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"ANTITRUST AND A FREE SOCIETY"

ADDRESS

BY

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This Forum of the National Farm Institute, concluding tonight, has been devoted to the theme of "The Farmer and the Free Society."

You have considered these last two days various aspects of a free society: What it is; what it should be; what it means; what it is worth; the threats to it; the opportunities it creates, and, finally, where do you, as citizens of our country, fit into it.

In these days of tension and crises, the concept of a free society and how that concept affects each and every citizen of America is of an importance that cannot be over emphasized. Gone are the days when the American farmer could obtain all the information he required by word of mouth, or by weekend conversations at the country store.

The present struggle to maintain and strengthen our free society cannot rest in the hands of anyone other than each of us. The struggle for the freedom of man's thinking and action influences not only every decision in Washington and every action of your Government. That struggle has a direct reference and bearing on the activities of our citizens, day by day, across this vast country. The all-pervading impact of this concept of free men in a free society requires action. More than that, however, it requires thinking - that most distasteful of all activities, "the intolerable labor of thought."

It is most obvious that a free society rests on political freedom: on the freedom established by our Constitution and by our Bill of Rights, a freedom (to follow Lincoln's immortal words) based on "Government of the people, by the people, and for the people."

As President Eisenhower so clearly has stated his Administration "believes in people, in all the people."

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"The Government must recognize," the President said, that while the American people is made up of groups, "each group has special problems, none has special rights. Each has peculiar needs. None has peculiar privileges."

And Mr. Eisenhower added, "We are the political captives of no section or interest...we face and make decisions...in the only light in which we can clearly discern what is just -- the peace and the well-being of our whole people."

Political freedom is an empty phrase without economic freedom. From the time of the Boston Tea Party, the American people have realized that the tangible evidence of their political freedom is expressed in the economic freedom of equal opportunity in a free, competitive society. Our system guarantees, as nearly as possible, the right of every citizen to engage in whatever business he chooses, and to conduct his business in the way he desires. It means freedom of access to the market place -- freedom for both buyers and sellers to trade in a market which is not controlled or rigged by private groups in their own self-interest. Goods must stand the cold test of competition. The public acting through the market's impersonal judgment, allocates the nation's resources and thus directs the course our economic development will take.

Sixty-five years ago the Congress embodied this economic faith in the antitrust laws. Congress decided that competition, rather than monopoly or governmental regulation, would be our fundamental, economic principle.

Fifty years ago the average farmer thought of antitrust law -- if he thought of it at all -- as something vaguely connected with John D. Rockefeller and the "Oil Trust." Antitrust violators were, to him, Diamond-Jim

Brady type of Capitalists, who inhabited the canyons of Wall Street, or the stockyards of Chicago. Yet, these antitrust laws actually affect the inhabitants of every community in the United States. Because of this, I should like briefly to discuss with you these antitrust laws and, what they are designed to do -- how they contribute to your free society.

The basic antitrust law is the Sherman Act. It makes unlawful every contract or combination or conspiracy in restraint of interstate or foreign trade. It also makes unlawful the monopolizing or combining or conspiring to monopolize or attempting to monopolize such trade and commerce. The Act has been called by the Supreme Court a charter of freedom, and likened to constitutional provisions in its generality. No attempt was made in the Sherman Act to specify or detail acts or practices which should be forbidden. Rather, the broad provisions of the law reflect the intent of Congress to sweep away every type of activity which restrains interstate and foreign commerce by concerted action among a private group, or which monopolizes that commerce.

Although infrequent amendments and additions have been made to the antitrust laws, the basic underlying principles have never been touched since they were enacted in 1890. The courts over the years have added meaning to the terms used in the Sherman Act, and many things have become clear through the long period of case by case interpretation which could never be ascertained by merely reading the words of the Act.

Let me refer to some cases in which farmers would have an interest as sellers -- cases having a bearing on the right to sell farm produce in a free and open market.

I need not tell you that the distribution of farm produce to the ultimate consumer is a complicated matter. The average haul of every piece

of fresh fruits and vegetables eaten in these United States today is slightly over 1,400 miles. An important place in this complicated process of distribution are the terminal markets in large metropolitan areas.

Providence, Rhode Island, for example is an important marketing center for the distribution of vegetables and fruit consumed in all New England. From many states, the farmer sends his produce to Providence, chiefly by railroad although substantial quantities are shipped there by truck. Practically all of the produce is consigned to a receiver, who, in turn, sells to wholesalers, jobbers, or other customers buying in wholesale lots.

Thus, the receiver is an important link in the distribution chain for getting farm produce from grower to consumer. The price the farmer will receive, and the price the ultimate buyer will pay, depend on many factors. But, those prices are greatly influenced by the competition among receivers. Any agreements between receivers not to compete tend to depress the price paid to the grower and increase the price paid by the consumer.

The City of Providence is served by only one railroad. That road built a terminal market some years ago in order to concentrate in one place the unloading, delivery, and wholesaling of all fruit and vegetables brought into the city. This market has the only facilities in the city for unloading, display, sale, and delivery to customers' trucks. Accordingly, substantially all jobbers and chain stores, and others who buy at wholesale, buy at this market. There alone can they find all varieties of fruits and vegetables.

Therefore, it is essential that anyone who wants to compete freely and openly in buying and selling produce there should have access to that

one terminal market. Otherwise, a receiver, for example, is at such a competitive disadvantage that he is unable to sell the produce consigned to him on equal terms with other receivers.

The first antitrust case filed after I became Attorney General charged that the company leasing the Providence terminal market -- and the receivers who controlled that company and through it the terminal market -- had violated the antitrust laws. The suit charged them with agreeing to control the admission of receivers and wholesalers as tenants and doing this with the purpose of eliminating competition. The civil complaint alleged that the defendants agreed that persons should be arbitrarily excluded as tenants at the market if their competition was considered as "undesirable" by the defendants. This allegedly was done without regard to any reasonable business requirements or other criteria. The business of the tenants in the market was regulated so as to discourage competition. The effects of this unlawful agreement were to deny access to the market to all but a chosen few, to suppress competition among receivers at the market, to curtail the amount of produce sold in the market, and thus to raise prices to the consuming public of the area.

Last October, this case was terminated by the entry of a consent decree in favor of the Government which removed the artificial barriers to competition in this distribution center. The court ordered the company controlling the terminal market to rent any available space to any responsible applicant wanting to act as a receiver on a first come, first served basis.

This decree broke up artificially imposed road blocks on the movements of produce from farmer to final buyer. The price he now receives is set in a free market in which all have an equal opportunity. No barriers are erected

by a group for their own selfish interests. The principle of law thus established will benefit all communities throughout the country and somewhat similar cases are pending even now against the Detroit Wholesale Produce Buyers Association.

In another phase of distribution the Government, in 1942, brought criminal charges against A&P and certain of its affiliates charging combinations and conspiracies to restrain and to monopolize interstate commerce.

One of the central charges related to the activities of A&P's buying subsidiary, Atlantic Commission Company, or Acco. Acco was accused of assuming and exploiting inconsistent functions by acting simultaneously as a selling broker for food suppliers who were trying to sell to both A&P and its competitors, and also acting as a buying agent for A&P which was trying to buy from the same suppliers.

After a full trial of these criminal charges, the court found the A&P defendants guilty. This was affirmed on appeal. As to the activities of Acco, the trial court found, and I quote:

"Its practices over the years leave a bad odor. It exploited its inconsistent positions... Restraint of competition...must follow conclusively from the multiple irreconcilable, inconsistent functions of Acco, including its obligation as an agent for sellers to sell high and its obligation as buying agent for A&P to buy as cheaply as possible. Any attempt to perform these or other inconsistent functions...must have inevitably resulted in illegal restraint of competition."

After the criminal case was ended, the Government filed a civil suit. In January 1954, A&P agreed to a consent decree. One of the provisions was that Acco be dissolved, and that A&P not engage in business as a buying agent for others, so long as A&P retailed food itself. The inconsistent position of A&P as both broker and buyer was eliminated. Another road block on the

distribution channel to the final buyer was broken.

While the Department of Justice has been zealous in protecting the interests of the farmer as a seller in our free society, we do not overlook the fact that the farmer is also a consumer of goods and products. The farmer is as much interested as any other consumer in maintaining competition in the market where he buys.

The objectives of antitrust enforcement from the standpoint of the consumer or the buyer can be simply stated. First of all, it seeks to insure a plentiful supply of goods and services in the market place. Secondly, it is aimed at achieving a competitive market where the prices are set freely by buyer and seller under the normal laws regulating the market. Thirdly, it strives to make available to the consumer as many sources of supply as the forces of supply and demand will permit. And, finally, it seeks to provide every consumer with a free choice in the selection of the dealer from whom he wishes to purchase his merchandise.

In line with these objectives, the Department has filed numerous cases within the past two years charging a number of corporations and trade associations with conspiracies to violate the antitrust laws by fixing the prices on a variety of objects. Coal and fuel oil, butane gas, corn grits, soft drinks, laundry blue, and many others. Some of these cases also involved a system whereby the defendants allocated dealers among themselves.

To insure that the consumer will have available alternative sources of supply and a free selection among those sources, we are particularly interested in eliminating all instances involving boycotts and concerted refusals to sell products to particular dealers. A boycott is the outstanding method used by

industry to deprive the consumer of alternative sources of supply. In this connection, we have instituted actions against electrical contractor associations whose members were engaged in the rigging of bids on contract work for the installation of electrical equipment and whose members agreed to boycott those contractors who refused to participate in the scheme. Similarly, we have pending or prepared for filing three cases against so-called "Insurance Exchanges" involving alleged boycotts of fire and casualty insurance agents who are not members of the Exchanges.

Protection for the consumer is sought not only in the necessities of life, but also in other items which we have come to consider as part of the American standard of living. Since I became Attorney General, civil cases filed by the Department have included actions against American and Swiss watch concerns, the Radio Corporation of America, Philco Corporation, and Eastman Kodak Company. The complaints in these cases allege that artificial restrictions have been imposed on the production and distribution of jewelled watches, radio and television sets and equipment, and the processing of certain color film. These restrictions bear a direct relationship to the problem of providing alternative sources of supply from whom the farmer and other consumers can purchase.

As an example, the Department charged Eastman Kodak with monopolizing the processing field for its color film through distribution practices by which it controlled prices and conditions of film sales so as to prevent competing photo finishers from gaining entry to this market. Eastman sold its amateur color film on the understanding that it obtain all of the processing business in connection with such films, by marketing them only at prices

which included charges for the subsequent processing of films by Eastman. We alleged that this policy completely foreclosed competitors from processing such films, and in effect left Eastman as the sole source for processing its own color film.

A consent judgment was entered in this case last December which prohibits Eastman from selling its color film with a processing charge included in the sales price or from otherwise tying in the sale of its color film to its processing. Eastman was also required to make available its know-how with respect to commercial processing of this film so that others could enter this industry and become alternative sources for processing.

Now, as sellers of products, you want to sell in a free and open market, rather than one controlled by powerful, entrenched groups for their own benefits. As buyers of various types of commodities, you want to buy in a free and open market where the price is the result of normal market forces of supply and demand rather than one in which the price is fixed by groups desirous of keeping the price high and production low.

Farmers as citizens are interested in the more general success of antitrust enforcement to the extent that it contributes to establishing a sound, healthy, free and vigorous economy for our nation, and so enables our nation to remain strong and democratic.

The original Sherman Act as passed in 1890 contained no kind of exemption or immunity for farmers. The result was that they could not get together to market their products without danger of running afoul of the law.

However, Congress, in 1914, included in the Clayton Act, which supplemented the older Sherman Act, a provision that nothing in the antitrust laws should be construed to forbid the existence and operation of agricultural

organizations instituted for the purposes of mutual help, and not having capital stock or being conducted for profit.

This exemption created by the Clayton Act was not regarded by Congress as adequate, and in 1922 the Capper-Volstead Act broadened and clarified the position of the farmers' cooperatives under the antitrust laws.

The position of the farmer in our economic life was recognized as being different from the position of others. The Supreme Court pointed out that "Farmers were widely scattered and inured to the habits of individualism; their economic fate was in large measure dependent upon contingencies beyond their control."

Faced with such considerations, Congress chose to authorize farmers to form organizations, under certain limitations, for the purpose of preparing their products for market, and then marketing them. The thought was that a cooperative association of farmers would enable the farmer to sell his produce on a plane of equality with the cooperative associations of capital, to whom he sold.

The congressional policy of encouraging agricultural cooperatives has not, however, gone to the point of conferring upon them blanket immunity from the operation of the antitrust laws. What primarily has been given to the farmer is the right to associate with his fellows, in order that together they may enter the market place as a unit rather than as competing individual sellers.

Farm cooperatives are in all respects accountable under the antitrust laws except to the extent that their conduct is sanctioned by the Clayton and Capper-Volstead Acts. There have been relatively few court decisions in

this field. Agricultural cooperatives may not join with other groups or individuals to fix prices or to control markets or production. The Supreme Court has held that even though a cooperative has been given the right to market collectively, it is not authorized to conspire with other persons in restraint of trade.

A cooperative can establish uniform selling terms, if it acts alone in establishing these terms. But, if these terms are set by agreement between the cooperative and a group of potential purchasers, this would seem to be a violation of the antitrust laws. Moreover, selling terms fixed by the cooperative, which limit competition in the resale of the product, may violate the law.

A cooperative may be in trouble if it forecloses a market to a competitor or if it boycotts non-cooperative dealers. Again, a cooperative would be engaging in prohibited activities if its members should agree to limit production or destroy crops, since the Capper-Volstead Act gives no immunity to collective action to limit production.

Joint action pursuant to agreement between two or more cooperatives also presents antitrust problems. Such action would seem to be subject to the same restrictions and limitations as would apply to organizations other than cooperatives.

We are all aware that our government cannot survive without intellectual and political freedom.

Antitrust enforcement promotes a free society and protects our economic liberty.

We cannot preserve our intellectual and political freedom unless at

the same time we preserve our American system of individual initiative and private enterprise.

The primary objective, therefore, of any type of Government activity affecting the economic life of our people must never be to replace our system of private enterprise, but rather to make that system work more effectively.

Towards this objective, I dedicate the full resources of the Department of Justice.