

Concentrated Power

One constructive result of the inquiry into the Government's out-of-court settlement of its three cases against International Telephone & Telegraph Corporation can be to focus public attention on a fundamental issue in antitrust law: whether huge corporate size is, of itself, illegal and contrary to the public interest.

Indeed, the principal reason former Assistant Attorney General McLaren brought suit against I.T.T. was to obtain a Supreme Court ruling on whether conglomerate mergers involving enormous corporations can be blocked by the antitrust laws, even if the companies being acquired do not possess monopolies in their particular markets.

Former Attorney General Mitchell says this was precisely the issue that Harold S. Geneen, president of I.T.T., came to discuss with him in private. The corporation head voiced strong objection to what he regarded as the Antitrust Division's policy against "bigness." Mr. Mitchell sees no relation between his conversation with Mr. Geneen and the agreement to settle the case by Deputy Attorney General Kleindienst and other Justice Department officials. The I.T.T. officials who met with Mr. Kleindienst contended that the antitrust laws did not apply to large conglomerate mergers.

Yet the case was brought by Mr. McLaren primarily for the purpose of getting a Supreme Court ruling on the issue. It can hardly be argued that the legalities have been clarified by decisions made by political appointees after clandestine meetings with corporate officials, decisions on which rode hundreds of millions of dollars.

This I.T.T. case thus dramatically illustrates one of the major reasons for concern about size: the political power great financial assets confer upon corporation heads to bend the law to their purposes. In the classic Aluminum Corporation of America case of 1945, the decision by Judge Learned Hand breaking Alcoa's monopoly stressed that Congress "did not condone 'good trusts' and condemn 'bad' ones; it forbade all. . . ."

That prohibition was intended to protect the public from monopoly's economic effects—unwarranted price boosting, a failure to pass on to consumers cost reductions and the monopolists' resistance to change for the purpose of protecting past investments or to avoid costly innovations. As Judge Hand said: "Immunity from competition is a narcotic, and rivalry is a stimulant, to industrial progress."

But the antitrust laws were also intended to prevent a free society from suffering from certain moral, social and political effects that might stem from highly concentrated economic strength. Powerful corporations can gain access to the highest officials in the Justice Department or the White House, as lesser persons cannot; they can use their connections with politicians from all over the country—I.T.T. operates in all fifty states—to bring pressure on administrators and regulators; they can impair both political freedom and economic diversity and efficiency. The I.T.T. disclosures have shown the need for the courts and Congress to consider stronger measures against undue concentrations of economic—and political—power. The entire antitrust process, especially the negotiation of consent decrees, must be exposed to the light of day.