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ANTIMONOPOLY ACTIVITIES DURING

THE TRUMAN ADMINISTRATION

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Preparation of a doctoral dissertation involves so much help from so many people that after some reflection the writer wonders if he can take any credit at all for himself. If there is any credit to be bestowed on me for this effort it is clearly because of other people's assistance and direction.

To the history faculty at the University of Oklahoma goes my warmest thanks for instruction and counsel that increased my knowledge and smoothed off, I hope, some of the rough edges in my writing and teaching. Especially to professor Gilbert C. Fite, who so ably directed and so often salvaged wandering paragraphs, goes my heartfelt thanks. I am also grateful to the members of the final examination committee for their careful reading and valuable suggestions.

Since the major portion of my research was done at the Truman Library in Independence, Missouri, I should like to express my appreciation to that institution. Dr. Philip Brooks' fine direction has made this archival depository a pleasant place in which to work, while Phil Lagerquist and other members of the staff have given many hours of much

appreciated assistance (including the hauling of numerous bound volumes of the New York Times in order to obtain one small news item). In addition to the archival staff, Betty Herscher deserves a commendation for her unfailing knowledge of printed matter on antitrust problems and her ability to translate to a poor historian the hidden meanings in legal citations. All in all, a "searcher" could ask for no better treatment than is given at the Truman Library.

Filling in certain gaps required a brief visit to the National Archives at Washington, D. C. Here I received quick and courteous service from archivists in the Business Economics Branch of the Social and Economic Records Division and the Legislative Branch of the General Records Division. A visit to the Clerk of the House to obtain permission to use the House papers, while not particularly helpful in tracing antitrust enforcement, was from the standpoint of contemporary politics a highlight of the Washington trip. Mention should also be made of the great institution, The Library of Congress, which, as usual, had every book and hearing that I desired. My major disappointment in Washington was that the records of the War Assets Administration were not then available for research.

A final library which proved useful was at the University of Kansas City. Numerous magazines provided business reaction to government antitrust policies, and the Congressional Record attested to the verbosity of both friend and foe of antitrust legislation. In addition, I would like to thank the government documents librarian, Bernice Miller, who uncovered several obscure, but much needed, hearings on very short notice.

A feature which I did not expect to have much value turned out quite the opposite. Personal interviews provided some extremely interesting, but often off-the-record, facts about the topic. The greatest "find" was William Johnson, an old Washington hand who has been with the FTC, the SDPA, and in 1960 was the chief economist for the House Small Business Committee. President Truman's helpful comments illuminated several obscure points and provided a few colorful anecdotes. While not interviews, discussions with colleagues at the University of Kansas City often extricated me from blind alleys. Especially helpful were Professor A. T. Brown, visiting Professor Ray Ginger, and Mrs. Dorothy Wilson.

Finally, I would like to express a measure of thanks, unequaled heretofore, to Helen Baird Branyan, my combination typist, proofreader, critic, and confidant, who also did a commendable job throughout the task as a wife and mother.

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CHAPTER I

INTRODUCTION

Monopoly as an economic fact of life has been recognized since Biblical days, and the struggle to limit or eliminate the monopolist has continued to the present. That it is evil is seldom a matter for discussion. In the United States both parties have regularly opposed it in their platforms. This study of the problem during the Truman years will, therefore, not be a chronicle of pro- and anti-monopoly, but rather an attempt to show how the government waged its battle against excessive concentration in many areas.

The traditional antitrust program was not an outstanding feature of the Truman Administration. "Trust busting" usually occurs during secure and prosperous times when aid and comfort from big business are not needed. The turbulent years after World War II did not provide the opportunity for such action. But if antitrust action was not a major theme of the 1945 to 1953 period, it was certainly a strong minor current. Within all the major movements of the period efforts at limiting concentration continued and in several fields completely new programs were initiated. Antimonopoly considerations affected administration acts in disposing of surplus war goods and plants, in preparing a new program for small business, in various legislative battles, and finally in rearming for the Cold War and the Korean conflict. That antitrust during the Truman Administration was not well publicised is known; that it was nevertheless important seems clear from an examination of the evidence.

While no administration is a pure reflection of the President's views, his background and opinions will generally shape his administration's mode. Truman's early adult life coincided with considerable political activity in the midwest. However, while Theodore Roosevelt attacked the trusts and Woodrow Wilson preached New Freedoms, Harry Truman concerned himself with farming and speculation in oil lands.[1] Even the famous haberdashery failure provoked no criticism of big business or monopolies, but rather an attack on the tight money policies of Secretary of the Treasury Andrew Mellon.[2] Truman has stated that his interest in antitrust did not come from any book or "personality" but from his

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[1] Memoirs by Harry S. Truman, I (Garden City, New York: Doubleday and Co., 1955), p. 127.

[2] Ibid., p. 134.

own desire to aid small business.[3] Throughout his career he endeavored to assist small economic units by whatever means were available.

During his public career Truman frequently expressed his attitude toward large business combinations. In fact some of the harshest words he ever used about big business came in 1937 during a Senate debate over railroad legislation.

> No one ever considered the Carnegie libraries steeped in the blood of the Homestead Steel workers, but they are. We do not remember that the Rockefeller Foundation is founded on the dead miners of the Colorado Fuel and Iron Company and a dozen other similar performances.[4]

Never again as Senator or President would Truman speak as severely about big business.

While in the Senate, Truman spent most of the pre-war years working on problems of railroad transportation. Although not personally involved, he consistently supported New Deal legislation, heartily backing the TNEC and other antimonopoly activities. As President he referred to the TNEC several times once noting, in a message to Congress, the monographs as evidence of economic concentration.[5] World War II changed the Senator's life completely, for he

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[3]Personal Interview with Harry S. Truman, May 16, 1961.

[4]Congressional Record, 75th Cong., 2d Sess., LXXXII (Dec. 20, 1937), p. 1924.

[5]State of the Union Message, Jan. 6, 1947, Truman Papers, Records of the White House Reporter, Truman Library.

became chairman of a committee investigating the war effort. Although this task showed Truman the danger inherent in a massive defense effort, it did not give him an opportunity to stress antitrust law enforcement.

The rapid pace of industrial concentration caused by huge government contracts posed, Senator Truman believed, the greatest danger to the postwar economy. He remarked in the Senate that the 100 largest corporations, whose prewar share of American business had been 30 per cent, had increased their portion by early 1943 to 70 per cent of the country's total production. This trend had to be halted, he argued, or the postwar period would see a rapid continuation of concentration and a consequent destruction of small business.[6] Truman noticed excessive concentration early in the war and continued to fight it throughout his entire Administration.

During the interim in Truman's life which commenced with his nomination for vice-president and terminated with the death of Franklin D. Roosevelt, he made few comments about economic matters. When Truman, the President, finally spoke about monopoly his position was still consistent with that of Truman the Senator. Speaking at Washington College in Maryland, he again emphasized his preference for small

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[6] Congressional Record, 78th Cong., 1st Sess., LXXXIX (Feb. 11, 1943), p. 842.

economic units:

> You know, I am rather an advocate of small business and small educational institutions, and small communities. I have said time and again that I would much rather see a thousand insurance companies worth four million dollars in assets than an insurance company worth four billion. I would rather see a hundred steel companies than one United States Steel Corporation. I would rather see a thousand banks than one National City bank.[7]

On the specific question of antitrust policy the President made several statements early in his Administration. During the inflation crisis in 1947 a reporter asked if the antitrust laws would be suspended in an effort to develop wage and price controls. The President replied, "the antitrust law will be enforced to the limit as long as I am President."[8] Later. answering a National Federation of Small Businesses, Inc. questionaire, the President was equally specific: "...enforcement will not only be continued but are /sic/ in the process of being increased."[9] The President's antimonopolistic sentiments continued clearly in evidence.

Despite his interest in antimonopoly the overwhelming problems of 1945 were in other fields. Truman's first concern was reconverting the country to a peacetime

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[7] Speech, Harry S. Truman, Washington College, Md., June 1, 1946, Truman Papers, OF 172, Truman Library.

[8] Transcript of Press Conference, Dec. 11, 1947, Truman Papers, Records of White House Reporter, ibid.

[9] Harry S. Truman to the National Federation of Small Businesses, Feb. 6, 1948, Truman Papers, OF 277, ibid.

economy, and this he proposed in a lengthy message to Congress in the fall of his first year in office.[10] Achieving this aim required most of 1945 and 1946. It was not until the State of the Union Message in January 1947 that the President specifically called for a domestic policy which included "restriction of monopoly and unfair business practice; assistance to small business; and promotion of the free competition system of private enterprise." He also noted the danger to a free economy that came with continued concentration and called for aid to small business by "Government assistance, research programs and credit powers...."[11] The President's Economic Report reinforced this earlier message and added that Congress should "supplement or strengthen existing legislation after reviewing studies of TNEC and other Congressional committees."[12] Thus after two years of directing the reconversion effort, the Administration turned its attention to the concentration problem.

In the months prior to the 1948 State of the Union Message the nation's economy began to slow down after the first wave of postwar prosperity. Commenting on this situation, the President called for continued economic growth

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[10] Memoirs by Harry S. Truman, I, p. 484.

[11] State of the Union Message, Jan. 6, 1947, Truman Papers, Records of the White House Reporter, Truman Library.

[12] President's Economic Message for 1947, June 15, 1947, Truman Papers, OF 396, ibid.

adding that only strict enforcement of antitrust laws could assure this end.[13] The budget message supported this proposal by calling for sufficient funds to enforce the laws properly.[14] The President had struck a note that had long been the major stumbling block for antimonopoly activities--lack of money. Although the Truman antitrust program was taking shape in this period, it was not until after his election in 1948 that major efforts occurred.

The 1948 election provided an opportunity for both parties to restate their views on antitrust. While political platforms and campaigns often overstate or oversimplify the situation, they can give a fairly accurate picture of party and candidate. As expected then, the Democratic platform called for continuing antitrust enforcement, strengthening antitrust legislation, and providing for protection of cooperatives.[15] Truman often lambasted big business during his campaign, but he delivered only one of four major addresses on antitrust prepared by his staff. In Louisville, Kentucky, on September 30, 1948, he referred to the "monopolies" in steel, tin cans, banking, and railroads,

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[13] State of the Union Message, Jan. 7, 1948, Truman Papers, Records of the White House Reporter, *ibid*.

[14] President's Budget Message for Fiscal 1949, Jan. 11, 1948, White House Press Releases Nov. 1, 1947-Jan. 31, 1948, *ibid*.

[15] Harry S. Truman, *The Truman Program* (Washington: Public Affairs Press, 1949), p. 258.

stating that a Democratic President and Congress were needed to restrict these enemies of free enterprise. As in most of his campaign speeches, he blasted the Eightieth Congress and recalled how the railroads had been freed from certain aspects of the antitrust laws through passage, over his veto, of the Reed-Bulwinkle Bill.[16] The President also attacked the National Association of Manufacturers, suggesting that most postwar problems, such as premature ending of price controls and excess profits taxes, were the result of the N.A.M.'s political tool, the Republican Party.[17]

The effectiveness of the 1948 campaign has been long disputed; the outcome has not. The President won a full four year term of his own and had moderate majorities in both houses of Congress. With the political battle over Harry Truman could now turn his attention to developing the Fair Deal. Among the many programs proposed by the Administration, several involved antimonopoly aspects.

The President made a number of important statements on maintaining a prosperous and competitive economy early in 1949. In his State of the Union Message Truman said "small business is losing ground to growing monopoly," and he asked for "stricter antitrust laws by closing these

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[16]The legislation exempted railroad rate-bureaus from the antitrust laws if the ICC approved the intersystem rates proposed. See below pp. 166-83.

[17]Speech, Harry S. Truman, Louisville, Ky., Sept. 30, 1948, Murphy Files, "Monopoly" folder, Truman Library.

loopholes that permit monopolistic mergers and consolidations."[18] A few days later in his budget message the President pleaded for more funds for antimonopoly work by the Federal Trade Commission and the Justice Department.[19] The second Truman Administration appeared to be off to a rapid start in the antitrust field, but just as postwar problems limited activities in the 1945-1947 period the recession of 1949 again diverted executive efforts. Economic problems became the President's major concern and the antitrust program faded.

As the recession of 1949 deepened, the Administration turned its attention to solving the problems of growing unemployment and increased business failures. Rather than investigate the whole economy, as was done by the TNEC in 1938, the President relied on aid to selected segments of the economy. Much information on the recession came from the studies of the Council of Economic Advisors, a postwar agency charged with watching the economy and suggesting remedies to economic problems. The numerous reports of this agency were collected into a pamphlet, "Business and Government." This study declared that a healthy competitive economy needed both big and small business, but in recessions

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[18] State of the Union Message, Jan. 4, 1949, Truman Papers, Records of the White House Reporter, ibid.

[19] President's Budget Message for Fiscal 1950, Jan. 12, 1949, White House Press Releases Nov. 1, 1948-Jan. 31, 1949, ibid.

small business suffered "not so much by big business, but in big instabilities in the economy."[20] The evidence convinced the President that a full-scale effort to bolster small business would be the best possible anti-recession policy. Here again, however, the press of events in foreign affairs during 1950 forced a change of direction.

The small business program developed concurrently with another aspect of antitrust action. No general congressional monopoly investigation had been held since the war. Thus Emanuel Celler's decision to have his House Committee on Monopoly Power review the whole situation received considerable public and governmental support. In one of the best summaries of his administration's program, the President wrote to Representative Celler:

> Since the end of the war, other matters, both foreign and domestic, have at times appeared to overshadow the monopoly problem or at least have been the subject of greater public preoccupation. But it is my conviction that year in and year out, there is no more severe problem affecting our country and its free institutions than the distortion and abuse of our economic system which results when unenlightened free enterprise turns to monopoly. I have watched this situation carefully and I have made sure that the agencies in the Executive Branch with responsibilities in this field have discharged them as effectively as their statutory powers and opportunities would permit.[21]

The Celler Committee constituted the second major aspect

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[20]Council of Economic Advisors, "Business and Government," Dec. 20, 1949, Truman Papers, OF 396, ibid.

[21]Harry S. Truman to Emanuel Celler, July 8, 1949, Murphy Files, "Monopoly" folder, ibid.

of postwar antimonopoly activity, investigating the problem and proposing legislation.

The President's interest in the Celler investigation involved much more than the normal liaison between the executive and the legislative branches. The July 8th letter not only approved the work, but went on to propose careful consideration of economic concentration, which had become a great danger since the end of the war. Truman's letter suggested fighting monopoly in two specific ways: first the committee could turn up facts which, he noted, were in remarkably short supply; second, it could propose changes in legislation to close the loopholes in the antitrust laws. The President did not propose any specific legislation but made it clear that he would support changes drafted by the committee.[22]

One more event in the antimonopoly field occurred during the last month of 1949. Secretary of Commerce Charles Sawyer proposed, and the President agreed, that a new cabinet committee be established to educate business about the antitrust laws. Sawyer argued that since many companies violated the monopoly statutes by accident, the friendly hand of the Commerce Department could save them by education from the rigors of Justice Department or FTC litigation.[23] Although certain members of the Democratic

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[22]Ibid.

[23]Charles Sawyer to the President, Oct. 17, 1949, Harry S. Truman to Charles Sawyer, Oct. 19, 1949, Truman Papers, OF 172, ibid.

Party feared this technique might lead to reduced antitrust activity, a committee was formed to carry out the program. While overall success of the group was not as great as Sawyer had hoped, it did assist in drafting a small business program before the Korean conflict diverted its attention.

The last and most notable response to economic concentration by the Truman Administration was the Small Business Act of 1950. The State of the Union Message in January of that year called for businessmen to keep their "spirit of initiative and enterprise," and alluded to "aids to small business" which might be discussed later in a special communication.[24] The President's budget message sounded the same note and specifically stated that the Commerce Department, the Attorney General, the FTC and the Council of Economic Advisors would develop a small business program during 1950. The plan would "remove obstacles to their [small business'] survival as independent competitive enterprises."[25] Thus the many reports and studies on small business were distilled into a legislative proposal to aid this segment of the economy.

The Small Business Program involved a series of governmental aids to small enterprises. Direct loans,

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[24]State of the Union Message, Jan. 5, 1950, Truman Papers, Records of the White House Reporter, ibid.

[25]President's Budget Message for Fiscal 1951, Jan. 9, 1950, White House Press Releases Nov. 1, 1949-Jan. 31, 1950, ibid.

federally chartered speculation corporations which would finance new businesses, research programs, and technical and managerial aids would be provided for small firms. Although Congress' reaction to the bill was not enthusiastic, there was a possibility that small business advocates would have obtained passage. The plan's fate was sealed, however, by the invasion of South Korea in June of 1950. Even before the conflict erupted, public opposition to the plan had appeared, with small and large business alike seeing not antimonopoly as the end result, but more government interference in free enterprise.[26]

Although most antimonopoly plans of the Truman Administration were disrupted by uncontrollable outside forces, there were also elements within the government that hindered the various programs. This opposition is apparent throughout the Truman era. As early as October, 1947, an "anonymous source" listed the problems faced by antitrusters. Among some of the difficulties observed were: criticisms of the program by high officials, insufficient funds for proper enforcement, and a lack of coordination between the Justice Department and the FTC. The report concluded that the Democratic Party had failed to present itself as the "antitrust party." This could be solved only if the National Committee compiled a file of antitrust speeches and stressed to party officers and candidates the importance of

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[26]Various items, Jan.-July, 1950, Spingarn Files, "Small Business" binders, Truman Library.

using this topic at meetings and party rallies. This evaluation considered antimonopoly as a political "stepchild."[27]

Individual criticism by Administration members varied greatly. Lowell Mason attacked the FTC, of which he was a member, for being too powerful,[28] while Wright Patman wrote to the President that his "messages, although good, have been just a little too vague."[29] Depending on the official, the government was far too weak to do the job, or much too strong. Even greater apprehension was expressed by the Celler Committee's counsel, David C. Coyle. He suggested that there be no monopoly message at all in 1950 because of arguments between Sawyer, McGrath and other officials, and a "half baked" report of the Sawyer group.[30] Senator Estes Kefauver's dissatisfaction with the Sawyer plan led to a letter asking if education would replace antitrust law enforcement. Truman explained to the Senator that nothing had changed; the press reports were, as usual, half correct and the antitrust "situation is /sic/ well in hand."[31] Every new approach, whether it involved more

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[27] Anonymous memorandum to Charles Murphy, Oct. 13, 1947, Murphy Files, "Monopoly" folder, ibid.

[28] New York Times, Oct. 13, 1947.

[29] Wright Patman to the President, Feb. 10, 1949, Truman Papers, OF 277, Truman Library.

[30] David C. Coyle to the President, Je. 12, 1950, ibid.

[31] Estes Kefauver to the President, Dec. 5, 1949, Harry S. Truman to Estes Kefauver, Dec. 10, 1949, ibid.

active enforcement of the old antitrust laws, or the development of new programs, met with criticism from someone within the Administration.

The last major antimonopoly battle fought by the Truman Administration occurred during mobilization for the Korean War. Curbing industrial concentration at home while fighting a war abroad was an old problem, but in 1950 it was placed in a new setting. The limited nature of the conflict required a new approach to economic controls. During the Korean War regulations were partial, and traditional antitrust enforcement also continued to an extent. This problem of partial mobilization led to a plan by the Attorney General calling for limits on corporate mergers, dollar-a-year men, and close checks on price-fixing.[32] Since some military contracts would allow industrial cooperation that was normally illegal, the task of antitrust during the Korean War was extremely difficult. The President considered the Attorney General's report so important that he had it, along with a memo from his assistant, John Steelman, sent to all departments involved in the war effort. Steelman's additional remarks stressed the need for special vigilance in the early stages of mobilization, the period when the danger of concentration was greatest.[33]

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[32] The Attorney General to the President, Sept. 26, 1950, *ibid*.

[33] John Steelman memorandum, Dec. 12, 1950, *ibid*.

The defense effort, however, quickly became the major task of the Administration, leaving little time for large-scale antimonopoly activities. In its draft proposals for the 1951 State of the Union Message, the Justice Department restated the dangers of concentration but did not propose any new legislation or executive action.[34] When the President delivered the message it did not even include this reference, but rather concentrated on military needs.[35] The budget message had no special comments on antimonopoly either; however, the request for a million dollar increase for the Antitrust Division and the FTC showed continued financial support of this approach.[36] As in previous periods of crisis, attention to traditional antitrust activities declined.

Although most antimonopoly programs were suspended during the conflict, the Administration continued its efforts to aid small business. The President called for "distribution of defense contracts among all segments of business, large and small," as one way to arrest the tendency toward concentration.[37] When it became clear that voluntary actions

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[34]Justice memorandum on the State of the Union Message Dec. 22, 1950, Truman Papers, OF 419A, ibid.

[35]State of the Union Message, Jan. 8, 1951, Truman Papers, Records of the White House Reporter, ibid.

[36]President's Budget Message for Fiscal 1952, Jan. 10, 1951, White House Press Releases Dec. 1, 1950-Jan. 31, 1951, ibid.

[37]Presidential memorandum, May 3, 1951, Truman Papers, OF 277, ibid.

would not suffice, Congress created in June, 1951, a Small Defense Plants Administration. Enactment of legislation establishing an agency to work on the behalf of small firms was by far the easiest part of the struggle. In the months that followed the SDPA found itself, like other antimonopoly units, with insufficient funds and an uncooperative Congress.[38]

The various programs introduced indicate President Truman's consistent support of antitrust ideals. While there seemed to be no doubt of this, the immensity of the presidential task limited Truman's personal direction of most of the programs. The various attempts to reduce economic concentration were largely developed and executed by lower level officials. The most important figure in the executive organization was the Assistant to the President, John R. Steelman. Trained in both economics and sociology, with a doctorate in the latter from the University of North Carolina, Steelman became the coordinator of all Administration plans involving economic regulation.[39] Arthur Krock observed that Steelman's appointment as the Assistant to

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[38]Small Business Administration, A History of the Small Defense Plants Administration, Prepared by the Office of Information and Managerial Assistance (Washington: U. S. Government Printing Office, n. d.), passim.

[39]"John R. Steelman," Current Biography 1952, eds. Anna Rothe and Evelyn Lohn (New York: H. W. Wilson, Co., 1952), pp. 556-558.

the President would make him one of the most important men in the government.[40] If the volume of correspondence and apparent control of planning were indicators of importance, Krock was completely accurate in his evaluation.

In addition to John Steelman many others were deeply involved with the antimonopoly programs. Early in the Administration the problems of surplus war goods brought Stuart Symington into government service for the first time. Shortly after this well known businessman was transferred to the Defense Department, his post was filled by Jess Larson of Oklahoma. Larson, who had spent several years in the Army, now undertook the task of selling equipment worth billions of dollars without disrupting the economy. Although not specifically trained for this task, he was commended by several congressional committees for his ability to keep the surplus operation free from "influence peddlers" and others who would like to take advantage of the operation.[41] These and many more, some of whom will be described below, struggled diligently to make the words of the Sherman Act a reality.

Succeeding chapters will describe traditional antitrust activities, legislative battles on extension or limitation of antitrust laws, antimonopoly aspects of the

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[40] New York Times, Dec. 15, 1946.

[41] "Jess Larson," Current Biography, 1951, pp. 362-363.

government's effort to liquidate World War II surplus, aid to small business as a weapon against concentration, and antitrust during the Korean conflict. An attempt will be made to show antimonopoly in this broad manner rather than chronicling antitrust indictments and convictions. If the Truman years have any importance in the history of monopoly control it is in the introduction of programs to aid new enterprise or to limit industrial concentration. The sum of Truman's efforts cannot be called "trust busting," but it may well be remembered as "concentration arresting."

CHAPTER II

ANTIMONOPOLY ASPECTS OF WORLD WAR II PROPERTY LIQUIDATION

Long before the guns had stopped firing, American industry had won the great production battle of World War II. So successful had it been that even as the war continued to rage concern developed over the effect of surplus war goods on the domestic market. The struggle to re-establish a "peacetime" economy without depression, excess government competition, or increased economic concentration involved a multitude of decisions which would surely not please all groups. The conflict over government owned property, especially its anti-monopoly aspects, continued from the latter days of 1945 until 1949 when those undisposed items were returned to the agencies which had purchased them for distribution.

The greatest danger facing the postwar economy came from the rapid concentration of industry during the war. The government had relied almost exclusively on big business to produce war goods. In the early months of the crisis 60 per cent of all military spending went to only 20 industrial producers. As the war progressed the situation did not greatly improve. By mid-1942, 56 corporations had received over 75 per cent of all contracts.[1] During the entire war period 67 per cent of all prime contracts went to the 100 largest firms. The abundance of contracts led to rapid plant expansion. Often the government built these facilities and loaned them to private operators.[2] Massive government spending and limited private plant construction led to a tremendous increase in profits. Thus, when the war ended a very small segment of American business operated a vast number of the industrial plants and had more than enough capital to purchase them from the government. If this concentration were to be halted a specific government disposal policy would have to be developed.

Confusion over reconversion was a topic of general discussion as early as 1943. Editorially the New York Times called for careful planning to avoid a depression that might well develop during the changeover.[3] A spokesman for the business community suggested reverse lend-lease to pay for

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[1] Small Business Administration, A History of the Small Defense Plants Administration, Prepared by the Office of Information and Managerial Assistance (Washington: Government Printing Office, n. d.), pp. 1-2.

[2] C. D. Edwards, "Antimonopoly Policy During Rearmament," The American Economic Review, XLII (May, 1952), pp. 410-11.

[3] New York Times, September 12, 1943.

the retooling of American industry and called for labor-business cooperation to avoid price increases.[4] This view clearly lacked an understanding of Europe's postwar condition. Late in 1943 Nation's Business said that industry was upset over the possible dumping of government goods, but hoped that a "system" would be developed to avoid swamping the domestic market with surplus property.[5] Problems of reconversion and Federal liquidation of war goods were near at hand by 1944, but it was obvious that most Americans did not know what they or their government should do.

Business concern over the government's position was complicated by the government's own lack of plans. In November of 1943 Senator Truman proposed a multi-stage plan for reconversion including selling surplus goods and plants and cutting back military purchasing. His basic aim was to lay down the rules early, thus avoiding confusion when the public demanded action after the war. The future President proved almost prophetic when he remarked that if economic problems were solved before the war ended political problems would be avoided after it.[6] While no one doubted that reconversion would need design and direction, Congress did nothing more than authorize Senator Truman's Committee

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[4] T. Caltedge, New York Times, November 6, 1943.

[5] "War Surplus for Sale," Nation's Business, XXXI (Dec. 1943), p. 70.

[6] Congressional Record, 78th Cong., 1st Sess., LXXXIX (Nov. 4, 1943), pp. 9173-74.

to commence hearings on the problem. It was obvious that in 1943 preoccupation with the war would limit efforts toward solving postwar economic problems.

Within a few weeks the Truman Committee started investigating "post war conversion." Charles Wilson of General Motors, representing industry, had a long friendly discussion with the group, but he could see no great need for government involvement in the task. All that was needed was permission to convert; business could do the job itself.[7] Although Wilson was not asked what should be done with surplus goods and plants, the Committee included definite proposals in its annual report. War plant sales, the group suggested, required more than maximum financial return to the government. Consideration should be given to the future usefulness of the facility, and excess profits and concentration were to be avoided. Sales should be negotiated, and the plant's new ownership should be a consideration.[8] While the report contained the genesis of the idea that surplus sales to new or small producers should aid competition, it was far from complete on this concept. Truman's own remark that plants should be sold for "true value" clearly showed

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[7]U.S., Congress, Senate, Special Committee Investigating the National Defense Program, Hearings, Investigation of the National Defense Program, 78th Cong., 1st Sess., November 24, 1943, pp. 8613-38.

[8]U.S., Congress, Senate, Special Committee Investigating the National Defense Program, Third Annual Report, 78th Cong., 2d Sess., March 4, 1944, passim.

that he had not yet developed the idea of limiting concentration by surplus plant sales to potential competitors of established firms at less than the facility's cost.[9]

Congress finally enacted legislation dealing with excess war goods late in 1944. Although a Surplus War Properties Administration had been operating under the executive since early in the year, little could be done without statutory authority.[10] The law created a board of three to direct surplus disposal and established certain guide lines among which were aid to small business, aid to veterans, annual reports to Congress, congressional approval for sale of synthetic rubber and aluminum plants, and a Justice Department veto on plant sales which tended to create a monopoly.[11] The board was not only charged with surplus goods disposal, but also with aiding certain segments of the economy and protecting the public against monopoly.

The Surplus Property Board's first task was not one of deciding between buyers but of finding any at all. Magazines reporting the business scene constantly noted that plants were difficult to sell because purchasers could see no use for them, capital was not available, or they feared

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[9] United States News, XVIII (April 27, 1945), p. 22.

[10] Business Week, July 24, 1944, p. 17.

[11] Congressional Record, 78th Cong., 2d Sess., XC (Nov. 14, 1944), p. 8163.

action by the Justice Department.[12] In addition there were frequent complaints about the techniques used to distribute surplus consumer goods.[13] Whether real property or consumer goods, the Board had difficulty in handling war surplus.

The business community did not pose the only stumbling block for the Surplus Board. Members frequently disagreed among themselves over how sales should be made, and often when they agreed the Office of War Mobilization and Reconversion or the Justice Department would object.[14] This state of affairs led President Truman to request that Congress change the agency from a board to an agency under a single head. With rather remarkable speed Congress acted and by mid-1945 the President had a Surplus Property Administration.[15] As soon as the new post became available Truman appointed Stuart Symington as administrator; the Senate approved the nomination on September 26, 1945.[16]

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[12] Business Week, Sept. 30, 1944, p. 18; United States News, XVIII (Feb. 16, 1945), p. 53. The activities of the Surplus Properties Board and successor organizations are based on published materials and correspondence with the President since records of the agencies dealing with excess goods have not yet been made available at the National Archives.

[13] Since the numerous protests concerning the agencies' operations fall outside the area of antimonopoly, they will not be explored here.

[14] New York Times, July 13, 1945.

[15] Congressional Record, 79th Cong., 1st Sess., XCI (July 17, 1945), p. 7588.

[16] New York Times, Sept. 27, 1945.

This first adjustment was followed shortly by another change which separated the agency from the Department of Commerce and attached it to the Reconstruction Finance Corporation, an organization already involved in administration of government-built or government-financed plants. The transfer, it was hoped, would place all government surplus sale under single control and improve the handling of this difficult problem.[17] Within a year the approach to war liquidation had changed twice without, apparently, any marked improvement in solving the problems of surplus property.

Indications of discontent with war surplus sales were quite numerous. Senator Burton K. Wheeler complained that sales of consumer goods were in too large lots. Middleman profits left the ultimate consumer with no saving at all.[18] Representative John Tabor of New York took the agency to task on two counts; it kept large quantities of surplus steel during a national shortage and the payroll of the agency had risen to 60,000 with little increase in efficiency.[19] Finally Senator John L. McClellan protested that previous organizational changes had done little and the most recent one (April 1946) seemed to accomplish even less. For, he said, the new War Assets Administration left

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[17] Ibid., Oct. 20, 1945.

[18] Burton K. Wheeler to Matthew Connelly, Oct. 23, 1945, Truman Papers, OF 345, Truman Library.

[19] Congressional Record, 80th Cong., 1st Sess., XCIII (Jan. 27, 1947), p. 630.

bidders for single cars or trucks as vehicleless as had the old Surplus Property Administration. The President agreed with McClellan that surplus disposal had been a problem but stated without clarification that the basic problems now seemed to have been solved.[20] Complaints about and reorganization of the Surplus Property Administration lasted far longer than the President or Congress desired.

Private individuals joined in the clamour against the agency. An aluminum producer wrote Symington that the government's efforts to sell plants by reducing prices or providing subsidies would destroy free enterprise and cause more confusion than it resolved.[21] A small businessman from Mississippi complained that sales to chain stores were destroying small business, adding that the President would not approve of this.[22] The most violent private attack came from the pen of columnist William Allen in an article which reported the contents of a "secret" document reviewing the work of the surplus agency. Allen said the report showed sales had aided monopoly and added that war surplus would be

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[20]John L. McClellan to the President, April 18, 1946, Harry S. Truman to John L. McClellan, April 20, 1946, Truman Papers, OF 345, Truman Library.

[21]Congressional Record, 79th Cong., 1st Sess., XCI (Oct. 22, 1945), p. A4801.

[22]C. Klemington to the President, Oct. 3, 1946, Truman Papers, OF 345, Truman Library.

the greatest scandal of the postwar era.[23] Numerous other complaints arose, but these were typical of the discontent with the surplus sales operation.

Some domestic manufacturers opposed all postwar sales of surplus goods that competed with their production. These producers were especially upset when excess equipment was returned to the United States from overseas for local sale. The process for foreign purchase by civilian jobbers involved the need for an import license granted when the items were declared in short supply at home. By 1947 groups like the National Automobile Dealers Association were arguing that domestic production was large enough "to negate any need for importation of surplus cars and trucks from abroad." In a like manner heavy earth-moving equipment manufacturers were badgering Washington. The complaints were so numerous that John S. Steelman, then in charge of the program, prepared a form letter explaining the licensing process and assuring domestic producers that production was checked frequently and import quotas reduced accordingly.[24] There is little wonder that the War Assets Administration was under constant attack with so many diverse views prevalent and special interests involved.

The general operation of the surplus agency involved everything from selling can openers to disposing of million

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[23]Unidentified newspaper clipping, April 21, 1947, ibid.

[24]Various items, Jan. and Feb. 1947, ibid.

dollar plants. Its most direct connection with antimonopoly was in the area of surplus plant sales. The struggle to counter concentration can best be described by several examples of how government facilities were placed in private hands. Senator Alben Barkley displayed an apparent lack of knowledge of the agency's aims when he asked the War Assets Administration what it was trying to do. Symington's successor General Robert M. Littlejohn answered by restating the law itself. As he noted, the aims included maximum aid from the government to re-establish free independent enterprise, discouragement of monopoly, the fostering of new enterprise, and equitable disposal of surplus without disrupting the economy.[25] These hopes were more easily expressed than enforced, but there was a moderate degree of success.

General Littlejohn described a typical problem encountered by the agency. General Electric wanted to purchase plants at Bowling Green, Kentucky, and Tell City, Indiana, both operated by this corporation during the war, but the Justice Department vetoed the sale of these two plants to the same company. The WAA then negotiated a sale on less favorable terms with a smaller firm, Electra Voice, and G. E. protested. Littlejohn justified this action because of the need for new enterprises, even if the government's return was not as large. He concluded with a plea

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[25] Robert M. Littlejohn to Alben Barkley, Feb. 18, 1947, <u>ibid</u>.

that General Electric, still operating the plant sold to Electra Voice, aid in transferring it to the new operator without delay. The President's agreement with the Littlejohn policy came in a reply to a copy of this letter sent to the executive department. Truman thanked the General and expressed support for war sales as an important weapon against economic concentration.[26]

The conflict over a government built blast furnace at Daingerfield, Texas, was a good example of the struggle between a larger, established business and a small newcomer. Briefly, the construction of a blast furnace was begun in the northeastern corner of Texas by Sheffield Steel but not completed before the end of hostilities. During 1946 the WAA advertised the facility and received a bid from the Sheffield Division of Armco Steel Corporation and an indication of interest from a Texas group which ultimately became the Lone Star Steel Company.[27] Congressman Wright Patman wrote the President asking that the Texas group get a chance to bid on the property. Truman replied that he "would like very much to see /a/ large number of independent steel plants in various sections of the country," and assured Patman that the Texans would get a fair opportunity when the time came.[28]

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[26]Harry S. Truman to Robert M. Littlejohn, Feb. 24, 1947, ibid.

[27]Staff memorandum, Jan. 4, 1947, Truman Papers, OF 342, Truman Library.

[28]Wright Patman to the President, Jan. 21, 1947, Harry S. Truman to Wright Patman, Jan. 23, 1947, ibid.

During the early months of 1947 the contestants began to apply pressure. The governors of both Texas and Arkansas wrote to the President asking that the Daingerfield plant go to the new Lone Star Steel. Truman's reply was fairly noncommittal, merely noting that the WAA was working on the problem and that both the plant mentioned and another at Houston should start production for the benefit of the Southwest.[29] The other bid received support from the Sheffield president, R. L. Gray. He protested that the need was for production, not debate, and the quickest way to get it would be to ignore the Daingerfield furnace and reopen the Houston plant under Sheffield management. Gray argued that if Lone Star were to complete the furnace at Daingerfield time would be wasted and coal resources would be drained. He concluded by noting that Lone Star had no experience or know-how, and that it was upsetting to see both the President and Steelman involved in aiding Lone Star when the real question was not selling a plant but producing steel.[30] Gray's position was seconded by the Houston Chamber of Commerce which added that Sheffield would use its own money not a government loan. Finally, several pig iron users wrote stating that Sheffield would be in production

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[29] Governor of Texas to the President, Feb. 7, 1947, Governor of Arkansas to the President, Feb. 3, 1947, Harry S. Truman to the Governors of Texas and Arkansas, Feb. 19, 1947, _ibid_.

[30] R. L. Gray to the President, Feb. 12, 1947, _ibid_.

sooner than an inexperienced newcomer.[31] It seemed clear that the prize was well worth unlimited effort by both sides.

Not to be ignored was the new steel company itself. Lone Star's vice-president, Robert Germany, agreed that both plants should be operating and even offered to split the available coal from Oklahoma with Sheffield on a fifty-fifty basis until the steel shortage ended. He noted, however, that Houston could get Alabama coal by water cheaper and more quickly than it could obtain the Oklahoma product. In a noble tone Germany proposed that if Sheffield refused to cooperate Lone Star would be glad to operate both plants.[32] Several days later Wright Patman again proposed granting the Daingerfield plant to Lone Star and authorizing part of the pig iron for export to Italy where a good price could be obtained. Steelman refused and the Congressman asked to see the President in order to push for his steel plant project.[33] Progress was slow but Patman continued the fight, although he did not get to see Truman.

The outcome of this particular struggle was a victory for the persistent Member of Congress from Texas.

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[31] Houston Chamber of Commerce to the President, Mar. 14, 1947, Various foundry operators, Mar.-April 1947, ibid.

[32] Robert Germany to John Steelman, Feb. 23, 1947, ibid.

[33] Wright Patman to John Steelman, Feb. 24, 1947, John Steelman to Wright Patman, Feb. 26, 1947, ibid.

Early in March 1947 the WAA granted Lone Star the Daingerfield plant and its parent organization, RFC, added a $1,600,000 loan.[34] Wright Patman thanked the President and noted with pride Lone Star's ability to raise money from fellow Texans equal to the RFC loan. A Lone Star vice-president also contacted the President's staff by wire and extended his heartfelt thanks. Truman replied to both in a friendly note that concluded he was "glad things worked out all right."[35] Although there is no evidence that the President wrote to WAA while the transaction was under consideration, his pleasure in the disposition of the plant and his support of General Littlejohn's position indicate he was strongly in favor of the decision. Thus ended the first big battle to oppose concentration by using war surplus.

The Lone Star story did not end with the granting of the plant. Long months of fighting big steel and big banks, whose directors were all too often the same men, occurred before production could begin.[36] Lone Star's victory statement went directly to the President in October of 1947

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[34]Details of the agency's decision are unavailable because of continued withholding of WAA records.

[35]Wright Patman to the President, March 24, 1947, Robert Germany to the President, March 24, 1947, Harry S. Truman to Wright Patman and Robert Germany, March 26, 1947, Truman Papers, OF 342, Truman Library.

[36]Personal interview with William Johnson formerly with the FTC, the SDPA, and in 1960 economist for Wright Patman's House Small Business Committee, June 16, 1960.

when the company proudly announced that production had begun.[37] The corporation sent details of its first year's operation to the President, informing him that it had made $3 million net profit, paid the RFC $7.5 million, expended over $3 million in wages, and still distributed three dollars per share to stock holders. This very happy executive concluded that government's "faith" in Lone Star had paid off. And clearly it had.[38]

Another contest between local ownership and big steel took place over a furnace at Granite City, Illinois. The two major bids for this plant were from a newly formed group in St. Louis and representatives of Republic Steel who operated the furnace during the war. In September of 1947 both bids were rejected as too low, but since the local group's proposal was closer to the government's figure, and it was independent, the WAA started direct negotiations with it.[39]

As soon as talks commenced between WAA and the new group, Missouri Illinois Iron Co., the usual pressure appeared. Henry Kaiser complained because he had not even been able to enter a bid.[40] Coleman Heating Company of

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[37]Robert Germany to John Steelman, Oct. 27, 1947, Truman Papers, OF 342, Truman Library.

[38]Robert Germany to the President, Jan. 5, 1949, ibid.

[39]WAA memorandum to John Steelman, Sept. 11, 1947, Truman Papers, OF 345, Truman Library.

[40]Ibid.

Wichita objected that a change to local ownership could cut off its pig iron supply because St. Louis control could lead to St. Louis sales.[41] Finally, a massive effort by the St. Louis Chamber of Commerce supported local control. Much of the local argument appeared in Post Dispatch editorials which were given wide distribution by the Chamber. The dual arguments for the Missouri Illinois Iron Company were assurance of local supply and cost reduction on transportation. As the Post saw it, the Granite City plant was too high in production costs to compete in a normal market. It had not produced until the war and under normal supply conditions would be shut down again unless customers were close at hand. Republic Steel's ownership would not assure local sales of pig iron while St. Louis control would. The final argument was that selling to the local group would come far closer to fulfilling the law with regard to avoiding monopoly.[42] Within this framework of contrasting views the WAA had to make its decision.

Local enterprise won again when late in October, 1947, the surplus agency granted the plant to Missouri Illinois Iron Company, after suitable terms were negotiated. In a letter to a supporter of the other group bidding for

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[41] Coleman Heating Co. to John Steelman, Sept. 3, 1947, ibid.

[42] St. Louis Chamber of Commerce to the President, Oct. 8, 1947, ibid. The Chamber correspondence included reprints of various undated Post Dispatch editorials supporting its position.

the plant, John Steelman explained that the sale assured local control and pig iron supply to an important manufacturing area. Although Steelman's correspondent did not reply, it can be assumed that big steel was not completely in accord with the Administration's view that small locally controlled units were advantageous.[43]

Another dispute which involved Republic Steel, Kaiser Steel, and the WAA over two blast furnaces is by far the most interesting from the viewpoint of personalities. The story unfolds in 1948 after Jess Larson became War Assets Administrator. Republic Steel had operated a blast furnace in Cleveland since early in the war, and had been negotiating for a long term lease during 1947 and 1948. On May 28, 1948, the WAA rejected all bids as too low, including that of the ubiquitous Preston Tucker who was talking about manufacturing automobiles. Since the furnace was included in a complex which was, for the most part, owned by Republic, the agency continued to negotiate with this corporation for lease or sale. Larson offered to lease the furnace for $1,600,000 a year with back rent payable from September, 1947. Republic rejected the bid and notified the WAA that the furnace would be closed on August 31, 1948. The squeeze was on and it looked like a steel hungry economy

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[43]John Steelman to Charles Spice, Nov. 15, 1947, ibid.

would be punished even more unless Larson made an acceptable offer to the company.[44]

Pressure of this type might have won under certain circumstances but Larson called Republic's bluff. A quick deal was arranged with Kaiser-Frazer, and on August 17th the furnace was leased to Kaiser. A storm of protest broke with the announcement of the deal, and both House and Senate Committees wanted information on the transaction. During the House Procurement Subcommittee hearing, President Charles White of Republic and Henry Kaiser exchanged words over the propriety of granting an outsider Cleveland's pig iron supply. Throughout the discussion White spoke as the defender of the small foundries that depended on Republic for pig iron. If Kaiser took over the furnace local iron workers would be put out of work. This "friend of the foundries" view was questioned by Larson who testified that Republic had already stated that the furnace would close down on August 31, 1948. The WAA director said he had no other choice if he wanted the production of iron to continue.[45]

The WAA decision and the subsequent hearings led to a flood of public opinion mail over the Cleveland furnace. Kaiser received support from his automobile dealers who stressed the need for cars and the sanctity of the

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[44]WAA Press Release, Aug. 20, 1948, Truman Papers OF 345, Truman Library.

[45]*Ibid*.

government's contract with Kaiser. Only a few dealers attacked big business in general or big steel in particular; the problem was a steel shortage not abstract economics. The Republic position that foundries would be closed led to numerous letters from management and labor in these shops calling for a reversal of the WAA decision. It was clear that Republic's rumor mill had done its job well since several of these letters noted Kaiser would be paying less than one-half of what Republic had offered. In a press release defending his agency, Larson denied the price to Kaiser was less than Republic had offered. The comments of Republic and Kaiser as well as their advocates did little to clarify the issues involved.[46]

In order to avoid a pitched battle over the Cleveland furnace, Kaiser and White agreed that Republic would continue operating it until March of 1949, but that part of the pig iron would go to Kaiser-Frazer.[47] This operational agreement in no way reduced the battle over eventual control. The struggle took several strange turns, but always the Cleveland blast furnace stood starkly in the background. A newspaper advertisement by a small steel producer in Tennessee led Kaiser to demand an investigation of ties between Republic Steel and the advertiser, Wheland Steel. Not content with counterattacking, Kaiser went on to drag a whole

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[46]Various correspondence reflecting public opinion, Aug.-Sept., 1948, ibid.

[47]WAA Press Release, Aug. 20, 1948, ibid.

new issue into the dispute. He argued that Republic would not need the Cleveland facility if it used a furnace located in Gadsden, Alabama which Republic had closed down in July, 1947. Moreover, Kaiser noted that Republic uttered not one word of remorse for pig iron users at the time. Actually Republic had reopened the furnace while the Cleveland dispute was at its peak in an apparent effort to avoid the Kaiser attack.[48]

In the weeks that followed Kaiser continued to level his broadsides against the supposed efforts of Republic to break his contract for the furnace. In a detailed answer to another Wheland advertisement Kaiser insisted that his purchase of the Cleveland furnace would not violate antitrust laws as the Tennessee corporation said, but rather was a clear example of vertical integration that the court had approved in the recent _United States_ v. _Columbia Steel_ case. The release went on to note that the Justice Department had to clear all contracts and that Republic had expanded more than Kaiser. A chart in the press release indicated that Republic Steel had been granted government plants in South Chicago, Youngstown, Ohio, and Gadsden, Alabama. Kaiser held firmly to the view that he was more sinned against than sinning.[49]

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[48] Kaiser-Frazer Press Release, Sept. 15, 1948, _ibid_.

[49] Kaiser-Frazer Press Release, Sept. 30, 1948, _ibid_.

As the battle dragged on, Kaiser turned more and more to the proposition that Republic could use its Gadsden plant to supply its pig iron customers. Kaiser remarked that Republic tried to trick him into an antitrust trap by having him agree to sell to Republic's old customers to the exclusion of others. Kaiser observed he was too sharp to fall for this trick.[50] Again he protested against sharing the Cleveland furnace's production and pleaded that the WAA require that Republic use Gadsden while Kaiser operate the northern furnace. In tracing Republic's indirect offensive Kaiser said the protest against his getting the furnace "suggests that while the voice objecting to the Kaiser-Frazer lease is the voice of the foundry customer the hand is the hand of Republic."[51]

The frequent reference to the Gadsden plant makes it necessary to trace briefly its part in this case. Until June, 1947, the furnace had been used by Republic for the production of pig iron used in soil pipe. In the summer of 1947, Republic and the WAA were at an impasse on terms, and, in addition, the furnace had fallen into very poor condition. The danger was so great to personnel that the United Steel Workers asked that the furnace be shut down for repairs to avoid a serious accident. After ignoring government and

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[50] Kaiser-Frazer Press Release, Oct. 15, 1948, ibid. In fairness to Republic there is no evidence to support the position that the proposal on pig iron was a trap.

[51] Henry Kaiser to Jess Larson, Oct. 15, 1948, Truman Papers, OF 342, Truman Library.

union requests for about thirty days, Republic shut the mill down but did not repair it. Ned Beddow of the Housing Expediter's office indicated that Republic had let the furnace fall into disrepair in order to purchase it more cheaply. He considered Republic's actions less than noble and prospects for the government less than good. Despite the Housing Expediter's view Republic was granted the furnace by the WAA in April of 1948 and it was back in operation a month later.[52]

Republic Steel, having once succeeded with the "close down" technique, might well have had the same idea in the summer of 1948 with the Cleveland furnace. However, in this instance Larson held firm. The Justice Department authorized the Kaiser-Frazer contract in October 1948 and with this last hurdle cleared the WAA went ahead with a twenty year lease.[53] The unavailability of WAA records leaves many of the events in the Kaiser-Republic struggle veiled, but the end result is in line with aid to new or smaller producers. Whether Republic tried a bluff and failed may never be known; it is known that the WAA succeeded in reducing pig iron concentration.

These few examples, which were by no means all the cases in which the WAA fought concentration, were the most celebrated, and gave ample evidence that the administration

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[52]Various Items, June-July 1947, <u>ibid</u>.

[53]N. L. Goodman to Young Democrats of Oregon, Nov. 19, 1948, Truman Papers, OF 345, Truman Library.

attempted to apply the antimonopoly aspects of the surplus property laws. By mid-1948 surplus distribution neared completion. The director of the Iron and Steel Division of WAA wrote in February that 90 per cent of the government plants would be sold or leased by the end of March.[54] The President was even more to the point when he sent a message to Congress in March informing it that only $5 billion worth of surplus remained from the original $40 billion. He proposed ending the WAA and turning over to the various owning agencies what was left.[55] The WAA expired on February 28, 1949, and, although Congress did not pass a comprehensive act for future surpluses until the following June, no problem arose because of the limited quantity of surplus goods.[56] The WAA died with few mourners but it had done its bit against concentration.

In the overall problem of economic concentration surplus sales played a relatively small part, but a part that provided a foundation from which some of the other unusual efforts against monopoly would grow. In addition to aiding new and old small producers the WAA managed to do its job with speed. It also helped the economy avoid an

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[54]W. A. Hauck to Jess Larson, Feb. 16, 1948, _ibid_.

[55]Message to Congress, Harry S. Truman, Mar. 5, 1948, _ibid_.

[56]Jess Larson to John Steelman, Oct. 1, 1948, John Steelman to Jess Larson, July 6, 1949, _ibid_.

economic slow down that could have occurred if surplus plants had been left unused for too long. An agency with so much to disperse could never please everyone, but the WAA came close enough to avoid being the scandal some thought it would be.

The desire to avoid monopolistic trends from the war appeared first in the surplus law of 1944; the changes in the statute and the development of new agencies to carry out the work showed a continuing effort to meet a difficult problem. Finally, the rapid completion of surplus disposal without undue concentration or depression indicated that reconversion could undo some of the war's concentration effects. Since many facilities went to large corporations, no one could claim that the distribution of war surplus returned the United States to a golden age of competition, but certainly giant combinations of industrial power were limited by the WAA's techniques. Like most of the collateral antimonopoly efforts of the Truman years, this one was not exciting enough to receive big press coverage, but taken as part of the whole it can be seen as an important factor in modern antitrust activities.

CHAPTER III

ALUMINUM: THE UNIQUE INDUSTRY

Production of aluminum ingots in the United States was, from the conception of mass production until 1941, completely in the hands of one firm, The Aluminum Company of America. This true monopoly was not gained by destroying established competitors or controlling raw materials or finance. The monopoly grew with the industry and was soon protected by patents, and later by sheer size. Court action ended cartel ties early in the twentieth century, and attempts were made to break up Alcoa in a case begun in 1937. Rising defense pressures led to dismissal of the case in July, 1942, leaving the country dependent on a single supplier for aluminum.[1] The transition from this situation to a moderately competitive industry in 1952 involved wartime expansion, postwar reconversion, and tremendous efforts by non-litigative agencies of the government.

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[1]U. S. v. Aluminum Co. of America. The original case was ended in July, 1942, when the District Court dismissed the government's petition and found Alcoa not guilty. The Supreme Court was unable to obtain a quorum to hear the case so the Circuit Court of Appeals was certified to be the court of last resort for the appeal. Its decision was not reached until March 12, 1945; thus the impact of the decision had little effect until World War II was over. The Federal Antitrust Laws (New York: Commerce Clearing House, Inc., 1952), pp. 175-77.

Modern war depends to a great extent on light metals; thus it was no surprise that one of the Truman Committee's earliest investigations involved production of aluminum, a metal already in short supply. In fact, during the first day of the hearings in 1941 the question of a monopoly in metal used for aircraft was posed to Secretary of War, Henry L. Stimson. The Secretary said he was not aware of a monopoly, but in the following weeks sufficient information was uncovered to edify the War Department chief.[2] This lack of information or interest about the problem was not shared by everyone. Those private citizens who dealt with the only aluminum producer had, as a rule, quite a bit to say.

The most outspoken citizen was Richard Reynolds who had long been in the aluminum business, but who had only recently begun to build his own reduction facilities. Reynolds indicated that Alcoa had stated in November of 1940, that there would be plenty of aluminum for both military and civilian customers. However, he noted that when he started to build his own ingot plant, Alcoa could no longer supply him. Reynolds, annoyed by the reduction in his supply, nevertheless had high hopes for the future saying he had built a plant in six months "without knowing a damn thing

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[2]U.S., Congress, Senate, Special Committee Investigating the National Defense Program, Hearings, Investigation of the National Defense Program, 77th Cong., 1st Sess., April 15, 1941, p. 16. Hereafter cited as Investigation.

about it."[3] A minute degree of competition would be introduced into the industry as soon as Reynolds' plant started to produce, but this one small addition would be insignificant when the government started to let huge wartime contracts.

The last witness in this early hearing was G. R. Gibbons of Alcoa. Questions on the nature of Alcoa's monopoly were consistantly dodged by this clever executive. He argued that there was plenty of competition from foreign aluminum, that Alcoa did not have a monopoly through patent control, and that his firm did not control an unreasonable amount of the nation's bauxite.[4] When pressed on the statement that there was no aluminum shortage, Gibbons replied that things were changing too fast for anyone to really know what demand would be, but that Alcoa worked harder than any company in America to prepare for the war effort.[5] While no one on the Committee doubted Alcoa's hard work, some Senators questioned whether one company could supply all of the light metal for a major war effort. Gibbons was not eager to answer flatly, but finally stated that Alcoa was not wrong to say it could produce all of the aluminum needed.[6] By the end of the hearing Gibbons had won few,

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[3] Investigation, May 14, 1941, pp. 754-56.

[4] Investigation, May 14, 1941, pp. 789-90.

[5] Investigation, May 14, 1941, pp. 792-93.

[6] Investigation, May 14, 1941, pp. 818-23.

if any, friends, and the Committee seemed to be as sure as ever that there was, and would continue to be, an aluminum shortage.

The Committee's report to Congress on aluminum suggested that since so much more aircraft metal would be needed, and since the government would have to provide the power to operate the new reduction plants, it would be more economical for the government to own the works and hire experts to operate them.[7] The proposal was not accepted; instead all the new plants were constructed and operated by Alcoa for the government.[8] While war years brought no competition to the industry, government funds and Alcoa technology solved the shortage by early 1944.[9]

At the war's end nothing had been done to solve the dilemma of a single producer except for Reynolds' Lister Hill, Alabama, plant built with his own money early in the war period. Actually, however, Alcoa had changed from a monopoly which owned 100 per cent of the aluminum production to a near monopoly in which it owned only about 40 per cent of the plants but operated almost all of them. It was obvious that something needed to be done if the Alcoa monopoly were to be ended. The Surplus Property Act had placed

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[7] Congressional Record, 77th Cong., 1st Sess., LXXXVII (June 26, 1941), pp. 5536-37.

[8] Washington Post, Oct. 30, 1945.

[9] Commercial and Financial Chronicle, Sept. 7, 1945.

restrictions on the sale of aluminum plants and had called for sales which would aid competition. These provisions, however, did not provide a positive solution to the problem.

Alcoa, not waiting for government action, took the offensive with a series of newspaper advertisements in late 1945 defending its position. The company stated that the government owned 57 per cent of all aluminum plants and could do what it wanted with them. Breaking up Alcoa to form several competitive producers, the corporation argued, would only hurt small investors and harm the country. The advertisement noted that while the court had found Alcoa guilty of violating the antitrust laws, it had stated that Alcoa could not be considered a true monopoly since the government owned a majority of the aluminum plants.[10] Alcoa concluded that it had done its own small part in the war effort fairly well.[11]

The government's point of view differed rather sharply with that of Alcoa, but it was no closer to a solution than the company. Early in 1945 the Justice Department had refused to authorize the sale of several plants to Alcoa by the WAA.[12] The restriction on sales to Alcoa led the RFC to terminate its leases with Alcoa in order to free itself to find other purchasers. The company, in most cases, lost

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[10]See below pp. 84-85 for details about the Justice Department's actions.

[11]<u>New York Times</u>, Sept. 18, 1945.

[12]<u>United States News</u>, XIX (Feb. 9, 1945), p. 45.

two or three years' use of the plants and protested violently. While the action was hurried, the RFC denied that it was done in a spirit of antagonism; rather, it claimed to be aiding the development of competition in the industry.[13] Contract terminations, while a positive act, could not alone revamp the industry. This was made clear by the Attorney General when he reported to Congress that the aluminum industry would have to be "recast" into several large well balanced and integrated units if competition were to be established.[14] Attorney General Tom C. Clark had no specific plans in mind but asked Congress to agree on how competition could be established in the industry.

To compound the confusion another tack was taken by Surplus Property Administrator Symington who told Congress rather flatly that competition would require subsidies and special privileges to new producers. He stated that no one would buy from a firm which was not stable and, stability in the same industry with Alcoa would require considerable aid.[15] A few days later the President remarked that Administration policy was not yet set but that he hoped the plants could be disposed of in a manner which would develop competition and not require subsidies.[16] Needless to say, the

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[13] New York Times, Jan. 26, 1945.

[14] Ibid., Sept. 18, 1945.

[15] Ibid., Oct. 16, 1945.

[16] Ibid., Oct. 19, 1945.

government lacked a firm policy late in 1945. Real agreement existed only on the final aim--to make the aluminum industry competitive.

The Federal government's efforts to make aluminum competitive in the postwar years is without doubt one of the best available examples of non-litigative antimonopoly action. Senator Tom Steward suggested in a report from his subcommittee of the Mead Committee (formerly Truman) that the government give lower electric and freight rates as well as tariff reductions on raw materials to new aluminum producers.[17] With support building for some sort of subsidization, the Surplus Property Administration could go ahead with negotiations for sales and leases on the basis of federal aid to the new producers.

Symington's agency had its first bit of success in the fall of 1945 when Reynolds finally agreed to lease one of the government plants with a subsidy limited to lower electric rates. This ended a deadlock in the discussions in which Reynolds had insisted that the government absorb 85 per cent of the loss for a certain period.[18] In April, 1946, the government leased the plant at Hurricane Creek, Arkansas, to Reynolds.[19] With the placing of a fully

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[17] _Ibid._, Sept. 27, 1945.

[18] _Ibid._, Oct. 19, 1945.

[19] W. B. Harris, "The Splendid Retreat of Alcoa," _Fortune_, LII (Oct. 1955), p. 117.

integrated facility in new hands, the trend toward aluminum concentration, so accented by the war, had been reversed.

Administrator Symington had long insisted that only strong competition would have any effect upon Alcoa. A major deterrent to any competitor was Alcoa's virtual monopoly of the industry's patents. A tremendous step forward occurred in early 1946 when Symington convinced Alcoa to release its patents for aluminum refining. Both Attorney General Clark and Symington said this was in accord with Judge Hand's decision in 1945 when Alcoa was convicted of violating the Sherman Act. Symington added that knowledge of the patented processes would do much to make competition with Alcoa successful. The only dissenting voice was that of Alcoa's George Davis who implied that his firm had given up the patents under government pressure although he said they were released for "public consideration." Regardless of the reasons, the action was a major breakthrough for competition in the aluminum industry.[20]

After the patent publications and the agreements on subsidies, leasing of plants proceeded at a more rapid pace. In a review of the whole Truman Administration this period was referred to as the "first stage," when the number of producers was increased from one to three.[21] While the

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[20] Stuart Symington to the President, Jan. 10, 1946, Truman Papers, OF 541, Truman Library.

[21] Aluminum Expediter's Report to the President, Jan. 2, 1953, *ibid*.

exact procedures involved are not known because of the continued unavailability of War Assets Administration records, there are other documents which indicate how rapidly the first stage progressed. Paul Mather, liquidator for the General Services Administration, reported on plant disposal after his agency took over the work of the defunct WAA. In July, 1949, he announced that three plants had been sold to Permanente Metals Corporation on twenty-five year terms at 4 per cent interest. This, he said, aided the government by fostering competition and providing several sources of aluminum for defense.[22] At the end of the year he reported the sale of four other plants to Reynolds on the same terms as Permanente. The effectiveness of the government's policy, Mather recorded, had resulted in a situation where Alcoa was no longer producing the major portion of ingot aluminum. Figures for 1948 showed Alcoa with 650 million pounds a year against Reynolds' 340 million and Kaiser's 257 million.[23] After the 1949 plant disposals Alcoa dropped even more, to 581 million, while the other two reached a total of 624 million pounds.[24] The government had in less than three

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[22]Paul Mather to the President, July 28, 1949, Truman Papers, OF 345, Truman Library.

[23]Permanente was renamed Kaiser Aluminum and Chemical Corporation in 1949.

[24]Paul Mather to the President, Dec. 22, 1949, Truman Papers, OF 345, Truman Library.

years turned an almost complete monopoly of long standing into an oligopoly of three competing producers.[25]

The first stage of the aluminum decentralization did not occur with complete harmony. The arguments on who was to get what raged long and hot, and often one branch of the administration disagreed with another. Such a conflict occurred when Jess Larson's negotiations with Alcoa over a plant at Messena, New York, broke down because Alcoa would not lease and Larson would not sell. The plant was finally sold to Alcoa after the company agreed to free more patents to Reynolds and Kaiser. In reporting this, Larson knew that the Justice Department might oppose the sale, but he argued that "National Defense demands [are] ahead of anti-trust considerations." In his own defense he recorded that the task was very difficult, but that he did his best for both competition and defense.[26] That the Justice Department would not agree was borne out by a hot letter to Steelman from the Attorney General. Clark stated that the Department had given a negative opinion on the antitrust nature of the Messena sale and that national defense was not an issue

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[25]The precise number of plants leased or sold to the "big three" were: Reynolds one aluminum plant, two smelting mills, two sheet mills, two extension plants and one forge shop, Kaiser one aluminum plant, two smelters, and one sheet mill, Alcoa one extrusion plant and one smelter. Simon N. Whitney, Antitrust Policies (New York: The Twentieth Century Fund, 1958), II, pp. 97-98.

[26]Jess Larson to John Steelman, Nov. 15, 1948, Truman Papers, OF 345, Truman Library.

since Alcoa would now close another but older plant. In his most stinging remark Clark said Larson's actions "Well might destroy the /newly pending antitrust/ case" against Alcoa. He asked for executive action to stop this kind of sale or, if not that, then a change in orders for antitrust actions.[27] Apparently Steelman calmed all the participants in the dispute since neither the sale nor antitrust policies changed.

Despite occasional arguments on particular plant sales, general agreement existed that the "first stage" had developed competition. Testifying before the Celler Committee, Leonard J. Emmerglick of the Justice Department stated that increased production and continued low prices in the aluminum industry were the result of competition; the Alcoa monopoly would not have kept prices as low without the newcomers. He also argued that any additional expansion should go to new producers since enlarging the present big three would not assist competition.[28] It was clear that Alcoa's monopoly was gone, but aluminum was still America's most concentrated industry. Future expansion would have to take this fact into consideration.

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[27] Tom Clark to John Steelman, Nov. 26, 1948, ibid.

[28] U. S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, Hearings on Aluminum, 82d Cong., 1st Sess., Serial No. 1, Part 1, Jan. 25, 1951, p. 14. Hereafter cited as Celler Committee.

Prior to the second round of production expansion, accompanying the Korean War, the Aluminum industry went through a short but rather severe depression. As early as mid-1947 vice-president C. M. Cashie of Reynolds Aluminum called on the government to stockpile aluminum so Reynolds would not have to cut back production.[29] In the summer of 1949 R. S. Reynolds himself wrote to the President pointing out the need for a light metal stockpile for use in the event of a Russian attack.[30] This same firm took another tack in protesting the aluminum tariff which allowed Canadian firms to compete with United States production. Reynolds indicated that Alcoa, which had a stock tie with Alcan,[31] was using it "to stifle the competition" and regain a monopoly.[32] Supporting this position he sent copies of two long briefs which had been presented to the Tariff Commission.[33] A later letter from Reynolds Aluminum protested that far too much of the Marshall Plan aluminum was Canadian; if American shipments were not increased damage to competition could be "great."[34] Reynolds' overproduction

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[29]C. M. Cashie to the President, Aug. 17, 1947, Truman Papers, OF 541, Truman Library.

[30]R. S. Reynolds to the President, Je. 21, 1949, ibid.

[31]The Mellon, Davis and Hunt families owned 45 per cent of Alcoa's stock and 35 per cent of Alcan stock in 1950. Harris, "Splendid Retreat of Alcoa," op. cit., p. 117.

[32]R. S. Reynolds to the President, Oct. 27, 1947, Truman Papers, OF 541, Truman Library.

[33]Tariff Commission Briefs, n. d., ibid.

[34]C. M. Cashie to John Steelman, Je. 15, 1949, ibid.

problem apparently was not critical since during the period of greatest complaint he leased or purchased several new plants. Actually his salvation seems to have been not government action but new uses for aluminum. A contract with the National Rural Electrical Cooperative Association for fifty to seventy-five million pounds of aluminum conductor showed the metal's entrance into new fields.[35]

The Korean War increased the demand for aluminum above the available supply for the second time in a decade. Yet even at this late date some of the World War II facilities were still in government hands. The Harvey Machine Company corresponded with the President several times over its inability to obtain a plant at Riverside, California. Harvey complained that the Administration had failed to follow the surplus property law's requirement to make aluminum competitive.[36] Spartan Aircraft Company still protested its inability to get one of the World War II plants as late as November, 1951.[37] Despite these loose ends, the Administration had, by 1951, well established plans for industrial expansion. D. L. Marlett of the Defense Electric Power Administration informed the Celler Committee that as of January, 1951, aluminum production was divided between the big

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[35] Reynolds Aluminum Press Release, Jan. 29, 1949, ibid.

[36] Harvey Machine Co. to the President, Mar. 25, and April 11, 1949, ibid.

[37] Spartan Aircraft Company to the President, Nov. 30, 1951, ibid.

three on the following basis: Alcoa 49 per cent, Reynolds 30 per cent, and Kaiser 21 per cent. The government's new distribution plan would give Alcoa 45 per cent, Reynolds 25.4 per cent, Kaiser 20.4 per cent, Harvey 5.6 per cent and Apex 4.1 per cent. He added that the government wanted to get as many new producers into the industry as possible.[38] The Truman Administration's aim for the Korean War varied greatly from World War II when all government plants went to Alcoa.

The Defense Department determined that Apex would be granted a site at Oklahoma's Grand River Dam, and Harvey would get the Riverside, California, smelting pots (unused since World War II) for use at Hungry Horse Dam in Montana.[39] It is typical of merger-minded American businessmen that Harvey joined with Anaconda Copper, and Apex became part of the Olin Chemical Corporation shortly thereafter.

The Justice Department maintained a keen interest in aluminum during the second expansion phase and requested in 1951 that any additional aluminum production go to entirely new producers. Department attorney's argued that the industry was still too heavily concentrated. According to the Attorney General, production was to be expanded 174,000

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[38]Celler Committee, Aluminum, Jan. 22, 1951, p. 4.

[39]Staff memorandum, Aug. 11, 1950, Truman Papers, OF 541, Truman Library.

pounds per year, and this, he said, while not a large amount, could aid competition considerably.[40]

The new producers did not receive a warm welcome from all members of the executive. David Bell of the White House staff attacked the Harvey-Anaconda contract, noting that Anaconda was unworthy because it "owned" the state of Montana, controlled the state's press, depressed wages by keeping other industries out, and had a rather poor war record.[41] This view received a second from Senator James E. Murray who wired the President urging a delay on final approval of the Anaconda contract.[42] He received a firm reply from the President. "There has been a great deal of ballyhoo stirred up about this contract which has no foundation in fact. I am satisfied with the contract and I am going to see that it is carried through."[43] The President made clear that opposition to the Anaconda Corporation would not prevent the Administration from increasing competition in aluminum.

Aluminum expansion became one of the Celler Committee's major areas of investigation. The group had been looking into monopoly problems in general, but when the

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[40]The Attorney General to the Secretary of Defense, Oct. 11, 1951, _ibid_.

[41]David Bell to the President, Dec. 12, 1951, _ibid_.

[42]James E. Murray to the President, Dec. 9, 1951, _ibid_.

[43]Harry S. Truman to James E. Murray, Dec. 12, 1951, _ibid_.

Korean War broke out it took on certain attributes of the Truman Committee of World War II. In January, 1951, Representative Celler stated that the Committee would investigate the "effect upon monopoly power of the proposed expansion of the aluminum industry."[44] To discover just what was happening the Committee called witnesses from both government and industry.

Among government officials interrogated by the Committee were Jess Larson now head of the General Services Administration and D. Marlett of the Defense Power Administration. Larson was rather vague on Administration plans, while Marlett indicated that even with increased aluminum production there would be a shortage.[45] Later the Committee heard H. G. Morison of the Antitrust Division of the Justice Department. Morison introduced a new subject when he indicated the Justice Department wanted more aluminum to go to small users of the metal who did not reduce the ore themselves.[46] While Celler spent several days learning about various aluminum industry problems, he did not get the details of the Administration's expansion plan.

The Committee's report to the House on the aluminum hearing reflected Celler's unawareness of the total situation

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[44] Celler Committee, Aluminum, Jan. 22, 1951, p. 1.

[45] Ibid., pp. 10-11.

[46] Ibid., Jan. 25, 1951, p. 12.

He stated that government officials agreed that concentration in aluminum made it difficult for new producers to get started. He chided Alcoa for newspaper advertisements stating that there was plenty of aluminum, and lastly, he lamented that the 17,000 non-integrated users of aluminum were the first to suffer when a shortage of the metal occurred.[47] The report did not mention either Marlett's remark that two new producers were being established or that it was Administration policy to assist new firms to enter the aluminum reduction business.[48] This report is difficult to understand, since the Committee had heard expansion was planned but did not bother to obtain detailed information on it.

The Administration spent the greater part of 1951 concluding arrangements with new aluminum producers and granting some expansion to the big three. In his 1952 State of the Union Message the President remarked that the United States was in the second year of a three year expansion program.[49] A few days before the President had told the Public Affairs Institute that expanding aluminum production was difficult because, "you can't make the people who control

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[47] U. S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, Aluminum, House Report 255, 82d Cong., 1st Sess., Nov. 13, 1951, *passim*.

[48] Celler Comm., Aluminum, Jan. 22, 1951, pp. 4-11.

[49] State of the Union Message, Jan. 9, 1952, Truman Papers, Records of the Official White House Reporter, Truman Library.

those things believe that it is necessary to increase production."[50] In the midst of the expansion program Representative Celler again expressed his concern over the fate of small users, asking the President to increase purchases of ingot aluminum from Canada. Truman agreed that the Canadian production would be a great aid, but he did not discuss the problem of integrated producers with the Congressman.[51] The lack of coordination between the President and Celler can only be explained in terms of poor communication.

Aside from Celler's complaints, the big three continued to oppose the President's expansion plans. Reynolds argued that increasing Canadian production would aid Alcoa since there had been a close tie between the companies befor the antitrust case of 1950. Any increase in production could easily be accomplished by the existing producers. The plea brought one of Truman's strongest statements on aluminum expansion:

> I shall continue to put forth every effort of which I am capable to increase the aluminum production both in Canada and in this country.... While we have succeeded in getting some competition for Alcoa the competitors have become almost as tightfisted about further competition as Alcoa always has been.[52]

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[50]Harry S. Truman to the Public Affairs Institute, Jan. 8, 1952, Truman Papers, OF 541, Truman Library.

[51]Emanuel Celler to the President, Jan. 18, 1952, Harry S. Truman to Emanuel Celler, Jan. 21, 1952, Truman Papers, OF 541, Truman Library.

[52]R. S. Reynolds to the President, Mar. 11, 1952, Harry S. Truman to R. S. Reynolds, Mar. 17, 1952, ibid.

This view left little room for doubt on the Presidential position, and yet publicly there was still confusion of the sort that Celler magnified.

Evaluating the success of the aluminum program presents certain problems. In the broad view it appeared rather successful; the industry had one producer in 1945 and five in 1953. If, however, one looks at the industry's continued concentration it must be admitted that newcomers could enter the business only with aid from the federal government. The Aluminum Expediter reported with some pride on the Administration's progress during Truman's final days in office. He noted the three "rounds" of expansion: first Kaiser and Reynolds, second Anaconda, and third Olin and Harvey.[53] Since the first two stages had been completed and the final stage was well under way the Expediter concluded that the surplus property law of 1944 had been properly administered. Defending the Administration's establishment of integrated producers, he stated that these were the only kind that could compete with Alcoa. Those who wanted just ingot producers were not considering the overall competitive situation. In general he showed pride in the accomplishments of the Truman Administration during the post-war and Korean War crises.[54]

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[53]Lack of WAA records leaves the situation confused. but apparently Anaconda and Harvey worked together in one plant, but both have single ownership of others.

[54]Aluminum Expeditor's Report to the President, Jan. 2, 1953, Truman Papers, OF 541, Truman Library.

Another way to measure Administration success in this industry is to note the speed and methods by which competition was introduced. The courts were, as usual, reluctant to break up an integrated producer like Alcoa; thus the creation of competition by surplus sales became the major means of federal action. This was done, as has been shown, to the extent that Alcoa no longer held fifty per cent of the total capacity. The development of new producers and Alcoa's surrender of patents led to an industry highly concentrated, to be sure, but competitive. The real success was the manner in which competition was obtained; new firms were soundly established without court-ordered divestment of the old monopoly. The last measure of success was the continued decentralization during the Korean War. While other industries were concentrating, three new producers entered the aluminum field and the percentage produced by the industry's old members declined. This was a sound example of industrial expansion without undue concentration and with a minimum of government interference.

In one area success was more limited. Production of ingot aluminum for non-integrated users lagged behind demand and the Administration did little to solve the problem other than to continue low tariffs on Canadian aluminum. While great need for competition among integrated members of the industry was the reason for so little attention to this problem, it hindered small fabricators during the emergency period.

The Administration also failed to communicate its policies to Congress and the public alike. Outside executive circles there seemed to have been little knowledge of the 1951 expansion plan. The delving of the Celler Committee into some problems already solved indicated that congressmen knew nothing of the President's program. This gulf between executive and legislative branches during the Truman Administration has been described as one of the major factors for failures and frustrations in carrying out Administration programs.[55] Had Celler known more about the Administration's plan he might have been of greater aid in solving new problems rather than retracing ground already investigated by the executive. This problem is all the more perplexing when it is realized that Celler and Truman were on good terms and that weekly reports of the Committee's work were sent to the President. The failure might have been in the area of organization and communication at the secondary level in the Administration.

A final evaluation might conclude that the aluminum program was the high spot in the Administration's resistance to concentration and its use of non-litigative techniques in the antimonopoly struggle. It is unique in that the conflict started before Truman became President and continued after he left office. The length of this battle waged against monopoly reiterates the old adage of "eternal vigilance" as the "price of freedom" in any endeavor.

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[55]Personal interview with William Johnson, June 16, 1960.

CHAPTER IV

TRADITIONAL ANTITRUST ENFORCEMENT: THE JUSTICE DEPARTMENT

Freedom of economic opportunity has traditionally been considered a basic tenet of American life. Dating from Jefferson's proposal to include freedom from monopoly among natural rights, down through the Sherman Act of 1890 and the Clayton Act and other amendments, the American people have opposed monopoly. Since 1890 the task of limiting monopolistic activities has been entrusted to the Justice Department. Within the department an Antitrust Division under the direction of an assistant Attorney General has operated since 1903. The difficulties faced by this unit involve developing working definitions of "monopoly," "restraint of trade," and other terms important in enforcing the laws.

Devising such definitions constitutes the basic problem in antitrust enforcement. Although everyone apparently opposes monopoly, seldom is there agreement on just what it is. The struggle to maintain a competitive economy requires a combination of executive leadership, congressional support and judicial cooperation.

Since the Antitrust Division operated as a subordinate unit of the Justice Department, its ultimate direction had to come from the President. Harry Truman, while never known as a "trust-buster," constantly supported antimonopoly efforts. His State of the Union messages called for "restriction of monopoly and unfair business practices,"[1] "economic growth through competition,"[2] "strengthen[ing] our antitrust laws by closing their loopholes that permit monopolistic mergers and consolidations,"[3] and for "curb[ing] monopoly and aid[ing] small business."[4] Truman also stressed antimonopoly in his Budget messages. Year after year he asked for increased funds so that the Antitrust Division could apprehend "violation of the antitrust laws,"[5] "strengthen enforcement of the antitrust laws,"[6] "protect free enterprise" from predatory monopolies,[7] or "remove obstacles to

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[1]State of the Union Message, Jan. 6, 1947, Truman Papers, Records of the White House Reporter, Truman Library.

[2]*Ibid.*, Jan. 7, 1948.

[3]*Ibid.*, Jan. 4, 1949.

[4]*Ibid.*, Jan. 5, 1950.

[5]President's Budget Message for Fiscal 1948, Jan. 10, 1947, White House Press Releases Nov. 1, 1946-Jan. 31, 1947, Truman Library.

[6]President's Budget Message for Fiscal 1949, Jan. 11, 1948, White House Press Releases Nov. 1, 1947-Jan. 31, 1948, *ibid*.

[7]President's Budget Message for Fiscal 1950, Jan. 12, 1949, White House Press Releases Nov. 1, 1948-Jan. 31, 1949, *ibid*.

/small business/ survival as independent competitive enterprises."[8] Another indication of the President's attidude toward monopoly control was revealed when he spoke at a "Truman Day" celebration in St. Paul, Minnesota. In listing the important tasks of his Administration he placed antitrust third after stable prices and good wages.[9]

Although there seemed to be no doubt about Truman's attitude toward antitrust matters, his statements were generally broad to the point of vagueness. Secretary of the Treasury John Snyder once commented that all the talk about strengthening the laws had resulted in only one legislative effort, a slight change in Section Seven of the Clayton Act.[10] The Justice Department also requested that proposals in the 1950 State of the Union Address on antitrust be "concrete" rather than vague.[11] But since the President's plans were couched in generalities, interpretation and application would have to come from the Department itself.

The next most important official in the chain of command below the President on antitrust matters was the

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[8] President's Budget Message for Fiscal 1951, Jan. 9, 1950, White House Press Releases Nov. 1, 1949-Jan. 31, 1950, ibid.

[9] New York Times, Nov. 4, 1949.

[10] John Snyder memorandum on the President's Economic Message for 1947, Dec. 22, 1946, Truman Papers, OF 346, Truman Library.

[11] The Attorney General to the President, Nov. 1, 1949, OF 419 F, ibid.

Attorney General. During the Truman era there were four men in charge of the Justice Department; but two, Tom Clark and J. Howard McGrath, were in power all but a few months. Shortly after Clark took office he wrote an article in a well known business magazine stating that since the anti-trust laws were now well defined by numerous court decisions, he would increase enforcement as rapidly as time and money were made available.[12] Later Clark was quoted as saying that his Department would step up action against price-fixing agreements that increased the cost of living.[13] Developing this theme he told the Celler Committee that anti-trust actions were directed toward either price-fixing or big firms that misused their economic power. The first, he said, was easier to enforce because it did not involve divestment, a step that the courts were often reluctant to take.[14] Other antimonopoly techniques developed by Clark included the establishment of an antimerger unit to check the ever increasing number of mergers, and a special study of interlocking directorates which tended to reduce competition.[15] Reviewing his term as Attorney General Clark

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[12]Tom Clark, "My Job as I See It," Nation's Business, XXXIV (Jan., 1946), pp. 21-22, 101-102.

[13]New York Times, Aug. 22, 1947.

[14]U. S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee of the Judiciary, Study of Monopoly Power, 81st Cong., 1st Sess., Serial No. 14, Part 1, July 11, 1949, pp. 79-95.

[15]New York Times, Mar. 20, 1947, Oct. 11, 1947.

noted that most investigations resulted from complaints by businessmen themselves, and that the Department never equated bigness with badness, but always looked for misuses of economic power.[16]

Clark's successor, J. Howard McGrath, also stressed the importance of the antitrust laws, remarking to several groups that they were the "keystone of [the] economy."[17] McGrath took office in August, 1949, during a period of high antitrust appropriations and good congressional relations. However, within the next two years the Korean War disrupted normal functions and congressional rapport declined sharply. Also the scandals in the Internal Revenue Division affected the morale of the whole Department leaving little hope for effective enforcement after early 1952.[18]

Before these military and personnel problems developed, however, McGrath had assisted the Division in an expansion which included several new field offices and a major

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[16] _Ibid._, Dec. 14, 1949.

[17] Speech to the U. S. Wholesale Grocers Association, Mar. 12, 1950, _New York Times_, Mar. 13, 1950; Speech to the National Association of Automobile Dealers, Feb. 7, 1950, _New York Times_, Feb. 8, 1950.

[18] During 1951 rumors of special treatment in tax cases led to the firing of several district directors of internal revenue, and finally to the removal of Assistant Attorney General in charge of revenue, T. Lamar Caudle. The Justice Department was violently shaken when Truman's special investigator, Newbold Morris, was removed by McGrath who in turn was quickly replaced by James P. McGranery in April, 1952.

test case on oligopoly.[19] Even after the Justice Department had been rocked by scandals, the Attorney General continued to support the Antitrust Division, protesting violently the appropriation cut for fiscal 1953 suggested by Congress.[20] Although McGrath's removal reflected a sharp conflict between him and the President, he had been a staunch friend of antitrust enforcement while in office.[21]

Since the Attorney General's duties included much more than antitrust, it is necessary to investigate the directors of the Division itself to understand its operations adequately. There were five Assistant Attorney Generals in charge of the antitrust efforts between 1945 and 1953. The Division could not help but suffer to an extent from this turnover, since even though new directors were usually either transferred from another division or promoted within Antitrust, a new head took some time to orient himself. A brief view of these men might indicate how the unit operated.

When Truman became President Wendell Berge was the Division head. Although he had been in the agency since the late 1930's and had risen to the directorship during

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[19] Annual Report of the Attorney General for the Fiscal Year Ended June 30, 1949 (Washington: U. S. Government Printing Office, 1949), pp. 19-20.

[20] U. S., Congress, House of Representatives, Subcommittee of the Committee on Appropriations, Hearings, Departments of State, Justice, Commerce, and the Judiciary Appropriations for 1953, 82d Cong., 2d Sess., Jan. 21, 1952, p. 7. Hereafter cited as Appropriations Hearings for 1953.

[21] See below p. 80 for McGrath's defense of the Division during the A. and P. case.

the war, he had not been able to carry out a broad program of enforcement because of wartime restrictions. At the end of World War II Berge was one of the first to note the danger of postwar industrial concentration carried out with wartime profits. He stated that there were, as yet, no specific plans but indicated that mergers would have to be limited.[22] On a speaking tour shortly before his resignation, Berge frequently referred to active antitrust law enforcement as the best way to keep prices low and competition high.[23] Berge, in his letter of resignation, told Truman that he was forced for financial reasons to return to private law practice but that he still wholeheartedly supported "vigorous enforcement of the antitrust laws."[24] A news story related that most businessmen were glad to see Berge retire because of his strong New Deal attitude.[25]

Wendell Berge was followed by John F. Sonnett who held the office for less than a year. Sonnett, who had achieved some fame as the government's attorney in the strike injunction case against John L. Lewis in 1946, desired to return to private practice, but on Truman's urging agreed

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[22]Speech at Washington, D. C., Sept. 20, 1945, Truman Papers, OF 10, Truman Library.

[23]New York Times, May 4, 1947.

[24]Wendell Berge to the President, Jan. 30, 1947, Truman Papers, OF 10, Truman Library.

[25]New York Times, April 12, 1947.

to take over direction of the Antitrust Division.[26] During Sonnett's tenure there was no great action within the Division and not much business comment on the director. Truman's letter of thanks to Sonnett after the latter's resignation indicated that his major task had been to reorganize the unit. Sonnett apparently felt the task was completed because when he resigned he stated that the Division was "sound and operating well."[27] Having been relatively inexperienced in monopoly law, Sonnett made fewer speeches and remarks than most directors but he did note that economic freedom required as much vigilance as any other kind; antitrust cases were not government interference, but a means of protecting a basic American right.[28]

In June, 1948, Attorney General Clark appointed Herbert Bergson to head the antitrust unit. Bergson had been in the Division for several years and thus was well experienced in antitrust law enforcement.[29] The new director hoped to make the Division more active than it had ever been. He told a reporter when asked about seven new indictments, "we are out T.R.ing them."[30]

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[26] Harry Truman to John Sonnett, May 15, 1948, Truman Papers, OF 10, Truman Library.

[27] John Sonnett to the President, Apr. 15, 1948, _ibid_.

[28] _New York Times_, Nov. 10, 1947.

[29] The Attorney General to the President, June 3, 1948, Truman Papers, OF 10, Truman Library.

[30] _New York Times_, Sept. 25, 1948.

Bergson, who held the position for over two years, directed the unit during a period when appropriations were high and support from McGrath and Congress was good. He became a fairly well known speaker, defending antitrust law enforcement before the New York Bar Association and various business groups.[31] An outspoken critic of fair trade laws, he made many small business people unhappy with remarks like: the laws "lead to monopoly" or that they "undermine the basic tenets of a competitive economy."[32] Bergson resigned in September, 1950, without giving a specific reason, stating that Truman's "philosophy" had been "a constant inspiration" to his work.[33] The President replied with a warm letter reviewing Bergson's work and thanking him for a "fine" job.[34]

Following Bergson, McGrath appointed H. Graham Morison to the position. Morison was also a longtime government employee, having spent several years with the War Production Board and the Claims Division of the Justice Department. In recommending his appointment the Attorney General

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[31] Speech to the New York Bar Association, Feb. 18, 1949, New York Times, Feb. 19, 1949; Speech to the Beer Wholesalers Association, May 9, 1950, New York Times, May 10, 1950.

[32] New York Times, May 24, 1949.

[33] Herbert Bergson to the President, Sept. 6, 1950, Truman Papers, OF 10, Truman Library.

[34] Harry Truman to Herbert Bergson, Sept. 13, 1950, ibid.

said Morison would be of special aid because, as an expert in legal matters, he would be able to direct the many cases currently in court.[35] Since Morison took over the Division after the outbreak of the Korean conflict, he was faced with the new problem of antitrust law enforcement under partial mobilization.[36] Although he stated that the Division would file as many cases as possible, it was not long before the defense effort consumed most of the unit's time.[37] The new director also faced a difficult situation when scandals occurred in the Justice Department and Congress began to reduce non-military spending. Morison's task became so difficult that he finally asked the President to release him as soon as convenient.[38] The President did so and commended Morison for capable work under difficult circumstances.[39]

During June, 1952, Holmes Baldridge was transferred from the Claims Division to Antitrust and headed that unit until January 20, 1953. There were few references to Baldridge except for Truman's farewell letter in the last days of his Administration when the President thanked Baldridge

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[35]The Attorney General to the President, Sept. 15, 1950, ibid.

[36]See below pp. 207, 211 for wartime antitrust enforcement.

[37]*New York Times*, Jan. 25, 1951.

[38]H. Graham Morison to the President, June 13, 1952, Truman Papers, OF 10, Truman Library.

[39]Harry Truman to H. Graham Morison, June 21, 1952, ibid.

for directing the Division during the final months of the Administration.[40] The latter part of 1952 was not particularly active in the Antitrust Division.

Although these individuals conducted an operation which directly affected the economic life of most Americans, there was little discussion or criticism of anyone below the rank of Attorney General. Public opinion, while frequently encountered, was almost always concerned with specific cases. Even there, however, it can be noted that both support and opposition were directed toward "big government" in general or the President in particular. Very seldom did either a commentator or a company spokesman refer to anyone in the Justice Department. One reason for this was, no doubt, the rapid turnover in directors of the Antitrust Division. Since a normal case spanned approximately five years, two or three Assistant Attorney Generals would have directed it at one time or another. Criticism of antitrust cases was almost always conducted in general terms because a specific target, except the President, was not available.

An important aspect of antitrust law enforcement during the Truman Administration was the nature of the cases instituted. When enforcing the antitrust laws, the Justice Department stressed various objectives, depending upon current economic conditions. From the end of the war until the

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[40] Harry Truman to Holmes Baldridge, Jan. 13, 1953, ibid.

recession of 1949 the major aim was to hold or reduce the cost of living by attacking price-fixing schemes. After prices leveled off increased attention was directed toward oligopolies, with the aim of reducing their economic power. Finally, the Antitrust Division spent most of its time after June, 1950, enforcing provisions of the Defense Production Act or allied legislation. Although during no period was only one kind of case instituted, this general pattern prevailed during the Truman Administration.

Tom Clark announced in 1947 that the Department would intensify investigations of price-fixing in order to fight inflation.[41] Proof of this came with the indictment of the real estate agents of Washington, D. C., for increasing their commission rate through a collusive agreement.[42] Early the next year a secret investigation of steel prices was begun for the purpose of determining if collusion had any part in postwar price increases.[43] No indictments resulted from this study but it indicated the focus of the Division's attention.

One aspect of the price-fixing investigations involved an attempt to clarify how much power firms holding

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[41] New York Times, Aug. 22, 1947.

[42] Ibid., Aug. 28, 1947.

[43] Charles Ross to the President, Feb. 21, 1948, Truman Papers, OF 342, Truman Library.

patents had over the prices charged by companies licensed to use their patents. There were two major cases during 1949, United States v. United States Gypsum Company and United States v. Line Materials Company, in which the government stated that the companies granted other firms the use of a patented process only after agreements were reached fixing prices and eliminating competition.[44] The government won its case against the Gypsum Company when the Supreme Court agreed that price-fixing was not part of the patent grant.[45] Line Materials Company also was found guilty by the Supreme Court and its price setting technique declared illegal.[46] These two victories opened the way for many cases in which patents were involved and Business Week reported that Clark had at least nine other indictments in mind.[47]

Patent problems led to several studies on the relationship of patents to monopoly. Since a patent constituted a temporary legal monopoly, it was difficult to determine exactly what limits should be applied. The Attorney General compiled a massive report which tended to support the thesis that patent grants were too broad and assisted

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44 Business Week, Mar. 13, 1949, p. 20.

45 The Federal Antitrust Laws (New York: Commerce Clearing House, Inc., 1952), pp. 230-31.

46 Ibid., pp. 320-21.

47 Business Week, Mar. 13, 1949, p. 20.

monopoly,[48] while several congressional hearings came to the conclusion that any major change in the patent laws would reduce industrial research and development.[49] An academic survey indicated that while almost everyone connected with patent rights supported some changes, no agreement could be reached on just what modifications should be made.[50] Thus the cases involving the use of patent licenses to set prices were settled on an individual basis and the long range implications were not clearly drawn before 1953.

A second catagory of antitrust cases involved actions against companies controlling a large portion of their industry. In January of 1949, a business magazine warned that the antitrusters were going to change direction and investigate individual big businesses rather than illegal cooperation on prices.[51] Although this type of case had never been eliminated there was a marked increase in indictments during late 1948 and early 1949. After General Electric and

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[48]The Attorney General, Report and Recommendations of the Attorney General to the President on the Investigation of Government Patent Practices and Policies (3 vols.: Washington: U. S. Government Printing Office, 1949), passim.

[49]U. S., Congress, House of Representatives, Subcommittee No. 3 of the Committee on the Judiciary, Hearings, Our Patent Policy, 79th cong., 2d Sess., 1946, passim; ibid., Hearings, Patent Law Codification and Revision, 82d Cong., 1st Sess., Serial No.9, 1951, passim; ibid., Hearings, Patent Extension, 82d Cong., 1st Sess., Serial No. 10, 1951, passim.

[50]Donald Dewey, Monopoly in Economics and Law (Chicago: Rand McNally, 1959), pp. 176-77.

[51]Business Week, Jan. 22, 1949, p. 15.

the American Telephone and Telegraph were indicted, it was reported that Clark was now out after big business in general.[52] One magazine had reported earlier that 1948 would be the year when many of business' "blue bloods," would be indicted because of the election.[53] Although Business Week's editors had once noted that the Republicans would try to slow Truman's attack on big business by holding back appropriations because they could not openly oppose antitrust,[54] a Republican Senator, Ralph Flanders of Vermont, insisted that a bias against big business was not a partisan matter and that "antibigness" could be found from the TNEC right down to some Republican members of the Eightieth Congress. Flanders himself did not criticize bigness but he reported quite bluntly that this view was part of the American tradition and in some instances voluntary dissolution would be the only way to stop public criticism.[55] According to most authorities big business was clearly under attack by 1949.

The best example of an indictment based on size *per se* was the 1949 indictment of the Great Atlantic and Pacific Tea Company. This firm had been involved in numerous small antitrust actions over the years, but the new case

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52 *Ibid.*, Jan. 29, 1949, p. 26.

53 *Ibid.*, Jan. 3, 1948, pp. 21-22.

54 *Ibid.*, Dec. 5, 1946, p. 5.

55 Ralph Flanders, "Must We Curb Success," *Nation's Business*, XXXVII (May, 1949), pp. 29-30, 62-64.

was the first attempt to destroy the firm's economic dominance in the grocery field by dividing it into several small chains. Division attorneys argued that the A. and P. was using its "dominant position in the industry . . . to control policies and practices in the production, processing, manufacturing and distribution . . . of local products throughout the United States."[56] A government victory would have great impact because the company, while the largest in its field, controlled less than ten per cent of grocery sales in the country. Success would open the door to many cases against oligopolies. While the court supported the government's contentions about the firm's economic power, it refused, in the years after the Truman Administration, to break the chain into several firms, agreeing only to separation of produce buying and distribution functions of the company.[57] The uniqueness of this clash was not so much the ultimate outcome, but rather the newspaper battle fought between A. and P. and the government. The company took its case to the people and the result was a propaganda clash second to none in antitrust annals.

The Attorney General's annual report for 1950 noted the A. and P.'s nationwide advertising campaign and called the case the Department's biggest.[58] McGrath also referred

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[56] The Federal Antitrust Laws, p. 313.

[57] Dewey, Monopoly in Economics and Law, p. 244.

[58] Annual Report of the Attorney General for the Fiscal Year Ending June 30, 1950 (Washington: U. S. Government Printing Office, 1950), pp. 70-71.

to the case at least twice, telling a drygoods association that the A. and P. was using the press to cloud the issues because it knew it was guilty, and noting to reporters that A. and P. was not being attacked because it was big but because it misused its power.[59] Herbert Bergson used even stronger language when he referred to the claim that the case was instituted because the firm was large, as an "absurdity." He said the chain used illegal methods and it was the Antitrust Division's duty to stop it.[60] Taking the opposite view, Greg McGregor wrote in the New York Times that a government victory would disrupt the whole nation's retail system and increase prices.[61] H. Walton Clarke joined in defending the chain, noting that it had grown because it was willing to accept a small profit on its sales.[62]

More evidence that the company was not friendless came from public opinion mail. This case engendered more mail than had any previous antitrust case. Most correspondents opposed the government action against the A. and P., declaring that the Democrats attacked all successful business, that Truman was "playing for votes," or that the Administration was run by "dopes and Jew lawyers." There were those who agreed with the government, but they were less

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[59] New York Times, Je. 9, 1950; ibid., Oct. 18, 1949.

[60] Ibid., Dec. 7, 1949.

[61] Ibid., Sept. 18, 1949.

[62] Ibid., Sept. 29, 1949.

numerous. These citizens felt that the company had violated the law and was now trying to escape by a publicity smoke screen. A small grocer wrote that he had received a one pound, seven ounce package of advertisements and editorials defending the A. and P. His response was to ask the President to put the whole group in jail and pass stronger laws. One small business group wrote to protest the "false" A. and P. advertisements, offering support for the case.[63] In general, however, the public gave more support to the company than to the government.

This failure to sell the public on the A. and P. case was a serious problem for antitrusters during the Truman Administration. Seldom if ever did the government get good press response on its indictments. The _New York Times_ columnists noted above typified press reaction. The problem prompted a supporter, Julien Elfenbein of the Business Newspaper Editors Association, to write to Bergson telling him that the government needed propaganda equal to or better than that of A. and P.'s. The Division, he said, had to convince the public that antitrust cases were to its advantage.[64] Modern communication methods tended to put all controversies into the public arena, and if one party failed to sell its case, as the Truman Administration had, the real issue might well be lost.

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[63]Various letters to the President, Mar., 1949-Feb., 1950, Truman Papers, OF 277, Truman Library.

[64]Julien Elfenbein to Herbert Bergson, Jan. 16, 1950, _ibid_.

The two other most important cases handled by the Department during this period involved large firms, but they were attacks on other aspects of monopoly. A unique use of the antitrust acts occurred in the United States v. Columbia Steel Company in 1947. In this action the government tried, for the first time, to stop a merger prior to its completion. The government attorneys argued that the purchase of the Consolidated Steel Corporation by Columbia, a subsidiary of United States Steel, would eliminate west coast competition in rolled steel and fabricated products between U. S. Steel and the company to be purchased. The Attorney General called the case "novel" since it involved fighting concentration at its very roots by halting a merger.[65] The court ruled against the government, however, saying that since there was no competition between the two firms on the west coast "no unreasonable restraint of trade or monopoly action . . . would result from consummation of the purchase."[66]

Justice William O. Douglas dissented vigorously, calling the litigation "the most important antitrust case which has been before the court in years."[67] He argued

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[65]Annual Report of the Attorney General for the Fiscal Year Ending June 30, 1947 (Washington, U. S. Government Printing Office, 1947), p. 28.

[66]The Federal Antitrust Laws, p. 351.

[67]United States v. Columbia Steel Co., 334 US 495.

that United States Steel wanted to avoid competition and to assure a market for its Geneva, Utah, plant. The decision, he thought, was wrong because it set no limit on bigness in an economy where size meant strength.[68] Despite Douglas' view, the court held that the restraint of trade would not be "unreasonable."

The failure to stop concentration in this manner led to demands for more specific antimerger legislation which would establish more clearly the circumstances when mergers could be stopped. This will be discussed below,[69] but it can be pointed out here that before and after the legislation the Antitrust Division had little power to stop mergers.

The other case was even more interesting since the court held the Aluminum Company of America to be a monopoly. The basic petition had been filed in 1937, but with World War II and other intervening problems, it was not concluded until 1945. The final decision was rendered by a special court under Judge Learned Hand because the Supreme Court could not secure a quorum. The issue was whether Alcoa's monopoly was illegal since it had not developed by illegal practices. The court held it was illegal and based its

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[68]Simon Whitney, Antitrust Policies (New York: The Twentieth Century Fund, 1958), I, pp. 275-76.

[69]See pp. 127-32.

decision on Section two[70] of the Sherman Act which had long been ignored. Judge Hand noted that Alcoa expanded as rapidly as the market, controlled most plant sites and raw materials and presented too massive a power for competitors to enter the field. He concluded that all this was not an accident; Alcoa's capacity always to forestall the need for additional producers was illegal. Under these circumstances it appeared that the Antitrust Division would obtain a divestment order.[71]

Dissolution, however, entered the court's decision only in an indirect way. Since the war had made the government owner of over half of the nation's aluminum production, dissolution would only be used if government plant sales did not develop competition. As shown above[72] the work of WAA and others resulted in some competition, and Alcoa avoided the court's ultimate wrath.[73]

This case set off a series of legal actions in which Alcoa attempted to have the label "monopoly" removed after some government facilities were leased to other producers. Litigation dragged on through all levels of the judiciary

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[70]"Every Person who shall monopolize . . . shall be deemed guilty," The Federal Antitrust Laws, p. 7.

[71]George Stocking and Myron Watkins, Monopoly and Free Enterprise (New York: The Twentieth Century Fund, 1951), pp. 288-90.

[72]See above pp. 50-53, 57-60.

[73]The Federal Antitrust Laws, p. 176.

from 1947 until 1950 when the court declared that Alcoa still maintained a monopoly position. The Division again failed to obtain divestiture, securing only a stock separation between Alcoa and Aluminium Limited, its Canadian subsidiary. The case was kept open for five years to assure that the stock was transferred, and the Attorney General was to be informed of any sales of 50,000 or more shares of Aluminium Limited. Thus in an action which lasted from 1937 to 1955 the court upheld the Antitrust Division's view in most of its accusations, but consistently refused to follow the Division's request to dissolve Alcoa.[74]

From the above cases it was clear that the Division did not limit itself to any particular type of case during a specific period. However, the interest in size _per se_ as a means of regulating oligopolies was much more evident after late 1948. _Business Week_ feared that this "attack on bigness" would change the whole pattern of American commerce,[75] but a close look at court actions both before and after 1949 could have assured the editors that the courts were not going to disrupt the economic life of the country. Donald Dewey held that no court would go so far as to unsettle the business life of the whole country, so there was little real danger of widespread "trust busting."[76]

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[74] _Ibid._, p. 177.

[75] _Business Week_, Nov. 12, 1949, p. 26.

[76] Dewey, _Monopoly in Economics and Law_, pp. 254-55.

This conflict between the courts and the Antitrust Division was one of the most difficult problems faced by the antitrusters. H. Graham Morison described this difficulty to the Celler Committee. His department, he said, did not judge "good" or "bad" monopolies; it simply instituted a case against an offender and if the court felt the business or industry was a "good" trust the government lost the case. Morison hoped that Congress would legislate more precisely about what monopoly practices should be indicted and which should be ignored.[77] One of Morison's aides took an even stronger stand when he indicated that there were no "good" monopolies. A benevolent monopoly, he argued, was no better than a benevolent dictator.[78] This difference in view meant that "trust busting" could be a very disheartening task.

The basis of the court's position was well described by Donald Dewey. He indicated that the courts would be "reluctant to order dissolution and divestiture," because by its nature the judiciary tended to preserve a system, and in this case the system was one of private property. Little trust busting would be tolerated by the courts "because it [a government suit] seeks [sic] a deliberate unsettling of property rights that offends [sic] the conservative bias

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[77]U.S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, Hearings, Aluminum, 82d Cong., 1st Sess., Serial No. 1, Part 1, Jan. 25, 1951, pp. 11-12.

[78]*Ibid.*, p. 14.

of the courts."[79] From the above examples this belief seemed to be well supported.

In addition to this conflict of views with the judiciary there were several other problems faced by the Division. Like all parts of the Executive the Justice Department had to appear each year before an appropriations subcommittee. After a general survey of departmental needs by the Attorney General the various division heads appeared individually. The Antitrust Division's appearances before New York Representative John J. Rooney's subcommittee usually involved two distinct features. First, the Division would have to describe its work during the previous year and on this basis make financial requests for the year to come. Second, it would have to hear how Rooney and other committee members would run the Division. Getting money for the antitrust unit had all the aspects of a baseball pitcher negotiating a new contract. A poor year frequently would be followed by a pay cut. The resultant financial insecurity tended to weaken the Division.

The hearing in 1951 was indicative of this situation. Rooney complained to Morison that in some previous years the Division had won more cases even though appropriations had been smaller. Morison tried to explain that the number of prosecutions was less important than the type of case.

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[79] Dewey, Monopoly in Economics and Law, p. 308.

He indicated that one piece of litigation involving an important monopoly might be worth twenty-five or thirty small cases.[80] Rooney did not agree with this explanation and replied that retrenchment might cause the Division to "weed out some of the chaff from the wheat."[81] Later Rooney asked the chief of the Division to explain how the fiscal 1950 appropriation had been spent. Morison outlined the expenditures noting that all but $2,000 of the $3,750,000 granted had been spent. When asked why this small sum had been returned to the Treasury, Morison replied that the Division "cut it tight." Rooney retorted, "it will be tighter."[82] This approach made long range planning difficult, and when Congress was in a retrenching mood there was little hope for sufficient money.

Not always, however, were funds for antitrust enforcement reduced. Like the pitcher who had a good year, or who talks a good game, the appropriation might go up as well as down. In 1948 Congress voted over $160,000 more than the Budget Bureau requested. This contrasts sharply with the 1951 action when $500,000 was cut from the requested

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[80]U.S., Congress, House of Representatives, Subcommittee of the Committee on Appropriations, _Hearings_, _Department of Justice Appropriations for Fiscal 1952_, 82d Cong., 1st Sess., Feb. 19, 1951, p. 236. Hereafter cited as _Appropriations Hearings for 1952_.

[81]_Ibid._, p. 237.

[82]_Ibid._, p. 239.

amount. Only once during the Truman Administration did Congress approve the amount requested in the budget.[83]

The other major problem with Congress was the second guessing in which committee members indulged. Year after year Rooney chided Division representatives for not warning violators prior to originating litigation. He felt that in most cases a warning would suffice, thus saving time and money. Morison explained that the Division required court support to obtain compliance from large corporations and that the Division already warned small firms. Despite the explanation, Rooney felt that immediate recourse to the courts was poor use of manpower.[84] These suggestions were, no doubt, in good faith, but it seems that a single yearly meeting between the antitrusters and Congress was not sufficient to provide Rooney with enough insight into antitrust problems for his criticisms to be particularly valid.

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[83]The appropriations for the Truman Fiscal years are as follows:

Year	Millions	Deviation*	Year	Millions	Deviation
1946	$1.875	$- 50,000	1950	$3.875	$ 100,000
1947	2.089	-------	1951	3.750	-238,000
1948	2.400	-100,000	1952	3.200	-500,000
1949	3.571	161,700	1953	3.500	-250,000

In some instances additional emergency appropriations were granted during the fiscal year; this is reflected in the total appropriations, but not in the differential. <u>Appropriations Hearings</u> for 1953, p. 129. *Amount above or below the budget request.

[84]<u>Appropriations Hearings for 1952</u>, pp. 240-47; <u>Appropriations Hearings for 1953</u>, pp. 117-20.

Another problem faced by the Division was the rapid turnover in staff. As noted above there were five Directors during the Truman Administration, the longest service running a little over two years. At lower levels in the staff the replacement rate was not as rapid, but it still presented a serious problem. When asked about this problem by Rooney, Morison said that the financial rewards of private practice were such that the Antitrust Division could hold attorneys only for an average of five years and economists an average of six.[85] The private demand was great because major firms wanted attorneys who were well acquainted with antitrust laws and their enforcement. Since government salaries were usually less than $15,000, it was easy for industry to lure staff members away.[86]

This rapid turnover led to organizational problems and low morale. In a letter to the President after the shake-up in 1952 when J. Howard McGrath was fired, H. A. Toulmin, Jr., an antitrust lawyer from Ohio, noted that the new Attorney General, Joseph McGranery, told him that antitrust was the worst Division in the department.[87] Since no corruption had been uncovered, it must be assumed that the poor condition of the Division was due to its organizational

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[85] Appropriations Hearings for 1952, p. 235.

[86] Personal interview with James Wilson, former Justice Department lawyer, Sept. 14, 1960.

[87] H. A. Toulmin, Jr., to the President, Oct. 25, 1952, Truman Papers, OF 10, Truman Library.

difficulties. Earlier, testifying to the appropriations subcommittee, Morison had stated that some staff problems could be solved by increasing the work load on experienced men, but that since he too was new this would take time. Representative R. L. Clevenger replied that it seemed to him he had heard this "new" argument every year. To this Morison had no reply.[88] The Antitrust Division then, like any organization, had a difficult time doing its job well when personnel changes destroyed much of its continuity.

All problems concerning antitrust law enforcement must be considered against a background of numerous comments. The fact that almost all Americans accepted and believed in the antitrust laws did not mean that everyone supported each case. In fact, in many circles it was popular to praise the law, but to damn most indictments. Truman indicated his feeling toward successful trust regulation when he answered a letter from Brian McMahan in which the Senator had proposed several antitrust prosecutions. The President said, "I do not mean to be cynical, but reflect how trusts have prospered during fifty years of the Sherman Act." He concluded with a note of hope, saying McMahan was "on the right track," but overall the picture was not bright.[89]

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[88] Appropriations Hearings for 1952, pp. 259-60.

[89] Harry S. Truman to Brian McMahan, Mar. 7, 1951, Truman Papers, OF 277, Truman Library.

The President's attitude toward antitrust actions was clear, although he did not take personal interest in very many cases. The evidence indicates that the President took special interest in only one indictment. This involved the Independent Motion Picture Producers. After an interview with Samuel Goldwyn and others the President wrote to the Attorney General asking that he "vigorously push the antitrust suits against the motion picture trusts."[90] The cases had been in court for some time, and it is hard to say if any greater speed resulted from this communication. It did prove, however, that in one case, at least, the President expressed direct interest. The overall evidence, or lack of it, clearly indicates that there was little direct White House involvement in the daily operations of the Antitrust Division.

In addition to general support for the Division from the President, some non-governmental sources expressed appreciation for the Justice Department's work. The Businessmen's League of the United States sent the Attorney General a resolution praising his work in several recent indictments.[91] A press release from the Public Forum of Spokane backed antitrust enforcement and chided Congress for not helping the

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[90]Harry S. Truman to the Attorney General, May 17, 1950, *ibid*.

[91]A. G. Kirkback to the Attorney General, Nov. 9, 1949, *ibid*.

President more.[92] An economist surveyed the situation and concluded that the real solution to the monopoly problem would come when the public elected congressmen who would support and a president who would enforce the laws.[93] Finally, the New York Times commented editorially on the need for antitrust enforcement saying that the laws should not be changed during an inflationary period. Antitrust actions should be continued so that the economy would remain free and competitive.[94] These views indicate that antitrusters were not without public support.

Statements critical of antitrust indictments were more frequent and heated. The attacks on antitrust law enforcement were usually based on a defense of big business as a positive good, or on the belief that indictments were political maneuvers to obtain votes. While some of these techniques were noted above in connection with the A. and P. case, many others were aimed at enforcement in general. A Standard Oil executive said that bigness was the result of technology and nothing else. Big firms were the heart of American business, he said, and the real advocates of

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[92] Copy of Public Forum of Spokane Resolution, Oct. 21, 1949, ibid.

[93] Earl Latham, Political Theories of Monopoly Power, Bureau of Governmental Research, College of Business and Public Administration (College Park, Md.: The University of Maryland Press, 1957), p. 15.

[94] New York Times, April 15, 1947.

competition.[95] The editors of Business Week called the Truman enforcement "A Blunderbuss Antitrust Policy," saying it was opposed to big business just because it was big. What was really needed, the magazine concluded, was a complete study of the laws by an impartial committee of Congress.[96] Another critic charged that the Antitrust Division seemed to act whenever a firm had low prices. He wondered why the government opposed lower prices and better living conditions for the people.[97] These statements show that big business was not friendless either.

Attacks based on political grounds were also fairly frequent. Arthur Krock complained that the President, like all Democrats, constantly called for antitrust action because he felt business was not basically honest. Krock believed that standard prices did not indicate price-fixing but rather a consistent lowest possible price. Thus the President was on the wrong track, and as long as the government looked into price-fixing instead of reducing taxes and ending burdensome regulations no real good would be accomplished.[98] A financial writer, Edward Collins, agreed with

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[95] Speech, E. Holman, Washington, D. C., Nov. 8, 1948, Truman Papers, OF 172, Truman Library.

[96] Business Week, Oct. 15, 1949, p. 128.

[97] J. B. Wood, "How Big is Monopoly?" Nation's Business, XXXVIII (Apr., 1950), pp. 62-68.

[98] New York Times, Jan. 13, 1949.

this view and reported that all the Democrats did was to talk about monopoly when the real danger was big government--the basic tenet of the party.[99] Another financial expert doubted the need for antitrust laws because World War II had increased purchasing power so much that demand would reduce concentration without government assistance.[100] Apparently all that was needed to make competition perfect was for the government to withdraw economic regulations completely.

A final area of protest involved the lack of clarity about what the antitrust laws meant. H. Graham Morison's desire for clear definitions, noted above, was often seconded by businessmen who wanted "an exact and detailed statement of what the antitrust law now is [sic]."[101] As desirable as an exact statement of the law's content would be, Attorney General McGrath pointed out that the Sherman and Clayton Acts must be "adapted to everchanging economic conditions."[102] Business leaders did not stop to consider that constantly evolving business techniques required everadjusting antitrust law interpretations.

In the final analysis it must be concluded that antitrust laws played only a small and limited part in the

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[99] Ibid., Jan. 20, 1949.

[100] J. A. Livingstone, "Is Big Business a Threat to You?" Nation's Business, XXXVI (Mar., 1948), pp. 41-45.

[101] Business Week, Aug. 18, 1951, p. 148.

[102] New York Times, Jan. 26, 1950.

overall battle against monopoly. The reaction of the courts, especially their unwillingness to dissolve large firms, made large scale success unlikely. One factor, although difficult to judge, was important. That was the limit on concentration and monopoly which existed simply by having the laws on the books. Corporation directors, as well as antitrust lawyers, never knew exactly what the court would do, so they frequently avoided too much merging or expansion. Elbert Gary was reputed to have given strict orders after the 1911 case against United States Steel that the company should not produce over 40 per cent of the nation's steel. While there was no proof of this statement the company did not expand as rapidly after this date and, in fact, sold some of its properties.[103] This "limited success" idea has some merit but it is clearly too vague to stop completely or markedly reverse the concentration trend.[104]

It can be said that the Antitrust Division's efforts during the Truman years were about the same as they had been before and would be afterwards. Antitrust laws continued to be more a threat than a positive controlling factor of large corporations. It seemed to be true that the antitrust laws and judicial interpretation resulted in "ground rules" under which oligopolies operated. These rules were more

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[103] Whitney, Antitrust Policies, I, p. 260.

[104] Dewey, Whitney, Stocking and Watkins in works already cited all take this general view, but vary on how effective this method is in keeping the economy competitive.

the work of courts than congress, and, although the Antitrust Division constantly tried to increase restrictions, few changes occurred. By 1952 it was clear that a firm could control from one-half to two-thirds of the production of an industry and be safe from antitrust action on the issue of size alone. Giant firms would have to be careful of how they used their economic power, but if the "ground rules" of good corporate conduct were followed there was little danger of government action.[105]

If the antitrust laws cannot effectively provide a climate of real competition then it is obvious that other means must be used. Some of these means have already been discussed, but these were aids to competition by indirection. The effort to aid small business directly, and certain legislation to control concentration, indicate a more positive side of the Truman Administration's attack on monopoly. These programs will be revealed after a discussion of the other litigative agency, the Federal Trade Commission.

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[105]Stocking and Watkins, Monopoly and Free Enterprise, p. 290.

CHAPTER V

TRADITIONAL ANTITRUST ENFORCEMENT: THE FEDERAL TRADE COMMISSION

It has been the task of the FTC since 1914 "to prevent the free enterprise system from being stifled or fettered by monopoly or corrupted by unfair or deceptive trade practices."[1] Fulfilling this rather broad order has resulted in sharp compartmentalization of the Commission, for in addition to litigation, the Commission staff has collected all sorts of information for the government and the public alike. During the Truman Administration the agency issued reports on price increases, reconversion, mergers, and other items of interest to the executive.[2]

The Commission's antimonopoly duties included only a small portion of its total effort. Specifically the FTC investigated violations of the Clayton and the Federal Trade Commission Acts involving restraint of trade through unfair practices, the Robinson-Patman Amendment of the Clayton Act

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[1] _Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1951_ (Washington: U. S. Government Printing Office, 1951), p. 1.

[2] Various items, 1945-53, Truman Papers, OF 100, Truman Library.

which limited chain store activities, exclusive dealing arrangements, mergers, and interlocking directorates. Most of the cases instituted during the postwar years fell into restraint of trade through unfair practices.[3] Since interest here is limited to antitrust actions, other aspects of the Commission's activities will be excluded except when they were concerned with antimonopoly.

Successful antitrust enforcement, difficult because of the large number of duties performed by the FTC, was hindered even more by the "shot gun" method of indictments which led to little or no pattern in investigations or indictments. This was improved drastically by changes made in 1946 when, at the President's request, a general reorganization of the agency took place. The new plan divided the FTC into divisions, each handling a precise task. Commissioner Lowell Mason commended the President for ending the old "hit or miss" approach and for establishing an enforcement program which concentrated on one industry at a time. It was also hoped that litigation would be more successful and less frequent since violators would now be warned through the new Division of Stipulations.[4] Later the FTC

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[3]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1950 (Washington: U. S. Government Printing Office, 1950), pp. 38-39.

[4]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1946 (Washington: U. S. Government Printing Office, 1946), pp. 2-6.

reported that "voluntary corrective actions" usually took place without legal action following a warning by the new division.[5] This streamlining seemed to improve efficiency and assist in more adequate investigations.

Although the reorganization improved the agency's operation, there were other factors which limited its effectiveness. Since the FTC was an independent regulatory agency, its legislative basis required that it be bipartisan and independent from the executive. This could lead to disagreements between the President and the FTC or among the commissioners themselves. Moreover, since a member cannot be removed except for cause this conflict was unavoidable. The bipartisan nature of the agency was complicated even further by the fact that the commissioners served a seven year term. This meant long periods of over-lapping membership from previous administrations, or possibly drastic changes of opinion by the commissioners during a single term. The FTC, then, was slow to reflect the exact views of the President, and in some instances might never do so.

Truman was President long enough to have the opportunity to appoint all five members of the FTC. His selections varied greatly and provided the Commission with widely divergent points of view. Truman's first appointment to the

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[5] Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1947 (Washington: U. S. Government Printing Office, 1947), pp. 65-66.

FTC came only a few months after he took office. In October, 1945, Lowell B. Mason was nominated as a commissioner. Mason, a Republican, had served with Clarence Darrow on the Industrial Recovery Review Board, and was known as Darrow's "hatchet man," because he announced the most critical reports concerning the NRA. Although Mason represented several companies before the FTC using a narrow interpretation of interstate commerce as the basis for his defense, he was still generally known as a staunch enemy of monopoly. Mason's development into one of the FTC's most outspoken critics might have been guessed from his earlier work and his attitude toward federal regulations based on the interstate commerce clause. However, he seemed to Truman to be a good choice--an antimonopoly Republican. The business community was also pleased at his appointment, with one magazine remarking that he would bring "horse sense" to the FTC.[6]

During the next four years no new members were appointed to the Commission and reappointments received little press attention. In 1949 two vacancies occurred when Chairman Robert Freer resigned to return to private law practice and Garland Ferguson died. In order to keep the FTC properly bipartisan, Truman again had to select one Republican. In this instance he chose John Carson of Michigan. Carson came highly recommended by small business advocates, union leaders, and some Democrats. Although not a registered Democrat,

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[6]Business Week, Oct. 13, 1945, p. 86.

some Senators insisted that he was not a Republican either. During the debate on his confirmation, he was referred to as a "fuzzy thinker" and criticized for his close association with the Cooperative League of the U.S.A. Despite spirited Republican opposition to Carson, he was confirmed by a vote of 45 to 25 on September 28, 1949.[7] Business Week had commented a few weeks before the Senate action that Carson would have difficulty getting confirmed because of his cooperative background, but that if approved he would cooperate with the President.[8]

The other Federal Trade Commissioner appointed in 1949 was an old Washington hand, James M. Mead. A former Senator from New York and head of the Truman Committee after 1944, he was nominated in October and approved the following month. Mead's experience in conducting investigations, and his long friendship with Truman assured the President of fine cooperation.[9]

Truman's fourth appointment involved a transfer from within the government. Stephen J. Spingarn had been in federal service since 1934, working with the Treasury Department until the war, then with the Attorney General, and finally as a White House aide. His experience in legislative

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[7]Staff memorandum, Aug. 8, 1949, Unidentified press clipping, Sept. 28, 1949, Truman Papers, OF 100, Truman Library.

[8]Business Week, Sept. 24, 1949, p. 16.

[9]New York Times, Oct. 19, 1949; Staff memorandum, Truman Papers, OF 100, Truman Library.

drafting and codification were considered among the best in the government by Charles Murphy.[10] After working diligently on the small business program,[11] Spingarn was nominated to the FTC in September of 1950, to replace Ewin Davis who had died the previous year. In politics and economics the President and the new commissioner were close; cooperation with the White House could certainly be expected from Spingarn.[12]

Truman's final appointment to the FTC came in June, 1952, when Albert A. Carretta received an appointment to replace William Ayres, a longtime commissioner who had died in February. Carretta, while possessing some government experience as an OPA employee during the war, was basically an academician, teaching corporation law and allied subjects at Catholic University in Washington, D. C. He was a regular Democrat from Virginia who had worked for the Truman ticket in 1948 and was highly recommended by Frank McKinney of the Democratic National Committee.[13] Carretta received confirmation in June, 1952, with little Senate debate or news comment.[14]

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[10] Charles Murphy memorandum, Mar. 22, 1948, Stephen J. Spingarn biography, Oct. 4, 1950, OF 1730, _ibid_.

[11] See below pp. 194-207.

[12] _New York Times_, Dec. 21, 1950.

[13] Frank McKinney memorandum, May 9, 1952, Truman Papers, OF 100, Truman Library.

[14] _New York Times_, June 17, 1952.

The Federal Trade Commission changed considerably during the Truman Administration. In general, the President appointed men with knowledge of government regulation and experience in business affairs. Except for Mason, the President and the Commission agreed that industrial regulation was necessary, but, as will be noted below, success was not as great as desired.

Although the Commission was reorganized and on good terms with the President, it had constant financial difficulties. A review of its appropriations indicates that it never received the amount requested by the Bureau of the Budget. In 1945 the reduction was only $50,000 but in 1947 it increased to more than $1 million when Congress authorized only $2.9 of the $3.9 million requested. The reductions were usually several hundred thousand dollars, and the agency never received more than the Budget requested as had the Antitrust Division on several occasions.[15] Much more

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[15]The appropriations for the Truman fiscal years are as follows:

Year	Millions	Deviation*	Year	Millions	Deviation
1946	$ 1.94	$ 50,000	1950	$ 3.65	$ 89,000
1947	2.23	380,000	1951	3.89	333,000
1948	2.95	1,022,000	1952	4.00	451,000
1949	3.45	521,000	1953	4.05	313,000

(*Amount below budget request.) _Appropriations, Budget Estimates, Etc. Statements_, Prepared for the Senate by Everad Smith and John Pugh, Senate Document 85, 79th Cong., 1st Sess. (Washington, U. S. Government Printing Office, 1945), _passim_; _ibid._, Senate Document 263, 79th Cong., 2d Sess. (1946), _passim_; _ibid._, by Everad Smith and George Harvey, Senate Document 106, 80th Cong., 1st Sess. (1947), _passim_; _ibid._, Senate Document 205, 80th Cong., 2d Sess. (1948), _passim_; _ibid._, Senate Document 125, 81st Cong., 1st Sess. (1949), _passim_; _ibid._, Senate Document 239, 81st Cong., restrictive than limited funds was the yearly rider to the appropriation bill which confined the FTC's general investigations to those with specific appropriations. This legislation kept the Commission from instituting large-scale investigations as the need arose and hindered any long range program that Congress might oppose.[16] Although these drawbacks restricted the Commission to an extent, it still accomplished much in the area of freight absorption and mergers.

Some of the most important decisions ever made by the FTC involved basing points and freight absorption. The successful fight against the steel makers' "Pittsburgh plus"[17] in 1924 led to an investigation of the cement

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2d Sess. (1950), _passim_; _ibid_., Senate Document 88, 82d Cong., 1st Sess. (1951), _passim_; _ibid_., Senate Document 169, 82d Cong., 2d Sess. (1952), _passim_.

[16]Robert Freer memorandum on the State of the Union Message, Nov. 29, 1948, Truman Papers, OF 419F, Truman Library.

[17]The basing point system involved the use of a single location as the point of origin for all freight charges. Thus if the basing point for all steel shipments were Pittsburgh, Pa., a buyer located near a Gary, Ind., steel plant and purchasing from the local firm would still pay the freight charge from Pittsburgh. This "extra" charge was called "phantom Freight." On the other hand a purchase of steel from Gary by a company near Pittsburgh, would still include only the freight from Pittsburgh. The cost of shipping the product was borne by the Gary firm and called "freight absorption." This system could, and often did, involve multiple basing points, _i.e_. a point of origin for each state or district set up by the companies involved. The end result of basing points was a standard delivered price to all customers despite the varying distances between the producers and the purchasers' plant.

industry during the 1930's. The cement producers' use of basing points for freight shipments, which led to standard delivered prices for all purchasers of cement, despite their distance from the mill, was declared illegal by the FTC in 1937. It was not until 1943 that the Commission issued a final cease and desist order requiring cement companies to stop using basing points which led to uniform prices for the customer and varying "mill-net"[18] for the producer.[19]

The Cement Institute appealed the order and after the Seventh Circuit Court of Appeals overruled the Commission in September, 1946,[20] The Supreme Court reversed the lower court and upheld the order in April of 1948. Basing points, the court decided, destroyed competition by violating the Clayton Act's definition of "unfair competition."[21] Another case involving the producers of Rigid Steel Conduit, which also used the basing point system, followed the same pattern, and the FTC cease and desist order was upheld by the Supreme Court in April, 1949.[22] These two decisions had apparently just about destroyed the basing point system.

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[18]This is a term devised by the FTC to describe the actual amount paid for an article at the producing plant.

[19]Simon Whitney, _Antitrust Policies_ (New York: The Twentieth Century Fund, 1958), II, pp. 296-98.

[20]_Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1947_, p. 60.

[21]Whitney, _Antitrust Policies_, II, p. 300.

[22]_Ibid._, p. 301; FTC Press Release, Aug. 14, 1947, Truman Papers, OF 100, Truman Library.

The impact of these decisions on the business community was tremendous. Many people were not sure what the FTC had outlawed and speculation ranged all the way from collusion on setting basing points to ending all delivered pricing. As early as 1945 a cement manufacturer wrote to the President asking that he stop the "witch hunt" and let the cement industry get to work on reconversion.[23] A builder complained to President Truman that before the court decision prices were lower than at present. Since, the writer concluded, the FTC's interference had resulted in higher prices, the President should assist in legalizing basing points again.[24] One contractor protested that the FTC action had caused an $.80 increase per barrel of cement. This, he said, made business less profitable, and he hoped the commission was satisfied with the damage it had done.[25] The FTC became the villain of higher prices in almost every industry, and nothing the commissioners did could change this impression.

Chairman Freer replied to this criticism by stating that the issue was not whether the decision was right but whether the FTC would be free to investigate what it felt was harming competition.[26] He frequently assured businessmen

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[23]F. C. McKee to the President, Aug. 21, 1945, OF 172A, ibid.

[24]J. C. Wright to the President, June 10, 1950, OF 277, ibid.

[25]R. K. Linton to the President, June 10, 1950, ibid.

[26]Speech, Robert Freer, Denver, Colo., Dec. 28, 1948, OF 100, ibid.

that the decision had not made all delivered pricing illegal;[27] he even held a radio debate in Seattle with a local lawyer who insisted that the court case made F.O.B. mandatory.[28] It appeared that nothing the Commission said could assure some businessmen that honest competition during a period of rising prices was still legal.

The most important result of the basing point battle was its effect on the FTC. In addition to starting a long legislative battle[29] which involved the Commission, the issue so disrupted the agency's morale and unity that after 1948 little was accomplished. The dissention led in part to poor preparation of a case against Standard Oil of Indiana in 1951 which resulted in a broad ruling by the Supreme Court on "good faith" in meeting competition which all but reestablished basing points.[30] William Johnson, chief economist for the Wright Patman Small Business Committee in 1960,

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[27]Speech, Robert Freer, New York, Dec. 8, 1949, New York Times, Dec. 9, 1948.

[28]U.S., Congress, Senate, Subcommittee of the Committee on Interstate and Foreign Commerce, Hearings, Study of Pricing Methods, 80th Cong., 2d Sess., May 14, 1948, pp. 449-50.

[29]See below pp. 148-167.

[30]Standard Oil Company v. Federal Trade Commission (1951), Whitney, Antitrust Policies, II, pp. 134-35, states that the court decision allowed producers to absorb freight to compete for trade they would otherwise clearly have lost. He notes, however, that the issue is not completely resolved and that in the future the court might hold that some absorption was not to meet but to injure competition.

who was with the FTC during the Truman era, believed that the cement case destroyed the effectiveness of the Commission for the remainder of the Truman Administration.[31]

The FTC's struggle with basing points was almost matched by the battle it waged with business over the issue of mergers. The Commission reported in 1947 that a seller's market eliminated conspiracy to fix prices among producers, but increased mergers to the danger point.[32] Solving the merger problem, Commissioner Freer noted, would require clear laws and strict enforcement.[33] Another Federal Trade Commissioner, Ewin Davis, indicated that it was difficult to control mergers because the court had opened a loophole in the Clayton Act when it ruled in 1934 that the law prohibited only mergers achieved through stock purchases and not those by purchase of assets.[34] In fact, the high court held that if the merger were completed before the final Commission order divestiture could not be required. Operating

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[31]Personal interview with William Johnson, June 16, 1960.

[32]Robert Freer to the President, A Report of the Office of Industrial Economics in the FTC on Economic Trends and Competition for the period July and August, 1947, Sept. 12, 1947, Truman Papers, OF 100, Truman Library.

[33]Robert Freer memorandum, Industrial Problems and the FTC, May 5, 1947, OF 172, _ibid_.

[34]Donald Dewey, _Monopoly in Economics and Law_ (Chicago: Rand, McNally, 1959), p. 219-20, states that the court had opened the way to mergers through property purchases as early as 1926 in _Thatcher Manufacturing Co_. v. _Federal Trade Commission_.

under these handicaps, Davis concluded, the FTC could do little more than watch concentration of industrial power take place and then report it.[35] Thus, in a period when mergers were most dangerous, the FTC was least able to control them.

The FTC and small business alike consistently demanded that the Clayton Act loophole be closed. George Burger, President of the National Federation of Small Businesses and frequent correspondent with the Administration, asked that mergers be limited as an aid to small producers.[36] The FTC agreed and included in its suggestions for the 1950 State of the Union Message a plea for an act to arrest concentration. The Commission cited the profit dip during the 1949 recession as evidence of small businesses' precarious position. Big business profits fell 11 per cent as compared to a drop of 61 per cent for small operators. An antimerger law was the first step toward small business security.[37] A few weeks later the Commission proposed that in Fiscal 1951 it be strengthened by the antimerger bill and added funds.[38] There was little doubt that the Commission felt unable to cope with the concentration problem without a change in the Clayton Act.

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[35]Speech, Ewin Davis, Cambridge, Mass., May 10, 1946, Truman Papers, OF 100, Truman Library.

[36]George Burger to the President, July 28, 1948, OF 172, _ibid_.

[37]FTC memorandum, Oct. 29, 1949, OF 419F, _ibid_.

[38]FTC memorandum, Nov. 23, 1949, _ibid_.

Indicative of its keen interest, the FTC published a report on mergers in 1948. After an historical review of the problem, it noted that mergers made enforcement of fair competition difficult because firms, when warned of violations, would merge to free themselves from punishment. If the new firm was a monopoly it was necessary for the Justice Department to start from the beginning on an anti-trust case. The report concluded that the FTC's work would be much simpler if there were a law allowing the Commission to require divestment of an absorbed firm when the merger was monopolistic. While agreeing that there would be opposition to increased bureaucratic control, the FTC countered that the end result of unlimited mergers would be massive private monopoly or nationalization, both abhorrent to democracy.[39] The study showed clearly the need for legislative changes.

A year after its merger study the Commission reported on the degree of concentration in various industries. In the 26 fields investigated there was a high degree of concentration in all but two, bread and woolen goods. The study showed aluminum, tin, and automobiles as the most concentrated, with glass and aircraft falling into a catagory of moderate concentration. Using control of 60 per cent or more of an industry by three companies as a definition of

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[39]Report of the Federal Trade Commission on the Merger Movement: A Summary Report (Washington: U. S. Government Printing Office, 1948), *passim*.

extreme concentration, the FTC found half, or 13, of the industries investigated in the extreme bracket.[40] This report provided more evidence that an antimerger law was needed to halt concentration.

The desires of the Justice Department, FTC, the Council of Economic Advisors, and many small businessmen were fulfilled in the last days of December, 1950. Representative Celler's antimerger bill, which permitted the government to force divestment of a merged firm when the resultant company tended toward monopoly, was passed and signed by President Truman.[41] Enforcement of the new law was, however, sharply limited by a shortage of money. In September of 1951 Commissioner Stephen Spingarn asked Truman to assist in the fight for a special appropriation, noting that funds to enforce the act had been deleted from the bill on the floor of the House. The need was great, he said, since mergers had jumped from 200 a year to 750, indicating an apparent attempt by companies to merge before enforcement began.[42] Responding to this request, the President sent a

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[40]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1949 (Washington: U. S. Government Printing Office, 1949), pp. 15-17.

[41]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1951, pp. 4-5; see below pp. 122-132, for a discussion of this legislation.

[42]Stephen Spingarn to Charles Murphy, Sept. 26, 1951, Truman Papers, OF 277, Truman Library.

special message to congress asking for an additional $300,000 for antimerger work, warning that this was a minimum figure if the merger rush were to be stopped.[43] Congress did not respond to the request and, in fact, increased the agency's budget only $50,000 for the next fiscal year.[44] Congress had gladly expanded antitrust legislation but had refused to support it with the necessary money.

Like other branches of government, the FTC turned its attention to national defense after the Korean conflict began. In January, 1951, the agency informed the President it was ready to assist in enforcing the Defense Production Act and other legislation resulting from the war.[45] In the same vein Commissioner James Mead told the appropriations subcommittee "we have geared the FTC to the whole defense requirements of today."[46] He added that all non-defense work had been suspended leaving the agency free to aid in defense efforts although, even with this total effort, some of the new tasks would be more than the present staff could

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[43]Harry S. Truman Special Message to Congress, Oct. 13, 1951, OF 100, ibid.

[44]Appropriations, Budget Estimates, Etc., Statements, Prepared for the Senate by Everad Smith and George Harvey, Senate Document 88, 82d Cong., 1st Sess. (Washington: U. S. Government Printing Office, 1951), p. 461.

[45]James Mead to the President, Jan. 4, 1951, Truman Papers, OF 277, Truman Library.

[46]U.S., Congress, House of Representatives, Subcommittee of the Committee on Appropriations, Hearings, Independent Offices Appropriations for Fiscal 1952, 82d Cong., 1st Sess., Part 1, Feb. 15, 1951, p. 133.

handle.[47] Under these conditions it is obvious that no new investigations could be started; in fact, old work could not even be completed.

Despite preoccupation with national defense, there was hope that the Commission could return to some of its traditional tasks during 1952. In his proposals for the State of the Union Message Commissioner Mead again asked the President to request additional money to enforce the antimerger act.[48] During 1952 the agency finally secured enough time and money to institute a case under the new law. The first antimerger case sought to force Pillsbury Mills to divest itself of a small milling firm, Ballard and Ballard of Atlanta, Georgia, because the change in ownership sharply reduced milling competition in the southeastern United States.[49] Since the case was not brought to trial until after the Truman Administration left office, it cannot be said that this law was enforced during his tenure.

While the FTC succeeded in having one loophole closed it failed in another. The situation in which a person served on the boards of two competing firms, commonly called an interlocking directorate, had been outlawed by Clayton Act. However, Commissioner Mead explained to the

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[47]Ibid., p. 129.

[48]James Mead to the President, Nov. 28, 1951, Truman Papers, OF 419F, Truman Library.

[49]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1952 (Washington: U. S. Government Printing Office, 1952), p. 31.

Celler Committee that, despite the law, corporate interlocking could be achieved by using a non-director from one corporation on a competitive firm's board, or by having both company's directors on the board of a third non-competitive firm.[50] After Mead suggested changes to stop this, Celler wondered if "stooges" could be caught under any law; Mead had to agree that, generally, they could not. One member of the Committee asked if Mead felt that interlocking directorates were still a problem, saying he could no longer see danger from them. Mead replied that they limited competition and thus were one of the gravest dangers faced by our economy.[51]

Following a study of the interlocking directorate problem, the FTC issued a report showing that many "interlocks" existed among the nation's one hundred largest companies. Some did not involve competitive firms, others did; some were used to limit competition, others were not.[52] Simon Whitney agreed that interlocks were often used to limit competition, but indicated that Congress had never been able to agree on just how to remedy this weakness in

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[50]U.S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, _Hearings_, _Interlocking Directorates_, 82d Cong., 1st Sess., Serial No. 1, Part 2, Mar. 7, 1951, p. 28.

[51]_Ibid._, pp. 35-39.

[52]_Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1950_, pp. 19-21.

the Clayton Act.[53] Despite the lack of clear legislation or sufficient funds, both the Justice Department and the FTC had the grave responsibility of maintaining a competitive economy.

One unusual feature of antimerger and interlocking directorate problems was the dual enforcement by the FTC and the Antitrust Division. In both these areas the FTC carried on most of the research and general investigations, while indictments came from either agency. There seemed to be little reason for one agency instituting a case when jurisdiction overlapped except that often the Justice Department was better prepared for litigation than was the FTC. Thus the Justice Department frequently followed up an FTC investigation with its own action, using the other agency's information.

Criticisms, needless to say, of a regulatory agency like the FTC were bound to be numerous and heated. During the Truman Administration, however, there was an unusual amount of conflict inside as well as outside the Commission. Within a year of his appointment, Lowell Mason had become the Commission's most frequent and caustic critic. Mason was so consistent in voting against the majority on the Commission that Business Week referred to him as "the dissident member" of the FTC.[54] In speeches and magazine articles

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[53] Whitney, Antitrust Policies, II, pp. 410-11.

[54] Business Week, June 5, 1948, p. 16.

he hammered at two themes: the FTC was too powerful, and the agency did not aid business as it should but rather punished one firm for a crime committed by many. This "hit or miss" technique was the basis of a long article by Mason in Nation's Business. The Commissioner, noting that his agency had over 2200 rules and regulations, said that every businessman violated at least one a day. This situation needed correcting if American firms were to be served, not hindered, by the FTC.[55] Later he told the American Bar Association that the "vested interests" which were attacked as harming free enterprise were not just businesses but agencies that enforced the antitrust laws as well.[56] Mason reached a high point when he spoke in New York, referring to the FTC as an all powerful agency capable of disrupting any firm in interstate commerce. Not only did he believe that luck alone kept most firms out of court, but he felt that under FTC rules an offender was guilty until proved innocent.[57] These few examples indicate the general view of "dissident" Mason.

These attacks on the FTC roused several defenders of the Commission. George Burger wrote to the President demanding that Mason be fired if he believed what he was

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[55]Lowell Mason, "Get the Devil Out of Business," Nation's Business, XXXV (June, 1947), pp. 39-40, 73-74.

[56]New York Times, Oct. 13, 1947.

[57]Ibid., June 28, 1948.

saying. Small companies, he insisted, were very happy with the FTC; Mason's remarks could only please big business.[58] Commissioner Freer also defended the FTC. He observed that often fixed prices were less "rough" on business than competition but, he said, those who oppose commission action must decide "whether the antitrust laws should be retained as a basic principle of our legal and economic structure."[59] Finally, C. W. Harder, president of a Small Business group, stated that Mason's speeches could only turn business against the FTC and in the long run destroy its effectiveness. He asked if Mason were trying to "throw the present antitrust laws out the window."[60] The Commissioner's criticisms were not completely ignored.

Other critiques of the agency, while not as spirited as Mason's, were equally as severe. The Hoover Commission reported that the calibre of men appointed to the FTC was low and that they were often kept on for more than one term. The report suggested appointment of men with "realistic understanding of the intricacies of production and, if possible, experience in government regulation of business."[61]

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[58]George Burger to the President, June 30, 1948, Truman Papers, OF 100, Truman Library.

[59]<u>New York Times</u>, June 2, 1948.

[60]<u>Ibid</u>., July 13, 1948.

[61]Nathan Ely memorandum on the Hoover Commission Report, April 1, 1949, Truman Papers, OF 100, Truman Library.

An officer of the National Association of Manufacturers issued a statement based on the Hoover report and suggested that since the FTC disrupted all American business by its cases on F.O.B. pricing it should be completely "revised and changed" by Congress.[62] Finally, a private investigating group noted that among other things the FTC's morale was low, it did not cooperate sufficiently with the Justice Department, its costs per investigation were too high, and its enforcement powers were "woefully meagre."[63] If the FTC's morale had not been shattered by the basing point battle it is a fair guess that these reports would destroy it.

The Commission's Annual Report for 1952 tried to answer some criticisms. Personnel, it noted, had dropped from 689 in 1918 to 672 in 1952, although the number of firms in the country had doubled, and there were numerous new laws to enforce. Under these conditions it was no wonder that enforcement was not up to par.[64] Another defense of the Commission occurred in the final days of the Truman Administration when Commissioner Spingarn called a press conference.

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[62] New York Times, April 4, 1949.

[63] Small Business Antimonopoly Conference Report, July, 1949, in U. S., Congress, House of Representatives, Select Committee on Small Business, Congress and the Monopoly Problem: Fifty Years of Antitrust Development, 1900-1950, House Document 599, 81st Cong., 2d Sess., 1950, pp. 40-45.

[64] Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1952, pp. 10-11.

In an emotional outburst he damned those who tried to defend themselves from FTC action on the grounds that the agency was corrupt or tainted with Communism and those who started letter-writing campaigns to get cases dropped.[65] In January when President Truman wrote farewell letters to administration members he added special thanks to Spingarn for his fine stand against those who put unfair pressures on quasi-judicial agencies.[66] No matter how determined, the defenders of the agency were few when compared to the critics.

Criticisms of the Commission during Truman's Administration seem to be based more on fancy than on fact. Adverse public statements about the FTC were generally vague and usually directed at the whole Commission or simply "government regulation." Almost all correspondence and news stories were concerned with specific cases, and exhibited personal interest rather than intelligent critiques of the agency. The law breakers' first refuge seemed to be an attack on the policeman. The Hoover criticisms, while partially valid, seemed to ignore the fact that all of Truman's appointees had prior experience in regulating agencies, that the complete membership of the Commission changed during Truman's seven years in office, and that the agency had constant financial problems. Finally, Truman's choices for

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[65] Spingarn Press Conference, Dec. 5, 1952, Truman Papers, OF 100, Truman Library.

[66] Harry S. Truman to Stephen Spingarn, Jan. 16, 1953, <u>ibid</u>.

chairmen of the FTC seemed to have been sound. Robert Freer had served 10 years on the Commission before the President selected him as chairman in 1945. After Freer's resignation the appointment of James M. Mead, who had considerable investigating experience in the Senate, seems to have been a good selection. To a great extent the criticism of the FTC appeared to be part of the overall tendency to "snipe" at Truman and his Administration.

In conclusion, the history of the FTC during the Truman period seems to hinge on the basing point fight. Reorganized and spirited from 1945 to 1947, it was shattered by internal arguments over what the Cement case meant and how to enforce it. After the Supreme Court ruled on the case in 1948 the FTC found itself more involved, both in the public battle over interpretation and the congressional effort to change the decision, than it had been during the litigation. Before this struggle ended the Korean War required the agency's full time and effort. It is understandable, therefore, that the much sought after antimerger bill of 1950, was used only once in the Truman Administration after its passage. No organization, be it private or public, can stand the internal and external pressures that were applied to the FTC and do a good job. William Johnson seems to have been right when he remarked that the basing point victory was both the high point and the destruction of this agency under the Truman Administration.

CHAPTER VI

LEGISLATION: ADMINISTRATION VICTORIES

Legislation dealing with antimonopoly falls into one of two catagories: extention of, or limits on, the antitrust laws. During the Truman Administration there were numerous bills aimed at both objectives, but only four passed Congress and received the President's signature or veto. Only one of the four extended antitrust by closing a loophole in the Clayton Act. The rest in one way or another limited antimonopoly work by providing exemptions for certain business actions. In Chapter VI those bills which President Truman signed will be examined, while those which he opposed will be treated in Chapter VII. Thsse two chapters will trace the legislative difficulties in keeping the economy competitive.

Part I: Antimerger Act

The only significant addition to the antitrust laws during the Truman Administration involved the closing of a loophole in Section Seven of the Clayton Act. As has been stated above, both the Justice Department and the FTC had long desired this change. In fact, increased power to deal with mergers had been one of the demands made many years earlier by the Temporary National Economic Committee.[1] The precise problem was that mergers tending toward monopoly were illegal only if they came about by stock purchase. This left the way open for mergers through purchase of assets though not of capital stock. Once the merger was completed the government's only recourse was to start proceedings under the Sherman Act to prove that the new firm was a monopoly. Success in this effort had always been difficult because conviction usually involved divestment, a step the court deplored. Thus in the minds of most antitrusters a law that could stop a merger prior to completion would be a great boon in the fight against concentration.

Bills to change the antitrust laws in this manner had been introduced many times. Therefore it was no surprise when Emanuel Celler introduced an antimerger bill early in the Eighty-first Congress.[2] Although the Committee on the Judiciary under Celler did not hold specific hearings on the bill, much of the information collected during his investigation of "Monopoly Power" had a direct bearing on the proposed legislation. Even before the Committee met, a protest was sent to the Executive. An antitrust lawyer opposed the

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[1] <u>Congressional Record</u>, 81st Cong., 2d Sess., XCVI, p. A2128.

[2] <u>Ibid</u>., 81st Cong., 1st Sess., XCV (Feb. 15, 1949), p. 1237.

bill as unnecessary since mergers involved such a small part of all new business and because the bill might be used against the combining of two small firms.[3] Notwithstanding this plea to the President, the bill received considerable attention in the Celler Committee. The chances for successfully changing the Clayton Act were markedly improved by the Celler Committee's general investigation of monopolies in America. The lengthy hearings provided ample publicity for correcting this long ignored loophole.

In addition the hearings had the wholehearted support of the President who had written to Celler saying that America faced no problem greater than monopoly.[4] In the weeks after the group began work, stories in the New York Times indicated that Truman was backing the investigation and had even sent memos to all executive offices requesting full cooperation with Celler.[5] While general support of a congressional committee is not an unusual practice for a president, Truman's close contact with the Celler Committee went well beyond this. The Committee's counsel, David C. Coyle, prepared weekly summaries of the Committee's activities for the President's use. Often copies were sent to

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[3] G. N. Montague to the President, May 19, 1949, Truman Papers, OF 100, Truman Library.

[4] Harry S. Truman to Emanuel Celler, July 9, 1949, Truman Papers, OF 299, ibid.

[5] New York Times, July 10, 1949, Aug. 5, 1949.

the Democratic National Chairman, William Boyle, who then could use the choicest tidbits for political purposes.[6] The reports kept the President aware of the group's progress, and Coyle's commentary increased their value. While frequently just factual summaries, the reports sometimes noted the attitude or candidness of witnesses and occasionally indicated what outside pressures were being applied on the group.

Possibly the best example of pressure on the Committee was the report sent late in November, 1949. Coyle noted an item in the _Wall Street Journal_ which claimed the hearings were going to be halted because Truman was unhappy with Celler's approach. The paper went on to report that Celler had spent too much time on the issue of bigness itself and not enough on legislative changes. Coyle evaluated the "disfavor" story as a trial balloon released by United States Steel who wanted the hearings to end. He suggested that the Committee could frighten United States Steel into silence by proposing an efficiency test for all big corporations, a test in which the giant steelmaker would surely fare poorly.[7] Apparently the pressure eased since the hearings did not halt nor did Celler propose an efficiency test for business. The Committee's close tie with the Executive made

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[6] Copy of White House Staff memo to William Boyle, Nov. 9, 1949, Truman Papers, OF 277, Truman Library.

[7] Weekly Coyle Report to the President, Nov. 25, 1949, _ibid_.

the spreading of rumors considerably more difficult for those opposing the investigations.

On the topic of mergers Celler heard the most detailed argument for restrictive legislation from Dr. James Blair of the FTC. Blair, the chief economist, reviewed the dangers of concentration, using the information compiled the previous year in the agency's report on mergers. Much of his argument was based on the double work faced by the government because of the loophole. Once a merger which the government opposed took place the whole job had to be started from the beginning again with its legal basis changed from the Clayton Act to the Sherman Act. This was difficult enough, Blair said, but matters were made worse because success in a Sherman case could not, as a rule, be won on size alone. In the few instances where size _per se_ did lead to a conviction, divestment usually did not follow.[8] Antitrust Division head, H. Graham Morison, indicated the same view when he insisted that the government would not have lost the Columbia Steel Case if the antimerger law had been on the books in 1948.[9] There were no government witnesses who opposed the law to control mergers.

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[8] U.S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, _Hearings_, _Study of Monopoly Power_, 81st Cong., 1st Sess., Serial No. 14, Part 1, July 18, 1949, pp. 192-97. Hereafter cited as Celler Committee.

[9] U.S., Congress, House of Representatives, Subcommittee of the Committee on Appropriations, _Hearings_, _Department of Justice Appropriations for 1952_, 82d Cong., 1st Sess., Feb. 19, 1951, p. 245.

Various industrial representatives touched on the merger problem, but only one, George Steinkraus of the United States Chamber of Commerce, went into detail. He said that monopoly was no problem because substitutes could be found for any material controlled by a monopolist. As for an antimerger law, it would increase business' habit of "dependence on government" and thus weaken free enterprise. Coyle in reporting this interview remarked that Steinkraus had "naive ideas of what goes on" in American industry.[10] For the most part business showed neither great opposition nor enthusiasm for the bill.

After receiving a "do pass" recommendation from the Committee the bill was placed on the House Calendar.[11] Debate on the floor of the House lasted only one day and the burden of discussion was carried by Celler. He reviewed the testimony of Blair and others, concluding with the remark, "the antitrust laws are a complete bust unless we pass this bill." In answer to a question of why the law was needed Celler responded, "economic concentration has not been prevented nor sufficiently slowed down" by the present laws.[12] Opposition to the bill was almost nonexistent; only a few questions about necessity were raised by fellow lawmakers.

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[10] Weekly Coyle Report to the President, July 22, 1949, Truman Papers, OF 277, Truman Library.

[11] Congressional Record, 81st Cong., 1st Sess., XCV (Aug. 4, 1949), p. 10802.

[12] Ibid., Aug. 15, 1949, pp. 11484-87.

A vote taken after two hours of debate found 223 ayes against only 92 nays. The bill having passed was sent to the Senate for consideration.[13]

The Senate proved to be a more difficult hurdle for the legislation. No action at all, except for referring it to the Committee on the Judiciary, was taken in 1949 and, even after the second session of the Eighty-first Congress met, the bill's chances did not seem good. White House aide Stephen J. Spingarn, who directed Truman's efforts to get the legislation passed, wrote in May, 1950, that the Judiciary Committee was evenly split on the bill putting it in danger of being pigeonholed. Spingarn felt action was vitally necessary because the bill was the "only antimonopoly bill of consequence that the Administration can get [sic] this session . . . it is a good bill . . . [and it will be] something to talk about this fall."[14] Death in committee was avoided by a single vote when William Boyle managed to get Senator Louis Graham out of his sick bed long enough to support passage. Boyle had been informed by a White House memo to get Graham's vote even if it had to be by proxy.[15] After this close call in committee the antimerger bill found its way to the Senate Calendar.

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[13] Ibid., p. 11507.

[14] Spingarn memorandum, May 16, 1950, Truman Papers, OF 277, Truman Library.

[15] Memorandum to William Boyle, May 22, 1950, ibid.

The Senate did not appear eager to debate the bill, since it was passed over several times during the summer and fall of 1950. Celler, realizing the delay might well keep the bill from coming to a vote, wrote to the President. He asked "Dear Harry" to "please do the needful" to get the bill passed because it could not get through the House again. Truman replied to "Dear Mannie" that he would work on it, concluding: "I hope we can get it enacted into law."[16] Spingarn's hope for something to talk about in the fall of 1950 did not materialize and the President's desire to get the bill passed almost miscarried.

Not until December 13th did the bill reach the Senate floor where it was defended by Herbert O'Connor who had been chairman of the Judiciary Committee. O'Connor presented the standard arguments for the bill stressing the time wasted when a monopolistic merger had to be reindicted under the Sherman Act. Speaking for the opposition, Forrest Donnell, a lame duck Senator from Missouri, challenged the need for the bill on two grounds. First mergers were not excessive if a long view were taken, and second the terms of the bill were broader than just closing the Clayton Act loophole. Donnell claimed that the bill would give the FTC far too much power in arresting concentration.[17] Apparently the

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[16]Emanuel Celler to the President, Aug. 31, 1950, Harry S. Truman to Emanuel Celler, Sept. 4, 1950, *ibid*.

[17]*Congressional Record*, 81st Cong., 2d Sess., XCVI (Dec. 13, 1950), pp. 16438-39.

danger of an expanded FTC did not frighten the rest of the Senate; the bill passed by a vote of 55 to 22. The outcome is interesting from the viewpoint of party affiliation since all the nays were Republican.[18] Spingarn's view that the bill would have been useful in the November election might well have been true, if the vote had been the same.

The antimerger bill's troubles were not yet over. Since the Senate had added several short amendments, it had to be returned to the House for concurrence or a conference. If the House demanded a conference the bill's chances to pass would be sharply reduced since only two weeks remained before adjournment. Celler, noting that the changes did little more than define certain words, moved that the Senate amendments be accepted en bloc and that the bill be sent on to the President. Now, however, opposition to the bill developed, led by Angier Goodwin of Massachusetts, on the grounds that as Senator Donnell had said, it gave too much power to the FTC. Celler's motion, despite this counterattack, carried by a voice vote and the antimerger bill was ready for the President's signature.[19]

This legislative success so pleased the FTC that it drafted a statement on enforcement to be released when the bill was signed.[20] While there was no doubt that the President

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[18] Ibid., p. 16508.

[19] Ibid., Dec. 15, 1950, pp. 11488-89.

[20] FTC memorandum, Dec. 19, 1950, Truman Papers, OF 277, Truman Library.

would sign it, some confusion developed over who would be present when Truman affixed his signature. It appeared at first that the signing would not be publicized, but Spingarn proposed some press attention because "it [the bill] could lay the basis for a very useful antimonopoly issue in the 1952 campaign."[21] After much discussion a group to be present at the signing was selected, without Celler who had gone to Florida for a rest, and the bill became law December 29, 1950. The President released the FTC draft as an accompanying statement. It praised the new law and called on the FTC to "enforce [it] with vigor." The effort to close an antitrust loophole known to government and business for twenty years or more had finally met with success.

After this first major antitrust legislation in many years the President sent a letter of appreciation to Blair for his important role in convincing Congress that the Clayton Antitrust Act needed amending. The letter was drafted by Spingarn who had worked diligently to get the bill passed and who had been Truman's choice for the FTC in October of 1950.[22] It seemed clear that the President, the White House staff, the executive agencies, and most of Congress supported the bill, yet it very nearly died at the end of the session. The law showed the tremendous executive efforts needed to obtain legislative changes in this area.

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[21]Stephen Spingarn to the President, Dec. 18, 1950, ibid.

[22]Harry S. Truman to James Blair, Jan. 2, 1951, ibid.

The success of the new law was, as noted,[23] sharply limited by the Korean War and insufficient funds. In addition the Truman Administration lasted only two more years, years when antitrust enforcement was clearly a minor project. Although the act had little effect during the last years of the Truman era it is nevertheless important because it made a repair necessary if antitrust was to be enforced strictly in the years to come. The struggle against concentration could not be won by this change alone, but if it was ever to be won weaknesses of this sort had to be found and corrected.

Part II: Fair Trade Act

Fair trade legislation had existed since 1937 and, while many people opposed it in principle, there had been little effort to get the Miller-Tydings Act repealed. This law was, in effect, an enabling act which allowed the several states to pass laws establishing fixed prices for brand name items when a manufacturer contracted with a single retailer to sell at a particular figure. Most states required that non-signers, those without contracts with the manufacturer, hold to the established price. The foundations of fair trade pricing received a sharp blow when the United States Supreme Court in May, 1951, ruled that the Miller-Tydings Act did not require that non-signers sell at the

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[23] See above pp. 113-115.

fixed price.[24] This shattering of the old support started a new battle over price-fixing and fair trade laws. Specifically, fair traders desired a law to include non-signers while opponents hoped to have the whole law repealed.

Congressional action quickly reflected the efforts to obtain a new bill. Several pieces of legislation bearing on fair trade were introduced, but only one was placed on the House Calendar. It was Connecticut Representative John McGuire's proposal to supplant the Miller-Tydings Act and to strengthen it by expressly including non-signers under price-fixing regulations. McGuire's bill did exactly what the measure's proponents desired. It would not only reinstate fair trade, but would assure that price cutters like Schwegmann could not circumvent the restrictions.[25] Thus the struggle to replace the old law commenced.

Most support for fair trade legislation came from small retailers, especially druggists. As soon as legislation to circumvent the court decision was introduced, public opinion mail began pouring into the White House. The degree of organization can be seen from the volume in favor of the new fair trade bill; 14,850 pieces of mail favored the new legislation, while only 258 opposed it. According to the executive mail room, druggists wrote most of the

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[24] Schwegmann, Bros. v. Calvert Dist. Corp. 71 S Ct. 745 (May 21, 1951).

[25] Congressional Record, 82d Cong. 2d Sess. XCVIII (Mar. 13, 1952), p. 2313.

messages while liquor dealers, jewelry retailers, and grocery store operators added to the volume.[26] One druggist hoped that Truman could "see it /the fair trade bill/ from the standpoint of the small merchant."[27] Another noted that "before Fair Trade many small merchants were against the wall, and either closed their doors or were on the verge of closing."[28] The Tavern League of Wisconsin wrote to say that the bill was in "the public interest and a big help to the small independent businessman."[29] A wholesale grocer said the legislation was "urgently needed to bring back the element of fairness to small business and the democratic principles."[30] Judging from the above, fair trade was the only protection the small business had.

Within the government, support was much less evident. Only the Commerce Department responded affirmatively to a House request for views on fair trade. Secretary Charles Sawyer supported the act because the case against fair trade was "theoretical," it aided small business, and it helped

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[26]Various items, May-July 1952, Truman Papers, OF 327, Truman Library.

[27]J. E. Birkhimer to the President, July 3, 1952, ibid.

[28]L. Caligiori to the President, July 10, 1952, ibid.

[29]W. Hillers to the President, July 8, 1952, ibid.

[30]G. Niesolein to the President, July 7, 1952, ibid.

stabalize the economy.[31] The argument that fair trade aided small business was the major reason for most of its support, but there were numerous experts who disagreed.

Non-government opponents of the bill were apparent, but less well organized than the supporters. By far the best known groups fighting the new legislation were the American Farm Bureau Federation and the National Grange. Others included Housewives United of Washington, D. C., apparently formed for the specific purpose, Washington Report, a newsletter published by Dewey Anderson, and various law firms. In newspaper advertisements the opposition quoted C.I.O. officials, Consumers Union officers and the Federation of Women's Clubs as being against the legislation, but none of these corresponded directly with the Executive.[32] The opposition contrasted to those in favor of the bill most clearly in the volume of mail. There was not even a hint of an organized mail campaign among opponents, while those in favor virtually deluged the White House with correspondence.

If the private forces failed to detail their views, government opponents more than made up the difference. The Celler Committee heard many more witnesses against the bill than for it. Chairman Mead of the FTC went into great detail

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[31] Charles Sawyer to John McGuire, Feb. 27, 1952, House of Representatives Papers, 82d Cong., File on H.R. 5767, RG 233, National Archives.

[32] Various items, May-July 1952, Truman Papers, OF 327, Truman Library.

to point out that forcing a retailer to sell at a fixed price because some other retailer decided to do so was a great aid to monopoly. Although agreeing to fair competition, he argued that price-fixing was not the answer and that the FTC stood firmly against the new fair trade bill.[33] Economist Blair of the FTC took a different tack when he testified that fair trade was not needed, since retailers in states without this kind of legislation were just as sound as were those in states with it. In fact, he argued, drugstores failed more frequently in fair traded areas than in the others. Blair concluded with a general attack on price-fixing ending with the remark that price-fixing was a great danger to competition and one of the FTC's major problems.[34] The government's other major antimonopoly agency, the Antitrust Division, went on record against the bill when H. Graham Morison testified that price-fixing was monopolistic. He added that Canada had recently repealed its fair trade law and had experienced a moderate price drop. Morison summarized the Justice Department's opposition to the bill: it was inconsistant with the Sherman Act, it was a "blind" for general price-fixing, and it disrupted competition at all levels of production and distribution.[35] It was clear that

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[33]Celler Committee, Hearing, Resale Price Maintenance, 82d Cong., 2d Sess., Serial No. 12, Feb. 2, 1952, pp. 17-23.

[34]Ibid., Feb. 13, 1952, pp. 90-99.

[35]Ibid., p. 81.

those charged with antitrust enforcement had little good to say about fair trade legislation.

While organized labor did not appeal to the President during the battle, it was represented before the Celler Committee. David Montgomery testified that the C.I.O. could not support any bill that reduced competition. Organized labor favored small business, but not, he said, without competition.[36] This evidence supported the Chairman's views, since Celler had remarked earlier in the hearings that he opposed price-fixing as accomplished by the Miller-Tydings Act although he agreed that unfair competition through loss leaders or other techniques should be illegal.[37] That this position did not change was shown by a letter to the President after the bill had been passed complaining that Congress had rushed through the fair trade bill in the last days of the session without sufficient consideration.[38] Long before Celler protested to the President the measure reached the floor of the House.

Debate commenced on May 7, 1952, with Representatives Ray J. Madden of Ohio and James I. Dolliver of Iowa supporting the bill as an aid to small business, to free enterprise, and to state's rights. Celler opposed the bill, restating

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[36] Ibid., Feb. 18, 1952, p. 77.

[37] Ibid., Hearings on H.R. 3048, 82d Cong., 1st Sess., Serial No. 1, Part 3, May 3, 1951, p. 82.

[38] Emanuel Celler to the President, July 3, 1952, Truman Papers, OF 327, Truman Library.

the arguments expressed in committee.[39] On the second day of debate McGuire presented a defense of his own bill proving that prices were as low in fair traded areas as they were in non-fair trade states. Possibly the most unusual event occurred when Wright Patman, arch defender of competition, expressed support for the bill because it aided small business and encouraged state's rights. At this point debate was closed and a standing vote showed 196 ayes against 10 nays. The Speaker declared a quorum present when the count was challenged and the bill passed.[40]

Senate action on the McGuire bill did not follow immediately after House passage, increasing the chance that the bill would die in committee. In the last days of the Eighty-second Congress the bill appeared on the Calendar in an apparent attempt to obtain a quick vote. Paul Douglas of Illinois countered the effort to rush the McGuire bill through by a motion to table. Although he was defeated 64 to 7, the move precipitated a heated debate. Senator Matthew M. Neely stated that there was "great pressure" to pass the bill quickly but he, for one, would vote against this or any other price-fixing scheme. While several Senators made comments, most of the debate occurred between Douglas and Hubert Humphrey. Douglas cited volumes of evidence showing

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[39] Congressional Record, 82d Cong., 2d Sess., XCVIII (May 7, 1952), pp. 4896, 4926.

[40] Ibid., May 8, 1952, p. 4933.

the anti-competitive nature of the bill while Humphrey countered with the standard defense of aid to small business, stable economic conditions, and fair competition.[41]

The bill advanced to a vote on the second day of debate. Various comments were made including an angry outburst by Pat McCarran who protested the bill's quick passage through the Interstate and Foreign Commerce Committee. The Senator from Nevada, who chaired the Judiciary Committee, felt that the bill should have been sent to his committee like all legislation involved with antitrust matters. To make matters worse, the Interstate and Foreign Commerce Committee had held no public hearings and had rushed the bill to the floor without a recommendation. Despite these few objections it was clear that most Senators were not going to vote against the well organized supporters of the McGuire bill on the eve of an election. The final vote was 64 ayes to 16 nays. Support was bipartisan with only a small handfull of antimonopolists opposing it. Thus the Senate sent an extremely controversial bill on to the President on the final day of the Eighty-second Congress.[42]

In addition to the personal correspondence noted earlier numerous trade journals called for passage of the McGuire measure. The most frequent and outspoken periodical was the National Retail Druggist. Every issue during the

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[41]Ibid., July 1, 1952, pp. 8716-48.

[42]Ibid., July 2, 1952, pp. 8891-92.

spring and summer of 1952 contained numerous articles calling for an all out effort to get the new fair trade act passed. These were not discussions of the bill, apparently because the editors and readers were of one mind on the matter; the only objective was to get the bill passed by Congress and signed by the President. Several other magazines aided the fair trade cause. Senator Humphrey contributed an article to the Minnesota Pharmacist reiterating his view that strong small firms were a bulwark against monopoly, and that the fair trade law made small firms sound.[43] A Chicago newsletter, published for small retailers, noted "it will give them /small business/ the much needed protection to survive the economic conflict."[44] A magazine advertising audio-visual equipment suggested that is customers support the legislation because price cutting always led to confusion in purchasing and increases in other items to make up for the items reduced. Schools would be better off with standard prices that were set under fair trade.[45] The advocates of the bill could not complain about a lack of support.

A unique feature of this bill was that it had received

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[43]Hubert H. Humphrey, "The Case for Fair Trade," Minnesota Pharmacist, June 1952, Truman Papers, OF 327, Truman Library.

[44]The Little Businessman, William Castleman, ed., July 8, 1952, ibid.

[45]Paul C. Reed, "Fair Trade For Who," Educational Screen, XXXI (Mar., 1952), pp. 7-9, ibid.

little or no attention from the Administration. The pressure to pass it had come from neither the legislative nor the executive branches but, rather, from the Supreme Court action in 1951. Therefore, except for the Commerce Department and the antitrust agencies, little was known about the Administration's position. An Associated Press news dispatch in early March had reported that Truman would back the Justice Department and the FTC in opposing the bill despite the Commerce Department's announced support.[46] There were, however, no other indications of a Presidential stand on the legislation. Thus when the bill reached the White House a full scale pressure campaign was begun to obtain Truman's signature.

With the ink hardly dry on the bill, Senator Wayne Morse wrote to the President asking for an interview for himself and Schwegmann, the man whose case upset the Miller-Tydings Act.[47] The White House files indicated no answer and the President's appointment book revealed no interview. Despite this disappointment, Schwegmann tried two more times on his own to get to see the President. Both requests were denied by Matthew Connelly on the grounds that the President was too busy to add any new appointments.[48] It appeared

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[46]News clipping, n. d., <u>ibid</u>.

[47]Wayne Morse to the President, July 3, 1952, <u>ibid</u>.

[48]Herman Schwegmann to the President, July 4, 5, 1952, Matthew Connelly to Herman Schwegmann, July 9, 1952, <u>ibid</u>.

that the fate of the bill would not rest on personal contacts with President Truman.

Since the bill was not an Administration proposal the normal procedure of asking all agencies for views was carried out by the Budget Bureau. The responses provided no surprises. The Commerce Department was still for the act; the Justice Department and the FTC still against it. Those departments whose views had not yet been presented were all against the bill. The Bureau of the Budget said it would reduce competition, the Labor Department opposed it arguing that price-fixing was monopolistic, and the Agriculture Department agreed with Labor and was especially critical of the non-signer clause. Finally, several other agencies declined comment because the bill did not affect their actions.[49] This collection of agency views revealed a clear consensus against the bill. The President's position was, however, still unknown.

That Truman would sign a bill which most agencies in his Administration opposed, came as a surprise to many. His reasons for supporting the bill can be seen in a memo by H. A. Adler of the Treasury Department. Adler noted that a long conversation with White House aide, David Bell, indicated Bell supported the measure and, in fact, had written a draft defending it. Adler's arguments for purer

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[49]Various letters to the Bureau of the Budget, July, 1952, ibid.

competition were to no avail because Bell insisted that twenty years of fair trade had done little harm, and, since vast numbers of small businessmen wanted the bill, it was politically foolish to refuse them. Adler was all the more frustrated because Bell agreed that there was much wrong with fair trade but maintained that passage would not harm the economy. Adler feared that in the final analysis Bell's recommendation would convince Truman to sign.[50] Apparently Adler's view was correct since the President signed the bill on July 14, 1952, and a press release issued at the time used much of Bell's draft to support the President's action.[51]

This press release cleared up some confusion on why the President signed, but not all. It noted that fair trade would not cure all small business problems, but it would reduce cutthroat competition. While limiting competition somewhat, the aim was to assure fair competition and business stability. The release concluded that since fair trade was far from the only answer a complete study of small business conditions should be made.[52] The financial editor of the New York Times commented that while the President signed the bill it was clear that he was not "at all happy" with the measure and signed it only after Senator Humphrey agreed to

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[50] H. A. Adler memorandum, July 7, 1952, ibid.

[51] Press Release issued on signing of H.R. 5767, July 14, 1952, ibid.

[52] Ibid.

undertake an overall investigation of small business in the next Congress.[53] Apparently the President accepted Bell's view that even with its shortcomings the act would aid small business.

The abstract economic question of whether the bill should have been signed did not bother most American druggists. Thousands wrote to thank the President often suggesting that he run for President again or that he made them proud to be Democrats.[54] One said, "you really are a great liberal, and you are interested in the welfare of the consumer and small business."[55] The issue of *Drug Topics* appearing immediately after the signing, included a half page picture of the President affixing his name to the bill, a cartoon showing the druggists of America saying, "Thanks, Mr. President," and an article praising Truman for his "humane outlook and enlightened statesmanship."[56] The President, no doubt, made many friends among small business by his action on the McGuire bill.

Truman's decision, like Wright Patman's support in

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[53] *New York Times*, July 15, 1952.

[54] Various items, July 1952, Truman Papers, OF 327, Truman Library.

[55] Joseph Austin to the President, July 25, 1952, *ibid*.

[56] *Drug Topics*, Robert L. Sweain, ed., July 28, 1952, *ibid*.

Congress, indicated a sharp break in the ranks of antimonopolists. Against the bill were the "academic" antitrust supporters, *i.e.* any limit on competition, they believed, was evil. On the other hand those who supported it felt that aid to small retailers was a good enough end in itself to overcome the evil inherent in limiting competition. There was, then, a certain contradiction in supporting both antimonopoly and fair trade, but to obtain the political support of vast numbers of small businessmen a little limitation of competition could be condoned. This was the only legislation the antitrusters opposed that the President supported, and in this it can be seen that his support was to aid small business, not price-fixing *per se*.

CHAPTER VII

LEGISLATION: LIMITS ON ANTITRUST

Part I: The Basing Point Bill

The long struggle to eliminate basing points had, most people believed, ended with the Supreme Court's decisions upholding the FTC on the Cement and Rigid Steel Conduit cases.[1] From the orders issued by the agency and the decisions rendered by the court it had become clear that single or multiple basing points for freight costs were illegal if they resulted in standard delivered prices, or were the result of conspiracy. Thus the basing point battle should have been ended and forgotten. But rather than drifting into the past it became the source of a violent struggle to get legislation which would overrule the court decision.

Legislative negation of court action is a typical part of American politics. Both the antimerger and the fair trade acts were passed to close loopholes which court decisions had either opened or widened. It is not surprising, then, that those interested in standard delivered prices would support legislation allowing the use of basing points.

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[1]See above pp. 106-107.

The story of this legislation is especially interesting because the Truman Administration generally ignored it while it was before Congress, normal defenders of antitrust backed the bill, and information about the bill was terribly confused. William Johnson, economist for Wright Patman's Small Business Committee, recalled that the bill was the real "sleeper" of the Truman Administration. As the basing point issue had shattered the FTC, so would it come close to destroying Democratic unity in Congress.[2]

The campaign for corrective legislation opened within a few weeks of the Court's decision on the Cement case in April, 1948. A Senate subcommittee under Homer Capehart of Indiana commenced hearings in June on the topic: "Study of Methods of Competition in Commerce and the Impact of Legislation and Government Regulation on American Consumers." This hearing, although bearing a pretentious name, included little more than a series of protests against F.O.B. pricing. Senator Capehart asked each witness if he approved of the FTC regulation against freight absorption; they all opposed it. Few government witnesses appeared but those who did were given little time to speak. Only Commissioner Robert Freer of the FTC challenged the Senator's <u>red herring</u>, informing him that freight absorption was not illegal unless done in a conspiratorial manner. Capehart ignored this answer and called several more witnesses who opposed F.O.B.

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[2]Interview with William Johnson, June 16, 1960.

pricing. While not discussing a specific piece of legislation, the hearing did much to create the illusion that freight absorption needed legislative protection.[3]

Later hearings were held on specific bills to modify the FTC rulings, but Capehart was deprived of the chair when the Democrats regained control of the Senate in November, 1948. While not as biased as the earlier effort, the 1949 hearings directed by Francis Myers of Pennsylvania had the same aim--reversal of the FTC orders. "Competitive Absorption of Transportation Costs" was the topic investigated, and, as had the previous committee, it concluded that F.O.B. pricing created hardships for many producers. Senator Myers' solution for the problem was a two year moratorium during which time the FTC would not indict anyone for using delivered pricing or basing points. This approach, it was argued, while not solving the problem, would allow "the dust to settle" and let businessmen find out exactly what they could do in the area of freight absorption. Letting "the dust settle" was a solution supported by many businessmen and legislators who argued that the FTC ruling was confusing and unclear. This view would be presented throughout the struggle, even though the FTC indicated that the law was clear.[4]

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[3]U.S., Congress, Senate, Subcommittee of the Committee on Interstate and Foreign Commerce, Hearings, Study of Methods of Competition in Commerce and the Impact of Legislation and Government Regulation on American Consumers, 80th Cong., 2d Sess., June 2-4, 1948, passim.

[4]U.S., Congress, Senate, Subcommittee of the Committee on Interstate and Foreign Commerce, Hearings,

In addition to Congressional hearings other agencies and individuals presented views. The Federal Reserve Bank of Philadelphia stated that the basing point issue was getting much more attention than it deserved. Many people were blaming the end of basing points for higher prices; actually shortages caused higher prices and no antitrust legislation could change this.[5] In the _American Economic Review_ Frank A. Fetter wrote that the economy was well rid of basing points and that those businessmen who felt they would be unable to compete in more distant areas because of increased freight costs could reduce the basic price of their item.[6] Fetter's point that competition was not based on freight alone was not often found. It seemed that businessmen did not want competition, but rather basing points to eliminate competition. Herbert Bergson, Director of the Antitrust Division, told the Senate committee that limiting government action over basing points would aid price-fixing.[7] Ellis Arnall, former Governor of Georgia, later told the Celler

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Competitive Absorption of Transportation Costs, 81st Cong., 1st Sess., Jan, 1949, _passim_.

[5]Federal Reserve Bank of Philadelphia, _Business Review_, Sept. 1948, House of Representative Papers, 81st Cong., S. 1008 File, RG 233, National Archives.

[6]F. A. Fetter, "Exit Basing Point Pricing," _American Economic Review_, XXXVIII (Dec. 1948), pp. 327-31.

[7]U.S., Congress, Senate, Subcommittee of the Committee on Interstate and Foreign Commerce, _Hearings_, _Competitive Absorption of Transportation Costs_, 81st Cong., 1st Sess., Jan. 25, 1949, p. 75.

Committee that he opposed any restriction on competition including legal basing points.[8] Lastly, George Burger, head of a small business group, wrote to the President that his association opposed any act decreasing competition.[9] Thus, in addition to the various witnesses supporting the bill, numerous opponents of legal basing points made themselves heard.

In contrast to the comments by interested parties there appeared an organization expressly devoted to the legalization of basing points. The Council for Clarification of Pricing Practices wrote to the President saying it wished to obtain legality for "freight absorption and good faith meeting of competition." That this had always been legal and continued to be so was ignored. The Council, whose members were not listed on its letterhead, felt additional legislation assuring the right to absorb freight costs would end confusion. While this group did not appear to carry out a large scale propaganda effort, it did inform the President of its intentions several times.[10]

Indicative of big business' interest in basing point

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[8]U.S., Congress, House of Representatives, Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, Hearings, Study of Monopoly Power, 81st Cong., 1st Sess., Serial No. 14, Part 1, July 19, 1949, p. 270.

[9]G. Burger to the President, Mar. 10, 1950, Truman Papers, OF 277, Truman Library.

[10]Council for Clarification of Pricing Practices to the President, Feb. 7, 1950. ibid.

legislation were letters from several steel company presidents. Benjamin Fairless of United States Steel answered a George Burger inquiry assuring him that United States Steel opposed joint action on prices and freight. The problem, he noted, was that other firms adopted United States Steel's prices and then it was in danger of violating the FTC regulation against basing points. This plea of innocence to price leadership is understandable, but in light of United States Steel's action in favor of the bill, not very believable.[11] A more direct defense of the legislation came from Benjamin Morrell of Jones and Laughlin Steel Company. Prices, Morrell wrote to the company's customers, would be higher if the basing point bill were not passed because freight could not be absorbed. He concluded with the assurance that all Jones and Laughlin wanted was "the right to compete."[12] These two views indicate the importance of this bill to big steel producers.

In addition to those personally involved in this issue, there were numerous scholarly articles on pricing systems and basing points. George Stocking's Basing Point Pricing and Regional Development traced the history of basing points, declaring that the Court and the FTC were clear on

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[11] Copy of letter from B. Fairless to G. Burger, May 24, 1950, *ibid*.

[12] B. Morrell to Edgecomb Steel Products Co., Mar. 26, 1949, Senate Papers, 81st Cong., S. 1008 File, RG 46, National Archives.

what was illegal and that the cry of "confusion" was simply to provide an excuse to legislate legal basing points.[13] He concluded, as had the FTC, that freight absorption by a single firm was legal but, Stocking warned, government agencies should watch all delivered pricing because it tended to limit competition and the development of regions like the South where new industry lost its freight advantage on sales to local consumers.[14] In a work coauthored with Myron Watkings he stressed that basing points increased freight costs (because cross hauling occurred more frequently), although it did provide price stability.[15] The Basing-Point System by Fritz Machlup concurred that basing points kept prices stable, but he argued that it also limited competition and fostered market division and production controls.[16] These volumes indicated the great interest that the basing point controversy developed. Before the legislative battle ended, however, both experts and laymen would need all the information they could get.

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[13]George W. Stocking, Basing Point Pricing and Regional Development, A Case Study of the Iron and Steel Industry (Chapel Hill: University of North Carolina Press, 1954), pp. 174-84.

[14]Ibid., pp. 193-94.

[15]George W. Stocking and Myron W. Watkins, Monopoly and Free Enterprise (New York: The Twentieth Century Fund, 1951), pp. 224-27.

[16]Fritz Machlup, The Basing-Point System (Philadelphia: Blakiston Co., 1949), p. 143.

In the midst of the general discussions of basing points, Myers introduced his bill for a two year moratorium in Congress.[17] He had earlier described his bill as just a "stop gap" until investigation showed if any permanent changes were needed.[18] When the Senate began to debate Myers' proposal, S. 1008, William Langer attacked the bill as a big business effort to undo a court decision and proposed that the Senate kill it.[19] Wayne Morse of Oregon joined Langer saying that the bill was a steel industry attempt to revive "Pittsburgh plus." Although support seemed to be from small business, Morse said, the legislation was backed by, and the fight was directed by, big steelmakers and their friends.[20] On the second day of debate Joseph O'Mahoney proposed an amendment to change the bill from a moratorium to permanent modification of the FTC Act allowing freight absorption when not done by conspiracy. Several Senators including normal antitrusters like Myers and O'Mahoney repeated the phrase that the bill would end the confusion caused by the FTC decisions on Cement and Rigid Steel

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[17] Congressional Record, 81st Cong., 1st Sess., XCV (April 27, 1949), p. 5091.

[18] U.S., Congress, Senate, Report on S. 1008, Senate Document 505, 81st Cong., 1st Sess., 1949.

[19] Congressional Record, 81st Cong., 1st Sess., XCV (May 31, 1949), p. 7023.

[20] Ibid., pp. 7025-30.

cases. A voice vote replaced the Myers proposal with the O'Mahoney substitute.[21]

Several days later Langer attempted to have the bill reconsidered but failed.[22] Despite Langer's protest the Senate had, with little debate, changed the very nature of the FTC by approving basing points when not conspiratorial. This substitute for the original moratorium bill passed the Senate without hearings or debate on its precise effect on antitrust law enforcement. Proponents of basing point legislation had good reason to be gratified.

A few days later the bill appeared on the House Calendar after quick action by the Judiciary Committee which did not include public hearings. On June 14th Wright Patman protested that the bill was being rushed through without due consideration and indicated that he believed it to be a big business effort to nullify the court decision on basing points.[23] Several days later Patman protested the Rules Committee's hasty approval, arguing that it gave the bill's opponents no time to organize. He insisted that antitrust law changes should receive proper consideration and not quick passage in the last days of a session.[24] Patman's one man fight was to little avail; the bill came up for debate on July 5, 1949.

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[21]*Ibid.*, June 1, 1949, pp. 7090-92.

[22]*Ibid.*, June 6, 1949, p. 7248.

[23]*Ibid.*, June 14, 1949, pp. 7678-83.

[24]*Ibid.*, June 30, 1949, p. 8768.

During the House debate Patman opposed the measure, stressing the damage that would be done to competition by reviving basing points. He argued that the bill had never received proper discussion, but was a quick switch from a mere moratorium to a permanent change in the FTC made on the floor of the Senate. Proponents of the law continued to stress the need for clarification of court decisions and called for an end to the "fog and uncertainty" which surrounded freight absorption. In a heated exchange with one of the bill's prime movers, Francis Walters of Pennsylvania, Patman insisted that basing points would be revived because the "burden of proof [was] on the government now." He elaborated that prior to the Cement case standard delivered prices were in themselves evidence of price-fixing, but under this act actual proof of agreement between producers other than final prices would be needed to stop firms from quoting equal delivered prices.[25] Test votes indicated that most members agreed with Walters that the "confusion" had to be cleared up.

On the final day of debate Patman succeeded in amending the bill to include a more detailed definition of conspiracy. This small amendment which changed the bill little led to a long conference fight, giving opponents of basing point legislation a chance to rally their forces.

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[25] Ibid., July 5-7, 1949, pp. 8768, 8993, 9032-9039.

With the amendment the bill passed by a voice vote and was returned to the Senate.[26]

The following weeks were filled with parliamentary efforts for and against the bill. The Senate's refusal to accept Patman's amendment led to a conference committee composed of three Representatives and three Senators all of whom favored the legislation.[27] In the midst of conference activities anti-basing point forces tried to have the Senate reconsider the measure. This move would have stopped conference action and in effect killed the bill. After a brief statement by Senator Paul Douglas the Senate refused to reconsider by a vote of 28 to 49.[28] With the bill's enemies outvoted, the conference committee was free to complete its compromise.

Action was delayed by the summer recess but when Congress reconvened in the fall the basing point issue was still very much alive. In October, 1949, the House voted for the conference report by a 200 to 104 count.[29] In the Senate Douglas still struggled to kill or delay the act and in a surprise move managed to get the bill postponed until the following year. A motion to table Douglas' proposal lost by a 29 to 29 tie indicating that proponents of the bill were

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[26] _Ibid._, July 7, 1949, p. 9074.

[27] _Ibid._, Aug. 12, 1949, p. 14603.

[28] _Ibid._, Aug. 12, 1949, p. 11360.

[29] _Ibid._, Oct. 14, 1949, p. 14842.

one vote short of a majority.[30] Thus in October, 1949, the basing point bill was delayed for at least six months.

In the long run the delaying tactics of Douglas and other opponents did not prevail. By the spring of 1950 the bill had more support than ever. Even Emanuel Celler, long-time defender of competition, spoke in favor of the bill saying that if his support was inconsistent then "consistency" was as Emerson had said, a "hobgobblin of small minds." With the conversion of Celler, the House completed its action by refusing 204 to 175 to reconsider the bill it had passed during the first session.[31] Although there was more opposition to the second approval of the conference report, the chances that the Senate would defeat the bill were slim. When the Senate acted early in June the bill passed 43 to 27 despite another long protest by Douglas.[32] More than a year had passed during which time a host of parliamentary moves and counter moves had been tried for and against the bill. Finally, however, the legislation was on its way to the White House.

An issue which had generated such congressional activity was bound to arouse considerable public opinion. During the debate, Congress had received considerable mail

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[30] _Ibid._, Oct. 18, 1949, p. 14842.

[31] _Ibid._, 81st Cong., 2d Sess., XCVI (Mar. 14, 1950), pp. 3329-32.

[32] _Ibid._, June 2, 1950, p. 7976.

on the subject. Most of it came from small manufacturers who claimed that a limit on freight absorption would force them out of business. The ratio was about seven or eight to one in favor of the bill.[33] Congressional action seemed to reflect this support, and if it continued the President would be under tremendous pressure to sign.

David C. Coyle, Counselor for the Celler Committee, challenged this broad support in a letter to John Steelman. The bill's "prime mover" had been the United States Steel Corporation, Coyle said, and small business had been sold on the legislation by big business propaganda. Coyle concluded that "the unrighteous certainly are expert at making tangles for the feet of the righteous."[34] There was no doubt that those who favored passage had done a remarkable job in rousing small business interest in a bill that some believed would do more harm than good.

Consistent support for the law among business people was in marked contrast to the confusion that existed among executive departments. FTC Commissioner Lowell Mason opposed the bill in 1949 on the grounds that it would increase confusion by adding new terms for the court to decide upon,

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[33]Various items, Mar.-June, 1949, House of Representatives Papers, 81st Cong., S. 1008 File, RG 233, National Archives.

[34]David C. Coyle to John Steelman, June 2, 1950, Truman Papers, OF 277, Truman Library.

yet in June, 1950, Mason favored Presidential approval.[35] The Justice Department's view was more consistent but just as confusing. Herbert Bergson told the House that the department "never urged the necessity or desirabliity of [this] legislation," but later he stated that he could see no "harm" in it.[36] Ultimately this vague view appeared on the floor of both House and Senate as an outright Justice Department endorsement of the basing point bill. Lack of clear agency views plus some careless use of quotations by the bill's supporters gave it considerable aid.

Until the basing point bill reached the President the general public had heard little about it. Support reflected the personal interest of those who wanted this technical change in the antitrust laws; most of the nation had little interest in the bill. Typical of the general disinterest was the fact that the New York Times made no comment on the bill until the President acted.[37]

The real battle over passage developed during those few days when the President held the bill. As could be

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[35]Lowell Mason to Emanuel Celler, May 16, 1949, House of Representatives Papers, 81st Cong., S. 1008 File, RG 233, National Archives; Mason response to Bureau of the Budget poll, June 12, 1950, Truman Papers, OF 277, Truman Library.

[36]U.S., Congress, House of Representatives, Subcommittee No. 1 of the Committee on the Judiciary, Hearings, on S. 1008, Clarification of Pricing Practices, 81st Cong., 1st Sess., Serial No. 13, June 8, 1949, pp. 18-21.

[37]New York Times, June 25, 1950.

expected all the arch supporters and opponents corresponded with the President frequently in the early days of June, 1950. Wright Patman protested that the measure was Republican, that the "clarification" issue was "phoney", and that "permissive legislation" was dangerous to all antitrust enforcement.[38] Patman's request for a veto was countered by Senator Joseph O'Mahoney who pleaded that passage would aid in "expanding private competitive economy" and would not revive basing points.[39] Congressional and public pressure developed at a rapid rate.

Outside the government, support for the bill included some strange bedfellows. Numerous Cement Workers Unions joined with construction and cement companies to petition the President to sign the bill because delivered prices were needed to assure stability in the building industry.[40] The confusion about the bill increased as the letters poured in. Some saw the legislation as a way to end "cut-throat and entirely unregulated competition,"[41] while others insisted that it would clarify the Clayton Act and increase competition.[42] The most unique plea for signing was an anonymous paper showing the bill's support. It contended

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[38]Wright Patman to John Steelman, June 9, 1950, Truman Papers, OF 277, Truman Library.

[39]Joseph O'Mahoney to John Steelman, June 15, 1950, ibid.

[40]Various items, June 1950, ibid.

[41]Wade Pashall to the President, Je. 7, 1950, ibid.

[42]Raoul Desvernine to the President, June 9, 1950, ibid.

that the FTC favored it, although only Lowell Mason indicated support; the Justice Department favored it, apparently because Bergson had said it would do no harm; and finally, Representative Celler supported it despite the fact that his support came late in the battle and apparently under great pressure.[43] Most of the bill's advocates were in some way connected with the cement or building industry, although some simply parroted big business views. The confusion that existed over the measure was not eliminated by the correspondents who favored it.

Unlike the period when Congress was considering the measure, opponents commenced to organize. Groups like the National Association of Retail Druggists, the Cooperative League, Farmers Union, United Auto Workers, the C.I.O. and the National Association of Consumers deluged the President with requests for a veto.[44] In addition to these, several antitrust experts asked that the President reject the bill. Huston Thompson, Chairman of the FTC during the 1920's, wrote to Truman that the fight to end price-fixing had come a long way, but this law would return competition to the old "Gary dinner" days.[45] Concurring with this was a letter from the Birmingham Publishing Company noting that "the

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[43]Facts for the Basing Point Bill, n. d., ibid.

[44]Various items, June 1950, ibid.

[45]Huston Thompson to the President, June 5, 1950, ibid.

steel industry needs cleaning up more than it does higher prices. It calculates to be ahead of the law, rather than above the law. And heretofore, has not been altogether unsuccessful." Thus the bill should be vetoed.[46] Walter Reuther added still another protest when he wrote that the bill was another example of big business getting the law changed to suit itself.[47] The bill had finally received attention from its enemies.

Opponents within the executive branch attacked the bill by showing it as a Republican measure. Stephen Spingarn did a vote breakdown and concluded that Democrats were against it by two to one in the Senate and House, while Republicans favored it by fifteen to one in the Senate and seven to one in the House. Only two liberal Democrats voted for it, Myers and O'Mahoney, and signing would be a "repudiation" of the Democratic majority.[48] Steelman also received a letter from an anonymous source pointing out that Republicans had voted for the bill in much larger numbers than had Democrats.[49] Prior to Presidential action there

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[46]Birmingham Publishing Co. to the President, June 5, 1950, ibid.

[47]Walter Reuther to the President, June 10, 1950, ibid.

[48]Stephen Spingarn to the President, June 7, 1950, ibid.

[49]Anonymous letter to John Steelman, June 14, 1950, ibid.

was ample evidence that the basing point bill had more Republican than Democratic support.

Small businessmen expressed fear that basing point pricing would lead to increased prices at the wholesale level. Almost one-third of all the mail asking for a veto came from small druggists, and in fact one member simply signed and sent a mimeographed form distributed to all Milwaukee pharmacists headlined "Your Last Chance" to ask for a veto.[50] Another large segment of correspondence came from various unions not connected with the construction industry. White House mail records for the two weeks before the President acted showed an overwhelming sentiment against the measure. During the first week in June 1,100 post cards and 527 letters called for rejection while only 33 letters asked the President to sign the bill. The next week had about the same proportion although the total declined somewhat.[51] Certainly the combined support of druggists and organized labor had produced an impressive mail effort.

In a poll of the executive branch by the Budget Bureau the legislation received mixed reaction. The FTC favored a veto with the exception of Lowell Mason who continued to feel that its passage would end business "confusion."

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[50] Flier from Milwaukee Pharmacists Association to various Milwaukee druggists, June 12, 1950, ibid.

[51] White House mail room reports, weeks ending June 9 and 16, 1950, Truman Papers, OF 550, Truman Library.

The Interior Department asked for a veto because the bill would revive basing points. The Justice Department opposed the bill because it would cause more confusion than it would end; but Peyton Ford, who wrote the reply, indicated that certain parts were not objectionable. Other agencies either did not answer or, like the ICC, RFC, and Agriculture Department, indicated they had no view.[52] The only clearcut executive support was Secretary of Commerce Charles Sawyer's plea for this "liberal" legislation which he and other liberals like Celler and O'Mahoney advocated. Sawyer's argument followed the old view that F.O.B. would be mandatory without the bill; a view that both the FTC and the Justice Department had denied. Rejection, Sawyer said, would be sad because it would allow antitrust laws to continue halting freight absorption and thus reducing competition.[53] Before the second week of June 1950 had ended the President had ample information and opinions on the bill.

Truman's action supported the old antitrusters. In a lengthy veto message he noted that to end confusion Congress had added new terms and ideas which would take years of litigation to clarify. The courts had already made clear what freight absorption could take place and what could not. This bill, according to the President, would set back

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[52]Departmental responses to Bureau of the Budget poll, June 1950, Truman Papers, OF 277, Truman Library.

[53]Charles Sawyer to the President, June 9, 1950, ibid.

antitrust enforcement ten years.[54] The veto brought immediate response from Senators Kefauver and Douglas and Representatives George Christopher and Patman. All told the President that his veto was a great victory for "free and fair competition."[55] A county Farmers Union president wrote to President Truman thanking him for his action.[56] The retail druggists went even further and reprinted in their magazine Truman's letter of thanks for the organization's interest in the matter.[57] Numerous other letters of thanks were received while only one letter protesting the veto reached the White House.[58] The President's veto represented the view of most Democrats in Congress and much of the small business community.

There was no effort in Congress to override the veto, apparently because there seemed no chance of success. Of more interest than the bill's defeat is the change in public opinion from seven to one for the bill in Congress to fifty to one against it at the White House. The best explanation

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[54] Press Release of Veto Message, Je. 16, 1950, _ibid_.

[55] Paul Douglas to the President, June 19, 1950, George Christopher to the President, June 17, 1950, Estes Kefauver to the President, June 16, 1950, and Wright Patman to the President, June 16, _ibid_.

[56] Ronald Lewis to the President, Je. 17, 1950, _ibid_.

[57] Page clipping from _National Retail Druggist_, July 17, 1950, _ibid_.

[58] White House mail room report, week ending June 23, 1950, Truman Papers, OF 550, Truman Library.

seems to be that the measure received so little publicity during the congressional fight that opposition forces simply did not organize. Once the National Association of Retail Druggists and organized labor became interested, other opponents rallied quickly. Supporters of the bill realized they could not win so they merely stepped aside and let the bill die. While the charge that it was a big business bill was never proved, the overwhelming opposition by small business groups tended to sustain this view. Whatever the situation, Truman's veto made basing point pricing less frequent, although the Standard Oil case partially opened the way to standard delivered prices under the guise of "good faith" meeting of competition.

The conflict which sprang from the FTC's Cement case lasted over two years and showed the need for knowledge of the antitrust laws. So much information was distributed about "uncertainty" that few people knew what the law said or how the bill would change it. Adding confusing definitions to a field already overburdened with legislation and court _dicta_ would, as David Coyle said, certainly "make tangles for the feet of the righteous."

Part II: The Reed-Bulwinkle Bill: Railroad Exemption from Antitrust

Like most major industries in America the railroads have often found themselves in trouble with the antitrust laws. The Interstate Commerce Commission, the first federal regulator of interstate commerce, restricted monopolistic practices like pools and rebates. Even with the ICC, railroads ran afoul of the federal government over rate bureau activities and monopolistic mergers. The Northern Securities case ended much of the merger problem but intersystem rate-setting continued to plague the government even though certain practices were stopped in the Trans-Missouri Freight Association case in 1897. During the late 1930's the Justice Department investigated rate-setting mechanisms which tended to reduce competition between carriers. The result was an indictment against the Association of American Railroads in 1942 which was almost immediately dropped in order to aid the war effort. Thus the long standing problem of rate-setting bureaus and their activities was in no way settled when Harry. S. Truman became President.[59]

As soon as the war ended a Bill of Particulars was entered against the Association of American Railroads and the Western railroad group for restraints of trade imposed by the price and rate-setting machinery used among the railroads. Trial did not begin until 1947, but railroad action to obtain legal immunity commenced almost at once.[60] The

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[59] J. W. Jones memorandum, June 4, 1948, Murphy Files, "Monopoly" folder, Truman Library.

[60] Justice Department Bill of Particulars against the American Association of Railroads and the Western Railroads, Sept. 24, 1945, Senate Papers, 80th Cong., S. 110 File, RG 46, National Archives.

government's case stated that rate bureaus, whose traditional function was to set the proportion of the fare which went to each road when freight traveled over two or more lines on its way to its final destination, had taken on other functions which violated the antitrust laws. These other activities included limiting new equipment, stopping roads from increasing service or reducing fares within ICC limits, and making deals with other carriers to avoid competition. An example of this last point was an agreement keeping air freight twice as high as rail.[61] The government believed that rate bureaus had far exceeded their assigned tasks and were actually eliminating the competition which was supposed to exist among railroads under the general limits of the Interstate Commerce Act.

The pre-war investigation that had produced the 1942 indictment also led to a book by Arne C. Wiprud, an Antitrust Division lawyer and partner of Thurman Arnold. Wiprud's work, _Justice in Transportation_, dealt harshly with the American railroad system. It still operated in a nineteenth century style, he stated, and depended on government protection from competition and support for high rates.[62] On the issue of rate bureaus Wiprud had no doubt that progressive lines were deterred from developing new service by threats

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[61]Speech, Arne Wiprud, Washington, D. C., Dec. 5, 1945, Truman Papers, OF 173, Truman Library.

[62]Arne Wiprud, _Justice in Transportation_ (Chicago: Ziff Davis Co., 1945), p. 69.

of reduction in the proportion of intersystem fares which went to the offending road. Most despicable of all was the fact that private groups, devoid of public interest, had total control of the American transportation system.[63] It is not surprising then, that as soon as legislation appeared that freed the railroads from antitrust, Wiprud protested.

The legislation exempted from the antitrust laws railroad rate-setting bureaus. That the activities of the bureaus extended beyond mere rates had been the repeated contention of the government, and had been upheld by the courts at least once. Under the proposed act the railroads could establish intersystem rates with the approval of the ICC. Once the rates received the regulatory agency's sanction the railroads were immune from antitrust action. The railroads argued that without this protection they were being regulated from two directions, making it difficult for them to comply with either. According to the railroads the measure was simply a matter of justice. They were already regulated by the ICC, and additional interference from the Justice Department was more than the industry could stand.[64]

Throughout the whole period of consideration Wiprud made speeches, wrote to the legislative and executive branches and testified against the Reed-Bulwinkle bill.

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[63] Ibid., pp. 87-88.

[64] New York Times, June 20, 1948.

In December 1945, when an abortive attempt was made to rush the bill through Congress in the final days of the session, Wiprud spoke in Washington against this attempt to undermine the antitrust system.[65] The next year he wrote to the President reviewing the bill's progress and remarked that one of the bill's worst points was that it disrupted the ICC by increasing its authority to approve, but not to regulate, rate bureau activities.[66] A later letter referred to the legislation as a railroad "cartel" bill and asked Truman to protect the American people from such laws.[67] While Wiprud fought intensely against the bill, he found little support.

Truman's chances to stop this limitation of the antitrust structure were good as long as the Democrats controlled Congress. The election of Republican majorities in 1946 combined with generally poor congressional relations paved the way for its enactment. Within three weeks after the meeting of the Eightieth Congress hearings were underway in the Senate on a new Reed-Bulwinkle bill. Directed by Senator Clyde Reed of Kansas, the Committee on Interstate and Foreign Commerce spent several weeks listening to numerous

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[65]Speech, Arne Wiprud, Washington, D. C., Dec. 5, 1945, Truman Papers, OF 173, Truman Library.

[66]Arne Wiprud to the President, Aug. 17, 1946, Truman Papers, OF 123, Truman Library.

[67]Arne Wiprud to the President, Jan. 21, 1947, OF 433, ibid.

witnesses on the measure. While most of those interrogated were pro-railroad men who felt, along with Senator Reed, that the bill was badly needed, a few disagreed. Wendell Berge of the Antitrust Division said the measure would reduce competition and ultimately harm the railroads. The Senator interrupted frequently, disagreeing with almost every point. Reed was especially disturbed when Berge referred to the legislation as a "railroad bill," insisting that it was his and his alone. Only after Senator Ernest McFarland interjected that railroad pressures had been severe did Reed agree that railroads were also strongly in favor of the legislation.[68] The Senator would clearly brook no opposition to the proposed change.

Outside of government officials only one other individual failed to support Reed's view. R. W. Purcell, Vice-President of the Chesapeake and Ohio Railroad, representing the road's President, Robert Young, stated that the bill would destroy freedom of action in those areas where railroads traditionally competed, such as air-conditioned coaches, improved speed, or round trip privileges. Increased authority for rate bureaus would stop such competitive efforts through threats or pressures making American railroads

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[68] U.S., Congress, Senate, Committee on Interstate and Foreign Commerce, Hearings on S. 110, Regulation of Rate Bureaus, Conferences and Association, 80th Cong., 1st Sess., Jan. 21, 1947, cited from hearing MS, Senate Papers, 80th Cong., S. 110 File, RG 46, National Archives. Hereafter cited as Regulation of Rate Bureaus.

non-competitive.[69] Prior to this testimony Young had sent a brief to the Committee giving about the same information and stressing that railroad improvement would just about cease if the law passed.[70]

The last unfriendly witness with which Reed had to contend was a staff lawyer from the Justice Department, J. W. Kilday. He showed that the government had no quarrel with rate bureaus as such. The problem was that rate bureaus or groups of railroad executives formed into "Committees of Directors" would use the intersystem machinery to end competition between roads. This technique clearly violated the antitrust acts as well as the Interstate Commerce Act. Throughout the testimony Reed sat quietly, neither asking questions nor arguing with Kilday's conclusions.[71] Despite Kilday's statement that the Executive opposed the bill, it was reported to the Senate with a "do pass" recommendation.[72]

Public opinion mail received by congressmen appeared to be in about the same proportion as Capehart's witnesses. Those favoring the bill were in the majority by four or five to one. Most letters came from small businessmen who noted

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[69] Ibid., Feb. 4, 1947.

[70] Robert Young to Homer Capehart, Jan. 29, 1947, Senate Papers, 80th Cong., S. 110 File, RG 46, National Archives.

[71] Regulation of Rate Bureaus, Feb. 4, 1947.

[72] Congressional Record, 80th Cong., 1st Sess., XCIII (Feb. 12, 1947), p. 1926.

that rate bureaus were needed because they could not afford traffic men to route their goods and had to depend on the local railroad to quote intersystem rates. Without rate bureaus this information would disappear and small producers would be harmed. Other defenders of the bill included many Chambers of Commerce and trade or manufacturers associations among whom were orange, pecan, and Christmas tree producers. Although the only railroad against the bill was the Chesapeake and Ohio, it received aid from a few individuals and the Farmers Union. It is interesting to note that no railroad wrote in favor of the legislation. It appeared to be another example of small companies expressing the view of large corporations.[73]

Using the supporting mail to good advantage, Senator Reed noted on the Senate floor that 958 organizations had indicated support for his measure. Several pages of the Congressional Record were used to list all of them, including six columns of Chambers of Commerce. Reed declared with pride that all this support clearly indicated this was not a railroad bill. Senator George Aiken interrupted the Kansan and questioned the validity of some of the support. He asked if the Vermont Public Service Commission, which Reed listed as favoring the bill, was the one recently elected or the old Commission. Reed did not know, but agreed that some

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[73]Various items, Jan.-Mar., 1947, Senate Papers, 80th Cong., S. 110 File, RG 46, National Archives.

endorsements were several years old. Aiken, noting this admission, suggested that the Vermont Agency be removed since support of the bill had been a factor in the old Commission's defeat. The Kansan admitted that he "didn't know" if the new group favored the bill but made no attempt to remove it.[74] After this demonstration of nationwide support, debate began.

Vocal opposition to the bill came from only two Senators. Richard Russell of Georgia protested that it weakened the antitrust laws, and undermined a rate-setting case the state of Georgia had instituted against the Pennsylvania Railroad. Alben Barkley agreed with Russell and added that the United States case against the Western Railroads would also be destroyed if the bill were passed.[75] A few days later Barkley protested against passage noting two newspaper editorials to support his position. The Louisville Courier Journal said that formation of railroad monopolies was the real issue before the Senate and it called for rejection by Congress or a veto by President Truman. Supporting this view was a statement by the Charleston, West Virginia Gazette, that the Republican Congress was helping the railroads get "back to monopoly." It concluded that the "Republican leopard" could not change its spots, and in this

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[74] Congressional Record, 80th Cong., 1st Sess., XCIII (June 9, 1947), pp. 6588-98.

[75] Ibid., pp. 6601-09.

case did not even try.[76] While Senators Russell and Barkley received some aid from Aiken and Wayne Morse of Oregon, the opposition was small indeed.

The Senate vote on the bill showed that all Republicans except Aiken and Morse supported it. In addition numerous Democrats, including Harry Byrd, Pat McCarran and Dennis Chavez, crossed over and voted for Reed's legislation. The final count stood at 60 ayes to 27 nays. Thus the first Republican Senate since 1930 had within six months of its election put a wide gap in the antitrust laws.[77]

The House debate that followed made Senate deliberations appear lengthy in comparison. Although almost a year passed between Senate and House action, the proposal lost no support. With one hour's debate, a bill very much like Reed's passed the House. Only one Representative, Ed Gossett of Texas, rose to oppose the measure saying that while he was a "voice in the wilderness" he wanted to place on record his opposition to legislation that would destroy the court cases against railroad monopolies. Proof that Gossett was in the wilderness came with the vote: 273 ayes against 53 nays.[78] Later in the day the Senate bill was introduced and without debate the House bill was substituted

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[76]Quoted in _ibid._, June 18, 1947, pp. 7702-03.

[77]_Ibid._, p. 7215.

[78]_Ibid._, 80th Cong., 2d Sess., XCIV (May 11, 1948), p. 5633.

for it.[79] The House had, with a single hour of discussion, agreed with the Senate that railroads should be exempt from the antitrust laws.

The difference in wording between the two versions required a conference committee. Composed of five Senators and five Representatives, all of whom were supporters of the bill, it met a week after the House vote and resolved the differences between the two bills.[80] Prior to Senate action on the conference report, Barkley again attacked it. First, he stated, limiting antitrust laws was foolish in the face of growing concentration and monopolies, and secondly, continued competition among railroads was necessary if they were to improve service. His efforts were to no avail and the report was accepted by a voice vote.[81]

The House had already passed the report by a voice vote without debate. After approval, however, one supporter made an amazing speech. Representative Clarence Lea who had served on the conference committee and voted for the bill in all its forms stated that this legislation had not solved the real problem. The ICC, he said, had not in the past regulated the railroads with any success and there was nothing in the bill to indicate that it would start now. He went on to say that the Justice Department, through antitrust enforcement, was not the agency to set rates, but the

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[79] Ibid., p. 7215.

[80] Ibid., May 24, 1948, p. 6350.

[81] Ibid., May 28, 1948, pp. 6640-68.

"Bulwinkle bill should be broadened . . . the powers of the ICC be further extended to assure definite protection to the carriers and to the public." It seems almost incredible that Congress would pass a bill whose most ardent supporters agreed that it weakened the antitrust laws and government regulation of transportation.[82]

While the bill was under consideration administrative officers had often indicated their views. Testifying before Reed's committee, Clyde Atchison of the ICC had favored the bill in order to improve intersystem transportation while Wendell Berge opposed any weakening of the antitrust laws.[83] J. M. Johnson of the Office of Defense Transportation, supported the bill because national security required fast and effective transportation.[84] Two White House aides, Washington Graye and Charles Murphy, opposed the bill because it ended competition in areas where it was supposed to exist and it destroyed the case against the Western Railroads.[85] The Attorney General agreed that the bill was wrong because it "delegated to private groups the power to govern the basic transportation system free of the

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[82]Ibid., May 24, 1948, p. 6351.

[83]Regulation of Rate Bureaus, Jan. 21, 1947.

[84]J. M. Johnson memorandum, June 30, 1947, Truman Papers, OF 173, Truman Library.

[85]Murphy memorandum, Mar. 25, 1948, Murphy Files, "Monopoly" folder, Truman Library; Graye momorandum, May 21, 1948, OF 277, ibid.

legal restraints of the Antitrust law . . ."[86] In addition to this, Truman, while still a Senator, had opposed any legislation that would lead to "sectional cartels" in transportation. Progress, he had noted, was needed in American transportation, and competition was the only way to obtain it.[87] By June of 1948 it was clear that antitrusters opposed the Reed-Bulwinkle bill, while those interested in transportation approved it.

After the bill was presented to the President for his action, the usual flow of pro and con correspondence began to arrive at the White House. Arne Wiprud called for a veto telling Truman that a transportation monopoly would be national disaster.[88] Hubert Humphrey, then mayor of Minneapolis, asked the President to veto this legislative undermining of the antitrust laws which was parading under the false colors of aid to free enterprise.[89] Governor Ellis Arnall of Georgia was especially interested since passage of the bill would destroy his state's case against the Pennsylvania Railroad. In several letters and wires

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[86] _Annual Report of the Attorney General for the Fiscal Year Ended June 30, 1948_ (Washington: U. S. Government Printing Office, 1948), p. 39.

[87] Speech, Harry S. Truman to Baltimore Traffic Club, Feb. 1, 1944, Truman Papers, OF 173, Truman Library.

[88] Arne Wiprud to the President, June 14, 1948, OF 277, _ibid_.

[89] Hubert H. Humphrey to the President, May 24, 1948, _ibid_.

he pleaded for a veto, citing both the President's and Wiprud's previous statements against the legislation.[90] In addition to individual comments, several organizations including the Brotherhood of Railway Trainmen, the Oregon and Washington Grangers, and the National Federation of Small Businesses, petitioned for a veto.[91] While the opposition to the Reed-Bulwinkle bill was small in quantity, it was highly vocal.

Mail favoring the legislation arrived in far larger quantites than that opposing it. While no important individuals wrote urging the President to sign the bill, there were many letters from Chambers of Commerce, truck line executives, movers, traffic leagues, and Farm Bureau Federation members.[92] One large block of correspondence came from furniture moving companies. Apparently it was inspired by an association letter, since most had roughly the same wording. One mover was especially outspoken in favor of rate-setting bureaus. He noted that "rate bureaus educate the recalcitrant operator to the fact that he is his own worst enemy when he undercuts the rate."[93] This clear cut request for no price competition might have shocked those

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[90] The Governor of Georgia to the President, June 1, 15, and 25, 1948, ibid.

[91] Various items, June, 1948, ibid.

[92] Ibid.

[93] John Studart to the President, June 19, 1948, ibid.

who insisted that the bill did not harm competition, but to those in transportation the issue was clear. These messages of support were reinforced by a long and sympathetic article in the New York Times by J. H. Carmical. He felt that since the railroads had long been the subject of more and more regulation it was pleasant to see them granted some freedom. Reporting of this kind did much to rally public support for the legislation.[94]

While the public, according to the While House mail, favored the bill by four to one,[95] executive departments viewed the measure in just about the opposite proportion. The Director of the Budget Bureau collected the various observations and reported that the Justice Department, the Council of Economic Advisors, the FTC and the Budget Bureau itself all favored a veto while the ICC and the ODT favored signing. The Agriculture and Commerce Departments were undecided.[96] David Bell, who carried on his own poll, wrote to Murphy that most members of the Administration opposed the bill and that a veto draft was almost complete.[97]

Indicative of opposition to the bill at the White

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[94] New York Times, June 20, 1948.

[95] Staff memorandum, June 12, 1948, Truman Papers, OF 277, Truman Library.

[96] Departmental responses to Bureau of the Budget poll, June, 1948, ibid.

[97] David Bell to Charles Murphy, June 8, 1948, Murphy Files, "Monopoly" folder, Truman Library.

House was the work done by Murphy's staff. It had already produced two memos noting the bill's shortcomings and stressing the need for rejection. J. D. Clarke referred to the bill as "bad" because traffic associations would now end all competition. Although they already tried to do this, he said, they would now be free from legal action. Kenneth Lorenthal discussed the vast public support for the bill and concluded that most of it was manufactured by the railroads through clever public relations men who sold Chambers of Commerce or trade associations on the idea that the bill would reduce prices or increase business. This "dummy" public opinion was a misuse of economic power and thus another reason for a veto.[98] The President heard little good about the bill from his economic advisors.

On June 12, 1948, President Truman returned the bill to the Senate without his approval. The power granted to rate bureaus was far too great, he noted, especially when the ICC was required to approve rate agreements when they were in "furtherance of the national transportation policy." The President said this phase was "too vague" since it did not indicate who would establish what the "national transportation policy" should be. Truman said the country needed more, not less, antitrust laws and this bill, by exempting a whole industry, would start a trend in the wrong direction.

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[98] J. D. Clark memorandum, K. Lorenthal memorandum, June, 1948, ibid.

He concluded by reassuring transportation interests that legal operation of rate bureaus setting intersystem fares would not be harassed by the government. In total the message reflected parts of all his aides' work and reasserted the need for a competitive economy.[99]

It took only four days for the Republican leadership to call for a vote to override the President's veto. On June 16, after a brief debate in which the opposition case was again presented by Senator Barkley, the Senate voted by 63 to 25 to pass the bill, notwithstanding the President's views.[100] The House acted the next day, without debate, and overrode by a vote of 297 to 102.[101] Thus a bill of tremendous importance became law,[102] despite inadequate public hearings, limited congressional debate, and ample evidence of its shortcoming from legislative and executive sources. The railroads had good reason to be happy with the Eightieth Congress; the United States case against the Western railroads was dismissed in 1952 as a result of this law and the ICC approved the rate agreements in question.[103]

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[99] Press Release of Veto Message, June 12, 1948, Truman Papers, OF 277, Truman Library.

[100] Congressional Record, 80th Cong., 2d Sess., XCIV (June 18, 1948), p. 8433.

[101] Ibid., June 19, 1948, p. 8633.

[102] U.S., Congress, An Act to Exempt Rate-Setting Bureaus from the Antitrust Laws, Public Law 662, 80th Cong., 2d. Sess., 1948.

[103] The Federal Antitrust Laws (1952-56 Supplement; New York: Commerce Clearing House, Inc., 1957), p. 33.

The overall effect of the Reed-Bulwinkle law still cannot be evaluated. Certainly the railroads showed no great improvement after the act, but various other factors may account for this. Railroad legislation allowing more mergers and less competition passed Congress in 1948, but the railroads' problems seem to be far from a solution.[104] The worst feature of the Reed-Bulwinkle act was that it exempted one segment of the economy from antitrust action. Representative Lea might well have been correct when he noted that the Justice Department was not the agency to set rates. However, it was clear that more than rate-setting occurred in rate bureaus and it was obvious, then as now, that a more active agency than the ICC was needed to investigate the problems that arose.

Considering all legislation bearing on antitrust during the Truman Administration, it can be concluded that it did well, since only one bill limiting the scope of antimonopoly became law. While antitrust extention did not fare too well, more was achieved than many groups desired. Avoiding legislative restrictions of the antitrust laws became a task which required constant effort. The Truman era seemed as successful in legislation as in other antimonopoly programs; there were some defeats and some victories, but, on the whole, the battle against concentration held its own.

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[104] New York Times, July 31, 1958.

CHAPTER VII

AID TO SMALL BUSINESS: AN ANTIMONOPOLY INNOVATION

Throughout American history small enterprises have made up the vast majority of those engaged in commerce. This section of the economy has often been praised as the back bone of American business, but until World War II no specific legislation to aid small business passed Congress. Then in response to numerous complaints from the Truman Committee and others that war purchases were discriminating against small firms, Congress enacted a Smaller War Plants Corporation to assure a fair share of war contracts for smaller members of the business community.[1] Treating small business as a separate type of enterprise was far from an accepted notion when the war ended. Senator Joseph O'Mahoney noted that the old idea that small business was small because it thought small continued to be a popular view and had even been repeated to his committee by Benjamin Fairless of United States Steel.[2] H. G. Morison, head of

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[1]Congressional Record, 77th Cong., 1st Sess., LXXXVII (Nov. 17, 1941), pp. 8910-11.

[2]U.S., Congress, Senate, Select Committee on Small Business, Annual Report of the Select Committee on Small Business, Senate Report 1068, 82d Cong., 2d Sess., Jan. 21, 1952, pp. 17-19.

of the Antitrust Division, while not faced with legislative problems, remarked that discrimination against small firms was so bad that a special unit had been established in his Division to oppose it.[3] During the Truman Administration assistance to small business finally received careful consideration.

The work of the old Smaller War Plants Corporation, while not overwhelmingly successful, had tended to limit concentration during the war. When World War II ended, the demise of emergency agencies, including the SWPC, was to be expected. Defense of this agency appeared, however, from those who wanted to assure continued protection for small business. Congressman Jerry Voorhis wrote to Truman protesting the unit's termination, pointing out that aid to small producers was greatly needed during reconversion because orders were harder to obtain. Truman replied that the SWPC was a temporary war measure which had to be terminated, but the Administration intended to continue small business aid through a revised Office of Small Business in the Commerce Department.[4]

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[3]H. G. Morison, A Study of the Development of the Antitrust Laws and Current Problems of Antitrust Enforcement, Report of the Department of Justice to the Subcommittee on Monopoly of the Select Committee on Small Business, Senate, 82d Cong., 2d Sess., Subcommittee Print No. 3 (Washington: U. S. Government Printing Office, 1952), pp. 1-13.

[4]Jerry Voorhis to the President, Mar. 9, 1945, Harry S. Truman to Jerry Voorhis, Mar. 13, 1945, Truman Papers, OF 92-B, Truman Library.

The President's view provoked a mixed response. A representative of the Business Institute of America agreed that small business was being squeezed and called for federal assistance.[5] A New York banker opposed federal assistance, writing that private capital could provide all the aid needed. The federal government, he argued, should reduce taxes and involvement in the economy, not increase them.[6] Thus like all government programs, aid to small business faced staunch resistance from without as well as from within.

The nature of small business made it difficult to develop a program to aid that segment of the economy. The problems were manifold. Small business often opposed self aid because of pressures from large corporations, leadership from big business so subtle that smaller firms followed without being aware of it,[7] and because many small business leaders were tied closely to big firms through mergers or contracts. George Burger of the National Federation of Small Businesses cited this latter problem when he complained that a member of the Commerce Department's Small Business Advisory Committee for Petroleum was the President of a firm affiliated with the City Service Company. Burger argued

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[5]Charles Daughters to the President, May 1, 1945, OF 172, ibid.

[6]Luther Cleveland to the President, Aug. 22, 1945, OF 230, ibid.

[7]Interview with William Johnson, June 16, 1960.

that this kind of "small business representative" would not provide leadership for small producers.[8]

Small business also suffered from poor lobbying. Unlike large enterprises, limited funds lessened the scope of any lobbying or propaganda effort. In addition, some leaders, like Burger, had been in Washington so long that they were ignored or had made too many enemies to achieve substantial gains.[9] A small business program, then, would have to convince those to be aided before it could gain general support.

The greatest task facing Truman was to convince the public in general and small business in particular that the aid program had value. Small businessmen who wanted government contracts to increase their profits joined with certain individuals in Congress and the executive to support the plan. Opposition came from bankers who felt they could provide any assistance needed and others, including many small businessmen, who opposed government expansion. The idea that healthy small business was an important antimonopoly factor was little understood and grew slowly. It conflicted with the old idea that small firms were on the way to becoming big corporations, and that government should stay out of business as much as possible. This innovation

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[8]George Burger to the President, May 2, 1949, Truman Papers, OF 3-Y, Truman Library.

[9]Interview with William Johnson, June 16, 1960.

of government aid to one segment of enterprise as a means of stimulating competition, while not fully developed under the Truman Administration, finally did get started.

For two years after World War II small business received little direct attention. The Department of Commerce revived its Office of Small Business, took over the duties of SWPC, and attempted to answer the question: "What are the basic needs of small business?" To do this the OSB provided information on taxes, finances, industrial production, and scientific management from its main office in Washington and the 77 branches of the Commerce Department throughout the country.[10] While the OSB was not concerned with monopoly the Secretary of Commerce, W. A. Harriman, was. He reviewed reconversion in late 1946 reporting that small business had been seriously hampered by mergers and vertical integration of larger firms since the end of the war. While he had no specific action in mind he indicated that federal action would be necessary.[11] For the first time a clear relationship had been established between healthy, independent small business and excessive concentration.

Small business' plight also received attention from others. A Senate committee, noting the rapid increase in mergers, reported that small business would be saved only

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[10]Office of Small Business Report, Oct.-Dec. 1946, Truman Papers, OF 3-T, Truman Library.

[11]W. A. Harriman, Biannual Report on Small Business Activities, Dec. 5, 1946, ibid.

if aid were provided "on a scale never before contemplated."[12] War Assets Administrator, Jess Larson, wrote to John Steelman that antimonopoly through small business aid had been a duty of the SWPC and was now a task for his agency. But he added that when these temporary units ended new aid would be needed.[13] While these views indicated concern, apparently it was not overwhelming since no legislation aimed specifically at small business appeared in Congress until 1949. Then a "fair share for small business" bill appeared calling for a "fair and substantial portion of any procurement" to go to smaller firms. A report from the Budget Bureau said the Administration had no quarrel with the legislation, noting that President Truman had already assured a fair distribution of government orders among various sizes of firms.[14] The next year a Small Business Corporation bill was introduced to replace the defunct SWPC. It proposed a government lending corporation capitalized at $5 billion, but received no congressional action.[15]

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[12] Economic Concentration and World War II, Report of the Smaller War Plants Corporation to the Special Committee to Study Problems of American Small Business, Senate Document 206, 79th Cong., 2d Sess. (Washington: U. S. Government Printing Office, 1946), p. 2.

[13] Jess Larson to John Steelman, May 28, 1948, Truman Papers, OF 345, Truman Library.

[14] David D. Lloyd memorandum, June 24, 1949, Lloyd Files, "Small Business" folder, ibid.

[15] Supplement to Congress and the Monopoly Problem, Fifty Years of Antitrust Development, 1900-1950, A History of Congressional Action in the Antitrust Field during the

Assisting small business was still popular but no widespread interest in a general program had yet developed in either Congress or the Administration.

Governmental inaction on small business problems had been deferred, to a great extent, by the generally healthy condition of business in the first years after the war. Although Truman had proposed legislation to assure full employment by combined government and private action, Congress had eliminated federal responsibility for full employment and replaced it with concern over maximum employment. Actually the law provided for little more than a three man Council of Economic Advisors who would watch the economy and assist the President in preparing a yearly Economic Report. The government through its Maximum Employment Act stated its intent, but the measure itself did not provide for implementation of the aim. Any effort to obtain full employment required normal executive and legislative action. Although the legislation did not mention antimonopoly by name, continued high employment would do much to keep the economy healthy and competitive.[16]

Past 50 Years, Prepared at the instance and under the direction of the Select Committee on Small Business by the Legislative Reference Service of the Library of Congress, House Document 599, 81st Cong., 1st Sess., (Washington, U. S. Government Printing Office, 1951), p. 19.

[16]Staff memorandum, "Review of Employment Act of 1946," Sept. 28, 1946, Truman Papers, OF 985, Truman Library.

The first postwar recession developed in late 1948 and early 1949. As the economy sagged, the Council of Economic Advisors kept a closer watch on the economy, increasing reports to the President from quarterly to monthly. By June of 1949 the Council expressed fear that unemployment would reach nearly six million before the economy revived.[17] The multitude of proposals contained in the monthly reports were finally collected into a booklet entitled, "Business and Government." Its comments on small business did not include a specific program to aid that group but rather noted that small firms suffered a much greater drop in credit availability and profits during a recession than did big business.[18] In fact the Council's draft for the 1950 Economic Report, while including numerous suggestions on tariff changes, foreign aid, the St. Lawrence Seaway Project, and various grants to states, did not mention either antitrust or small business by name.[19] The Council's investigations had made it aware of small business' plight, but apparently no program had been developed.

While the Council of Economic Advisors collected information on the recession, an unrelated development took

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[17]Council of Economic Advisors to the President, June 1949, OF 396, <u>ibid</u>.

[18]Council of Economic Advisors, "Business and Government," Dec. 20, 1949, <u>ibid</u>.

[19]Draft of President's Economic Report, Jan. 2, 1950, <u>ibid</u>.

place. Charles Sawyer, who had become Secretary of Commerce in 1948, wrote to the President with a new idea for antitrust enforcement. Sawyer stated that the original Commerce Department Act required that the department observe industrial concentration, and when it became excessive suggest governmental action. Therefore, Sawyer considered it his duty to propose a new plan in the face of increased industrial concentration. The Secretary had in mind an educational program, directed by the Commerce Department, to improve compliance with the antitrust laws. He argued that the FTC and the Justice Department were litigating agencies and therefore not on friendly terms with business, while the Commerce Department was close to business and could clarify the laws and improve compliance. Another feature of the plan was a cabinet committee which would review Administration antitrust powers, establish clear definitions of antitrust laws and evaluate and develop new Administration proposals from an interdepartmental point of view.[20] The President agreed with the idea and stated that the program "will be good for the government and good for business."[21] Thus a new force for antitrust appeared in the Truman Administration.

Sawyer's proposal was put into effect several weeks later when the President established a committee representing

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[20]Charles Sawyer to the President, Oct. 17, 1949, OF 172, ibid.

[21]Harry S. Truman to Charles Sawyer, Oct. 19, 1949, ibid.

the Commerce and Justice Departments, and the FTC. Truman named the Secretary of Commerce as chairman and directed the group to develop new legislation, if possible.[22] Steelman discussed the new interdepartmental committee with Leon Keyserling of the Council of Economic Advisors and he agreed that much could come out of the effort. Steelman noted that everyone to whom he talked agreed the plan was a good one.[23]

Acceptance of the Sawyer Committee was quick and complete. It received funds in the Budget for 1951 as well as a complimentary letter from Presidential Secretary, Matthew Connelly, on its great potential.[24] Although the group was not able to live up to these high hopes because of the Korean conflict, it had a chance to assist in the development of a small business program. David D. Lloyd, a Truman economic aide, who participated in drawing up a scheme to assist small firms, indicated that the program's success depended on complete Administration support. Especially necessary, he stated, was the blessing of the Council of Economic Advisors who had done so much work on business conditions during the recession. Taking advantage of the new group's popularity Lloyd suggested that a small business "message could be based on the work of the Sawyer Committee

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[22] Ibid., Nov. 25, 1949.

[23] John Steelman memorandum, Nov. 23, 1949, ibid.

[24] Matthew Connelly to Charles Sawyer, Feb. 6, 1950, ibid.

and be, in a sense, its first fruits."[25] Apparently the proposals for a full scale aid program depended on support from the Council and Sawyer's group, neither of which had yet developed a plan.

Sawyer's interest in the plan seemed to increase after he heard the President's State of the Union Message which stressed the need for economic growth among all segments of the economy.[26] The Secretary drafted and sent to the President a proposal for government insurance of private loans to small business and federal assistance in issuing securities. Truman replied that the ideas were sound and suggested that Sawyer send an aide to the White House to work with Stephen Spingarn who was drafting a small business bill for the Administration.[27] Later, however, this interest was somewhat undermined by a speech in which the Secretary noted that the best way to halt undue concentration was to have healthy small enterprise which would develop from a better tax code and general growth of the economy.[28] Sawyer completely ignored the ideas which he had earlier proposed,

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[25] David D. Lloyd memorandum, Dec. 19, 1949, Lloyd Files, "Small Business" folder, ibid.

[26] State of the Union Message, Jan. 7, 1950, Truman Papers, Records of the White House Reporter, ibid.

[27] Charles Sawyer to the President, Feb. 14, 1950, Harry S. Truman to Charles Sawyer, Feb. 18, 1950, Spingarn Files, "Small Business" binder, Vol. I, Tab 16, ibid.

[28] Speech, Charles Sawyer, Minneapolis, Minn., April 13, 1950, Tab 53, ibid.

and which had been included in the draft bill written by Spingarn and Lloyd. The small business measure would not be assisted by vague statements about a "growing economy." Sawyer's ambivalence did little to assist those trying to obtain a small business act.

Compiling the various programs into a single piece of legislation was carried out by Stephen Spingarn. His intense interest in the measure was attested by the detailed record which he kept. Three loose leaf volumes of information on the legislation's progress were collected and carefully organized. As introduced into Congress the Small Business bill included five major ideas. First, the government would establish a fund of $10 million to insure private bank loans up to $25,000 for small businesses. Second, the Secretary of Commerce would incorporate "National Investment Companies" with a capital of one million dollars each to assist small firms in selling securities. Third, the RFC would be placed under the Commerce Department and its lending functions changed to exclude small business loans taken over by the above units, but extended in other areas to include loans for longer terms and on less collateral. Fourth, the Federal Reserve Board was to end its industrial loan operation and, fifth, the technical aid program to small firms carried on by the Commerce Department was to be greatly expanded.[29] The Commerce Department's new activities

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[29] S. 3625, Draft of Mar. 17, 1950, Tab. 32, ibid.

indicated that agency's part in drawing up the program as well as Spingarn and Lloyd's desire to have its full support.

Spingarn defended the plan as well thought out and representing clear solutions to basic small business problems. He agreed, however, that it would disrupt some part of almost every department's "empire" and would not receive strong support on all points from Secretaries John Snyder of the Treasury, Sawyer, or Federal Reserve Board Governor, Thomas McCabe. While these men would oppose losing departmental functions, more opposition, Spingarn feared, would develop among the press and small business itself because the program would not be seen as an antimonopoly aid but rather as more government interference.[30] Spingarn's observations proved true, though the Korean War did more to destroy the plan than all the domestic opposition.

In the months before international involvements wrecked the program Lloyd and Spingarn worked diligently rallying support. Lloyd wrote in March that if the President hoped to get the bill passed he would have to "state personally to these individuals /Snyder, Sawyer, McCabe, Keyserling, etc./ his deep interest in this program."[31] Spingarn faced an even more difficult problem when McCabe

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[30]Various items, Mar.-June, 1950, ibid.

[31]David D. Lloyd to Stephen Spingarn, Mar. 24, 1950, Lloyd Files, "Small Business" folder, ibid.

prepared a memo on the program expressing the Federal Reserve Board's view. The draft was an unbiased review including all the plan's advantages and shortcomings. Spingarn protested that opponents would extract the criticisms and ignore the advantages making the paper a "kiss of death". McCabe accepted Spingarn's criticism and wrote a second message which "was a tempered but unmistakable endorsement of the program."[32] These instances show the difficulty in organizing support for the unique new program.

Lagging interest in Congress complicated the Administration's problems. Spingarn asked the President to send a special message on the bill, presenting a draft early in May. Spingarn's suggestions reiterated the need for economic growth which had declined far too much during the recession, and noted that growth had a direct relationship to healthy small business.[33] A few days later the President sent a slight modification of this draft to Congress asking for quick action to provide for this much needed economic stimulent. "Encouragement of small and independent business," Truman stated, was one "of our strongest weapons against monopoly."[34] This request was reinforced by a plea to

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[32]Federal Reserve Board Review of S. 3625, n. d., Stephen Spingarn to Thomas McCabe, June 26, 1950, and June 29, 1950, Murphy Files, "Small Business" folder, ibid.

[33]Stephen Spingarn, Draft of Small Business Message, May 1, 1950, Lloyd Files, "Small Business" folder, ibid.

[34]Harry S. Truman to the Congress, May 5, 1950, Spingarn Files, "Small Business" binder, Vol. II, Tab 83, ibid.

legislative leaders at a White House meeting later in the month. The President told the Congressmen that the bill was needed to aid the economy and to bolster the Administration's antimonopoly program.[35] Congress could have no doubt about Truman's position.

The President also sought public support for the measure. During May, 1950, Truman referred to the program in a speech to the Better Business Bureau in Washington, and in addresses at Cheyenne, Wyoming, and Cumberland, Maryland. The Washington remark was an "ad lib" inserted at Spingarn's request noting that "several million people" wanted the small business bill.[36] At Cheyenne Truman said antitrust actions "are only a limited and negative approach" to a competitive economy. A positive approach, he remarked, would come with strong independent small enterprises keeping both growth and competition at high levels.[37] Returning to Washington via Cumberland, Truman reiterated the need for competition and the small business program.[38] During May, 1950, the small business bill appeared high on the "must" list.

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[35] Stephen Spingarn memorandum, May 24, 1950, ibid.

[36] Speech, Harry S. Truman to Better Business Bureau at Washington, D. C., June 6, 1950, Vol. III, Tab 121, ibid.

[37] Speech, Harry S. Truman at Cheyenne, Wyoming, May 9, 1950, Vol. II, Tab 89, ibid.

[38] Speech, Harry S. Truman at Cumberland, Maryland, May 19, 1950, Tab 101, ibid.

The President's concerted effort to rally support for the measure led to considerable press comment. The Abilene, Texas Reporter stated that a loan program for small business seemed as logical as loans to home owners.[39] This view was not shared by most other American papers, large or small. Criticism was widespread and diverse. Most papers said the plan erred because it did not include tax reforms, it would lead to government loans for weak firms with "connections" and finally, it increased the danger of socialism.

Among major urban papers there was no support, although some remained neutral. Godfrey Wilson of the New York Times feared the program "could lead to placing private enterprise under its [government's] regulation and control, culminating in socialism."[40] In the same city the Herald Tribune reviewed the plan without evaluating it except to note that the provisions for government chartered investment companies would produce the most opposition. It agreed, however, that numerous urban Republicans would support this feature to gain small businessmen's votes.[41] Chicago's Daily News struck the tax note when it suggested that "Dr. Truman . . . knock off the leeches" of high taxation instead of "administering blood transfusions."[42]

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[39] Abilene Reporter (Texas), May 7, 1950, Vol. III, Tab 124, ibid.

[40] New York Times, May 14, 1950, Vol. II, Tab 99, ibid.

[41] New York Herald Tribune, April 17, 1950, Tab 58, ibid.

[42] Chicago Daily News, May 8, 1950, Tab 124, ibid.

Comments by small town newspapers were no more friendly than those in the large cities. The Waterloo, Iowa Courier attacked the plan as more government meddling, saying less federal control and lower taxes were "the program that small business wants /sic/."[43] In Lansing, Michigan the editor of the State Journal noted that the greatest aid to small business would be an end to Truman's interference.[44] The whole plan smacked of "backing into socialism" warned the Utica Press,[45] while the Corpus Christi Caller complained that the program would lead to weak firms obtaining government loans.[46] Both Tulsa papers criticized the plan with the Tribune saying that Truman was trying to treat the symptoms of small business sickness when "his whole government philosophy is the disease,"[47] while the World complained that the plan was too much of a "departure" from traditional functions of the Federal government to be good.[48] Throughout this cross section the remarks were sometimes mild, sometimes heated, but always against the plan.

The most detailed review of the small business

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[43] Waterloo Courier (Iowa), ibid.

[44] Lansing State Journal (Mich.), May 25, 1950, ibid.

[45] Utica Press (N. Y.), May 16, 1950, ibid.

[46] Corpus Christi Caller (Texas), May 17, 1950, ibid.

[47] Tulsa Tribune (Oklahoma), May 8, 1950, ibid.

[48] Tulsa World (Oklahoma), ibid.

program appeared in one of the nation's best financial papers, the <u>Wall Street Journal</u>. In a long article it concluded that the program would lead to influence peddling and poor loans like the famous Lustron scandal. Small business, if sound, the <u>Journal</u> argued, could always get funds from local sources; if not sound, no funds should be obtained anywhere.[49] That the press was almost unanimous in opposing the plan was not surprising since the bulk of American newspapers automatically disagreed with the Truman Administration. What was shocking was the fact that not one editor noted that the major aim of the program was increasing competition and fighting concentration. Several Truman speeches and a special message to Congress stressing this point had been completely ignored by the "free press." No legislation stands much chance when the press is overwhelmingly against it, especially when major aspects of the measure are ignored.

The inability of the press to grasp the aim of Truman's small business program was not the only problem faced. Congress had not acted prior to the special message, and seemed in no hurry to do so afterward. Although the Administration bill had four co-sponsors, Senators Scott Lucas, Burnett Maybank, Joseph O'Mahoney and John Sparkman, it was not referred to the Committee on Banking and Currency until May 19, 1950. Here it was to be considered along with

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[49] <u>Wall Street Journal</u>, May 29, 1950, <u>ibid</u>.

numerous other bills bearing on small business.[50] As early as the previous February Charles Murphy and Spingarn had indicated that they were ready to testify in favor of the measure as soon as hearings commenced.[51] The long delay ended in late June when Senator Maybank finally called for hearings on the Spingarn plan.

The executive branch now had an opportunity to describe its program. Secretary Sawyer, the first witness, reviewed the bill title by title, explaining how each would aid small enterprises. Summing up he said that the program would do much to aid small businessmen and would not cost the government much money.[52] During Sawyer's early testimony the committee members had been quiet and cooperative, but after he completed his general review Senator Willis Robertson quizzed him about inflation. Many of the questions were vague and confused, frequently leading Sawyer into blind alleys. Finally Robertson said that he favored "private enterprise" and opposed "taxpayer loans" to aid unsound small firms. Deflation and tax reform were the solution to business problems not a totally new program, the Virginian concluded. By agreeing to several of the Senator's questions,

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[50] Congressional Record, 81st Cong., 2d Sess., XCVI (May 19, 1950), p. 7267.

[51] Charles Murphy to Stephen Spingarn, Feb. 18, 1950, Truman Papers, OF 172, Truman Library.

[52] U.S., Congress, Senate, Committee on Banking and Currency, Hearings, on S. 529, S. 2943, S. 2947, S. 2975, S. 3386, S. 3625, Small Business Act of 1950, 81st Cong., 2d Sess., Part 1, June 22, 1950, pp. 39-55.

Sawyer had led himself into a position where it appeared he too saw no need for an overall plan.[53]

If Sawyer's early testimony had not been overwhelmingly successful his last few moments were catastrophic. Homer Capehart, who arrived late at the hearings, asked why small business needed loans and Sawyer responded that capital requrements were greater now than before the war. The solution, Capehart said, was to return the economy to a 1939 condition or, better yet, make the economy so healthy that business would not need loans. Neither Sawyer nor anyone else could explain to the Senator that borrowing to expand a business often indicated a healthy and competitive economy. After the exchange with Capehart, Sawyer took his leave, sadder but wiser.[54]

The hearings continued for several more days with witnesses from the Interior Department, the RFC, the Treasury Department, and the FRB all speaking in favor of the small business bill. James Boyd, representing the Interior Department, stressed that the measure would help reopen many small mines closed during the war. Capehart again proposed returning to 1939 as a substitute for legislation. Boyd was speechless.[55] The RFC's Harvey Gunderson gave support to

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[53] Ibid., pp. 59-62.

[54] Ibid., pp. 56-68.

[55] Ibid., June 23, 1950, pp. 81-92.

the overall plan, but opposed subordinating his agency to the Commerce Department. While he understood that the new program included much more than loans and thus could not be directed by the RFC, he continued to hope that his agency could remain independent. Although careful not to state his views so strongly that they would harm the whole measure's chances, his support was modest.[56] The Treasury representative, Vance Kirby, received better treatment than did the other witnesses because he agreed that tax reform should be part of the small business policy and talked about this problem.[57] The final witness was Federal Reserve Board Chairman, Thomas McCabe. After agreeing to tax reform, he expressed support for the plan and asked that the committee give it a trial.[58] While all the witnesses supported the bill, none were avid in their defense of the plan. Spingarn had obtained support but not the type that could stampede a congressional committee.

On the final day of the hearings the arch advocates of the measure appeared. Senator Lucas, the bill's staunchest friend, listed several reasons for passage including strengthening of small business by easier loans, greater technical assistance, and general aid to the free enterprise system. The Senator received support from an unusual bank

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[56] _Ibid._, pp. 93-111.

[57] _Ibid._, June 27, 1950, pp. 113-128.

[58] _Ibid._, pp. 128-149.

president, Walker Congriff of Utah. While the American Bankers Association would oppose the plan Congriff said, it would be the best thing for small business. This colorful witness noted with a chuckle that bankers opposed every act that had assisted their business for the last half century. These outspoken witnesses received a quiet but cool reception and few questions or comments were directed to them from members of the committee.[59] This ardent support was small and late, and the committee's reaction indicated that it was not convinced.

The hearings occurred during the week that the North Koreans invaded the area south of the thirty-eighth parallel. On June 30, United States forces entered the ground fighting ending any chance that normal domestic issues would continue to predominate in Washington. The Small Business hearings were discontinued even though several more government witnesses were ready to appear. The abruptness of the cessation was noticeable in the printed hearing. The information discussed above was collected in part one; part two could never be printed because the committee turned to problems of rearmament.[60]

The new situation prompted Spingarn to ask the President if the small business program were now "on ice." Truman replied that while he was still very much in favor

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[59] Ibid., June 28, 1950, pp. 151-172.

[60] Ibid., p. 1.

of the program he "might not be able to get it through this session because of the new situation."[61] The President was overoptimistic in suggesting that there was even a chance that the plan might be enacted. As soon as the Korean War began, additional hearings were cancelled and the bill itself was totally ignored; it was not even referred back to the floor of the Senate. Trouble in the Far East had halted this phase of the Administration's domestic program.

Despite the new circumstances, certain Senators continued to give small business special attention. Senator Sparkman's Select Committee on Small Business opened hearings early the next year on the problems faced by small entrepreneurs. While no specific measure was under consideration, continued interest in this segment of the economy would make future legislation easier to obtain. The Small Business act was dead, but interest in aiding this area continued and later appeared in wartime procurement legislation.

The failure to enact a small business program indicated how difficult it was for the President to obtain a sympathetic audience among Congressmen and most of the press. Small business had become a sector of the economy in need of additional assistance if the economic system were to

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[61] Stephen Spingarn to the President, July 21, 1950, Harry S. Truman to Spingarn, July 24, 1950, Spingarn Files, "Small Business" folder No. 3, Truman Library.

remain competitive and free. But men like Capehart were unable to grasp that more had changed in postwar America than the value of the dollar, while others like Truman and his aides saw that healthy small firms were an important counterbalance to industrial concentration. Although the program was ignored in the rush to rearm, the economic difficulties encountered during the Korean conflict presented new opportunities to assist small business. These efforts will be considered in the following chapter.

CHAPTER IX

ANTIMONOPOLY ASPECTS OF THE DEFENSE PRODUCTION ACT OF 1950

Events in the last days of June, 1950, plunged the United States into a conflict which was distant and confused. Within a few weeks it became clear that this country would not use its massive nuclear potential but rather would carry most of the burden of a conventional United Nations' war in Korea. The limited nature of the conflict caused many new problems in the economic as well as the military arenas. Before a truce was signed in July, 1953, a full scale political crisis developed over the removal of the United Nations' military leader, and the American economy had to adjust to conditions of partial mobilization.

The Attorney General noted in mid-1951 that the Korean conflict was especially dangerous for the economy because government procurement was limited and, in a sense, competitive with the private buyers. The war had to be waged without "undue concentration" and "without impairing the strength of our system of free enterprise."[1] The unique

[1]Attorney General memorandum on Midyear Economic Report, June 18, 1951, Truman Papers, OF 396, Truman Library.

nature of limited war required special legislation and executive action. The problem of where and how much to regulate the economy was the first and most difficult task faced by the government in the summer of 1950.

Legislative proposals to mobilize the economy were presented a few days after the conflict began. Following brief hearings, the Defense Production Act was reported to the House in late July.[2] Representative Brent Spence reported that the hearings were brief because the bill was needed immediately. He pleaded for quick passage telling Congress that the measure was what "the President wants /sic/." The debate revolved around the issue of the degree of government control. Congress, departing from its usual role of reducing Truman's requests, desired greater regulation of wages, prices, and rationing than did the President. The proposal for almost total mobilization originated with Bernard Baruch and had widespread support in the Congress and press. His plan contrasted sharply with the President's proposal to establish only limited controls on production and prices. Although the opposing forces delivered long remarks on the desirability of limited versus complete controls, the President's view prevailed.[3]

Antimonopoly considerations appeared during the

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[2]Congressional Record, 81st Cong., 2d Sess., XCVI (July 31, 1950), p. 11445.

[3]Ibid., Aug. 1, 1950, pp. 11512-31.

second day of debate when Emanuel Celler proposed an amendment to clarify antitrust exemptions granted in the act. The original draft proposed that military contracts involving violations of the Sherman and Clayton Acts could be authorized by the Secretary of Commerce. Celler protested that since the Commerce Department did not enforce the laws it should not be allowed to suspend them. He called for joint action by the Justice Department and the FTC on granting immunity from the antitrust statutes. To support his view Celler quoted letters from the Assistant Attorney General, Peyton Ford, and the Chairman of the FTC, James Mead. Both agreed that exemptions to the antitrust laws should be carefully checked. After a warm supporting speech by Wright Patman, the Celler amendment passed.[4]

The provision to check more closely on antitrust violations was not the only antimonopoly aspect of the DPA. Small business was "to make [the] greatest possible contribution toward achieving the objectives of this Act." The bill provided that small enterprises were to receive information on contracts and ample opportunity to bid for government work.[5] Without additional debate the House approved this complex measure dealing with numerous regulations of the private economy, provisions for government procurement,

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[4]*Ibid.*, Aug. 2, 1950, pp. 19619-21, 19626.

[5]*Ibid.*, Aug. 1, 1950, pp. 11532-41.

and antimonopoly and small business aid on August 10.[6]

Senate consideration commenced the next week. A brief debate led to several amendments strengthening controls over credit and installment buying. The measure then passed 85 to 3.[7] This credit modification required a conference committee which acted quickly, reporting a compromise bill to Congress within a week. The report resembled the House measure more than the Senate, but in neither case were the sections dealing with antimonopoly disturbed. Both houses accepted the conference version by voice vote and the bill was sent on to the President.[8]

The Defense Production Act of 1950 became law on September 8, when the President signed the bill establishing his framework for partial mobilization.[9] The basic aim of the DPA was to obtain the materials with which to wage war while maintaining a stable and prosperous economy at home through the use of minimum controls. Most of the act's provisions dealt either with measures aimed at obtaining war goods or with attempts to stabilize wages and prices within the domestic economy. Stabilization on the home front included avoiding excessive concentration of industry. This

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[6] _Ibid._, Aug. 10, 1950, pp. 12224-31. The final vote was 303 to 12 with 34 not voting.

[7] _Ibid._, Aug. 21, 1950, pp. 12910-11.

[8] _Ibid._, Sept. 1, 1950, pp. 14126-27, 14060-74.

[9] _Ibid._, Sept. 11, 1950, p. 14555.

was antimonopoly under new circumstances; partial mobilization and free enterprise both had to be achieved.

President Truman's vast experience with problems of large government spending obtained as head of the Truman Committee in World War II, was of considerable assistance in the new task. Aware that the antimonopoly aspects of the law were brief and as yet unpublicized, he issued an Executive Order reiterating that purchases should not lead to antitrust violations and informing procurement officers that the Attorney General and the FTC should be notified of any problems that arose.[10] James Mead and J. Howard McGrath replied that they would report occasionally to the President on the problems referred to them.[11] Thus, need to control excessive concentration was recognized early in the Korean War.

The plight of small business also received quick attention from the Administration. Even before the DPA had passed Congress, Leon Keyserling had written to Stephen Spingarn suggesting that as much of the Small Business Act of 1950 as possible be incorporated into the defense bill. He criticized the measure presented to Congress saying it gave insufficient aid to small producers.[12] Keyserling's

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[10]Executive Order 10161, Sept. 28, 1950, Code of Federal Regulations, Title 3-The President, 1949-53, Compilation (Washington: U. S. Government Printing Office, 1958).

[11]James Mead to the President, Oct. 31, 1950, J. Howard McGrath to the President, Oct. 3, 1950, Truman Papers, OF 277, Truman Library.

[12]Leon Keyserling to Stephen Spingarn, Aug. 1, 1950, Spingarn Files, "Small Business" folder No. 3, ibid.

idea was, no doubt, well received by the originator of the small business program, but the President wanted quick action on the bill and reviving the aid program would cause a long delay. Although nothing was done during August, 1950, to increase the small business aspects of the DPA, the President's Executive Order in September could be considered as indirect aid to small firms. Later a memo from the FTC to Steelman commented that it would do all in its power to control concentration and to give small producers equal opportunity.[13] The friends of small business continued to look for ways to aid it.

Truman further assisted antimonopoly efforts when he issued an Executive Order establishing regulations for industrial executives serving government agencies without salary. These "dollar-a-year men" were immune from conflict-of-interest charges, but Truman made it clear that policy decisions should still be made by government officials and that meetings of "borrowed" executives should always take place in the presence of a government man.[14] Presidential experience during World War II convinced Truman that careful restrictions should be applied to those who might be tempted to display a bias on defense production despite noble motives. This order made conflicts-of-interest easier to

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[13] James Mead to John Steelman, Nov. 29, 1950, Truman Papers, OF 100, _ibid_.

[14] Executive Order 10182, Dec. 1, 1950, _Code of Federal Regulations, President_.

avoid and kept responsibility on the government where it belonged.

While both the executive and legislative branches talked about economic expansion and controls, big business moved to take advantage of the military situation. Before the DPA passed, Benjamin Morrell of Jones and Laughlin Steel twice wrote to the President requesting information on aid for new steel plants. Most American steel plants were over twenty years old, Morrell noted, and increased demand whould require new facilities. Jones and Laughlin could not build these facilities without "accelerated amortization" privileges from the government. Truman replied that he wanted "some approach . . . that will allow continued expansion of plants."[15] Thus it appeared that big business was ready to take advantage of government aid long before small enterprises were even aware that a program existed.

The haste with which big firms applied for assistance from the DPA was shown by the Attorney General's first report on the act's operation. He warned that although military orders were being filled adequately, purchases were not distributed evenly throughout the economy. The greatest fault, said the Attorney General, was that contracts were awarded by negotiation rather than competitive bids.

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[15] Benjamin Morrell to the President, July 25, Aug. 4, 1950, Harry S. Truman to Benjamin Morrell, Aug. 7, 1950, Truman Papers, OF 342, Truman Library.

This technique led to quicker deliveries, but usually meant that larger and better equipped firms obtained the orders. Since this activity could destroy "free enterprise," efforts should be made to assure that the "economy will remain competitive and free." The report indicated that small firms received a small share of war procurement.[16]

Other evidence that small business was being slighted came from the new Director of Defense Mobilization, Charles Wilson. Wilson, who had once testified that there was no conflict between big and small business and that they were "happy partners," now gave a different view.[17] He informed the Senate Select Small Business Committee that in a war situation the government went to large firms for goods because it had the equipment and knowledge necessary to produce them. Small firms, on the other hand, required government assistance and direction if they were to manufacture complex defense items. Wilson, who had been on the job for only a few weeks, admitted that he did not yet have a plan which would increase the use of small units.[18] The

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[16] Attorney General's First Report on the DPA to the President, Dec. 7, 1950, Truman Papers, OF 277, _ibid_.

[17] Charles E. Wilson, _Big Progress and Big Business Go Together_, Testimony before the Special Subcommittee of the Judiciary of the House of Representatives in Connection with its Study of the Antitrust Laws, Nov. 30, 1949 (n. p., n. d.), pp. 17-19.

[18] U.S., Congress, Senate, Select Committee on Small Business, _Hearings_, _Small Business Problem_, 82d Cong., 1st Sess., Jan. 18, 1951, pp. 7-9.

one thing evident by early 1951 was that small business had been ignored.

Evidence continued to mount that, like World War II, the economy was concentrating at a very rapid pace. The Attorney General's second report under the DPA noted that purchases from big business had increased by 21.3 per cent during the last half of 1950.[19] John Steelman, also concerned over the trend, sent a memo to Wilson asking him to increase antimonopoly activities in his agency. He told Wilson to organize a plan to stop concentration so that money could be requested for such an agency in fiscal 1952.[20] That it was more needed than ever was shown in a congressional debate when Representative Joe Evins reported that in the second half of 1950 small business received a fair share of Army contracts but only ten per cent of Air Force and twenty per cent of Navy orders.[21] By the spring of 1950 there was little doubt but that the limited mobilization of the Korean conflict tended to concentrate the economy as much as the total efforts of World War II.

As the difficulties faced by smaller units in the economy became more apparent, ideas for solutions also appeared more frequently. The Budget Bureau proposed a joint

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[19] Attorney General's Second Report on the DPA to the President, Apr. 30, 1951, Truman Papers, OF 277, Truman Library.

[20] John Steelman to Charles Wilson, May 1, 1951, ibid.

[21] Congressional Record, 82d Cong., 2d Sess., XCVIII (Mar. 12, 1952), p. 2167.

Justice Department-FTC Committee to advise what purchases could be diverted to small firms to reduce concentration. This group would have no power to control purchasing, but rather would issue reports on how selective buying could stimulate competition.[22] In addition to this specific plan the President sent a Memo to Wilson asking him to note carefully the Attorney General's reports and to stop undue concentration in the economy.[23] These suggestions, while indicating concern, tended to be vague and had very little direct impact on American business.

During the late spring of 1951 the nation faced many problems more serious than the plight of small business. Various aspects of the DPA including credit controls, rent ceilings, and priority regulations required extension or modification. Congressional action on these tasks commenced in June, 1951. The necessity to achieve immediate goals led the committee to eliminate a small business agency before sending the measure to the floor.[24] The lack of time for public hearings and need to act on other matters must have seemed logical since no one protested when Senator Burnett Maybank announced that a small business plan would be

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[22] Bureau of the Budget memorandum, Mar. 13, 1951, Truman Papers, OF 277, Truman Library.

[23] Harry S. Truman to Charles E. Wilson, May 5, 1951, ibid.

[24] Congressional Record, 82d Cong., 1st Sess., XCVII (June 21, 1951), p. 6875.

delayed several more weeks.[25] The Senate commenced debate on all aspects of the defense effort, except small business.

Delaying or ignoring the small business problem displeased several Senators. John Sparkman stated that, since the plan to aid small firms had been rejected in committee by a single vote, he felt compelled to introduce it as an amendment from the floor. Assistance to small business was of such importance that Sparkman wished to avoid the delay that public hearings entailed.[26] The Senate debated the plan briefly, determining only that it was about the same as the Smaller War Plants Corporation of World War II. Following this short discussion, the Senate reversed the committee stand and approved a Small Defense Plants Administration by a voice vote. Later another amendment was proposed, assuring that the new agency would have some prime contracts which it could subdivide among smaller firms. This view obtained quick support and by evening the SDPA and other Senate amendments to the DPA passed without trouble.[27] Thus, with little effort and less opposition the Senate created an administration to assist small business.

Late in July the House of Representatives spent several days considering its own changes for the defense system. Although the House agreed with the Senate on most

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[25] Ibid., p. 6940.

[26] Ibid., June 27, 1951, pp. 7250-51.

[27] Ibid., June 28, 1951, pp. 7377-83.

items, there were numerous small differences, including one on the SDPA. The House plan varied from the Senate proposal in that it did not provide for direct lending by the new administration, but rather that the RFC would lend the money on authorization from the SDPA. The driving force for House adoption was Wright Patman who pleaded for small business aid on the basis of his small business committee's work and his long experience with its problems. The Texan recalled how World War II had increased concentration and asked Congress to defend free enterprise by keeping small business strong. The House like the Senate presented no apparent opposition to the Small Business plan, and passed it by a voice vote.[28]

Although there was no opposition to small business aid, parliamentary difficulties delayed its passage. The differences between the House and Senate amendments required a conference committee. The conference acted with unusual speed completing the compromise draft within a week. In the compromise bill the SDPA was more like the House plan than that of the Senate, in that it had no lending power of its own. Both houses accepted the report in late July, and the President signed the bill on August 1, 1951. Thus a little more than a year after the Korean conflict began, small business had an advocate.[29]

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[28] Ibid., July 20, 1951, pp. 8594-8601.

[29] Ibid., July 27, 30, Aug. 1, 1950, pp. 9025-29, 9246.

The newly created agency was to see that small firms received a "fair share of government contracts for supplies and service." The SDPA did this by cooperating with procurement agencies in determining what products small enterprises could provide. The administration checked various small firms for technical and financial capability to carry out contracts, and if they were satisfactory it granted certificates to indicate this. In addition, prime contracts could be obtained by the SDPA and then sublet to small firms which could not obtain other contracts. The lending power, while not in the hands of the agency itself, was to function only on recommendation of the SDPA. The law proposed that a fund of $100 million be established within the RFC to be available only for small business loans. Finally, the measure called for "technical and mangerial assistance" to small business concerns. The program as constituted included not only emergency war aims, but carried out many of the ideas proposed in the Small Business Act.[30]

Creation of the agency was but the first step in a long battle to assist small business. To put it into operation an administrator was needed. This proved more difficult than might have been expected. When Truman did not announce an appointment for over six weeks, Congressman

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[30]Small Business Administration, _A History of the Small Defense Plants Administration_, Prepared by the Office of Information and Managerial Assistance (Washington: U. S. Government Printing Office, n. d.), pp. 6-7. Hereafter cited as _History of the SDPA_.

Frazier Reams wrote requesting action, noting that the drift toward concentration was moving so rapidly that it could never be reversed unless the SDPA got to work. Truman replied that he was "having difficulty obtaining a man for the job" because of the special nature of the job, but that he would act within a few days.[31] A problem equally as vexing as finding an administrator was obtaining funds. Congress had not included operating funds in the act creating the SDPA and did not rush to grant them after the agency came into existence. No money was appropriated until November, 1951, and then the sum was only $350,000. This was only enough for initial expenses and two or three month's salaries.[32] The much sought after small business agency was off to a very slow start.

The selection of an administrator occurred early in the autumn of 1951. Truman finally asked Telford Taylor of New York to accept the task of organizing the new agency. Taylor appeared to fulfill all the requirements for a small business agency director, combining law, military, and government regulatory experience.[33] At the hearing on his nomination Taylor told the committee that he would not duplicate other aids to small business, but would attempt to

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[31]Frazier Reams to the President, Sept. 24, 1951, Harry S. Truman to Frazier Reams, Sept. 26, 1951, Truman Papers, OF 3147, Truman Library.

[32]_History of the SDPA_, p. 8.

[33]_Ibid._, p. 10.

obtain fair opportunities for small concerns in defense work.[34] Approval of Taylor's nomination occurred on October 19, 1951, and the SDPA commenced operations.

In addition to the agency's statutory power the new Administrator was assisted by two executive orders. First the President transferred to the SDPA most of the small business activities of the Commerce Department, ordering the department to transfer all records which would aid the new agency in carrying out its functions.[35] Secondly, the President authorized the organization of small business "pools" when needed to produce items more complex than could be manufactured by a single small firm. Immunity for the groups from the antitrust laws required only the approval of the Attorney General and the Federal Trade Commission.[36] The SDPA finally had both direction and authority to assist in the fight against concentration.

Limited funds posed the major stumbling block to effective organization of the group. The initial funds were quickly exhausted on organizational costs and the Congress was asked to vote supplemental money for the remaining months of fiscal 1952. Wright Patman supported additional aid and

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[34] U.S., Congress, Senate, Committee on Banking and Currency, Hearings, Nomination of Telford Taylor to be Administrator of the Small Defense Plants Administration, 82d Cong., 1st Sess., Oct. 9, 1951, passim.

[35] Executive Order 10323, Feb. 5, 1952, Code of Federal Regulations, President.

[36] Executive Order 10370, July 7, 1952, ibid.

told the House that the work of the SDPA greatly aided small firms in the defense effort. The Texan warned that a refusal to grant additional funds would kill the agency.[37] Following Patman's lead Representative John Fogarty of Rhode Island proposed an emergency appropriation of $825,000.[38] Since the bill creating the agency had psssed with such ease there was no reason to suppose that the money would not be approved. Patman listened in shocked silence when J. Vaughan Gary of Virginia launched an attack on the agency. What small business needed, he said, was less government interference not another administration which spent its time duplicating other agencies' work.[39] Brooks Hays of Arkansas joined Gary, and called for a vote to kill the appropriation. Although the motion failed 132 to 103 the size of the minority opposed to the SDPA funds indicated that support had declined sharply since the preceeding August.[40] Before the vote Patman found his voice and rose to defend the SDPA, trying to convince Congress that the agency would be of more help than harm. He countered the duplication argument by noting that the SDPA had not yet taken over the duties of the Commerce Department's Small Business Office because it

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[37] Congressional Record, 82d Cong., 2d Sess., XCVIII (May 11, 1952), pp. 1331-2.

[38] Ibid., Mar. 12, 1952, p. 2208.

[39] Ibid., p. 2191.

[40] Ibid., p. 2216.

lacked the money to do so. More not less funds would end duplication in small business projects.[41] Patman's eloquence saved the day and the amendment finally passed the House 158 to 70; the Senate accepted the House figure without debate and the money was available in June, 1952.[42]

Before the emergency appropriation had been voted work on the budget for fiscal 1953 was well under way. The President's view of the SDPA was demonstrated by its inclusion in the budget under antimonopoly agencies. The $4.2 million requested showed Truman's desire to expand and strengthen a unit which had gone through its first year with a little over $1 million.[43] The problems encountered by the emergency appropriation led SDPA to prepare a booklet describing its present efforts and future plans. This "Legislative Fight Data" listed the contracts granted or pending, the loans approved and the continued need for small business growth. It concluded by noting that both the Council of Economic Advisors and the Joint Committee on the Economic Report agreed that aid to small business should continue and that "adequate funds should be provided" to carry out this

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[41] Ibid., p. 2192.

[42] Ibid., Mar. 13, 1952, p. 2305; June 5, 1952, p. 6638.

[43] Harry S. Truman, Budget Message to the Congress, Jan. 7, 1952, Press Releases, Dec. 31, 1951-Jan. 31, 1952, Truman Library.

program.[44] The battle for a full year's appropriation was clearly not going to be lost by default.

Congressional action occurred without the rancor that appeared during the supplemental appropriation debate. The House quickly approved $3.5 million for which Patman expressed great appreciation.[45] The Senate increased the SDPA funds to $4 million, later agreeing on the compromise figure of $3.75 million in conference with the House.[46]

The lack of debate on the SDPA's money did not mean that everyone now supported it. Rather, there were more important items in the 1953 budget on which to disagree. Certainly the agency did not share Patman's glee over its compromise appropriation. H. G. Hanna, Budget and Finance Director for the SDPA, wrote to the New York field office complaining that the reduction from $4.2 to $3.75 million would stop expansion plans, and might even force some suspension of operations already begun.[47] The SDPA continued to be financially insecure.

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[44]Small Defense Plants Administration, "Legislation Fight Data," 1952, Small Business Administration Papers, Appropriations File No. 1-2, RG 309, National Archives.

[45]Congressional Record, 82d Cong., 2d Sess., XCVIII (Jan. 28, 1952), p. 8505.

[46]Ibid., July 5, 1952, p. 9682; July 15, 1952, p. 9755.

[47]H. G. Hanna to Walter McCarthy, July 11, 1952, Small Business Administration Papers, Appropriations File No. 1, RG 309, National Archives.

The appropriation for fiscal 1954 which would be considered after Eisenhower took office was, like previous ones, far short of adequate. John Horne, the new Administrator, stated that if Congress approved the entire amount of $4.1 million requested by the budget the Administration would still be extremely short of money.[48] Horne's dilemma was quickly solved when the Eisenhower Administration eliminated the agency and transferred its duties to a new Small Business Administration.[49]

One factor that had made life difficult for the agency had been its unwillingness to play politics. Senator Kenneth McKellar of Tennessee spent several months trying to get a small business loan to build a steel plant in his home state. Although he obtained a tax amortization certificate from the Internal Revenue office, little else was accomplished. In a letter to Truman the Senator asked for help in this project, especially a Certificate of Essentiability and loan support from the SDPA. Truman replied that he would check the matter and expressed hope that all would "work out."[50] The SDPA believed that since the McKellar group had nothing but land as its part in the venture, and

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[48]John Horne memorandum, Dec. 17, 1952, ibid.

[49]History of SDPA, p. 14. The agency officially ceased to function on July 30, 1953.

[50]Kenneth McKellar to the President, Dec. 10, 1952, Harry S. Truman to Kenneth McKellar, Dec. 12, 1952, Truman Papers, OF 342, Truman Library.

since the need for a steel plant in Tennessee was as limited as the materials with which it would operate, the loan should be refused. William Johnson, a SDPA staff member, said that the agency's refusal led McKellar to support every move to limit funds or to kill the administration.[51] While there were no direct attacks from the floor by McKellar his support was also conspicuous by its absense.

Inadequate appropriations were far from the only difficulties faced by the SDPA. Public reaction to the agency showed neither an understanding of what it was doing nor a desire to learn. Most letters to the Administration opposed some part of its operation. One discontented group fell into the catagory of "self made men" who did not need a special agency to aid their small firms and who proposed that the SDPA close its doors and turn its money back to the Treasury so taxes could be reduced. Other unhappy correspondents felt just the opposite. They noted that the SDPA provided neither enough aid nor sufficient contracts. The most frequent correspondent was Henry Scharf of New York who published a little paper, the Daily Procurement Bulletin, which purported to list all contracts available for small concerns. Scharf constantly complained that the agency either did not want to assist small plants or did not know what contracts were available.[52] The only encouragement

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[51]Interview with William Johnson, June 16, 1960.

[52]Various items, 1951-53, Small Business Administration Papers, Public Relations File, RG 309, National Archives.

came from George Burger and his National Federation of Independent Businesses. Burger told Taylor that over 90 per cent of his membership supported the agency's work.[53] In general the SDPA mail did little to encourage it.

The agency also became involved in disagreements with other government units. The SDPA had the authority to grant "Certificates of Competency," indicating a small firm's ability adequately to carry out a contract. Often, however, the armed forces awarded contracts to larger firms on the basis of past experience, ignoring the certificate altogether. Since the decision was a matter of judgment on both sides it was impossible to force the military to purchase from the approved small firm.[54] Another conflict arose when the SDPA approved "Regional Advisory Boards" made up of local businessmen producing government goods. The Antitrust Division heard about this and H. G. Morison wrote to the agency stating that such boards would be "anticompetitive" and thus illegal. All committees and boards, according to DPA, had to meet under government direction and had to have complete minutes of their meetings; the SDPA plan ignored both of these requirements. Morison regretted that the groups could not be formed, but added that competition had

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[53]George Burger to Telford Taylor, Feb. 27, 1952, ibid.

[54]Interview with William Johnson, June 16, 1960.

to be protected.[55] Finally, the statutory divison of lending authority led to a conflict between the SDPA and the RFC when the latter refused to grant a loan approved by the small business agency. Considerable correspondence followed, with Taylor's argument ultimately convincing the RFC to grant the loan. The victory, however, was not complete since the RFC agreed only on the one disputed loan. Although a small accomplishment, the acceptance of Taylor's view on a single loan improved the agency's position for future conflicts, but it also strained the relationship between the two organizations.[56] Constant difficulties with money, the public, and the law kept SDPA morale low.

Despite many problems the agency assisted small business in numerous ways. Under a process of "Joint Determination," in which the SDPA screened proposed military contracts, small firms received almost $500 million in orders. The Certificates of Competency, noted above, led to 96 contracts totalling $53 million. The agency's efforts to obtain subcontracts for smaller industries also met with considerable success. A total of 759 were granted with a value near $20 million. While only seven prime contracts were handled by the SDPA, these purchases provided small firms with $2.3 million in military production. Although

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[55] H. G. Morison to Telford Taylor, Jan. 30, 1952, Small Business Administration Papers, Legal File No. 2, RG 309, National Archives.

[56] History of SDPA, pp. 81-84.

the figures are small when compared with $40 billion military budgets, the contracts aided many small businesses.[57]

The agency assisted small firms in several other ways. Pools of small firms to produce items they could not make alone were established in 26 instances. These groups obtained more than $5 million in government contracts. One of the most important aids to small business was the SDPA loan program. The Administration approved 411 loans totalling over $50 million to small plants, with two-thirds of the dollar value going to firms with less than 100 employees. Rapid tax amortization certificates, priorities for scarce materials and assistance on plant expansion obtained for smaller concerns by the agency were also helpful.[58]

SDPA's other major task was its "technical and managerial assistance program." It published over 60 different pamphlets covering such topics as plant management, production aids, and production pools, distributing over one-half million copies. Frequently the SDPA staff gave on the spot assistance to firms in connection with production difficulties, applications for loans, or contract clarifications. This personal aid and advice did much to bolster the various programs.[59]

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[57] Ibid., pp. 15-16.

[58] Ibid., pp. 16-17.

[59] Ibid., p. 17.

Finally, the SDPA's success must be measured by the health of small business. During the Korean conflict the percentage of firms reaching the age of 4.5 and 10.5 years increased from 29 to 33 and 19 to 20 per cent respectively.[60] Thus a new firm's chance to stay in business increased slightly. Another factor which indicated improvement from World War II was the percentage of government contracts going to the nation's 100 largest firms. The figure dropped from 67 per cent in the earlier conflict to 61.5 per cent during 1950-53.[61] In addition to the greater concentration in World War II, the more recent conflict did not involve nearly as great a reduction in antimonopoly agencies. The total global conflict caused a drop of 28.5 per cent in employees in the Antitrust Division and the FTC, while limited war in Korea showed only a 2.5 per cent decline in staff. The larger staffs were necessary during partial mobilization, since the DPA required that those agencies approve agreements violating the antitrust law.[62] On the negative side, mergers among manufacturing firms continued at a high rate. An FTC study of mergers covering all but the first six months of the Korean War concluded that big firms were still

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[60] U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1959 (Washington: U. S. Government Printing Office, 1959), p. 499.

[61] E. D. Edwards, "Antimonopoly Policy During Rearmament," The American Economic Review, XLII (May 1952), pp. 114-15.

[62] Ibid., pp. 404-9.

eliminating small firms through mergers at a tremendous rate.[63] In general then, the wartime fight against concentration was much like the peacetime conflict; little ground was lost but, on the other hand, not much was gained.

The greatest problem presented by the Korean War was that it introduced a long period of high military budgets. This led to a sustained competition between private and public buying and to the constant danger of too much procurement from too few firms. Federal Trade Commissioner C. D. Edwards called the Cold War a much more dangerous time for effective free enterprise than World War II. The latter had total controls while the former required only partial regulation. The effects of concentrated war purchases could lead to great restraint of trade in private purchases. Edwards noted that because of this danger antimonopoly had to be more effective during a rearmament period, and, he added, it was.[64]

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[63] Federal Trade Commission, Report on Corporate Mergers and Acquisitions (Washington: U. S. Government Printing Office, 1955), pp. 42-48. The FTC noted over 1000 mergers involving firms of over $750,000 capitalization merging with small firms.

[64] C. D. Edwards, "Antimonopoly Policy During Rearmament," op. cit., pp. 416-17.

CHAPTER X

ANTIMONOPOLY DURING THE TRUMAN YEARS: A RESUME

Before drawing final conclusions, one additional antimonopoly tactic of the Truman Administration should be considered. Banking had been criticized as excessively concentrated for many years. Although the Clayton Act permitted the Federal Reserve Board to dissolve banking monopolies, this section of the act had never been used before 1948. In that year the Board took action against the giant banking combine, Transamerica Corporation of San Francisco, California.[1] Thus another little known aspect of antimonopoly was evidenced during the Truman years.

Supporting its demand that the economic power of the Transamerica Corporation be limited, the FRB contended that the company's control of 40 per cent of the banks in the five westernmost states reduced competition among bankers in the area and tended to prevent new firms from entering the banking field. As a remedy the Board asked that the corporation sell the stock which it held in numerous

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[1] U.S., Congress, Senate, Select Committee on Small Business, Hearings, Concentration of Banking, 80th Cong., 2d Sess., June 24, 1948, pp. 21-23.

banks and, in addition, divest itself of some of its branches.[2] A victory in this case would not only have reduced banking concentration in the West, but would have opened the way for several cases against the "money trust."

While the court considered the Transamerica case, several attempts were made to explain that the company was not a monopoly. An employee of the Bank of America wrote that this banking ally of Transamerica was not under its control as the Board claimed. He defended Transamerica further, contending that, rather than limiting competition, Transamerica had helped develop a strong economy which supported many new banks. No antitrust case was needed to keep banking competitive in the West.[3] Another correspondent wanted a quick hearing by the Supreme Court so the corporation could "get its day in court." He was sure the bank was innocent, and, in fact, stated that the case came from a conflict between the Comptroller of the United States and the Federal Reserve Board, and that the company was just an innocent bystander. The Board, he wrote, had acted to stop a bank transfer between Transamerica and the Bank of America because it felt that the Comptroller had approved it too quickly.[4] Whatever the real cause of the action, a long unused part of the Clayton Act had now been applied.

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[2] Ibid., pp. 24-47.

[3] Samuel Stewart to James P. Cain, Nov. 25, 1949, Truman Papers, OF 230, Truman Library.

[4] Unsigned letter to Matthew Connelly, Oct. 16, 1950, ibid.

Although the case was not decided before the Truman Administration terminated, the result did not expand monopoly controls. In July, 1953, an appellate court denied the Board's request that some of the corporation's branches be divested because the FRB had not proved that ownership of two or more banks in the same locality reduced competition.[5] A government appeal to the highest court was to no avail since the Supreme Court also ruled six to two that the Federal Reserve had not shown a tendency toward a banking monopoly. Only Justices Hugo Black and William O. Douglas dissented while Tom Clark abstained because he was Attorney General when the case was instituted.[6] Thus another attempt to expand antimonopoly was refused by a court that seemed to hold divestment more dangerous than monopoly.

The court's view of Transamerica's economic position was more lenient than usual, but it was not completely unlike previous decisions. The court's unwillingness to dissolve large corporations like Alcoa, its refusal to stop mergers like Columbia Steel and Consolidated Steel and its continual vagueness on how much economic power oligopolies could attain, were some of the major stumbling blocks in effective antitrust enforcement during the Truman era. This "conservative bias," while sometimes easing, continued

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[5] Federal Reserve Board v. Transamerica Corp. 206 F.2d 163 (1953).

[6] Ibid., 346 U.S. 82 (1953).

to make traditional antitrust enforcement an unsatisfactory means of markedly reducing industrial concentration in America.

Another constant problem was the small budget on which antitrusters had to operate. Although funds increased during the postwar period, they never kept pace with the rapidly growing problem. The complexities of modern business required much more expensive and painstaking investigations to determine if the antitrust laws had been broken than had been necessary in earlier years. Never during the Truman Administration did the traditional antimonopoly agencies receive enough money to fulfill adequately the terms of the antitrust laws. The attitude of Congress seemed consistent--plenty of laws to protect competition, but no money to enforce them. One must conclude that antitrust was not a high priority operation in the American free enterprise system.

If the traditional antitrust approach would not suffice, then there had to be another method to keep the economy competitive. Under Truman there developed several programs, all of which in some way or another aided small economic units. From the early postwar attempts to bring new producers into the steel and aluminum industry to the Small Defense Plants Administration efforts to secure a fair share of war contracts for small firms during the Korean War, the Administration tried to assist the smaller members of an industry. This tendency to assist small business led Business Week to complain that Truman had changed the concept of the Sherman Act to mean, not equal treatment for all, but special aid for small business.[7] The President's reaction to this charge was that maintaining strong small enterprises was the only way to aid the whole economy.[8] Certainly this approach was more successful during the Truman era than was traditional enforcement.

The high tide of this movement was the Small Business Act of 1950. This program included several techniques to bolster small firms including loans and technical aid. Although the opposition to the bill might well have killed it, the advent of the Korean conflict made passage impossible. Overwhelming press opposition to the bill was to be expected, said Truman, because the press, itself a monopoly, automatically opposed any plan to reduce concentration. The President added that another problem was small business' frequent opposition to programs which were in its own best interest.[9] This resulted from either subtle big business leadership or traditional political views held by the entrepreneur. According to Truman, failure to obtain public and congressional support for the bill was not a reason to despair, but merely another proof that constant effort was

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[7] Business Week, Sept. 24, 1949, p. 25.

[8] Personal interview with Harry S. Truman, May 16, 1961.

[9] Ibid.

needed to keep the economy free from monopoly.[10] The Administration's ability to blend many of the Small Business Act's provisions into legislation passed during the Korean War added credence to this view.

The reluctance of Congress to support the President's small business program did not extend to acts limiting antitrust controls. In both the Reed-Bulwinkle and basing point bills, Congress exempted business activities which tended to reduce competition. In these, as well as the many other bills that did not complete the legislative process, the view that immunity from the antitrust laws was needed to aid competition or to end "uncertainty," prevailed. In both instances the legislative battle commenced after the government had used the antitrust laws to stop industry from using anticompetitive techniques. The ability of industry to convince Congress to change these laws has been shown above; the justification for it seems to be inexplicable.

The willingness of Congress to restrict antitrust activities seemed even more unusual when contrasted with its agreeable atiitude toward extending them. The antimerger bill and the Small Defense Plants Administration were both good examples of antimonopoly extension. In neither case was there much opposition to passage. Congress wholeheartedly approved the legislation and then with equal insistence,

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[10] _Ibid_.

refused to provide financial support. This performance forces one to conclude that many congressmen, like numerous business leaders, honored the antitrust ideal more symbolically than actually.

Whatever Congress's or the President's attitude might have been, the greatest deterrent to a really effective antitrust program during the Truman years was the critical state of world affairs. During the early part of the Cold War the nation focused its attention on containing Communism, and after the outbreak of the Korean conflict it turned to rearmament. These foreign involvements were more than matched by troubles at home. Problems of reconversion, loyalty probes, crime investigations and new political conflicts deterred any large-scale investigation which could lead to intensified antitrust activities. That attempts were undertaken to expand antimonopoly at all seems to be the most remarkable aspect of the period. Fighting concentration when so many other problems intervened was not easy; that it achieved some success was a credit to the Truman Administration.

Even if world tensions had not increased in the postwar era, antitrust law enforcement would have been difficult for two reasons. First, as H. Graham Morison once noted, the anticompetitive techniques used by business became much more difficult to detect. No longer were there open meetings of the Gary Dinner type; the agreements were reached by telephone or in secret meetings of which there were no written records. Antitrust enforcement required much more painstaking investigations to prove collusion had taken place. The second factor militating against successful prosecutions was the general business climate. This is difficult to define, but business magazines from 1945 to 1953 show the change rather clearly. Basically it was an inability to accept big government, as the opposition to the Small Business Act, noted above, indicates. What was needed, business felt, was less government involvement and more freedom from regulations and taxes. The antimonopoly aspect of healthy small business was ignored or categorized as simply "more federal interference." These conditions made accomplishment all the more difficult to achieve.

No resume of antimonopoly during the Truman era would be complete without mentioning press and public reaction. Truman's belief that since the press was a monopoly it could not be expected to support antitrust seems too simple. It would appear, rather, that the usual bias of the newspapers against regulation prevented them from seeing advantages to the whole nation in aid programs for one segment of the economy. Another factor was the poor relationship between Truman and the press. His outspoken replies to criticisms frequently led to further newspaper reaction based more on personal antagonism than fact. These personal involvements are understandable, but that the press would then ignore important parts of Truman's program is hard to excuse. A free press cannot continue if it allows personal prejudices to color its reporting.

Public response seems to have borne a direct relation to newspaper coverage. Correspondents who were not pleading out of self interest, like druggists supporting the McGuire act, usually reflected news coverage. The A. and P. case was the best example of unsolicited mail criticizing the government for an "anti-bigness" or "anti-success" campaign. The negative attitude displayed by the press toward government programs for small business or expanded antitrust law prosecutions was simply reflected by a public which often had no idea of the total plan. If an informed public is the aim of the press, it did not even attempt to achieve this in the area of antimonoplly.

In final summation, antimonopoly action during the Truman era may be viewed as a series of partial victories and partial defeats. In the early postwar period the government made good use of its surplus plants to reduce concentration in several industries. The aluminum monopoly was reduced to an oligopoly of five members prior to 1953. This was, no doubt, the most effective use of war surplus to combat industrial concentration. In the realm of legislation success was less marked. The only clearcut victory for antitrust was the Celler antimerger law, while limits on antimonopoly appeared in the Reed-Bulwinkle and McGuire acts. However, the latter could be justified as an aid to small business, and was thus supported by the President. The partial success in legislation was comparable to the continued inability of the traditional enforcement agencies to control concentration. While new programs appeared in the Justice Department and the FTC, the court constantly refused to widen its interpretation of monopoly and steadfastly refused to order divestment in antitrust cases. Since the old antitrust approach could not cope with the new problems, the Administration turned to small business aids as a means of fighting concentration. This attempt was the most successful; by 1953 small firms had a slightly better chance to stay in business than they had in the years directly after the war. Thus a final evaluation of the Truman years must conclude that while there were no great victories, concentration was partially arrested.

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