M'LAREN IN MEMO PUSHED I.T.T. SUIT

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4 Months Before Accepting Settlement, He Called for Legal Test in High Court

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WASHINGTON, March 23—Before he heard the company's special pleas, Assistant Attorney General Richard W. McLaren argued "most strongly" to the Solicitor General that "win or lose" the Government should take one of the International Telephone and Telegraph merger cases to the Supreme Court.

Mr. McLaren, who was in charge of the Antitrust Division, called in February of last year for a legal test to set a precedent relating to the permissible scope of conglomerate mergers.

Less than four months later —after hearing an I.T.T. presentation on how the company and the economy would suffer if the merger was blocked and after getting an "independent" financial analysis and a brief oral opinion from the Treasury Department—Mr. McLaren ac-

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cepted the framework of a settlement that did not take the case to the Supreme Court and thus provided no precedent.

Mr. McLaren's argument to Solicitor General Erwin N. Griswold took the form of an official, 48-page memorandum. In the memo, he urged that the essential to implementation of this Administration's antitrust policy, which is aimed at the present merger trend."

Mr. McLaren's memo, dated Feb. 24, 1971, and signed by him, has been turned over by the Justice Department to the Senate Judiciary Committee, which is looking into charges that I.T.T.'s contributions to the Republican National Convention in San Diego resulted in a favorable settlement of the antitrust cases.

The specific purpose of the hearings is a review of the nomination by President Nixon of Deputy Attorney General Richard G. Kleindienst to be Attorney General.

The Justice Department gave the memo to the committee with the explicit understanding that it be available only for the personal inspection of Senators on the committee, who are not permitted to copy it. A copy of the memo has been obtained by The New York Times.

In the memo, Mr. McLaren wrote that "in furtherance of [its close] enforcement policy, the Government filed in 1969 five actions against conglomerate acquisitions."

"This is the first case to reach decision on the merits," he said. "For this reason alone, it is important that we seek review of the trial court's adverse decision."

Under the heading of "discussion," Mr. McLaren wrote:

"I recommend most strongly that we appeal this case to the Supreme Court. At my confirmation hearing, and since then, I have taken the position that the Antitrust Division must move vigorously to halt the trend toward economic concentration which has resulted from the wave of conglomerate mergers that have taken place in the last decade.

"I have felt that this wave carries with it the same dangers for the economy at large as other types of mergers—a tendency to concentrate great economic power in the hands of a few. . . ."

Three paragraphs later, he said:

"I do not suggest that will be an easy case on appeal, but, win or lose, appeal is essential to implementation of this Administration's antitrust policy . . . see address by Attorney General Mitchell June 6, 1969. . . ."

In that speech, Mr. Mitchell said, "The future vitality of our free economy may be in danger because of the increasing threat of economic concentrations by" conglomerate mergers.

Mr. Mitchell concluded the address, to the Georgia Bar Association in Savannah, by saying: "We will, despite expected criticism, be carrying out the mandate of this Administration to reflect the hopes and aspirations of all Americans for a free society."

Mr. McLaren's feeling that Section 7 of the Clayton Act allows the Government to move against conglomerate mergers is well known. He articulated it in numerous speeches. Also well known, among Justice Department aides and the antitrust bar, was his intention to take a conglomerate case to the Supreme Court, where he hoped for a favorable ruling.

Associated Press

Richard W. McLaren

What was not publicly known was his strong desire that one of the I.T.T. cases be taken to the Court for a ruling, and the fact that he had that desire—and urged action by the Solicitor General—in late February, 1971.

Mr. McLaren has said that he told I.T.T. on June 17—less than four months later —that he would accept a settlement. While the settlement resulted in divestiture of the fire-protection operations of Grinnell, it eliminated the possibility of a court test and, with it, establishment of the Government's power to move against conglomerate acquisitions.

Mr. McLaren, now a Federal judge in Chicago, could not be reached for comment on his memo. His secretary, Mary Ann Schappey, told a reporter, "He is just taking the position at

the moment that the is not giving any more interviews."

In testimony before the Senate Judiciary Committee, Mr. McLaren said that h thought the Government had a "60-40" chance to win the I.T.T. case, and when the settlement possibility arose he felt that he had to do what was "in the public interest."

It has been learned that one of Mr. McLaren's staff members in the Antitrust Division. Charles D. Mahaffie Jr., refused to sign the settlement agreement with I.T.T. because he thought that it was a poor settlement from the Government's standpoint. Mr. Hahaffie has refused to discuss why he did not sign.

Extensive interviews with lawyers in the Antitrust Division over the last few weeks show that feeling about the settlement in the Justice Department is mixed. Some lawyers think that the settlement was good, and some think it was bad.

However, there appears to be general puzzlement as to why Mr. McLaren did not push for at least one test before the Supreme Court since he had reportedly said that was his aim.

One of the attorneys who worked on the I.T.T. cases said:

"Even on the merits it was a terrible settlement because the substantial divestiture we got didn't measure up to what we stood to gain by going to the Supreme Court. We would have gotten divestiture in any case, and we would have gotten new law. It was like getting to the starting gate and getting stuck there."

This lawyer, who asked not to be identified, also said:

"The settlement came at a silly time. We had already filed our appeal to the Supreme Court. McLaren had waged his battle, and we were finally up to the Court. Settlement then was a repudiation of everything McLaren had stood for."

Mr. McLaren has told the Senate Judiciary Committee that three things made him change his mind about the I.T.T. cases and accept a settlement. These three things were:

¶An I.T.T. economic presentation for Mr. McLaren and his staff. The meeting was arranged by Felix Rohatyn, an I.T.T. director, through Mr. Kleindienst.

¶An "independent" economic analysis of I.T.T. by Richard J. Ramsden, a partner in a New York money management firm who received his instructions about the report and delivered the finished document to Peter Flanagan, a key White House aide. Mr. Ramsden's report was brief and drew no "hard" conclusions from the possibilities of divestiture. He was paid by the Commerce Department for two day's work on the report.

¶An informal telephone call from one of two Treasury Department officials who had attended the I.T.T. economic presentation. The official has said that he told Mr. McLaren that Treasury had not independently verified the facts I.T.T. had presented but thought there was "merit" in its arguments relating to effects on the balance of payments.

Question Defined

The Treasury official has said that he did not address the key, competitive aspects of the I.T.T. cases.

In his memo to Mr. Griswold, Mr. McLaren said that the "question presented" by the I.T.T.-Grinnell case was this:

"Whether the acquisition by the International Telephone and Telegraph Corporation — the ninth largest industrial corporation in the United States, with assets of approximately $51billion, which in the last decade has acquired highly diversified interests in many fields including fire insurance —of the Grinnell Corporation— a leading firm in the manufacture of components for and installation of automatic fire sprinkler systems and the 268th argest industrial corporation with assets of approximately $185-million—may further the trend in the United States toward increased economic concentration and substantially lessen competition within the meaning of Section 7 of the Clayton Act?"

Later in the memo, Mr. McLaren wrote 5/8

"If we cannot reach a conglomerate merger of the kind involved here under the present language of Section 7, then Congress failed to achieve its purpose when it amended the statute in 1950. Before we concede this and seek new legislation, we should exhaust the possibilities of present law."

In Section E of the memo, headed "Why This Case?" Mr. McLaren argued that the case "is an appropriate vehicle by which to establish relevance of the trend of economic concentration to conglomerate merger cases."

In the first place, Mr. McLaren wrote, "it involves a major acquisition by I.T.T. whose history in the last decade makes it the most acquisitive corporation in the nation's history. Indeed, I.T.T. is the archetypical example of the diversified corporation which has grown almost entirely by acquisition. It has swallowed some 101 companies in widely varying fields in the last 10 years."