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Antitrust Chief

Attorney's Shift On the ITT Case

Washington

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.

With this argument 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 ITT presentation on how the company and the economy would suffer and after getting an "independent" financial analysis and a brief, oral opinion from the treasury department — McLaren accepted the framework of a settlement that did not take the case to the Supreme Court and thus provided no precedent.

McLaren's argument to Solicitor General Erwin N. Griswold took the form of an official, 48-page memorandum. In the memo, he urged that that appeal of the Grinnell case — one of three ITT cases — "is essential to implementation of this administration's antitrust policy, which is aimed at the present merger trend."

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 ITT contributions to the Republican national convention in San Diego resulted in a favorable settlement of the antitrust cases. A copy of the memo has been obtained by the New York Times.

In the memo, McLaren wrote that "in furtherance of (its) enforcement policy, the government filed in 1969 five actions against conglomerate acquisitions. This is the first case to reach decision on the merits. For this reason alone, it is important that we seek review of the trial court's adverse decision."

Under the heading of "discussion," 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. Ihave 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, McLaren continued:

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

McLaren has said he told ITT on May 17, less than three months after writing the memo, 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.

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

Extensive interviews with lawyers in the antitrust division show there is general puzzlement as to why McLaren did not push for at least one test before the Supreme Court, since he had reportedly said that was his aim.

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