between competitors In the export field will lead to Illegal cooperatlon at home is too great to be viewed as merely a potential abuse. Nothing in USp domestic compeUtlon poZcy or foreign economic policy warrants the retention Or this outmoded approach ta inter.nation41 cotnpeution.

On the agenda for long-tern letNslatlve reform must be the Robinson-Patrnan ACt. Tlhe Ac' leads to rigidity in distribution patterns and to uniform ir~e.xibie pricing In insl;lstrtes Wlth few sellers, price reductions are more likely to he rode if they can be made covertly. Such limited reductions often least over time to generous lowver prices Thus

a p.ob!bitlon against price discrimln3tion r.v..y preclude the 'land r.' confipetlt'on that 13 rnost liSselv to lead to loner tr:es in

•.7.grDpoitstic Industries. We view the Federal 'grade Cc~.rnSslon's tendency in recent times to re!a:r the enforcement or the Act as a desirable but, so lone as private treble damage actions are available, art inadequate reform.

In rcr~trrlng the P.ob!nDon-P3tman Art, too kinds Or amendment are desirable. I;>.rst. the general prohibxtton against price discrmin3tion In Section 2(1) should be made more supple by broadening the meetlng competition and cost stisttecatlon defenses so as to make them nore readily avnUable for sellers whose price differentials do not stem from a predation purpose and do not IrJtire comreetitSon In the r.a2rket niace (as opposed to disadlantog:ng Individu31 arms Second the more absolutist brokerage payments and services prohibitions or stlhsectlons (c) id) and (e\ should be repealed vhile making clear that the standards of amend-d subsection (a) recta n apdl.cable to practices that x70uld ? cv:o~:s y have been treated under those repeated S Ibsections Ens Task: Erie recognizes the rsiinical support that the Robinson-P3Lr Mu Act retains in some quarters and the danger that an atten pt to amend the Act might give p3rticuiar interests an oppor:unity to add even more restrictive provtsions As 3 consequence some of our members view a2^.endrrent of the Act as a lono-term albeit important reform others wish to ldave It alone

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2B. WHITE HOUSE "WHIM PAPERS THE ITT ANTITRUST DECISION, JGUEY 8, 1974 1-2

THE WHITE H0~JSE

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the 1TT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution From 2 Subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

--- The President originally acted in the case because he wanWed to avoid a Supreme Court ruling that would permit antitrust suSts to be brought - .against large American companies simply on the basis of their size. He,did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT, cases. He rescinded that instruction two days later. ' - ~'

-- The actual settlement of the ITT case, While avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some $1 billion in annual sales, and its **acquisitions Caere restricted for a period Or 10 years.**

-- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he toot action on the antitrust case. In fact, the President's antitrust actions tools place entirely in April of 1971 -- several lQleeks before the ITT pledge was even made.

I. President's Interest in Anti-Trust Policy

Mr. T!ixon made it clear durinz his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference :iit'r Xree enterprise. One Or e;;r. tXi.<on's major antitrust c_nce:^ns in that campaign Bias the Goxsernrzentts tIeatnle.t oi conSlo.<erat~-) Mergers. Conzlo-erates had become an important ~E_ctor in the American economy durin, tne 1960's, and despise

public fears tha they Were threatening free competition in the marketplaces the administrations o.' those years •-in Mr. ITixon's opinions had not been clear in tileir attitude toward them. In one of his 1968 campaign boo7E.s, Nixon on the Issues, in *Which* he put for>;erd in summary form his conclusn'cils about national and international issues, WIr. Nixon expressed his dissatisfaction with existing conglomerate policies:

'The Department of Justice has recently proposed guidelines for 'conglo.,erates' but the guidelines have not provided any substantial criteria on which businessmen can safely depend. is70reoverv there is the problem of unsettled case law on the question. Iily administration zxill make a real effort, and a successful one, I believe, to clarify this entire 'conglomerate' situation...

To help resolve the issues involved, Ilr. Nixon during his campaign appointed a Task Force on Productivity and Competition, headed by Professor George Stiller of the University of Chicago and including several eminent academicians. The task Force presented its report to the newly inaugurated President on February 18, 1969. The group recognized public fears that conglomerates posed a 'threat of sheer bigness but said these fears were tInebulouss and should not be converted into an aggressive antitrust policy on the basis of knowledge then I available. 'We strongly recommend,: stated the reports :rthat the Department (of Justice) decline to undertake a program of Qaction against conglomerate enterprises..."

A similar view was set forth by many outside the Government. In an article in Fortune in September of 1969, Robert Borl, then a professor Of antitrust law at the Yale Lat~r'School, attacked the policy of **antitrust enforcement against conglomerates that** he thought was emerging at the Justice Department. He noted that unless conglomerates mergers were involved in horizontal price-fixing within an industry, there was no economic foundation for believing that they were anti-competitive. He also noted that 'The campaign against conglomerate mergers is launched in the teeth of the conclusion reached by the task force that President **Nixon himself** appointed to study and report on antitrust policy.'

A second major concern of the President and his advisors was their fear that the ability of U. S. companies to compete in the world market might be threatened by ant ftrust actions against conglo.erates. The United States faced a shrin'riny balance of trade surplus and the President and many of his advisors felt that U. S. multi-national conDanies could play an important role in improving the balance.

The President feared that antitrust action against thDse companies which was based upon something other than a clear restraint of trade Would render them less able to compete 3> with the government-sheltered_;nd snnnmorpf7 snnl-cF~fl^^T~t^~L-~

2C. REMARKS OF HAROlD GESWEF,W, JUNE 26, 1969v ANNUAL MEETING OF ITT
~HAREBOLDGSj 8-9

REMARKS *BY* IvlR. HA;~OLI) S. GEINTEEN, C5IAIRA:IAN AND PRESIDENT INTERNATIONAL TEL2PHONTt AND TELEGRAPH CORPORATIO.^'~-, AT 1969 ANNUAL IslE;ETI;\~G OF ITS STOCKHOLDERS -- SrIERATON-CADILT 4C tIOTEL, DETROIT, 1MICESIGXN ON JlJ.;\rE 26, AT 2 P M.

Ladies and Gentlemen:

On behalf of the Board of Directors and Officers I avant to overcome you to your 49th Annual fleeting.

This is our first meeting to be held in Detroit which reflects our policy to bring ITT to the stockholders throughout the country's economic

and financial centers.

Durina the past 10 years eve have brought our Annual Meeting to Baltimore, San Francisco, New York, Boston, Philadelphia, Cleveland, Los Angeles, A tlanta, I) enver, and today - - Detroit

Today's meeting also has a special historic significance for the Company -- today's meeting is the first official meeting at the bet,innirD of its 5Qth Anniversary-Year.

Turnina back now so Detroit and the State of Michigan, this is an area **that has** increasing significance to ITT. We are represented in the area by 19 of our major divisions which provide a variety of services and more **than 20 product** lines

We are clients of Detroit's great bands and financial institutions and major purchasers of its products. The annual dollar volume of our oven activities in this area alone would total svell over $100 million.

Among the better known of our activities in the Detroit area are:

,hornpson Industries suppliers to the automobile trade

These two reports, the Neal Report requested by President Johnson, and the Stigler Report requested by President Nixon deal with exactly the problem we are speaking of today. Each report represents the formal opinion of a distinguished group of economists and businessrnen.

Each report concludes that there is no legal support for an attack on size as such and that Congress, armed with all of the information, facts, and opinions from hearing all sides, would be required to pass new legislation to do this.

The **Stigler Report (which is the Nixon report) went even further** to state that there was no dangerous concentration of industry in their opinion talweina place and specifically warned against antitrust actions against large diversified companies on the basis of "nebulous fears of size 2nd economic power. "

Furthermore, the Stlgler report warned against anti merger attacks on large companies which would have to be made through "a contrived interpretation of the Clayton Act.

Yet, what I have described to you is precisely what this report warned against and yet what we are literally experiencing not once, but possibly twice and three times.

Needless to sz

:ounsels are eminent, independent experts who say that we are legally correct and since the mergers we have sought have strong significance to our future and were arrived at openly and willingly by both parties on each case and based on the exchanae of sound

[redacted]

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3. Apparcnt1)~, in Junc of *}969,* Mr. £~ neen •iu;~ht to tlrect v:ith

President IXizoon alJout; certai!z ritl.Lnciel ;|~ul cconriL!>:e conccrns of C -

ITT, includi2lg, but llot lirnit.c..l so, tllC ;tT5J il'tiSt s ." .;. Joln~ N.

Mitchell, for one, thought thc Ineeting x.ould be il>.-..5;~ropri.-tte

because of ITT's legal involvc:nlent NVi'6il t!Ers Delpa!:'-nlellt of Justice.

The meeting was not schedule.

3a Letter of June 9, 1969, £ro.n Lor..n At. Berry to the President enclosin,;, one co,,x,s of a June 3,

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Page

3A. I2OREN BEFERY LET17CR JUNE 9 1969

I . M. E^ERRY AND COMPANY ~

P. O. Box 6000 • Dayton, Ohio 4540t

LOREN M. BERRY
Chairman of the Board

June 9, 1969

President Richard EM. Nixon

The White House

WashingtonZ D. C.

Dear President Nixon:

I am sending you herewith copy of a letter containing late information regarding matters of vital importance to our country both at home and abroad.

The letter, dated June 3rd, xvas written by Mr. Harold S. Geneen, President of International Telephone & Telegraph Corporation, to Secretary Maurice H. stans, and sets forth vital information which I believe you would like to have. I note that Mr. Geneen has asked to see_you in the hope that he can give you any further_facts needed. I I sincerely hope you~can~air'range such a meeting at an , early date because-I Se-finttelzrfeeLffiat~lt would be ,a_,txvo Ij Sway street; namely, that you can be of real help to each 18 other, both from a national and an international standpoint. |}

I want to thank you for a wonderful evening at your dinner t party May Z7th. It xvas a real pleasure for me to be there, also to see you looking fine.

Best regards and all good wishes.

LMB/lm

Encl.

(36)

As alas,

_~e

Loren M. Be rry

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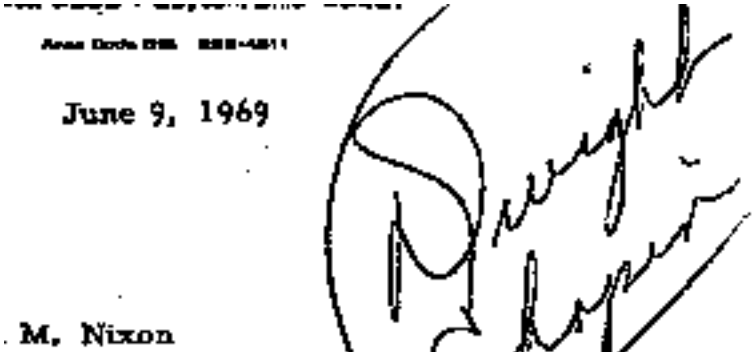


3A. *HAROLD G13NEES LETTER, Jo 3v i 1969*

iNTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

3ZO PARK AVENUE

NEW YoRs,N. Y. 10022

The Honorable
Maurice H. Stans
Secretary of Commerce
lath and Constitution Avenues, N. at.
Washington, D. C. 20230

Dear Maury:

June 3, 1 'R69

From the newspaper reports I can see the immense amount of globecircling coverage you haste been putting into some of the long-standing problems of the Department in an effort to get them cleared up promptly. I think your exanlple bears out what all of us knew you would accomplish in a difficult public assignment.

Because of your own load I hesitate to raise any further problems With you, yet tinning is of such importance that I would appreciate very much your reading the contents of this letter, and then perhaps I can taik to you briefly 011 the phone witnout disturbing your work schedule too much.

I First, to put this in context, I write concerning a problem that involves

I national policy and also deeply involves our company and which, very impor-
tantly, comes under the jurisdiction of your Department.

The United States balance of payments situation is, in my opinion, probably the rr.ost difficult, long-standing problem that the nation faces and it will continue to be potentially the roost dangerous and troublesome one that will be with US into the future as far as we can see.

Essentially, the payments problem is a balance of trade problem that primarily confronts the Departrnent of Commerce for solution. Against this background, let me use our company as an example of the difficulties that any of us ill this activity faces.

First, ITT has consistently brought back cash to the United States -"net of everything" -- for the past 20 years.

The rate at nvhich we are bringing this back has been doubling every

five years.

This vear, 1969, ITT will bring back approximately S200 million ef of evver;rthinc,),

I~.l the Mace vie are nmovin;,, in the next four years vile should lDring home al:~proxilnately $1 billion (again ret or eve.y;t}linC,). Yet there is a IJrolJlem for any 1}-. S. company in "bringing bacls the bacon" in t}:~'s :zzalll:t-~.

Let nle recall my early days with tl e COnlpanf ten years ago to explain. I had been in the company little more than 12 months when Ctlba seized our telephone company in Havana which, at that time, represented about one-quarter of our total earnings. Despite the fact that Bob Murphy, then Undersecretary of State for Political Affairs, assured nle that the U. S. Government would have the company back for ollr shareholders in 90 days, ten years have passed and Castro still runs Cuba and we still do not, of course, have our telephone company back. iNTor has the telephone company been returned that xYZS expropriated in Braz.l (though on that one we received some compensation), and every morning I loo}; for a neadline about what will happen to our Peru Telephone Company, a pawn in the current problem in that country.

lA,hell we lost the Cuban Telephone Company, we lost a great deal of investor confidence at that time. The loss coupled with the fact that 80% of our earnings then came from overseas, although solne 93% of our stockholders were (ard are) U.S. citizens, gave us a tremendous problem. Use decided then and there that it was necessary for us to es,tEblish a broad, firm U. S. base in order to continue to carry on foreign trade. This we have done, complying with all of the laws of the U.S., including those of Antitrust.

In short, Islaury, in order for a U. S. company such as ours to be a "bacon winner" for you abroad and'to be able to continue to contribute to the balance of payments account, we have . •und it is absolutely essential to our stockholders' confidence and support, to establish credit and raise money alvroad-- to do all of the necessary things with which you are so familiar -- to have a large, strong domestic base. We put the require-ment as approximately two-tnirds domestic to one-third overseas earnings.

I think our record on balance of payments testifies to how well this system works, including the fact that any acquisitions we have made, we have taken overseas promptly to enhance both our positions abroad and to maintain our "bread winning" role.

Now, as against this problem, eve are running into a probleln
with the Antitrust llix ision of t we Justice Dcpal-tr:nent -~vhic h is suino us on
mergers we ctnl-.ounced last year, and ure are advised by counsel that this
is btaino *dons* tan hifgilly speculative and improper grounds. As a nlatter
of fact, Mr. NdcLaren now card dly admits to us that he is really bringill<,
suit because eve are a "conglorr.erate" 2nd because we etre non a "bib
company" and that he nvill continue to do so using, any pretest he can
dream us. This policy of A4r.. AficLaren's is all the more difficult to
ur.c'erstand because we have and are proceeding in conzpl,allce w th the
antitrust lavvs of the land as they have been interpreted by the legal
profession and the courts for a great number of years, and in compliance
with the guidelines laid down by the Justice Department. XVe are still
assured, as I write, by our antitrust attorneys that the grounds on which
these cases are being talcen probably will not stand up in court.

Tllis is reassuring to a degree, but the suit filed and the prospect of other suits are a severe deterrent to carrying out our plans, running the business daily and, lnost importantly, a major ilnpedirnent to continuing our role as one of the leac'incr foreign commerce companies of the United States.

Only last week we had a serious e>;ample of this negative impact abrpad. We had a bond issue in the United Kingdom that was sinlply a flop: This was our first flop in AD years of raisins funds abroad and while there are rnan:h- factors that have to be considered, certainly one that cannot be overlooked -- reflective of the antitrust policy -- was a press report, prominently placed ill The Times of London, on the issue saying that "the U.S. Government was against ITT because it is a conglomerate". The European pickup of The Tirnes story and the failure or the issue will **not, to put it** mildly, be helpful to us or to **you.**

The significance o£ the unwar anted and unjustified antitrust policy now appears in light of the responsibilities of your own Department in connection with the balance of **payments effects in our activities abroad,** as well as domestically.

Now, let's look at sortie additional faces.

1. There are in existence hvo outstanding reports on the econonlic effects of antitrust policy, and the role of the conglomerates is dealt with specifically. These reports xvere compiled by outstanding panels of economists, one at the request of former Pres cent Johnson, the other at the request of }'resident iNiscon. The first eport is known as the Neal Report and xvas released last week by A4r. SlcLaren after repeated requests N
nor As dist-losv;re.

~ - The rt>!aevrt states very simply, in effect, that the suits col,ternplated a,<~aillse us are now supported by law and it recommends further a l).,.iC\' of antitrust enforcement that vvould JlOt leave provided

a basis ot ;ti! for the suit tha. was filed against our merger with Canteen.

The seconsi report kr.owr. as the Sti Her Report and compiled

by an cnliriel.t panel Df businessmen 2nd ecor.onais.s, not only reiterates the main points of the l\=eal R^eDort, but even n-ore emphatically opposes the use of tile Antitrust Division to curb mergers on the basis of "way-out" theories of "reciprocity", "potential competition", etc., except where clear evidence of illegality exists. The Stigler Report has not been released though i. has been reported as a "secret Nixon Report" in the Washington Star, and reliable sources are quoting its contents in

Washington .

2. In a discussion with Arthur Burns, I found that his general

thou,,}a,s support the position that there is no sound basis for the unwarranted

attack on conglomerates that is being waged. '

3. in an informal discussion with David Kennedy, I round that

his concerns are against "improper concentration Wit}lil: an industry" and not with conglomerates per se or because of size, a position also

taken by tile iNkal and Stigler Reports.

In tallying with several of tne key Republican policy people in

the Congress, including Senator Dirksen and Congressman Ford, I find they hold equally strong views against unjust attacks on conglomerates because of size per se or "fancy" theories of reciprocity which are

untried in law and generally regarded as unsound.

Among the Governrr,ent Departr.^~ents which would be directly

involved, it appears your Department would have a sharp and immediate interest. Of course, I don't know your detailed views on this subject, but 1 do have the impression that you were concerned about the aspect

of "raiders" in the business world. As you know, this has also been the

concern of Congressman Mills. As I am sure you are aware, we have never indulged ill these "raiding tactics". On the contrary, all of our mergers have been jointly agreed to, they have been harmonious and

tile considerations have been represented by normal stock securities.

3A. *HAROLD GENEE1W LETTER, JUNE 3, 1969*

5 ._ .

It does appear, Maury, that the need for your support o£ large zt~.lnerican foreign trade companies is very real. The need ls to be allowed a domestic base from which to move zenith assurance in worldwide trade.

This, I think, is demonstrated by the fact that such acquisitions as we malre are done -freely, that they are paid for fairly, with proper securities, Most importantly, these kinds of acquisitions result not only in more efficiency domeestically, but -- by carrying these activities abroad-- tiley increase the ability to expand balance of payments remittances.

It does seem that almost every one in Government who should be concerned with these matters is in agreement on one thing -- that a proper policy would recognize the care with which we have planned our activities in close compliance with the law, as well as the very real contributions we are making domestically in addition to remittances from abroad. I have said "almost every one". There are those, however, who seem to feel that the only proper course is one of harrassment and of punitive legal actions.

since it appears we are to be the first at bat, there remains only this question -~ "While there is still time, how can we do anything about thi S ? "

I hare asked to see the President in the.hope that I can draw the g facts to his attention.

I can see no virtue in any discussion with Mr. McLaren or in turn with the Attorney General who either from conviction or cornmi~.nzent continues to express support of Mr. McLaren's actions.

The purpose of this letter is to see if I can elicit your support based on the facts that I have outlined here to do two things:

l. See that the Stigler or Nixon Report is released officially. I believe it might have a healthy influence on this problem since it represents the Administration's best advice on policy solicited at the President's request.

[redacted]

F 3A. *HAROLD* *GNIIIEEIII*
LETTER, JULIE 3, 1965

- 2. Possibly, since I feel this directly ar.d indirectly affects your own responsibilities, that you request tha; there be an .Adnlinistration revievv and reappraisal of these policies Witll all of fnese facts now iDr(,ught to light. Sufficient differing policy, versus the current activities of tile Justice Department in attacking conglomerate mer,,,:lrs on speculative grounds, has been expressed at high enough levels, as detailed above, to indicate Chat such a review would be in order.

I do want to point out that while this is essentially a broad policy 1

issue, our company is directly and justifiably interested in the outcome. l

I would like to tall; xvish you briefly on the phone, after you have read this, if I may have the opportunity.

Thank you for your courtesy and consideration.

Sincerely,

o1gx

(42)

[redacted]

THE ATTORNEY GENERAL

WASHINGTON

July 14, 1969

TO: John Ehrlichman

FROM: Jof Av !
RE: Attached

As you may know, Mr. Geneen's company is involved in a number of antitrust suits with the Justice Department. Further, some of the companies in his conglomerate are represented by the Mudge firm. I would see no reason for the President to see Mr. Geneen unless he wants further review of the antitrust problems from him. Needless to say, the Geneen letter attached does not reflect accurately the legal position of the Justice Department in the antitrust suits.

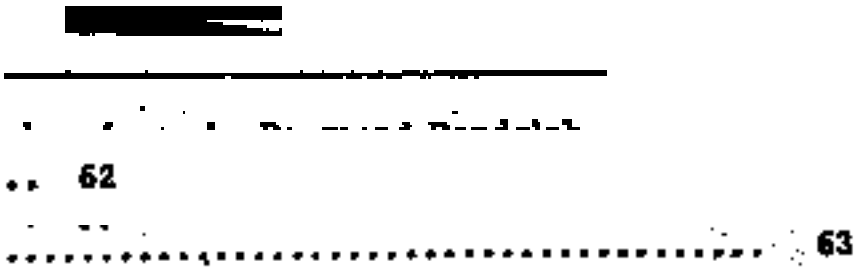
It might be well to leave this matter with Maury stans

for a follow-up on the balance of payments matter.

(43)

4. In March, 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the United StatesX v. ITT (GrtnneO case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the govermnent's chances of winning were minimal.

(45)



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XC/BO}td/ZdZl?4

'1'0 : The Solicitor General l)A't'I,: tlarcll 2, 1971

Aim t°N A. Raymond Randolph, Jr.

SUBJECT: United states v. International Telephone & Telegraph (D. Conn.)

I recommend appeal to the Supreme Court, although not on the primary basis set forth in the accompanying memorandum from the Antitrust Division.

Appeal is sought mainly on the ground that the district court erred in refusing to consider cvi-dence A/ of a trend toward concentration in the economy as a whole. Basically the theory is this: Section 7 of the Clayton Act forbids one corporation from acquiring another cohere in any line of com-merce in any section of the country, the effect of such acquisition may be substantially to lessen com-petition . . ." The Court has held that "any section of the country" can mean the entire country, United states v. Pabst Brewing Co., 384 U.S. 546, and it should similarly hold that any line of commerce can mean the entire economy. The court has also recog-nized that a trend toward concentration in a speci-fic product market is relevant in determining whether a merger may have a substantial anticomDetitive effcct in that market. United states v. Von's Grocerv Co.,

!/ Dr. IWlueller's proposed testimony.

(46)

[redacted]

384 U.S. 270, 277-27£3, icl. iB1 (White, J., concurring). Thus, a trend-tot.sard agc3recJate concentration in the entire economy should be considered as relevant in determining whether a merger violates Section 7.

The obvious Question is _

~ to l.thclt? To the effect of this merger on competition in the particular product markets or to the effect on competition in the entire economy? awhile i, is far from clear in the memorandum, apparently Antitrust would answer "both." Thus, one theory is that with respect to the particular product markets involved in this merger, soraething less than the usual quantum of proof is needed to show that there may be substantial anticom~?etitive erects if, in addition to such proof, the government can show a trend in the economy toward increasing aggregate concentration (see p. 25, 2d M[). The other theory is that this merger Jill increase aggregate concentration; Lhat a considerable increase in aggregate concentr2tior. should be equated zzith a substantial lessening of competition under Section 7; that the general trend toward concentration supports this equation and must be considered in assessing the effects of an increase in concentration by a particular merger; and than the anzicompetitive effects in Grinnell's product markets are a microillustration of the general results of greater concentration through conglomerate mergers. (See p. 5, 1st i,)

At the outset I should note that there is no serious problem about whether we properly raised these issues below. The Memorandum in support of Dr. Wiueller's proposed testimony does seem to focus only on the first theory:

Consequently, such evidence [the trend] is relevant to.the issues in this case in two respects. First, she specific anti- , competitive consequences of this merger must be considered svithill the perspective of this merger trend. The result of placing this

merger against that bacZic3round is to require

that greater judicial concern be given to demonstrated anticornpetitive effects within specified lines of commerce, because of the additional impact upon

competition in general. [p. 9]

But other statements do hint at the second theory also:

> In addition,- apart from its instant anticompetilaive consequences, this merger must be viewed as one which would further and encourage the previously discussed trend toward increasing concentration . [Id .]

I

lns to the first theory, I fail to see why it is at all necessary to argue that Section 7 should be construed so that "any line of commerce" means all lines of commerce. If the general trend toward concentration bears on how the merger \vZill affect competition in, for example, the fire sprinkler system market, then the court should consider it -- and vice versa. But the interpretation or Section 7 has nothing to do with this.

However, rather than offering reasons tJhy this trend is relevant the attached memorandum seems to proceed on the basis that it is sufficient to argue that Section 7 can mean "all lines of commerce": Congress itself deemed the evidence of a trend toward concentration relevant and that is enough. One obvious difficulty with this approach is that the legislative history in support of construing Scction 7 to mean "all lines or commerce" is weals Obviously in order to persuade the court to accept this construction something more \wtili have to be shown. tend that something must consist of a demonstration of the pertinence OL this trend with

respect to competition in the particular lines of commerce involved in the r.lerger. Unfortunately such a demonstration has not been made and, frankly I doubt whether one could be,

Moreover, even if Section 7 is interpreted as

Antitrust urges, there is still the problem z^,thether proof about aggregate concentration in the entire economy -- that is the trend toward such concentration -- assists proof wits respect to particular product markets. If more than the trend itself is needed to show a lessening of competition in all lines of comrnercc!, and i £ the o Gher evidence is less than adequate to show this in a particular line of con~.merce, there is no apparent reason \hy some combination of the two shows a substantial diminution of competition within a particular product market, other than the bald and conclusory assertion that increases in aggregate concentration through conglomerate mergers musL be stopped so~.neho->v. This seems to be little different From a case where we have introduced insufficient evidence of anticompetitive effecLs within the entire country andxalso within a specific geographical market. No one would contend that this nevertheless makes out a violation of Section 7 with respect to the specific market area. Yet the arguments in support or the proposed theory do essentially just that, although for lines

of corunerce rather than Xor sections of the country.

Unless it can be shown how the Lrend increases the probable anl:icompetitive effects of the merger within the product markets, unless this nexus can

be supplied, the proposed theory is baseless.

It musL be remembered that the trend use seek to

prove is a trend toward aqcTrecTate concentration, not market concentration. (Apparently most economists

agree that there is no trend toward the latter.)

As indicated above, there are, in my viesEt, no grounds for arguing that this has an anticompetitive effect on a particular product r.lar',fWet. To be sure, ITT is

one of the largest conglomerates; it has been gobbling

up companies in diverse industries in the past; and this past practice, together with the general trend in the economy toward increasing concentration, indicates that ITT Quill continue to follow the same course in the future. As ITT acquires more and more companies, the opportunities for reciprocal dealing brought about by the acquisition of Grinnell, while perhaps somewhat less than substantial at present, may intensify. If this tJere the theory, it would at least be understandable. But (a).the trend adds little, if anything, to the force of this argument, and (b) this is not the theory. The difficulty in considering the trend toward aggregate concentration with respect to effects within specific product markets is not so much in requiring courts to try to add apples with oranges. The fundamental probletn is that we have given them no reason to even try to perform that task.

Perhaps this is ashy no satisfactory basis has been offered for explaining just how the trend toward concentration should be combined with other Factors to allovz a court to form an overall judgment about the case. (Of course, it is asserted, as indeed it must be, that the district courtss failure to consider Dr. Dlueller's testimony made a difference in the outcome EP 253.) Obviously if one cannot show ashy certain evidence is relevant at all, it is impossible to say hoax much sleight a court sho i give

to such evidence in deciding the case before it.

II

The other theory of the case is that this merger has lessened competition in the entire economy -all lines of commerce -- and that the trend coward aggregate concentration relates to this. One might ask hols this could possibly help Lichen there appears to be trouble enough, in making out a case With respect to only a few lines of commerce. Actually it suould be easier to Show a violation of Section 7

under this theory For little more than the trend

[redacted]

plus the size of the merging firms would have to be proved.

As noted earlier, the Court has held that a tendency toward increasing concentration in a product market is highly relevant. The reason is that, in the Court's view, an industry that tends toward oligopoly becomes less competitive. While cl particular merger, as seen in isolation, may seem to push the industry toward oligopoly, it may be that other new firms have been entering so that the overall movement is in the opposite direction. Also, the concept of oligopoly itself necessitates looking at more than one firm; the actions of other firms in regard to their share of the market must therefore be considered. Thus, the trend toward concentration in the market is highly relevant.

The basic problem with using this approach with the,entire economy is twofold. First, as noted above, the increase has been in aggregate concentration, not market concentration. (This is perhaps understandable in light of the fact that conglomerate mergers do not increase market concentration.) While there is substantial economic opinion that increases in market concentration do not decrease competition, there is an even more weighty line of authorities who contend that increases in aggregate concentration do not have any appreciable effect on competition. (Dr. Mueller, of course, does not agree.) Second, and more important, the trend in a product market has been treated by the Court as just one factor to be considered. But here, aside from the size of the merging firms, we have little else to offer.

Thus, if we ask the Court to assess the competitive effects of this merger on all lines of commerce, the question arises whether we can supply any meaningful guideposts. The Court has stated that "the purpose OL delineating a line of commerce is to provide an adequate basis for measuring the effects of a given acquisition." United States v.

Continental Can Co , 378 U.S. 441, 67. Surely the trend plus the size of the acquired firm cannot be. Suppose Grinnell, although relatively quite large, was not a leader or even close to a leader in its product markets and suppose also that the top four firms in that market held a significant combined s,harc. It would seem that ITT's acquisition could in fact increase competition; at the least, competition would certainly not be decreased. Yet the merger certainly added to the trend toward aggregate concentration and under the proposed theory it would violation,9vl2olation9Aection 7 However one views the desirability of such aquisitions as a policy matter, the fact is that there was certainly no intention to forbid them under Section 7; indeed encouraging this kind of activity may have been part of the purpose or the statute. In short, if trend and size are the only relevant factors, this would mean simply that conglomerates cannot acquire relatively large firms. I don't thin there's a ghost of a chance that the Supreme Court would buy such a nonselective and indiscriminate approach.

This brings me to the *ques* tion how the evidence with respect to competition in Grinnell's product markets comes into play. One thing seems certain. The fact that we have failed to show a substantial lessening of competition within those markets assuming that the district court was correct -cannot be fatal under the proposed theory. For if such a showing were required, then the theory-itself would be mere surplusage. On the other hand, if, the proven effects OL **the merger in particular markets are intended to illustrate the general result of increased aggregate concentration, it seems quite damaging that these effects a-e somewhat less** than substantial in the very product markets **directly** involved in tile merger (again,l assuming **the district court was correct in this regard.)**

There appears to be no satisfactory v,way out of this dilema. Indeed, given this problem it is difficult **to see why we**

should even address ourselves to the anticompetitive consequences within Grinnell's product lines.

Unfortunately I must conclude that neither theory comes even close to holding water. Quite frankly, we should not attempt to take a case to the Supreme Court on such a flimsy basis.

However, it would be unwarranted to conclude from this that we have no weapons under Section 7 against conglomerate mergers. We of course still have the more traditional arguments with respect to entrenchment of a dominant firm, although these proved less than persuasive to the district court on the facts of this case. Another line of attack which at least seems more persuasive than the approach proposed here would be to argue that the acqusition of one of the top four leading firms in concentrated markets should be illegal because (a) the possibility that that firm will become further entrenched, thus making the market more rigid, and (b) even if this in itself might not be enough to show a substantial lessening of competition it should be considered as such because the acquisition of a more minor firm would have helped it to increase its share of the market, thus decreasing market concentration. obviously the major argument against this is that we are not showing a lessening of competition, but rather the failure of the merger to be pro-competitive. Nevertheless I still believe that this line of argument is much more tenable than the theories expressed in the attached memorandum. A/

Although I thus not appeal on the basis of the theories discussed above, there are, however, two grounds on which I would recommend seeking Supreme

A/ since we did not argue this below, I should thin]; that we cannot now offer it to the Court.

Court review. The first is with respect to the district court's finding that Grinnell is not a "dominant" firm in its product markets. This term has never been defined by the Court and here the district court supplied no definition. The meaning of the term is important because it has been thought that if a dominant firm becomes more entrenched by the merger this will substantially lessen competition. gee pp. 29-30 of the Antitrust memorandum.) The memorandum spells out in detail the arguments against the court's finding (pp. 29-33) and these seem quite persuasive.

I recognize of course that the district court went on to hold that even if Grinnell is a dominant firm the government's proof is nevertheless inadequate. On this score I think we can mount a strong attack against the court's findings with respect to the possibility of reciprocity. Again this seems to give rise to significant questions on which the Supreme Court has not yet spoken: e.g.,., whether it is enough to show that the structure resulting from the merger makes reciprocal dealing likely regardless of the acquiring firm's disavowals of following this practice; and whether the possibility of reciprocal dealing must entrench a dominant firm in order to be deemed substantially anticompetitive or whether that possibility standing alone is enough. See pp. 41-42 of Antitrust's memorandum.

In my view a win on either or both of these grounds will go a long way toward halting the trend toward conglomerate mergers and will certainly 'De a significant step in the direction that Mr. McLaren has indicated the Department or Justice should move.

[redacted]

60-11v9-03'1 -1

¢B. DANIEL FRIEDMAN MEMORANDUM, MARCH 15, 1971

Office of the Solicitor General
Washington D.C. 20530

**March 15,
1971**

MEMORANDUM FOR THE SOLICITOR
GENERAL

**Re: United States v. International Telephone
and Telegraph Corporation (D. Conn.)**

**I recommend
APPEAL**

This is the first of the government's conglomerate merger cases that has been decided. Since the beginning of his adnlinistration as head of the-Antitrust Division, Assistant Attorney General IIcLaren consistently and repeatedly has taken the position that Section 7 of the Clayton Act reaches such mergers, in a 1909 speech the Attorney General suggested a similar belief. Three other conglemera~~.e cases are pending before the district courts. ConsiderinZ all the circr.mstances, le really have no choice but to seek Supreme Court review of this decision which, if left standing, would be a serious adverse precedent that probably would doom our remaining cases and would also muse it extrenely difficult to proceed against future conglomerate mergers.

The basic problem is developing effective theories upon which to challenge Judge Timbers' decision. Thee latter, unfortunately, is an able job, and at every turn fife will be up against carefully drarm findings in which the Budgets credibility determinations played an important part. It is vital that our appeal not involve a wholesale frontal attack on those findings; lze must avoid presenting the case so that the appellee effectively could argue that "What the Government asks, in effect, is that we try the case de nova on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our oam" (United States v. YeU on Cab Co., 338 U.S. 338, 340). ale may have to challenge some of the fine9Ln~~~~s- the fewer the better, of course--but basicaV y our case for reversal must be that the district court applied the wrong legal standards in holding that this merger did not violate Section 7. Several theories are possible.

1. The most persuasive argument to me is that the nature of the large modern conglomerate enterprise necessarily carries with it a sufficiently serious likelihood of reciprocity that the effect of its acquisition of a major firm may be substantially to lessen competition in that firms industry within the meaning of Section 7. Federal Trade Commission v. Consolidated

Foods Corp., 380 U.S. 592, seemingly announced the rule that the acquisition "of a company that commands a substantial share of the market" (as Grinnell [redacted] does here) violates Section 7 if it creates the "probability of reciprocal buying" (p. 600). The Court recognized that the "mere possibility' of the

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~.lprohibited restraint is not. enough" (p. 598) and it relied heavily on the Commission's finding, solidly supported by clear proof, that the merger there created a real likelihood of reciprocal buying

In the present ease, on the other hand, the district court found expressly to the contrary. It ruled mimeograph, opinion 47-48) that the substantial credible evidence demonstrates that reciprocity and reciprocity effect is not likely to occu, even if r **the merger were to create the opportunity for reciprocal dealing particularly in view of ITT's anti-reciprocity policy, implemented by the witholding of purchasing;~~~ and sales data and the profit center organization Or I'1""' and that "the government has not sustained its burden of establishing either that the merger:~~~er ill create an oppo tunity for reciprocal dealing through a market structure conducive to such dealing, or that reciprocal dealing in fact is likely to occur even if the merger were to create an opportunity for it." It reached these conclusions on the basis of a comprehensive and careful analysis of the evidence, and its findings will be extremely difficult to overturn. Our best chance will be to argue that the findings rest upon an erroneous concept of what kind of showing the government must make to prove the "probability of reciprocal buying," and that the court has imposed too strict a standard** upon US . **The problem, of cou]rse, is t hat the proof we urge as sufficient may strike the Supreme Court as showing only a mere possibility, and not a provability, that the merger will substantially lessen competition. Although there is some support for our** positicn **in the recent White Consolidated decision** (N.D.. **Ohio, February 24, 1971)with its acceptance of the theory that a merger leading to "reciprocity effect" may involve a significant change in market structure--t'lat decision was on an application for a preliminary inj unction, and the court did not have before it the detailed record of the present case.**

2, Antitrust also proposes that we stress the advantages that would accrue to Grinnell as a result of IT&T's ownership of Hartford Fire insurance. The use Of automatic sprinkle:- systems reduces fire insurance premiums; insurance brokers will point this fact out to their customers; and Hartford's brokers, a/ho presumably are aware that Hartford is a member of the same corporate family as Grinnell, are hardly likely to be insensitive to the desirability of encouraging purchases from the latter. Moreover, insurance brokers appa:rently are an excellent source of business leads for sprinkler installation firms, and IT&T's ownership of both Hartford and Grinnell will give the latter an entree not available to others in the business.

The district court rejected this theory because of findings which, in its view, eliminated the factual basis therefor. Here, too, we will have a hard time overturning the findings. More importantly, this theory is less attractive than the reciprocity approach for two reasons: (1) If we won on this. gro)und, it would have no impact beyond this case and would not furnish an effective tool for challenging other conglomerate mergers. (2') It seem_ somewhat anomalous to be attacking the Grinnell acquisition because

of the allegedly harmful effects that flow from IT.'l"s ownership) of hartford, when in another case we are simultaneously challenging IT& T's acquisition of that company.

3. Antitrust stresses the cumulati-~~ve effects of reciprocity, the fire insurance company interlock and various other alleged competitive advantages of the merger for Grinnell, from which it concludes that the merger is. likely to entrench Grinnell 's dominant position in the automatic sprinkle,- business. It contends that such entrenchment condemns the merger under the rationale of Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568. The findings OI the district court, however, seriously undercut this theory. In Procter & Gamble arc had the advantage of Commission findings that established the factual foundation for the entrenchment theory, and it was not difficult for the Supreme Court to accept those findings and then to conclude that they supported the agency's conclusion of probable anticompetitive effect. In the present case, on the other hand, the district court's findings lead to the opposite conclusion. Particularly in dealing with the entrenchment theory, I think that our argument seems particularly vulnerable to the charge that we have shown only the possibility, but not the probability that the merger will cause competitive injury.

The district court's reliance upon its conclusion that Grinnell is not the dominant company in its industry may be vulnerable. In the first place, Grinnell is the largest firm, with 20-24 percent of the market, and if it is not the dominant firm (although I think it is), it certainly is a dominant one, and that should be enough. In any event,, as long as the acquired firm is important and significant in the market, the entrenchment of its position due to a merger should suffice to condemn.~~un the merger under Section 7, whether or not it is considered dominant. But even if the district court is wrong in its dominance ruling, we still have to overcome the court's further finding that in any event the merger would not entrench Grinnell in the sprinkler market, and that is where our real problem on this branch of the case will be.

4. Finally, there is the theory that this merger is invalid because it furthers a trend toward economic concentration in the economy as a whole.

(a). The first facet of this theory is that amended Section 7 was intended to prohibit any merger that produces a significant increase in such concentration. This argument which I understand Antitrust does not now propose to m ake--relies on the legislative history of the 19'v0 amendments:Its to Section 7, in which Congress frequently indicated its concern over the increase of concentration in American industry. The

difficulty is that the method Congress chose to deal with the problem was to strengthen the prohibitions of Section 7, but not to change its basic focus. Congress apparently did not abandon the traditional approach to mergers which emphasized the impact of the aquisition upon competition in the particular geographic and product markets involved; it merely provided a more flexible definition of those markets, in order to strike at the general trend toward

concentration by **prohibiting all mergers that have the prescribed anticompetitive˚ effect "in any line of commerce in any section of the country."**

Antitrust suggests (Memo. p. 10) that since in United States v. Pabst)st Brewing!ir Co., 384 U.S. 546, the Court held(l that the gover,ment I.may establish:W.v,lI a violation Section, 7 by,lr introducing[i!!:)-l evidence a[tliCll ';}lORfZ,'LElaX **as a rcslLIt; of a merger competition may be substantially lessened throughout t;}sc** country" (p. 549)) i.(**can similarly established a violation by showing a generalized lessening of competition in the economy.Rr as a whole:without focusing on any particular product. In Pab)st, however, the district** court **had recognized 'hat the continental United States was a relevant market; and we introduced evidence showing a significant trend toward increases in the level of concentration in the beer business on a national basis, which the Pabst-Blatz merger significantly furthered. It is quite another matter, however, to conclude that because there has been a general increase in concentration in the economy as a whole, a merger of two large firms which increases that concentration--althou{n necessarily only slightly--produces the anticompetitive effects that Section 7 condemns. This theory leads to the conclusion that any merger--~~rhether conglomerate or not--violates Section 7 if the companies are large enough that their combination fairly can be said to be a significant step toward furthering concentration in the whole economy Perhaps Congress may enact legislation taking that approach to mergers, but' it is difficult to conclude that it** a **d so in Section 7 of the Clayton Act. This theory also would require the Court to ignore its frequent statements that, in order to determine the anticompetitive effect of a merger, the relevant geographic and product markets must first be ascertained.**

(b). A second aspect of the aggregate concentration theory is the one Antitrust seemingly now urges: that because there has been an increase in concentration l/which **in recent years has been mainly the result of conglomerate mergers, a lesser degree of proof of traditional antitrust criteria should suffice to establish illegality in conglomerate merger cases. Under this analysis, Antitrust argues that the evidence it cites to show the entrenchment of Grinnell, although perhaps not sufficient to establish illegaliity if a nonconglomerate had been the acquirer, is enough where the acquirer is a large conglomerate. I do not understand the basis of this analysis. The anticompetitive consequences that stem from IT&T's status as a conglomerate exist because of the widespread nature of IT&T's operations and the relations**]lip **between those operations and Grinnell's business. This relationship would be the sane if IT&T were the only conglomerate. The fact that there are many other conglomerates that also have made acquisitions that allegedly have weakened the play of free competition in many industries is not relevant to determining what the competitive effect OF this merger is likely to be. It is difficult to understand why lesser proof should**

[redacted] **suffice in a particular case merely because elsewhere in the economy similar mergers have taken place.**

To recap, itlElatc: This i; an extremely difficult case, and our chances:S)
Of winning in the Supreme?iC Court?'t stein minimal. nevertheless:.:S, 1 think WC have |

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4B. DANIEL FRIEDMAN MEMORANDUM MARCH 15 1971

no practical choi ce but to app)~~,eal. Ou]r best app)roach is the r ecip)rocity theory,v, and even that may founder on t]IC particular facts. It ho].ds -l:he best y)romise, however, and if accepted would(l provide a y)olierful tool for deal:iliffr X,r; th ot;}IOI' cong,.l lomerate ac(luizitions. It i s impossible to evaluate,e the strength of our various theories ies with,'lout a deta:ilcd study of the lengthy record]d; per!lall., when we write the brief on the merits, some of our other app)3?rOaCI)eS may turn out to be stro:lt er than. t!1eY seem at presen,t;. At this stage, however, all we can **really do is outline our theories, and avoid arguments that will not withstand probing analysis. We shoul d take a bold and broad approach t}hat minimizes challenges to the findings** of an(l **disagreements with the district court on minor aspects of its decision, and moulds the issues in terms that will avoid the appearance of seeking a trial de novo.**

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Daniel M. Friedman

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4C A RAYMOND RANDOLPH JR., MEMORANDUM, MARCH 25, 1971

UNITED) STATES' GOVERNMENT' DEPARTMENT OF JUSTICE

MEMORANDUM

'1'0 : ***DMF***

{pi: ,-"] FROM : ARR

SUBJECT: SUPPLEMENTAL MEMORANDUM FROMl ANTITRUST

DALI E: ***3/25/71***

Now that Antitrust has reiterated its strong recommendation that we appeal, we doubtless have to appeal. On that much everyone-agrees. Everyone also agrees that on appeal we should attack the court's holdings with respect to dominance and reciprocity, although I do not think that either

~~ Antitrust's confidence that the court's findings of fact will not be a substantial problem because we **need only challenge the inferences drawn from those findings. And finally everyone agrees that our chance of prevailing on these arguments is mighty slim.**

But unanimity ends when we get to the business about the trend toward concentrations which is discussed on page 3. Antitrust answers none of our questions and meets none or our criticism about the relevance of that trend. We are first told that the ITT-Grinnell merger will scare smaller firms into merging with other large companies. But even assuming this shows that an anticompetitive effect will result (whatever happened to the desire to encourage foothold acquisitions?), (a) if the district court was right that the ITT-Grinnell merger will not have any significant anti-competitive effects it is hard to see how we can show that the other firms will be scared into merging, and (b) what has this got to do with the trend toward concentration in the economy as a whole?

[redacted]

one of its shares

1 ***4C. A. RAYMOND RANDOLPH, JR., MEMORANDUM, MARCH 25, 197:~~***

The rest of the second paragraph of page 3 is, to put it bluntly mumbo-jumbo. Now it seems the idea is that the trend is relevant only to acquisitions by large congomerates of leading firms. Ergo there should be no concern that foothold mergers will be prevented. I am at a complete loss to understand why, if the trend is relevant at all, it vant only to the former situation. In any event, the whole point of my memorandum and yours was that Antitrust had failed to show how the trend toward concentration is relevant at all. We still do not Xnow.

Where do we go from here? I would strongly urge that the Dean, when he authorizes appeal, limit this to the dominance and reciprocity holdings of the district court. If our case is weak on those issues, we will not even be able to put up a respectable front before the Court if we taint and obfuscate the rest of the case by attempting to work in some full-blown-theory" about the trend toward concentration.

, Incidentally it seems quite strange for Antitrust to suggest (on page 4) that the ITT- Canteen case could be considered by the Court with this one. It is my understanding that Dr. Muellers testimony was excluded in that case on the ground of incompetitance because of the FTCts refusal to release underlying data. The instant case has enough problems of its own without introducing that can of worms into it.

A. R. RANDOLPH Jr.

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9 ***4D. DANIEL FRIEDMAN MEMORANDUM, MARCH 26~~ 1971***

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GENERAL

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Like Ray Randolph, I don't find Antitrust's memo particularly illumiinatingt. I agree that you should(l authorize appeal. But the precise scope and form of our arguments must await the jurisdictional statements; we should not attempt to foreclose making any arguments that either hold out some **prospects of success or, even if they really do not present a theory upon which the Supreme Court should rule---if only to open the way for legislation**

I).z\F

[redacted]

(62)

4E. ERWIN GRISWOLD,D APPEAL AUTHORIZATION MRCH 26, 1971

Retyped from indistinct original

Office of
The Solicitor General

Re: United States v. International
Telephone and Telegraph Corporation

filing date: April 20, 1971 (3/20/71 order
Justice Harlan)

File HES
60-149-037-1

March 26 1971

DIRECT APPEAL AUTHORIZED.

ERWIN N. GRISWOLD
Solicitor General

I think this is a very hard case, but it is an important one and Antitrust wants to go ahead and it is in the public interest, I think, that we should learn more about what the law is in this area. ENG.

Retyped from indistinct original

(63)

[redacted]

4E. ERWIN GRISWOLD APPEAL AUTHORIZATION; MARCH 26, 1971

OFFICE OF'

THE S(x SOLICITOR GENERAL

March g, 1971

Re: United States v. International Telephone and Te]egraph Corporation

DIRECT APPEAL AUTHORIZE

ERWIN N. GRISWOLD
Solicitor General

***5.* After the** President's telephone **call of** April ***19,* 1971, to**

Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met, in his office, with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren **had no objection to the application for an additional extension of time.**

Senator KENNEDY. Now, at some time you had a call from either Sir. McLaren or Mr. Walsh about tile 18th, that is right, April 18;?

Mr. GRISWOLD. No, I never had a call from eith er. I understand now that the 18th v-as a Sunday, so this must have been on the l9th.

Senator KENNEDY. And your secretary told you that the Deputy Attorney General wanted you down in his office?

Mr. GRISWOLD. a That is right.

Senator KENNEDY. Could you tell **us about that meeting?**

- Mr. GRISWOLD. I **think I have summarized it quite completely in** the statement I have already filed.

- Senator KENNEDY. There was no **one else there?**

Mr. GRISWOLD. NO one else was there. It didn't last more than 5 minutes, perhaps less.

Senator KENNEDY. **And as I understand from your memorandum— could you repeat for us what you believe to be the reasons for seeking** the delay in the filing of the jurisdictional statement?

mr. GRISWOLD. The **basic reason was that the Deputy Attorney** General wanted it. **And I understood the underlying reason was, the** letter which he had received from Mr. Walsh which requested it, which was summarized, but which letter I didn't see—I didn't ask to see, it wasn't withheld from me—it w as simply, as I recall it, it was on the desk or the side, in front or beside the Deputy Attorney General as he was talking, to me, and he pointed to it—but the substance was that there were some matters here which ought to receive further consideration.

Senator KENNEDY. There is nothing further that you can add about that conversation?

Mr. GRISW OLD. NO.

Senator KENNEDY. He just said that there are other matters that have been included in this letter that deserve further consideration?

Mr. GRISWOLD. No; as I understand it, it was matters relating to vhether we should proceed by litigation on conglomerate mergers

Senator KENNEDY. The materials we received from the Department show the Solicitor General's memorandum up to March 26, 1971. Can you give us any idea what, if anything, happened between March 26 and April 19?

Mr. GRISWOLD. The jurisdictional—let me start over again Senator. We had probably 30 or 40 other cases in my office moving through during that time Once the appeal was authorized, word would he sent to the Antitrust Division, and they would be requested to make a draft of the jurisdictional statement. The jurisdictional statement would be prepared, it would come to my office, and it would be worked˚ ov er in detail by one of ma younger staff members, and then reviewed t!horoughly and carefully By my senior staff member, and then U would come to me, and then w ould! go to the printer.

And as} I recall it, it went to the printer on Thursday or Fri(1as- before April 19, and was due back on the afternoon of April 19 in printed form

Senator KENNEDY. THOU **have supplied materials, or the Department** has, a series of memoranda, the following documents—You are familiar with those items here'! Are you familiar with the letter from Mr. Wilson that was sent to the committee?

Mr. GRISWOLD I don't know what you are referring to, Senator.

Senator KENNEDY. Air. Solicitor, has there been any other OC(.asion in the times that you have served under this or previous administrations when you have been directed by the Deputy Attorney General to seek a delay 9 days after the time expired?

Mr. GRISWOLD. If o—if you say 9 days, the time hadn't ex; pired, Senator, and the rule says that you are supposed to apply not less than 10 days before the time expires, but makes it perfectly plain that you can apply within that period, but you have got to show some reason. And I don't recall any case where >-e did it on the next to the last day.

On the other hand, it is not at all unprecedented that we do make applications within the 10-day period for one reason or another.

Senator KENNEDY. But **have you made them at the** direction of the Deputy Attorney General any time?

~ Mr. GRISWOLD. I don't like to accept your word "direction." This was at the request of the Deputy Attorney General. I cannot now name you some. I have had many conversations with the Deputy Attorney General about cases and have frequently heal d people, usually other agencies of the Government, who have expressed an interest or concern, and I have delayed my action until I heard them. Ordinarily, however. that would not require any application for an extension of time, because we had enough time. I think this one is

| the only one that I know of within 1 day, and as far as I can recall, w ithin a 10-day period.

Senator KENNEDY. Do you know Air. Walsh at all, Dean?

Sir. GRISWOLD. Yes, I have know Judge Walsh at least since the time he was a judge, and then as Deputy Attorney General, and since.

Senator KENNEDY. But you never had occasion to talk with him about this case?

Mr. GRISWOLD. Never whatever about this case, except on Monday afternoon of this week he called me on the telephone and asked me what I said in that statement. But he didn't in any sense complain about it, he simply wanted to know what it was so that he could respond to questions that were coming to him.

I rea(l him, over the telephone, the paragraph relating to him And he thanked me. And I did talk with him to that extent OD Monday of this week. Otherwise I have never talked with him about this case.

Senator KENNEDY. I want to thank you for coming up here this afternoon and being so helpful.

A Ir. GRISWOLD. Thank you, Senator.

Senator KENNEDY. You have certainly been very forthright and candid with us, and I M-ant to express my own personal app)reei;ltion to you. It is nice to see you again

Mr. GRISWOLD. Thank- you, Senator.

Senator HRUSKA. Dean Griswold, the 10-day rule has been mentioned often. That rule is simply this, is it not, that if there is any request for a postponement of a filing or to meet a deadline, the request for such postponement should be made at least 10 days prior to t he date that is sought for extension?

Mr. GRISWOLD. That is right, Senator.

Senator HRUSKA So that is the general rule. How ever, the Supreme Court does say, if it is within those 10 days, for good reason, we will still allow the postponement.

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Solicitor General and his staff had some reluctance about the appeal, anyway.

This was a request merely for an extension of time. That (lid not affect the ultimate disposition of the case because it would not have been argued before that term, and as I think you know, the appeal was perfected(l subsequently, and McLaren said I see no harm in it, and I then called the Solicitor and he came in.

Senator KENNEDY. _you tell us when you read the letter? Did you read Mr. Walsh's letter?

Ali. KLEINDIENST. Well{)[l! I think I read the letter comprehensively and thoroughly for the first time during these hearings.

Senator KENNEDY. SO, at the time that you made your decision, it was really based on the representations that were made by Air. McLaren as to what the substance of the letter was?

Alr. KLEINDIENST. Right, and also his characterization and representation as with respect to what the issue was in the memorandum of law, and the letter.

Senator KENNEDY. Well, now, having rend the letter in connection with these hearings here, what do you think was meant by Sir. Walsh when he said, "It is our understanding that the Secretary of the Treasury v, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration."?

Mr. KLEINDIENST. w ell, I do not like to speculate as to what Ju(loTe Walsh thought.

Senator KENNEDY. Well, you do not—did you **have any reason to** believe that they had views?

Mr. KLEINDIENST. No. I did not know

Senator KENNEDY. were you at any time in contact w ith **the Secre**tary of the Treasury, or the Secretary of Commerce, or the Chairman of the President's Council of Economic Advisers about this case?

Mr. KLEINDIENST. No. s o.

Senator KENNEDY. About antitrust policy generally?

Mr. KLEINDIENST. NO. Well, other than—I never had a conference **with** Secretary Stans, or the Secretary of the Treasury, about the an!titrust policy. I know that just based upon the general statements, public and otherwise, that Secretary Stans had some very sharp differences with the antitrust policy of **the Department of Justice. as enunciated** by the Attorney General, and effectuated by the Assistant Attorney General McLaren, and there were a lot of **other people who sharply disagreed** with Judge McLaren's policy, as enunciated by the Attorney General, and supported by the Attorney General, myself, and the President of the United States.

I might have the order wrong.

Air. McLaren. May I add a word, Senator Kennedy?

Senator KENNEDY. Yes.

Mr. McLaren. I think it is fair to say that **at the time we did have** underway an overall antitrust kind of review going on; and I know that there were meetings going on at that time.

There was an interagency thing. I was one of the principals on it. I do not know whether or not there was any connection between this letter of Walsh's, as to which Mr. Klein(lienst is perfectly right, I (lid disagree .

For exampl)le, he said in there, as I recall, that our policy wasstolBl~~itlfr perfectly normal legitimate mergers that had nothing to do with
effects on competition andI strenuously- argue, with that.

Other parts of his legal pitch I very much disagree with. But, I— it subsequently develop)ed that there M as no connection b)etrveen what he was saying and the—an(l no connection ever developed between what he was saying an(l the antitrust review we then had underway- -.

Senator KENNEDY-. Well, Mr. McLarren, after reading the letter, particularly- the l)art which reads—

It iS our understanding that the Secretary of the Treasury, the Secretary of Conamerce, and the Chairman of the Prcsident's Council of Economic Advisers all have some views with respect to the question under consideration.

do you remember mentioning that to Mr. **Isleindienst rvllen vou** gave l;im vour summation of tlle letter9

AIr. :\lcLARExx-. I elo **not sl)ecificalls remember it, Senator, but tllose** ageneies all had rel)resentatives on this group thaSt ~~vas rerie\\-inCr antitrust l)olicy overall.

' SenatOr ISENXEDY. Knd actuallv, some of those—rvllsn't tllat y)rimarilv the reason for the extension, as stnted in the Solicitor Gelleral;s r)resentation?

AIr. AIcL.~REx. Tllat is tlle reason I did not oppose it, If ~~ze lvere talkincr alsout a strai~~~~llt legal l)rol)osition, as to rvhether or not tl!e~~slloul(t lla^-e an exteasion, I ^~~oilkl—I ~~\-ould not llas-e a~~~~reell ^ sitil that. But, for a kistld *of* a l)oliev re~~-ierv tllinr, I XV21S intereste(l to lle;sr vhat develol)e(l. :\lv information at tllat tilue ~~\-as that he ~~R-as—or IllV feelinC at th2lt tillle ~~\-as that lle ~~; as ~~\-ron~~.

I tilought that Dr. SIcCracl;en, for examl)le, rvas verv muell in favor of our antitrtlst l)oliev, an(l I hare nevel heard, altlloufJl! ~~\-e ha(l differellces on tlle sixecifics, I llever heard thut Secretara- Stans or tlle Treasulv l)eol)le ~~N-ere a~~<aillsl it, an(l I subse(luelltl~~- tullle(! out to be ri~~<ht. \\~e lla(l the extension, but ~~~~e rvent aheaul and file(l the brief.

Senator ISEXXEDY. \\'21S tlliS tlle first tillle tlint Vou t]1011"11t. tll21t tlle Secretarv of Treaiul^-, and of Commerce, an(l tlle CouIleil of Econonric Advisers, o~~-oul(l lms-c ~~~iexvs on tllis learticul2ll case?

AIr. AlcLAnEN. \X~ell, Me h2td l'eell \\orkino Oll this l)roject fOI' SOIlle **lencttll** *of* time.

S;enatC)r I\ENXEI)Y lA~ell, so tllat di(l not come as mlvtllill" velsnelv to z-ou, ditl it ' ~

Alr. :\ICLTREX. 'rlle ne~~E- tllinC ^X-as silnlzlv, .9enator, Ak. Walsll's

surCesfion in tlle tlli'l°-, aIlul ~~~~e \\ele Ul) atsainst tl filitl~~ d:tte, rtlld2 \\ C sillli~~lv alloss~e(l til le to ex~~)lore tlLat. As it tullleel ollt:, tilele ^E-as

not.lli2)t to it. :

Senator IXEXXED5-. Can vou tell us ~~vllat vou foun(l lzartiellktrl!r l)ersuasive abont tlle \0~alsl; letter tllat M'Olli(l llave been tllc lyasis for

:\lr. :\IcL~REs. I sasr nvain, I stronCl~~- objected an(l xvus noi l)cl sunde(l as to the leafll aspects *of it.*

Ho~~\-cver, ns to il)e, l)articn]nrlv finclin~~ out tlmt SIr. Isleinr3i2 nil lvas not l)articlllarlv ~~)ersua(leel 01~~ 1122(1 no rie~~s-s on tllc tllin#J, 1 1t ,d no leartiellll:ll objeeiio.l to ttn ad(litional exlellsion of tinle. Vs 1 saitl *before, extensiolts of* time in (ases]ilRe tilis ale IlOt llovel OIX nntlS.l:ll.

~ Senator 1;EXXEDY. So, \\~e llave a Sitt):ltiOII llere ~~\-Ile~~rc SIr. AI.I..Ire tt

5C. RIChARD KLEISDIEXST TESTIMONY, MARCH 7 A#D APRIL 27, 1971, 2 KCH

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SellatOr IIEXNEDY. Could vou tell us the collversation on the **l9th?** NV6lat did that involve? f

A[r. ITLEINDIENST. \\ ell, it took abotlt, I xvotll(l imaaille it lvoultl has-e taliell a fexv seconds unless 1 would have talked to him about SO§1}e jU(lit'i:tl clll(li(late. Let's assume I diel not tall; to }~~im about a judicirll (.lmli(l:tte. It Xvould have just been a matter of a fexv seconds Scn;ltol lxellne(l~~-.

Sentltor ISEXSE1)Y. Xnd tl~~is converiation lvith Alr. Walsh lvas about tllc—evhv .lid vou feel vOll hatl to c;lll him back?

SIr. IVLEIXDIENST. 1 thillli as a collltes+~. 1 (li(ln t 113ve to.

SellatOI ITENG-EDY. 11e had tele~~)holled vou about tilis caKe an(l—

A[r. KLEIXDIENST. Alr. Walsll alld I are s-erv close frielllds alld llave develol~~e(l a verv close friendsllip over the 3 vears as a result of our svork toaether in the ju(licinl pro(>rum. lNe ha(l the confelellce ^ith Alr. AlcLaren anel the Solicitor. 'rhe Solicitor ~~~~as-aske(l to file an extensioll. lle said that he lvoulel alld J merels- called him to tell l iin rvhat the decisioll ~~~as. I auess it xvas a courtesy more thall anv-~ thi~~zg else. I di(lll't hax-e to.

Senator AEXNEDY. At nnv time did +-ou talk to AIr. Rqhatvn about this?

AIr. ISLEIN-DIENST. NO. sir.. :

Scnator TTENS-EDY. \~OU di(ln't mention his name dllrillg the coursc'

:\[r. 1SLEINDIENST. :\'O, sir. I ha(ln't met personally AIr. Rohat~~-n at that time. At abotlt that time, I xvoul(l llave probablv—ut or al)out tnat time, Ntr. Rohat~~-n ~~^-ould have called me to come in and e me oll the 20th, the next dav.

Senator RENNEDY. Cotll(l ~~,-Otl tell lls, avhen SIr. NValsh called, tlld vou tell AIr. AlcLaren abotlt that telephone call?

Air. KLErNDIE~~-sT. Diel I?

SenT1tOr }VENNEDY. Yes, or di(l vou

:\lr. KLEINDIEN-ST. I don't knorv if I did nor not, Senator Kenneds; l)ecause the call xvould ha~~~e indicated that he rvas goina to delil-er the letter and the memoran(ltlm of lavr to me by a votlna man iD his **office.** The time xvas rather short, as I think vou **can** tell. The 16th—the 90th xvas the last day. I don't knoxv if I did or not. I knoxv xvhen **the** yollng man came to my office and handed me the materials, I di(ln't even read them.- I called A[r. Comegys or I called for ;V[r. SIcLaren and he xvasn't there and SIr. Comebays came up and I handed the materials to the vouna man in his presence.

Senator 1SENNEDY. A\hen rvas the final time for thc

Afr. lTLEINDIENST. I believe the 90th xvas the last day.

Senator TTENNEDY. So this xvas on the 16th and

Alr. KLE1NDIENST. A Frida~~.

Senator KEsNEDY. l~on have no recollection of talkina to Ak. S\lcLaren about either the tele[)hone conversation or nbout the letter?

A1r. ISLEIXDIENST. NO, I (lon't, Senator. But I coul(l have.

Senator, I ~~-oukl like to say somethina here, if I may. These event3 occurreel a year aia,o. This z~~-asn't the only matter that 1 had. It ali(ln't seem to me to be of any particular consequence.

SerlntOr ITEXSEDY. LM1iCh (IiCInXt?

:\[r. IQLEIXDIENST. ANell, these; I rnean that there ~~\-asn't any articlllar sianificance to thesc matters other than just routine

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WIr. ICLEINDIENST. Gee, I tllink yott just llave to drnlv 1'0111' 0\\m

conclllsions, Senator.

Senator }tENr!s-EDY. What conclusions do t7OU dra~s~ from tllem, just from that langllacre?

SIr. ITLEIXDIENST. \-0t1 mean if I accel)t this lallguagc for xvl~}~t apl)al entlv it says?

Senatoi KENXEDY.]-OU evere acocpt.illy lalltuaCc in the letter.

hlr. ELEINDIENST. I didn t read it ~N-hen I got it.

.Senator IVEN'XEDY. Oh, vou dicln't reacl this lettcr, either9

SIr. ISLEINDIEXST. N0, sir, M~hell it RVllS (lelis-ered to nle. I asketi

SII'. ComeCvs to collle Ul) nnd I hande{l tlle lettcr and tllc nlemoltlll(31lr ol la~\- to him an(3 told llinl tlltl.t this can-lc from Jud~<e Ms~alstl.

Sena.tor ITENXEDY. 0 'ell. nolv, let n)c ~et it strai<rht. \Titl, AIr. Grissrold and vour meetin~ EVith SIr. Grisrvold, ~vhat tlid VOlI—tlle nctioll tshat ?\lr. Grisxvoid look in behalf of the Government, rvits tlsttt on his initiati^-e?

- I\Ir. 1ILEINDIENST. N0, as I ha~-e testifiecl, Senator Ivellletl~~

Fri(lav tlle 16t.h, I deli~ ered the lettcr, I hall(lc(l him the letter all(l tiLe memorandttm of larv rvith the VOUIIF mall rvho deli^-ere(l it to me ill mw- office. It XVflS 3 or 4 in tlle afternoon—I don't knonv. 2, 3, 4. a.

Thell on :\Iondav afternoon, AIr. l\IeL:llen contacted me an(l sai(l I have gone o~~er this request of Jud£re \Valsh an(l I rvould like to tall; to ATOII about it. He canze tlp. •Ve discussed it.

Sellgtor l;~ENNEDY. z Otl discussed tlle letter?

!\Ir.]SLEI!s-DIENST. lVell, lre discussed—I doll t even tlli,lk I relttl

thc letter there. l\7e discussed tlle request contaille(i in tlle lett(r. Senator. \N'e didn't pick it al)art, like ave are doint noxv, analvzc ~v-!latJuAlc~re \Nalsh thou,zllt. or xvhat ~N-e thou,Cht xve meallt. \\~llat eve ~vere dcalillt \\-itll xvits tlle requcst contaillc(l in the letter an(l tllat is to sav alt cxtension of tilne in the (7risreell case. AIr. AJcLtllell s:.i(lfi I -cion't a,(rree rvitll tlle eontention made 11ere.

Scllator KENNEDY. I arll sorrv, Ilc Slli(l ~5-Itltt?

Afr. KLEI~)IEXST. He said, I (1ollXl uClee XVitll tlle l)OSiti(tll tlJkell ill

Jtl(lvc ANalsh's letter.

But it. seems to nle illasmuch as 110 llarln call l)c (lolle b~- <tivinc tltc exlellsion, sin(e tlic case cotlkl llOt 11C 11eard in thal. ternl of tlie tourl. hc lxad no objee.tioll if \\ e r equeste(l llle extellsioll.

At ll)nt point, I called tllc fiolicitor Gellernl alld lle callle dov-ll to nlv offilce XViIitC Judoc AIc>I,aren rvas tllere all(l ~ve gsked lviln if lle evoul(l xvoul(l nsk for tllc extellsion. An(l llC sai(l tlld.t he ~voulel, all(l lle (lirl.

.Sellatol IVEXXEDE-]-OU called hilll, as I ulw(lerst,all(l il"

A1l. ttLEiNDIEXST. 5 es, I (li(l. \0 llilc tlle Ju(lCe svas ill rllv oflice.

Senatol IVEXXEDY. Did +-ou ask lliin for tlle extellsioll. or tlid AIr. 51(Ltllel~?

Air. 1YLEIXDIENST. l tllillk it svas TI jOillt le~~tlebt.

Senator frENxEDY. \Tell, someonc lias to make tlle reqtlebtW

:\Ir. 1SLEINDIENST \l ell, let's stt~- 1 (ii(l.

— SelLalOI IVEXXED)-. Well, did you? Thtlt is ^X-hat] ~\~ant to fin i (sut Alr. JTLEINDIENS1. \\Tell, I don't recawll, Sellllltor. i lle l). it i 1 ~(oil((l s th:~t I di(l an(l it is so said in his statemellt. I don't think it not«cs allV differellec. Tilc re(lucst canlc jointlv from nlc tlnd Ju(l,e :\lel ar(ll—~N~e ~serel-l't both talkilz(< at the snule tin)e—to hnz~c lliln do this, **and he** did.

Senator } - X-S-EDE-. ~~1\' a Can vou hell) me
The CH AR1L~N-. w our time is ui~~.

Senator I\F5-SZDE. Just on thiS final point, gust a continuation, can you help us on whv, or whom vou ta]lied to in the morning, that you believed it n-as ryoina to be ie,,ative and avhat transpired durin,:. tllat period of time that turned it around to be positive as .Jud,ve Walsh said ?

AIr. T;:LEIN-DIEN-Sr. I thinlg I svould have tallred to Judqe BleLaren. Senator KEX5-ED1-. He xvould have been neCative or-positive?

!\lr. ELEIN-DII:N-ST. w es; he ~~vould have gone negative.
Senator ICEN-S-EDV. He svould have been negative '? I\lr.
KLEINDIEN-ST. Tes, sir.

Senator KEX5-EDY. M~llom did vou talk to that made it positive 7

!\k. KI]:TEDIEST. Later on I beiieve mv testimonV is—mv recollection is I had a meetinC svith the Solicitor UTeneral and Judoe BIcL;lren. I l~~nolv I at least had a meetinzr svith the Solicitor General in mv office about it lseeause AVit]10Ut such a meetina and without his assent the extension of time tvould not have been filed.

Senator }iEN-S-EDY. AR'ell. if AIcLarcn v;as neaative and the Solieitor xvaS nelltral on it, how did the decision con'le out for the 30-dav estension ?

AIr. IVLEIN-DrEST. Hom did it come out positive 7

Cenator KEN-N-ED1-. Yes.

~~Ir. KLEINDIENST. Al~ell, BIcLaren had a prettv ri~~id attitude about all the ITT cases and all of the attempts one lvaV or anot}lel to.]et-s FaV. interfe.e xvith his prosecution of these cases. I be]ieve tllat tllc rea';on xvhv the extension lvaS granted. nulnber one, sve all thlee T;nelv, Judqe Al~alsll verV ~~vell. that the case avaS not roing to be aryuecl that terlll in tlle .s upreme Court. that all tllea,- vvere aslviny for ~~ras a .l0-dav delav in the filin~~~~ of our juriFdictional statement and tllat could havc no l;rejuclice one rvav or another upon tlle prosecution of the case. .ro***it*** n-ouion ***t 2zavebeenadiSiellltoran unreasonableoranilk,fTical*** thillfflto sav. \]1 ri<~~ht. let's crive thelll tlle extension of time."

Senator }tEN-NZDY. Of course, thoFe facts svele in .JIld~~~~e B'alsll's]etter in the nlornin~~r: were thev not ?

5t1-. KI ErNDTF.XST. 1 llose facts al)out v:hat 7

Senator gY-,X5-EDY. The fact that thC .,()-(la~~ extension +x-as ~~~~oin on - AIr. ~~I.rtS-D-.I-N'ST. r..t I ean aSFUI-e VOtl. Cen:ltor lsennedv. T llad not tall;ed to 13t~~:~~n (;risv~~-nkl vvhen I llad mv telephone convelssttioll with JIICI(Ye AR~alcll th:lt mornin~~Y.

Senatol IvEx-Nzns. \s~~dhev;asnesrative? :

3t1'. IV1ETSDIENST. 50n10 7

S;enator l;EN-N-E1)1-. .Tudzre AVa]sh—I n~~eall. 3fcLaren n-as ne~~~~ative?

NlIr. ~~V1 E.lS-DYEN'ST. I think. tes: I t}lillk he was. \-011 knorr. if it, v~~-as a. SUl)ctantive de~~-ice avith respect to these cases. he vfas ah.-ollltelv I<e t.ltive. ARshell it {tot eloxvn to l~~e a proce(lural .',()-daa estension of tinze that. {ould not have nns substantive efl'eet on t}ie iSoll('S i'l the ease. tllen I (rness he is neutral

.Cenator IVEN-NEDY. I SV;aS jUSt trvinfr to fifrure out svho v;..s pos;tive.

tt1s. I~~EIN-DILS-ST. A5~ell. I was ljOSitil e al)out (~~i~~-in~~~~ theln tl~~e procedtlral 3X5-dav period of tim.e inasmuch as it could rzot afl'cet the outcomc of the caFeS and I thinl; that was the attitu(le taken bv])ean G. i-~~vold.

6. On June.~~ize ***17,*** **1971-(^-t, McLaren recom mended Kleindienst**

that the IT'S suits be settled. Kleindienst approved the proposed

.settlement by;- writing.,: "Approved, 6/17/71/71. RGK. " In affixing his

.ap-,oroval, Kleindienst • elied on the expertise of McLaren.

to the extent that ITT and its subsidiaries are able to finance foreign operations through foreign borrowings in lieu of expatriating funds or reducing the fl}\D of

funds from foreign subsidiaries to the United States.

- Hartford is obv iously not a major direct factor in ITT's overall favorable

balance of payments posture. Hartford's impact is indirect in terms of the balance sheet strength it adds to ITT. To the extent that the divestiture of Hartford affects ITT and its subsidiaries' ability to get credit on favorable terms there

would be a longer-term impact upon ITT as an earner of foreign exchange.

A final factor should be mentioned. Several hundred million dollars of ITT stock

is held by foreigners. The increase or decrease in such holdings, while representing short-term investment swings, nevertheless affects the balance of payments. If ITT is a less attractive investments without Hartford, there could be some balance

of payments impact from liquidation of foreign holdings.

In addition to Hartford, the Justice Department is also seeking, through court

action, the divestiture by ITT of Canteen Corporation and Grinnell Corporation both acquired in 1969. ()n December 31, 1970, the U.S. District Court rendered a decision in favor of ITT in the Grinnell litigation, this decision is being appealed

by the Justice Department. The Canteen litigation has not vet come to trial.

In 1970 Grinnell earned $18 million after taxes and Canteen earned SJO million

after taxes. With Hartford the three companies accounted for 12% of consolidated revenues of ITT and 33% of consolidated net income. While it is not possible here to comment with definition as to the effect on ITT of divestiture of these two companies, including their value as separate companies, the effect on ITT's capitalization, etc., it is reasona!)le to assume that divestiture would have some impact upon the investment community's view of ITT and the predictability of its earnings. Most likely it would result in further concern as to ITT's ability to manage consistent earnings increases and such concern would probably be reflected

in a diminished multiple on the common stock.

CON CONCL IO N

In conclusion, I think the following statements can be made:

1. Hartford and ITT as separate companies would be valued in the market place at approximately!y S54 per present ITT share versus S64 is for the combined company on o/ 54171. This represents a 16 % diminution in market \ alue, or almost S1.2 billion.

2. A spinoff to ITT stockholders would appear to be the only feasible way of divesting l Hartford. How ever, because of the div requirements of the Series N Preferred. the elimination!l of the div idend from Hartford to ITT would probably have a meaningful impact upon the ITT parent company and its liquidity. A logical result would be a Cut ill the dividend on the ITT common stock.

3. The divestiture of Hartford would have a negative impact upon the ITT parent company and consolidated balance sheets. The result would be a reduction in ITT's incremental parent company debt capacity and possibly credit rating.

4. Fina!!y, to the extent tint the changes in (2) and (3) affected ITT's consolidated credit picture, there cou]d be some indirect negative effect 11])C.II ITT's balance of payments contributions.

RICHARD J.RAMSDEN

May 1,, 1971, 1.

Mr. McLAREN. I might say that the man that made that report is the same man I used in analyzing the Ling-Temp-Voughtsituation when we be,g:tn to be concerned that that companymight go down

too during the course of our proceedings

After recei 8 ill=, this report—the report from the Trea,su. A, as I recall, was an oral report—~~~R-e in the Antitrust Division gave very careful consideration to l)ossil:)le alternative means of settling the three cases, consistent with h antitrust objectives, but without the massive

adverse impact upon OTT and its shareholders that would attend a divestiture of Hartford.

Ultimately- Mr. Hummel—tvllo as I mentioned was the dep)ut~~~~ director of operations—and I, with some particip)ation by Messrs. Comegy's, Carlson, and Mr. Joseph Widmar, the principal trial attorney on the ***Grinnell*** case, developed(l a proposal which was as reduced

to writing in the [form oft memoran(lum to Deputy Attorney General Klein(lienst dated June 17, 19 # 1.

I presented(>(l this memorandum to the Deputy Attorney,>- at a regular - scheduled briefing 011 June 17, 1971, and he t approved. I have a COI);' of this memorandum with me and(l it is attached to 1117' prepared statement, which has been furnished to the members of the committee.

(The memorandum referred to follows:)

DEPARTMENT OF JUSTICE,

Washington, D.C., June 11, 1971.

)[EMOR.~NDUM FOB THE DEPUTY ATTORNEY GENERAL

Re Proposed Procedure in ITT Merger Cases

Pr.l Background.—NVe have three anti-merger cases pending, against ITT: the Grinnell ease sprinkler systems), which was tried and lost in. the District Court and is IIO'.V on appeal to the Supreme Court, the Canteen case (vending and food service), which was tr ied and is now sub judice, and the Hartford Fire Insurance Co. case, which is set for trial in September.

Abo?ut six weeks ago, representatives of ITT made a confidential presentation to the Department, the gist of which v,as that if we are successful in obtaining a divesture:lre order in the ITT-Hartford Fire Insurance Company case, this will cripple I1'T financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a $500 million premium for the Hartford stock but took its assets in at book value ill a socalled pooling of interests transaction. It cannot now sell its Hartford stock without (a) suffering a serious loss as opposed to what it paid but, at the same time (b) incurring a large capital gain tax. A ' "spin-off" to its own shareholders would be a—and probably the only—feasible alternative; however, a spin-off would leave ITT with the large preferred dividend commitment it made ill acquiring Hartford ($5;,O million a year), but without the earning power which was counted on to cover that commitment. The result, we are told, would be a loss of \% ell over :51 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity

We have had a study made by financial experts and they substantially confirm ITT's claims as to the effects of a divestiture order. Such being the case I gather that we must also anticipate that the impact upon ITT F would have a ripple effect— ill the stock market and in the economy.

Under the circumstances, I think we are compelled to weigh the need for divestiture in this case—including its deterrent effect as well as the elimination of anticompetitive effects to be expected from divestiture—against the damage which divestiture would occ:Lsiou. C)r, to refine the issue a little more: Is a decree against ITT containing injunctive relief and a divestiture order worth enough more than a decree containing only injunctive relief to justify the projected adverse effects on ITT and its stockholders, and the risk of adverse effects on the stock market and the economy?

I come to the reluctant conclusion that the answer is "no." J say reluctant because ITT's management consummated the Hartford acquisition knowing it violated our antitrust policy, knowing we intended to sue; and in effect representing to the court that he need not issue a preliminary injunction because ITT would hold Hartford separate and thus minimize any divestiture problem if violation were found.

Perhaps equally guilty is the trial judge, who listened sympathetically to defendants' plea that granting our motion for preliminary injunction would cost Hartford stockholders the $500 million premium ITT was paying for their stock. Obviously, if such a premium is being paid on an unla wful acqusition, the acquiring company may lose that and more if forced to divest, and will so plead if found guilty. This highlights our continuing need for amendment of the Expediting Act to permit us to appeal from District Court orders denying **our motions for preliminarv** injunctions in such cases.

Pr oposed Procedure.—In order that we do not lose the deterrent **we have** developed in this field, I propose the following terms of settlement of the ITT cases::

1. Grinnell-divestiture. This would require a joint motion in the Supreme Court to refer the case back to the District Court for entry of consent order—which was the procedure the Department followed in *National Steel Corporation (No.* 31, Oct. Term, 1966).

2. Canteen—divestiture by consent order.

3. Hnrt.ford—hljllnctinll alollg lines of LTlZ, ineluding particularh
(a) Prohibiiion for 10 rears of (i) acqllisition of atla eorpor:utiolI ~~ith assets of Sl(JO nlillio:l or nlorc, (ii) acquisiiion of anv corporatiolI xvith aEs.ls
- of Sl() million-lOl) million ritho~xt approval of Ule Departinellt, or permission of the court; aud (iii) for a period of fin additional lfive vears, prohibition of anz aeqvlisitiolI of an+~ corpor.~tion ~s-ith atset* ovcr S10 fllillion except on a sholving that it s-ill not telld to lessen competitiolI or create A

Illolwol)oly.
(b) ProhibitiolI agail1st ellgagitzg in systematic reciprocity.
(c) Divectit ure of Az-is and Les it t.

Finalh-, in awll three caces, I think me should have the right to approxe ITT's press releases. We want no great protestatiolls of inllocence, go~~erlllnellt abuse, etc., etc.

I recommend that you **appro~~e a program silong the lines of the foregoing**-alloving, of course, for sonle leeway ill llegotiatillg.

RICIIARD IV. ASCLARES,
Assistant Attornev Gcneral
Ant~trusl Division.

Approved, 6/17/71.
R. G. E.

SIr. 51cLAREN. This plan contelnl)lated dis-estiture of Grinnell and Canteen! divestiture of Avis an(l Levitt; l)rollibition for 10 wears of acquisitions of an+,- corporation nith assets of $100 nlillion or more, or acquisitions of anv eorporation ~sith assets of more than S10 million excel)t on a sho~X-ing that it svould not tend to lessen comlletition! and so forth—that xvoukl be a shorving bv ITT an(l it \soulfl be their burtlen of T>roof; y)rohibition against engfl~ring in s\-sternatie recil)rocitv; anel certain other prosisions alony the lines of our Lrt'\ decree.

At the conclusion of m+~ meetine rvith NIr. Elein(lienst, I tele~)hone(l !\ lr. Felix Rohatz-n fron; Alr. Irleindienst's office—mhile lle ~s-as J)resent—ancl outlined mv prol)osal to him. This ~sas at npl)roxinlatelv 10 o'clock in the nwornill(r on June 17. SIr. Rohatx7n aslie(l celtaiu questions about I)oints in the T)rol)osal and repeated his un(le1slall(4incg of tlle prolsosal as-—it algl)eared to me—he took notes on it. 1 tol(l SIr. Rohat+-n that if the l)ropocal ~X-ns acceptable to ITT as a bavis for a settlement, ll~. sholll(l have ITT's trial counsel get in touch XVitl1 111C. I ma(le clear tflat if ITT ~ras un~sillilg to accel)t the basic outline of the ploposal, ~sith neCotiation only-as to details, I did not care to diccuss the matter furt)ler.

On the cxrenill? of Julle 17, I inforllled i\lessrs. Hummel, AIallftflie and Carlson of the Anlitrust Dirision that our proposal hatl heen commullic,lte(l to ITT's rei)resentative. I did this because AIr. Carl on an(l AIr. \\ ielmar + X-ere (~oilleg to tal;e the delsositions of some of l l f-b tOI) exeeutises in Ne\N- \ ollc on Jul)e lS, mld I felt that the~- should hc fullv inforllle(l as to the stntus of the case.

Therenfter 3\Ir. Henrv Sailer. Of tlle Col-in(rtol1 & Burlincr laxs- firlll. lvho xvas trial cotll)cel for ITT iII the *Gr,ntleil* and ***Hartfor(lcases,*** *as i* said before, telel)holle(l me for an al)l)ointment. Jud~~in~~ froitl the telel)holle recor(l maintained by mv secretarv, t}lis al)parentla- ~:-as Olt June 1S; s~-e mflde all al)l)oilltment for a l;reliminar) discl;ssiol) on Julle 2J!. At the meetil)~ on June 94, LIIE SaXler S1lO\\-e(l bA- IliS (On1 tnellts that hc h2l(l rec(i^-(el n rnthel ftlll an(l accurslte a((oll!)l oir :lle nollosill ~s-hi.!l ~ve ha(l nlltle to Alr. Rollat~~ls, an(l he inaluise~l as to variotls sl~(>(ifi(s of ollr luolsosal. For examl;le. he su~~reste(l it ~~owal(l be apl)roluliate to a(lxise Jue3gc Austitl, ~\-ho then h,lel the Ca~Xttezz **case Ull~]t** r consi.leratioll~ tllat ~~ e ss-erc enteri:lo iuto serious sctr.le!!lent

neac)tiations. Al*o. ~villl resl~ect to (:anteen, he iusluired if we ~vonl(l be ~~illulg to let ITT l;eep after-a(sluilett prol)ertie>, that is, tllore

• holltrht or constructed after tlle nlilia slC(tUiSitiOII. +\ith resl)ect to Grirlllell, lle ar~~ue.l tlmt l fT shollld be pern1itted to divest only part of Grillllell, that is, the fire protection business! ~z-hi(h h;k(l been disclls seel durillg the trill of the tnse. \Nith respett to l.evitt, he rnise(l the after-acqltiretl l)ropertv l)oint and also ilzeluired nbout retainina overse;ls ~~rol)erties. He ploteste(l thut therc xvas no Coo.l antitrllst, reasoll ~~ hv I L T SilOUId be lorced to divest Xvis. Tllell lle .tsked about the neaotiatibilitv of our l)rovisioll on no ae(luisitions over 810 million, vm(l so forth. I told hilll \z-e \voultl negotiate on details, **but that tlle** baslc plOViSiOllS of the prol)osal ~s-ere {irlll.

\0-itllill the next IP\\ (l;~vs ~ve a>neetl intelllallv th.lt C?arlsoll an(l lXitlnlal shoul(l hillldle the ne~~otiatiolls and bv Julle 30 Carlson an(l l ~idmar had so atlvised Sailer, a ld h;l(l ha(l s diSoUjjiOIl ~s-ith }1Bl COll eeJ Ilill" ;~roe edure.

()n Julv 1, I nlet \vith Siailer, C7arlson und \0~idllltlr nn(l after a verv short seszion, prillcil)allv tovering the l)oints I hatl discllsse(l ~Vitil Sailer on June °4, I left (Carlson and l\~idmar •X-ith S;ailer to continue the neaotiations.

SieM>otiatiolls l)etss~een Carlson and \0~i(lrnar on the one hand ancl Sailer on the other llalld continuetl throelCrh the mollth of .Julv—a p.lrt of ~s-hich tinte I think from ahollt Julv l0 to ,Jltlv 90, I was in I,oll(lon at the ~B.-t meetin<~—an(l in the laat fesv davs of the month, Carlson and Rlfi(lmar adoised me that the matter RVdS about wollll(l up an(l tllat it woul(l be hell)ful if I xvollld sit in Oil one or two sessions to coxer some final points. On Julv 30, I a~~reed that we wolll(l aceept direstiture of the Fire Protection Dixision of Grinnell, rather than insistin~~ Ol1 full divestittlre. L di(i so because NLessrs. (:arlson and \Jid mar, xVitll Alr. Hulllmel concurrill(78 felt that sepalatillCr the Fire Protection Division fronu the rest of Grillnell evould be u l)rocoml)etitive stel), puttinCr the rejt of the inelustrv on a more even com~)etitive basis xvith ()rinneli, wllich incidentallv xvas the leadel in that particular industrl~, Rvhi(~h hacl had a coml)etntive n(lvanta~~e bs- rea30l1 of its vertical inte~~ration anel its brood contacts in the cunstruction business.

There **~vere certain other** minor points still in displlte. and our meetjna adjourned on the eveningr of Juiv 30, which was a lrridav, for ALr. Sailer to consult ~vith 11iS Client. \Ve reconvenetl our meetinv on Saturdav morning, Julv 31, an(l ironed out the final points. Alr. Sailer then contactc(l ITT—and I believe thev polled the directors for final ap})roval of the proposed settlement bv telel~hone durin~~ the dav. I tl1en prel)are(l a press release, for immediate distribution, announting th;lt we llad rea(}letl an agreement in principle on **thc-terms of consent** decrees which it aplarove(i bv the courts, ^-ould **terminate the three** cases. This xvas done in or(icr to head olf anv further newspal)er speculatios and anv possible insider tradillg rvhen the markets reol~ened on the follo~^rin(> Aton(lav.

In conclusion, I want to **emphasize that the deeision to enter into settlement negotiations vwith ITT was mv own personal decision; I lvas not pressllred to reach- this decision. Furthermore, the plall of** settlement wns devised, and the final terms were negotiated, bv rne ~vith the a(lvice of other members oF the Antitrust Disision, and by no one else.

Mr. KLEINDIENST. NO; I might have talked to Governor Nunn two or three times since I have been in the Government. I know I had OIIC -conversation in which he was interested in being a judge. And I think **that is the most lengthy conversation I even had with him.**

The CHAIRMAN.~N-. Your time *is up. .*

Senator COOK. Mr. KLEINDIENST, just a couple of very short questions. There was, as a matter of fact, a great divergence of opinion]I within the administration relative to, not yourself but Mr. Mc:Larens policy in the Antitrust Division; was there not?

• Mr. KLEINDIENST. **Not only in the administration but in tile** country in the legal profession

Senator COOK;. As a matter **of fact, the** Stigler **report, that had** been filed, stated that, and I quote: "vigorous action on the basis of our present knowledge of-conglomerates is indefensible." And the report Bent on to say and I quote again from the report which R -as made to the President of the united States:

we strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises pending a conference to gather information and opinion on the economic effects Of the conglomerate phenomenon.

So there was a divergence of opinion, was there not, and, as a matter of fact, as the result of Mr. McLaren's position as head of the Antitrust Division, the largest corporate divestiture that ever tool; place in the history of the United States occured as a result of his actions; did it not?

Mr. KLEINDIENST. Yes; not only that, but an agreement against further acquisitions.

Senator COOK. For a period of 10 years.

Mr.KLEIDIENST. Right.

Senator Coon. And as a matter of fact, at the time that this debate was going on and his actions were going on, the former l end, under the former President, of the Antitrust Division took the position that the position of this administration in its antitrust policies was wrong? '

Mr. KLIENDIENST. That is correct.

Senator COOK. Did he not?

Mr. KLEINDIENST. Dl. Turner.

Senator COOK;. Thank you Air. Chairman.

The CHAIRMAN. Birch]1.

Senator BA1E. Mr. Kleindienst, the last question I asked before deciding there was nothing to begained in pursuing other questions was something to the effect that were you aware of the Ramsden report and you—I mean, were you aware of its sp)ecitı(s—ant you said, as I recall, you were not aware of any of the specifics at all?

Mr. KL EINDIENST. Never read(l it . r Senator BAYH. And, as I recall the hearing, at least part of the l answer to the last question was that your reliance on Judge McL aren | was really the whole reason this case was resolved as it M-as.

Stir. KLEINDIENST. You mean that Ju(t(>e McLaren recommended this solution

Senator B.~Y}r. **Yes,sir**

Mr KLEINDIENST. **That is the** only reason why I went along with it. **He recommended it.**

- Senator' BAR H. Was that recommendation and **the reason *for*** it th!'lj **compelled you to accept his judgement contained primarily in the**

memorandum that we have all read? It is on page 111 of the record, ' Ale Memorandum for the Deputy Attorney General Re Proposed Procedure in ITT Merger Cases." If X you are not familiar with the Rams(len memo, are you familiar with that memo?

Mr. KLEINDIENST. I (10 not have any present recollection of having read it. Sir. McLaren would send me a memorandum and then ~~;what we would usually (lo is discuss it, M which would save me a lot of time and(l iv also rave him an opportunity to present it, I think a little bit more • clearly. 1 might read it Senator Bayh I do not know

Senator BAYH. This is XI memorandum(if I might try to ask you to) refresh your memory, which was (dated(l June17 1971, and which lists

i'.l some detail the reason why THOU ale recommending(t the settlement,
if it is ap)l)rovetls and it is "-~pliroved. June 1x, 19,1. RGE." D

Mr. KLEINDIENST. Right.

Senator BAYH. Then I understand that after this ITT was called.

Ail'. KLEINDIENST. Right.

Senator BAYH. Does that refresh your memory?

Mr. KLEINDIENST. z es, it does. Now I know the know you are talking about. W **Whether I rea(l it** or not in its entirety is doubtful to me. Air. McLaren would have discussed it with me and I would(l have approved it in writing just so it would show it was approved in his file. After that we called Sk. Rohatyn and Mr McLaren outlined the broad outlines of the proposed settlement to him.

Senator BOYS. When a man like Judge McLaren, your assistant, maı<es recommendations like that, of this consequence, is it your judgement to take the memorandum and(i its discussion at face value or
do you try to substantiate it with, from other sources?

Air. KLEINDIENST. No, I have never tried to substantiate a recom mendation or opinion of Judge McLaren from any other source. I I have read complaints or memoranda and have raised questions about it, and then have had a conference, and had it explained to me, and I guess, Senator bayh, the antitrust law is probably the most specialized form of the art that we have. Consequently, you have to make a judgment whether 5 you have go a competent lawyer in the field, and I do not think anybody challenges McLaren on that; and(l then, second, whether he is a man of integrity, so that when he tells you something you know- what his reason for telling you something is. I think it would have been presumptuous for me to go out and hire a consultant to check on McLaren in a field of law about which I then knew very little and about which I still know very little, although i I have learned a little bit more about it. J

Senator BAYH. I must say I have the greatest sympathy with you in your description of the antitrust law being complicated. I would find it much more so than Lou. And I would be inclined, I suppose, to relv on a man y Judge McLaren's expertise. I keep coming, back to this inconsistency and perhaps you can help us out on this. If we are to accept your reasoning, rationale, which I am prepared to do, relative to the ITT case, why is it again you did not go along with Mr. McLaren's advice on the *Warner-Lambert* case?

Mr. KLEINDEINST. That is the one exception, and I guess that **hopefully proves the rule.** When the ***Warner-Lambert situation came*** up, as I try to recollect it again, I was out of town, I got a call from Air. mitchell, whereever I was, on a Friday afternoon or a Saturday morning,,, indicating that they had come up with a recommendation

[redacted]

8B. RICHARD KLEINDIENST TESTIMONY, APRIL 27, 1973, 3 HCH 1732-33

7. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Company. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was *important* for ITT to retain Hartford.. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford, As a result of that presentation, in combination with the Ransdem Report from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford. *~~ ~~

7a Memorandum of John W.. Poole, Department of Justice

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to files dated August 7, 1970, , 82

7b Memorandum of August 18, 1971, authored by

Richard W. McLaren....-.-.....

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7c Affidavit of Harold S. Geneen, dated June **12, 1972, given**

in connection with a Securities and Exchange matter.....88

7d Testimony of Richard G. **Kleindienst 2 KCH I29 - 95**

7e Letter of May 3, 1971, from Felix G. Rohatyn to
Richard W. McLaren.....

7f Testimony of Richard W. McLaren, 2 KCH 165,.. - ...

7g Testimony of Richard G. Kleindienst, 3 KCH 1736.- -

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7A. JOHN POOLE MEMORANDUM, AUGUST 7, 1970

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UNITED S 1 A 1 ST (:()N .X8NILN I

MEMORANDUM

lo Files

**Ace Ot John ;}0 Poole, Jr,, Assistant Chief
General Litigation Section**

SUBJECT: **United States International Telephone and Telegraph Corporation (Canteen): Conference with Defendant's Counsel**

A,~~P~~\lt 1 A11..S1 OF JUSTICE

JWPoole: dmh

DATE. August 7, 1970

FILE: 60-270-037-

On August 6, 1970, Hammond Chaffetz and William Jentes of the Kirkland Ellis firm called on mr. McLaren in Washington to discuss possible settlement or disposition of the captioned l case, Gerald Connell and I were also present. - -i

- - ' 0 ' f 0 i

Mr Chaffetz contended that the Government's evidence elicit so far is so weak that the case ought to be dropped. He and Mr. Jentes adverted among other things to what they described as l the extremely small number of "reciprocity" incidents revealed (in the recent depositions of the Government's proposed witnesses \ Fishman, Walsh and Manthy. They mentioned also that of all the \ possible incidents which have cropped up in Canteen documents in % only 10% of these instances has Canteen gotten business. Overall Mr. Jentes said that the incidents of reciprocity which the {X:? Government intends to prove are insignificant given the size of this industry, ~~ --of

- \ : - :- . , - 0

Mr. Chaffetz also admitted that at one time Canteen had practiced reciprocity as "everyone" had practiced reciprocity because it was understood that it was legal if coercion was ; not used. He said that this was no longer the case and particularly in view of ITT's management it was unrealistic to expect Canteen to engage in reciprocity.

Mr. Chaffetz also asserted that ITT would only improve Canteen's operations and this would redound to the benefit of [redacted] the industry as a

whole. (Mr. Jentes hastened to add that the management improvements ITT would make were not of a sort which would be available only to large firms.)

Mr. McLaren stated his intention to pursue the case-, pointing out that the reciprocity issue was only half the case; there was also a major issue of the trend toward concentration through mergers, a trend in which ITT has been a leader and a prime contributor and one which runs afoul of the concerns voiced in the legislative history of the CollerKefauver Act,

f Mr Chaffetz said that although he had not spoken to I Mr. Geneen of ITT on the subject he thought that ITT,might be willing to consider an injunction of some years duration against further acquisitions as a means of settling the pending antitrust cases. He also stated that if the facts warranted it, ITT would be willing to settle the Canteen case on the entry of an order along the lines of that entered against U.S. Steel. Mr. McLaren indicated it he felt that divestiture was the proper remedy > here. >

Mr. Chaffetz asked whether this was rewarded as a - "testiest case' and Mr McLaren challenged that characterization, pointing out that this was one of a group of cases where the grounds for Government suit had been clearly described to the proposed defen, before suit was brought.

7B. RICHARD TIC LAREN MEMORANDUM AUGUST 18 1971

August 18, l971

MEMO RANDUM CONCERNING NEGOTIATIONS

FOR SETTLEMENT 07 ITT CASES

Three cases were filed with respect to ITT

acquisitions: Canteen Corporation, Grinnell Company and Hartford Insurance Company, all in 1969. At various times in 1970, overtures were made by counsel to settle these cases and in every case counsel was advised that the cases could be settled but a sine q non was divestiture of at least Hartford and

Grinnell .

f E In November-~of 1970, Ephraim Jacobs of the

1 law firm Hollabaugh & Jacobs of Washington, repre senting ITT, visited me and proposed that ITT would be willing to divest Canteen, the principal parts of Grinnell and ITT-Levitt as well as certain other subsidiaries of ITT which might be agreed upon, provided that they could retain Hartford. I said that this was I out of the question. Jacobs later wrote me a letter

substantial confirming the discussion we had.

At some time in March, we were advised by

ITT representatives that ultimate divestiture of Hartford would be almost a fatal blow to ITT and that they would like to make a presentation to establish this fact and to establish a basis for negotiations for settlement without a Hartford divestiture. Ar,ange ments were made and a meeting was held in this office*

attended by the following representatives of ITT:

Howard J. Aibel, Senior vice President

and General Counsel

Felix Rohatyn, director of ITT, member of

Lazard et Freres
Henry P. Sailer, Covington &-Burling

and as special consultants:

Dr. Raymond Saulnier, Columbia University

Willis J. Winn, Wharton School, University of Pennsylvania

* On April 29, 1971

Representing the government were Deputy Attorney General Richard KLEINDIENST, Messrs. Comegys, Hummel, Mahaffie Carlson and myself of the Antitrust Division, and Bruce MacLaury and Timothy Green of the Treasury Department.

The substance of the ITT presentation was that a Hartford divestiture would cost the ITT stockholders approximately 51 billion. The reasons for this are varied but include the fact that ITT paid a $500 million premium for Hartford; it would have to pay a very large capital gain tax on a sale of its Hartford~stock; and if it spun off the Hartford stock to its stockholders, it would be left with ;;1 unmanageable issue of preferred stock>.

Following the meeting, we requested the Treasury representatives and an outside consultant to evaluate the I@T claims.

Shortly after the middle of Play, these experts reported that there alas substantial support for the arguments made by ITT and that a Hartford divestiture would indeed be very difficult for ITT and, because of changes in the law and in accounting practice, such a divestiture would probably entail a,very large loss to ITT stockholders.

Following this report, there was consideration in this office of alternative means of settling the case consistent with antitrust objectives, and Mr. Hummel and I, with some participation by Messrs. Comegys, Carlson and Widmar, developed a proposal.

This culminated in a memorandum which I prepared for the Deputy Attorney General dated June 17, 1971. [redacted] I presented this Widmar to the Deputy personally at approximately 8:30 in the morning on June 17, and after considerable discussion, he approved our plan of settlement.

7B. *RICHARD* MC LAREN MEMORANDUM AUGUST 18 1971

This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of $100 r,lillion or more, or acquisition of anycorporation with assets of more than $10 million except on a showing that it would not tend to lessen competition, etc.; prohibition against engaging in systematic reciprocity; and other provisions along the lines of our LTV decree.

At the conclusion of our discussion, Hr. Kleindienst and I telephoned Mr Rohatyn at approximately 10:00 A. 1. June 17 and outlined this proposal to him Mr. Rohatyn apparently took notes on the proposal; he asked certain questions about ' details of the proposal. We suggested that if this appeared to present a reasonable basis for settlement, with negotiation as to details, to have ITT's counsel get in touch with US.

On)n the evening of June l?th, I informed Messrs. Hummel, Mahaffie and Carlson that this offer had been communicated to IT?'s representatives.

Thereafter, Henry Sailer telephoned 'or an appointment (apparently on June 18) and came in for a preliminary discussion on June 24. He had received a rather full and accurate account of the proposal I had made to Rohatyn and he inquired as to certain specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the Canteen case under consideration, that we were entering into serious settlement negotiations. With respect to Canteen, he inquired i. we would be willing to let ITT keep after-acquired properties. With respect to Grinnell, he strongly urged that ITT be forced to divest only part of Grinnell, i.e., the Fire Protection business. with respect to Levitt, he raised the after-acquired prop;>erty point'; and also in;!uire'd about retaining overseas r)properties. He protested that there was no good antitrust t reason why

ITT should be forced to divest Avis. Then he as}ee<l

7B. RICHARD MC LAREN MEMORANDUM AUGUST 18 1971

about the negotiability of our provision on no acquisitions over $10 million, etc.

Within the next few days. we agreed internally that Carlson and Widmar:tar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer and had had a discussion With him concerning procedure.

On July 1st, I met with Sailer, Carlson and Widmar and after a very short session, covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

The negotiations continued through the month of July and we reached our ultimate agreement on Saturday, July 31. (On July 30, we indicated for the first time we would accept divestiture or the Fire Protection Division of Grinnell rather than insisting on full divestiture.) Carlson and l!iOmar have notes of their discussions, and their notes and memories would be the best source of information concerning

the time when substantial agreement was reached.

The foregoing s,as dictated in the presence
of Messrs. Comegys and Hummel of the Antitrust Division,

and messrs. Rossen and Borowski of the SEC.

RICHARD If. McLaren
Assistant Attorney General
Antitrust Division
Department of Justice

7C. ***HAROLD GENEEN AFFIDAVIT JUDE*** 12
1972

In the Matter of

TRANSACTIONS IN IHE SECURITIES

OF INTERNATIONAL TELEPHONE AND

TELEGRAPH CORPORATION

File No. HO-536

, STATE OF N~~}J YORK)

, I COUNTY OF NEW YORX)

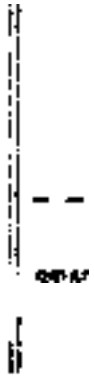
HAROLD S. GENEEN, being duly sworn, says:

1. I am the President and Chief Executive Oficer of International Telephone & Telegraph Corporation ("I'll I').

2. I submit this affidavit to provide the Commission I with information concerning a rough draft memorandum dated May c 1 1971 (Exhibit A hereto) which I prepared for the use of internal ', counsel at ITT.

3. The background of this May 5 draft memorandum is a I follows:

In about January 1971, I was informed that Assistant I Attorney General Richard McLaren had rejected a proposal by ITT to settle the three antitrust cases pending against it and had i inquired why, ITT was so insistent against having a divestiture of .' Hartford Fire Insurance Company ("Hartford") included in any • possible settlement. We understood Mr. McLaren's question to me i that. it would take a detailed financial and economic presentation V 1,1 on the importance of Hartford to ITT to persuade the Justice



 || Department that divestiture of Hartford could not realistically t I expected to be part of any voluntary settlement Or these three | antitrust cases. i! Accordingly, preparations thereafter began for a presen I tation to the Department of Justice on the adverse economic and

I financial impact on ITT and national policy concerns which a l divestiture of Hartford would have and it was eventually decided that Mr. Felix Rohatyn, an ITT director and a acknowledged expert in *he financial community, should take the lead in making this presentation to the Justice Department. For this purpose, arrang ments were made for Mr. Rohatyn to see Deputy Attorney General Richard Kleindienst on April 20, 1971 (Attorney General John Mitchell having previously disqualified himself from acting on these cases) .

Mr. Rohatyn met with Mr. Klelndienst on April RO, and made a preliminary economic presentation on the importance Or Hartford to ITT and the national ecomony. I understand that following the meeting arrangements were made for a fullscale presentation by ITT to Mr. McLaren and others on this subject for April 29. It is my recollection that Mr. Rohatyn also reported to me that, during the April 20 meeting, he had suggested to Mr. Kleindienst that the maximum divestiture which he felt he would personally recommend to the ITT Board Or Directors in an overall voluntary settlement Or the three antitrust suits against Hartford, Canteen and Grinnell would be a divestiture Or Canteen and Grinnell. Mr. Rohatyn told me that Mr. Kleindienst did not respond to this statement and there was no further discussion on the subject. While I recognized that as

a practical matter the Department Or Justice might insist upon >

of an overall settlement, I was concerned that Mrw. Rohatyn's statement might preclude us in the future from negotiating a lesser divestiture with respect to Grinnell, I took the positio that ITT had not violated any antitrust LAWS, as demonstrated by Judge Timber's final decision in our favor in the Grinnell case ., December 30, 1970, and that consequently ITT should not be required to make a complete divestiture of both Grinnell and Canteen .

On April 29, Mr. Rohatyn led the full-scale ITT presentation to Or. McLaren, Mr. MacLaury Or the Treasury Department, members of their staffs, and Mr. Kleindienst, with respect to the economic importance of Hartford to ITT and to the national economy. I was informed that there was no discussion Or possible settlement terms in connection with that meeting.

Upon reviewing the materials which were left with Mr. McLaren in the course of the April 29 presentation (Exhibit B hereto), I felt that several points should be further amplified, t Consequently, I suggested to Howard Aibel, ITT's General Counsel i, and to Mr. Rohatyn that a followup letter should be sent to Mr. McLaren. This was done by a letter of May 3, 1971 (Exhibit C hereto). In the course of my discussions with Messrs. Aibel, Rohatyn and Scott Bohon, ITT's Assistant General Counsel, with respect to preparing this letter, we also discussed what other steps might be taken to follow-up the economic presentation of April 29. It was decided that Mr. Rohatyn would attempt to set up another meeting with Mr. Kleindienst for about May 10, 1971.

In preparation for such a meeting Mr. Bohon wrote a memorandum to Mr. Aibel dated May 4, 1971 (Exhibit D hereto), a copy of which he also gave to me, pointing out some of the practical financial

 'lman-agement and other problems Which would be involved in a posse litotal divestiture of 5rtrmell and the importance of Grinnell to tlITT's diversification.

It is my recollection that after receiving a copy of ~ Mr. Bohon's May 4 memorandum, I then dictated a rough draft memorandum of my thoughts on this subJect, which is the memorandum

; dated May 5, 1971 (referred to in paraZraph 2 of this affidavit) It is my recollection that I sent this rough draft memorandum to Mr. Bohon. I do not recall whether I also gave a copy of this , draft memorandum to Mr. Rohatyn, but I may have done so.

In the course of my conversations with Mr. Rohatyn, recognized that his statement to Mr. Kleindienst on April 20 concerning a divestiture of Canteen and Grinnell might be interprets as a commitment as to the outside limit to which ITT would be prepared to go. Accordingly, I agreed that if the subJect of ; possible settlement terms came up in any subseqent meeting with Lithe Justice Department and he was not successful in gaining accef i ance Or the idea of only a partial Grinnell divestiture, he could 0 fall back to the statement he had made to Mr. Kleindienst on 4Aprll 20. It was this statement by Mr. Rohatyn that I refer to Hlin paragraph 1 of my rough draft memorandum Or May 5 as "t-hv nova **of Grinnell."** i However, because I **earnestly did not believe that a** total Grinnell divestiture was really necessary from the Justice Department's standpoint, paragraph 2 Of my May 5 **memorandum goes** **'on to** set forth possible courses of argument for counsel to ||develop on this subJect in prepaying for any future meetings. It

lXwas my thought that we should try to persuade the Department of
,! •
jlJustlce that a partial divestiture Of Grinnell's Fire Protectlon

lDivision should really be sufficient to satisfy the Governmentd's

- -||antitrust theories. We had coon the Grinnell casn derisively on the merits, and the Fire Protection Division was the only portic

Nor the company involved in the proposed appeal by the Governmant

HI felt strongly that it would be manifestly unfair and unnecessa

ifor ITT to be required to divest all of Grinnell when there were

! not even any anti-competitive charges involving most of Grinnell

,,business operations. I understand that if. Bbhon then prepared

j final memorandum dated May 7, 1971 (Exhibit E hereto), using cer

" **tain of the** material in my rough draft memo of May 5, which com-

municated our

make if the subJect of a possible Grinnell divestiture **should come up.** Our position in this respect is set forth in tI greater detail in another May 7, 1971 memorandum prepared by Mr. ' Bohon, captioned '1The Grinnell Antitrust Cased (Exhibit F hereto

1i **which was also given** to Mr. Rohatyn.

4. After Mr. Rohatyn met with Mr. Kleindienst on May **10, he reported** to me that the conversation was essentialiy confined to a repetition of the economic and financial points made **- during the April** 29 meeting and in the follow-up letter of rtay 3 ıMr. **Rohatyn said that** he briefly mentioned that **the Justice j Department should** not require ITT to divest any portion of ', **Grinnell other than its** Fire Protection Division since **that was 1| the only part of Grinnell** which was involved in any potential **al antitrust problems.** But, Mr. Rohatyn reported that Mr. {i **Eleindienst** made no response to this point and that there was no l: **discussion at all** of any possible settiement terms.

5. Thereafter I received no further information about , the Justice Departnent's reaction to our economic presentation

flun,il June 17, 1971 wrens as I have previously testified before the Commission, I was told by Mr. Rohatyn of a telephone conversation he had had that morning with Lessors. IlcLaren and Kleindienst kin which they informed him that the Justice Department's 'Inegoitiating position" for a settlement of the three antitrust cases

would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avis, Levitt - and

l would impose severe restriction against future domestic acquisitions and against possible reciprocity practices. As I have also testified, both War. Rohatyn and I were surprised and dismayed by that "negotiating position" since we considered that the price

'the Justice Department was~suggesting for settlement was "very steep", and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my May 5 rough draft memorandum - the maximum voluntary divestiture

|which I had even contemplated was divestiture of the two other companies whose acquisitions were directly challenged in the Government's lawsuits, Canteen and Grinnell. And even in that respect, as is illustrated by my **May 5, 1971 rough draft memo-lrandum, I was extremely reluctant for what I sincerely considered l|to be very** valid **reasons to agree to any complete divestiture of I Grinnell. Furthermore, I should emphasize that any willingness** on our part to even consider a divestiture of all Or Grinnell was **only in** the context of an overall settlement which **would require** | divestiture of two companies - Grinnell and Canteen. Certainly, jwhen the Department of Justice, on June 17 an* thereafter, in|

fisted upon a divestiture of the four large companies, a **total divestiture** of Grinnell from my point of view was simply out of i the question.

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divestiture os Grinnell should not be required as part of an overall settlement of the three antitrust cases. It was not until July 30-31, 1971 a7hen a settlement agreement was reached, that he withdrear from this position.

Sworn to before.me this.

/o2 < day of June, 1972

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' HartlW t. Geneen

[redacted]

7E. FELIX ROHATYN LETTER,

MM.Y 3. 1971

- t:CLI;t. G. RolswsTYtt
44 v *ALL STn* r In
|4Ch'# YORK 5,N.Y.

The Honorable Richard 17. tIcL-aren Assr stant Attorney General in

Charge of tale Antitrust Division Justice Depar.m.2nt - *Washington, D^C.*

Dear t1-, McL2ren:

May 3, 1971

-*X am 'writing this* le tier to ampl i£y ar.d ausr..~n~ *2 point* was made *in* the course of the d i SCtlSSz on which *we* nad *in* your *office* last Thursdays in i:re ho-_
-*that its* importance will not be oxterloo,sed *e Hen tioug: it tfaS* not fullv developed *in She* brief summary menc*randum* whicn was left with you, Mr. KleindionsP and tar. I4acLallry.

The point is that in the event a *divestiture ok :* | the Hartford was carried out by. ITT through. some kind. E;pin-off, -ITT would be placed in a very difficul t cast position which would severely itap2ct i ts ab.iRlitit to c-: pate in markets abroad. There could be as muon as a 8. reduction q r. cash available to ITT. This shortfall i . available cash would arise from •he reduction of ssarnings by $88.7 million on such spin-off Penile the rates **obligation** to pay dividends o:E.$50,000,000 on the Se--. S preferred stock would continue, since as I exDlaineextensively at t'ne meeting, the exchange couia no. -a: ticably be wade For the series N *stock.* These reduced would in turn adversely affect borrowing pocket by an
2 equal a:r.ount since every dollar of retained earrlincs A. Support a dollar of borrowing This shortfall is il*lestratea by the* follo<sing_t&ble:

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1970 Earnings ar.c] Dividends X ith Proforma Adjustment **to** Put t: Preferred from partial Year to ,Znntznl Basis

Net Income

Dividends Paid and Proforma
for 1v Pre~errec' ~:~~~ - -
All PreXerreds Excest N :

N Preferred for Hartford -
Paid in 1970 Partial Year $26.0

N Preferred for Hartford Proforma to Bring to Annual Amount .

Preferred Dividends Common Dividends **otal**

1970 Retained **Earnings after** Adjustment for~1970 to Put.Hartford N Preferred on Annual Dividend Basis

Borrowing Capacity on 50/50
Overall debt/equity ratio

Total Cash Available From Retained Earnings

Shortfall in Cash Source to ~X~@;~;c^~ Reduction in Earnings due **to m-X*X~.=siOno** of Hartford and Retention of Series N Dividend Obligations

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Page Shrec

labile the cash problem would be ameliorated to s extent by spinning oft tnc Hartford shares in cxchans for ITT shares, thereby reducing partially **the total** dividend requirement for ITT co.-l-mon shares, the short fall in available cash •wour d still be a ma jor corlcer-.
are (1) the Series N Dr ferred dividend requirement of t50,000,000 would rema and (2) the e:ccher.ge ratio offered to ITT shareholder. would undoubtedly have to be more than one share of ; ford for eacn share of ITT con!a.on tendered in order . induce the exchange. As a result of being-recuired a< offer a substantial discount the number of ITT sha-2ss retired could be as little as one half the 22 mil-lJc:: Hartford shares, distributed, and certainly no more than three-fourths.

You will remember, I am sure, that at the meeting Dr. Saulnier pointed out that the credit worthiness o borrower in foreign capital markets such as ITT is, **heavily deDendent** on the value which is placed on its **common** stock on the stoc'.-; exchanges here, and on the **credit rating** *which* its outstanding debt securities receive. Dean Willis NJinn, in his rem2rks~p2rticular: **referred to the importance of the** credit worthiness o: *a U.s.* based company in the United states to successes financing abroad, a major requirement far companies w foreign operations like ITT's in **light of the current balance** of payments situation.

A major reduction in available cash such as that demonstrated above, will, in addition to having the **obvious adverse oDerational impacts which inevitably** : *a* **contraction of cash, have an adverse impact on ecuivalucs** as dividends on the common stock come under cr

sure. Such a cash shortfall would also undoubtedly s an adverse impact on the holders of outstanding ITT _~ **instruments** and on ITT's ability to raise additional funds through debt financing here, but more signi£ica. abroad.

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1'D71 Page Four

Among the advcrvc conscauences to the nation tha would inevitably follow fro.n the requisite contrac.i~ by ITT or its foreign ot.3^-ations is loss of marT;ct shares to major foreign competitors such as Ericsson, Sickens, Philrps, Nippon Electric and Hitachi. **Loss** of market shares abroad can only result in a diminuti of the cash Which I'ST should have otherwise rcDatriaFe to the United States. It should acpoar.contrary to to. national interests of this country to **take conscious** actions which azould have such **an adverse impact on tit balance of payments.**

Thank you once again for the courtes ies which arc extended to me, Dr. Satllnier, Dean Finn, and counsel. We very much 2?O-ec iated the opportunity to discuss **the overall** policy implications of this situation wit you, Mr. Kleindienst and ;lr. MacI;aury

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I f , *jar h* ~,.e,~;> ' -

cc: The Honorable Richard G. Kleindienst Deputy Attorney General Justice Department Washington, D.C.

The Honorable Bruce tlacLaury Deputy Under Secretary for Monetary Affairs Treasury Department Washington, D.C,

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Qe.71:ltOl' 1 u.sYIL Hosv is that kind of (lecisio11 ;Irilde 9 bt).ll'd t 1 ,vC'l i:ltO consideration, the executive conlmittee '?

nor. ROIIAT1-N. Oil, no, Senator; we would no more go into a thins 1i',\e that tl!.tll we would the acls-ertising budget of Avis. Tllis is or stloul;l 'we .l ll~vltine matter maybe Eve avid leave souse did'eIelwt rifles in file fttttire lout in any case, expenditures ot' that kind for nol mal busiess 1nl 1 poses Would not come up to the board.

Senator IS.\YR. A5.rere)-011 ester On the board of IIT-Shethttoil'2

'. [1 . 1 ' { i I f XT}-Na No, sir. ' \

SellatO P..\YII. Thalil; YOU. sir.

fudge AI.LalYn, let me thiow a few more questions at vail very quickly here if I may. _

Could vou enunciate a bit more specifically the whole reasoning that necessitated or that resulted in your chanting your feeling about accepting the negotiations AN'hat reallv concerns me is that the impact on ,tocldlolders is important, the impact on the economy is importallt. Pelt if we have a corporate merger that violates tRle lava-. have we rotten ourselves in the position that if the merger is big enough, it doesll t m aloe axIy difference what the law says ?

Jlldge HI r lEs

Senator I think that doesn't really fairly express the situation. Let me put it to you this oval. I think that a responsible enforcement officer has to take into account the overall impact of what he is bli:lqrinfr about. Uptlntil they came in and proved to mv satisAletion tliat it was goinC to tremendously weaken ITT and was going to cost their stockholders something over *3* billion dollars, I saw no reason for settling this case shott of a divesture. I thought that thev nl; de their bed, they could lie in it.

Now. when it became clear to me that we vsere tallcing about this kind of devastating effect on them, then I began to thinly in terms of what kind of a **settlement vie could world out that vould achieve our** antitrust objectives and would not Jet into this kind of a tremendous **adrelse effect upon the companv and its shareholders I use the paring**off kind of analvsis that I explained a little while ago to Senator Hart.

If vou look at ITT as **it was before the Hartford acquisition and** you say to vourself, what can I pare off of ITT such that if they had not owned those **companies that are pared off.** I **would not have filed | suit against their acquisition of Hartford? Now one** of the **things** I that we objected **to was the fact that the Grinnell Fire-Safetv Division** | was tied into **this complex and Hartford** 2

Senator B. a. Mavv I interrupt?

Non has e **been very kind and I think you have already gone through** this.

fudge AICLAREN~ Yes, sir.

Senator Balm. And I remember it. It is in the record at least once or twice. I don't want y ou to have to labor through that again. I understand that weighing and slicing and trying to come up with something that you feel—andA have the greatest respect for your judgment and + our expertise—would conform to the law.

5X5!hat I m-as trying to get at is what philosophical responsibilitv (lo we have in Government? I am concerned about stockholders losing

8. On July 31, 1971, the ITT cases mere finally settled. Whether ITT would have to direst itself colnpletcly of Grinnell was a principal matter of consideration between June 17, the date of McLarenls proposal, and July 31, and in ITT's eyes, a matter UpOll which any

settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleinclienst did not talk with McLaren about this matter at any time from June 17 until Tuly 30. Mitchell and McLaren never tanked with each otlXer.about the cases. There exists no testimonial or documentary evidence to Indicate that the President had any part, directly or indirectly, in the settle

ment of the ITT antitrust cases.

McLargn was unaware of any financial commitment by ITT in regard to San Diegots hosting of the Republican National Convention until long after the negotiations had terminated. McLaren has stated ITTts contreDunon had nothing to do with the settlement.

Page

8a Affidav t of Harold Geneen, dated June 12, 197Z; 4-7..... 105

8b Tesinony of Richard W. McLaren, 2 KGH 113, 361, **125,** 116-l 17, 144, 174. • • • • • • •

8c Testimony of Richard G. Kleindienst, 2 KCH 142, 99,

8d Testimony of Felix Rohatyn Z SCH 119. - -

8e Testimony of John N. Mitchell 2 KCH 541---------

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AFFIDAVIT, JViF 12, 1972, 1, d-7

In the Matter of

TRANSACTIONS It} THE SECURITIES

OF INTERNATIONAL TELEDHONE AVID

TELEGRAPH CORPORATION

, File No. H0-536

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In the course of my conversations wither. Rohatyn, I recognized that his statement to Mr. Kleindienst on April 20 concerning a divestiture of Canteen and Grinnell might be interpreted as a commitment as to the outside limit to which ITT would be prepared to go. Accordingly, I agreed that if the subject Of ii i possible settlement terms came up in any subseqent meeting with to the Justice Department and he was not successful in gaining accepts

,c2ce oR the idea Or only a partial Grinnell divestiture, he could fall back to the statement he had made to Mr. Kleindienst on ,4Aprll 20. It was this statement by Mr. Rohatyn that I refer to !' in paragraph 1 of my rough draft memorandum of May 5 as "the offer **of Grinnell."**

However, because I earnestly did not believe that a 1 total Grinnell divestiture was really necessary from the Justice IDepartment's standpoint, paragraph 2 of my May 5 memorandum goes 1 on to set forth possible courses of argument for counsel to ||develop on this subJect in preparing for any future meetings. It !l Was my thought that we should try to persuade the Department Or i injustice that a partial divestiture of Grinnell's Fire Protection r% Division should really be sufficient to satisfy the Government's

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8A. HAROLD GENDER AFFIDAVIT, JUSE 12, 2972~ 1~ d-7

Of

antitrust theories. We h2vi won the G:~innell ease dec:l.sively on

,Itlle meLits, and the Fire Protection Division teas the'only portion

Ijof the company involved in the proposed appeal by thn Government.

1,I felt strongly that it would be manifestly unfair and unnecessary

sIfor ITT to be required to divest all of Grinnell when there arere

knot even any anti-competitive charges involving most of Grinnell's

libusiness operations. I understand that Mr. Bohon then prepared a

,{ final memorandum dated May 7, 1971 (Exhibit E hereto), using cer-

" tain of the material in my rough draft memo of May 5, which com-

municated our final suggestions as to the points Mr. Rohatyn

might make if the subJect Or a possible Grinnell divestiture

should come up. Our position in this respect is set forth in

greater detail in another May 7, 1971 memorandun prepared by Mr.

Bohon, captioned "The Grinnell Antitrust Case" (Exhibit F hereto),

(1iwhich was also given to Mr. Rohatyn.

4. After Mr. Rohatyn met with Mr. Kleindienst on May

10, he reported to me that the conversation was essentially con-

01 fined to a repetition of the economic and financial points made
~1

] during the April 29 meeting and in the follow-up letter of flay 3.

1, Mr. Rohatyn said that he briefly mentioned that the Just:lce

!!Department should not require ITT to divest any portion of

„ Grinnell other than its Fire Protection Division since that aras

Nil the only part of Grinnell Which Eras involved in. any potential

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I, antitrust problems. But, Mr. Rohatyn reported that Mr.

| Kleindienst made no response to this point and that there was no

if discussion at all of any possible settiement terms.

11 5. Thereafter I received no further information about |

„ the Justice Departs nt's reaction to our economic presentation tJ

(Xluntil June 17, 1°71 when, as I have previously testified before) I I! the Commission, I as tola by Mr. Rohatyn Of a telephone conver-a (lion he had had that morning with i.essrs. IlcLaren and Kleindienst, Win which they informed him that the Justice Department's t'nego- .. tiatinJ position" for a settlement of the three antitrust cases .j Would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avist Levitt - and would impose severe restriction against Suture domestic acquisitions and against possible reciprocity practices. As I have also test fled, both Mr. Rohatyn and I were surprised and dismayed by ii that "negotiating position" since we considered that the price the Justice Department was suggesting for settlement was "very tsteep~', and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my day 5 rough draft memorandum the maximum-voluntary divestiture which I had even contemplated was divestiture of the two other **Icompanie5 whose acquisitions were directly challenged in the** ! Government's lawsuits, Canteen and &rinnvll. And even in that ¡! **respect, as is illustrated by my May 5, 1971 rough draft** memoIrandum, I was extremely reluctant for what I sincerely considered !! to be very valid reasons to agree to any complete divestiture of jlGrinnell. **Furthermore, I should emphasize that any alillingness || on oar part to even consider a divestiture of all Of Grinned** was ! **<u>only</u> in the context of an overall settlement which would require divestiture of two companies** - Grinnell **and Canteen. Certainly,** At **,8when the Department of Justice,** or June 17 and- thereafter, in- il fisted upon a divestiture Or the four large companies, a total divestiture of Grinnell from my point of vie, was simply out of **the question.**

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8A. HAROIJD *GENEEDXtFFIDAVITJ*
HUGE 12, 1972, 1, d-7

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6. As the COIT~~.iSSiOn is aware, lairs ilcLaren disagreed 1

for some tilde with our position that a complete divestiture Or

..r~innell should not be required as part of an overall settlement

~ of the three antitrust cases. It was not until July 30-31, 1971, 1

,, when a settlement agreement wa.s reached, that he withdrew from ,

i ~

J

, this position. C)

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~,<3 AREAS,\-; •_,

har 1 A. Geneen

Sworn to before me this

/fD27Y day of June, 1972

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11:,

negotialtiolls Also, ~vit1lresl)ectto Canteen,heillfluile(lifsxe~zou l)e svilling to let IT'S lveel) aEter-tlcquile(l pro~)elties, tllat is, tllo.se l)oll,(vht 01- constructctl aftel the Illaill uz riltibition. \\rith resl~ect to C;rillilell, he al,~>lled ihat ltST sholll(l I)e pelmitte(l to tlivest only- part of (,rinllell. th.it is, the fire protectic~ll btlsiness, XV4liqll ha.l iveen discalsse(l (lurista tlle trial oE thd case. WN-ith resl)ect to L,evitt, he raise(l the nfter-ac(luiretl prol)erty l)Oillt alltl also inquire(l abotlt retaining overse;ts l)ro;)elties. He proteste(l that there ~\-as no aood antitrtlst re;lsolls\llx IrrRshould befolcedto(livest~tvis Thellleashe(l.ll)oltt thc nebgotiatibilitv of ollr l)rostisioTl 011110 nC(luisiliolls over 810 Illillioll, 2llld SO forth. I tokl him ~ve xvoulel ne(rotiate on details, but that t.hc basic provisions of the t)ro^)osal ^zere firm.

' WN-itllill the next f~nv davs xve ncreed interutlllv that Cnarlson nnd RN~itlmar showll(l hllllldle tlle neaotiatiotls an(l bv June 30 Callsoll .tnd ll idlll.lr ha(l so advisetl Sailer, 'an(l hall lla(l a discussiorl lVitll him eoncerllin(~t pro(edure.

0n Jul+-], I met ~Vitll Sailer, Callson an(l lVidm:tr and after a verv shol t seskiou, prineil)allv ('OR'eliIIC the points I hud cliscussed XVit
S liler 011 Julle 94, I lefl C5arlson alld Wielrnar xvith Sailer to continue the nerJoti.ltiolls.

, :\'e~otiations het~veen (~arlson nnd \0~idmar 4011 the one hancl atld Sailei 011 the other hall(l continue(L thlourrh the month of Julv—a part of xvhicil time'I thinl; frolll about Jvllv 10 to Jui+- 20, I lvas in I,or,(lon at the .&B,& meetin,a—an(l in lhe last ferv clavs of the month, Calisoll nnd lVidm(lr az:lvised me th,tt the matter lvas abollt AVoUIld Ul) nn(l t}l;lt it xvoukl be helpful if I xvoul(l Sit in on one or txvo sessions to wover some final l)OilltS. On Julv 3(1, I azrreed that ~ve xvould aerept di~-cstitule of the Fire Protection Disisiou of (;rillnell. rather tha insi jtinC 011 full dis estiture. I did so l)ecause Alessrs. Carlson and AN-idmar! zvith LII'. Hummel eoncurrina, fell that separatina the Fire I'rotection l)i\ision fronl tlle re,t of (Sri,mell \ vould be a ,)rocoml)etiti~-e stel~, pilttinzr the rest of the imillstrv on a more even competitive ba-ij xvith Giim)eli, xvllich incidentall^-;vas the lea(ler in that particlllltlr industl~-, lvhicll had had a eorl>~letttis-e acls~alltage b~- rettson of its verticai intearation an;l it3 broad contactS in the construction business.

Thele lvere certnin other minor points still in dispute, and our meetina acljourne(l on the evelling of JUIV 30, rvhich lvas a. k'ridav, for S\lr. Sailer to COIlSUlt rvith his client. We reconvelle(i our meeting on Saturdav molninC, Julv 31, and ironecl out the final points. Afr. Sailer then contacte(l ITT—ancl I believe thev polled the directors for final approval of the propose(l settlement by telephone dulina the clav. I then plel)wtreci a press release, for imine(liate distlibution, announcina that xve ha(l reached an aareemellt in principle on the terms of collsent decrees lvhicll, if apl)rove(l bv the eoults, ~voul(l terminate the three cases. ~'his vvas done in order to head off anv further nervsl)aper speculation, ancl anv possible injider tradina xvhen the markets raope1le(1 on the folloxsDing A1Ondav. o

In conclusion, I' lvant to emphasize that the deeision to **enter into I** settlement negotiations ~sith [TT rvas 1u~- oxvn personal cleeision, f I lvas not pressured to reach this decision. Furthermole, **the plan of** settlement ~;as devised, and the final termXs evere neaoti2rted, bv me lvith the aclsice of other members of the Antitrtlst IZivision, alid by 0 no one else. 2

3G1

'l'l<zlt, as xou may remember, is a peat of Foul l)rei).lred statelllellt el;ltl at)}}t';ITS at leatre lti [of the t^pexvlitten copv3 of the resold.

All. .\kIS\REX 5:~es. I thinly I used the telm ' tliscuss" there in the ,>ii or :b.,lls,llt sVitzl.}*

Peril lids. the Senator has in mind one of the menlor;lll(llllLts eve tug n in \vhiell indicates that I sent the Canteen case up to the Attorney General Shell I initially recollllllende(l suit.

I }nls-e] reviewed the situation there. Sk. Mitchell had listed (Sontinellt:ll P>ii1;erv as n torlIsel client of his *former firm* told Olll~- indicated that it llama latex been nequile(l bv IT'D. I thinly What hap;~ene(l X-as that I sent the proposed case up, and then he telephoned me about it all(l said he Was (lisqtlalified, and then he sent it (loxvn to :\1l. lilein(liellst. I thinly tllat M-as the extent of anv tables I had With him.

.Scnator *J\ENA-EDY.* And Senator I1art, in discussion, questions, rvith Alit. itloin(iiellst, said:

"\NTha- discussions (lied You have lvitll John :\litchell rvith respect to tllV aspen ts of the ITT cases?"

Air. TQleirlclienst said "hone," and Senator Hart said: "NIr. :\IcLaren, Jyel~e S\ l cIJal en?"

Anti Judge :\lcLaren said:

"l ha(l none, sir."

AII. LIcLAztEx. I think that ~X-oul(l be correct. Tllere is a "buck" slip slloxvina that the Attorney General's executive as3istaIlt sin1plv buclsed the matter down to Air. Ixleindie1lst.

Sen.lt{)r ILEXNEDY Air. Cllairnlan, in the Del)artnwent documents mafle a part of the resold of this heali3la there is, as S\k. WIcLaren jtlSt l31elltiOlled, the mer.lolulldum from ;\Lr. AIcI-aren, dated April 7, 19G9, ackllessed to WIr. :\ Iitchell Which states as follows:

The aStort3eys for ITT arc coming in to talk about the Canteen acquisition *tomorrow mc,rllillg. I expect to* tell them Eve are reconumending suit, including a prompt Inotioll for ten por.lry restraining order, unless the merger is abandoned.

And the second document is a memorandum dated April 7, 16369, **from the executive assistant to the Attorney General, addressed to** Air. lileindienst, lvhich reads as follows:

This is a proposed civil antitrust complaint to prevent ITT from acquiring Canteen Corporation, a nationwide food service and vending company.

This looks like a good case under section 7 of the Clayton Act. **There is a** vertical aspect in that Canteen will be in a position to muscle its competitors and potential competitors out of **food service and vending at the installations** of ITT and its affiliated companies.

Canteen and ITT will also have the power to expand the former's business by anticompetitive reciprocity action directed at suppliers of ITT and its subsidiaries. Moreover as alleged in the complaint, the merger vs ill tend to cause similar mergers by Canveen's competitors simply seeking protection against the effects of this one or atsrressively seeking similar competitive benefits.

Diek AIcLaretl has talked to the Attorney General—

and it saws "A.G."

about this case so that he is aware of it. I don't believe he is aware that it is noxv "ripe." You nlay avant to talk to him about it on the phone.

And then it continues:

As far as your signing the **complaint is concerned, I dare say you can scratch out the** A.G.'s typed name and then sign yours as Acting Attorney General.

And, then, at the bottom **of the memorandum there is a hand**lXrittel} ItOtatiOTl: "To ALcIia,en. O.I~."

cases, l thilllx all(l I hol)e all of us feel lvc are uskino llim in that lieht, and tllat voll svoukl understtln(l certainly our reslJonsibility in asking in tlmt resl)ect.

.Sonle of the al eas that I xroul(l like to inquire into **hetve been touche(l** on, bot.ll by Sen; tor Hart and by your oxvn commAents, but in any e~-cnt I think it is useful and helpful to the oeneral nnderstan(linffl to

erllll)s ha~-e these responses, alonc the liaes of quest,ions that

mcmoran(lum allevedEv R rotten bv AIrs. Dita Beard. Ml . asked whether the subject of that memorandum had entered into l.-V conversations with the Justice Department. I flatly denied that anvthing having to do vvith the Sheraton commitment had ever been discussed by me with Mr. Eleindienst or anv other representative of Justice.

Let me sav now that I (lo not knoxv WIrs. Beard and, in fact, had never heard her name before talking with NIr. IIume. !\loreover, I - never knew of-an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press This was 6 months after the antitrust settlement had been reached. Therefore, it was Siterally impossible for me to have participated in anv conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise-comprising compames~nith sales ap- - proximating $1<'billion in-assets.'-Even apart from forced sale, I can think of no case in- Which a single owner voluntarilrparted with values of this magnitude. As a director of the company; I considered this an extremely harsh-settlement,-arrived at after protracted and difficult negotiations betwsen-representatives of Justice and ITT.

- If I may, sir,'for the record, I-would like **to place the** dates of mv meetings with A{r Eleindienst:

The first one took place on April 20, 1971, where I Rave orallv some of the poliev considerations Eve thought relevant.--~Ir. lileindienst stated that since the Attorney General had disqualified himself, the ultimate decision With respect to and litigation would necessarilv be his. He-said too he would make that decision based on SIr. :\IeLaren's Antitrust Division recommendations, and - told me anv presentation should be made to lKIr. 5\IcLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting >-as June 29.

The last meetina was July 15.

Thanl; you, hair.- Chairrnan. r The CHArR^rsN. Judge AIcLaren, you sav you were solelv responsiblefor this settlement, with your staff?

Mr. McL~REs. I'm sorrv. I couldn't hear the last sentence.

The C&<RA[.~N. Did I understand VOI1 to say that vou revere, You and vour staff revere solely responsible for this settlement?

Mr. SIcL~REs. That is mv testimony ves. sir. -

The CHArR~As. Norv, did vou know anything abo'ut a $400,000 contnbution from ITT to the city of San DieCo?

SIr. McL~RE>-. Absolutely not. I Ihwezv nothing about and of this I Whole business, or even that the convention divas zoint there until I I read about it in the nervspal)ers inhere someone tried to make a f connection between an alleged pawn ent and the-settlement of the l case.

The CHAIRN1.sST. NO\V, did ASIr. Iileindienst. -AIr. Mitchell, or anyone else attempt to influen(e your decision in this settlement?

Air McLAREN. The direct answer to +-our question is :\-o~ then did not." I would like to add this: When I lvas first interviewed be-AL.. AIitehell an(l SIr. Ixlein(iienst in the Pierre hotel in Decembel Or leas vith retard to coming down here, I had an understanding xvitll them

SIr. ECLEIXDIEXST.ANTell, I tlluderstood tllat tIr. ROJI.ttn 11 llad Gll, \ onc i'UllftiOn ill tllis situ;ltiol~. That lvas to first lna!~e .t fillallcial-eennomie presenlatioll to tlle Deleartment. T]wat v;as done Oll April ◦.

Tllen! VV]Ien AII. BIcLaren brouFrllt up the proposed settlement outlinet

I presume because of tlle fact tllat ZIJ. Ilollat) n lvas tlle lle.t(l of tl e company at the April 2D meetina is avllv]~e ~vanted to call S51. Rtol.a

tyu Oll June]7 to tell him ~~llat ave avoul(l l~e svillina to do.

I ulldelstand tllat tl~er>.lftel. l)ased ul)oll ,llldfre AIcLLIleJls testimonvt lle tllen netrotiated t}le settlc,ntent V<itll tlle companv 1 alvlers.

r Se;rlator ISEN:N-EDE. **He was the one** lvlso ~vorlved 011t tlle settien-le-~t

t vvitll tlle I.T. & 1'. directors '~

A!:r. KIZI.N'DIEN-ST. Altitll tlle la~+vvers.

Sellator IvEs-S-rDr. MTith the lasryers ?

318. ITLErS-D1ENST. Yes, sir. I nes-er did anvtllillg in t]lat re~~rard.

SenatOr IVENNEDY. AIr. AIcLaren, did ~ou (rather tl)c iml)lessioz tllat tlle attornews of I.T. & T. understxlod tllis re]atiollsllips tooi I lllean, at anz time, did ally of tlje attornexs *for* I.T. & T. sat, AIr Ito1lat+-n is tlae felloxv sort of to xvork t]~rot1ell ?

.Jtldt,rc AIcLAsu;x-. I llad nel-er lleard of'3tr. Rollatall lwelore tli,s *2tpt'il* nceetill~. Tllen, n-llen lve came up lVit]l our propositioll in .Jun *I tokl* AIr.]'oUlatvn tllat if tliat *RS* acal~tal)le. are xvolllld. fronl tllele on. deal lvitll tlse lavysers. ~'lsen AIr. Sailel came l)acli tl]e ne st d:-t-; and sai 1, OIs **let's sit dorvn and** net:,otiate, I tooli tllat—partiell]all~-

I)ecause of tlle information lle had, it XVaS olmvious lle llad zrotten 't froall RollatJ,-n. c

From t}~ere on, I dealt avitll tlleir lassvcrs.

.9enator ICE.SXEDE. \ATell, 5011 can see p.lrt of tlle prolulem ITT. il! its pless re]ease, said acreelliellt xras re.lelxed xvitll the .Tustiee I9epa.r-

aent onl~ after llard negoti.ttions l)etxreen ;;our outside Je~~al eoulseX

and tllen .&ssistant.Sttorllev (Rener.ll, l'iellar(l Alel,arenq sllld llis ctaIi.

';Neit-llel Sirs. T3eard llOl' anv otllel leXral counse] m-ere alltllorized ~;-w carrv ont sucll nenrotiatiolls."

.Tlidfre A1c L vra :N-. T]lat is true.

,RenatOI IVEN-N-ED\-. 1 tllOnrIIt + 011 just said ~-ou felt tllat Air. I'o]larw-n

R-as tlle ne~~otiatol.

Jndrre AIcLAllEx. I said I on]V llad two eolltacts svitll lliln. alld ~s-e lBnt it np. an outline of settlemeilt to tlle colnrtalll~ talve it or leave i.: if +'Oll ilre goin~r to talie itv con-le baclo and xa-e'll ne~gotiate it ol.t lV,t.!

rollr lavXvers.

T]le~- sent t]~eir la~vlers in. and from tllere on, re nerotiatedt sr s . j]leir]aRvvers.

F Nolv. tilere slre a lot oi tllilt rs rve netrotinttd abOllt. Tll('l(' ale 111:.':'-

§ details. Senator. If I svere to go lJaclS and reconstrllet. I could 1lro5Jal:.: .-

slsot tllinfrs ill tlle decrees tl-lat ~vel e l-soints nt issue tllat tllev svc r e ve ~-

concerlle(l alout, alld so Oll all(l so Oll. E;;;ome of tllel!l :;Je (~f so; -
jm l)ortance.
-ts Atr. Isleindienst said, rve chanfrecl our deal, in effect. on (>Trinl!e ;.
Al'e also ellang(d tlle xvordiyl o of tlle i;A-o fultllel nc(lllisitions '
1)!(;Vj
siozn I oririmlll! 11ad 11.ld in tltere tllat on ac(~llisitions (,f R1n
llxil!io .
tllev 1lacl to affirnlativell I)rovc tllat it lvolllld tlot lwave al) arl\-erse
etl't;c1- Oll eOnl1)etitiOII.
•l e I:.n.lllv came to t]le eon(lllsioll tllat tllat lvas l)IOl)ShlV ltNre:;liSt'S.
<,alz(i rve develolle(l a llerv fornllla. Tlsosc rvele inll)ortallt ile=X-
4iatio: s.

:!ir. AT(T,a]Cn~ I 11aVe ;11 mY 11al1(1 (; COl)V Of tile (1(tlee, t1;e (OnSellt decrec. It is 15 tvl)eavritten l azres on legal-sized l)a;)cl. It too'; cluite a svllile to non:ld tllat ont. did it llota

Judge NiCLAREN-. Tes. sir. I think tllat is only one of- tlle tllree, is it not?

Senator lIRrssi.v. Tllis is tlle one in tlle *ITT-B, rXfo2dt* case, that is rir~ht.

Judqe BIcL-~Rr.N. But there w-ere three cases.

Senatol *fJl.l-sE.t.* I f tllere w-cre tllree c'lecrees! tllen lve ^~ oulel ... to **have** tllree blmdles of pal-ler like tllat rvluicll I llave 1lerc.

.JI]dYe AICISAREN-. lsl~:lt is ricllt.

SellatOr IlrrSE.~. HOEV manV COnferellCeS \NOUId tl!*}e lLaRe l)eell 1)L n-ay of negotiatioll ss-itli the rf.speetive letral staffs of the l)eleartule lr of .Justi(e; 'rreasurx, tlle lalvvers representil1g tlle ITT alld t l~ese ot}zer
eorl)ol tltiOllS Sl

Holv nlally eonferences do you tllinlv tllat lroukl]<ave been?

Judfre 53chAREN. \\'ell~ just as a ,eyess, Senatort tl)ere larobal)lv o~-ele ^20 or so. I;ut 1 tllinlv tlle larrvers tlwink of nerotiations as tlie lXind ot' thing that started after]' made our l)roi~osal to iNtr. Ivo]~atvll and he eame bacl; and said—and ilis lu~n~yer asiSed for an nlarzointlnellt an(l discussed tlle brond basics of ous p1'0pO5{11) and I tokl him tis,lt tliat ~vas the laatteril tilat ~X-e ~vere (roilig to sticli rvitls, lullt +>e: sv(>ul(l nefrotiate as to all tlle (letails of lhc thinfr. .-&nd fronl t!lerf oll~ startill<~ about tile.—l rvoukl (rtless aroland the 24tll of .lilne—11e callecl nce.]~ tilink. on tile 1trtil ancl xvc niade an alr~~ointnzent for tlse ' 'til. It is in mv preleared stzltenlent. ~Ynd from tllere on, that ~vas real!v tlle first neaotiatinfr FeSSion on thc •aAth, av}len]~e came in and ~s-ant(~d t-o linc,xilloxv broad tlle nefrotintil1(r limits mere llere. I l;ind of laid Ollt tlle t~all park.

.tt tlle end of tlle montll. I bl'OUtDlYt lwiln teretller lvitl, tlle t~so tl ial llten an(l thelT nlet almost dailv, then, until the latter 1lal t of .11l1s, linillmering Ollt all tllese details. .4nd there were tllree decrees

Senator Hr.rs};A. Xorv. tllen. mv nuestion is at hoxv snall s of tllose neCotiatinffl session6 ~A-as hlr. Itleilldienst presellt ?

Jndoe A>~,sriex. ITc lvas at none of those sessions. l sav aCaill. zCen:ltor. I tllilll; tllat I lvas resl)onsible for the 11asic laro~)osal of tllis thin~. I svas res~)ollsil)le lrerson<llly and avitll 111V aSsiStalltS i11 tlle O~mitlllst 'Division for of the neCotiations. I do not tllinlX allx larvver xvlEo lxnoxvs anvtllill~abollt neroti.ltin~M-oul(l s.t! tllatliliell(liellst liacl an!-tlli lfi to (lo o-itl) ~t.

Senntol IIrrsl~.X. Tllen Arr. Ssohatvll lv.y,s notifie(l alld lle l)reslll];;tl)l! too!~ it lll) rVitll his princileals and that ~nas 011 ,Jul.s 4,() nud the annoul1celllellt xvas macle on tlle .~lstF ~vllich ll-as a :Ratul dav ?

Judae :\Tc:Lvr.Es-. 5'o, lve did not have nnv eontaet nVit)l I~~ol~ntv l tllen. rrV dealill(Ts at that time lvere entilelv lvith ar, . .Railel . t!le tl ial eolulsel. Fri(l:lv avas tlle .>,(ttll. We bloke Ill; ancl lle ~vac 1n eollta(t rlre cl ients and clear certain thin as that lve l)ad prollosecl. Tluell lle canla l:acls on Saturdal- morllin~ and lve ironed Ollt some mole tlein¢s. T"l('':! on Sattlrdltv afterlsoollt '>ailer m-ent bac3~ hv telel)llone to tlle ITT y)eoy)le .allfl ile got tlleir approval. ARTllen lle eame bacl~. lle s;n id! rve 3s;lve t ot a (leal. ancl I l ut ollt a yarews relense. 11 svaS lnv sieal.

S;enatol lIr~r-sT~.v. In tlle neaotiatinC sessionst 311-. Isleil! lienst lvas not lulosent ?

SU'32

S\I;. ILLEJXDIENST. N0; I D1i(Yht 1XaVC ta1]\eC| tO GOVernOr SUIIII 11\-.3

or three times sinee I have been in tlle Gorernmcut. I lino\v I lla(l c ue conversfit,ion in srh.ie.ll Ile avas iLnterested in lJeinC a jud(te. And I t]linl tlzat is tlze r,70st lenv.hv conversatiolI I even htIcl lvitl2 hill7.

'rl~e csrTtln^\f t~-. i~our time is up.

Sensltol COOTS. l\Ir. Iileindienst, just a eouple of l-erv short, cnestions. 'T'llere El-aC. as L1- rnatter of fact, a xI-eLlt divcrrretlce of oiBi tio,; osithin tlle nclministratiort relative to, not yoursclf but l\Ir. :\JcI.a esl's poliev in the Antitlrlst Disision; lVllS tllere not?

- SIr. 1LLEINL'IEXST. S ot on]v in tlle adzlillistratioll but ill tlle

coulltrlr, in tl.e lecrnl 1lrofession.

Senlitor Coo~k. 4s n mfltter of fact, tlle Sti¢>lel relsort, th lt 11;ze3 I)een filed, stn.ed th&t, and I (luote: "vit.orous netiou on tlle 1>:.- s of our 3zresent lQnorvledfTc of eollglomerates is in(lefellsible." -&nd the relsort ~-fznt on to sa.v, nn(l I quote avaiY.t from tlle report zvlliell xrLl5 marle to tlle Presideln.t of the United States:

\^~e strolugh- reconllstenct thot the Departllaellt dec~li~~e t.o underla',ze tl r.lrexar^.t

0r actioll against conglolllerate Inergers ancA con<<lomer;lte enterpriseS pl'l;\'"i:l" r colzfercrlle to g.7ther i>;forlz-lrition and opi-!;ioLl 011 t.hc economic effeets of the conglo nerate phenoz.tenon.

So there rras n divertellee of OlRilliO'I, rves tllere not, and, ns a matter of fLtCt, as thc result. of AIr. IXIeLaren's pOSitiOIl &S Ylend of ;l~e Antitrust Dilision, tlle lfArfJest corpornte divestitu}e tlrnt erer tonJk place in tlle lliStO37' of tlle lSniled States oceured ns a result of !2ts actions, did is not?

AIr. ISLEINDIENRT. TeS; I10t On1N tIIal} 1)Ut .1Y) aC1CC311eRlSIE ::";1St

further nco lisitions.

Senator (looz;. I~7or a~~ ~-,eriod Or 10 treals.

A1l }\LEIND:ENST, Liqllt.

SeIItltor Coox. And as a Tllatter of fa(t, aT the tillle til.lt lliiS del)aie tr,S aoinw on nnd h.s aetions rrere ~fDoiDcr 011, tile foril~le, I;Xwad, undel the folmer Presidel,t, Or the Antitrust Division toolc tlit novitio thdt tlle positionbof this administratioll in its antitlust politi~;s +;~ss \RTOI1 's ?

AII I\LETN'DIEXST. .7 I~nt i; correel;.

Senator COOTs. Did he not9

SI1 . 1s LE;NDIEXST. D, . Turner.

Selj;,tol Coo~. Thn~Q1<: VOU, Atr. Cl)airman.

1]1e C.HAIRETAN.]3il'C',ll.

,f Se~l~^tow ISArir. :\lr. IQleindienst, tlle Itlst quectic)ll r asl;ed i,eforc g decjic'.inlr tllere rv&s notllil~¢~ to be railted in pllr-ui!l" otllel~ <*zae;~ions 'l rraS son7etllin~- to the erreet thnt +s-ere ~-oU afirale of tile i~al~f-cie

report alld vou—I meali, xs~ere vou nxrare of its specifi(s—a!lel ~-ou said, &s l recall, voU ~rere not alrare of nny of the specifies at ',!1" lsil. I\LEIXDIi.NST. :2sever read it.

Senator B~TH. An(l, as I reeall tlle 11enril~~, nt Zeast part of kl~e ans~E-er to the last question rras that. s-our reliai7ee 011 Judre A1t1, Iren ras reallr tl)e rR-IIolc reason this casc ~ves resol~-ecl as it avas.

Is-lr. IET,EINDIENST YOU n1ean tl1nt. JU(SCRe AX(IJaren re(O~5 nI~^ ;de(1 this solution?

I Senator B~E-ll Tes sir.

§ ~\11 * IVLT INDIENST. il~at is the OTily reason-arllv I M-ent alo:lC ~s-i T .: il .

tHe re(onlmellded it.

Senatol BTYH \N as t!sat recoml)lendatioIl and the reasons fol if tll l. coml~clled ~-ou to accept his ju(lTment contained psinsaxil!- in the

{ SIr. 1ALLINDJE?>-ST (e.oTlt.irluills,~). "The Iloildivestiture of Hartfol-d

t.2ut tlle~~ llebve i.o do other thiri~>ts." I said, "If thtLt is good enou~-rl.l for R ~-ou tllat is fine aNitll me" and z~-e called up nol~~t,+<
u The CHAlS'8I,tN. We nvill recess now unt,il after tile ro]]eall.

(A recess rvas tsl;eu.)

Tlle CIIAIRAI&N-. Let us have order
Serlator XBavh, proceed.

Senn.t,or B.~,W'}T. Alr. ~iendienst, t,he evho]e thingo is r£X.pidllr mol-iTlfJ

toxvard thc +sitchin~~ hour.

The ~R-l)o]c SUIll alld substance of the reason for subject,in.~r VOtl Ullfl ararious indil-iduals associated +soith ITT to these l,tearin rs goes to tlle tllrust of t,he Govemment case n~~ninst I'ST arld ~N-hy its pOSitiOwl ws-as chEtnged. AYhen ~s~c just left t.o K°' t.o vote I think you s2lid vou re<lllv did not discuss the nlemorandum, the hiIcLs.ren memoraaldum, 5X-ith AXlr. SIcLarell. That you jllSt took his jud~twewlt an(l lle said this is 5;htt. ouerht to l)e and ~-ou illSt init,iated it, is tll:ll, accurate''
S\lr. IQLEINDT;.SST. \Afel],]~e outliJIed in l)reeise det,ail 11is pro,r)osed fra.me~^-ork f<~r a sett.lernent, a,nd gave me his reasons for it. 'rllo-e

^^-ere vers- l~ersuasirTe reasolls.
Sena.tor ~3A.5'H. And t'.lese reasolls >s-ere, arrs.in?
AIr. 1x l,ETNl,JI,~ ST. Bef; R ou pardon?
S;elz.~tor ~EE'H. 'those ?~easolls ~N-ere, acraino
Air. li].rl>-nrEs-sT. AN'e]l, llo had becoine conlinced l\-it]l resl)ect to

the {inullci;ll impLie;lltioiis iurolrecl in the si4llation, haliner l~ecc\alze so conx-irlced l)ec~l, se of tlle sensitin-e re]ationsltips of Hart{'oz(I to tlle ITT coJlfrlollle; ate, t,hott; if tlze;~ +X-ere 2Coinar to];eep thst ;llen tl:~ea- ri-ere

ooinfr to tXc rc(luirecl t.o elivest tllemsell es. of otller assets subst~;ilti:lli~ eqUt?l to lI:lrtl'or(i, an(I KllSO asset.s t,]lat; ~x~oulel t,end t.o reelllee or clll.li-

nate ;12e no.lcomy)e-~iti~-(rlspects of tl?e ITT confrlomeratc.
Senator B Y1'li. Could I read from tlle memo to relresh ~+-our

memorv—— -

AIr. WLEINDIENST. Sure.

Senator EA5-.;I (COlltilllllill7). T<s see if ille sulbstarsce eont;lille(l in lllc

memorancll,m ~\-as discusseil EVith R ou l)ecftuse it is complitat.ed"
:\lr. IVr.ETNI)IENST. ,Sure, +-ou ee.rt.ain]+ mav.

sentltol B.VYI4. Did :Atr. Tilc:I,arell sllfr(rest in d.iscussion OT di(l +-ou rend ~sllat it sa!-s in the t2lemo, and it sa-vs:

This \\-ill cri!~llle IrT fil2anci.l11!- and seriousl!- illjUI'C itS 9.-!(2,000 ;t(-1el.hewl(i*-l;. Lssentiallv,thi-isbec2uselTi-S.lidaS.;OOmillio:lpltilliuinforP]>.rlcold' Xi lr.c result, szc ale t'/1(2 svould be :1 k!SS of xxell ovcr Sl biliion in ITT ecn]llzf,;5 Sl-> C'}. value, a aveal.e:>eci balallce shect, and reduced borro~. ing capacit!,-.

Di(l that

AfR.]SLEIXnIENST. Tl~S.t is evhat I meallt to imp]+ M-lle'l lle saiel

tllat lle had l ecome persuacletl uith respect to ihe finallciul irqln cb of a cliv-estiture oI Hartford.
Senator B.NYH. Then he sa.+ s:

~'c havc l-ad a stud^- made bV financial experts alld they s-ubstalltialh CO!!t.r~ll ITT's C'lt.illl a, to tl)c cffecl of a dix-estiture c,rde r.

Arr. IQLLINI)TENST. MTell, I ttII) sure he mllst llave alhlc-~ed 10 tll:it but I
:iBe:;ator BA]'r,. In otl~(r +R-orcls, the tllllllst ovas the dam.~re Illc li~-est.tule ~;-oii'iel htlr e 011]'rT stoclz?
AIr. I;LEIN~)IJ.XS'r. Wes, s~; lllat is tlle reason Jualqe Alel are;l

cl);l~|~etl llis lniral, the V;t!'i(S\' of final-lcial rezlsons, the L:-~l:lllce (,f

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Alr. l'uLEINI)IEXS'r. A(), sir. I tl,illk olle of tlle filSt nc ti tllat I

onlmitgtell jlS tlle L)el)utv ,Vttornes~ Genet;tl ill 1969 alld thell in llicse sases aj tllC AtntOl'll(;V Geller~~i~X~as filinr tiie (onll)laillis in the l,'<:,*{/zin, Glir^Z^ell: ttLld [Iu;'tf.,,ll ca.-es. SIr. Atet,;LIen di.l, aj lle does ill tho~e C:!iesl l)rel)are ,~ I)tosecutill<~ meluol;llldurnX and hc l)re-.>ents il to vou alld lle discusscs it ~X-ith vou. .\I'ter tile disg us.>ioll, I s'.,ned the tOIIIiJI:IiEltS that d;ly in my oSices, 2tlld all three cas+^s, an(l rliev XVf re p~.sellte(l.

'J;he (,' 1,;11t31 tS'. \-OU lltt(,] to autllorize the rIpl)e;21s also, vlid VOtl

l,zt "

Atr. 1SLEIN-DIENST. \'es, sir. I believe the statute requil es the ;Sffrlll;ltii-e learticil)a(ioll of the Attolllev General in Illally aspects

Or antitr.lst, la\s-.

Sell;ltor lI tlvr. \\-I~:lt discllssiolls did you llave XVitll John Alitchell EVitlI resl)?~ t lt,} anv asl)eet of the IT'1' ease?

A:lr. ISL'EN'DIESST. Nolle.

Senatol l-IA1TT. Alr. AIcLaren, Juclge AtcLaren?

:\lr. AtCLAREN-. I 11;t(1 nolle, sir.

Senator HART. I quess I should ask SIr. Roha2yn that same ques

t i011.

Sk. MolTtTrz-. Atone, sir.

Senator HART. Because you thought vou xvere negotiating a settle ment; (libl you not'?

AIr. PWOIS.\TYN. I dicl not think tllat I \vas negotiating a settlemerlt, slr.

,Seniltor H,TP.T. WA-h2lt dicl you think you avere doing, giViUlg an economies course?

:\Ir. ROH.\TE-N. I svas trying to, sir.

1, Senator 11.\RT. \-0t2 rvere tryincr to negotiate a settlement?
AIr. RollQrYx. No, sir.
--' Scnator ~.~RT. Trviaa to crive an econotnics course?

SIr. RO'T.\TYS-. I A\M trying to make an economic case, sir, of hard

S}lii). ,

Senator II.tRT. To persuade a partieul;;r settlement to be arrived at, di.l VO;I not?
:\Ir. RO.-I&TYX. Persnade Alr. SIcLaren and the Antitrust Di^-ision

tllat this position on the Hartford or the divestiture of Hartford by ^~r svou;(l be a ver~ harmful thin~~ to the comp:sny.

Senatol H.~RT. lNrOW, ~vhat discussions did vou have +sith NIr.

:\litehell'?

AIr. ROH.~TYN. None, sir.

Senatc,r H.VRT. And these meetincrs that you participated in, S\tr. Rohatyn. z~-ouNl you s;~y that AIr. ltleinclienst svas not participatin

in the ncrrotiations of the settlement?
A11. RO'ISATT~-N. Yes, sir; I lvould say that vely debitelJ~. I rvoulcl) say that Alr. Eleindienst xvaS verv polite and listened to me, and kept to me essentially that the cliscussions and the negotiations and thc settlenzent ~X-oul l have to be handled by SIr. NlcLaren in the Antitlust Ditfiion.

tienator ***HART.*** And to put it bluntly, the **presence of the boss in** those meetinDYs ~vas ~>ithotlt significance?

WIr. RO1IXTYS-. Sir, as I **said, I considered that the final settlement ~vas a verj purritive one and a very** harsh **one.**

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Us';

letrt ;'s.t meetint !~ef;:oe i.s 2'Ontl'lSis)!l. l'llc secon~.l lleei;S~t convelje;l :5t 1 :'fi l~.~n. Pr~+srXnt, in a.islirion 10 mvself, rvele AIr. L2> 1zer, cl~;:irm:

tst llle 'xt~~r Tor!~ Sio~;~ J£xchen¢~e, 31!'. De\u;lzio, ~-ice clntilmtn 01' 11le >'e i 5 orE Stoc'g. T;:xf I? tnae, Alr. Yaacli, zeresitlent or t,le :\'erv)lo ls :;;= 'S i_-. 'i;-:;~re,; ..tUl :. .Ai;. lSralliTt*~lv .vhl!, I ,1,.!.,. ve, LvaS tbeir tbou;,sei. *Rir. itvis;.'+~n joinesl vlae meelisl, ab 1:4U; :\11. i'ClOt, AIr. LIve3svxlX -aml A;r. Ri~lrtin, avl.o 1 lje!ieve, lv.s AJr. Perot's rzounsel, joined at 2:10, ...ld !^lr. Flalliaoul at s):aD. ~^lv records sholv tllat my next

~ftr!lsointment that dsv ~ras ~rith an omcial of tlae Depaltment at 3:04.

- !t is ?.-l\~ e(ellectioll tllat ali parli(ip:lnts in tile'sr.onfl meetin~>~ Ieft
Dl!- o!iict) to,~~ether.
,XI'rs. l)ita Beard. Atry one eneclunter mith Alrs. Bear(:l lvas on
AS,;v i, ln,l, at the esecutive mansion of Gowetnor Sunn (ll rinz a
rece ~iio~.; anxl bllEiet supl~er.
'- - pLr I ree~~ll tbis ir,cl(lent, AIrs. Benrd ap~)roaclled me to com?lgin
sbout ti e treoltment til!lt ITT n-as l eceis~.~ a.t the h l ds o, the Justiee
IZe;z2z;me}it. I avlms.ell :Nlrs.-P>e;lr(l taltlt I ~:1J (listlutllified mx-self
vith res;3ect to this litifflation ancl cou]d not ar~.l RVOllit; not discuss
it lvilh iler. I sllrcreste(l that the DiKoper course lvould be for the
;~pl)ropl~at.n people lepresentino I'ST to take the matter up nith the

sI,;X:~ropri:lte people sa the Justice De}~artment. .^ fesv minutes ltlter,

0 7.irs I'e.v;(l a¢ains apnropached rle 031 the sul7ject mLL4tterX I believe

- tvvif e, ar.zi I re?eateXl mv desire net, t.o (l,scuss t!ze sulJjeet mstter anel

advisell lz~~r tlz:~t 1 ditl not sXtppleeiate her pressinr t}Je subJect.

'1'S e til.:ti point, LIr. ullsirman, related to .lie selection Or San
D.ezo ;:s t11e site of llle Rew'3tl671ic;tII 1i3. 2 Convenlion. I rvas uot invoJ3X-e~d
in: ;~v \\'.'-f in ;1IIV ~!etWrO;iaiicIls +s-l~ic!w le(l. to th'ws selection o' ,S:lit
Diter.i ;is ihe site of the cont-cntiol b,5 the l'epu3olitan \.ational
Cot~w l i j . ee.
sX 1 3).;~e laever tal'.x-ed to anv rel7lesentative of ITT :11~out the Svn

J Die~~o -' e or ars r.slte. rel.itir3<^ t'lele..o.

1 Is;:ve never tasL4rve(i 10 t}>e Denutv AttorPeV Geller.il or ..he ,SXs-~siar.t At;~r ev Gerleral in (haratc of the sntitrust L7iv.sion aL70ut the Svn Dte~-o cnnventiorl Slte o'iw anvthin¢~ re'~atiD<7 to nev ('iscuasions 01" ne,tf.)t ati~.-s •with' IT'i' ot anv of its sulsi.rris ies.

I tlf) il;j; recall lv}.en or horv I first learned o8' tlle bhe-^.lton Ho~..el (Dorp.'s r,articipsitic.r end slzDpolt for t=,e llokJii*~f of tl~e c-nlention n Ret,1 DieCo, but I l elieve tll&t 1 rrst rea~.l abouL It in the ne~.A-Sy,topers.

1 zio ll{st 2S of this dsit,e lmow v;hvst~ slrrsngement'S, if ann, e.xist betv.-ee;I ITT or the. S!lerstton h-otel Corp. and the Repll3s3ican ?s-m3uitl-u1 C'03mmittce, or Esetween lrflE or env of its stllesitliaries :11)(1 tl~e ci;X- ot' San I3iecvo or anv aCellev tllereo~'.

Atr. C' lslirman, i t.i-lXSf that- these l'acts evill clalifv tllij record here. I trust thS4t thev 3r.ake it unnecessarv for me lo (3o13V tl e slsttement . eo~%.tained in t ,he memorallficlsl elated Jur.e "t-9, 1'1~ 1; s.ttri i711t ecl to ~.I!s. Bearei. .it the ris}; of reclurlel llev~ hoeve~~e!, 1 rvelcome t31iS Cpwtort~!,tii v .0 sta.e unuelW oath that tlle statements i7.S t1~at menlo,.ul(lunz RE.'i::il reiate to sle are iofalJr false aliel tol ll.7v xviil-,ollt fotl (l ltie)n.

In el; -i ~-ra AIr. CJ: wirm§n, I lVOII~(8 enz rhasize tJle f:lc. tl-~at there is

pe~~dinz

G. 1\7i;,ldienst to be lhe ittorl7ev GerLeral of tJe TWnited States.

As one lrho leas v-or~~e(l closelv F th AIr. IZleindiel st on S claily

}3uS.S +'o; the ~vast 3 a~en.s, I sm lial;pv to lleve il~is op~~ortunity to

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ISF- RICHARD MC LAREX TESTIMOXY, MARCH 2, 1972, 2 KCH 139, 116

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Senator IXEN'S-EDY. B'as Mr. Flaniban in on LT\' ?

Judt,e LIcI,xrss-. ArO; not otller tl~.~n if lla lv.ts tlle olle I tall~ecl to to recommend an expeIt. tnd I t.hillk I ma,)r loave discussed xvhat I intended to do there s9-ith 3Ir. ICeinclienst from the linallcial stanclpoint.

Senator KEN-N-EDY. AX'hy xvould you discuss that xvith him? Is there anV—I am just irlquirina. I am just interes;ted.

Jtldfre 3tCLtREt[. Do you understalld the LTV decree? It is a very broad Hecree. It nvas a very irn~portant case at the time. LTV rvas in verzr bad trouble n-hen xve beaan analyzinC it in those terms. I thin.k I mi^,ht have consulted lvith othets~Pau] 3IcCraclven, perh;lps. I vanted to b8 Sure I xvas riaht on tl is thint, that is all.

Sen.Ltor IVENN'£~DY. Sure.

.'ell now, to t,et bacls—-are vou zInsure ns to w-ho recolTsmencled 31r. Ivallls(:len ? It sras either 31r. Flanit,(m or the Treasury -

Judfre 3rcL~xF.2W. ILither It lanigan or AlacLaury, I lvould say. I llave no speeific reeollection, bUt that is the best I can remember.

Senator ltE,D[:9-EDY. In ailV event, he nvas the one ~vho took this mater,i<^l, as I lul(lerstand it, provided by ITT and di(l the stlrvey ancl the stu(ly ancl made a recommelldation to vou. Is that right ?

Jlid<>e 3iCLAREN-. Both Ramsclen and WIacLaurv.

Sen:~tor IVEN'S-EDY. Took tlle ITT material ?

Judcfe 31t'LAREN-. w es.

Senator IVEN.NFD-f. Both of thern. And then they made the reconznendation ?

Jucl~-¢ ArCL*tRENB
hicht.

Seneltor ISEN-NEDY. .Yn(l the evaluation of the ITT material ?

,Jlld"e BIcLssEs. +'s el], tllev made their oxvn evaluat:ion, I think, as ~vell as reviewin(t vvhat I rrr Insd nlrnislled. _

Sellator IXED.-NTEDY. ~tt anV t.ime dicl yo~.l t(Lll; ahol,lt tlle ITT case lVitll Atr. Flanifran ot anyolle intheAVlliteHotlse?

,JU(1Ce 3tcLtREs. I do not believe
so.

Senatol I\tEN-NEDY. KSo)'Ott did not have anv comynlmication ~vith

anvolle in the White House ill any svaV al:)ollt the ITT case?

Jucl,qe arcr,.~I~X. A5ot that I recall at this time, and I thinli I lvould }

recall if I ha(l.

Sen.ttor IVEN'S-EDY. Sure. But thev clid the studv. these txvo men. ~

TIas e the materials that have beetu l)rovide(l bv IT1', are they available ? . S

.Tndt e A[CL VREN. 0}1, yes; certainlv.

Senator IVEN-NEDY. 'l'iley are available to the members of the COII1mittee if thev rvant tllem 8

Jud,cre 3iCti,,SREN-. Surely; ves.

Senatol ISEN'XEDY. lYns there anv memorandum lvept, Mr. Eleindienst, that vou lcnoxv oid, of the meetinz that svas hel(l ? Is there any record or ree.ording lzept of the meetincr altout svho saicl avleat to lvhom'~

Atr. ITLEIN-DIENST. Not that I knolv of. If there is, Mr. 3tcLaren has

it,.

Senat,or I;ENNEDY. Do VOll ~1.tO\V of any ?

JudfTe t~0CLST{F.N. I ~votthl have to checl;. MJe had a lot. of peoI)le at that meetin~ and someboflwv may have talien notes or made a memorandum. I am IlOt sure.

Senator ITF.N-N-EDY. ALr. rsohatt-n, (lid yoll lveep any notes on that?

(124)

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The ~CIAIR31AN'. JudCe NIcLaren, sou s..y you ~x-ere solel~~ responsiblv for tllis se.tlement, lvith ~~our s;af.?

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14

HERMAN: Let me ask you one other in-their-shoes question. Do you think it was right and proper and"also wise for IT4T to make this large pledge to an organization connected with the Republican Party ile it was engaged in this litigation or these negotiations?

JUDGE McLAREN: I just have no way of commenting on 'that. I knew nothing about it. It never came to my attention, even where the convention was going to be, until long after our negotiations. I never met Mrs. Beard, I never had anything to do with that. According to their story, as I understand it, for the big hotels to make contributions, particularly on a big opening, as I understand that Sheraton's going to have out there, that's a pretty customary thing.

HERMAN: But by five times customary. They are the second ~ argest chain, they gave five times as much, I understand, as the first largest!chain. 0

JUDGE McLAREN: Well, they've got three hotels - I don't -- I can't argue that -- I knew nothing 'about it at the time, and I guarantee you that that Republican convention site and ITT's contribution had absolutely 100 per cent nothing to do with this settlement that I made.

STRAWSER: If, as Mrs. Beard claims, that memorandum that did link the two was a forgery all along, do you feel that it was unnecessary for you to sit through all those days of hearings in the Sena te ?

| JUDGE McLAREN: I don't -- I -- Mr. str.awser, it's completely ..-inexplicable to me. Based on my knowledge of the events, what I said oI before was that the memorandum is absolutely incredible. Now whether it's spurious, a forgery, or just name-dropping,

[redacted]

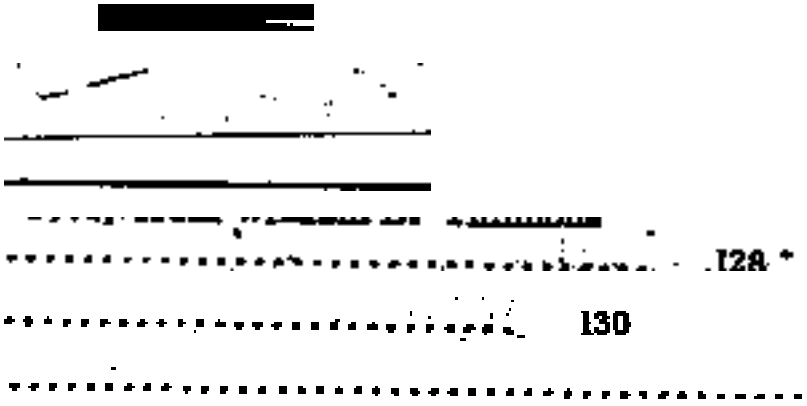
[redacted]

I just don't have any

9. 'a\ On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 197Z Republican National Convention. Sall Diego was the preferred site by William Timmons, who had investigated that city as a potential site and the Attorney, General's convention task force, and was the highest regarded city

for security purposes.

(127)



9A. WILLIAM T]7WONS MEMORANDUMS 1<4Y 6, 1971

THE WHITE HOUSE

WASHINGTON

CONFIDENTIAL/EYES ONLY

MEMORANDUM FOR:

FROM:

SUBJECT:

May 6, 1971

H. R. HALDEMAN

WILLIAM E. TIMMONSF

172 Convention site

I spent two days in San Diego this week surveying the city as a possible site for the 1972 Republican National Convention. A report on my findings is attached in Tab A.

There has' been no effort in this paper to compare San Diego with other possible locations. Also, there is no evaluation given to California in relation to the possibility of Reagan or McCloskey contesting the nomination or weight given to vice Presidential politics. Both of these factors must be considered at some point however in the decision process.

I believe San Diego would make an excellent location for the next Convention. However, there are two major obstacles and three minor problems:

TIMING: It is absolutely impossible for San Diego to host the Convention before Labor Day, September 4th. The city's hotel rooms are always committed during August by tourists and there is an unwillingness to lose regular customers. Also, the Hall is booked by the International Machinists Union September 3-17 and by the Fleet Reserves from September 17-21st. If these two organizations were willing to reschedule their conventions, even the early September date presents a legal difficulty for us. A number of

- states require Presidential candidates to file by late August in order to get on the November ballot. In 1968 I'm told the Democrats ran into this problem in several states but were able to get waivers. I am having two groups independently research the various state laws and possible waivers. Unless this is satisfactorily resolved, San Diego will not offer a bid. I'll keep you posted on the results of my investigation.

FINANCES: The RNC estimates it will spend $800, 000 to run the convention. Bidding cities are requested to pay the Committee this amount, part of which can be in services, rents, etc. It will be impossible for San Diego to raise this kind of money. They talk of only $200, 000, but if they are really in the running I feel the city can come- up with

CONFIDENTIAL/EYES ONLY

(128)

CONFIDENTIAL/EYES ONLY -2-

FINANC ES (continued)

' \$400, 000 wıth the remainder coming from RNC and California

GOP sources. If the timing problem can be resolved, I will

make the necessary contacts to work on the financial bid.

HOUSING: The lack of excess first class rooms and available parlors

present a minor problem. By stretching, San Diego can commit

sufficient rooms for theS event, I feel.

CONVENTION HALL: The RNC requires 150, 000 square feet of work .

space in - or adjacent to - the convention Hall. This is mostly for media. The San Diego Sports Arena has only about 30, 000 square feet of off-floor work space. Therefore, a temporary building with approximately 120, 000 square feet will have to

be erected. This can be done.

GOP FACTIONS: If San Mego is chosen as the convention site, we

can expect a blood-letting confrontation between the Finch and Reagan forces for control or at least public exposure. The battle lines are already forming, and I suspect the situation could become bitter. NOTE: Al Harutunian apparently has tentatively reserved the Sports Arena for mid-September under the name of Billy Graham. It is widely believed he is acting as an agent for Finch. I have information that Bob will be in San Diego this week-end and may discuss the convention. While I did not see Harutunian, he has learned of my trip and will undoubtedly spread it around. I suspect Dick Capen told him, although this is just

a guess.

San Diego will definitely make a formal bid for the 72 convention. 1.

am obligated to report to them if we can consider a September event.

The site Committee of the RNC will have to visit San Diego, but Bob Dole tells me he can arrange for a favorable report on any. city the

President wants.

CONFIDENTIAL/EYES C)NLY

(129)

[redacted]

[redacted] WILLIAM TIMMONS MEMORANDUM, MAY 6, 1971

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09B. GORDON STRACHAN MEMORANDUM, JUNE 23, 1971, WITH ATTACHMENT

THE WHiTE HOUSE

WAS H I N GTON

June 23, 1971

.NEtMO~DUM FOR: H. R. BLDD

FROM :

SU BJECT:

GORDON STRACHAN a

19 7 2 Convention site

Magruder will meet the Attorney General today and discuss memorandum attached at Tab A concerning the RNC site Committee's visit to San Diego.

To summarize:

1. The site Committee found the same faults Bill Timmons' noted in his May 6 memorandum (limited office space at the convention hall and barely adequate hotel accomodations);

2. The local politicians are indifferent, but the state officials, especially Ed Reinecke, are enthusiastic.

3. The San Diego bid is $500,000 in cash and $1,000,000 in inflated price services. This excellent bid is considered primarily the work of Reinecke and Magruder will suggest that the Attorney General call Reinecke and thank him.

4. San Diego is the favored site of the Attorney General's task force, though Chicago, Miami, and Louisville are still under serious consideration by the- Site Committee.

Z / ,8tS 5. Dole, Timmons, and Magruder believe the Convention site CommitteeXs request to see the President should be denied. Rather, Timmons should see the- President, get his decision, ,relay it to Bole, and have Dole program the site Committee to recommend formally to the President and announce to the media the location of the 1972 RNC Convention.

6. A formal decision paper will be presented to you and the Attorney General when San Diego submits its formal bid, hopefully this week.

On a related matter, Timmons submitted the memorandum attached at Tab B concerning the number of White House Staff who would be attending the convention. Timmons believes all commissioned personnel (approximately 50) are "entitled to be present whether or not they are actively engaged in the Convention ."

(130)

[redacted]

9B. GORDON STRACHAN MEMOMADUM JUNE' 9? 707? WITH ATT

The following are the optionsof which 4 I T ___ number two.

x options of which x I recommend

1. All commissioned personnel attend

2. Only those Staff who are contributing, whether commissioned or not

3. All male Staff down through Staff assistant level (150)

Ge)v>-<_

(131)

~~1 T'

[redacted]

[redacted] MEMORANDUM, JUNE 20, 1971, WITH ATTACHMENT

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CONFIDENTIAL

MEMORANDUM
FOR:

FROM:

SUBJECT:

9B. ROBERT ODLE MEMORANDUM, JUNE 22, 1971

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASH INGTON

June 22, 1971

MR. JEB S. MAGRUDER

ROBERT C. ODLE, JR.

1972 CONVENTION SITE

The RNC's Convention Site Committee has now returned from San Diego, thus completing its series of visits to all the cities which have bid for the 1972 Republican National Convention. The Committee was not as impressed with San Diego as we hoped it would be, citing the lack of office space for the media and the RNC at the convention hall as the main drawback. Also, some political officials in the city, chief among them the mayor, either suggested that the city did not want the convention, or were at best indifferent to the prospect of getting it. On the other hand, business leaders and state officials, led by Lieutenant Governor Ed Reineke of California, were very enthusiastic and members of the Site Committee reacted favorably to these people.

Bill Timmons reports that his contacts in California tell him the city is now offering $400,000 in cash and approximately $600,000 in services bringing the total offer to approximately $1,000,000. However, the city is putting very high pricetags on the services, so in reality the figure might be more like $800,000. The final bid is being prepared this week in San Diego and should be received by the National Committee at the end of the week -- we will obtain a copy of it. It is our understanding that in this bid, the city will offer to construct a building adjacent to the convention hall which can house offices for the media and also for the RNC. San Diego will donate the use of the convention [redacted] hall-for as long a time as is needed to ready it for the convention, and also for the convention sessions.

CONFIDENTIAL

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CONFIDENTIAL

2

Incidentally, San Diego Democrats are reported to be upset that the city did not bid for the Democratic convention and therefore San Diego has decided to put in a pro forma bid for the Democratic convention.

It also should be noted that the Site Committee believes the list of cities under serious contention is now down to San Diego, Miami, Louisville, and Chicago. The committee has ruled out Houston because it has not expressed a real interest in the convention and has refused to make a firm offer of cash and services. San Francisco was ruled out because the committee fears possible problems with the nearby campuses and does not feel the convention hall and hotel situation is as good as it is in other cities.

In the meeting of our convention strategy task force on Friday, San Diego emerged as the very clear favorite, followed by Houston. There was no support for any of the other cities. Those attending that meeting were Pat Buchanan, Bill Safire, Dick Moore, Harry Dent, Len Garment, Don Runsfeld, and Bill Timmons. Dwight Chapin, Fred La Rue, and Frank Shakespeare were out of town. In addition to favoring San Diego, the task force agreed that the convention should begin the week of August 21, 1972, and should be a three day convention.

Jo Good told me today that members of the Convention Site Committee are in Washington this week and that she would like Chairman Dole, Fred Scribner, and the vice-chairman of the committee to meet with the President later this week or next week to review with him the thoughts of the Site Committee, SQ. that the President might be informed of everyone's views before making up his mind. I have advised Bill Timmons and Gordon Strachan of this, and the three of us have agreed that the following strategy should be employed rather than having the committee see the President. Also, Timmons tells me that Dole agrees with him-that we should pursue the following scenario:

As soon as the bid from San Diego comes in, we (Timmons, Magruder, Odle) will examine it. If our inclination is still to go with San Diego, I will prepare a decision paper for the Attorney General and Mr. Haldeman. Assuming their concurrence, we will then request that Timmons discuss with the President his views on all the cities in contention for the convention site and our recommendation that we go to San Diego. Assuming the President concurs with this choice, Timmons would then talk with Dole and communicate the President's decision to him. Dole would talk with the members of the Site Committee regarding this and at some future point in time (next

CONFIDENTIAL

week or the week after), either Dole by himself or Dole with the other members of the Site Committee would meet with the President and announce to him their decision that the convention go to San Diego. The President would tell the Site Committee that he concurs with their recommendation that the convention be held there. Members of the Site Committee could then go into the Briefing Room and announce to the media that they had recommended to the President that the convention be held in San Diego, that the President had approved their recommendation, and that they hoped the Republican National Committee would approve the recommendation in Denver on July 23. This would put us publicly on record as having chosen a convention site before the Democrats.

If the general strategy as outlined above is approved, we will Proceed as suggested with the initial decision paper.

Approve Disapprove _

Comments _

. *KJ* . i

.; A. n ..

/ **bcc: Mr. Gordon C. Strachan (for Mr. Haldeman's approval and concurrence - if necessary)** **ri** 0

MEMORANDUM
FOR:

FROM
:

SUBJECT:

TH E WHITE HOUSE

VVAS H IN GTO N

June 21, 1971

H. R. HALDEMAN

WILLIAM E. TIMMONS N

'72 Convention

In preparing my preliminary plan for next year's convention, I need to know how many White House staff we may be required to accommodate with rooms, transportation, tickets, etc.

No doubt a number of key staffers will be involved in the convention campaign and, of course, those will be included in our early plans.

I personally feel that all commissioned personnel are entitled to be present whether or not they are actively engaged in the convention This would be a morale booster, give staff a greater insight into politics, and serve as crowd fillers' for selected events.

RECOMMENDATI
ON:

That I include plans for having all commissioned White House staff attend the '72 Convention.

APPROV
E

OPTIONS:

DISAPPROV
E

[redacted]

If the recommendation is disapproved, then

1. Only those staff who can make a contribution to the Convention

If the recommendation is approved, then

1. Include male staff down through staff assistant level

41-566 0 - 74 - 10

CONFIDENTIAL/EYES O,NLY

June 26, 1971

MEM,ORANDUM FOR:

FROM:

SUBJECT:

THE ATTORNEY -GENERAL
H. R. HALDEMAN _

JEB MAGRUDER k
WILLIAM TIMMONS.@S
g **%.**

1972 Convention

This paper.with its attachments is a summary of information relating to decisions that should be made immediately regarding the 1972 Republican National Convention. We make three recommendations:

1. **That San Diego be selected as the site city**

2. **That the Convention start August 21, 1972**

3. **That it be a three-day Convention**

We suggest you discuss these topics, at the earliest opportunity, with the President to get his guidance. When resolved, Chairman Bob Dole should be notified so he can engineer his Site Committee to make identical recommendations to the President. Later, Dole should meet with the President to advise him of the Committee's views, giving the President an opportunity to concur. Should San Diego be selected, this meeting might be considered for San Clemente the.-first week in July.

I. DEMOCRATS

Every available signal is that the opposition will hold its national convention in Miami Beach, starting on July 10, 1972. While Miami has: good facilities, hotels and vacation atmosphere, the Democrats are probably more interested in the security ~ aspects of Miami as a

result of the '68 riots in Chicago.

[redacted]

II. REPUBLICANS

Bob Dole is Chairman of the Republican National Committee Site Selection Committee. The Committee membership is listed in Tab A..t Bids have been received from:

CONFIDENTIAL/EYES ONLY

CONFIDENTIAL/EYES ONLY

—2

-- San Diego
< -- Miami Beach ;
) -- Chicago I
\ -- Houston %('
) -- Louisville

< -- Jan Francisco..wX .

Committee visitations have been made to all cities except San Francisco. An analysis of each city's bid and some pro and con arguments of the various sites are in Tab B.

Since the President will control the Convention machinery and can schedule events to fit television prime time, media coverage is not a significant factor in site location. Presumably we will try to target time for maximum exposure, and this can be done by a little earlier program on the West Coast or a little later on the East Coast.

Also, while we question the argument that site location helps deliver a state's electoral votes to the Party, it certainly is a false issue for regular convention cities such as Chicago, Miami and San Francisco.

Facilities, security, a healthy "upbeat" atmosphere, confidence and control are important considerations to site location.

The Site Committee will make its formal recommendation to the full Republican National Committee at the Denver meeting on July 23. It is expected that the RNC will ratify the recommendation without difficulty. Additionally, Dole has indicated he recognizes that the President will call the shots on the Convention.

III. DATE OF CONVENTION

The Republican National Committee, Justice Department and White House counsel agree that a September convention would be too late to guarantee that the nominees can legally be placed on the ballots in a number of states. While some waivers may be possible, a September Convention cannot be considered. The Summer Olympics start in Munich, Germany the last week in August, and ABC has exclusive coverage and a commitment to carry events in prime time. ABC officials say that is locked in and it would be difficult for their crews and equipment to cover a convention the last week in August A1<> ; t is felt we

[redacted] felt we **would lose a substantial audience if the Convention were to compete with the Olympics. Therefore, August 21 appears to be the latest date the Convention could start considering the circumstances. The RNC favors the Convention for this period.**

CONFIDENTIAL/EYES ONLY

IV. THREE-DAY CONVENTION

Historically, both parties have held conventions varying in length from two days to five days. A four day convention has been the most popular. Because of the expected renomination of the President, a shorter Convention is felt appropriate for 1972. This would help eliminate delegate and public boredom and leave fewer opportunities for the media to emphasize Republican differences, demonstrators, etc. On the other hand, official business can hardly be condensed to fewer than three days. It is anticipated the sessions might be divided as follows:

Monday, August 21
Morning
First Session

Monday, August 21
Evening
Second Session

Tuesday, August 22
Morning
Third Session

Tuesday, August 22
Evening
Fourth Session

Wednesday, August 23
Evening
Fifth Session

Convening
Committees appointed
Temporary Chairman

Keynote Address
Permanent Chairman

Reports of Platform
Rules, Credentials,
etc.

Nomination Speeches and
election of candidates

Acceptance Speeches

The principal change in this agenda schedule is that normally the committee reports, including Platform, are held during evening prime time on the second day. With an incumbent Administration, it is felt this event could be held in the morning even though we are exploring ways (films?) to make the platform more interesting and attractive. The RINC favors a four day convention because of anticipated hotel commitments to the host city and fear emergencies may require longer individual sessions.

We urge adoption of our recommendations.

1. San Diego as site

APPROVE _

2. Start August 21, 1972

APPROVE

3. Three-Day Convention

APPROVE

DISAPPROVE

DISAPPROVE

DISAPPROVE

CONFIDENTIAL/EYES ONLY

(138)

AVAILABILITY

:

HALL:

BID:

HOTELS:

SECURITY:

ARGUMENTS:

SAN DIEGO

August date is okay.

Seats 15,000. Will require temporary facility for network and service organizations.

$1,500,000 in cash, goods 4 services.

Can meet 18,000 requirement, some rooms better than others. Short on parlors.

Good local police force and state patrol. Military installations close by. Access to hall is good.

PRO: -- Republican Governor (Reagan) -- Republican Congressman (Wilson) -- Close to Western White House -- Outstanding climate -- New, nonconvention city -- Emphasizes GOP interest in Western votes -- Best money bid -- California has most delegates and most electoralvotes -Many things for delegates to do -- Outside, wholesome atmosphere -- Copley papers

CON: -- Democratic Mayor (up for re-election this year) -- City never handled big riots -- Shortage of parlors -- Construction of temporary facility next to ball -- Possibility of Reagan candidacy -Internal competition between Reagan and Finch forces -- Proximity to Watts 4Berkeley could assure demonstrations -- Arnhold Smith IRS problems -- Must have earlier sessions to accommodate national prime time

CONCLUSIO

[redacted]

N

-- Aerospace unemployment
-Considered a non-union town

By far the best of bidding cities.
Security is main concern.

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AVAILABILITY:

HALL:

BID:

HOTELS:

SECURITY:

ARGUMENTS:

MIAMI BEACH

August date is okay

Seats 16,U00. Excellent hall.

In neighborhood of $600,000 in cash, goods and services.

Good rooms and parlors in sufficient numbers. However, they are stretched out with only one artery.

Excellent because of geography.

PRO: -- Close to Key Biscayne
-- Sentimental return to '68 site
-- Lot for delegates to do; beaches
-- Best security of all cities
-- Easier for media to cover both conventions

CON: -- Hurricane season
-- Old hat; nothing new
-- Public boredom-of having two conventions in same city

-- Democratic Governor and Mayor
-- Afraid of riots; seek shelter
-- Not truly a "southern" city
-- Local Cuban competition
-- Have had racial problems
-- Must have later sessions to accommodate national prime time

CONCLUSION:

Second best choice

9C. JEB MAGRUDER AGD WILLIS TIMMONS MEMORANDUM[SM JUNE or 1971

AVAILABILITY:

HALL:

BID:

HOTELS:

SECURITY:

ARGUMENTS:

PRO:

CON:

CONCLUSION:

CHICAGO

August date would require moving American Legion convention. This may be possible.

12,000 seats -- a little small In black ghetto section.

The required $800,000 anyway we want it.

Excellent number of rooms andparlors.

Police good and have riot experience.

Republican Governor (Ogilvie)

- Midwest location
- Transportation center
-- GOP can do what Democrats couldn't.
-- Good prime time coverage for nation
-- Big City atmosphere

Red flag to demonstrators
- In Daley's hands
- Have been there before
- Governor Ogilvie is opposed
- Chicago is not truly representative of

Heartland America
- Not much new for delegates
- Racial and unemployment problems
- Hot, humid climate

The risk is too great for any marginal benefit.

(141
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AVAILABILITY:

HALL:

BID:

HOTELS:

SECURITY:

ARGUMENT S:

PRO: -

CON

CONCLUSION:

9C. JEB MAGRUDER AND william timmon memorandum june S£: 1971

HOUSTON

Possible in August subject to rescheduling of baseball games.

Astrodome is too large but Astrohall has 15,000 seats. Modern facilities.

No firm offer made.

Limited. Must utilize rooms far away from hall.

Probably adequate.

A new convention site
- Will influence Texas and southern votes
- Republican Senator (Tower) and one local Congressman (Archer)
- Midwest television time
- Central geographical location -
- Few demonstration problems

-- Democratic Governor -- LBJ image covers Texas -- Hot and humid climate -- Not much for delegates to do -- It was apparent to the Site

[redacted]

Committee that Houston was not genuinely interested in attracting the convention and refused to cooperate. If Houston is chosen, it will require a great deal of RNC staff work to get a decent bid.

"Dark Horse" third choice but harder negotiations required.

(142)

AVAILABILITY:

HALL:

B_:

HOTELS:

SECURITY:

ARGUMENTS:

PRO:

CON:

CONCLUSION

LOUISVILLE

Anytime we want it.

New, excellent downtown facility.

Open to negotiation; no firm offer.

Extremely limited; probably have to house in other states.

Probably adequate but untested.

-- New convention city
- Helps with southern and border states votes
-- Republican Governor (election this year and two Senators (Cook 4 Cooper)
-- Small town heartland America
-- Kentucky bourbon

-- Housing and transportation limited -- "Why Louisville?" -- Nothing for delegates -- The Site Committee feels Louisville is not sincere in its

bid, which was instigated by Col. Sanders of chicken fame and a group of aggressive Jaycees who are part of the Democratic Mayors best supporters.

Not enough pluses to offset liabilities.

(143)

9C. JEB MAGRUDER AID WILLIAM TIMMONS MEMORANDUM, JUE 26, 1971

SAN FRANCISCO

AVAILABILITY:

HALL:

BI D:j

HOTELS:

SECURITY:

ARGUMENTS:

CONCLUSION:

Undetermined

Cow Palace seats 14 000 but

No offer made-> Felt could raise $300,000. ~

Tourist season. Hard to commit.

Not--Good. Center of dissent and unrest.

No body considers San

[redacted]

Is far from city Francisco a possibility in light of above and other factors.

Absolutely out of question!

9D. JERRIS LEONARD ZD CLARENCECOSTER MEMORANDUM JUDE 30, 1971

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OFFICE OF THE ADMINISTRATION

UNITED STATES DEPARTMENT OF JUSTICE

LAYS ENFORCEMENT ASSISTANCE AD~~.'.;NISTPATION

WA5:HINGTON,D C 20530

MEMORANDUM FOR: Mr. William Timmons

June 30,- 197L

Office of Congressional Liaison

SUBJECT: Security and Civil Disorder Capability of the Six Cities Bidding for the Republican National Convention

After a review of the security and civil disorder capability of the six cities which have submitted bids for the holding of the Republic National Convention, we herewith submit our conclusions. A detailed breakdown of the capability of each city in those areas which we consider most important is attached. The cities were evaluated on the basis of these criteria. The six cities, together with our summary observations, are listed in order of preference as follows:

1.

San Diego, California

Command and control elements of the city for civil disorders is considered excellent. Recent incidents in the nature of civil disorders indicate that the police department is well

organized and well deployed. Arrangements exist for curfews and the imposition of restrictions such as the closing of bars and gasoline stations. The city has developed excellent mass arrest procedures. San Diego has approximately 950 uniformed sworn personnel and approximately 260 reserves. The city has achieved an excellent level of training in riot control and has engaged in

some joint command post exercises for civil disturbances. The police department has two SEADOC attendees. Their intelligence system is excellent.

The city has a very small EOC, but is capable of expansion with considerable reorganization. It has no mobile command posts. The existing master civil disorder plan is considered excellent and is tested each year. They have excellent special organizational arrangements for large scale security and large scale civil disorders situations. They have sniper suppression teams, but only limited capability in explosive clearance and arson suppression. The city relies on the active military service for ordinance disposal.

Mobile booking teams are available and mass arrests procedures have been developed. They have special protective equipment such as flack vests and face shields but would need supplemental equipment in the case of a large civil disturbance. A limited communications ability exists.

Mutual aid arrangements are in existence with local cities (approximately 500); regional areas (approximately 2,000); and state police (approximately 2,500). On street national guard strength can be anticipated at 15,000. The state of training of these forces can be considered good at the county and regional level and excellent at the state level.

There is excellent ingress and egress to the municipal convention center which is located in the center of town and across he street from the county jail The San Diego Sports Arena is located approximately five miles west of the city in a semi-industrial area. There are no parks or other open areas in the immediate

vicinity. Heliport facility could be arranged. Adequate parking facilities do exist.

Relationship between the judiciary and the police is excellent.

(146)

Chicago, Illinois

This city has a good police command and control element Which has operated successfully in the pas.. The number of uniformed police is adequate for most anticipated situations. They are well trained in CD operations. Their intelligence system is excellent.

The city has an expandable well-equipped EOC. They have a present capability in the area of Special Operations to include ordinance disposal, sniper and arson suppression, mobile booking, mass arrest and detention. Police force is well equipped with protective gear and chemicals. Good communications equipment is available with trained operators.

The **major facilities afford adequate ingress and egress. Heliport facilities can be arranged in the immediate location,-and adequate security can be provided.**

Excellent relations exist between police and judiciary.

Police superintendent is not a political activist.

3.

Houston, Texas

There are established policies and procedures for the control of civil disorders in Houston. The [redacted] city has approximately 1,800 uniformed sworn police officers. They are considered to have an operational capability in controling riots.

They have an excellent master civil disorder plan. Existing mutual aid arrangements with surrounding counties can provide 50 sheriffs and 500 reserves as well as a state highway patrol of 700 equipped officers and approximately 11,000 on street national guard forces.

The top leadership of the police department is considered to be excellent.

4.

Miami Beach, Florida

Command and control element of the Miami Beach Police Department is considered to be good. The police department has performed in minor civil disturbances in an adequate manner. They have made local curfew arrangements and have a capability for mass arrests. The number of uniformed sworn policemen is 231. All members of the police department have had some special riot control training, but none haveattended SEADOC.

The city has an excellent master riot control plan and an excellent working relationship with the fire services and public utilities. They have a capability for special operations in the area or ordinance disposal, sniper suppression teams, and mobile booking teams. They have a regional mutual aid arrangement providing 60 sheriffs, 285 policemen. The highway patrol augmentation capability is 872

uniformed personnel. The National Guard could provide an on street strength of 4,800. The police have a good working relationship with the judicial

establishment. The competence of the top leadership of the department is considered good.

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Louisville, Kentucky

This city has good command and control for civil disorders. There are 563 uniformed sworn policemen. The general status of riot control training among uniformed personnel is considered good. However, none OL the police department has had any SEADOC training. Louisville has **an excellent master riot control and civil disorder plan. The police have an** explosive **ordinance disposal team and sniper suppression teams** GS **well as a mobile booking team. The force is equipped with** protective helmets and gas masks and has some chemical ordinance. --

There are 638 state police available to the city in an emergency and an on street national guard capability of 3,000 men. The police have a good relationship with the judicial establish ment,-and the top leadership of the police department is considered good.

San Francisco, California

The command and control element for civil disorders in this city is CORS idered to be excellent. Recent experiences in civil disorders in San Francisco over the past few months show that the police department is well organized and well prepared. There are curfew arrangements and authority to impose restrictions such as the closing of liquor stores and gasoline stations.City has provided for mass arrests. The number of [redacted] uniformed police

personnel is 1,761 with a reserve force of 240. The status of riot control training for the uniform police officers is considered to be excellent. They have had two SEADOC attendees. The city is

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9D. JERRIS LEONARD AND CLARENCE COSTER MEMORANDUM, JVNE 30, 1971

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considered to have a good intelligence gathering network.

San Francisco has an adequate emergency - operation center and several mobile field command posts. EOC is capable of expansion. Police department has sniper suppression teams with limited capability in the area of arson suppression and explosive clearance. Mobile booking teams are available. The police - have special protective equipment and some chemical ordinance. Police department has a very limited communications capability. Mutual aid arrangements are in effect with local cities, counties, and regional areas and the state police. They are capable of supplementing the police force by 1,500 (local cities); 500 counties; 1,000 (regional area); and 1,500 (state) The national guard has the capability of putting 15,000 men on the street. The police department has responded well in recent civil disorders.

The relationship between the police and the judicial establishment is excellent.

The command structure of this police department has been subject of criticism in recent years, because it is not considered to be responsive to the Chief of Police. The Chief was appointed approximately one year ago by Mayor Allioto, replacing the past Chief, T. Cahill, due to

Cahill allegedly being too law and order oriented and conflicts arising between the Chief and the Mayor.

[redacted] [redacted]

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s Leonard

Cowcur--.Admi'&istrator
Administrator

C arence HI. os

Associate

(150)

_!~~i tJ9Uri FOR JO!t; D. EHRLICHMAN

EXECUTIVE OFFICE OF *THE* PRESIDENT
OFFICE Or **M MANAGEMENT AN** D **BUDGET**
WASHINGTON, D.C. 20503
.-March 4, 1971

subject: Security Preparations for the 1972 Convention

As you know.~~, the 1968 De!..ocratic convention was the scene of considerable controversy and violence, giving rise to security problems of major proportions. The Republican convention in .'Miami Beach ,*/as relatively free of such dis turbances, but the fact that. the Republicans now consti tute the party in power in:-addition to the involvement of t.!lC President increases the importance' of security at the 1972 convention site. :

Early planning in regard to the Federal role is already underway in the Secret Service. However, a comprehensive effort involving coordinated Federal and local enforcement efforts cannot be mounted until the site is known. If the convention site identified at an early date, the local law enforcement agencies can start the necessary preparations, 211;3 their efforts can be sup)plen.Lente6 by possib;e funding throughan LEAA grant. Law,7 enforcement offici als **from potential convention already visited LEAA requesting consideration of supplemental grants. however,** both **LI:AA and OMB agree that such a step cannot** be **cons idered until the particular site is selected.**

Taking into account security alone, it is desirable to have the site selected as early as possible I recognize that ether considerations arc relevant and may be determinant, but I thought;~~t that it would be desirable to bring. this matter to your attention early in the game.

/5/As<w
Arnold 2. Weber
Associate Director

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10. ". In response to a question at the Senate Select Committee,.

g concerning Dita Beard's disappearance on the eve of the Kleindienst

| hearings, E. Howard Hunt stated that he was not aware of any role

Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

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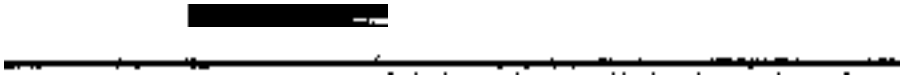
Page

lOa , i:. Howard Hunt Testimony, 6 SSC.....3791.....154



3791

Third, when the attache case of Mr. McCord was opened for my

view at the time of discovery v, I noticed that the group of sur~~~~ic,il gloves, m-hicll I hall last seen in the attache case. xvLeli it nvas in my safe ' at the AThite Eloltse. tllllt those cloves there nlissin~~~~ front the attache case and lvere not otherwise emllllerated in the ins extort subsequently provided bv the FBL

Ancl. of contse, there mnV have been mallv othel things. I did not

maintain all index of the col;tellts of mv safe. _

Senator Is-o~~x. And my final questi(3n. 3Ir, Hunt: In response to I

one of my questions, vou said that vou event to Denver, Colo., some- I vhere to meet xvith Sirs. Dita Pseard to determine filstz her reasons

for leas ink A\ra3hillarton. Weren't yott a~~.vare at that time that AIr. G.

Gordon l,ldda had escolted Ails. Dita Beatad out of lN'nshingtonw
Air. H1'S-T. I mas llOt aware then, and I am IlOt to tilis day anvale .

that such tool; place. Senator. a_

Senator Isotope Did AIrs, Beard tell you llov she got out of '

Washington ?

3Ir. TItrst. She did not.

Senatol IN'01'1-E. Did she tell VOII ~~^vhv she left AVashillflon ?
Air, HUNT. She alluded to it in response to mV question.

Senator INTONE. M5lat svas her response sir ?

hIr. H1JE-T. She said in effect, and again let me stress that she seemed

to be under sedation and nvas from time to time in need of oxVDwen, she r)tlt it that thele •vas nobody she could trust, that she felt the only thing she could do nvas to run awav from what she interpreted to be n hostile environment. I don't know if anV memorandum stated it ill those terms,

Air. I.enzner, do vou have a copy of that memo !

3Ir, LES-Z5-ER. Of the memo on Dita Beard ?
Ak. HUN-T. 3tv eig!lt-pn~~te memo. Did I see you referring to it?

Sir. LEN-ZNER. No; this isn't it. If you are referring to the memo on

Dita Beard, lFe have made a request to BIr~~ Cox's office for that. Eve

have not received it.

Sir. HUN-T. Again I hate to go into details of an incident that took place n long time ngo when there is hard evidence, n document that

I myself wrote just hours after I returned from Denver.

Senator Is-o~~E. In questioning Sirs. Beard, you indicated that Iron met with her from 11 o'clock to about s :30 ill the morning. :

DIr. HUNT. A rough estimate. sir.

Sentor Is-o~~E. Honv did you convince the doctor that it avas im portant for you to meet Atls. Beard ? -

hIr. HOT. I believe those representations had been made before I embarked on my trip by her daughter.

Senator Is-oı) x~~C. Thank you very much. sir.

Thank You, BIr.

Chairman.
JSenatot F1R\aN. Senator
Balker.
Senator BAsER. fir. Chairman, thank vou very much.'
Sir. Hunt and AIr. Chairman. I apologize for being absent during much of the afternoon but as I indicated~to the chairman earlier, the

11. *On* June 22, 1974, The New York Times, page 15, carried a story in which Rep. Bob Wilson (R-Calif.) said the Special Prosecutor informed him that no legal action was being considered against him in relation to the ITT matter.

-- ~ . Page

lla New York Times article, dated June 20, and carried

in its June 22, newspaper 156

(155)

[redacted]

NEW YORK TIMES, June ZZ, 1974

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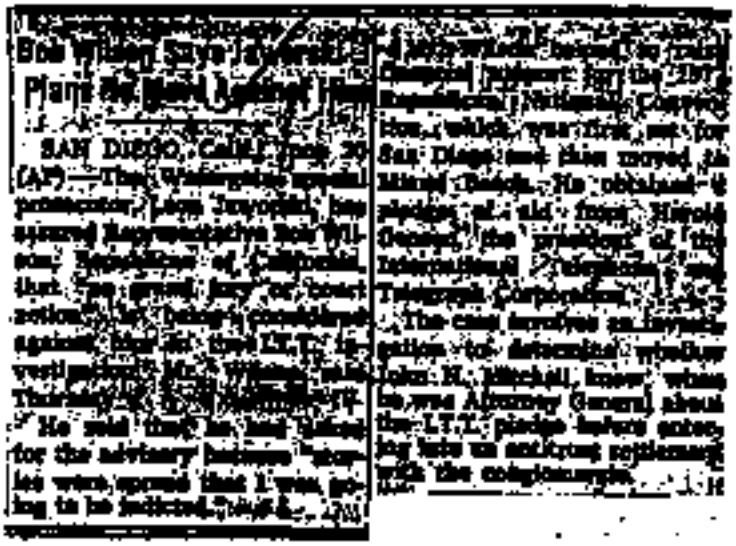


12. **On** April 4, 1972, the President met with H. R. HALDEMAN and Attorney General Mitchell in the Oval Office from 4:l3 p.m. to 4 50 p.m. during which time the ITT matter was mentioned.

12a Transcription of recorded conversation of above described meeting; 1, 4-6, 8, 10, *15. **(A transcription** was previously furnished to the House Judiciary Committee).. -158

(157)

[redacted]

The President/Attortlcy General Mitchell and H. R. Haldeman Oval Office April 4, 1972 - 4:13 - 4:50 PM (Exple tives s De le te d)

M

H

M

P

M

H

M

p

P Well John, I hope you had some time off -- that they didn't bother you to death,with ITT and all that

No. It was simply wonderful.

Good (unintelligible) .

We always enjoy it, Mr. President. Oh, Bebe turned that thing up according to your formula and

(Laughte r) .

I tell you, it was just great.

I told these people around here, I said (unintelligible) call Mitchell, I said don't you Bob, and.

Of course, I suppose they had to (unintelligible) one or two.

Well some of them did.

We didn't bother you too much?

No, not you fellows.

I said in the campaign -- I said to hell with the damn campaign. Did you do any golfing? No?

M Hell, I didn't even care to.

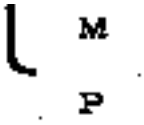
P Did you fish?

M We fished, and we went out in the boat with Bebe a couple of

times and had dinner with him two or three times.

(158)

[redacted]



P I'd like a little consomme. Want some consomme?

M I'd love some. So it-was just absolutely great. We had some of the people down from the Committee where we could spend a couple of days, you know, with quiet and so

P Yeah (unintelligible) sort of busy these days. Try and get the weather, damn it, if any of you know any prayers, say them (unintelligible) weather. Let's get that weather cleared up. The bastards have never been bombed like they're going to be bombed this time, but you've got to have weather. :

M Is the weather still bad?

P Huh! It isn't bad. The Air Force isn't worth a I mean, they won't fly. Oh, they fly, but they won't -- you see our Air Force is not . . .

H It's the strangest thing -- in World War II they flew those : bombing runs all the time and they couldn't see a thing.

P I know.

M But they were doing a different type of bombing then.

P strategic bombing and all that -- nevertheless it's a miserable business.

M Are the Navy pilots as bad?

[redacted]

P Oh they're better, but they're all under this one command.

It's all screwed up. We just aren't going to talk about it.

The weather will clear up. It's bound to. When they do,

. they'll hit something -- and, they're a lot of brave guys -

1,

: you've got to say. After all that POW (unintelligible) that poor who got shot down. They're over there starving on that damned rice. It's all right, we'll give 'em hell, 0Well the ah,

what are your reflections on the present thing. Why don't we

' start with what I told the staff to get the hell off of the ITT 0

and then' get on to'--politics' which is' more interesting', ' not

that that'isn't--

M But that's politics -- pure and simple politics, but hopefully

\ f 'D0'--'; \R --D. Of.;\ 7 : , f

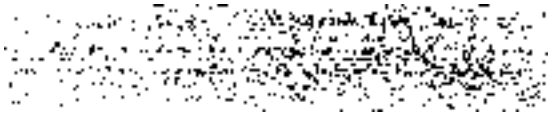
we'll get this thing.' 0'; 0 -

P Well, I don't know if we'll ever get out of it -- I mean -- I think what we have to face is that it will be investigated by' ' (unintelligible) election as you get closer to the election of course it's extremely, I think that -- I think you might adopt the practice -- I think you might consider adopting the practice that after the Democratic Convention the Republicans will boycott all

investigating committees on the grounds that they

are politically motivated How would that be?

(160)



M I would think I would go beyond investigative committees.

. I'd go to some of the others where you have a facade,

P Harassing.

M Of substance, but

H (Unintelligible). It's a good idea.

p Yeah -- we're going to boycott anything that we think is politically motivated.

H These people are disgracing (unintelligible).

P And ah, Republicans just walk off and say it's just politically motivated. Well, at least ITT got 'em confused.

M I would say it's quite confusing. Some of the more enlightened newspaper people are beginning to write to the effect that the Democrats got to come up with something more than they've come up with or the monkey's going to be on their back.

H Manolo, who do you think (unintelligible).

MS I don't think so, sir.

M Not much Manolo.

MS What they do is (unintelligible).

M You happen to be right, Manolo. I was just telling --

(Material unrelated to Presidential actions deleted)

[redacted]

{ M You know this little girl -- this Lichtman -- the secretary? You know where she had her press conference don't you -- did you notice that? Down in the law office of the Democrat Chairman for the District

P She's a Democrat?

M Yeah, but the press conference was held in the law office of this (unintelligible) District, Democrat Chairman, and yet there wasn't anything in the newspapers about it or why it just so happened.

Ho rP (Unintelligible) .

M Most of the"shakers"are, that's for sure.

P What is your view about the convention -- about all the scares and cries I hear about the 250, 000 naked kids that are going to be coming?

M Well, Bob and I have just gone over this and I've had a meeting this morning with

P Kleindienst told us about it.

(162)

M And so forth, ah, it seems to me there are three factors -- number one was screaming kids -- if you call them kids; number two .- the ITT Sheraton business with the television on the hotel all through the Convention; and thirdly, and equally, if not more important, is the fact that the site selection committee and the people that went out there to look at that thing did a God damned poor job. Its come to the point Where it's going to cost between 2.4 and 2.5 million to put that thing together. In addition to that, there's

, XH That's if we just get the convention hall apparently? En ff , l

M :; No, no, this is the whole thing, this is the whole thing. t

H I see, all the hotels and stuff involved.

M Yeah everything in addition to that there has to be nine hundred odd thousand dollars of insulation in that arena out there, and in addition to that there's a

P Who, (unintelligible) this, Wilson (unintelligible).

M No, I think a lot of our people closer to us than that were at fault in not recognizing the limitations of these facilities.

P All right.

M In addition to that you have your building trades labor contract co ming up on June 1, out there for negotiations, and they can put the pressure on your pay board or the rest of it. So, in view of that we have thought of the potential of changing the site. We can get out of there -

(163)

P WY}lat ground would you use for changing it?

M The cost and the uncertainty of the availability Or the facilities.

H There's a real question as to whether they can do the construction on _ _

M That's correct, and the arena out there is owned by two Canadians, and they're just acting tougher than hell.

P All Canadians are tough.

M And, there's no contract with them that covers some of these things; -- ah, so that you're not walking away from the city of San Diego, you're walking away

H You can make a very good case.

P How about San Diegians -- how do they feel?

M I don't know, frankly, I believe it would be mixed emotions.

H It's mixed, but with all the talk of the demonstrators

P Lot of people don't want them there

H I think a lot of San Diegians would be very happy to have them go away.

M I would think that that would be the case.

(Overlapping conversation)

H Hotels anyway --

r P (Unintelligible) you build the fact that the arena is in trouble, in other words, you've got to find the cause. This subject came up before, you know, you raised it, Bob, and said, well, our people are so stupid on public relations that I 'm sure the way it would come out is we went because we didn't want to stay at the Sheraton where somebody I understand agreed I was to stay.

H No.

P I'm not even going to stay any place in San Diego -- I'm staying in San Clemente, but be that as it may that was apparently some story that they had. Well anyway, whatever it was, the question is whether or not at this point we could start the talk. It's a wful hot incidentally, terribly hot.

H I can see that

M Well, we've started this

P Put it on the basis that the arena can't be finished. Can we do that?

M Yes, as a matter of fact, I was going to say we're starting this, programming this, by sending people out to continue, and I say continue the negotiations with these Canadians because they don't want to give us a place for lead time in order to get in there to do the improvements, etc., etc.

H Then we could start the cost thing and then

(Overlapping conversation).

P I'd just say that the arena would not be finished.

M Well, the cost factor goes in with the negotiations because if you don't get into the arena to do the reconstruction by a certain date your cost factors multiply and multiply and multiply - so you just (unintelligible) the same factor. In the meantime, I talked to Bebe this morning and a Miami Beach of course is the logical place.

P Sure.

H (Unintelligible).

P Well, if it's all set up -- safe -- television -- that's the major consideration. At least it' s all there. Go to the stupid damned place again, and I got a place to stay this time I wouldn't have to stay in a hotel. '

M So Bebe has got this fellow Myers.

P Hank Myers.

M Hank Myers, who has the contacts and so forth, quietly canvassing to see if the arena and the hotel rooms Will be available.

H This time of year?

M Oh hell, they run a lot of conventions.

12A. WHITE HOUSE TRANSCRIPT, APRIl 4, 1972, 4:13 - 4:50 P.M. MEETING

P They run a lot of conventions but they'll clear them out by that time. It isn't really, I've been there in June and August -- we all have -- and they do run conventions, but generally speaking, it's still more open in the summer and the rates are lower.

MOf course

H It's still ridiculous though.

M So, if the only negative factors that I see in the change

P Is the admission of guilt in ITT, right?

r. M L Well, I think that that will go by the boards.

P

Maybe that's better than just having the damned story rehashed again.

.; M:: I would rather have the -- if they can sell it as an admission of guilt now than I would have the television cameras on the Sheraton Hotel all through the Convention.

P That' s right. That' s right.

M I don't know

P My theory is - It's the old story you know that a good poker player -- cut your losses -- get out of the bad box and get out of it fast.

M I don't know how our friend the Governor would take this. He might be damned glad to get the problems out of the way. I don't know, but we would do --

MEETING

Can't we -- could we have a situation where we have a break with the Canadians. You see what I mean? Create a conflict with them. That's what we're And then go out and announce it, but it's got -- if for once we could do the PE right -- if for once -- just one single solitary time -- and keep it out of Bob Wilson's hands -- and do it right -- but the problem is that the convention (unintelligible) that is the arena won't be ready, the cost is too great, or . . .

M That' s the way we would program it.

P Think it would work?

H Sure. I think it would. You're bound to get some bumps on the other side? So what? You got a base a story -- just stick with it -- couldn't get the arena done -- made a mistake in surveying it. It' s all fallen apart.

P You've got to establish that immediately though. This is April, and the Convention is only five months away, and so everybody is going, as you know, now that's going to be ready -

M You see these negotiations are going on and what we were proposing to do is to send a big architect and a builder or somebody else up to have a confrontation with the Canadians in Vancouver.

(168)

-12

P Well let's do it.

M Well, we want to make sure we can go to Florida before we break this pick.

H I'd just soon not have a convention, but we can't get away with it.

M Have an absentee ballot -- that's what I'd prefer.

H The Ripon Society is suing us for improper selection of delegates or something.

P (Unint elligible) .

H We have something where you state that (unintelligible) to the President gets eight additional delegates or something and the Ripon people have gone to court and some judge has upheld them on the first round.

P Is that right? Well that's been done -- been done from the beginning -- I don't know whether it means anything.

H I don't think it does. They don't seem to worry about that anymore.

M The fact of the matter is that there are a few rules that a political party has control of it's Convention and in the past they have ignored even the state laws that require people to be pledged for so many ballots and so forth. They've just ignored them.

((169)

12A.WHITE HOUSE TRANSCRIPT, APRIl 4, 1972, 4:13 - 4:50 P.M. MEETING

P J,et me ask you this. Do you think the possibilities of major demonstrations are less ill Florida? It doesn't make a hell of a lot of difference anyway. I'd rather have a demonstration in Florida than I would in California anyway. California is a state we have to go for for other reasons.

H Well, I think they are infinitely less.

M Infinitely le s s.

H You've got much better physical (unintelligible).

M And in addition to that you have all the Democrats in co)-ntrol in Florida from the Governor on down -- where in California you have all the Republicans in control.

(Unint elligibl e) have d emon s tr ation s (unint elli gible) .

One story John, whenever you're asked about a (unintelligible).

You know, I'm the only one in the whole outfit that didn't want to go to California. I was against it all the time.

M You wanted to go to Chicago. I didn't want you to.

P I did. That's right, but I (unintelligible).

M No qu e stion about it.

P How about Chicago now?

M

P

Daley wouldn't let you in there, I bet.

Oh

(170)

ES

H

M

P

M

Can't start from scratch from anyway now, I don't think.

You I vc g o t

Be very very difficult.

It would.

And we have a month between the Conventions -- more than

a month in which

Clean things up

To change things enough to make it look like -- assuming that

(unintelligible)

(Unintelligible) platform in.

The facilities for crowd control are so much better in Miami

Beach there.

And of course the cost is

H

M And we save money LEAA money, we don't have to

H Save police money.

P The other point is the Democrats really fouled up, and the police and the rest will feel that they have a responsibility to be a little bit more restrained when we're there. Well, I hope you can do it. My idea is -- I'd wait. Obviously we have to get ready - when it's ready -- I'd say in about 30 days from now.

M I think we could move in on it before then

M Because we're at the point where

[redacted]

-14-

H Foster

{ P (Unintelligible.) no way you could do it though without being charged because of ITT

M Well Herman came out with a statement today which shonvs that ITT's contribution is down to $25, 000. r just think that the cost of it, the labor problem, the possibility that you'll never get that place in shape

Ye ah

Ah, added on top -

Also, we don't -- there's very little that we could do to screw up Florida as a state that we might win. California is a toss ows anyway you figure it. It's a to carry and there's a nasty . incident that could hurt us.

M Yep.

P That's the point. On the other hand, I don't think Reagan's attitude is supportive. He wants to carry the state. On the other hand, you got to figure whether or not -- these clowns that ' want to go there say -- oh it would help so much -- and all that business.

H (Unintelligible).

M Well -- you've a double edged sword there -- if everything went off nice and peaceful and you had all those 10, 000 college kids we were going to have out there marching with their banners and everything was beautiful -- that'd be great.

P Yeah.

M But if you have one of these confrontations with a Republican Governor and a Republican Mayor and Pete Pitchess is sending in his storm-troopers -- why

P Yep.

M Well that's where the police are going to come from, you know they don't have enough in San Diego to handle it.

P (Unintelligible) send Pete Pitchess down - Sheriff's posse. Those old farts riding their horses. Well, I like it, but I would say that if you just start getting the word out awful fast about the (unintelligible) problem you are having with the Canadians. Is that being done, I haven't seen anything?

M Well, it's all local out there. It's known locally.

P The main point is to get it out nationally. Well.

H Local too.

P Who would say that? -- the Mayor would say it or the Convention Committee -- that we regret that we cannot handle it -- that we cannot have the hall ready.

M Well this is the Republican Convention and they wouldn't be saying it because they would, of course, have to bring that site selection committee back and they'd have to put out another call and things like that; so it would be the Republican National Committee that's the party of interest.

P Ok. -- Well leaving that subject -- what else is -- 1 guess today is Wisconsin isn't it?

M It certainly is -- ought to be an interesting go -- ah -- I told those fellows over there tonight with Dale and -- Dole and so forth -- to get out two thoughts in connection with this primary in Wisconsin. Number one, that there was a clear indication because of the proliferation that the Democrats did not have a viable national candidate when you look at who won in New Hampshire and who won in Florida and who won here and the next place and secondly, if there was any winner at all it was Teddy Kennedy. Now Teddy's been getting a free ride, but not being drawn into this, and if you have Dole, Dale and whoever else bring this up that -

P Why wouldn't you say that Teddy is going to be the nominee.

AM Yeah, Teddy's getting

P Rather than he's a winner -- I'd simply say that McGovern's a stomping horse for Kennedy and Lucey is the Kennedy man and it looks like Kennedy is going to be the winner of the nomination. Looks like Kennedy. None of the others have got the horses to win it. Smoke him out a little.

M That's right and then, what I would hope would come out of it -- is what the Republican National Chairman and so forth are saying

M is that the reporters will l)e going to these other candidates and say "what do you think about what they are saying about Kennedy" and let's get them posturing themselves against Kennedy so that he doesn't get this free ride.

P It's clear,, it's clear that this is a -- Mel Laird is saying that the reason Muskie has been really poleaxed there among other is that Lucey and the Kennedy Democrats have ganged up on him. They got behind McGovern, not for the purposes of supporting McGovern, but to kick the hell out of

M Muskie

P Muskie, and also, he said they did it for another reason: they didn't figure Hubert had a chance before Florida and didn't have time to change their course until then or they'd all been for Hubert, but then anybody but Kennedy. Their purpose was to stop Muskie. But they've done that-- now- Hubert, of course, has come in.

H They can't stop Hubert! (Laughter)

P They can't stop him if he wins this time.

P I think he will. I think he'd be first -- McGovern second -- and if Wallace is third, I think Muskie then would be fourth, but that's just a guess.

M I don't know how the

P Maybe Muskie will be -- Muskie will be second.

M Well, I doubt that very much.

P He's up there though. He had a big telethon push which I (unintelligible).

M I don't think Muskie is going to have that drawing power up there .

P You know the thing that occurred to me is that -- it seems to me that as you look around the states -- the big states - New York is one that I don't think you could (unintelligible) - you really have to be personally in charge out there, and anybody else I let in there, you know what I mean, because you've to play the game and Rockefeller's got to carry it for us hasn't he? Have to get off his ass, but you've got to play the game with those conservatives, right? And so there the p r oble m .

H Incidentally, did you see Bill Buckley's -- you see that letter he sent out?

P No. What's he done now?

H He s e nt out a lette r to the - - I don ' t know whe the r it ' s a circulation building letter or something to the publication people or whatever it is - but anyway, the whole 'pitch is -- "I've been asked about this coming election or something, and I will say proudly I will vote for Richard Nixon for President. I consider

any one of the Democratic possibilities wou]d be a disaster for this country. " He said that "Nixon will be a problem too

M or P (Unintelligible)

but that he ha,s the job" -- no, he insists that "he has the job now of doing just what the conservatives want of pulling together a sufficiently broad coalition in order to be elected to govern. " He said "I would not vote for Nixon as editor of a convservative journal. "

Th at' s ve ry good .

And he said "I don't feel that we should abandon our principles but when we get to the election we must vote (unintelligible).

Then he sort of sticks it to Ashbrook?

Well, Bill's written

He said he was going to do that

M A couple of column's you know that go in this

P How does he, well how does he deal with Ashbrook. I mean does he want him to get a good vote anyway?

H Yeah, because that's forcing you

M That's the signal

H To take a conservative position.

I mean I watched Ashbrook closely

H You watch Ashbrook closely and get your guidance from

(unintelligible)

(177)

P What I was going to say is -- in Pemlsylvania, v ho do we have there that you would say -- you also will handle New Jersey won't you? I don't think (unintelligible) or were you using Sears or others

M Yeah, Sears.

P What about the list of the big states? We got New York and New Jersey. What would you say about Pennsylvania? (Unintelligible). Or do you just divide the state up?

M Oh, do you mean who do we have in Pennsylvania?

P The boss, I mean it's a (unintelligible). Who would you consider to be the top man?

M That's really divided into regions but Arlen Specter is -- well

P Specter is our general

M Well he's our campaign director. Scott and Schweiker are the co - chairmen, and Arlen -

P Specter is the statewide chairman?

M Yes.

P Good.

M Well he's really going to work.

P Well he's good.

M And a

P And he wants to be governor doesn't he?

M That' s correct.

P Whether he wants to be (unintelligible), he's good don't you think with the Jews and with the Blacks and (unintelligible)? Also he's with us.

M Yes, and also he's -- we're deciding whether Rizzo's campaign manager should go to work for Arlen Specter now or wait and a

P How's his relationship with the Pittsburgh crowd, all right?

M They're good, because we've got other lines

P But Specter -- that's the guy -- in other words you wouldn't be in direct -- you wouldn't need anybody here to watch (unintelligible) ?

M We're going to have to have people to do that, but what I've done

P (Unintelligible) you ought to handle that

M - Well let me.

P On a real tough job, I would not let them out of your hands. I don't know whether you can do them all but

M No, I've already decided that in California, Illinois, Ohio, Pennsylvania, New York and New Jersey, that I am going to have a direct line through to the people. The other states we will have these surrogates

P Surrogates.

M Regional people. Now, what I want is what we've talked about before, it's -- well, use the example of California: If we can get Cap Weinberger, if he's not SO far "Hatched" that he can't do it, Cap could be a state desk man or auditor, or whatever you want to call it, somebody with the expertise of politics in California -- can go in and see what's going on up in the Valley under Monagan or what Packard is doing and his people and .San Francisco, or what they're doing here there and the next place. I expect to have somebody like that for each of these big states. But I think

P I'm afraid he is "Hatched," but a

' M IS he?

P (Unintelligible)

M Cap is a pretty bright able guy and he's been immersed in politics out there as state chairman

P Wonder if we should pull him out of the Budget?

' M He gets along with everybody.

H Well, he doesn't want to stay in the Budget.

P I know he doesn't want to stay there. Can we pull him out and put him in an agency. He might be just as good a man as you could find around California.

M Can he take a leave?

H Just resign.

P Let Carlucci or somebody else be Budget Director if he

re si gn s, and

H After you get a Budget Director.

p

I'd have him as full time. George could find somebody

H You've George on top of it.

P George Shultz can run the Budget, (unintelligible). I really

think the thing for Cap -- so important that you want him

. (unintelligible). Illinois?

M Well, we've got, of course, Tom Houser is a good operator and

I haven't got anybody yet.

P Pretty good, yeah

M Tom Houser.

P He's Percy's man, you know.

M No.

P No, I meant he was.

M He was.

P I mean his

M He broke with Percy you know when Percy went back on his

commitment to vote for you -- or to me to vote for you at the

Conve ntion.

p

M

p

M

p

M

P

M

p

M

Well he helps its in the area we needed him (unintelligible)

and so forth, and Texas?

And we have

How does Texas stand?

We have Al -- we have John Connally.

(Unintelligible),

We have Al Topper (phonetically) downstate.

Oh, good.

Who is, you know

(Unintelligible).

' And so -- plus a lot of good regional people -- even a top flight

guy in the city of Chicago which is a real good politician. In

Texas, I've been talking to John Connally about it.

P - Have you? Good.

M John's feeling is that by the time they get to the Democratic

Convention he is not even sure that Bentsen or the Lt. Governor

P Barnes -~

M Ben Barnes or these people should even go to that Convention.

I guess it's his line. What he is angling for in effect, is keep

your options open. Don't get tied in with an organization now,

because you may want to bring

P Texans for Nixon, I know, I know (unintelligible).

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M Wcll, on the other side of the coin, of course, our Republican friends are getting itchy and I keep telling them to go out and write you some more Republicans -- but they say well, we're going to lose good people to the gubernatorial campaign, etc., etc.

P Let 'em go.

H So what?

P Let them go. They don't -- that doesn't make any difference. Hold it firm. We need Texas Democrats. We don't win Texas - we haven't won it yet -- but you don't win it with Republicans. We never have. And let's just face it, that's the way the score is. Tower has won it once or twice but -- accidents, pure accidents. (Unintelligible) any Democrat, believe me, by any Democrat (unintelligible) committee of that sort is better. Rather than that fellow who is finance chairman down there. What's his name ?

H Al Fay

P Al Fay

M You mean Peter O'Donnell? Peter's left.

H He ' s left?

M Peter quit. He's (unintelligible) national committee (unintelligible).

H I'll be darned.

M Agnitch is the new national committeeman.

[redacted]

p

H

p

M

p

M

p

H

M

Yeah.

O'Donnell was such a horrible whiner.

Ohio !

Ohio we still have the Bliss.

Bliss is still.

S ituation .

I think going for the old timer there is a bad idea. What do you think Bob?

I think it is a good idea.

Well, we have to, Mr. President -- almost have to -- to keep the Taft forces and the Rhodes forces and the rest of them.

P Well, we've got to go for the young too and the rest, but I guess Bliss is

M Well, Bliss is going to come back to work for me, you see, he wants the recognition.

P Great.

M He's not going to be the guy to come and do the nuts and bolts, but he wants the identification with you and back here to reestablish his

P Let me ask you this. We have these curious reports, which, you've seen these of course, (unintelligible) out of Michigan showing we have a chance in Michigan. Do you think we ought to take a whirl at it or not?

(184)

[redacted]

M We're going to take a whirl at it. We're going to take a whirl at all of them.

P Well (unintelligible) even Minnesota?

WI Well, I mean a whirl at them to the point where we're going to organize to the teeth and then when it comes to where you're going to spend the money on your media, your mail, your telephone, and things like that, we'll make the judgment a little further down the line.

P Michigan judgment could be very interesting because if it gets really heated up on busing, if it could, and we're on the one side and they're on the other side, you might win the state on that issue. You agree Bob?

H Sure.

M In addition to that, look what you've done for the automobile industry.

H That was a year ago.

P Well, still

M It still can be sold

P Sold lots of cars

And, Milliken is all aboard and he's working hard, and we've got a good chairman out there.

P I'd even run -- I'd even have some sort of a campaign on that. I'd even do something in Massachusetts. Do you know why? Solely because I think it isn't good to let any one area just go completely .

M No, you can't, because of its rub off on Vermont.

P (uninte lli ibl e)

M We've got an added starter there who wants to be the chairman to get out and work and that's the Governor.

P He does?

H Sargeant?

M Why not? He gets

M He gets on the tube.

H (Udintelligible).

P Well, he's a good liberal fellow.

H He really wants to get in?

M Yep -- and I think we can get it cleared with Brooke and Volpe and all the rest of them.

P I think there's a great deal to be said to go for every state. You know the line I took with these people -- the governors which they all like to hear -- but you take, I was telling Bob the other day that in terms of our own plan, of course, we've got to look at everything you can without killing ourselves or without being over exposed. But, I feel very strongly that

P Won't hurt us!

P Wallace in or out, we ought to hit of the southern states that I ought to get to Georgia, Alabama, Louisiana, and Mississippi, because I think if we can sweep that South and of course Texas is the big question mark (unintelligible).

M Did I tell you about Connally's poll that Barnes ran down there? Shows the President did very well -- quite different from our poll s .

P In Texas?

M Yep.

P Our poll shows five points behind.

M With Muskie, yeah.

P Of course that would be

H That was awhile back.

M Quite awhile back. Yeah. But John Connally's impression is that you're in good shape in Texas with or without Wallace.

P Well, that's hard to say (unintelligible).

M Well we don't have that liquor thing down there this year that we had in '68. That was what really did us in.

H Unintelligible).

P You know Unintelligible) really kicked Muskie in (unintelligible) that Harris Poll showed him slipping in the trial heats. Apparently (unintelligible) something similar (unintelligible) .

[redacted]

M Well, this has a hell of an impact because the press picks it

up and drum s on it day in day Otlt.

Especially because he had been (unintelligible).

(Unintelligible) Gallup (Unintelligible) even, even in February

and now (unintelligible).

When is this coming out?

I've got to see the Ambassador -- he's leaving -- he's leaving.

M

p

M Oh, is he?

H Going home.

P Yep. Well, anyway John. (Voices fade).

H French Ambassador's name is Kosciusko. Figure that one out.

P For your -- I can't tell you too strongly now with regard to the

San Diego thing -- got something to do, do it! Cut our losses

and get out. But I do think that from a PR standpoint, Bob,

at this time we really ought to.

H (Unintelligible) ahead of time.

P To build (unintelligible). start a fight, right now. Play hard

(unintelligible) no question,

M As soon as we see any light through it at all.

P I'd start right now.

M Give them the guidelines and put them right on it and let them

stay right on it. (Unintelligible).

P John, I would start the fight right now. (voices fade away).

P Well, Mr. Ambassador, (The French Ambassador and

Dr. Henry Kissinger enter)

13. **During the days following the publication of the "Dita Beard"** memorandum on February 29, l973, several of the top White House aides were involved in investigating, the allegations contained in that memo random .

The actual settlement of the ITT cases as a quid pro quoo for. an ITT commitment to the Republican National Convention was.~~as the focal point of the Kleindienst Confirmation Hearings which began on March 2, 1972. Peter Flanigan, a White House aide, was the object of considerable attention from the Senate Judiciary committee and press during the coverage of these hearings,s.

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13a Testimony of Charles Colson on June 14, 1973, before the Special Subcommittee on investigations - of the House Committee on Interstate and Foreign Commerce, page 202.~~

13b Statement of Richard G.....Kleindienst, dated 10-31-7

13c Testimony of Richard G. Kleindienst, 2 KCH 95-96

13d Memorandum of March 13, 1972, to John Dean from.] Charles Poison.....

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The Boston Globe, April 13, 1972; and The Washington Post, March _,

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13A. CHARLES COLSON TESTIMONY, JUSE 14, 1973, SUBCO g ITTEE OF HOUSE INTERSTATE AGD FOREIGN COMMERCE CO B ITTEE, 202

20~

Mr,. PICKLE,l-. If you: sent him;'1 to Denver! C,-,10.. what was: s the pllrpose of t71e interlie~~N- ?

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Atr. PIC,IS3SE. Is it, trlle, WIr. IIunt avent to Dcns-er in disouise avith a WA-i r on and slil)ned illtO tile llospital ?

Afr. Cor,so>-, +~~ov l nei-er St"lt ATr. lIunt in clisfJuise or RVith a lvic 011.

Art, P1C3;LE. I didll't asls tsl>F,, I asltetl clid 11e t.o tllere and {ro in discuise ?

AIr. Cor.so~~-. I have llacl tllat reportecl tllat lle dicl t)llt I clo not ltnoav for a fact he (lid.

AIr. J)TC'ILLE. rOU l-lon't doul)t it since it llas not 7aeen denied ?

BIr. COLSON-. I laa~~-e 310 reason to cloi~~5t it.

AIr. PICETE:. WN-71V did he put a disfTIlisc on if yGU ~~z-ere prollerly coneel necl al: out Al'r. l~~]eindiensts srltv didn't vou 7rut on VOI, r ,9;llatla.v**to-to-msetinSsuitand fly outthere and tellthe pressvou lrere ooinr**

Atr. COJ.SON-. I di(Rn't su~~~~tzst to '\Ir. TItmt hov~~- he shlllfl conchlet the interviexV. I simi)lv tolcl him to (¢o out antl iind Ollt ss-I)ether it ~~gsa,s her r-len.lorallelilln, nvlie.ther ske had •rritten it, and if it avas true.

AIi^. PI(,'liLE. YOll didn't cliscuss an~~.-thint about puttinb on a disguise and froin,~~ into the hospital ?

Atr. COL505-. A 0^ sir.

Arr. PIORLE. That svas never mentioned, that ~~vas AIr. Hunt's idez entirelv 2

Af r. COLSON. Tes, it was.

WIr. PICIZLE. Di Cl vou concur Ts ith it ?

l lr. tiOLSON. 1 aon t xonow Inat tne suD]ect came up quite thab lvay. I vould have to tracs a little more of the bael;~~round to tive -you an a,ccurate understanding of ~~vhat hoppened. There had been grolvin,g eviclence in the ea.r".y davs of Afarch that the memorandum vas not authentic. 3tr. Hunt wrote me a memorandum I believe on the 10th of BIarch in which he said

that information had come to his attention

that the memorandum was not authentic. He proposecl in the memo

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event-v.~~~hlch *NY25* not leaked. - the- contemt of those- ques :'.-_t ; *5S~~~70r_23CtOsc~~~*
On Itlonday - af.errloon, tions th2t.I made .he stat~~~ i- >~~~ .t-
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April 19th, l98 1, DIr. Ehriich- ment quoted on C.E.S nexvs ! r v >, i, mt C,~~~ ~~~

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.man . abru?tly called and last evenino, as fo'lo ^7s

staced t;nqt the President di- "In the discharge of my
.ceted me no. to tile the ap- responsibilities as the heeizag l
p>~~~l in the Grinnel c2se -That Attorr.ey General in these-l
v;2s the *12sC* d2y **in xvhich cases, I was not interEe~~~~~~ed**
t:aot- *23pe21* could t7e taken. with by - anvbody- at tue
T informed h~~~m that we had White House. I was not =-n-
dete,sined to take thst 2p~~~ po.t7Tned: I~~~sas-not pressu ed
pea:, m.d tha; he should- so ff I EV25 nOt directed."
i,~~~¢o.~~~ 'the President. ;9lin- L It xvas aLso in response to

(191)

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MICHh~?;D G. ItLEI.iDIL,~ST

TE:~~SDAY, :~CE 2, 19X

U.S. SENATE,
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1PTPS JUI)iCI &X;Y}
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D.C.

The colwtljittee m.et, puzsuant to notice, &t 10:40 a.m., iLl room 2:39S,
ATew Senate Olfice Building, Sellator 3ame3 (). Tps.stlaIld, chairrnan7
pre'sldztcr,
Prcsent: Se~:lators Lastland, Ermin, I:Iarts liente.dy, T§avh ICurdicSi, Tu~|~ney, IIruskaX Foncr, Scott, 'rhut-monfl, Cook, WIatLias, and Cxurney.

tClso present: lprancis C. Ptosenbelge~.r, Pcter M. Stoclgett, Tom Halt, Hite .LIcLea.n, Thomns B. Collins, ~,rad Rol)ert 1;. Yountr, of the comm.ittee st,afE, and V8liOUS avss.istant.s to Senators.

The ~z.-slR\f.tA. The comlnittee wil] be in order.

WIr. E;leindienst, **hold up your hand.**

I)o X ou solem rlly swe8~ to tell **the truth, the •vhole truth, and nothintr** btlt the truth, so help you God?

AIr. EAEINDIE.NST. I
do.

WIr. SIcL.~Rz~. I dz3.

5* r,-, Tv OtllTYar. T dc.

TI;.'.TI:&ONY OF PtI¢3iSEI) G. IZ2INDI~DJS'.£, ACTING 1\
z"XORN:E l' GERr.3R Af., S.CCO3DAlTll>D :BY RICEARD RN7
XclERE..Z, TORM7; R
ASSIST.uIT ATTORNI:Y G~NTERAI., A;TTITRFST DIYISIO>T;
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T1aD
G}lAPH CORP.; At:'D WSUK}:R :B. COD. EGYS, SNTITRU'ST
DRISION,
DEPART3t~;.N'T O]? JlJSTICli:

'rhe CHAIR3TAN. This hearincr ~ras called at the request of Mr. FLleindienst.

Nossr, the zvay the Chair thiSs the proper procedure lvould lJe is to hear AIr. Eleindienst, Mr. A:lcLaren, andl the other gentlernen, and then thronv the ma tter open for questions by whoever on the committec M ants to ask them.

L'oxv, ?\Ir. Ftleilldienst, you rnay proceed.

ALr. ELEIDEDIENST. Thank ;you, WIr. Ch3irman, and Jnember3 of the comrnittee.

FiIst I nvant to express my personal appreciation to the committee for pronding me this opportunity at the estrliest possible moment to proside the committee the information that 1 have nvith respect to sorne of the charges that have been made in ths public press in the last several days.

Tlle reacon ^R-hz l asl e(l for this hearintr :\Ir. Cllai]Jlzall, flnd mem- 1 I)ers of the (osnlJlil.tee is l~ecal]se char);es have l>een made that I I inlluence(l tlle settlerllelltl of Governnzellt antitrtlst litiration for pa] tisall political reasons. I llese are seriolls e]laroes alld 1)v 1irt.Ue or t.he fact that! tl~e conf]rgnatioll of my nonlinatiol) as tlle AttorlletT Gener21 of the IJnited States is before the T .S. Senate, I xvoul(l not avant tllat cont!rluatioll to tal c Tl~]a.ce rvitll n cloud over m~~llefld so to S]:)eak, llOr \\(?Ul(i I rvant the IJ.S. Senatc to act upOll mv nonzinatioll if t!lere rvas an^- substantial dol]bt in the minds of a]ly of the sIeml)(rs of i]le U.S. Senate to the ef3ect tllat rvhile l: }?erforllle(l lrly ofrlcill duties on l?ella]f of the U.S. Gorernmellt in t.lle Icast 3 5-C'8l'S as the DeputJ Attolnev General tllat I encrao.ed in 9117' inllaroller condllet or in anv conduct tbat +V-ol~]d £:0 t.o or l)e re]evant to tlle consideration of mn c;~nIrmabioll t?y the V.S. Senate. ~

I am hele tl-lis momillor lNilll respect to tho matters inlrollil)g the I l T Co. and its antitrust matters beforc the Del-)artnlent of Just]ce to tell firou lrllat I did. And I have here mith me this mornillg Jud~~a AScLalen. the Fe(leral l)istrict Jud~>e of t]le Northerll I)istlict of Il]hrois nnd]\lr. l?elix Roi]al;yll a menIl)el of the boar(l oI dilecto s of Il i l:>ein<~ t-.he t.Rso per-ons lTitll ~~l?on} I llad any dealinrs in connect.ioll rvith tl~ese]na.tt.els to a]so lla~~e tlleln te]l w-ol] lvha.t thew did. A]ld lo t.ll e exten t tha t. i t involves me t o h ave th em tell v ou ~~ 11 a t I d id .

l: sr-as involxred in ally waST zl; th r e lwect to these all titrust llltlt s ers by virt.ue of the fact. tllat the Attorney Gellel al, in lg6t3 (3isqusliiied lli!nself from t.he collsideratioll of anw- nzatters involvina the l. J. . ~\- J . Corp. Tl]e reaso~z mhv he disqualified hinise]f is t.hab his follll(r lSl.\V firm has performed le~~al xerliees *I* beliere *for* sl]bsidiaries *of* I. l . (t l . and the~efole lelt from Ille st.&ndl)oirjt of proper eoladuct that he shou]d net l~e(ome involved in eny mat ter or consideration or decision that avou]d invo]ve tllese com~)anies.

In 1969 &t the recommendation of thel3 Assistant Attorner General EJcLaren in tlle Antitrust lDizisiou I siClled ns the *At,torney* General in tllese ca;es and as required bv lalv tlle coml)laints or a.uthorized *the* filinC of complaints against the acquisition or pro~rosed acqllisiiion l~y I.T. & T. in eonnection lrith three corporationsJ the Cnnteen Corp. the GrinneXl Corp.. and the Eartford Corp. These complaints and the nature of tllose setions lvill be discussed in more detail I i}slie;-e, by Judee ANcLarell tllis mornill~.

But in anv evenl all three of tllose coml)laints seekintT on lsellalf of t.he Government t.o preveIlt their acquisitioll by l.T.-&: T. ~xere filed in the vear]969 t)v t.he I)el)artment cf Tnstic.e.

I re&llv had verv little. t~i do or relat onship axitll or kno^.vledge abollt tllf ordinarv proces3 of those cases in the venr 3 969. Indeed I llave no recollection of halillt anv nmeetil (>s othe.o thnn routine Ol of a vcIy no]ninal nature in that !-ear ^sit.h res~)ect X,9 anv one Of t.hose cases.

Ap;)roximatelv Al)ril 20]9fi9 I received rbt call from SIr. Fclix Rollatvn u-llo is sitsinC here to mv left in ss-hich he identified hilllsclf to me a~s n meml~er ol tlle board of Vdirectors Of I.T. & T., flnd he stated that he was not a]aMn-er and lhat he ~rould li}ve (o come to nlv offilce to diseuss some of tlie economic consequenees of the lsoliev of the De~~artmeLtt. of Jtlstice t.o require bv I.T. & T. a divestit.uIe of the Hartford Insuran(e Co. As a result of our discussion Oll t.he telel)hone AJr. Rohatvn came to mr oR:ice on Alaril 20 l9Gg. He aCain ol)ened U1) the conversatioo and incident.allv onln- !\II ROhntVE1 an(1 1 A\eTe

THE WHITE HOUSE
WASHINGTON

march 13,
1972

MEMORANDUM!TDUM FOR: JOHN

FROM:

One of our great problems in the |

t DEAN

CHARLES COLSON -! :....

FTT fiasco has been our inability to present directly and succinctly some obvious strong facts on our side. ! The attached is an attempt to summarize the three Key points that need to be made over and over and over. I thought this **might** be useful to you.

(194)

[redacted]

1 ID. CHARLES COLSON MEMORANDUM MARCH 13 1972

There has been so much innuendo, so much political rhetoric and so many smear charges in connection with the ITT case that I don't wonder that people may be confused about it. A few facts need to be put in perspective:

1. **In two** weeks of hearings before *the* Senate Judiciary Committee

there has not been one scintilla of evidence of any wrong doing,

not one scintilla of evidence that there was any connection between the anti-trust decree in the ITT case and ITT's offer to a civic committee in San Diego to help San Die,go make a bid to obtain the

Republican National Convention. 2. The press continually reports "ITT's contributions to the GOP". The simple fact is that Sheraton Hotels, a subsidiary of ITT, made a pledge to the civic interests in San Diego to help guarantee the financing necessary for the city to obtain the convention in c Diego. Whether San Diego got the convention or Chicago or Miami, could be of little financial concern x the Republican National Committee and **the financing of** this year's political campaign. In short, it was not the Republican Party to whom any pledge of financial assistance was

offered .

[redacted]

3. Perhaps most importantly the government did not, as has been charged, "drop" the ITT case. It forced upon ITT a tough, hard settlement requiring ITT to divest itself of 6 major corporations and to agree not to engage in a:ny further acquisitions for 10 years without. Department of Justice approval. It is perhaps fair to note that this decree one of the toughest anti-trust' dec:isions in history and the

1a-.r; gest was acheived by this Administration even though the p:rior Administration had decided not to pursue anti trust: litigation against this samecorporation.. It is important also to note that this Admini strationn *has a record second to none in* vigorous anti-trust enforce ment.. Most lawyers and, indeed most businessmen, to their own displea-?.su"-e, *agree* chat we have been the most vigrous enforcers *of the anti-trust laws* in this country. Fina11y the Solicitor Genera1 of the United St:ates and former Dean of the Harvard Law School,

Erwin Griswold, appointed incidentally to this po sition by our predece sor Democratic Administration, testified under oath last week not only that this was a very tough settlement imposed on ITT but that; | *had the* government not obtained this settlement it probably couldn't have sustained the burden of its case in the Supreme Court. I:)ean Griswold was one of the primary officials whose judgment was considered in reaching the ITT settlement.

What the American public has been subjected to in t:he past two weeks ha been a campaign of smear and innuendo by one of the most disreputable

_ 3,

columnists in America, Jack Anderson has tried to slander decent government officials all the way from Dean Griswold to President Nixon, with half truths and fourth-removed hearsay evidence. The simple facts don't support his charges; indeed, the facts are quite to _ although they have been largely overlooked in all of the political harangue that **has been s o widely reported.**

(197)

[redacted]

14. The President left for an official visit: to the People's Republic

of China on February 17, 1972; he returned on February 28, 1972. He

spent the weekend following his return at Key Biscayne, Florida. On

May 20 1972, the President went to Moscow, returning on June 1,

,]972 .

14a - Weekly Compilation of Presidential Documents, Volume 8, Number 8, 443-44; Volume 8, Number 9, 482.....

Page

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14b Weekly Compilation of Presidential Documents, Volume 8, Number 23, 912, 975# 207

(203)

Inspection of Tax Returns

Executive Order 11640. February 16, 1972

iNSPECTION BY CERTAIN CLASSES OF PERSONS AND

STATE AND FEDERAL GOVERN MENT ESTABLISH MENTS

OF RETURNS MADE IN RESPECT €)F CERTAIN TAXES

IMPOSED BY TIDE INTERNAL REVENUE CODE OF 1954

By v irtue of the authority vested in me by section 6103 (a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a)), it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5X 61 11, 12, and(~~ X2, subchapters B and C of chapter 33, subc hapter B of chapter 37, and chapter 41 of such Code shall be open to inspection by certain classes of persons and State and Federal Government establishments in accord ance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury decision 6543, relating to inspection and use of returns by such classes of persons and State and } ederal Government estab,lishmenis, approved by the President on January 17, 196], the amendments thereto approved by the President on April 4, 1963, and March 18, 1965, and the amend

ment thereto approved by me this date.

R1CHARD NIXON

The White House
February 16, I072

[Filed \ ilh the Office of the Federal Register, 2:58 p.m.,

February 16, 1972]

Red Cross Month, March(.h 1972

Proclamation 4110. February 16, 1972

By the President of the United States of America

a Proclamation

Born in war and raised in adversity, the American Red

Cross has evolved many traditions in its universal quest

to casc human suffering, but none have served it so durably: .- | as its tradition of flexibility.

since well before the turn of the 20th century, through!rou~~:- I times that tested the very soul of our humanitarian . - I stincts, the Red Cross has proven equal to the challenges of each era with unfailing resourcefulness, zeal and com . -; passion. Red (Cross programs and services we have long | taken for granted—from disaster relief and blood ba.. ! to nurse training and aid to military personnel—greet o-- 'i {)f its pioneering approach in meeting generations of unpl precedented crises.

This tradition has carried forward into the 1970s \<-:~ undiminished vigor, and the Red Cross emblem may w--e found on banners flying over inner-city child care center and drug abuse clinics. It is stamped on publications and._ r continuing education materials dealing with ecological:c_ I concerns, race relations, the adz ancement of the arts, a i- ! rural development. I

And as a member of the global so,ciety, the Red Cross continues to fulfill its international enterprise of m ercy again with a flexibility that makes its mission as vital;_ I and viable as at anytime in its history

NOW, **THEREFORE,** I, RICHARD NLXON, President of ye

United States of America and Honorary Chairman of 1 as i Amedcan National Red Cross, do hereby desigl.a:c March, 1972, as Bed Cross AvIonth, a month Ashen e;.-: citizen IS asked to join, serve, and contribute in the same example of urzelfish spirit **that** has characterized the Rmi Cross since its founding.

IN NVITXESS WHEREOF, I have hereunto set my had_ t

this sixteenth day of February, in the year of our LG.~~ **nineteen** hundred se~~~~enty-two, and of the independence | of the United States of America the one hundred I ninety-sb;th. - - ;

RICHARD NDzo:; t

[Filed with the Ofl;ce of the Federal Register, 11:54 a.—_ 4
February 17, 19,2]

TIIE PRESIDENT'S TRIP TO THE PEOPLE'S REPUBLIC OF CHINA

The Presr'derrt's Remarks at the Departure Ceremony on the South [awn at the White House. February 17, 1972

Mr. Mice Pres.'denl, Fir. Speaker, Members of the Congress, and Meme bers of the Cabinet:

I want to Express my very deep appreciation to all of you Who have come here to send us off on this historic mission, and I particularly avant to express appreciation to the bipartisan leadership of the House and Senate echo are here.

(g/}f)

14A. PRESIDENT FIXON TRAVELS, 8 PRESIDEXTIAI DOCUMENSS 443-44, 9 PRESIDESTIAI DOCUMENTS 482

Tlzeir llrescllce and thc nlessagtS that 11asvs lJotlrc:(i in froa-n all OVCI'

the countl-> to tlle AN!hitf H(.)use o~>cr lhc past fe~. clays, seisllin! IIS s.tt11 on this tl'i}t, I tilill';, ull(ltrlille the stateme]~t t])3t 1 nla~ls orl lul) 15,

lasl: arear, \N l l cn I all ll0ur,ce cl tl] e \ isit .

That s;atel^)~]3t WnlS, ilS yoll s.il1 rec:>ll, that tllis •sould l)c a joul-ncy

for peac~~. Xt'C, of colgrsc, aleX uncle] 110 illusions tllat ')O veal-s of 11ostility l)cte een tl-iC })COJO]C'S 1' elJul)lic of C;})ilaa ai)d tt)C I Trlitod StilttjS (,r Anlcl ica are gOill;w,r t0 he sz~-el)t a\S ay 195- one \N te1s of tallis tllat ~X-c \N-ii] 11d \ e tlle re.

BBut as Premicr Chtu EIl-lai sai(l in a toast tlnat IICC]))OISUSCD to

Dr. Kissiliser and tlle llleml)eis Or t.he advallce gI-OI.Sp in C)ctol:)cr, thc Amel-icall lJeople arc a great peoi)1c. 'rhe Chirl(+s~~ peol)le are) a great people. 'I'ne fact tllat tlley are sel)arated by a xZast ovean al)d great differences in ,ul)ilosophy should IlOt prevent them. from findillbr ~omlnon

ground.

As eZc loolc to the future, +Nre rnust reco,plizc that t}lC Goverllment

of the Pcople's Republic of China and tlle Go~~crnment of tlle United States havc had glcat dilSerer)ces. \81C \N ill have differences in tilc futllre. But wllat >>c must do is to find a \N a>- to see that ~s-c can llave difIcrcllces erithout beirlg enemies ill \s ar. If ss7C can make progre ss toward that goal on this trip, the ~^,osld \N-ill bc a much safer vvorld and the cha!lce particuiari)r for all of tllose 8'OUIlg clliidrcn over vllore to grosst up ill a

e orld of peace \Ntill bc infinitely greatcr.

I svou]d simlrly say in conclusion that if there is a postscript that I

llope migllt be ssrrittc,n asrith regard to t}lis trip, it x~~ould be tlle words 011 tllc plaque whicll ~*ias left on thc nlooll by our first astrollauts w}len

they lancled there. "X~\te came in peace for all manl;ind."

Thank you and good by.

B'OTE: Thc l'resident spolic at 10:10 a.m. 011 tlle Soutll Lav.~n at the \0thile lTouse Followillg his rem;lrks, the Plesident, the Filzt Lady. and menlbrls vf the officia] party Tzoarded the helicopter for the flight to Andrexsrs A.r Force Base. The ceremony was

bl oadcast live on radio and tele~~ision.

The XVhite Hou.e had announced earlier, at Key Biscayne, Fla., on February 12,

that the official party woukl include the follcssing:

I HE PRESIDENT

MRS. NDCON

SECRF.TARY OF S'TATE 0'VILLIABi P. ROGERS

HEIN'RY A, KISSIINGER; Assistant to the President for NationEtI Security Affairs
H. R. HALDENIAN', Assistant to the President

RONAID L. zILCLER, Press Secretary to the President
BRIC. GEN. BRENT SCOWCROFT, ANilitary Assistant to the Prcsident

MARSHALL GREEN, Assistant Secretary of State for East Asian and Pacific Affairs
DWIGHT L. CEXAPIN, Deputy Assistant to tlle President

JOE{N A. SCAI.I, Special Consultant to the President
PATR1C}; J. BUCEXANAN, SPeCial ASSiStant tO the PreSident
ROSE ~{ARY \s/OODS, Pelsonal Secretary to the President
ALFRED Ll. S. JENXI:9S, DirCCtOr fOr ASian COmmUrliSt AffairS, BUreaU Of EaSt ASian
and PacH;c Afl'aJrs, Department of Statc
Joz~~ HOLDR]D.,E, Senior Staff blember, Na.ional Security Council
WINSTON LORD, SPeC;al ASSiStant tO I)r. K;SSingCr

14. PRESIDENT NIXON TRAVELS, 8 PRESIDENTIAL DOCUMENTS 443-44

Our communique indicates, as it should, some areas Or difference. It also indicates some areas of agre ement. To metion only 011;5 t! at is particularly appropriate here in Shanghai, is the fact that this gr eat city, OVCI the past, has on many occasions been the victim of foreign agg ession and foreign occupation. And we join the Chinese people, we the American people, in our dedication to this principle: That never again shall foreign domination, foreign occupation, be visited upon this city or any part of China or any independent country in this world.

Mr. Prime Minister, our two o peoples tonight hold the future of the world in our hands. As we think of that future, we are dedicated to the principle that we can build a new u orld, a world of peace, a world of justice, a world of independence for all nations.

If we succeed in working together where we can find common ground, if we can find common ground on which we can both stand, where we can build the bridge between us and build a new world, generations in the years ahead will look back and than'- us for this meeting that we have held in this past week. Let the Chinese people and the great American people be worthy of the hopes and ideals of the world, for peace and justice and progress for all.

In that spirit, I ask all of you to join in a toast to the health of Chairman Mao, of Prime Minister Chou En-lai, and to all of our Chinese friends here tonight, and our American friends, and to that friendship between our two people to which Chairman Chang has referred so eloquently.

NOTE: The Chairman spoke at 8.25 p.m., local time, in the Shanghai Exhibition Hall. He spoke in Chinese and the President in English; their toasts were translated by an interpreter.

As printed above, this item follow s the text of the White House press release.

RETURN TO WASHINGTON

Remarks of the President and the vice President Following the President's Arrival at Andrews Air Force Babe. February 28, 1972

TEXE VICE PRESIDENT. Mr. President, Mrs. Nixon, distinguished guests, ladies and gentlemen:

For more than a week we have witnessed through the miracle of satellite television, the sights and sounds of a society that has been closed to Americans for over two decades. We have been made aware of many new things in that society through this visit, Mr. President. We have witnessed much of what you have done with feelings of pride and pleasure and an immense Curiosity that has certainly not been diminished by the amount of attention paid by the media to this visit.

I must confess that we have been surprised to some extent by your facility with chopsticks, Mr. President, and by the equal facility of the Chinese orchestra which rendered 'America The Beautiful."

But I will say that the u eek's undertak ings were intensively covered— I think that is the understatement of this week, Mr. President—and we enjoyed every minute of it as we watched with pride and approval the way you and the members of your party and our gracious First Lady conducted yourselves.

ffieetviW CT0SS,~E'fGctS'02 0.f

-, PRESiDEN~T~:XiL DOCHtIARi<TS

T4Zcek Endi?^g Saturday, J'u7le 3,]972

TtIE PRESIDENT'S TRIP TO AUSTRIA, TIRE SOVIET UNION, IRVIN, AND POLAND

Chronology of Events

.Saz7s7-dtl i; Afay 20

The President and l\{rs. ATixon boarded the Spirit of l '76 at Andrees Air force Base for the fight to Salzburg, S Austria. (For the Presidcnt's remarks at the departure ceremony, Ree page 881 of the Alla) 22 issue of the \N'eekly Con pilatioll of Presidential Documents)

Arriving ataSalzburg Airport at 10:30 p.m., they here ! grreted bv Chancellor Bruno Kreisky of the Federal Rc- X public of Austria.

IS

S1zn<zal; xlJa~~ 21

The President and Chancellor Kreis}~y met for discussion at Schloss Klesheim.

'rs Nixon entertained Mrs. Kreisky at tea at Schloss .lenll .

'l'he President and NIrs. Nixon were then guests of the Chancellor and Afrs. Krcisliy at luncheon at the Kobenzl Hotel (secpage914).

Adronday, Afay22

After departure ceremonies at Salzburg Airport, the President and Mrs. Nixon flew to A{oscoxv, where they were greeted at Vnukovo II Airport by President Porigomy, PrcJnier Kosygin, Foreign Minister Gromyko, and Ambassador Dobrx;nin.

In the afternoon, the President met for more than 2 hours with General secretarv Brezhnev.

In the evening, the President and AIrs. Nixon acre guests of honor at a dinner hosted by the Presidium of the Supreme Sot iet of thc U.S.S.R. and the Government of the U.S.S.R. in Granoxit Hall in the Grand Kremlin Palacc (see pages 915, 916) .

Tuesday. Afay 23

Thc PrcKident and members of the United States party met with Soviet officials in plenarv session in Catherhle Hall in the Grand Kremlin Palace.

In ceremonies in St. Vladimir Hal], the President and President Pod.gomy signed an agreement on enxSironsc-,tal protection (see pagc 917). secretary Rogers and

St Health Minister Petrovsky then signed an agrecment on medical science and public health (see page 9193 .

9l2

The President and General secretary Brezhnev met for 2 houls of discussion before the ceremony and for ;) additional hours later in the evening

During the day, SIrs. Nixon visited a secondary school, toured the Moscow 22> 1etro, and had tea with lairs. Brezhnev, Firs. Podgomy, and wives of other soviet oflicials in the Imperial Living Quarters in the Grand Kremlin Palace.

Wednesday, Slay 24

In the morning, the President went to the Aleksandros Gardens to lay a wreath at the Tomes of the Ulll;llown Soldier. He returned to the Grand Krel~n]in Palace for further discussions with Soviet leaders.

In aftemoon ceremonies, the President and Premier Kosygin signed the space cooperation agrjeemcnt (sac page 920) and secrctar! Rogers and committec Chairman Kirillin signed the science and technology agreement (see page 9'71) .

Tile' President then went to Chaimman Brezhnev's country residence for additional discussions.

Tl e First Lady visited the Moscow State university and the GUNS department store. In the evenings she attended a perfomnance at the New circus.

7'hursday, May 25

The President met for 2 hours with soviet leaders and a maritime agreement on the prevention of incidents at sea was signed by Navy Secretary •vamer and Admiral Gorshkov (see page 922) .

hfrs. Nixon visited the Bolshoi School of Choreography and the All-Union Fashion House for a showing of men's and women's clothing by Soviet designers.

In the evening, the President and the First Lady attended a perfomnance of the "swan Lake" ballet at the Bolshoi Theater.

Friday, A@'ay 26

After discussions on trade matters, a comsnuniquc \ as issued on an agreement between Soviet leaders and Prcsident Nixon to establish a U.S.-U.S.S.R. Commercial Commission (see page 924) .

that end the two sides decided to create a joint Polish-American Trade Comnission.

3. The two sides will encourage and support contacts and coopera tion between economic organizations and enterprises of bath countries.

4. 'l'he two sides expressed their satisfaction with the expanding program of scientific and technical cooperation and appraised positively its mutually advantageous results. Last year's exchange of visits at the cabinet level, which gave attention to the development of scientific and technical cooperation, confirmed the desirability of continuing coopera- tion in this field.

The two sides expressed their interest in the conclusion of an inter governmental agreement on comprehensive cooperation in science, technology and culture. Appropriate institutional arrangements will be established to promote uncork in these fields.

5. The tlVO sides agreed that the increase of mutual economic and personal contacts, including tourism, justifies further development of transportation links between Poland and the United States by sea as well as by air. The two sides expect to sign in the near future an air transport agreement and to establish mutual and regular air connections.

6. The two sides expressed their interest in commemorating the five hundredth anniversary of the birth of Nicholas Copernicus and discussed w ways of celebrating it.

7. Both sides welcomed the signing of the Consular Convention by Secretary of State William P. Rogers and Minister of Foreign Affairs Stcfan Olszows;:i and the conclusion of an agreement on the simultaneous establishment on December 1, 1972 of new-Consulates—in New York and.Ilral;ow, respectively. Both parties welcome these steps as concrete evidence of expanding relations between the hvo states.

a. The two sides emphasized the positive influence exerted on their mutual relations by the traditions of history, sentil-nent and friendship between the Polish and American peoples. A prominent part is played in this respect by many United States citizens of Polish extraction who maintain an interest in the cotmtry of their ancestors. The two sides recognize that this interest and contacts resulting from it constitute a valuable contribution to the development of bilateral relations.

Signed in Warsaw, June 1, 1972.

REPORT TO THE CONGRESS

The Prendent's Address to a Joint Session of the Congress at the Conclusion of His Trip to Austria, the Soviet Union, Iran, and Poland. June 1, 1972

M,. Speaker, Mr. President, Members of the Congress, our distin- guished guests, my fellow Americans:

Your welcome in this great chamber tonight has a very special mean ing to Mrs. Nixon and to me. We feel very fortunate to have traveled abroad so often representing the United States of America. But we both agree after each journey that the best part of any trip abroad is coming home to America again.

During the past 13 days we have flown more than 16,000 miles and we visited four countries. Everywhere we went—to Austria, the Soviet

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