

FOR **RELEASE** UPON **DELIVERY**

SUBSTANCE OF **REMARKS**

BY

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I appreciate the opportunity to review with the members of this Conference the vital activities and objectives which we have in common.

It is your daily business to develop, extend, and protect the credit system upon which much of the commercial activity of our country is based.

Because of the service which you perform, honest men of moderate means are enabled to purchase the automobiles, household appliances, and other conveniences and necessities which our free enterprise produces in such abundance.

Your efforts create markets and enlarge and stabilize our commerce. Without your services trade would stagnate, inventories would accumulate unsold, production would be throttled, and the free flow of our commerce would be hopelessly obstructed.

To free our commerce of unreasonable obstructions is the chief activity which you and I have in common, for as Attorney General of the United States my duties include the effective enforcement of our antitrust laws.

The Sherman Antitrust Act has been called the charter of freedom of American business. It is this nation's solemn declaration that American enterprise will be conducted by free and independent businessmen. In an act of deliberate choice, we have rejected subservience to either an all-powerful state or to private monopolies.

Prominent among the liberties which our antitrust laws guarantee is the liberty honorably to engage in the business of one's choice.

This right of the individual American citizen is the cornerstone of our industrial progress and the foundation of our political and social well-being.

It grows from roots reaching deep into our national past.

Let me remind you that a threat to this basic right stood high among the causes which precipitated our American revolution. That conflict arose in large measure from the resistance of the colonial fathers to the monopolies and restraints of trade imposed upon them by the British Crown, embodied in the infamous Colonial Navigation Acts.

In listing among man's inalienable rights, life, liberty, and the pursuit of happiness, Thomas Jefferson undeniably included to the understanding of his contemporaries the right to engage in business freely and without undue interference.

To maintain the freedom to trade against those who would have destroyed it, our country defeated the Barbary States and fought the War of 1812.

To the preservation of the individual's right to pursue his chosen business we owe a large portion of our nation's incredibly rapid growth from the status of colonial dependency to a position of world leadership.

In our nation economic power has always been a temporary possession. Success must be daily re-earned by daily accomplishment. However humble their origin, our citizens are free to challenge the existing order and by fresh energy, skill, and initiative displace those who possess power but have lost vision and vigor.

Because Americans were not confined to the status to which they were born; because Americans were not chained to a class, to a craft, to a plot of land; because we have not permitted those who held economic or political power to predetermine the niche which each man would occupy, crushing his efforts to move and to rise; because we have preserved the

inalienable right of every American freely to seek a better life for himself and for his children--because of these things we have populated and developed a continent, we have created a great industrial mechanism, we have remained vigorous, and we have grown rich.

The freedom of the individual to engage in business has been equally vital to our nation's social and political welfare.

In the final evaluation, your business depends upon the character and integrity of individual men. The security upon which you extend credit is not to be found in a chattel, a contract, or a mortgage. Your loans are no sounder than the men to whom you make them.

In precisely the same sense, our social and political institutions are no sounder than the men and women who compose our society. In any realistic analysis, political democracy rests upon the character and integrity of the individual citizen.

A few power grasping opportunists and a complaisant unquestioning mass may provide the necessary ingredients for a system of political dictatorship or political paternalism -- but democracy can survive only upon the broad base of an honest and independent citizenry.

I am convinced that, in turn, an honest, independent citizenry cannot exist in an environment of economic servitude.

It is therefore my firm belief that freedom of economic opportunity is the only premise upon which political and social liberty can be based.

We must instill in the minds of our people, particularly the young men and women of our nation, the sure knowledge that the way to economic independence is open to them if they but have the courage and initiative to follow it.

Small businessmen who have set out on that road, must be guaranteed the right to succeed--or to fail--solely on their own merits.

They must be permitted the unrestrained opportunity to enter the competitive struggle, and they must have the right to bring their ideas and energies to bear in that struggle through the free, independent conduct of their own business affairs.

They must be permitted to buy where they please, to sell where they please, to establish their own prices, and to seek the patronage of any customer. They are entitled to purchase, to sell, and to obtain their finances in a market free of crippling artificial restraints and barriers.

Unless we can guarantee this minimum opportunity to every American citizen, the process by which those of superior ability and courage are enabled to make their full contribution to our society will be gone. The class of independent businessmen will shrink away and disappear. The spirit of initiative and independence in those who do not choose the path of individual business effort, but who know that it is always available to them if their independence and integrity are threatened, will inevitably fade when that alternative is foreclosed.

We will become a nation of servants and masters--of people who order and people who obey.

The integrity and independence of judgment upon which democracy must rest will be gone.

If we fail to preserve free access to independent business opportunities we too will succumb to that "inevitable" disposition to let well enough alone" which in other nations has deadened initiative, discouraged thrift, depressed energy, and led inexorably to a national preoccupation

with past glories, to social stagnation, and to ultimate decay and revolution.

I therefore regard the protection of the liberty of the individual citizen to engage in the business of his choice free of unreasonable restraint, as one of the vital tasks of our day. I am firmly convinced that unless we succeed in this effort democracy as we know it cannot survive.

Most of you are aware of the recent court proceedings initiated by the Department of Justice in its continuing effort to keep the opportunity to engage in business freely available to all.

Three of these actions directly involve the field of finance.

The case of United States v. Rufus deWitt King, et al., now pending in the Federal District Court at San Antonio, Texas, attacks a conspiracy among small loan companies which is alleged to have had as its purpose the fixing of interest rates to be charged borrowers by the defendant loan companies. The indictment also charges that defendants agreed to divide business territories and customers among themselves and to eliminate competitive lenders who would not participate in the defendants' conspiracy.

The public is entitled to secure its finance in an unrestricted market. Those businessmen who desire to bring the advantages of cheaper financing to the borrower must be protected in their right to remain in business free from the oppression of organized competitors whose collusive business arrangements they challenge.

In October of 1947, the Department filed a civil complaint in the Southern District of New York, charging seventeen investment banking firms with a conspiracy to restrain and to monopolize the securities business in

this country by restricting, controlling, and fixing the channels and methods through which security issues are merchandised, and the prices and terms and conditions upon which such issues are sold.

The **Complaint** charges, among other things, that the defendants agreed to **eliminate** competition among themselves in the **marketing** of some **fourteen and one half billions** of dollars worth of securities. The **Complaint** alleges that the **defendant** banking firms denied to **competitive** banks and other **marketing** instrumentalities the opportunity to engage in the **business** of **selling** security issues.

In alleging the **effects** of **the** conspiracy the **Complaint** states that because of the **defendants'** conduct,

Investment bankers other than **defendant** banking firms, have been **arbitrarily** deprived of opportunities to manage and participate in the **merchandising** of security issues, or have been permitted to participate in such merchandising only **at** the sufferance of **defendant** banking firms.

Security dealers have been arbitrarily excluded from **re-tailing** securities merchandised through **defendant** banking firms or permitted to deal in such securities only at the sufferance of and on the **noncompetitive** terms and conditions **dictated** by **defendant** banking firms.

Industrial and commercial enterprises, including public utilities and railroad companies, operating on capital supplied by the investing public, have been compelled to **adopt** and pursue financial policies and programs and to conduct ordinary business activities in accordance with the **arbitrary** dictates of **defendant** banking firms.

Defendant banking firms, by their control of the securities business, have been able to substitute banker direction of industry and business for industrial and business management, with the result that industrial initiative and enterprise have been discouraged and new business developments retarded.

Defendant banking firms, for their own profit and advantage, have given preferential access to the markets for new capital to those businesses with which they have had long-established relationships, and have hindered or prevented the financing and growth of small or competing businesses.

The Government asks the Court to grant the relief necessary to bring to borrowers, and to investors, the benefits of a free securities market.

The Government also asks the Court to protect the right of both the borrower and the independent security marketer to conduct their businesses free of the arbitrary interference imposed upon them by the defendant investment banking firms.

The case is set for an early trial.

Those who have an interest in distortion, have represented that the Investment Banking case attacks the capitalistic system and throttles free enterprise. With this brief summary of the subject matter and purposes of the suit, I leave to your judgment both the soundness of this criticism, and the propriety of the action as a part of our essential defense of economic and political liberties.

The importance of the antitrust laws as an instrumentality through which the freedom of business opportunity may be protected, is perhaps best illustrated by the Automobile Finance cases involving the major automobile manufacturers and their finance company subsidiaries.

The crux of these cases is the coercion of independent automobile dealers by the manufacturer to compel the dealers to patronize the manufacturer's captive finance subsidiary.

Reviewing the evidence in the trial of the criminal case against the General Motors group of corporations the unanimous Court of Appeals of the Seventh Circuit said, and I quote

We do not hesitate to hold that the jury findings of conspiracy and coercion are supported by the evidence. In fact we would have no difficulty, even on a de novo analysis of the record, to conclude that the appellants were in position to impose and did impose their will on the independent dealer-purchaser, not only as to how he was to conduct his business but also as to whether he would conduct it at all.

Continuing, the Court remarked:

As matters now stand, some 15,000 dealers are graciously allowed to continue their business of purchasing and selling General Motors cars in return for their slavish obedience to the command of the appellants to use the GMAC finance service. We should not tolerate a control mechanism definitely calculated to make General Motors dealers independent in name only.

The General Motors defendants urged upon the Court that commerce in General Motors' cars was the manufacturer's commerce, and that the

manufacturer might therefore restrain that commerce with impunity. This argument the Court repudiated.

No man or group of men own the commerce of the United States. It belongs neither to the buyer nor to the seller. It is not the private preserve of any self-appointed group. The commerce of the nation belongs to the nation. The nation's welfare depends upon protecting its free and unrestrained movement.

The control mechanism through which these 15,000 independent businessmen have been denied their independence and reduced to a condition of subservience in the operation of their own businesses in restraint of interstate commerce must be eliminated. To this end the Department has filed appropriate civil actions which are now pending in the courts.

I have touched here tonight upon only one of the activities of the Department of Justice designed to protect the liberties of the individual. There are others--the fine work of the Civil Rights Section of the Department, for example, which is engaged in a continuing effort to enforce basic human rights within the framework of existing laws--laws which, unfortunately, are far from adequate to their high purpose.

There are many other persons, in private as well as in public places, who are doing their part to protect our cherished liberties.

I believe deeply that you and I have a high stake in this effort.