

White House on Milk

Summary

The Milk Price Decision

The Charge

It has been publicly alleged that President Nixon in 1971, in exchange for a promise of political contributions from the dairy industry, ordered an increase in the level of federal support prices for milk. That charge has been frequently denied and is totally false.

The Facts

On March 12, 1971, the Secretary of Agriculture announced that the price of milk for the 1971-72 marketing year would be supported by the federal government at approximately 80 per cent of parity. His announcement was made in the face of strong pressure from the dairy industry for a support level between 85 and 90 per cent of parity; the industry, along with its supporters in the Congress, argued that the 80 per cent level would lead to underproduction and would not represent a fair return on farm investments.

Subsequent to Secretary [Clifford] Hardin's announcement, there was a concerted effort in the Congress to pass legislation forcing the President to raise price supports to a minimum of 85 per cent of parity. In the House of Representatives, 125 members introduced or cosponsored legislation for higher support prices. In the Senate, 29 members introduced such legislation. Support for mandatory legislation came from both sides of the aisle, but was predominantly Democratic.

On March 23, 1971, following a meeting with representatives of the dairy industry who argued the merits of their case, and then a meeting with key advisors who agreed that the Congress would likely force his hand, the President decided that the milk support level should be raised to 85 per cent of parity for the coming year. His decision was announced by Secretary Hardin on March 25.

It is fallacious to suggest that the President's decision was influenced by a promise of political contributions from the dairy industry. The President had been informed of the dairy industry's intentions to raise funds for the 1972 campaign, but he at no time discussed the contributions with the dairy industry and the subject was not mentioned in his meetings of March 23, 1971. It is also worth noting that the ultimate contributions by the dairy industry to the President's re-election effort (1) were far less than the industry leaders had hoped to raise; (2) were far less than the dairy industry gave to other candidates for the House and Senate, including many prominent Democrats; and (3) represented less than 1 per cent of the total contributions to President Nixon's re-election campaign.

HOW THE DECISION WAS MADE:

The President's action took several factors into account:

- intensive congressional pressure;
- the economic merits of the case itself, as presented by the industry leaders in the meeting with the President, and as weighed by the President's advisers;
- traditional political considerations relating to needs of the farm states.

Price Support Decision

THE RESULTS:

The economic consequences of the decision have been beneficial to the entire country.

- The price of milk to the consumer did not skyrocket, as some feared. Rather, the price of milk to the consumer in the year in question rose at the lowest rate of recent years. It also rose at a rate significantly below the general rate of inflation.

- The cost to the government of the milk price support program did not go up as a result of the President's decision. It went down.

- Government inventories of surplus dairy products did not expand. In fact, they went down. No massive surplus was created.

- The level of dairy production was ample to meet the needs of consumers but was not excessive, and thus did not burden the government with special expenditures.

The Milk Price Support Decision

During the spring of 1971, Secretary of Agriculture Clifford Hardin announced that certain dairy products would be supported by the federal government at 80 per cent of parity during the 1971-72 marketing season. Subsequently, under heavy pressure from the Congress to increase supports and after consultation with his senior advisers, the President reconsidered and requested the Secretary to raise the price support level for the coming year to 85 per cent of parity.

Because the President also met with dairy leaders during this same period and because campaign contributions were given to his re-election effort during 1971, there have been charges in the media and elsewhere that the President's actions on price supports were the result of promises from the dairy industry to contribute to the 1972 Republican presidential campaign. These allegations are unsupported by evidence and are totally false.

I. The Decisions of March, 1971

The decision announced each year by the Secretary of Agriculture of the price at which the government will support milk prices has a significant impact on the nation's dairy farmers. In 1970, Secretary Hardin had announced that for the marketing year running from April 1, 1970, through March 31, 1971, the government would support manufacturing milk at \$4.66 per 100 pounds, or at 85 per cent of parity. This figure represented an increase of 38 cents and an increase of 2 per cent of the parity rate over the year before (1969-1970).

As the 1971-72 marketing season approached, the question within the government was whether to continue supporting the milk price at \$4.66 per 100 pounds or to raise the price. Because a grain shortage and other factors had

increased the costs of production for dairy farmers, a continuation of the \$4.66 price meant that the parity rate would actually fall to approximately 80 per cent. To the farmers, a drop in parity rate would result in a possible loss of income which in turn could deter production. The farmers therefore advocated an increase in the price support to \$5.21 per 100 pounds, or 90 per cent of parity; at the very least, they argued, the government should raise the price to \$4.92 per 100 pounds and thereby maintain the current parity rate of 85 per cent. At the Department of Agriculture, it was feared that such price increases might encourage excess production on the farms, raise the prices of dairy products for consumers, and ultimately force the government to purchase the surplus products.

The dairy industry, which had become highly organized in the 1960s, moved to exert maximum direct pressure on the Secretary of Agriculture in early 1971. In a few weeks, over 13,000 letters from milk producers were received by the Department of Agriculture.

At the same time, the dairy industry worked to achieve its objectives indirectly through members of the Congress who agreed with industry views. The upper midwestern affiliate of the Associated Milk Producers, Inc. (AMPI) estimated that its members alone sent some 50,000 letters to congressmen on the subject of milk supports. Between February 23 and March 12, 1971, some 25 senators and 65 congressmen wrote the Secretary of Agriculture to urge that the \$4.66 support price be increased. Some 20 senators and 53 representatives indicated that they wanted to see the price raised to a full 90 per cent of parity (\$5.21 per cwt.). Four senators and eight representatives adopted a more restrained position, asking that the price be raised to at least 85 per cent of parity (\$4.92).

Some of the letters openly referred to the fact that spokesmen for the dairy cooperatives—AMPI, Dairymen, Inc., or their affiliates—had written or called upon the congressmen to ask for support. A number of letters were apparently drafted by lobbying groups.

Many of the members also took to the floor of the House and Senate to express their concern:

On March 1, Congressman Robert W. Kastenmeier (D-Wis.) rose to tell his colleagues: "We need your assistance in persuading the administration to raise dairy price supports to 90 per cent of parity . . ." (Congressional Record, p. 4310). His sentiments were echoed by Congressman Les Aspin (D-Wis.).

After March 7, when the Associated Press reported that Secretary Hardin might raise the support level to 85 per cent of parity, Senators Hubert Humphrey (D-Minn.), Vance Hartke (D-Ind.), Walter Mondale (D-Minn.), and Fred Harris (D-Okla.), as well as Congressmen Ed Jones (D-Tenn.), Robert McClory (R-Ill.), and Vernon Thomson (R-Wis.), all made floor speeches in favor of a 90 per cent level.

On March 8, Congressman William Steiger (R-Wis.) entered into the Congressional Record a letter he had sent to Secretary Hardin calling for 90 per cent parity.

On March 9, both Senators Hartke and Humphrey called again for the 90 per cent parity.

On March 10, Congressman Jones argued that even 90 per cent would not be a "decent return," but "it would certainly help." Mr. Jones urged the Department of Agriculture not to "sit idly by and watch our dairy industry decline into oblivion. Unless dairy price supports are set at a level high enough to guarantee 90 per cent of parity, that is ex-

actly what we are inviting." (Congressional Record, pp. 5956-57) Senator Mondale again called for the 90 per cent level.

On March 11, Congressman Thomson repeated his call for a 90 per cent decision.

While their colleagues were marshaling support in open floor speeches, senior Democratic leaders in the Congress were expressing their concerns privately to representatives of the administration. On February 10, the chairman of the House Ways and Means Committee, Wilbur Mills (D-Ark.), arranged a meeting in the office of Speaker Carl Albert (D-Okla.) to discuss the dairy issue. Representatives of the dairy industry had apparently asked for the meeting to plead their case. In attendance were Harold Nelson and David Parr from AMPI; Congressmen Mills, Albert and John Byrnes (R-Wis.); William Galbraith, head of congressional liaison for the Department of Agriculture; and Clark MacGregor, then counsel to the President for congressional relations.

The congressional leaders continued to make their views known in several private conversations thereafter. According to Mr. MacGregor's records, Congressman Mills urged him on at least six occasions in late February and early March to urge the President to raise the support price. Congressman Mills and Speaker Albert also telephoned the director of the Office of Management and Budget, George Shultz, with the same request. Mr. Shultz sent a memorandum to John Ehrlichman at the White House indicating the substance of the Mills request for a rise in the support level.

Nevertheless, on March 12, Secretary Hardin announced that the price support for the coming year would be approximately 80 per cent of parity—not 90 per cent as the dairy industry wanted. The Secretary's announcement acknowledged that some dairymen believed that the support price should be increased. But, he said, higher support prices might lead to excessive supplies and large surpluses. Mr. Hardin believed his action was "in the long-term best interests of the dairy producers."

Immediately following the Agriculture Department announcement of March 12, 1971, a campaign was initiated on Capitol Hill by both Democrats and Republicans for mandatory legislation to increase the parity level to 85 or 90 per cent. Thirty separate bills were introduced in the House of Representatives between March 16 and March 25 with this specific goal in

mind. One hundred and twenty-five members of the House of Representatives introduced or cosponsored legislation to support the price of manufacturing milk at a level of not more than 90 per cent nor less than 85 per cent. In other words, 85 per cent would be an absolute floor for price supports. Of these representatives, 29 were Republicans and 96 were Democrats. Two congressmen, one from each side of the aisle, also introduced legislation for a mandatory level of 90 per cent of parity.

In the Senate, 28 senators, led by Democratic Senator Gaylord Nelson of Wisconsin, introduced legislation on March 16, 1971, that would have required support levels at a minimum of 85 per cent of parity. Of the Nelson bill sponsors, one was a Republican (Senator Cook of Kentucky) and 27 were Democrats (Senators Allen, Bayh, Burdick, Bentsen, Cranston, Eastland, Eagleton, Fulbright, Gravel, Hart, Harris, Hollings, Hartke, Hughes, Inouye, Long, Mondale, McGee, McGovern, Muskie, Moss, Nelson, Proxmire, Sparkman, Stevenson, Symington, Tunney). Three days later Senator Hubert Humphrey sponsored his own bill seeking higher parity.

Philosophically, the Nixon administration had hoped to gradually move away from federal policies which provide massive subsidies to agriculture. These subsidies had initially been instituted during the Depression years when the government undertook a variety of measures to ease the plight of the farmers and to give them some degree of economic stability and continuing purchasing power. During the ensuing decades, when these support policies might have been phased out, they instead became political footballs, tossed about in the Congress, aided and abetted by well-organized farm lobbying groups.

The dairy support question proved to be no exception. On March 28, 1971, for instance, the Minneapolis Tribune quoted an aide of Senator Gaylord Nelson to the effect that representatives of AMPI, who were operating out of a three-room hotel suite in Washington, played a major role in the preparation of the senator's bill. According to this account, AMPI also provided some of the research material which the senator used for a public statement.

With 29 senators and more than 100 congressmen actively spearheading the effort to achieve an increased parity rate for the dairy industry, it thus became increasingly clear that mandatory legislation would be enacted and, further, that a presidential veto of such legislation could well be overridden. Moreover, if the President were to try to force his will in this matter (i.e., to push parity down to 80 per cent) it could be politically disastrous in some of the Midwestern states, and, in the light of known congressional intentions, would be both foolish and futile.

A story reported by United Press International on March 24, 1971, (UPI-55) described the problem in these terms:

WASHINGTON—President Nixon probably will face the politically risky prospect of vetoing a bill to raise prices for dairy farmers unless he beats Congress to the draw by boosting milk supports voluntarily, a top Democratic farm bloc leader said today.

Nixon's latest farm bloc headache grows out of the administration's decision earlier this month to refuse any increase in milk price supports for the 1971-72 marketing year which begins April 1.

On the heels of the refusal, a growing parade of legislators in both the House and Senate have introduced bills to require an increase. The list of some 80 House sponsors, including members of both parties, is topped by Speaker Carl Albert and Chairman W. R. Poage (D-Tex.) of the House Agriculture Committee.

"If the administration doesn't act, I think we can and will pass the bill," Poage told UPI in an interview.

Nixon could veto the measure if he remains adamant against higher

milk supports, Poage said, but this would bring on a spotlighted confrontation with many farm interests, the Texan said."

Some months earlier, Godfrey Sperling, writing in the *Christian Science Monitor* on December 1, 1970, had observed that "farmers and rural communities of America are deeply distressed with the Noxon administration... especially "with the paring of subsidies..." Sperling also noted the election results of November 3, 1970: "Democrats in 11 basically agricultural districts picked up new congressmen. At the same time no Democrats who were incumbents in such farm districts were defeated." Finally Sperling mentioned those Democrats who did well in farm areas: Senators Joseph Montoya of New Mexico, Quentin Burdick of North Dakota, Hubert Humphrey of Minnesota, Stuart Symington of Missouri, Alai Stevenson of Illinois, Vance Hartke of Indiana, Gale McGee of Wyoming, Frank Moss of Utah and William Proxmire of Wisconsin. All but one of these senators in 1971 were supporting dairy industry efforts to obtain higher price supports.

The situation was not dissimilar to one facing President Lyndon Johnson in 1967 when he was forced to curb dairy imports by a Congress which had introduced legislation as a prodding action. Mr. Johnson sharply reduced dairy imports in that year after 58 senators, led by Senator William Proxmire (D-Wis.), and 180 congressmen had introduced a dairy import control bill. In 1967, as in 1971, the activity in the Congress had taken place after the dairy lobby had, by one account, "launched an all-out drive to get Congress" to pass import controls.

With the pressures from Capitol Hill mounting rapidly, President Nixon during the afternoon of March 23 met with seven of his senior advisers to explore the situation with regard to milk price supports. This was the President's second meeting of the day concerning dairy matters. As will be discussed below, the President and other administration officials met that morning with dairy representatives in response to a long-standing appointment. Meeting with the President that afternoon were John Connally, then Secretary of the Treasury; Clifford Hardin, then Secretary of Agriculture; Under Secretary of Agriculture J. Phil Campbell; George Shultz, then director of the Office of Management and Budget; John D. Ehrlichman, then assistant to the President for domestic affairs; John Whitaker, then deputy assistant to the President for domestic affairs; and Donald Rice, then associate director of the Office of Management and Budget. The discussion was frank and wide-ranging: It included an appraisal of the support which the milk price legislation had on Capitol Hill and the fact that the legislation had the support of two of the most powerful legislators in the country—Speaker of the House of Representatives Carl Albert and the Chairman of the House Ways and Means Committee Wilbur Mills.

The political power of the dairy industry lobby was also brought to the President's attention in the March 23 meeting. Secretary Connally said that their votes would be important in several Midwestern states and he noted that the industry had political funds which would be distributed among House and Senate candidates in the coming election year—although neither the Secretary nor anyone else discussed possible contributions to the President's campaign. Mr. Connally argued that the milk industry's case also had merit on strictly economic grounds, and rising costs for dairy producers were mentioned.

The President himself concluded that the final decision came down to the fact that the Congress was going to

pass the higher support legislation, and he could not veto it without alienating the farmers—an essential part of his political constituency. It was also believed that by raising the support level in 1971, similar action in 1972 could be precluded—thus holding the price line for two years.

The fundamental themes running

through this March 23 meeting were two: (1) the unique and very heavy pressures being placed upon the President by the Democratic majority leadership in the Congress and (2) the political advantages and disadvantages of making a decision regarding a vital political constituency.

After the President announced his decision there was discussion of the great power of the House Democratic leadership (which was then pressing for the milk price support increase and how that power might be enlisted in support of certain of the President's key domestic legislation if the administration acknowledged the key role these leaders played in securing the reversal of Secretary Hardin's March 12 decision. The meeting concluded with a discussion of the manner in which the decision would be announced and implemented.

Two days later, on March 25, Secretary Hardin officially announced the decision to raise the support level to approximately 85 per cent of parity for the 1971-72 marketing season.

Three days after the second price decision, the *Minneapolis Tribune* reported that the reversal "was the result of an intensive lobbying campaign mounted by the Nation's biggest milk-producer cooperatives with the eager—and perhaps crucial—assistance of dozens of members of Congress, including many whose recent election campaigns were financed partially by the dairy industry's political war chest." Among the lawmakers cited with Senators Edmund Muskie (D-Maine) and Hubert Humphrey, were Congressman Carl Albert, and the Chairman of the House Agriculture Committee, W. R. Poage (D-Tex.).

The response on Capitol Hill demonstrates the political realities that the President faced.

On March 30, Republican Senator James Pearson of Kansas told his Senate colleagues that he had intended to introduce legislation for the very purpose of raising supports, but "apparently the administration has had the benefit of deep concern expressed by both farm state congressmen and dairy farmers..." Democratic Senator James Allen of Alabama joined him in a similar expression of views.

On April 1, Democratic Senator George McGovern of South Dakota, who had actively sought a rise in price supports, noted that he had joined other senators in hoping supports would be set at 85 per cent. "This reversal," said Senator McGovern, "can be considered a victory for those in Congress who spoke out vigorously on behalf of the dairy farmers."

On April 5, Senator Nelson, who had worked closely with dairy interests on this matter and had introduced the mandatory 85 per cent support legislation, S. 1277, said that the support increase "accomplished by administrative order what the legislation would have accomplished." He went on to say that "the decision was the result of S. 1277, which was cosponsored by 27 senators, and a companion measure in the House which likewise had substantial support..." The Secretary of Agriculture responded to the outpouring of congressional and farmer concern over the initial decision on price supports by adjusting the support level upward...

This congressional pressure was the "gun to our head" that President Nixon referred to in his November 17, 1973, press conference.

It is also worth noting that in 1972, a year after the struggle over a legislatively mandated support level for milk, the Congress enacted legislation which requires that milk be supported at a level no longer than 85 per cent in future years.

II. The Dairy Industry Contributions and Lobbying Activities

The discussion in the foregoing section shows that overwhelming congressional pressure—and the political consequences of ignoring it—was the reason for the milk price support decision reached on March 23.

The lobbying and contribution activities of the dairy industry followed a separate track. Not unexpectedly the industry undertook to cover every available base. But there was no arrangement or understanding between the industry and the President as has been so widely and falsely alleged.

The very nature of the governmental process—with decisions frequently being made within the executive branch on the administration of critical dairy programs and with dairy legislation constantly under review in the Congress—encouraged the dairy farmers to organize and become a potent political force in recent years. There are now three major dairy cooperatives in the United States: AMPI, Mid-America Dairies (Mid Am) and Dairymen, Inc. (DI). Together these cooperatives have over 66,000 members and account for about 25 per cent of all the milk produced in the United States.

These dairy organizations not only represent in Washington the interests of their members, they also exert influence through the ballot box and through political contributions. Their activity is not unlike the fund-raising and contributing activities of a number of special interest groups such as the Committee on Political Education (COPE) of the AFL-CIO.

The record shows the following lobbying and contribution activities by the dairy industry representatives between 1969 and 1971:

1969-1970

President Nixon had no direct contact with any of the members of these dairy organizations until 1970 when AMPI officials invited him to address their annual convention in Chicago in September. The President was unable to accept the invitation, and Secretary Hardin spoke in his place.

Although he could not attend the convention, the President—as he frequently does—placed a courtesy phone call on September 4, 1970, to the general manager of AMPI, Mr. Harold Nelson. He also spoke with Secretary Hardin, who was with Mr. Nelson. During that conversation, the President invited the dairy leaders to meet with him in Washington and to arrange a meeting with a larger delegation of dairy leaders at a later date.

Accepting the President's invitation, Mr. Nelson and his special assistant,

David Parr, paid a brief courtesy call on the President on September 9, 1970.

The meeting, which was publicly announced to the press, occurred in the Oval Office, and, according to the President's diary, lasted approximately nine minutes. Most of that time was consumed with introductions, photographs and the distribution of presidential souvenirs.

The context of the meeting was a greeting during a presidential "Open Hour"—a session frequently arranged for short courtesy calls from diverse groups and individuals. During the "Open Hour" of September 9, the visit from the AMPI representatives was fitted in between the visits of 25 other people, including a group to encourage military servicemen to exercise their votes, a group of concerned citizens from the state of South Dakota and a contingent of Gold Star Mothers.

Mr. Parr has stated in a sworn deposition that it was essentially a social visit. He and Mr. Nelson invited the President to address the next AMPI convention in 1971 and also expressed a hope that he would meet with other dairy industry leaders. Mr. Parr also remembers that the men spoke about the economic plight of the dairy farmer.

Although money was not discussed in the meeting between AMPI representatives and the President in September of 1970, it is evident that raising and making political contributions to both Democrats and Republicans were important, continuous and conspicuous activities of the dairymen during 1970, 1971 and 1972.

During the late 1960s each of the three major dairy cooperatives established a trust fund in order to raise and distribute money to political candidates. AMPI established the Trust for Agricultural Political Education (TAPE), Mid-America Dairies established the Agriculture and Dairy Educational and Political Trust (ADEPT), and Dairymen, Inc. created the Trust for Special Agricultural Community Education (SPACE).

In August of 1969, an attorney for AMI delivered to Mr. Herbert Kalmbach the sum of \$100,000. Mr. Kalmbach deposited the funds in a trustee account he maintained at the Security Pacific National Bank in Newport Beach, California. The account contained political contributions remaining from the 1968 election campaign. The President had no knowledge of this contribution.

Reports on file with the clerk of the House of Representatives showed that contributions to congressional candidates in 1969 and 1970 by TAPE, SPACE, and ADEPT totaled over \$500,000. The bulk of the money was earmarked for Democratic candidates. Representatives of the dairy co-ops have indicated in an Associated Press account of December 17, 1973, that Republican candidates received approximately \$135,000, or less than 30 per cent of the funds.

Some members of the White House staff knew that the dairymen were giving financial support to Republican and Democratic candidates in Senate elections in 1970. One member of the staff, Charles W. Colson, asserted in a memorandum to the President that AMPI had pledged \$2 million to the 1972 campaign. (Whether any such pledge was actually made is unknown, but the total amount given to the President's 1972 campaign was \$437,000. As noted below, AMPI's campaign contributions to other candidates during this period were even more generous.) That memorandum was attached to a presidential briefing paper for the courtesy meeting between the President and the AMPI representatives in September of 1970. It was suggested in the memorandum that the President acknowledge AMPI's support. No suggestion was made that any commitment whatsoever be made to do any substantive act. There was also no mention of the asserted pledge during the meeting.

Another reference to fund-raising was in a letter addressed to the President on December 16, 1970 from Patrick J. Hillings, a former congressman who had succeeded Mr. Nixon in his congressional seat after the latter had been elected to the Senate. At that time, Mr. Hillings was a member of a Washington, D.C., law firm that represented the dairymen in the nation's capital. In his letter, Mr. Hillings asked for the immediate imposition of revised dairy import quotas in accordance with recommendations recently presented to the President by the Tariff Commission. President Nixon did not see the letter.

Since the President had already been informed of the fund-raising efforts by the dairy industry, the only possible relevance of the Hillings letter would lie in what action was taken on the Tariff Commission recommendations that Mr. Hillings asked the President to accept.

The fact is that the action taken by the President on import quotas was less favorable to the dairy industry than the steps recommended by the Tariff Commission. The commission, a body of impartial experts, had recommended on economic grounds and pursuant to statutory requirements that imports be closed off entirely for three dairy products (ice cream, certain chocolate products, and animal feeds containing milk derivatives) and that much lower import quotas be set for a fourth item, low-fat cheese. Rather than closing off imports — an action that would have been more favorable to the dairy industry — the President instead reduced the import quotas on each time, permitting all four goods to continue their competition with American dairy products.

1971

The President next met with dairy representatives at 10:30 a.m. on March 23, 1971, in the Cabinet Room of the White House. Included in the meeting were a delegation from the dairy cooperatives as well as several administration officials, including OMB Director George Shultz; assistant to the President, John Ehrlichman; deputy assistants to the President, Henry Cashen and John Whitaker; and Donald Rich, associate director of OMB. From the Department of Agriculture were Secre-

See SUPPORT, A11, Col. 1

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

- The President originally acted in the case because he wanted to avoid a Supreme Court ruling that would permit antitrust suits to be brought against large American companies simply on the basis of their size. He did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT cases. He rescinded that instruction two days later.

- The actual settlement of the ITT case, while avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some \$1 billion in annual sales, and its acquisitions were restricted for a period of 10 years.

- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he took action on the antitrust case. In fact, the President's antitrust actions took place entirely in April of 1971—several weeks before the ITT pledge was even made.

President's Interest in Anti-Trust Policy

Mr. Nixon made it clear during his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference with free enterprise. One of Mr. Nixon's major antitrust concerns in that campaign was the Government's treatment of conglomerate mergers. Conglomerates had become an important factor in the American economy during the 1960's, and despite public fears that they were threatening free competition in the marketplace, the administrations of those years — in Mr. Nixon's opinion — had not been clear in their attitude toward them. In one of his 1968 campaign books, Nixon on the Issues, in which he put forward in summary form his conclusions about national and international issues, Mr. Nixon expressed his dissatisfaction with existing conglomerate policies:

"The Department of Justice has recently proposed guidelines for 'conglomerates' but the guidelines have not provided any substantial criteria on which businessmen can safely depend. Moreover, there is the problem of unsettled case law on

the question. My administration will make a real effort, and a successful one, I believe, to clarify this entire 'conglomerate' situation. . ."

To help resolve the issues involved, Mr. Nixon during his campaign appointed a Task Force on Productivity and Competition, headed by Professor George Stigler of the University of Chicago and including several eminent academicians. The task force presented its report to the newly inaugurated President on February 18, 1969. The group recognized public fears that conglomerates posed a "threat of sheer bigness" but said these fears were "nebulous" and should not be converted into an aggressive antitrust policy on the basis of knowledge then available. "We strongly recommend," stated the report, "that the Department (of Justice) decline to undertake a program of action against conglomerate enterprises. . ."

A similar view was set forth by many outside the government. In an article in Fortune in September of 1969, Robert Bork, then a professor of antitrust law at the Yale Law School, attacked the policy of antitrust enforcement against conglomerates that he thought was emerging at the Justice Department. He noted that unless conglomerate mergers were involved in horizontal price-fixing within an industry, there was no economic foundation for believing that they were anti-competitive. He also noted that "The campaign against conglomerate mergers is launched in the teeth of the conclusion reached by the task force that President Nixon himself appointed to study and report on antitrust policy."

A second major concern of the President and his advisers was their fear that the ability of U.S. companies to compete in the world market might be threatened by antitrust actions against conglomerates. The United States faced a shrinking balance of trade surplus and the President and many of his advisers felt that U.S. multinational companies could play an important role in improving the balance.

The President feared that antitrust a clear restraint of trade would render them less able to compete with the government-sheltered and sponsored industrial giants of Europe and Asia. The President and his advisers were keenly aware that the large industrial

entities of foreign countries did not operate under the kind of antitrust pressure faced by American companies, and they believed that the absence of such pressure enabled those countries to compete more successfully in world markets.

This view took published form in a report, "The United States in the Changing World Economy" written by the President's Council on International Economic Policy. In that document, Peter Peterson, Director of the C.I.E.P. wrote:

"... the Japanese government sees itself as a partner with business in facilitating economic growth... The situation is far different from that in the United States — where... major efforts of the government are devoted not to growth and stimulation,

but to restraint and regulation of business and labor...

This view, along with a great deal of other data on foreign trade, was communicated to the President by Mr. Peterson on April 8, 1971 — only a few days before the President intervened in the ITT matter.

The President and his advisers, (but not Attorney General Mitchell, who had disqualified himself on matters related to ITT) were thus seriously concerned about two aspects of antitrust policy which would eventually bear on the ITT matter: (1) the policy of attacking gibness per se and whether such policy had any economic justification, and (2) the need to prevent misguided antitrust attacks upon U.S. companies in competition with large foreign industrial entities.

II. Background on the ITT Litigation

The Justice Department in 1969 initiated civil litigation against the International Telephone and Telegraph Co., a major "conglomerate," for alleged violations of the antitrust laws. The allegations involved acquisitions by ITT of the Grinnell Corporation, the Hartford Fire Insurance Company, and the Canteen Corporation. These were only the latest and among the largest of a series of acquisitions made by ITT in the years since 1963, a period in which favorable tax laws, among other things, made acquisitions popular.

Under Assistant Attorney General McLaren, the Antitrust Division of the Justice Department was concerned with the implementation of an antitrust policy which attacked the general merger trend not only because the effect of the corporate growth "may be substantially to lessen competition," conduct clearly proscribed by the antitrust laws, but also because of the economic concentration itself.

Other experts, including many of the President's advisers, did not see the role of antitrust law in such all-encompassing achieve political and economic aims beyond prevention of restraint of trade was unsound. If there were dangers such as Mr. McLaren and his colleagues feared from conglomerates, President Nixon and his advisers, along with other experts, preferred solving them through legislation.

Executives of ITT were also concerned about the Justice Department action, and talked with various administration officials to learn their views. The chief executive officer of ITT, Harold Geneen, was sufficiently concerned that he attempted to talk to the President personally about these issues in the summer of 1969. The President's advisers thought that such a meeting was not appropriate, and the meeting was not held.

Other White House officials, however, did talk to various representatives of ITT about antitrust policy. Those discussions invariably focused on the legal and economic issues of whether antitrust suits should be pursued simply because companies are large or rather because they are actually restraining trade in a tangible way. Papers relating to those conversations have been voluntarily turned over to the Special Prosecutor.

III. Making the ITT Cases Consistent

With Administration Policy On Antitrust

During the latter part of 1970, there was a question among White House advisers about whether the antitrust actions against the ITT were consistent with the notion of keeping hands off companies unless they had committed some clear restraint of trade rather than simply becoming large in size, and generally whether the ITT suits were consistent with administration policy on antitrust.

While these discussions were taking place, the Justice Department lawsuits against ITT were continuing. The Justice Department's actions against ITT to enjoin the acquisitions of the Grinnell Corporation and Hartford Fire Insurance Company were presented to the United States District Court for the District of Connecticut on September 17, 1969. The court (Chief Judge Timbers, presiding) issued a Memorandum of Decision on October 21, 1969, denying the government's motion for a preliminary injunction to enjoin the proposed acquisitions by ITT, but directing that "hold separate" orders be entered to preserve the status quo, pending a trial and a decision on the merits.

Subsequently, a trial of the Grinnell case on the merits was held on September 15, 1970 and concluded on October 30, 1970. The court again refused to find that ITT had violated the antitrust laws. In his decision, Chief Judge Timbers said:

"The Court declines the government's invitation to indulge in an expanded reading of the statutory language and holds that the statute means just what it says. It proscribes only those mergers the effect of which 'may be substantially to lessen competition'; it commands that the alleged anticompetitive effects be examined in the context of specific product and geographic markets; and it does not proscribe those mergers the effect of which may be substantially to increase economic concentration.

Whatever may be the merits of the arguments as a matter of social and economic policy in favor of, or opposed to, a standard for measuring the legality of a merger under the antitrust laws by the degree to which it may increase economic concentration rather than by the degree to which it may lessen competition, that is beyond the competence of the Court to adjudicate. As the Court attempted to make clear in its preliminary injunction opinion, if that standard is to be changed, it is fundamental under our system of government that any decision to change the standard be made by the Congress and not by the courts."

As a result of this litigation and pending a determination to appeal the adverse judgement to the Supreme Court of the United States, Assistant Attorney General McLaren discussed a compromise settlement with ITT during 1970. He indicated he would recommend that ITT be allowed to keep the Grinnell Corporation, but divest itself of the Canteen Corporation and not proceed with its pending acquisition of

the Hartford Fire Insurance Company.

By the spring of 1971, the President, based on the information and advice he had received, had concluded that the ITT litigation was inconsistent with his own views on anti-trust policy. The Department of Justice and some of the President's advisers continued to maintain, however, that the cases were not an attack on business and were based on clear anti-competitive effects of the acquisitions.

On April 19, 1971, in a meeting with John Ehrlichman and George Shultz, then Director of the Office of Management and Budget, the President was told by Mr. Ehrlichman that the Justice Department had filed an appeal with the Supreme Court in the Grinnell case which Mr. Ehrlichman described as an "attack on a conglomerate." Mr. Ehrlichman further told the President that he believed that prosecution of the case was contrary to the President's antitrust policy and that, as a result, he had tried to persuade the Justice Department not to file a jurisdictional statement (due the following day) so as to terminate the appeal. He indicated, however, that he had been unsuccessful with the Justice Department.

The President expressed irritation with the failure of the head of the Antitrust Division, Mr. McLaren, to follow his policy. He then placed a telephone call to Deputy Attorney General Kleindienst and ordered that the appeal not be filed. The meeting continued with a further discussion of antitrust policy during which Mr. Shultz expressed the view that conglomerates had been unfairly criticized.

The Justice Department, on April 20, 1971, requested and was granted a delay in filing the appeal which was due that day. On the following day, April 21, 1971, Mr. John N. Mitchell, the attorney general, advised the President that in his judgment it was inadvisable for the President to order no appeal to the Supreme Court in the Grinnell case. The attorney general reasoned that, as a personal matter, Mr. Erwin N. Griswold, solicitor general of the United States, had prepared his brief for appeal and would resign were the appeal not to proceed. The attorney general further feared legislative repercussions if the matter were dropped entirely. Based upon the attorney general's recommendations, the President reversed his decision of April 19, 1971, and authorized the Department of Justice to proceed with the case in accordance with its own determinations. He said that he did not care about ITT as such, but that he wanted the Attorney General to see that his antitrust policy was carried out.

At the end of the same month, April 1971, the President approved a proposal for creating a central clearing house for information about government antitrust policy within the White House, to ensure that the President's views on the subject could be made known to all the operating agencies.

On April 29, 1971, a meeting of ITT representatives, Department of Justice and Department of Treasury officials was held at the Department of Justice wherein ITT made a presentation concerning the financial ramifications of the proposed divestiture actions. Following the meeting, the Department of Justice requested that the Treasury Department and an outside consultant specializing in financial analysis evaluate the ITT claims. These evaluations were made in addition to the Justice Department's own analysis of competitive effect.

Based on the completed assessment, Assistant Attorney General McLaren, on June 17, 1971, sent a memorandum to the Deputy Attorney General outlining a proposed settlement. This pro-

posal was subsequently communicated to ITT representatives and after further negotiations a final settlement, extremely similar to Mr. McLaren's June 17 proposal, was agreed upon in principle on July 31, 1971, and final consent judgments were entered by the United States District Courts on September 24, 1971. On the first trading day after the settlement was announced the common stock of ITT fell 11 per cent, from 62 to 55 on investor reaction to the terms of the settlement. (A summary of the details of the settlement appears as an appendix.)

After the consent judgments were made public, several authorities offered their opinions as to the reasonableness of the settlements as opposed to pursuing the appeal to the United States Supreme Court. Former Solicitor General Erwin N. Griswold states as follows:

"We felt that it would be very difficult to win it, not only because the law with respect to conglomerate mergers is far from clear, but also because in this particular case there had been sharp conflict in the evidence before the District Judge, and the District Judge had found all the facts against us. And all experience shows that it is extremely difficult to win an antitrust case or another type of case in the Supreme Court when you have to attack the findings of fact."

He thus found the settlement "extremely favorable" to the Justice Department. (Hearings before the Committee on the Judiciary, United States Senate, 92d Congress, 2d Session, March 8, 1972 at PP. 372-374).

The opinion of Archibald Cox was set forth in a New York Times account of October 31, 1973 as follows:

"It was proper for the President to have an interest in such a major case, he said. 'There was nothing improper in voicing his own opinion.' He added that he thought the Government received a fair settlement in the case."

Mr. McLaren described it as a "tough" settlement which would have immediate deterrent effect in the antitrust area and was therefore preferable to waiting three or four years for a Supreme Court ruling.

IV. Selection of San Diego For Republican National Convention

The separate and unrelated process of decision-making regarding the Republican National Convention began in 1971, when the Site Selection Committee started to examine prospective sites.

In the 1971 selection process, six cit-

ies were seriously considered for the 1972 convention, and were being considered seriously by the site selection committee. Working with the Republican National Committee were White House staffers who were concerned for the security, logistics and effective functioning of the presidency in any given location.

On June 29, 1971, the San Diego City Council adopted a resolution authorizing the mayor of the City of San Diego to submit a bid on the Republican National Convention to be held in San Diego, and to offer financial support of \$1,500,000. Of this amount, \$600,000 was to be used for city services, such as police and fire protection, extra public works responsibilities and other service requirements connected with a convention.

The remaining \$900,000 to be used for facilities, rents and other convention requirements was conditioned upon contributions in cash and services by other State and local governmental agencies, individuals, corporations and organizations.

A large part of the cash portion of the bid was committed by the Sheraton Hotel Corporation, a subsidiary of ITT about June 1, 1971, and subsequently confirmed on July 21, 1971. A new Sheraton hotel was under construction in San Diego, and Sheraton apparently felt that television publicity for the hotel and the chain would be a worthwhile business investment. The exact provisions of the donation were and are unclear. Apparently ITT-Sheraton offered \$200,000 with some requirement of matching by other San Diego businessmen as to one-half of the commitment. In any event, a payment of \$100,000 to the San Diego Convention and Visitors' Bureau was returned when the convention site was changed.

The White House Staff report to Chief of Staff H.R. Haldeman on possible convention sites made no mention of ITT. Rather, it recommended San Diego because of California's Republican Governor, San Diego's Republican Congressman, its proximity to the Western White House, its outstanding climate, its relatively large bid in money and services, the importance of California in the electoral tally, the attractive outdoors atmosphere of the town, and the excellent security which could be offered.

The President, himself, informed Sen. Robert Dole, chairman of the Republican National Committee, that whatever Sen. Dole and Site Selection Committee decided was agreeable to him. Subsequently, the President approved the selection of San Diego by the Site Selection Committee.

Summary: Final ITT Judgment

1. Ten-year injunction against acquisitions of companies having total assets of more than 100 million or against acquisitions of companies having sales of \$25 million and 15% of a concentrated product market. Injunction against acquisitions of insurance companies and sprinkler companies.

2. Divestiture of both foreign and domestic operations of Avis:

1971 Sales (million) \$251
1971 Assets (million)..... \$266

3. Divestiture of Grinnell's entire Fire Protection Division. In addition divestiture of Grinnell's entire 46% interest in Hajoca Corporation:

Fire Protection Division
1971 Sales (million)..... \$ 87
1971 Assets (million)..... \$ 40
Hajoca Corporation
1971 Sales (million)..... \$ 62
1971 Assets (million)..... \$ 23

4. Divestiture of both domestic and foreign operations of Levitt:

1971 Sales (million)..... \$268
1971 Assets (million) \$322

5. Divestiture of Canteen:

1971 Sales (million) \$322
1971 Assets (million) \$145

6. Divestiture of annual life insurance premium income of about \$28 million.

Reference: Hearings before the Committee on the Judiciary, U.S. Senate, 92nd Congress, Part 3, pp. 1330-1.