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THE WHITE HOUSE

WASHINGTON


September 3, 1976

MEETING WITH ATTORNEY GENERAL, ET AL

Saturday, September 4, 1976

12:00 noon (30 minutes)

The Oval Office

From: Philip W. Buchen 

I. PURPOSE

To discuss strategy in regard to the pending compromise antitrust bill (Parens Patriae).

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

- A. Background. You received an information memorandum from me on this subject dated September 1 (TAB A), and as a result requested a conference at which you would hear the views of the Attorney General on the subject and receive a report on the views of the business community.
- B. Participants. Attorney General Levi, Jim Lynn, Max Friedersdorf, Jim Cavanaugh, Phil Buchen and Jack Marsh.
- C. Press Plan. White House Photo only. Meeting to be announced.

III. TALKING POINTS

- 1. I understand that the compromise bill involves three titles -- one dealing with civil investigative demands, the second with premerger notifications and the third with parens patriae to allow state attorneys general to seek damages in federal courts as a result of federal anti-trust violations.

Of these three titles, it appears that the first two are in acceptable form, but that the third contains two questionable provisions, namely that triple damages are mandatory and that contingency fees -- other than on a percentage basis -- may be allowed.

2. I would like to hear a report on the views of the business community concerning these issues.
3. What are the chances, if any, of securing a modification of either or both of these questionable provisions?
4. What are your views as to the position which I should take in the event we cannot secure modifications of the proposed legislation?

THE WHITE HOUSE  
WASHINGTON

September 2, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHILIP BUCHEN  
FROM: JAMES E. CONNOR *JEC*  
SUBJECT: Senate Consideration of Omnibus  
Antitrust Legislation

The President reviewed your memorandum of September 1 on the above subject and made the following notations:

"What is Attorney General's view? "

"What is view of business community? "

"I think we should have a conference on this soon. "

"I would veto if no modification but suggest conference as soon as possible. "

Please follow-up with appropriate action.

cc: Dick Cheney  
Max Friedersdorf


THE WHITE HOUSE

WASHINGTON

September 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM:

PHILIP BUCHEN 

SUBJECT:

Senate Consideration of Omnibus Antitrust  
Legislation

The Senate is continuing to debate a compromise omnibus antitrust bill that essentially adopts the provisions in three separate antitrust bills that recently passed the House. A final vote is expected next Wednesday after the Senate returns from recess. If the sponsors of this compromise amendment are successful, it will be sent to the House for action without a conference. The current prognosis is that the House is likely to pass the compromise amendment.

The following is a brief summary of the key provisions of that amendment and the most important modifications that have been made in response to Administration concerns:

Title I - Antitrust Civil Process Act Amendments - authorizes the Department of Justice to issue civil investigative demands to all persons who may have information relevant to an antitrust investigation. The Justice Department views enactment of these amendments as a vital step designed to close a gap in their enforcement authority. Despite the inclusion of a variety of safeguards to protect against governmental overreaching, however, some business opposition to these amendments continues. All provisions which were objectionable to the Administration were deleted in the Senate amendment under consideration which is the same as the House passed bill.

Title II - Premerger Notification - requires that corporations with assets or sales in excess of \$100 million that plan to acquire corporations with assets or sales in excess of \$10 million give the federal enforcement authorities 30 days advance notice, subject to a 20 day extension.

In addition to a premerger notification provision, the Senate had earlier provided for an automatic injunction against the consummation of mergers and acquisitions that could be invoked by federal enforcement authorities. Due to strong opposition by the Administration and others, the Senate amendment would drop this provision and adopt the limited House premerger notice provision. There is little controversy surrounding this title.

Title III - Parens Patriae - authorizes state attorneys general to seek damages in federal courts as a result of federal antitrust violations. In a March 17, 1976, letter to Minority Leader Rhodes, you expressed serious reservations regarding the concept of parens patriae, as well as concern regarding specific provisions of the House legislation (see Attachment A). In response to these specific concerns, the House parens patriae provisions were narrowed. The Senate amendment generally adopts the House version by limiting the scope of parens patriae actions, in practical effect, to price fixing violations by allowing the statistical aggregation of damages only in cases of price-fixing agreements. The Senate amendment, however, is broader than the House passed bill in that it would provide for mandatory treble damage awards and some latitude for the courts to permit contingency fees on other than percentage fee bases.

In addition to these major changes in the three major titles, the Senate amendment deleted all other titles in the bill that had earlier passed the Senate (e.g., declaration of antitrust policy, Antitrust Review Commission, and a miscellaneous set of amendments to the antitrust laws).

The Senate has made arrangements to vote on Wednesday, September 8 whether to adopt the proposed compromise amendment or go to Conference on the original Senate bill. The best judgement of your advisers is that the Senate will vote to adopt the proposed compromise amendment and that it is likely also to pass the House. However, the compromise amendment has not been printed and can be submitted to the Senate with such modifications as

Senators Abourezk and Hruska may agree upon. Thus it is possible to work with these two Senators to secure some modifications to the proposed compromise amendment. The modifications which we would like to seek are:

- (a) To make the award of damages up to a maximum of three times actual damages in parens patriae cases discretionary with the court.
- (b) To allow no contingency fees in parens patriae cases.

My best judgement is the first such modification is possible if we can indicate that otherwise you will veto the legislation when it comes to you. However, I do not believe that the second modification is favorable under any circumstances, and it is certainly not as important as the first inasmuch as the only contingency fees allowable could not involve a percentage of recovery.





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

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Jim —  
Handwriting was  
removed when it went  
up on 9/4/76.

Trudy