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Dear Bill:

As I told you on the way to the station there were a couple of matters which I forgot and could not think of until the train pulled out. You probably noticed the memorandum on your desk at home about the provisions of the Administrative Procedure Act. As I read this, Mr. Townsend and his prosecuting staff must not consult with the Board in any respect about the decision, but Governor Evans is definitely entitled to participate in all deliberations as you will note the clause that states that the hearing is to be treated the same as if the Board itself had been hearing the proceedings from the beginning. In other words it was not an appeal but Mr. Evans holding the final hearing assisted by his colleagues on the Board.

Another minor point in connection with subpoenas. It was argued in the District Court in the original case to enjoin the Board from bringing the action that one reason the Board should not be allowed to proceed was its lack of subpoena power. Judge Morris, in his opinion, stated that if Respondent, Transamerica, were prejudiced in any manner by this lack of subpoena power, he was confident the Circuit Court of Appeals could rectify the situation by itself granting subpoenas for any witnesses it deemed essential for a proper consideration of the case. In a sense this was an invitation for Respondents to allow the Appellate Court to complete the record if it felt the Board hearing was inadequate. There is, therefore, a legal precedent for the opinion I expressed based on common sense, namely, that if the Board Hearing Officer erred in excluding evidence as to lessening competition, the proper place for this to be corrected would be the Appellate Court.

I may change my mind upon reading the two volume transcript of the oral argument, but at the moment, I am still of the opinion that the outline I gave you, were the decision left to me, should be followed. In other words I would over-rule Respondent's objections as to procedure, including Governor Evans' lack of subpoena power, and lack of jurisdiction. The commerce question is apparently admitted and there is ample evidence to support the point that even assuming the statistics are somewhat garbled there was a tendency toward monopoly. Mr. Townsend is supported by the Standard Oil case in his conclusion that this alone is sufficient to show a violation of the Clayton Act. As to the second point, Respondents have some basis for their argument that evidence should have been admitted as to the lessening of competition but it is based primarily on the dissents

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in the Standard Oil case and not on the majority opinion. Another argument for upholding Governor Evans' ruling and suggesting that Respondents take an appeal if they feel prejudiced by the exclusion of this evidence is their own argument as to subpoena power. In other words, if the Board remands the case for further hearings before the Hearing Officer, the problem of subpoenas is still there, whereas hearings before the Court of Appeals would cure this defect. In final analysis, it seems to me the case boils down to whether to meet the terms of the statute it is necessary to say that each individual acquisition results in specific lessening of competition or whether as Mr. Townsend argued the historical record of acquisition in a relatively limited area does not indicate a tendency towards monopoly which the Clayton Act was designed to stop in its incipiency.

I doubt if these remarks will prove of any value, but I will send them to you from time to time as they crystalize.

I was greatly pleased to find I won the Star-Times v. Buder case I told you about in the Missouri Supreme Court, so my worry about a motion for re-hearing was unnecessary. The Court adopted our arguments completely and the decision was unanimous.

Everybody here is well. This will have to serve as a birthday letter also. I do not need to tell you how much you meant to me and how proud I am of you. Happy birthday on this 45th and many happy returns!

Please ask Cynthia to treat this as my thank you letter also. Obviously I enjoyed my stay immensely - I feel I really begin to know my niece and nephew. I have long known how fortunate you are in big Cynthia and I certainly enjoyed the visit with her. It is so nice to be always looking forward at life rather than backward - the change for me is a tonic. I shall long remember the hearings with pleasure because of the excuse for the mid-season visit to my Washington family.

With love to all,
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