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Dubious Intervention in a Merger Case

Deputy Attorney General Richard G. Kleindienst has put himself in an embarrassing position by blocking the efforts of the government's chief trust buster to stop the merger of two prominent drug companies. Mr. Kleindienst got into the case because Attorney General Mitchell disqualified himself to avoid any conflict of interest when the head of the Justice Department's Antitrust Division, Richard W. McLaren, sought permission to fight the merger in the courts. But it should have been obvious that the Deputy Attorney General could not with propriety do what would have seemed to involve a scandalous conflict of interest if the Attorney General himself had done it.

The largest concern in the merger, the Warner-Lambert Pharmaceutical Co., is represented by the law firm in which both Attorney General Mitchell and President Nixon were formerly partners. In addition, the honorary chairman of that company's board, Elmer H. Bobst, is a close friend of the President and a large contributor to the Nixon-Agnew campaign funds in 1968. In these circumstances there was only one proper course for the Department of Justice, and that was to leave the decision of moving against the merger wholly to the professionals handling antitrust cases. Such a course would have meant a challenge to the merger in the courts, for Mr. McLaren strongly questions its legality.

There is some evidence, moreover, that Mr. Kleindienst acted on the basis of an erroneous impression about the case. In a memorandum to Mr. McLaren on Nov. 12 he attributed to Commissioner Charles C. Edwards of the Food and Drug Administration an opinion that the proposed merger would promote research in drugs by reviving the research program of Parke, Davis & Co., the second party in the merger—a program he represented as being in danger of being "further cut back." But Commissioner Edwards denied making any such statement, and a Parke, Davis spokesman has acknowledged that that company's research spending is going up and not down. Beyond this is the fact that experts working on the case believe that research in this field is more likely to be productive when it is competitive.

Fortunately, the Kleindienst veto is not the end of the matter. Because of the strong feelings of Mr. McLaren about the case, the Deputy Attorney General agreed that it should be referred to the Federal Trade Commission. The FTC and the Department of Justice have concurrent jurisdiction in cases of this kind. From the vantage point of hindsight it would probably have been better if the case had gone to the FTC in the first place; being an independent agency, the FTC is supposed to be free of any political veto. That agency will be handicapped in handling the case now, however, because the controversial drug merger has already been consummated. By the time the FTC gets around to making a decision the question will be, not one of preventing a dubious merger, but of unscrambling a union that has already taken place.

Whatever the FTC may do, Mr. McLaren's courageous, efficient and professional management of the Antitrust Division has probably been impaired. The best way of minimizing the damage would be for the Attorney General to make clear that in any future case involving a possible conflict of interest high in the administration the judgment of the responsible antitrust chief will be allowed to stand.