

Speech by

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ON ANTITRUST LAW AND ENFORCEMENT

Politicians have devoted a considerable amount of time and talk the past few years to a wide-ranging group of social problems that are loosely collected under the phrase "crime in the streets." I would like to talk to you today about another kind of crime--one that is more subtle than a street mugging, less violent than an armed robbery and yet, at least in terms of money, far more detrimental to the American public than all other types of crime combined.

I am talking about what Ralph Nader calls "crime in the suites" and what others have referred to as white collar crimes--in short, I am talking about violations of the anti-trust laws which were designed to protect our free enterprise competitive economic system.

You know, our nation and our state are currently riding the crest of an unprecedented wave of consumerism. From both public and private consumer-oriented groups are coming more frequent and more stringent demands for better products and services, more reasonable prices, greater accountability by manufacturers and sellers, more fair and honest dealing generally in the marketplace, and greater concern with the environment.

Much of the energy of the consumer movement has been directed at the get-rich-quick, fly-by-night operator who profits through fraud, deception and misrepresentation. And, of course, this sort of unscrupulous person should be dealt with harshly. But measured in terms of economic impact, this sort of defrauder is really in the minor leagues compared to the corporate giants who profit daily from prices that are grossly inflated as a result of non-competitive practices.

To demonstrate the enormity of this problem, let me give you a few statistics that I think you will find shocking:

Reliable studies have found that every year our country loses a minimum of \$50 to \$60 billion because of monopolies and other industrial crimes. Other estimates put this figure at over \$100 billion in terms of higher prices, economic waste and lost production.

In order to fully appreciate these figures, let's look at some data relating to other problems that our society is faced with:

--The cost of all conventionally-defined crime in the United States last year was \$32 billion;

--The cost of the Vietnam war last year was \$15.8 billion;

--Removing the major sources of pollution in the United States would cost an estimated \$15 billion per year;

--Eliminating poverty by providing a minimum income of \$3,000 for everyone would cost an estimated \$11.4 billion per year.

These figures, from a speech by Senator Fred Harris, can only lead us to conclude, as Senator Harris did, that monopolies cost the United States an amount of money which is the equivalent of several times the total cost of eliminating poverty, ending pollution, paying for the Vietnam war or financing the high cost of our country's crime.

If these general economic figures do not persuade you, let me tell you about several specific antitrust violations and how much they have cost the consumer:

--In the early 1960's, an international quinine cartel cornered the market and succeeded in raising the price of quinine from 37 cents an ounce to \$2.13. This drug is taken mostly by the elderly to restore natural heart rhythm. A congressional subcommittee on antitrust and monopoly reported the following complaint from an elder citizen: "I cannot continue to pay these prices for quinidine; yet my doctor tells me I cannot live without it."

--During the years 1953 to 1961, the price of the antibiotic drug, tetracycline, was about \$51 for 100 tablets. Ten years later, after exposure of an illegal conspiracy among some of the nation's largest drug houses, the price is down to about \$5, a decrease of 90 percent.

--Other examples are plumbing fixtures which were overpriced in the early 1960's due to a conspiracy among most of the nation's plumbing manufacturers, and electrical

products which were overpriced during the 1950's because of a similar conspiracy. And these national and international conspiracies do not tell the whole story either. There are examples too numerous to name of price-fixing and other anticompetitive activities on a local level that create artificially high prices for such products as bread and milk.

Why, then, does the American public tolerate such a degree of monopoly? The answer, I think, is because the public generally is not familiar with the nature and purpose of the antitrust laws and with the extent of the abuse of those laws. Today I would like to give you a brief explanation of the antitrust laws and hopefully to persuade you that these laws serve the interests of both consumers and honest businessmen.

Let me for a moment elaborate on that last point. The consumer movement has not been without its detractors. There have been those who claim that the movement is anti-business, that the merchant is being ignored, that too many demands are being made upon him and that too few rewards await him in the marketplace. I feel that these objections are absolutely untrue. On the contrary, all of the consumer protection laws that I know about have only one aim and that is to create a marketplace in which honesty and integrity are the rules of the day, in which the honest businessman

with a good product can sell at a fair and reasonable profit and in which the consumer can purchase his goods with confidence that they are of good quality and reasonable price. In my opinion, this ideal should be the desire of both consumer and businessman.

The antitrust laws--like other consumer protection laws--are based upon that ideal.

We decided in this country long ago that we wished to have an economy in which decisions about the allocation of resources would be made in the marketplace. Much like the electoral process, we have in our economy a system in which the consumer votes with his dollars how he wishes our resources to be distributed. On the basis of this economic voting, demand is created for certain goods, and this demand is, in turn, supplied by manufacturers and sellers who recognize that demand and wish to profit from it. In theory, there are numerous buyers and numerous sellers and through the functioning of the free market pricing mechanism, a price is mutually agreed upon for the product. That price is high enough for the seller to make a profit and low enough for the consumer to feel that it is worth his money. If demand goes down, then prices go down to stimulate more purchasing; if demand increases, then sellers have the advantage and can raise their prices.

The net result of this process is that the consumers determine the types, quantities and prices of the goods to be produced and thus our economic resources are allocated

according to the wishes of our people. Sellers who want to survive in such a competitive situation must seek to increase their efficiency and devise new innovations. As the U. S. Supreme Court said in 1904: "The unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress."

That, at any rate, is the theory. However, the examples I gave you earlier show clearly that the theory is not necessarily the fact. The flaw in the system is indicated by the following two quotes, the first from Adam Smith, the intellectual father of free enterprise, and the second from the book, "Understanding the Antitrust Laws" published by the Practising Law Institute.

Smith said, "The interest of the [merchants] in any particular branch of trade or manufacture, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition is always in the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can only serve to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow citizens."

The author of the book I referred to makes a similar point: "The desire of a person to profit from trade and

commerce, however, is a volatile and highly explosive fuel. Uncontrolled, the energy of self-interest may explode into an unfair competitive race in which the beast defeats the best. The industrialist who engages in business, accordingly--like the student contesting for a scholarship and the sportsman striving for victory in a game--is required to conform to rules which regulate his competition."

The rules referred to by the author are our antitrust laws. In short, we recognize and encourage the profit motive and the power of self-interest to stimulate production of goods and services. But at the same time, we recognize the dangers that can flow from unregulated profit seeking, and in our antitrust laws, we attempt to lay down the rules by which the game is to be played.

By the way, before moving to my next point, I would like to assure you that antitrust laws are not a newfangled invention that just recently appeared on the scene. In fact, the Sherman Act was enacted in 1890 by a conservative, Republican Congress. And long before this piece of legislation, there were laws and common law cases against various forms of interference with the free enterprise system. For example, in 1783, the great common law jurist, Lord Mansfield, sent seven tailors to jail for conspiring to drive another tailor out of business. And, even earlier, in 1663, in The Brewers of London case, the defendants were convicted of conspiracy to deprive the King of his excises and to "depauperate the farmers" by agreeing to brew only small beer for three months.

To return to what I was saying, we have a number of statutes--both state and federal--that make up what we call the antitrust laws and which are designed to protect our system of free enterprise against abuse. Among these are the Sherman Act, the Clayton Act, the Federal Trade Commission Act, the Robinson-Patman Act and our own state statutes which are found in Chapter 75 of the General Statutes. I will not bore you with the details of these various statutes but will merely state that they proscribe a wide-ranging group of anticompetitive practices including monopolization, restraint of trade, tying arrangements, price fixing and others.

The question which might very well have occurred to you at this point is: Why, with all these laws, have the abuses you listed earlier been allowed to occur? The answer to that question has been the subject of numerous books and articles recently and is far beyond the scope of my talk here. However, I will briefly mention several answers that have been suggested:

--The Federal Trade Commission and the Antitrust Division of the Federal Department of Justice have both been criticized for their lack of vigor and imagination and for being too politicized.

--Other commentators have suggested that the old laws are no longer sufficient to regulate our modern, corporate economy. In conjunction with this is the unfortunate fact that lawyers have shaped most of our present antitrust principles instead of the economists who have a greater understanding of the problems in the field.



--Another suggested answer is something I alluded to earlier--the fact that antitrust is a very esoteric and dry subject and, therefore, has not caught the popular fancy. This, in turn, has perhaps resulted in less public pressure for strong antitrust enforcement than would be the case if antitrust were more easily understandable to the layman.

--Finally, it has been suggested that politics is the main reason for the abuse of the antitrust laws. The large corporations have easy ingress and egress to the seats of power, and the money at their disposal makes it difficult, if not impossible, for a politician who wants to keep his job to ignore them.

Regardless of what the answer is--and I suspect that it is all of the above and more--the fact is that we have today in this country an economy which is structured so that in many industries there is no meaningful competition. Again I am getting into an area that is complex and requires charts, graphs and detailed data to be really accurate. Briefly, however, it is generally accepted by economists today that an industry ceases to be competitive and becomes effectively monopolized when the percentage of sales by the four largest firms in the industry reaches 50 percent of the total industry sales. When this point has been reached, the adverse competitive effects of monopoly begin--namely, prices that are above the competitive level; a lower level of output than would have prevailed if there had been competition; and less innovation and efficiency. The number of industries in which this situation has been allowed to

develop is staggering; in fact, recent studies indicate that over 35 percent of the system has been effectively monopolized. Among the products included in this group are automobiles, razor blades and razors, telephone and telegraph apparatus, soaps and detergents, chewing gum and on and on down the line.

In short, it is no exaggeration to say that many of these giant corporations have become laws unto themselves which are practically immune from competition and regulation. Instead of economic decisions being made by consumers, these decisions are being made by corporate managers who are motivated only by the desire for profit and not by any desire to produce good, reasonably priced products for the public to consume. As a result, they can practically charge what they please for their product--and the public be damned.

Ralph Nader summed up the abuse well when he said, "Competition, free enterprise and an open market were never meant to be symbolic fig leaves for corporate socialism and monopolistic capitalism. The outright disregard of market principles and antitrust laws have become too institutionalized and too costly to be considered any longer mere deviations from the norm."

In the recent book released by a Nader study group, "The Closed Enterprise System," project director Mark Green said, "The concentration of industrial assets, the distribution of wealth, the extent of our wealth, productivity, innovation, pollution, employment, racism, political contributions and

lobbying--all are issues of national pitch and moment, and all are touched by antitrust policy. As our competitive economy goes, so goes our polity; the two are inseparable. At a time of increasing concern with "corporate accountability"--to consumers, to shareholders, to employees and to distributors--accountability to the market mechanism and antitrust laws must be stressed. For if corporations obeyed the laws of competition, which they so rightiously espouse at their annual meetings, they would go a long way toward fulfilling their economic and political obligations to society."

To this appraisal of the importance of the antitrust laws, I would like to add my own endorsement. The biggest single thing wrong with America in 1971 in my opinion is bigness--corporate bigness, governmental bigness, labor union bigness, municipal bigness. At all levels, bigness has reduced accountability and isolated the decision-making process from those affected by the decisions. I think antitrust law and policy is one avenue through which things can be reduced again to manageable size.

For that reason, as Attorney General, I have attempted to institute a strong antitrust policy at the state level. In implementing this policy, we are presently operating at basically two levels:

--First we are attempting to recover treble damages from antitrust violators who have already had successful antitrust actions brought against them by the federal government. One such case is the drug case which you may have read about in the newspapers. About \$132 million has already been paid out by the five defendant drug companies in that case in settlements. North Carolina and six other states and several private plaintiffs felt that the amounts offered in settlement were too low. Accordingly, we are proceeding with our case. In addition to that case, we are involved, or plan to get involved, in a plumbing fixtures price-fixing case, a cast-iron pipe price-fixing case, another drug case involving monopolization of the drug ampicillin, a case involving the discontinuance of fleet discounts for automobile purchases by states, and any other cases that we feel are appropriate. Perhaps I should explain that when we follow the federal government in these cases, it is not--as it may appear--a duplication of effort. The lamentable fact is that antitrust violators can lose in federal cases and yet still be allowed to keep much of their ill-gotten gains. Under the Clayton Act, however, other plaintiffs, such as states, can recover treble damages. It is our view that a few successful treble-damage actions would be a considerable deterrent to antitrust violations.

--Second, we conduct our own investigations. For example, we are now investigating, or planning to investigate,

gasoline and oil prices in the state, milk prices in a western county, dry cleaning prices and several other areas in which we have received complaints.

In connection with this last duty, I might point out that we receive many complaints alleging possible antitrust violations, and I would encourage any of you who feel that you are not receiving a competitive price for a product to let us know. Within our limits of manpower and resources, we will attempt to look into every legitimate complaint we receive.

In closing, I would like to reaffirm a point I made earlier. In my opinion, antitrust law is in no way anti-business. Rather, antitrust law is an area which deserves the support and interest of everyone--whether businessman or consumer--who genuinely believes in the free enterprise, competition system. In my opinion, that system provides the best hope for this country to live up to its economic potential, and I would strongly urge you to inform yourself of the dangers to that system and of the steps which you can take as a private citizen to see that our antitrust laws are vigorously enforced.

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