

Senator PROXMIRE. I just have one other question, Judge. That relates to what I think is an unfortunate lack of advertised competitive bidding in procurement in our Government.

I am particularly concerned with the space budget, where as I understand it, only \$1 out of less than \$10—actually it is, I think, \$9 out of \$100—represents procurement based on advertised competitive bidding.

Congress has established advertised competitive bidding as the preferred method of procurement. We all recognize the enormous benefits from advertised competitive bidding, not only to the taxpayer, which are obvious—costs are bound to be lower, it would seem to me—but particularly for the opportunities for all business people to compete on an equal and fair basis without special privilege. And small business does a lot better, as you know, on advertised competitive bidding.

I know that this is something that may be a little delicate, because it has to be within the purview to a considerable extent of the particular agency involved. But I wonder if the Department of Justice expresses an interest and a concern to the Defense Department, the Space Agency, and so forth, with regard to advertised competitive bidding.

Mr. LOEVINGER. Well, we do where we have a legitimate opportunity to do so. It is not the function of the Department of Justice or of the Antitrust Division to supervise the activities of NASA or the Department of Defense, and we do not undertake to do so.

Occasionally, we do have some function to perform which gives us an opportunity to comment on a particular practice. We have gone over certain contracts and have commented on various provisions in them, and suggested on occasion modifications that we thought would encourage competition.

The Department of Justice has the duty of commenting on surplus property disposal. You may have seen a little story in the papers recently about the disposition of a plant on Long Island where the Department of Justice said that it could not approve the proposed disposition as being consonant with the statutory standards, because it was disposed of under conditions that did not permit competitive bidding.

In general, however, Government procurement is an activity that does not come within the jurisdiction of the Department of Justice, and which the Department of Justice does not importantly influence.

It is, as I have suggested earlier, one of those other policies that does have to do with the competitive character of the economy in addition to antitrust.

Senator PROXMIRE. In view of your expertise in competition, and your tremendous experience in this area—I am speaking both of you and the Department of Justice—and its responsibility for competition and antitrust action with regard to competition, I think that any observations, any study, any recommendations, which you might have, either to Congress or to the agencies, would be enormously helpful, because this is something that we feel pretty helpless about in Congress.

Our Government has been losing out on competitive bidding, and we are told by the top Government officials that they cannot do it,