

NOTES FROM TALK MADE IN MORGANTON, NORTH CAROLINA

OCTOBER 22, 1969

- I. Consumers have been plagued by fraud and deception since early times.
 - a. For example, the first case in Taylor's N.C. Reports, IRVIN v SHERRIL, Taylor, 1. 1, NC 99 (1799) was a case in which the defendant deceitfully asserted that an unsound mare was sound and fraudulently encouraged the plaintiff to buy the mare. The court held that an action for deceit would lie.
 - b. In the early 1800s, there was adequate remedy - man dealt with neighbors - world of 1800 far removed from world of 1969.
 - c. In an economy that places emphasis on technological innovation and complexity and where the subtle sophistication of modern advertising is commonplace, the consumer has lost much of the equality of bargaining position he once had.

- II. a. The concept of free enterprise has never included freedom to injure buyers through deceit.
- b. To overcharge through conspiratorially rigged prices.
- c. To run a government granted "regulated" monopoly into a private fiefdom.

Thus, we do not view the efforts of our office in the field of consumer as anti-business.

Instead, I believe that we are trying to meet the growing demand from "the man on the street" that he be protected from deceptive and fraudulent practices.

We believe that we are trying to meet the demands of the members of the business community.

- a. Better Business Bureaus
- b. Chambers of Commerce
- (Protect their profits - Prevent regulations)

THREE AREAS

- (1) ANTI-TRUST (2) REGULATED INDUSTRIES
- (3) UNFAIR AND DECEPTIVE TRADE PRACTICES

I. ANTI-TRUST

North Carolina has had laws more than 50 years -
preceded Clayton Act.

Price fixing - collusive agreements - inflated
prices - suppression of technological innovation

In 1663, ATTORNEY GENERAL OF ENGLAND v BREWERS OF
LONDON under 75-9 - Attorney General given powers -
safeguards

Allocation of markets

Concerted efforts to drive competitor out-of-business.

Tying contracts

Customer has to take a second product he doesn't
want to get first.

Economic pressure.

II. REGULATED INDUSTRIES

Consuming public is vitally affected

power companies

telephone industry

transportation

insurance

In these areas some countries have exercised the option of operating rather than regulating.

In the United States, we prefer the free enterprise system.

However, since by granting to them a monopoly, we have eliminated the self-regulating influence of competition. The public has required those enterprises be subject to some form of public regulation.

This means in North Carolina:

Utilities Commission
Insurance Commissioner

The Attorney General's responsibility is to act for and on behalf of the consumer so that the consumer has an advocate when the public's interest demands it.

1969 General Assembly:

Senator Edward's bill - right to intervene.

To understand the need for a consumer's advocate before regulated industries, one must understand the framework with which such regulated industries operate.

The rights of industry must be recognized and respected as well as those of the consumer:

Right to fair return -

Right to fair hearing - due process

The very nature of the adversary system of our common law requires an advocate for the consumer.

Enlightened self-interest dictates that the evidence to be used by the industry should be marshalled in the light most favorable to the industry.

No man has ever been required under our system to build a case against himself.

This premise is one of the cornerstones of individual freedom and it applies to a utility company with the same force and effect as it applies to an individual - and rightfully.

But without an adversary, counsel representing regulated industry would be the happiest man engaged in the practice of law.

If the only fact in evidence are on the side of the regulated industry, then the regulatory board must grant relief requested.

We give other side of picture.

III. UNFAIR AND DECEPTIVE TRADE PRACTICES
(Fraud and Deception)

What are the alternatives?

Establish more regulatory agencies—no, too many now.

Beef up criminal investigation forces—no.

Create new division in Attorney General's office.
1969 Act.