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Department of Justice

Address by

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before the

ANTITRUST SECTION
of the
AMERICAN BAR ASSOCIATION

at the

Shoreham Hotel
Washington, D. C.

April 13, 1967

From a people numbering fewer than four million, with its chief metropolis 33,000 and only one in twenty living in towns of 2500 or greater, we have crossed a continent and filled the land.

As our century, the twentieth, began we were seventy-six million strong and predominantly rural. Two-thirds through this century we approach two-hundred million Americans, three-fourths urban. We are promised, or threatened, three-hundred forty million by the year 2000, 33 years hence when a person reaching his majority today will be at the height of his attainments.

The Technological Revolution, undreamt of in the philosophy of the founding fathers, hurdles onward at an accelerating speed presently doubling our knowledge of the physical world each decade: A sixteen-fold increase in forty years.

We have experienced more fundamental change in the way people live in the first two-thirds of this century than in history theretofore. We appear destined to duplicate this feat in the final one-third.

The variety, the vitality, the numbers of our economy boggle the mind. No people have approached our economic productivity. Our material wellbeing transcends that heretofore experienced. Research and development, capital, and skilled labor show limitless opportunity.

Our lives are more intimately affected by the structure of our economy and its workings than ever before and will become more so. Our economic interdependence means that opportunity for individual fulfillment, that liberty itself, is conditioned on a free economy.

Economic freedom becomes a predicate to personal liberty for all the reasons John Adams said, "Property must be secured, or liberty cannot exist."

While many factors make us what we are and will be, surely economic competition is in the forefront. Except for the opportunity it affords, the diversity it creates, the flexibility it causes, the initiative, imagination and energy it cultivates, we would be a different nation. Competition is a real force shaping the character of our country as surely as the north wind made the Vikings.

Its importance in the years ahead may well exceed its significance in days gone by. For we have more riding on competition than economic vitality, as if that were not enough.

Were Veblen right, and pride in workmanship, craft, the basic motivation of people, then economic competition might not be so important. Some inner drive for excellence as an end in itself might assure quality, performance and economy. But closer study of human nature indicates for the most part, we aren't really built that way: To race the squirrel cage faster than anyone else is not enough. We want to go somewhere. Competition provides the opportunity.

It is the discipline of competition, the felt necessity it imposes, that causes us to diligently pursue economy, efficiency and product excellence.

The potential benefits of competition are too manifold to mention, but the alternatives to competition are adequate for its justification. On one extreme there is the anarchy of no law where economic might makes right and the potential is monopoly. On the other extreme, to which the first alternative will often lead, and in the nature of things all too frequently, is government regulation with its tendency to inefficiency and inflexibility.

For the 140 million Americans to be added in the next 33 years we must afford room at the top, the opportunity to meaningfully use one's imagination and industry, choice and diversity. Vigorous enforcement of the Antitrust Laws will help. This is their purpose, even if their premise is faulty. As Justice Black said in *Northern Pacific Railway Co., et al. v. United States*, 356 U.S. 1(1958):

"The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that 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, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question, the policy unequivocally laid down by the act is competition . . ."

This is the mystique of Antitrust which so enchants the bar.

While most people concede that prohibition of anticompetitive agreements is desirable, some claim that a strong policy against concentration is out of date. Their arguments are not impressive. The economic points boil down to a contention that a strong policy against concentration may impede industrial efficiency or hinder adequate research and development. One case of poor management in a major corporation can dispel this notion. The arguments do not square with the facts. Economic evidence suggests that most industries can easily sustain many competing firms each using assembly line production techniques and that American markets are large enough to allow firms to enjoy all important efficiencies of size without dangerously restricting the number of competitors. The evidence further suggests that firms do not need to be immense to support an adequate research establishment. The research conducted by medium size firms may be as good, if not better, than that conducted by very large ones. In sum, there is no evidence that we must tolerate concentration or diminished competition as the price of economic progress. The evidence is otherwise.

With competition our goal we should vigorously prosecute price fixing and other restrictive agreements wherever we find them. We should scrutinize mergers including conglomerate mergers in the light of Proctor and Gamble to know that competition is not adversely affected. We should encourage a dispersion of government contracting and research and development subsidies in order to vitalize competition consistent with production requirements.

The Government's Patent Policy should maximize the use of new technology. Concentration and internationalization of business should not be permitted to diminish competition. Clear standards of enforcement, essential to equal justice and the preservation of competition, should be followed. Lawyers should develop techniques dispelling the fiction of the big case, bringing it to a size susceptible of rational and expeditious disposition.

Finally, competition, like justice itself is possible only where it resides in the hearts of the people. We as a nation must fully understand our dependence upon and indebtedness to competition. The Bar can help assure this understanding.