


**The original documents are located in Box 2, folder “Antitrust - General” of the John Marsh Files at the Gerald R. Ford Presidential Library.**

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THE WHITE HOUSE  
WASHINGTON

May 1, 1976

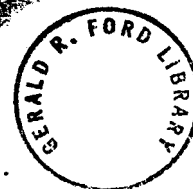
MEMORANDUM TO: THE PRESIDENT  
FROM: ED SCHMULTS   
SUBJECT: Your meeting with John Rhodes today

Jack Marsh advises that John Rhodes may wish to discuss the pending antitrust bills at your 9:30 meeting today.

On April 29 I called on Mr. Rhodes to seek his views about the various antitrust bills pending in Congress. He seemed to be familiar with only the *parens patriae* legislation, which the House has passed. Mr. Rhodes continues to believe that this legislation should be vetoed, and is doubtful that it can be modified in any acceptable way. Attached is a copy of your letter to Rhodes on *parens patriae*.

A subcommittee of the House Judiciary Committee has voted out unanimously the Civil Process Act Amendments which will be taken up by the full committee in three weeks. This bill is very close to the Administration's proposal, which you asked Chairman Rodino to act on in a recent letter. The Senate Omnibus antitrust legislation has been marked up by the full Judiciary Committee, and Senators Hart and Scott have asked the Administration to enter into negotiations with a view to obtain a mutually acceptable bill.

We have scheduled a meeting with you on May 4 to discuss the pending antitrust legislation. In view of that meeting I recommend that you not commit yourself, one way or another, to Congressman Rhodes.



THE WHITE HOUSE

TEXT OF A LETTER BY THE PRESIDENT  
TO REPRESENTATIVE JOHN J. RHODES

March 17, 1976

Dear John:

As I outlined to you on Tuesday, March 16, I support vigorous antitrust enforcement, but I have serious reservations concerning the parens patriae concept set forth in the present version of H.R. 8532.

I question whether federal legislation is desirable which authorizes a state attorney general to sue on behalf of the state's citizens to recover treble damages that result from violations of the federal antitrust laws. The states have the ability to amend their own antitrust laws to authorize parens patriae suits in their own courts. If a state legislature, acting for its own citizens, is not convinced the parens patriae concept is sound policy, the Administration questions whether the Congress should bypass the state legislatures and provide state attorneys general with access to the federal courts to enforce it.

In addition to my reservations about the principle of parens patriae, I am concerned about some specific provisions of the legislation developed by the House Judiciary Committee.

The present bill is too broad in its reach and should be narrowed to price fixing violations. This would concentrate the enforcement on the most important anti-trust violations.

In addition, the Administration is opposed to mandatory treble damage awards in parens patriae suits, preferring instead a provision which would limit awards only to the damages that actually result from the violation. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, is no longer justifiable given the substantial increases in these penalties in recent years.

The Administration opposes extension of the statistical aggregation of damages, beyond parens patriae legislation, to private class action suits because this is outside of the appropriate reach of this legislation.

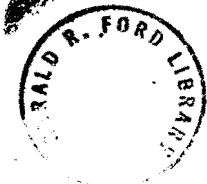
Finally, the Administration prefers discretionary rather than mandatory award of attorney's fees, leaving such awards to the discretion of the courts.

During the last two years, the Administration has sought to improve federal enforcement efforts in the antitrust area and the resources devoted to antitrust enforcement have increased substantially. In December 1974, I signed the Antitrust Penalties and Procedures Act which increased maximum penalties from \$50,000 to \$1 million for corporations and \$100,000 for individuals. As I indicated above, I support vigorous antitrust enforcement, but I do not believe H.R. 8532 is a responsible way to enforce federal antitrust laws.

Sincerely,

/s/ Gerald R. Ford

The Honorable John J. Rhodes  
Minority Leader  
House of Representatives  
Washington, D.C. 20515



THE WHITE HOUSE

WASHINGTON

August 4, 1976

MEMORANDUM FOR: ED SCHMULTS

FROM: JACK MARSH 

Yesterday during the Congressional Hour, Dennis Taylor, Congressman John Rhodes' Legislative Assistant, brought to my attention the plan that is being discussed in the House concerning anti-trust legislation.

Dennis says the present proposal is to lump in one package the three anti-trust measures passed by the House and send them as one bill to the Senate, and the purpose of his conversation was to inquire as to what would be the Administration's position on *parens patriae* which is one of the provisions.

I indicated to Dennis that I felt the President's view on *parens patriae* had not significantly changed and before they proceed too far, there should be some further discussions and conferences. I think it would be very helpful if you could touch base with Dennis Taylor and mention this matter to him. His telephone number is 225-0608.

Max and I will be glad to meet with you and go over this sometime when you would like.

Many thanks.

cc: Max Friedersdorf



AUG 10 1976

THE WHITE HOUSE

WASHINGTON

August 10, 1976

MEMORANDUM FOR: LARRY SPEAKES

FROM: KEN LAZARUS *KL*

Jack Marsh asked our office to provide you with some guidance in fashioning a response to inquiries arising from the news reports of an antitrust investigation of the auto manufacturers (see Tab A).

Attached (at Tab B) is some background information on the subject provided by the Antitrust Division of the Department of Justice. The Department recommends that any questions which are received on this matter be referred to them for response. However, I have been apprised of the fact that all of this information is already a matter of public record.

*cy to Schmeltz*  
*de*  
*—*

Attachments

cc: Phil Buchen  
Jack Marsh ✓



TAB  
A



THE WHITE HOUSE  
WASHINGTON

August 5, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: JACK MARSH *JM*

As you are aware, there are indications that there will be an anti-trust investigation of the auto manufacturers. This is more fully reported on in today's New York Times.

It is not unlikely that we are going to get some questions on this as to the President's view and position. Particularly, Ron Nessen can expect these inquiries.

I think it would be helpful if we could develop some guidance for Ron as to how to respond. It may be that he will want to refer the questions to Justice.

Many thanks.



# ANTITRUST STUDY ON CARS PLANNED

*New York Times*  
8/14/76

## Move by F.T.C. and Justice Department Is Deplored by General Motors and Ford

By The Associated Press

WASHINGTON, Aug. 3—An antitrust investigation of the nation's automobile makers was approved today by the Federal Trade Commission and the Justice Department.

The General Motors Corporation, which controls more than half the United States market, was considered to be the prime target, though the other companies might also be drawn into a legal attack.

Thomas A. Murphy, G.M.'s chairman, said that he expected to be able to show that the industry was competitive and in compliance with the law. But he added that he deplored "the waste of public and private resources that this task will entail."

### 'Yet Another Investigation'

Lee A. Iacocca, president of the Ford Motor Corporation, the No. 2 car maker, said that "the decision of the Federal Trade Commission to commence yet another investigation of the automobile industry is unfortunate and unnecessary."

The Chrysler Corporation ranks behind Ford and the American Motors Corporation is next in the industry.

The F.T.C.'s announcement said that the inquiry would focus on "the economic structure of the American automobile industry on the economic performance of firms, both domestic and foreign, engaged in

Continued on Page 52, Column 5

# ANTITRUST STUDY ON CARS PLANNED

Continued From Page 1, Col. 7

the manufacture and distribution of automobiles."

"Among the matters to be investigated are pricing policies, scale economics, vertical integration, and automobile distribution practices," the terse statement added.

The announcement said that "the existence of an investigation does not imply that violations of law have occurred."

Staff proposals for antitrust activity against the auto industry have been in existence for years in both the commission and the Justice Department.

The Justice Department was on the verge of filing a suit against General Motors in 1968, but dropped the matter for lack of support from the incoming Administration of President Richard M. Nixon.

A Justice Department spokesman confirmed today that the F.T.C.'s action had been cleared with the department. He said the Justice Department's own lawyers have been keeping an eye on the industry but "we weren't close to any kind of imminent filing."

However, it was agreed, he added, that if the F.T.C. developed any kind of criminal case against the auto makers, the department would move in. The F.T.C. is empowered only to bring civil actions.

The investigation can be expected to take considerable time, and any resulting litigation could last several years.

Owen Johnson, director of the F.T.C.'s Bureau of Competition, said that if an antitrust suit should develop, General Motors, which had sales of \$32 billion in 1974, would not necessarily be the only defendant.

He noted, for example, that the F.T.C. earlier this year brought a "shared monopoly" case against all the major cereal makers. The shared monopoly argument acknowledges that there may be no overt

conspiracy to control the marketplace. Instead, the argument is that the industry leaders effectively block or stifle competition from smaller concerns through tacit similarities in marketing and prices.





TAB  
B



U.S. DEPARTMENT OF JUSTICE

August 10, 1976

To: Kenneth A. Lazarus  
Associate Counsel to the President

From: Joe Sims  
Deputy Assistant Attorney General  
Antitrust Division

Subject: Automobile Investigation

This memorandum is in response to your request last night for a short statement of the facts surrounding our clearance to the Federal Trade Commission to initiate their broad-scale investigation of the automobile industry.

The Department of Justice and the Federal Trade Commission have, for many years, had an informal clearance process which basically involves each agency, prior to beginning an investigation, informing the other agency and asking whether such an investigation would conflict with anything underway or contemplated by the other agency. This "clearance" process is not binding on either agency, but is simply an attempt to avoid duplication of effort.

Pursuant to this clearance process, the Federal Trade Commission in late July informed the Department that they were prepared to undertake a substantial investigation of the automobile industry, and were ready to commit significant resources to such an investigation. They asked whether such an investigation would conflict with anything underway or contemplated by the Department. In fact, although the Department has traditionally been the active agency in the automobile industry, we had no investigation underway and had in fact just completed an economic analysis of the industry which was not particularly sanguine about the desirability of antitrust investigations in that industry. Based on these facts, we ordinarily would routinely grant the requested clearance to the Commission.

Because this industry had traditionally been in our bailiwick, however, and because of the obvious importance of this industry, we carefully considered the question of



clearance. In fact, we also met at their request with counsel for General Motors to hear their views on the question of clearance, which they opposed. After considering the matter for about two weeks, we determined that there was no rational basis for refusing clearance to the Federal Trade Commission and, on August 2 we informed Chairman Collier by letter that we were prepared to clear the Commission's investigation subject to two conditions: first, that this clearance would not foreclose the Department from future investigations in the industry, including specifically criminal investigations; and second, that at the conclusion of the Commission's investigation, the Department would be given access to information developed by the Commission.

On August 3, Chairman Collier responded to our letter by accepting the conditions contained therein.

Attached are copies of the exchange of correspondence between the Antitrust Division and the Commission, which have been made available to the press with the Commission's concurrence.

I would suggest that any questions that the White House receives on this matter be referred to the Department of Justice for response.

Attachment



FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

OFFICE OF THE CHAIRMAN

AUG 3 1976

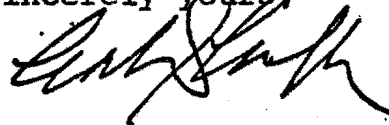
The Honorable Donald I. Baker  
Acting Assistant Attorney General  
Antitrust Division  
Department of Justice  
Washington, D. C. 20530

Dear Mr. Baker:

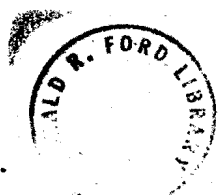
This is in reference to your letter of August 2, 1976, in which you agreed to clear to the Commission a broad investigation of the automobile industry, subject to the conditions specified in your letter. The specified conditions are acceptable to the Federal Trade Commission.

Accordingly, the Commission will initiate the necessary papers for the formalization of this clearance agreement.

Sincerely yours,



Calvin J. Collier  
Chairman



02 AUG 1975

Honorable Calvin J. Collier  
Chairman  
Federal Trade Commission  
Washington, D.C. 20580

Dear Mr. Chairman:

Pursuant to the liaison procedure between the Federal Trade Commission and the Department of Justice, the Commission has requested clearance to conduct a broad investigation of the automobile industry. We understand that the Commission has completed a detailed economic study and now desires to conduct a comprehensive investigation to determine whether or not violations of Section 5 of the Federal Trade Commission Act are present.

Subject to the following conditions, the Department is prepared to process the clearance request without objection. First, this clearance would not foreclose the Department of Justice from future specific investigations in this industry, including particularly investigations of a criminal nature. Any such future investigations would be subject to normal clearance procedures. In that connection, the Commission, consistent with our established practices, would undertake to advise the Department if any evidence of a potential criminal nature is uncovered.

Second, at the conclusion of the investigation, the Department would be given access to information obtained by the Commission. Obviously, this would be of particular importance if the Commission should decide that no action under Section 5 were appropriate.

If these conditions are acceptable, please let us know and we will proceed to process the clearance request.



As a final point, I should note that the Department has a substantial number of documents obtained by grand jury subpoena during the course of a prior investigation. That investigation was closed long ago, and the return of those documents has recently been requested. Since we have no basis to retain them, we will begin returning them on August 15.

Sincerely yours,

DONALD I. BAKER  
Acting Assistant Attorney General  
Antitrust Division



FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

OFFICE OF THE CHAIRMAN

AUG 3 1976

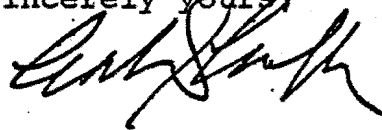
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Sincerely yours,

DONALD I. BAKER  
Acting Assistant Attorney General  
Antitrust Division



THE WHITE HOUSE

WASHINGTON

August 24, 1976

MEMORANDUM FOR: JACK MARSH  
FROM: MAX FRIEDERSDORF *M.F.*  
SUBJECT: H.Res. 1462, Anti-Trust Resolution

The House will consider today H.Res. 1462, a parliamentary device reported by the Rules Committee which would permit three previously passed House bills to be taken to Conference with the Senate as a package.

The bills include H.R. 8532 (Parens Patriae passed previously by voice vote); H.R. 13489, Anti-Trust Civil Process Amendments and H.R. 14580, Pre-Merger Notification, both previously passed on suspension.

Chairman Rodino, supported by Representative Bob McClory, appeared before Rules prior to recess to seek the Resolution in order to facilitate a Conference.

I recommend we oppose the Resolution. It marries good legislation, pre-merger and civil process, to objectionable legislation, namely, parens patriae which has passed both the House and Senate in objectionable form.

To oppose the Resolution today would signal objections only to the unusual parliamentary procedure of merging three previously passed bills.

Defeat of H.Res. 1462 would insure the President of considering the three bills on their separate merits and not having to buy all or nothing.

Ed Schmults concurs that we oppose H.Res. 1462. Bill Seidman disagrees, maintaining that this puts the Administration on the politically objectionable side of big business.

cc: Bill Seidman  
Ed Schmults



ADDENDUM

Minority Leader John Rhodes is putting out a whip advisory that he is personally opposed to the bill as a bad piece of legislation.

Michel defers to the Republican Members of the House Judiciary Committee; John Anderson believes the House will adopt the Resolution and that the White House should not get out front on a Custer's Last Stand.

Hutchinson favors the Resolution; opposes Parens Patriae. Wiggins is noncommittal and Caldwell Butler's dislike of Parens Patriae is constrained because the Virginia attorney general is running for Governor.



vide for participation by the Veterans' Administration in the national Swine Flu immunization program.

Pages 515045-515046

**Postal Service Organization and Financing:** Senate agreed to the conference report on H.R. 8603, to amend the laws with respect to organizational and financial matters of the United States Postal Service and the Postal Rate Commission, thus clearing the measure for action by the House.

Pages 514996-514997

**Government in Sunshine:** Senate agreed to the conference report on S. 5, to provide that meetings of government agencies be open to the public, thus clearing the measure for the White House.

Pages 515043-515045

**Antitrust Amendments:** Senate continued to debate House message on H.R. 8532, to improve and facilitate the expeditious and effective enforcement of the antitrust laws, taking action on proposed amendments and motions made in connection therewith, as follows:

(1) By 63 yeas to 27 nays, three-fifths of those Senators duly chosen and sworn having voted in the affirmative, agreed to motion to close further debate on Robert C. Byrd motion that Senate agree to the House amendment to the Senate amendment with an amendment in the nature of a substitute to this bill;

Page 515003

(2) By 27 yeas to 62 nays; rejected Allen amendment No. 2232, in the nature of a substitute for substitute amendment embodied in Robert C. Byrd motion;

Page 515004

(3) By 82 yeas to 3 nays, agreed to motion to instruct the Sergeant at Arms to request the presence of absent Senators;

Page 515014

(4) By 83 yeas to 4 nays, agreed to motion to instruct the Sergeant at Arms to compel the presence of absent Senators.

Page 515017

(5) Tabled Allen unprinted amendment No. 411, (in the nature of a substitute for the substitute amendment embodied in Robert C. Byrd motion) as follows:

(a) Division 1—Title Amendment—tabled by voice vote; (b) Division 2—Declaration of Policy—tabled by 63 yeas to 21 nays; (c) Division 3—Antitrust Civil Procedure Act Amendments—tabled by 61 yeas to 19 nays; (d) Division 4—Parens Patriae amendments—tabled by 62 yeas to 24 nays; (e) Division 5—Premerger Notification and Stay—tabled by 63 yeas to 23 nays; and (f) Division 6—Making the bill effective no sooner than January 1, 1977—tabled by 61 yeas to 23 nays.

Pages 515009, 515017-515019

(6) By 55 yeas to 23 nays, tabled Thurmond amendment No. 2255, placing compensation on plaintiffs attorney's fees on same basis as that paid by State to private counsel retained;

Page 515022

(7) By 58 yeas to 24 nays, tabled Tower unprinted amendment No. 412, to strike provision which provides for court costs and attorney's fees in actions for injunc-

tive relief against threatened loss or damage by a violation of the antitrust laws.

Page 515023

(8) By 57 yeas to 25 nays, tabled Hruska amendment No. 2253, to provide that if a State fails to establish that the defendant acted in willful violation of the antitrust laws, the mandatory relief shall be reduced from treble to single damages;

Page 515025

(9) By 52 yeas to 26 nays, tabled Bellmon motion No. 3, calling for Senate to agree to the House amendment to the Senate amendment with an amendment to provide that no portion of any monetary relief shall be paid to any private counsel employed by the State, or any person other than the natural persons residing in such State in whose behalf such action was brought;

Page 515028

(10) By 43 yeas to 21 nays, tabled Allen amendment No. 2239, to provide that no person may participate in bringing an action under Title III while seeking the nomination for election to any State or Federal public office;

Page 515037

Senate reached unanimous consent agreement concerning the further consideration of this bill as follows:

To resume consideration thereof at 2 p.m. on Tuesday, September 7—2 hour time limitation for debate—when it will be in order for Senator Allen to reoffer his amendment No. 2232, in the nature of a substitute;

To resume its consideration at 2 p.m. on Wednesday, September 8, with vote at 3 p.m. on question of adoption of Allen amendment No. 2232, and, if rejected, to be followed by vote on Robert C. Byrd motion; and that Abourezk unprinted amendment No. 410, in the nature of a substitute, be withdrawn from consideration.

Page 515047

Pages 515000-515043, 515047

**Toxic Substances Control:** Senate disagreed to the House amendments to S. 3149, to protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, agreed to conference with the House and appointed as conferees Senators Magnuson, Hartke, Hart of Michigan, Durkin, Tunney, Baker, and Stevens.

Page 514986

**Indian Claims Commission:** Senate disagreed to the House amendment to S. 2981, authorizing funds for the Indian Claims Commission for fiscal year 1977, requested conference with the House and appointed as conferees Senators Jackson, Metcalf, Johnston, Abourezk, Fannin, and Bartlett.

Pages 515117-515118

**Water Pollution Control:** Senate laid down for further consideration tomorrow S. 3037, authorizing funds for fiscal year 1977 for programs under the Water Pollution Control Act.

Page 515117

**Presidential Communication:** Senate received a communication from the President transmitting a report setting forth his determination that import relief for the U.S. industry engaged in the commercial production

Rhodes - 152 - 186  
w/ strong veto sig.

and extraction of honey is not in the national economic interest, and explaining the reasons for his decision—referred to Committee on Finance. Page S15049

**Presidential Messages:** Senate received the following messages from the President:

Transmitting annual report of the National Council on the Arts and the National Endowment for the Arts for fiscal year 1975—referred to Committee on Labor and Public Welfare; and

Transmitting legislation to establish a 10 year national commitment to double America's heritage of national parks and national wildlife refuges—referred jointly to Committees on Interior and Insular Affairs and Commerce. Pages S15047—S15048

**Legislative Program:** Majority Leader discussed Senate's legislative program for tomorrow and following forthcoming Labor Day Recess. Page S15119

**Committee Authority To Sit:** Certain committees were authorized to sit during sessions of the Senate on Wednesday, September 1, and on Wednesday, September 8. Page S15022

**Treaty Received:** International Convention for the Safety of Life at Sea (Ex. O, 94th Cong., 2d sess.) was received, the injunction of secrecy removed therefrom and the treaty, together with accompanying papers, was referred to Committee on Foreign Relations. Page S15045

**Nominations:** Senate received the nomination of Everett T. Keech, of the District of Columbia, to be an Assistant Secretary of the Air Force.

Also, Senate received the withdrawal of the nominations of Margareta E. White, of Virginia, and Joseph R. Fogarty, of Rhode Island, each to be a member of the Federal Communications Commission, and the nominations were then resubmitted for different terms of office. Page S15120

**Quorum Calls:** Three quorum calls were taken today. Pages S15004, S15014, S15017

**Record Votes:** Fourteen record votes were taken today (total—559). Pages S15004—S15005, S15014, S15017, S15018—S15020, S15022, S15023, S15025, S15028, S15038

**Recess:** Senate met at 11 a.m. and recessed at 10:58 p.m. until 10 a.m. on Wednesday, September 1. (For program for Wednesday, see last page of today's Record.) Page S15119

## Committee Meetings

(Committees not listed did not meet)

### INTERNATIONAL BANKING

**Committee on Banking, Housing and Urban Affairs:** Subcommittee on Financial Institutions held hearings on H.R. 13876, to provide for Federal regulation of par-

ticipation by foreign banks in domestic financial markets, receiving testimony from George H. Dixon, Deputy Secretary of the Treasury; Stephen S. Gardner, Vice Chairman, Board of Governors of the Federal Reserve System; John B. Olin, Conference of State Bank Supervisors, Washington, D.C.; William Volckhausen, First Deputy Superintendent of Banks of New York, Albany; Carol Greenwald, Commissioner of Banks of Massachusetts, Boston; Robert Ackerman, Pacific Coast Stock Exchange, San Francisco; Michael Tobin, Midwest Stock Exchange, Chicago; James Dowd, Boston Stock Exchange, Boston; Theodor Schmidt-Scheuber, ABD Securities Corporation, New York City; Hart Perray, So Gen-Swiss International Corporation, New York City; Dr. Wolfgang Jahn, Duesseldorf, representing European Economic Community Banking Federation, accompanied by his associates; Paul E. Hollos, and Stuart L. Pittman, both of Institute of Foreign Bankers, Washington, D.C.; and Douglas A. Smith, Bankers Association for Foreign Trade, Washington, D.C.

Subcommittee adjourned subject to call.

### SECOND CONGRESSIONAL BUDGET RESOLUTION

**Committee on the Budget:** Committee ordered favorably reported an original concurrent resolution revising the congressional budget for the Federal Government for fiscal year 1977. As approved by the committee the resolution recommends \$412.8 billion for outlays; \$447.5 billion for new budget authority; and \$362 billion for total revenues for fiscal year 1977.

### REVENUE SHARING AND WITHHOLDING RATES

**Committee on Finance:** Committee announced that in an evening session on Monday, August 30, it ordered favorably reported the following bills:

H.R. 11997, to amend the Internal Revenue Code of 1954 with respect to the tax treatment of certain divestitures of assets by bank holding companies; and

H.R. 13367, to amend and extend the State and Local Fiscal Assistance Act—"revenue sharing" (amended). As approved by the committee, the bill would (a) extend the program for an additional 5¾ years through September 30, 1982; (b) set funding for fiscal year 1977 at \$6.9 billion; and (c) increase annual increment by \$150 million starting with fiscal year 1978.

Also, committee agreed to an amendment to extend the present withholding tax rates until September 15, 1976, intended to be offered as a committee amendment to H.R. 3052, to amend the Internal Revenue Code of 1954 with respect to the tax treatment of the gain on the lapse of options to buy or sell securities, when such measure (now on Senate Calendar) is considered by the Senate.

## COMMITTEE BUSINESS

*Committee on Foreign Relations:* Committee ordered favorably reported the following business items:

Customs Convention on Containers, 1972, and the International Convention for Safe Containers (Ex. X, 93d Cong., 1st sess.);

Agreement on the Conservation of Polar Bears (Ex. I, 94th Cong., 1st sess.);

Convention for the Conservation of Antarctic Seals, with Annex (Ex. K, 94th Cong., 1st sess.);

Protocol amending the Interim Convention on Conservation of North Pacific Fur Seals (Ex. M, 94th Cong., 2d sess.); and

Fifth International Tin Agreement (Ex. J, 94th Cong., 2d sess.); and

The nominations of Robert J. McCloskey, of Maryland, to be Ambassador to the Kingdom of the Netherlands; and William G. Bradford, of Illinois, to be Ambassador to the Republic of Chad.

Prior to these actions, committee received testimony as follows:

On the nomination of Ambassador McCloskey from J. Ashton-Greene, Pass Christian, Mississippi;

On Ex. I, 94-1, Ex. K, 94-1, and Ex. M, 94-2 from Lindsay Grant, Acting Deputy Assistant Secretary for Environmental and Population Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State; and Richard Frank, Center for Law and Social Policy, Washington, D.C.; and

On Ex. X, 93-1 from Richard Abbey, Assistant Chief Counsel, and David Bamowetz, International Operations Division, both of the U.S. Customs Service, Department of the Treasury; and Rear Admiral William M. Benkert, Chief, Office of Merchant Marine Safety, U.S. Coast Guard, Department of Transportation.

WATER PROJECTS—TEXAS,  
NEW MEXICO/CALIFORNIA

*Committee on Interior and Insular Affairs:* Subcommittee on Energy Research and Water Resources concluded hearings on S. 3712, authorizing the construction, operation, and maintenance of an extension to the existing American Canal, Rio Grande Project, Texas-New Mexico, after receiving testimony from Representative White; Edwin F. Sullivan, Assistant Commissioner, Bureau of Reclamation, Department of the Interior; E. H. Bacza, Mayor of El Paso; Jessie Gilmer, Rio Grande Compact Commission, State of Texas, Austin; and George Mosley, El Paso County Water Improvement District, Texas; and

On S. 3727, authorizing the construction, operation, and maintenance of the Allen Camp Unit, Pit River Division, Central Valley Project, California, after re-

ceiving testimony from Clifford I. Barrett, Assistant Commissioner, Bureau of Reclamation, Department of the Interior.

## COAL MINE SAFETY

*Committee on Labor and Public Welfare:* Committee ordered favorably reported, with amendments, S. 1302, to promote safety in the mining industry; and ordered reported without recommendation H.R. 13555, House companion measure.

## BLACK LUNG

*Committee on Labor and Public Welfare:* Subcommittee on Labor approved for full committee consideration, with amendments, H.R. 10760, to improve program of benefits for victims of black lung disease.

## KENNEDY CENTER FUNDS

*Committee on Public Works:* Subcommittee on Buildings and Grounds held hearings on H.R. 14360, authorizing \$3.3 million for repair and reconstruction of the John F. Kennedy Center for the Performing Arts, receiving testimony from Roger Stevens, Chairman, Board of Trustees, John F. Kennedy Center for the Performing Arts, and Jimmie L. Dunning, Deputy Director, National Park Service, Department of the Interior.

Hearings were adjourned subject to call.

## WATER RESOURCE DEVELOPMENT

*Committee on Public Works:* Subcommittee on Water Resources continued to consider proposed water resource development legislation, but did not complete action thereon and will meet again tomorrow.

## SENATE COMMITTEE REORGANIZATION

*Select Committee on Committees:* Committee met to consider proposals for "starting points" in dealing with the Senate committee jurisdictional problem, and announced that further hearings on this subject will be held September 14 through 16.

## MEDICAID PRACTICES

*Special Committee on Aging:* Subcommittee on Long-Term Care continued hearings to report the results of its investigation into alleged fraud and abuse among participants in the medicaid program, receiving testimony from Robert B. Fiske, Jr., U.S. Attorney, and George Wilson, Associate U.S. Attorney, both of the Southern District of New York; Joseph Ingber and Sheldon Styles, Chiropractors, New York City; Irving Seidman representing Dr. Clyde Weissbart, and Dr. Nancy Kurke, East Harlem Medical Center, New York City.

Hearings were recessed subject to call.

# House of Representatives

## Chamber Action

**Bills Introduced:** 36 public bills, H.R. 15337-15372; 4 private bills, H.R. 15373-15376; and 13 resolutions, H.J. Res. 1081, H. Con. Res. 726 and 727, and H. Res. 1503-1512 were introduced.

Pages H9319-H9321

**Bills Reported:** Reports were filed as follows:

Conference Report on H.R. 8603, Postal Reorganization Act Amendments of 1976 (H. Rept. 94-1444);

H.R. 13950, to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulations of surface coal mining operations, and the acquisition and reclamation of abandoned mines, amended (H. Rept. 94-1445);

H.R. 15136, to authorize appropriations for construction of facilities on Guam, amended (H. Rept. 94-1446);

Conference report on S. 2184, to authorize appropriations for the winter Olympic games (H. Rept. 94-1447);

H. Res. 1507, providing for the consideration of H.R. 14238, making appropriations for the Legislative Branch for fiscal year 1977 (H. Rept. 94-1448);

H. Res. 1472, providing funds for the Select Committee on Narcotics Abuse and Control (H. Rept. 94-1449);

H. Res. 1497, authorizing appropriations for special counsel to represent the Sergeant at Arms in the case of Pressler v. Simon, et al. (H. Rept. 94-1450);

H. Res. 1510, providing for the consideration of H.R. 3605, relating to the Federal excise tax on beer (H. Rept. 94-1451);

H. Res. 1511, providing for the consideration of H.R. 6684, Exclusive Territorial Franchise Act (H. Rept. 94-1452);

H. Res. 1512, providing for the consideration of H.R. 14886, Presidential Transition Act of 1976 (H. Rept. 94-1453);

H.R. 14829, to provide for consumers a further means of minimizing the impact of inflation and economic depression by narrowing the price spread between costs to the producer and the consumer of needed goods, services, facilities, and commodities through the development and funding of specialized credit sources for, and technical assistance, to self-help, not-for-profit cooperatives (H. Rept. 94-1454); and

H.R. 12808, to improve peanut programs (H. Rept. 94-1455).

Page H9319

**Education Amendments:** By a voice vote the House passed S. 2657, to extend the Higher Education Act of 1965, to extend and revise the Vocational Education Act of 1963, amended.

Agreed to an amendment that inserts language contained in H.R. 12835, H.R. 12851, and H.R. 14070 as previously passed by the House.

Subsequently, the House insisted upon its amendment and asked a conference with the Senate. Appointed as conferees: Representatives Perkins, Thompson, Brademas, O'Hara, Hawkins, Ford of Michigan, Mink, Meeds, Chisholm, Biaggi, Andrews of North Carolina, Lehman, Benitez, Blouin, Cornell, Simon, Beard of Rhode Island, Zeferetti, Miller of California, Mottl, Hall, Quie, Ashbrook, Bell, Erlenborn, Esch, Eshleman, Buchanan, Jeffords, Goodling, and Smith.

Pages H9249-H9251

**Committee Elections:** House agreed to H. Res. 1503, electing Representative Steed chairman of the Committee on Small Business; and

H. Res. 1504, electing Representative Ichord as a member of the Committee on Small Business.

Page H9251

**Fire Prevention Authorization:** By a voice vote the House passed S. 2862, Fire Prevention and Control Act authorization for fiscal year 1977 and 1978; clearing the measure for the President.

Pages H9251-H9252

**Private Bill:** By a voice vote the House passed S. 3779, a private bill; clearing the measure for the President.

Page H9252

**Toxic Substances:** Speaker appointed Representative Brodhead, Scheuer, and Rinaldo as additional conferees to the committee of the conference on S. 3149, Toxic Substances Control Act; and Representative Devine, vice Representative McCollister, resigned.

Page H9252

**National Emergencies:** House agreed to the Senate amendments to H.R. 3884, National Emergencies Act; clearing the measure for the President.

Page H9253

**Presidential Message—Arts:** Received and read a message from the President transmitting the Annual Report on the National Council on the Arts and the National Endowment for the Arts for fiscal year 1975—referred to the Committee on Education and Labor.

Page H9258

**Government in Sunshine:** By a yeas-and-nays vote of 384 yeas the House agreed to the conference report on S. 5, Government in the Sunshine Act; clearing the measure for Senate action.

Pages H9258-H9262

**Electric Vehicles:** By a voice vote the House agreed to the conference report on H.R. 8800, Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976; clearing the measure for the President.

Pages H9262-H9267

**Automotive Research:** By a ye-a-and-nay vote of 344 yeas to 39 nays the House agreed to the conference report on H.R. 13655, Automotive Transport Research and Development Act of 1976; clearing the measure for Senate action.

Pages H9267-H9273

**Pueblo Indians:** By a ye-a-and-nay vote of 387 yeas the House agreed to the conference report on S. 217, to repeal the Act of May 10, 1926, relating to the condemnation of certain lands of the Pueblo Indians in the State of New Mexico; clearing the measure for Senate action.

Pages H9273-H9274

**Committee to Sit:** Objection was heard to a request that the Committee on House Administration be permitted to sit during proceedings of the House today under the 5-minute rule.

Pages H9275-H9276

**Late Report:** Committee on Rules received permission to file certain privileged reports by midnight tonight.

Page H9276

**Law Enforcement:** House completed all general debate and began reading for amendment H.R. 13636, to amend title I (Law Enforcement Assistance) of the Omnibus Crime Control and Safe Streets Act of 1968—but came to no resolution thereon. Proceedings under the 5-minute rule will continue tomorrow.

Pending when the Committee of the Whole rose was an amendment that sought to strike out language prohibiting funds for improving state and local correctional institutions unless such improvements comply with Administration and State standards.

Agreed to:

A series of committee amendments en bloc;

A series of amendments of a clarifying nature;

An amendment to the committee amendment requiring that the civil rights enforcement procedures comply with the provisions of the revenue sharing bill as passed by the House;

A series of technical amendments; and

An amendment which retains the language of present law requiring the approval of local governments for law enforcement program grants (agreed to by a recorded vote of 253 yeas to 133 noes). Earlier, the amendment was rejected by a division vote of 38 yeas to 57 noes.

Rejected:

A committee amendment adding language requiring that no less than one-third of discretionary funds be used for improving the administration of criminal justice in the courts (rejected by a recorded vote of 173 yeas to 214 noes);

An amendment extending the authorization for three years (rejected by a recorded vote of 119 yeas to 268 noes);

An amendment authorizing mini-block grants to general units of local government (rejected by a division vote of 42 yeas to 50 noes);

An amendment which sought to retain the present law definition of "local elected officials" in the Regional Planning Unit representation requirement; and

An amendment in the nature of a substitute which sought to require mutual resolution of differences between the State chief executive officer and the State legislature over statewide plans prior to submission to the Administration.

H. Res. 1246, the rule under which the bill was considered, was agreed to earlier by a ye-a-and-nay vote of 388 yeas.

Pages H9274-H9309

**Legislative Program:** Majority leader announced the legislative program for tomorrow.

Page H9312

**Amendments Ordered Printed:** Amendments ordered printed pursuant to the rule appear on pages H9321-H9338.

**Quorum Calls—Votes:** One quorum call, five ye-a-and-nay votes, and three recorded votes developed during the proceedings of the House today and appear on pages H9261-H9262, H9272, H9273-H9274, H9275, H9287, H9298, H9304, H9307.

**Adjournment:** Adjourned at 7:06 p.m.

## Committee Meetings

### NATIONAL FOREST MANAGEMENT ACT

**Committee on Agriculture:** Met for markup of H.R. 15069, National Forest Management Act, and will resume tomorrow.

### INTERIOR APPROPRIATIONS

**Committee on Appropriations:** Subcommittee on Interior held a hearing on the National Visitors Center.

### ARMED SERVICES MISCELLANY

**Committee on Armed Services:** Met and ordered reported favorably to the House the following bills:

H.R. 14773 as amended, to authorize cost-of-living adjustments of annuities under the Retired Serviceman's Family Protection Plan, to suspend retired-pay deductions under the Survivor Benefit Plan when there is no eligible spouse beneficiary, and to reduce the duration-of-marriage requirement under the Survivor Benefit Plan from two years to one year; and

H.R. 15136 as amended, to authorize appropriations for construction of facilities on Guam.

The Committee also approved reprogramming action to provide funding for \$15.7 million in abnormal escalation costs associated with the Economic Price Adjustment clauses of the FY 1975 A-10 airframe and gun contracts; and

Realignment of modification funds for the F-14 program totalling \$24.5 million.

### SCHOOL LUNCH PROGRAM

**Committee on Education and Labor:** Subcommittee on Elementary, Secondary, and Vocational Education con-



tinued oversight hearings on the school lunch program with testimony from public witnesses.

Hearings continue tomorrow.

#### SERVICE CONTRACT AMENDMENTS

*Committee on Education and Labor:* Subcommittee on Labor-Management Relations met and approved for full committee action H.R. 15246, to amend the Service Contract Act to ensure that all "service employees" except bona fide executive, administrative or professional employees will be covered by the Act.

#### TETON DAM COLLAPSE

*Committee on Government Operations:* Subcommittee on Conservation, Energy, and Natural Resources continued hearings on the Teton Dam collapse. Testimony was heard from Bureau of Reclamation Commissioner Stam; Brig. Gen. Drake Wilson, Deputy Director of Civil Works, Army Corps of Engineers; and Henry Eschwege, Director, Resources and Economic Development Division, GAO.

#### HOUSE ADMINISTRATION MISCELLANY

*Committee on House Administration:* Met and ordered reported favorably to the House the following resolutions:

S. Con. Res. 85, authorizing the printing as a Senate document of a report by a special consultant to the Administrative Conference of the United States on some administrative procedures of the Internal Revenue Service;

H. Res. 1472, to provide for the expenses of investigations and studies to be conducted by the Select Committee on Narcotics Abuse and Control; and

H. Res. 1497 amended, authorizing appointment of a special counsel to represent the Sergeant at Arms in the case of *Pressler v. Simon*, et al.

By a vote of 11 to 7, the Committee tabled H. Con. Res. 48 and 49, to provide for the printing of copies of the Constitution of the U.S.

#### CONSULTANT CONTRACTS

*Committee on House Administration:* Subcommittee on Contracts met and reviewed consultant contracts.

#### BOUNDARY CHANGES

*Committee on Interior and Insular Affairs:* Subcommittee on Public Lands held hearings on H.R. 3596, boundary changes in the Cibola National Forest in New Mexico; H.R. 14799 and H.R. 14800, boundary changes in the World and Mountain Home Tracts in Wyoming; and private bills. Testimony was heard from Representatives Udall, Roncalio, Lujan and McFall; and Departments of Interior and Agriculture.

Following the hearing, the Subcommittee approved for full committee action H.R. 3596, H.R. 3818, H.R. 14227, and S. 2511, all private bills.

#### WILDERNESS LANDS

*Committee on Interior and Insular Affairs:* Subcommittee on Public Lands met and approved for full committee action draft of an Omnibus Wilderness bill.

#### EXPORT ADMINISTRATION ACT

*Committee on International Relations:* Continued markup of H.R. 7665, to extend the Export Administration Act of 1969, and will resume tomorrow.

#### DETENTE

*Committee on International Relations:* Subcommittee on International Political and Military Affairs held a hearing on *Detente: An Overview*. Testimony was heard from Helmut Sonnenfeldt, Counselor, Department of State; and Arthur A. Hartman, Assistant Secretary of State for European Affairs.

Hearings continue Thursday, September 2.

#### U.S. INVESTMENT OVERSEAS

*Committee on International Relations:* Subcommittee on International Economic Policy met and approved for full committee action S. 2839 amended, International Investment Survey Act of 1976.

#### RAIL AMENDMENTS

*Committee on Interstate and Foreign Commerce:* Began markup of H.R. 14932, Rail Amendments of 1976, and will continue tomorrow.

#### MUNICIPAL SECURITIES FULL DISCLOSURE ACT

*Committee on Interstate and Foreign Commerce:* Subcommittee on Consumer Protection and Finance held a hearing on H.R. 15205, Municipal Securities Full Disclosure Act of 1976. Testimony was heard from SEC Commissioner Philip Loomis; Treasury Assistant Secretary Robert A. Gerard; and public witnesses.

#### FTC RULING ON CONSUMER CLAIMS

*Committee on Interstate and Foreign Commerce:* Subcommittee on Consumer Protection and Finance held a hearing on Federal Trade Commission ruling on preservation of consumer claims and defenses. Testimony was heard from public witnesses.

#### COMMITTEE BUSINESS

*Committee on Interstate and Foreign Commerce:* Subcommittee on Oversight and Investigations met and approved a report entitled "The Arab Boycott and American Business."

#### PETROLEUM MARKETING PRACTICES

*Committee on Interstate and Foreign Commerce:* On Monday evening, August 30, Subcommittee on Energy and Power approved for full committee action H.R. 13000 amended, Petroleum Marketing Practices Act.

**HABEAS CORPUS**

*Committee on the Judiciary:* Met and ordered reported favorably to the House H.R. 15319 amended, to approve in whole or in part, with amendments, certain rules relating to cases and proceedings under sections 2254 and 2255 of title 26 of the United States Code.

The committee began but did not complete action on H.R. 13157, Victims of Crime Act of 1976.

**ORGANIC ACT OF GUAM AMENDMENT**

*Committee on the Judiciary:* Subcommittee on Courts, Civil Liberties, and the Administration of Justice met and approved for full committee action H.R. 4580, with an amendment in the nature of a substitute.

**WARM WATER FISH HATCHERY PROGRAM**

*Committee on Merchant Marine and Fisheries:* Subcommittee on Fisheries and Wildlife Conservation and the Environment held an oversight hearing on the Fish and Wildlife Service's warm water fish hatchery program. Testimony was heard from Lynn A. Greenwalt, Director, Fish and Wildlife Service; Paul Dembling, General Counsel, GAO; Jack Crawford, Georgia Department of Natural Resources; and Charles Bowers, Director, Division of Fisheries, State of Kentucky.

**WATER RESOURCES DEVELOPMENT ACT**

*Committee on Public Works and Transportation:* Subcommittee on Water Resources continued hearings on the Water Resources Development Act of 1976. Testimony was heard from U.S. Coast Guard and Members of Congress.

Hearings continue tomorrow.

**LOCAL SERVICE AIR CARRIER SUBSIDY—  
ALL-CARGO SERVICE**

*Committee on Public Works and Transportation:* Subcommittee on Aviation held hearings on the following bills:

H.R. 12349, to require retroactive adjustment of local service air carrier subsidy for 1966. Testimony was heard from Representative Pickle; Fred Chabot, CAB; Paul L. Bradshaw, Ozark Airlines; and Francisco A. Lorencio, Texas International Airlines, Inc.; and

H.R. 14623, to permit CAB to authorize all-cargo service by exemption pending CAB consideration of an application for initial certification of such service. Testimony was heard from John Robson, Chairman, CAB; John W. Barnum, Deputy Secretary of Transportation; and Frederick W. Smith, Chairman of the Board, Federal Express Corporation.

Hearings continue tomorrow.

**PUBLIC WORKS EMPLOYMENT ACT  
GUIDELINES**

*Committee on Public Works and Transportation:* Subcommittees on Economic Development, and on Investi-

gations and Review met for joint briefing by Department of Commerce on regulations and program guidelines being developed for the administration of the Public Works Employment Act of 1976.

**BEER TAX**

*Committee on Rules:* Granted a closed rule providing one hour of general debate on H.R. 3605, to amend section 5051 of the Internal Revenue Code of 1954 (relating to the Federal excise tax on beer). Testimony was heard from Representatives Pickle, Vigorito, Lundine, Nolan, and Clancy.

**INTERSTATE HORSERACING ACT**

*Committee on Rules:* Held a hearing but postponed action on H.R. 14071, Interstate Horseracing Act of 1976. Testimony was heard from Representatives Rooney, and Murphy of New York.

**PRESIDENTIAL TRANSITION ACT**

*Committee on Rules:* Granted an open rule providing one hour of general debate and waiving section 402(a) of P.L. 93-344, the Congressional Budget Act, on H.R. 14886, Presidential Transition Act of 1976. Testimony was heard from Chairman Brooks and Representative Horton.

**LEGISLATIVE BRANCH APPROPRIATIONS**

*Committee on Rules:* Granted a modified rule providing two hours of general debate; waiving all points of order against title 1 of the bill for failure to comply with the provisions of clause 2, Rule XXI, and providing that no amendment shall be in order except amendments recommended by the Committee on Appropriations and the amendments printed in the Congressional Record of August 31, 1976 by Representative Shipley, and said amendments shall be in order, clause 2 of Rule XXI to the contrary notwithstanding, but shall not be subject to amendment except amendments recommended by the Committee on Appropriations and pro forma amendments, on H.R. 14238, making appropriations for the Legislative Branch for fiscal year 1977. Testimony was heard from Representatives Schroeder, Coughlin, Armstrong, Regula, Edwards, Archer, Bauman and Grassley.

**EXCLUSIVE TERRITORIAL FRANCHISE ACT**

*Committee on Rules:* Granted an open rule providing two hours of general debate; waiving the provisions of clause 2(1)(5)(B) of Rule XI and dividing debate time between the Committee on Interstate and Foreign Commerce and the Committee on Judiciary, on H.R. 6684, Exclusive Territorial Franchise Act. Testimony was heard from Chairman Rodino and Representatives Murphy of New York, McCollister, Flowers, Seiberling and Cohen.

## NATIONAL CEMETERIES

*Committee on Veterans' Affairs:* Subcommittee on Cemeteries and Burial Benefits held a hearing on proposals to establish a national cemetery in Alabama and Pennsylvania; and changing criteria for burial in Arlington National Cemetery. Testimony was heard from Representatives Brinkley, Nichols and Edgar; Deputy Assistant Secretary of the Army Ford; and public witnesses.

*Joint Committee Meetings*

## NUCLEAR PROLIFERATION CONTROL

*Joint Committee on Atomic Energy:* Committee held hearings on S. 3770 and H.R. 15273, to provide for more efficient and effective control over the proliferation of nuclear explosives, receiving testimony from Robert A. Fri, Deputy Administrator Energy Research and Development Administration, and Director, White House Nuclear Policy Review Group; and Marcus Rowden, Chairman, Nuclear Regulatory Commission; and Myron B. Kratzer, Deputy Assistant Secretary of State for Nuclear Energy and Energy Technology Affairs.

Committee recessed subject to call.

## ARTS AND HUMANITIES

*Conferees* agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 12838, authorizing funds through fiscal year 1980 for programs of the National Foundation on the Arts and Humanities.

## DEFENSE APPROPRIATIONS

*Conferees*, in closed session, continued to resolve the differences between the Senate- and House-passed versions of H.R. 14262, making appropriations for the defense establishment for fiscal year 1977, but did not complete action thereon and will meet again tomorrow.

## EMERGENCY JOBS PROGRAM

*Conferees* continued to resolve the differences between the Senate- and House-passed versions of H.R. 12987, authorizing funds through fiscal year 1977 for the public service jobs program under the Comprehensive Employment and Training Act, but did not complete action thereon and will meet again on Thursday, September 9.

## TAX REFORM

*Conferees* continued in an evening session to resolve the differences between the Senate- and House-passed versions of H.R. 10612, proposed Tax Reform Act of 1976.

On Monday, August 30, the conferees tentatively agreed to (A) extend some personal tax credits through

1977; (B) increase in tax credits for employee stock ownership plan contributions; (C) greater moving expense deductions; and (D) liberalize investment tax credit for movie and T.V. films.

COMMITTEE MEETINGS FOR WEDNESDAY,  
SEPTEMBER 1

(All meetings are open unless otherwise designated)

## Senate

*Committee on Agriculture and Forestry*, business meeting, 8 a.m., 324 Russell Office Building.

*Committee on Banking, Housing and Urban Affairs*, Subcommittee on Securities, to resume hearings in connection with its study of the securities activities of commercial banks, 10 a.m., 5302 Dirksen Office Building.

*Committee on the Judiciary*, Subcommittee, to hold hearings on the nominations of Harry W. Wellford, of Tennessee, to be United States circuit judge for the sixth circuit; Kenneth K. Hall, of West Virginia, to be United States circuit judge for the fourth circuit; and John T. Copenhaver, Jr., to be United States District Judge for the southern district of West Virginia, 9:30 a.m., 2228 Dirksen Office Building.

*Committee on Veterans' Affairs*, business meeting, to consider S. 969, the proposed Veterans Education and Employment Assistance Act; and S. 3596 and H.R. 14299, to increase the rates of disability compensation for disabled veterans and rates of dependency and indemnity compensation for their survivors, 9:45 a.m., 414 Russell Office Building.

*Committee on Public Works*, Subcommittee on Water Resources, to continue markup of proposed legislation on water resource development, 10 a.m., 4200 Dirksen Office Building.

*Committee on Interior and Insular Affairs*, Subcommittee on Parks and Recreation, to hold oversight hearings on the President's Bicentennial Land Heritage Program, 10 a.m., 3110 Dirksen Office Building.

## House

*Committee on Agriculture*, to continue markup of H.R. 15069, National Forest Management Act, 10 a.m., 1301 Longworth Building.

*Committee on Armed Services*, Subcommittee on Military Installations and Facilities, to consider pending real estate projects, 2 p.m., 2212 Rayburn Building.

Subcommittee on Seapower and Strategic and Critical Materials, to mark up H.R. 15081, to authorize the disposal of various materials from the national stockpile and the supplemental stockpile; hold a hearing on the President's request for a supplemental fiscal year 1977 authorization for shipbuilding and conversion, Navy; and reconsider the Subcommittee's prior action disapproving the transfer of naval vessels to Ecuador, 10 a.m., 2216 Rayburn Building.

Subcommittee on Military Personnel, to continue hearings on the recently announced plan of the Secretary of the Army to cope with the Honor Code problem at West Point, 10 a.m., 2118 Rayburn Building.

*Committee on Banking, Currency and Housing*, Subcommittee on Economic Stabilization, to hold oversight hearing on the Lockheed Aircraft Corp., 9:30 a.m., 2222 Rayburn Building.

*Committee on the Budget*, to consider Budget Act waiver (Section 402) on S. 1174, Hazard Reduction Act, 10 a.m., 210 Cannon Building.

*Committee on the District of Columbia*, to mark up H.R. 15276, Park Police pay comparability; and consider H. Con. Res. 694, to disapprove the Firearms Control Regulations Act of 1975, passed by the Council of the District of Columbia, 9:30 a.m., 1310 Longworth Building.

*Committee on Education and Labor*, Subcommittee on Elementary, Secondary, and Vocational Education, to continue oversight hearings on the school lunch programs, 9 a.m., 2175 Rayburn Building.

*Committee on Government Operations*, Subcommittee on Intergovernmental Relations and Human Resources, to mark up H.R. 14761, to establish an Office of Inspector General in the Department of Health, Education, and Welfare, 10 a.m., 2247 Rayburn Building.

*Committee on Interior and Insular Affairs*, to consider pending legislation, 9:45 a.m., 1324 Longworth Building.

*Committee on International Relations*, to continue markup of H.R. 7665, to extend the Export Administration Act of 1969, 10 a.m., 2172 Rayburn Building.

Subcommittees on International Political and Military Affairs, and on International Organizations, to hold joint hearings on the August 18 incident in the Demilitarized Zone in Korea, 2 p.m., 2172 Rayburn Building.

*Committee on Interstate and Foreign Commerce*, to continue markup of H.R. 14932, Rail Amendments of 1976, 10 a.m., 2123 Rayburn Building.

Subcommittee on Communications, to hold hearing on H.R. 15268, to provide just and reasonable rates, terms, and conditions for the use of certain rights-of-way by persons desiring to lease space for wire communications; to be followed by markup of penalties and forfeiture, and pole attachment legislation, 1:30 p.m., 2123 Rayburn Building.

*Committee on the Judiciary*, Subcommittee on Courts, Civil Liberties and the Administration of Justice, to continue markup of pending legislation, 10 a.m., 2226 Rayburn Building.

Subcommittee on Immigration, Citizenship and International Law, to hold hearing on private immigration bills, 10 a.m., 2237 Rayburn Building.

Subcommittee on Administrative Law and Governmental Relations, to markup H.R. 11315, Foreign Sovereign Immunities Act of 1975, and private bills, 10 a.m., 219 Cannon Building.

Subcommittee on Criminal Justice, to continue hearings on H.R. 14476, Special Prosecutor Act of 1976, 9:30 a.m., 2141 Rayburn Building.

*Committee on Merchant Marine and Fisheries*, Subcommittee on Coast Guard and Navigation, to markup H.R. 13585, to amend the Federal Boat Safety Act of 1971; and S. 3050, to authorize the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, to lease for military purposes structures and their associated real property located in a foreign country, 10 a.m., 1334 Longworth Building.

*Committee on Post Office and Civil Service*, Subcommittee on Retirement and Employee Benefits, to continue oversight hearings on physical examinations, 9 a.m., 311 Cannon Building.

*Committee on Public Works and Transportation*, Subcommittee on Water Resources, to continue hearings on the Water Resources Development Act of 1976, 10 a.m., 2167 Rayburn Building.

Subcommittee on Aviation, to continue hearings on H.R. 12349, to require retroactive adjustment of local service air carrier subsidy for 1966; and H.R. 14623, to permit CAB to authorize all-cargo service by exemption pending CAB consideration of an application for initial certification of such service, 9:45 a.m., 2253 Rayburn Building.

*Committee on Science and Technology*, Subcommittee on the Environment and the Atmosphere, to markup H.R. 14544, 10039 and S. 3383, weather modification legislation, 9 a.m., 2318 Rayburn Building.

*Committee on Standards of Official Conduct*, to consider pending business, 4:15 p.m., H-310, Capitol Building.

#### Joint Committee Meetings

*Conferees*, on S. 3149, to protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, 1:30 p.m., room S-407, Capitol.

*Conferees*, on H.R. 10339, authorizing the Secretary of Agriculture to provide information and technical assistance to encourage the direct marketing of farm products from farmer to consumer, 2 p.m., room S-126, Capitol.

*Conferees*, closed, on H.R. 14262, making appropriations for the defense establishment for fiscal year 1977, 9:30 a.m., room H-140, Capitol.

*Next meeting of the SENATE*

10 a.m., Wednesday, September 1

## Senate Chamber

Program for Wednesday: After one special order for a speech and a period for the transaction of routine morning business of not to exceed 15 minutes, Senate will resume consideration of S. 3037, authorizing funds for fiscal year 1977 for programs under the Water Pollution Control Act (two hours on the bill).

*Next meeting of the HOUSE OF REPRESENTATIVES*

12 Noon, Wednesday, September 1

## House Chamber

Program for Wednesday: Consideration of H.R. 14238, Legislative Appropriations for fiscal year 1977 (modified closed rule, 2 hours of debate);

H.R. 13636, Law Enforcement Assistance Administration (conclude consideration);

H.R. 14886, Presidential Transition Act Amendments (open rule, 1 hour of debate); and

H.R. 10498, Clean Air Act Amendments (continue consideration).

## Extensions of Remarks, as inserted in this issue

## HOUSE

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 Young, Andrew, Ga., E4766



# Congressional Record

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*Committee on the District of Columbia*, to mark up H.R. 15276, Park Police pay comparability; and consider H. Con. Res. 694, to disapprove the Firearms Control Regulations Act of 1975, passed by the Council of the District of Columbia, 9:30 a.m., 1310 Longworth Building.

*Committee on Education and Labor*, Subcommittee on Elementary, Secondary, and Vocational Education, to continue oversight hearings on the school lunch programs, 9 a.m., 2175 Rayburn Building.

*Committee on Government Operations*, Subcommittee on Intergovernmental Relations and Human Resources, to mark up H.R. 14761, to establish an Office of Inspector General in the Department of Health, Education, and Welfare, 10 a.m., 2247 Rayburn Building.

*Committee on Interior and Insular Affairs*, to consider pending legislation, 9:45 a.m., 1324 Longworth Building.

*Committee on International Relations*, to continue markup of H.R. 7665, to extend the Export Administration Act of 1969, 10 a.m., 2172 Rayburn Building.

Subcommittees on International Political and Military Affairs, and on International Organizations, to hold joint hearings on the August 18 incident in the Demilitarized Zone in Korea, 2 p.m., 2172 Rayburn Building.

*Committee on Interstate and Foreign Commerce*, to continue markup of H.R. 14932, Rail Amendments of 1976, 10 a.m., 2123 Rayburn Building.

Subcommittee on Communications, to hold hearing on H.R. 15268, to provide just and reasonable rates, terms, and conditions for the use of certain rights-of-way by persons desiring to lease space for wire communications; to be followed by markup of penalties and forfeiture, and pole attachment legislation, 1:30 p.m., 2123 Rayburn Building.

*Committee on the Judiciary*, Subcommittee on Courts, Civil Liberties and the Administration of Justice, to continue markup of pending legislation, 10 a.m., 2226 Rayburn Building.

Subcommittee on Immigration, Citizenship and International Law, to hold hearing on private immigration bills, 10 a.m., 2237 Rayburn Building.

Subcommittee on Administrative Law and Governmental Relations, to markup H.R. 11315, Foreign Sovereign Immunities Act of 1975, and private bills, 10 a.m., 219 Cannon Building.

Subcommittee on Criminal Justice, to continue hearings on H.R. 14476, Special Prosecutor Act of 1976, 9:30 a.m., 2141 Rayburn Building.

*Committee on Merchant Marine and Fisheries*, Subcommittee on Coast Guard and Navigation, to markup H.R. 13585, to amend the Federal Boat Safety Act of 1971; and S. 3050, to authorize the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, to lease for military purposes structures and their associated real property located in a foreign country, 10 a.m., 1334 Longworth Building.

*Committee on Post Office and Civil Service*, Subcommittee on Retirement and Employee Benefits, to continue oversight hearings on physical examinations, 9 a.m., 311 Cannon Building.

*Committee on Public Works and Transportation*, Subcommittee on Water Resources, to continue hearings on the Water Resources Development Act of 1976, 10 a.m., 2167 Rayburn Building.

Subcommittee on Aviation, to continue hearings on H.R. 12349, to require retroactive adjustment of local service air carrier subsidy for 1966; and H.R. 14623, to permit CAB to authorize all-cargo service by exemption pending CAB consideration of an application for initial certification of such service, 9:45 a.m., 2253 Rayburn Building.

*Committee on Science and Technology*, Subcommittee on the Environment and the Atmosphere, to markup H.R. 14544, 10039 and S. 3383, weather modification legislation, 9 a.m., 2318 Rayburn Building.

*Committee on Standards of Official Conduct*, to consider pending business, 4:15 p.m., H-310, Capitol Building.

#### Joint Committee Meetings

*Conferees*, on S. 3149, to protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, 1:30 p.m., room S-407, Capitol.

*Conferees*, on H.R. 10339, authorizing the Secretary of Agriculture to provide information and technical assistance to encourage the direct marketing of farm products from farmer to consumer, 2 p.m., room S-126, Capitol.

*Conferees*, closed, on H.R. 14262, making appropriations for the defense establishment for fiscal year 1977, 9:30 a.m., room H-140, Capitol.

[Sept. 1976?]

H.R. F532

3-18-76

~~to~~  
voice - final

memorial - study

CIVIL PENALTY

WIGGINS

(150-223-59)

SPM

9/3/76

Max: Per Frank Polk (House Judiciary Committee)

Addendum to our discussion re HR 3532 (The Antitrust Bill)

The House Parliamentarian office is preparing to rule that the motion to accept the Senate amendment is privileged and does not require a resolution to that effect from the Rules Committee.

Consequently, a House motion to concur could come up as early as next Thursday. A majority vote is all that is needed to pass and send the bill to the President. No amendments would be in order since any further House amendments would be in the third degree.

J





THE WHITE HOUSE

SEP 19 1976

WASHINGTON

September 18, 1976

MEMORANDUM FOR: JACK MARSH  
JIM LYNN  
WILLIAM SEIDMAN

FROM: PHILIP BUCHEN *P.*

Attached is a draft of a proposed Statement of the President on The Antitrust and Competition Policy of the Ford Administration. It was prepared originally at the Department of Justice and was revised slightly by me.

I suggest that such a statement accompany the President's action on the new antitrust bill, just passed by Congress. It could be a part of his signing or vetoing statement or could be issued at the same time as such a statement.

Please let me have your comments.

Attachment

*Dictate  
Monday*



STATEMENT OF THE PRESIDENT

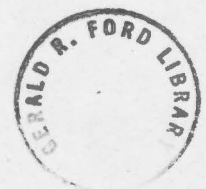
THE ANTITRUST AND COMPETITION POLICY  
OF THE FORD ADMINISTRATION

This country has become the economic ideal of the free world because of its dedication to the free enterprise system. Full and vigorous competition has been the watchword of America's economic progress.

This Administration has long recognized that competition is the driving force of our economy. Competitive markets promote efficiency and innovation by rewarding firms that produce desired products at low costs. In a competitive industry, inefficient producers are forced to become efficient or be driven out of business.

Competition is also a mighty stimulus to the development of new products and manufacturing processes. The free market system rewards the successful innovator. In today's international economy, members of a vigorously competitive economic system enjoy unlimited worldwide opportunities and contribute significantly to the stability of their domestic economies.

In the United States, promotion of competition is consistent with our political and social goals. The undue concentration of economic and political power has traditionally been seen as a threat to individual freedom.



Under competitive conditions, economic power is fragmented; no one firm can control prices or supply. Political power is also decentralized by competition because there is no need for massive governmental bureaucracies to oversee business operations.

But perhaps the most compelling justification for a free market economy is that it best serves the interests of our citizens. In a freely competitive market, consumers enjoy freedom of choice from a wide range of products of all sizes, kinds, and varieties. Consumers, through their decisions in the marketplace, transmit their preferences and desires to businessmen who then translate those preferences into the best products at the lowest prices.

The Federal Government must play an important role in protecting and advancing the cause of competition.

Through enforcement of the antitrust laws, the Antitrust Division of the Department of Justice and the Federal Trade Commission must assure that competitors do not engage in anticompetitive practices.



A vigorous antitrust enforcement policy is most important in deterring price-fixing agreements between competitors that result in higher costs to consumers. As we come out of an inflationary period and into a period of economic growth and expansion, we must assure that the price mechanism is not artificially manipulated for private gain.

This Administration has been the first one in forty years to recognize that there is a second respect in which the Federal Government vitally affects the state of competition. Not only must the Federal Government seek to restrain private anticompetitive conduct, but so, too, must the Federal Government see to it that the governmental process does not impede free and open competition.

Too often in the past, the Federal Government has itself been a major source of restraints on competition. Many of our most vital industries have over the years been subjected to pervasive regulation. Although regulation has been imposed in the name of the public interest, there is a growing awareness that the consumer is often the real loser.

Too many important managerial decisions are made today not by the marketplace responding to the forces of



supply and demand but by the bureaucrat. The innovative and creative forces of major industries are suffocated by governmental regulation. In many instances a businessman cannot raise or lower prices, enter or leave markets, provide or terminate services without the prior approval of a Federal regulatory body.

This is not the economic system that made this country great. Government regulation is not an effective substitute for vigorous competition in the marketplace.

To be sure, in some instances governmental regulation may well protect and advance the public interest. But the time has come to recognize that many existing regulatory controls were imposed during uniquely transitory economic periods that bear no relation to today's economic conditions. We must repeal or modify those controls that suppress rather than support competition.

The Administration's competition policy has proceeded along those very lines. We have set in motion a far-reaching regulatory reform program. This program has been accompanied by a policy of vigorous antitrust enforcement to implement our commitment to competition.



In the last two years, the antitrust laws have been vigorously enforced by strengthened antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this represented the first real manpower increases since 1950.

The Antitrust Division's crackdown on price fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than ever in history proves these efforts are not slackening.

To preserve a competitive market structure by preventing competitive mergers and acquisitions, the Antitrust Division is devoting substantial resources to merger investigations. At the same time, the Division is litigating large and complex anti-monopoly cases in two of our most important industries. Cases have also been filed involving such anticompetitive restraints as allocation of customers and markets which interfere with the free interaction of competitive forces.



The cause of vigorous antitrust enforcement was measurably advanced when I signed the Antitrust Procedures and Penalties Act of 1974, which made violation of the Sherman Act a felony punishable by up to three years' imprisonment of individuals and a corporate fine of up to \$1 million.

I also signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers \$2 billion annually.

Two regulatory reform proposals I have signed -- the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act inject strong dosages of competition into industries that had long rested in the shade of Federal economic regulation.

The Administration has also sponsored important legislative initiatives to reduce regulation of other modes of transportation and the regulation of financial institutions. An important element of the regulatory reform proposals has been the narrowing of legislative antitrust immunities which had been granted to industry rate bureaus and which permitted these groups to restrain competition under official government sanction. Congress has not yet acted on these proposals.



The Administration also has underway a broad in-depth review of many other legislative immunities to the antitrust laws, to eliminate those immunities that are not truly justified. All industries and groups, however regulated and by whom, should be subject to the interplay of competitive forces to the maximum extent feasible.

A full measure of the Administration's commitment to competition is its proposed Agenda for Government Reform Act that would include a comprehensive, disciplined look at ways of restoring competition in the economy. This would require in-depth consideration of the full range of Federal regulatory activities in a programmatic manner that would allow for an orderly transition to a more competitive environment.

This competition policy, which includes regulatory reform and invigorated antitrust enforcement, will protect the businessman who desires to be competitive from both government regulators and anti-competitive competitors. In turn, the American consumers will benefit from full and open competition within the business community.





SEP 30 1976

THE WHITE HOUSE  
WASHINGTON

DATE: Sept. 30, 1976

TO: JACK MARSH

FROM: JIM CAVANAUGH

SUBJ: LEAA

FYI            X

ACTION           



THE WHITE HOUSE  
WASHINGTON

September 30, 1976

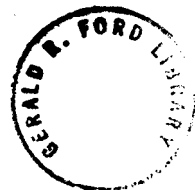
MEMORANDUM FOR THE PRESIDENT

FROM: JIM CAVANAUGH

SUBJECT: LEAA

The conference report on S. 2212, which is an authorization bill for LEAA, cleared conference a few days ago. The conference report has not been taken up by either House.

The bill does contain a \$10 million authorization for state attorney generals to improve and upgrade their offices and to engage in parents patriae activities.



THE WHITE HOUSE


WASHINGTON

December 7, 1976

MEMORANDUM FOR:

PHILIP BUCHEN  
JAMES CANNON  
DICK CHENEY  
JACK MARSH ✓  
BILL SEIDMAN

FROM:

ED SCHMULTS 

The Department of Justice wishes to release a report on the Robinson-Patman Act prepared by the Antitrust Division. The report reflects the views of the Antitrust Division and would not be expressing a formal position of the Administration.

Attached is an executive summary of the Robinson-Patman Act report. The report concludes that the Act creates serious anti-competitive effects and should, therefore, be repealed. In the alternative, fundamental amendments are suggested. If you wish to see a full copy of the report, which is about two inches thick, please give me a call.

Attached also is a copy of a memorandum from the Deputy Assistant Attorney General in the Antitrust Division outlining the manner of the proposed release of the report.

If you feel strongly that the Department of Justice should not release the report at this time, please give me a call before the close of business on December 10.

Attachments



EXECUTIVE SUMMARY OF DEPARTMENT OF JUSTICE

REPORT ON THE ROBINSON-PATMAN ACT

Background

Last year the President indicated in several speeches his strong desire for consideration of reform or repeal of the Robinson-Patman Act.

Following those Presidential statements, the Department of Justice and other concerned agencies (including Commerce, COWPS, SBA and OMB) under the direction of the Domestic Council Review Group (DCRG) considered various approaches to reform of the Robinson-Patman Act. An initial analytic paper was produced by the Antitrust Division on the Act, together with two draft proposals for statutory reform. These were circulated within the Administration in July, 1975. These materials were then made available to the House and Senate Judiciary Committees looking toward possible congressional consideration of Robinson-Patman Act reform.

In addition, in August of 1975, a meeting of DCRG members with representatives of various small business interests was held at the White House to discuss possible reform proposals.

Discussions with the staffs of the Judiciary Committees indicated that, because of the crowded legislative agenda of both committees, hearings on any Administration proposals for repeal or reform of the Robinson-Patman Act were unlikely during the Second Session of the 94th Congress. It was further suggested that additional public education as to the economic impact of the Act would be helpful prior to congressional consideration of any reform legislation.

In the interim, an ad hoc committee of the House Committee on Small Business held a series of hearings on the Robinson-Patman Act. At these hearings a number of congressional and small business supporters of the Act testified and opposed any change in the Act. In addition, the FTC at the hearings was urged to undertake more vigorous enforcement of the Act and to devote increased resources to this effort. In this setting, the DCRG decided that the wisest course was for it to hold a series of public hearings on the economic impact of the Robinson-Patman Act.



These hearings were held on December 8, 9 and 10. Testimony was taken from over twenty witnesses including members of the academic community, representatives of small business associations and other businessmen, as well as practicing attorneys. Testimony was also taken from the Assistant Attorney General for Antitrust, Thomas E. Kauper, and former Assistant Attorney General, Donald F. Turner.

Following the conclusion of these hearings, the Antitrust Division was asked to prepare a report on the Robinson-Patman Act based on the record of the hearings and other available evidence. The Report summarized here represents the culmination of those efforts. It should be noted that the Report represents the views solely of the Antitrust Division and does not express the position of the Administration.

### Summary of the Report

The Report arrives at several important conclusions about the impact of the Robinson-Patman Act. First, the Act creates serious anticompetitive effects by deterring price flexibility, and indeed fostering price rigidity if not price fixing; second, the Act fosters major inefficiencies in distribution at great cost to consumers; third, the Act fails to achieve any significant antitrust or procompetitive objectives; finally, the Act represents a false and illusory hope for small businesses because in the long run it fails to achieve the protectionist advantages which it promises.

On the basis of these conclusions, the Antitrust Division recommends that the Robinson-Patman Act be repealed. In our view, the costs of the Act far outweigh any discernible benefits. However, it is recognized that others believe that some price discrimination statute is needed. Therefore, an alternative reform recommendation has been advanced which in our judgment would produce less adverse impact on the economy than the present Act.

The reform proposal has basically four elements. First, it is proposed that enforcement of the new price discrimination statute be left solely to the FTC rather than private plaintiffs. The FTC as a public agency would of course be concerned about a proper application of the Act. The elimination of private plaintiffs would remove the current ability of private business firms to use the threat of suit and treble damage exposure to



blackmail competitors into withdrawing price reductions. A less far reaching alternative would be to eliminate the present treble damage provisions for private plaintiffs. The punitive effects of these treble damage provisions clearly deter legitimate price competition.

Second, the Report recommends that the offense of price discrimination be narrowed to avoid the present wholesale interference in legitimate price competition. This narrowing would be accomplished first by placing the burden of proof on the plaintiff to show that a price discrimination was not cost justified, and second, by limiting those circumstances in which adverse competitive injury may be inferred to instances of systematic discrimination, or the charging of prices below marginal costs. The current standard, which permits a finding of liability for sporadic discrimination or the charging of prices below fully-allocated costs, inherently inhibits a significant number of procompetitive price reductions.

Third, the report recommends that the defenses to a charge of price discrimination reflect business realities. Thus, businessmen should be able to justify discrimination on the basis of reasonably anticipated future costs according to flexible groupings of customers. Similarly, businessmen should not be required to go through unrealistic and potentially anticompetitive verification procedures to qualify for the meeting competition defense.

Finally, the report recommends that the Act's present flat prohibition against discounts in lieu of brokerage and "nonproportional" promotional allowances be eliminated. Since, at worst these practices can only be disguised price discriminations, it is recommended that they be evaluated under the Act's more general provisions, requiring a showing of competitive injury and permitting the interposition of basic defenses.

Of course, the basic proposal is for repeal of the Act, reflecting the report's finding that the implementation of a price discrimination statute based on faulty economic assumptions necessarily impedes the competitive process to the great economic detriment of consumers.



## Robinson-Patman Creates Serious Anticompetitive Effects

The Robinson-Patman Act is a statute of broad applicability, governing the prices which can be charged for most commodities and sales among businesses, including nearly all products which are to be resold by merchants. While the statute is intended to prevent the abuse of purchasing power by large buyers, the actual effect of the statute is to discourage many procompetitive price reductions.

Under Robinson-Patman, the Federal Trade Commission in an enforcement action, or a competing business firm in a treble damage action, can quite easily establish a prima facie case of violation. In most instances, the complainant need only show that one of his competitors was able to obtain a lower price for a product, and that such a discount was sufficient to affect the resale price for that item. Once such a showing is made, the firm granting the discount must prove that the lower price is justified by some cost saving in supplying the product to the favored customer, or that the lower price is necessary to meet a lower price of a competing supplier. These defenses are difficult to use. The cost-justification defense requires detailed accounting studies, utilizing procedures which are not part of normal accounting practice, and excluding certain cost savings which a prudent businessman would take into consideration. Consequently, a businessman can never know until his case is finally adjudicated whether his cost-justification defense will be successful. Similarly, in order to defend a price cut on the grounds of meeting competition, the businessman cannot simply rely on a statement from his customer that a lower price has been offered. Rather, he must undertake affirmative action, such as checking invoices or price quotes, or actually calling his competitor to verify the bid, before a "matching" discount can be given. Other provisions of the Act are even more restrictive, prohibiting certain payments in lieu of brokerage and promotional allowances regardless of their effects on competition or cost justification.

As a consequence of this overreach of the Robinson-Patman Act, the prudent businessman wishing to lower a price to a particular customer must assume that a competitor or the Federal Trade Commission will be able to successfully



challenge that price cut and that his ability to defend such a cut is highly uncertain. Rather than undergo the expense of litigation, pre-trial discovery of a firm's proprietary cost and price data, and the possibility of costly damages or injunctive relief, the cautious businessman will simply decide not to cut prices.

Robinson-Patman thus promotes pricing inflexibility. Unfortunately, such a result serves to reinforce high prices in oligopolistic manufacturing industries. In industries where there are few sellers, list prices tend to remain sticky and the only way high prices will come down is through the granting of selective discounts. These discounts over time erode the industry's high price structure leading to the establishment of list prices at a lower level. By requiring that price cuts be an all or nothing affair, Robinson-Patman serves to ensure that prices will remain high: oligopolists know it is not in their best interests to cut list prices across-the-board, except in times of very weak demand.

The anticompetitive effect of Robinson-Patman is compounded by the fact that the meeting competition defense serves to encourage discussions about prices among competitors, and even price fixing agreements. While the defense does not require that a firm check directly with a competitor before meeting his price, courts have stated that if a businessman does discuss prices for the purpose of satisfying Robinson-Patman, he can be exonerated of what would otherwise be a violation of the Sherman Act. Once such discussions begin, actual price fixing arrangements may result.

Finally, restrictions on price cuts to particular customers or geographic areas serve to inhibit businesses from engaging in promotional pricing practices to gain new customers. To the extent that such promotional prices are necessary to enter a market, the Act serves to insulate the entrenched business firms from new competition.

In addition to Robinson-Patman's protection of high prices, the Act also leads to higher costs for doing business. Various provisions of the Act serve to protect the existence of brokers and middlemen because the Act makes it difficult for businessmen to restructure their distribution systems to meet the needs of their various customers on an

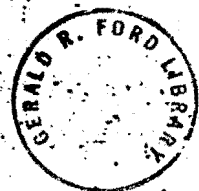




individual basis. Other restrictions on promotional allowances also may require businesses to engage in valueless promotional programs, again because of the inability to tailor such efforts to the realities of the marketplace. Lastly, Robinson-Patman leads to added costs when businessmen engage in product differentiation strategies to lawfully avoid the restrictions of the Act.

In light of the legislative history of Robinson-Patman, Congressional passage of a statute having such effects becomes understandable. The Robinson-Patman Act was a product of two historical occurrences. The first was the Depression. During the early 1930s, the severe deflation, high unemployment, and increased volume of business bankruptcies led to the general belief that competition was not necessarily in the public interest because it led to prices which were destructively low. Through the NRA Codes of Fair Competition, the minimum rate provisions of the Motor Carrier and Civil Aeronautics Acts, and through Robinson-Patman, Congress sought to stabilize or actually enhance price levels. At about the same time, a revolution was occurring in the distribution sector. The growth of chain stores in the 1920s led to much concern among wholesalers that absorption of the wholesaling function by chains would force them out of business. Similarly, it was feared that the growth of chains would also mean a decline in the number of independent retailers with whom they did business, a fear which the retailers soon adopted. Responding to pressures from these businessmen, state legislatures passed chain store taxes and fair trade laws, and the Congress passed the fair trade enabling amendment to the Sherman Act--and in 1936 passed Robinson-Patman.

Because of the understandable congressional desire to do something about the adverse economic effects of the Depression, and to do something to allay the fears of independent wholesalers and retailers, it passed the Robinson-Patman Act without thoroughly understanding the economic assumptions and long-run economic consequences implicit in such a statute. Thus, we find upon examination that Robinson-Patman's basic assumptions are invalid. Today, prices should be lower, not higher. The granting of discounts is not inherently unfair; it is a necessary part of the dynamics of bringing down high oligopoly prices. Price differences do not normally reflect only differences in costs; they result from the interaction of both supply (cost) and demand. Lower prices to some do not mean higher prices to others; high prices to certain



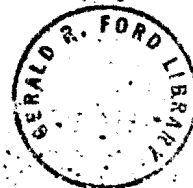
customers indicate the presence of market power on the seller's side and lower prices may represent a transfer of oligopoly profits from manufacturers to consumers.

### The Robinson-Patman Act Fails to Achieve Any Significant Antitrust Goals

Robinson-Patman is claimed to be an appropriate supplement to the other antitrust laws as a means of catching potentially anticompetitive situations in their "incipiency" by preventing the use of a market advantage gained through price discrimination to lessen the number of competitors and decrease competition. Unlike Section 7 of the Clayton Act which covers structural changes caused by mergers, the conclusion that price discrimination will have anticompetitive effects relies upon a series of speculative and untested inferences. It must be assumed that if one manufacturer is permitted to discriminate in price to a retailer, the effect will necessarily be to force a disfavored businessman from the marketplace; that such a situation would affect many other similarly situated businessmen; and that the number of businessmen so eliminated would be sufficient to seriously reduce competition in the market. The evidence shows, however, that such a chain of events just is not likely in the case of most price discriminations. Yet, these inferences are permitted in order that the statute may be efficiently applied to the billions of pricing transactions in the economy. Thus, the Act virtually presumes that any price discrimination will have an anticompetitive effect when the more likely truth is that the discrimination is procompetitive.

Robinson-Patman is, in fact, a regulatory statute, not an antitrust law. Those administering it seek to protect businesses regardless of their relative efficiencies, and regardless of varying demand characteristics of the markets they serve. As such, the effect of the Act is strikingly similar to that of the other regulatory statutes which empower agencies to set minimum prices. Also, the Act compels businessmen to seek legal advice before making pricing decisions, and may require businessmen to seek advice from the Federal Trade Commission before changing a marketing practice.

For all of this, Robinson-Patman provides no demonstrable antitrust benefits. Proponents argue that without Robinson-Patman, any immediate increase in competition and lowering



of prices would be outweighed by the likelihood that markets would become increasingly concentrated and prices would rise. In order for that eventuality to occur, though, it would be necessary that a discrimination be so substantial as to force a large number of businesses out of a market, that prices thereafter would rise to a level higher than that charged before and that these higher prices would be maintained for a long enough time to outweigh the benefit of the initial price reductions. No evidence of any such instance has been demonstrated, while testimony to the contrary was heard by the Review Group. Likewise, studies conducted by the Federal Trade Commission of its own enforcement orders have not demonstrated that its actions had any appreciable effect in improving competition. Rather, one study found such orders to have no effect, and its authors doubted that price discrimination and increases in concentration were related.

Genuinely predatory practices, like below-marginal-cost pricing, can be dealt with under the Sherman Act. Likewise, small businessmen can counteract the buying power of larger firms through the formation of cooperative wholesaling operations. Indeed, testimony was heard from one Review Group witness that his cooperative was so successful in countering the buying power of the chains, that one national food chain joined his group.

#### Robinson-Patman Provides a False Promise to Small Business

Perhaps the greatest irony of Robinson-Patman is that it does not protect small businesses as a class. Distribution is a dynamic sector of the economy. In order to remain successful, businessmen must deal with changing population and income characteristics, changing lifestyles, changing products, changing ways of doing business, and competition from new shopping locations. Moreover, businessmen must contend with competition from those who, though doing business in the same manner and in the same area, nevertheless do so in ways more responsive to the desires of the buying public. In such an environment, it is simply not the case that the ability of one competitor to get a somewhat lower price on merchandise of like grade and quality, which discount is not cost-justified and is not



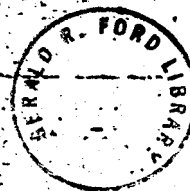
given to meet competition--plays any significant role in determining the success or failure of small business as a class.

The fact is that large and small businesses frequently do not engage in precisely the same selling function. Small businesses tend to provide higher price and higher service options, while larger businesses often utilize a lower price, lower service, mass marketing approach. The determinant of the success or failure of a given business in such a situation is not the cost of goods purchased, it is consumer preference for the price/quality/service mix of the large or small business. If a business satisfies its customers, it will survive, if it does not, it will exit the market, and no statute can--or should--prevent this.

Not surprisingly, the evidence available to the Review Group does not demonstrate any effect of Robinson-Patman on the viability of small businesses as a group. A comparison between the position of small businesses--retailers having only one location--in the United States with Robinson-Patman, and in Canada without it, shows that the percentage of stores attributable to small business is almost identical in both countries. In Canada, without an effective price discrimination law, small business actually has a higher portion of sales than does the United States.

Fair Trade laws were more protective of small business than is the Robinson-Patman Act. Yet, Congress recently found in repealing the Fair Trade enabling statute that Fair Trade simply did not protect small business.

Thus, for all its cost, Robinson-Patman gives only illusory protection to the small businessman. Most small businessmen work, very hard, to survive, and will support any statute which offers the promise of protection. But Robinson-Patman only offers a false promise, at a great cost to our society as a whole.





UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

November 30, 1976

MEMORANDUM FOR: EDWARD C. SCHMULTS  
DEPUTY COUNSEL TO THE PRESIDENT

STANLEY MORRIS  
DEPUTY ASSOCIATE DIRECTOR  
FOR MANAGEMENT  
OFFICE OF MANAGEMENT AND BUDGET

FROM: JONATHAN C. ROSE *JCR*  
DEPUTY ASSISTANT ATTORNEY GENERAL  
ANTITRUST DIVISION

SUBJECT: ROBINSON-PATMAN REPORT

Enclosed for your review is a copy of the Robinson-Patman Report which you have indicated should be released after you have had a chance to look at it. Upon reflection, we are inclined to think that this document should be issued as a Department of Justice Report. The reason for this rests upon our expectation about its ultimate utility: we see the Report having its primary impact on courts and the FTC considering Robinson-Patman issues. In this regard, we think it would have its greatest impact if it were viewed like the 1955 Attorney General's Report on the Antitrust Laws, i.e., as a non-political evaluation of an antitrust law.

You will note the Report contains various typographical errors which we estimate could be cleaned up in a matter of hours.

*cc: (memo & Report) -  
Stanley Morris (OMB)*

