

For Release on Delivery

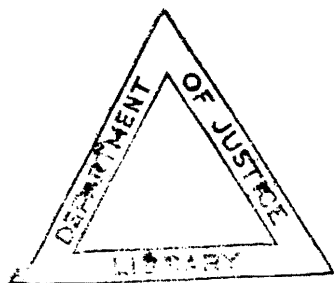
ADDRESS BY

J. HOWARD McGRATH

ATTORNEY GENERAL

OF THE

UNITED STATES



PREPARED FOR DELIVERY

BEFORE

NATIONAL AUTOMOBILE DEALERS ASSOCIATION

CONVENTION HALL
ATLANTIC CITY, NEW JERSEY

FEBRUARY 7, 1950
2:00 P.M.

I welcome this opportunity to speak to you because, as you know, we in the Justice Department have a very keen interest in you, in your business, and in the manner in which your business is conducted, maintained, and perpetuated. In this connection I shall want to discuss with you quite frankly certain matters which I consider vital to your industry and to America.

First, let us look at the position in the national economy which small business now occupies. I suppose that the average automobile dealer looks upon himself as an independent small businessman. I think I can say to you without hesitation that, more than ever before, small businesses are recognized as being the very heartbeat of our economic body. I think it is generally recognized that, unless small businesses can continue to flourish in their individual ways, that body will lose its vitality. We, in the Department of Justice, charged with the responsibility of enforcing the antitrust laws, are particularly cognizant of the general concern for small business.

As evidence of the Government's interest in small business I need but recall to you the various types of governmental action which, in post-war years, have been directed at a constructive long range program.

In 1948, the Senate adopted Senate Concurrent Resolution 14, which recognized the valid claim of small businessmen to equal representation, as an entity, with labor, agriculture, and other groups on various Government commissions, boards, committees, or other agencies in which the interests of the American economy may be affected.

The Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act declared it to be the policy of Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns.

In addition to these enactments of law, congressional committees are conducting hearings, the purposes of which are to explore the extent and effect of monopoly power; to identify the factors and influences which militate against small business; and to determine the ways and means for encouraging, stimulating, maintaining and preserving independent enterprise of every character.

President Truman, immersed as he is in matters of moment to the entire world, in his message on the state of the Union, reiterated and reemphasized to Congress the necessity for broad constructive action in the interest of small business. He said:-

"We must curb monopoly and provide aids to independent business so that it may have the credit and capital to compete in a system of free enterprise . . . I . . . hope before this session is over to transmit to the Congress a series of proposals to strengthen the anti-monopoly laws, to assist small business, and to encourage the growth of new enterprises."

The Department of Commerce has its office of small business; the Reconstruction Finance Corporation, the Federal Trade Commission, the Secretary of Defense and other Government agencies, each has its own method and machinery for providing special consideration for matters affecting small business.

Last but not least is the activity of the Department of Justice in what we call the Small Business Unit of the Antitrust Division. Immediately prior to the war, the widespread difficulties which small businesses were

encountering in their relations with the Government led to the establishment of a Small Business Unit, which was devoted exclusively to the assistance of small businesses in the working out of their problems. This Unit did not prosecute antitrust cases. Its whole activity was, therefore, a distinct departure from the established procedure of the Antitrust Division.

In the war years the work of this Unit was largely confined to furnishing small business representation before the various governmental agencies engaged in war work. When the war was over and the various regulations and controls were lifted, it was thought that the difficulties confronting small business would be largely eliminated and that the necessity for continuing the Small Business Unit would cease. This, however, did not prove to be the case.

It frequently becomes necessary, therefore, for the Unit to take up complaints with the representatives of private business to the end that, through negotiation, small businesses obtain consideration and relief.

Our aid to small business grows out of the many complaints we receive involving situations where the small businessman needs immediate relief if he is to survive. In such a situation an attorney in the Antitrust Division assigned to handle small business matters offers skilled service to solve the problem of the small businessman where it relates to restraints of trade or monopoly control.

Small businessmen 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 and to seek the patronage of any customer.

Most of you are aware of 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.

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 conviction in the criminal case against the General Motors group of corporations the Court of Appeals of the Seventh Circuit unanimously 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...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.

In the conduct of your business you have had many other tribulations. The long depression years had little more than become history when war came and, because of the necessary war regulations, your business literally ceased to exist. Terrific hardships befell the members of your industry to the extent that some were finally unable to survive. Once the war was over and automobiles began to come off of the production lines, however, your business became one of the foremost retail businesses of the United States.

The American people, in their typical fashion, began the wild scramble to secure your automobiles. Business concerns badly needed replacements of

cars and trucks. People clamored for new models, both for replacement and for additional utility or service. Earnings and savings had reached the highest levels in history and a sellers market, of proportions never before known, developed over night for the product for which you enjoyed a very advantageous franchise.

During this period some complaints were received in the Department of Justice from automobile purchasers in various parts of the country. These complaints, which fortunately involved only a very small percentage of the automobile dealers, charged some:-

With requiring the purchaser to take a long list of accessories and extra equipment which were not wanted and in some instances could not be afforded. A single example will illustrate:-

A customer was notified that his car was ready for delivery. The list price at that time was approximately \$1,700. When the customer arrived to take delivery, he was billed for more than \$2300. Instead of standard equipment, as ordered, the car had white wall super cushion tires, super bumpers, fog lights, rear and backing lights, a radio with a loud speaker in the rear and even flower vases cluttering up the inside of the car. He was given the choice of taking it or waiting indefinitely for another car.

A few dealers were charged with channelling an appreciable part of their allotment of new cars through second-hand dealers in order to sell at a higher price. A sample of this practice is illustrated by a customer who desired to trade his old car in on a higher priced model.

The dealer refused to sell him the higher priced car but said that he would sell him a lower priced car with the understanding that the purchaser would drive it around the block and immediately trade the lower priced car in on the higher priced model desired. The dealer then placed the new trade-in on the used car lot at a price several hundred dollars higher than the list price. The customer, who was in dire need of a new car, was forced to go along with this arrangement.

Fortunately, however, most dealers invoked a policy of listing all applicants chronologically and of making deliveries in accordance with that list, regardless of the many temptations with which they were confronted. More than one agency is of record as a religious adherent to a policy of absolute fairness in the distribution of the cars as they came through. More than one agency is known for its persistent and conscientious effort to protect its customers and to preserve a high standard of business morality and conduct. It took courage to follow a policy of this kind because it meant declining to accept tremendous premiums, gratuities, and other favors.

It is this latter type of business dealing which has made you independent dealers respected citizens in your community. This, perhaps, more than any other single practice is the way in which you have built and maintained the good will of your customers.

Our great American society rests upon the idea of limited power. This philosophy is best expressed in our Constitution, the principal source

of our cherished freedom. These moral concepts and this ideology of limited power apply to automobile dealers as well as to every other segment of American society.

Most people in this country agree that they want free economic enterprise, full employment and equal economic opportunity. Unfortunately, many pay only lip service to the principle. If we believe in economic freedom, we must do what is absolutely necessary to make it possible - that is, preserve, restore and continually create competition.

By the same degree in which the world has grown smaller in a military and political sense, so has it grown smaller in a business sense. Monopolistic tendencies are no longer confined to the boundaries of any one nation. And just as they thwart the progress of the common man in one country so will they thwart his progress throughout the world.

The deadening influence of economic concentration is not new to our generation. Nation after nation throughout civilized history has reached its peak of glory only to fall again under the weight of its economic concentration. It was called by many names but the condition was always the same - too much power in the hands of too few people.

Now the United States has risen to the pinnacle of its might and glory. It has attained this position through the sweat and toil of its citizens. Its people have supplied not only the ceaseless toil but the inspired leadership as well. Whenever the necessities required the emergence of a great leader, one has been supplied from the ranks -- and often the lowest ranks -- of our democracy. If we have demonstrated any single fact to the point of universal acceptance, we have demonstrated that there is nothing sacrosanct about inherited leadership. It is

inconceivable that any system other than the democratic system could have given us a Jefferson or a Jackson or an Abraham Lincoln. We develop leaders only because we are a strong nation and a free people. We must remain that way. The American system of free enterprise has been the backbone of our strength.

There is too much recent and tragic world history not to impress upon us the dangers in failing to meet the monopoly problem. In Italy, in Germany, in Japan the same disastrous cycle of events transpired. The forces of monopoly became so entangled in their own web of greed that they were forced to turn to a Mussolini, and a Hitler, and a Tojo to extricate them.

Surely history would record this as our blindest hour if we failed to learn those lessons which have been shown to us in the blood and suffering of all the world.

We, as a nation, need not fear strength from without so long as we avoid weakness from within. Internal decay is our greatest foe. That was the hope of the fifth columns; it is again the hope of the proletarian dictatorship. We are expected to succumb suddenly to our own capitalistic system. And we cannot afford to close our eyes to the dangerous symptoms now apparent. Weakness from within is the real economic cancer which attacks and destroys great nations. As President Truman said in his Inaugural Address, "If we are to be successful...we must keep ourselves strong."

We have witnessed this spectacle in other countries and we must be alert to the possibility of the pattern forming within our own gate.

The first symptom is unhealthy economic concentration which if allowed to progress, furnishes a fertile field for Communistic doctrine.

A most effective way to fight Communism is by removing the injustices upon which Communism feeds.

Revolution cannot be manufactured alone by a Politburo in Moscow. Revolution springs from an ever present sense of economic and social injustice -- an absence of hope and faith.

When these conditions of unrest are present, the philosophy of the alternative makes little difference. Infectious insecurity will find expression in whatever demagogic doctrine is handiest -- be it Communism or something else.

The answer to these threats is not found in denying the existence of injustices nor by denouncing those who offer an alternative. A people's aspirations toward justice, freedom and opportunity cannot be curbed in this way. The answer -- and the only effective answer -- is to assure justice, freedom and opportunity to all. This the American system guarantees. Our strength still rests largely in the fact that our government is established for the benefit of all the people. We believe in human dignity. Monopoly handcuffs the individual and enchains democracy. It is a tool of totalitarianism.

The greatest service that the automobile dealers and their Association can render our country in combating this threat is to sell the principles of democracy with the same vigor and fervor that it sells automobiles. An enlightened citizenry is the backbone of a democratic nation.

The work of your Association in overcoming the effects of the few who sought the quick extra dollar to the detriment of their own business and that of the many honest dealers, is well known. And, it is up to you to continue that work and to have your Association maintain its effective leadership for high business standards and integrity.