THE ATTORNEY GENERAL'S ROLE AS REPRESENTATIVE OF THE CONSUMING PUBLIC

The Honorable Robert B. Morgan
Attorney General of North Carolina

When I first became Attorney General of North Carolina a little more than a year ago, we had almost no consumer protection activity at all. We quickly changed this, for to me, this is one of the most important areas to be dealt with by any Attorney General's office. I believe very strongly that if we do not deal with it quickly and effectively the federal government is going to. Though, I'm a great believer in states' rights, I believe also that states' rights are for responsible states. With this thought in mind, immediately after taking office we moved to represent the public interest before state regulatory agencies.

My second day in office I intervened before our Utilities Commission under an old statute which gave us authority to intervene, but had not been generally exercised. I intervened against Southern Bell, which had gotten into the practice, in the years when the office of Attorney General was comparatively inactive and there was no adversary, of simply filling a letter indicating what their rates were going to be.

In this case, Southern Bell had gone informally before the Utilities Commission, without an attorney, and said they'd like to make some improvements in service and wanted to raise their rates. The Commission then asked, again informally, what kind of services were going to be improved; Southern Bell said that they were going to cut the number of phones per line and so forth; the Commission asked about the amount of rate increases, and the company said it would be roughly so much, and the hearing went on in that manner.

So my office intervened and here is what we discovered. They were putting the rate increase into effect immediately, even though they had no idea when the services would be completed. The company had not even filed a petition; it had simply forwarded a stack of material to the Commission and said that on the basis of informal conferences, they were asking for new rates. We prevailed, the increase was denied and we felt we had been successful. Since then, we've been involved in a number of similar cases.

All of us recognize that under our system of jurisprudence in America, we have never required any industry or any individual to go before a court and make a case against himself. For instance, it would be ridiculous for Carolina Power and Light in my home state when they feel they need to increase their rates to make a fair return on their money, to come before the Utilities Commission and present all of the arguments as to why they are entitled to a rate increase, and, on the other hand, require them

to present the other side - saying, "Now, here are a few arguments in opposition."

This certainly isn't reasonable, and no one would expect any industry to do that. But we do believe in the adversary system. A recent report of the American Bar Association stated, "The atmosphere of contention, which always is present in an adversary proceeding, is still the hallmark of our way of arriving at justice."

"Two adversaries, approaching the facts from entirely different perspectives and objectives and functioning within the framework of an orderly and established set of rules will uncover more of the truth than would investigators, however, industrious and objective, seeking to compose a unified picture of what had occurred."

I believe this quite strongly so what we are trying to do in our office is make sure that all points of view are presented before these regulatory agencies. We certainly are not seeking to prevent any company from receiving a reasonable profit.

I submit that if the offices of the various Attorney Generals do not assume this role, the Federal Government will. Let me illustrate and show you how close we are abdicating this proper function of our offices to Federal officials.

Senator Metcalf of Montana has proposed that a federal agency be established to represent the consuming public before any federal or state regulatory agency which is considering matters which effect the consuming public.

Now, I do not have to tell you what this means to the concept of states' rights. It would mean that Washington bureaucrats would descend on your state and appear before any regulatory

commission whenever they felt like it, proporting to represent the public interest of your state.

I believe that we as Attorneys General who are directly responsible to the voters of our states-voters who in most states have the right to remove us from public office whenever our actions displease them - are in a much better position to represent the public's interest in our state than attorneys from Washington who are completely removed from the will of the people of the states. And, I believe that regulated industry would much prefer that we do this on a state level than have someone from Washington do it. In promoting this function of our office, we are upholding the concept of states' rights while representing the interests of the consuming public.

To go back to our peculiar situation in North Carolina for just a moment, we felt we had the common law power to intervene before the Utilities Commission or any other commission in the public's behalf. I still think we did but, since the legislature was in session and since we had just won an election, we thought it was a good time to ask for legislation. The legislature almost without opposition gave us statutory authority to intervene on behalf of the using and consuming public before any rate-making body, either state or federal.

How about in the area of insurance? For the first time in North Carolina, we intervened before the Insurance Commissioner in a rate hearing. What were we trying to accomplish? In

North Carolina we have an insurance rate-making bureau, composed of industry representatives and chaired by the Commissioner of Insurance. He sits with these representatives as they accumulate all kinds of data from all over the nation, without any verification whatsoever. Then the industry petitions for rate increases.

Immediately, figuratively speaking, the Commissioner moves to the other side of the table and, acting as Commissioner, receives the petition and acts very surprised. Then he goes on radio and television and says he isn't going to give them a penny increase unless he has to, as he is also in the position of having to act as the adversary of the Insurance Industry. In other words, he is in an untenable position.

We wanted to put the Insurance Commissioner in a position where he can act impartially. We wanted to remove him from the position where he had to act as judge and prosecutor.

So when the companies petitioned the Commissioner for a 5 percent rate, the Attorney General's office appeared, questioned witnesses and raised repeated objections to the admission of hearsay evidence. After one exceptionally long hearing, the Commissioner came to the Attorney General's office saying that we were supposed to represent him in these hearings. We took the position that the Insurance Commissioner had attorneys on his staff to represent him; we agreed that he should have house counsel, because of this very situation.

But we also took the position that the Insurance Commissioner sitting as a hearing officer in a quaisi judicial capacity does not need legal counsel any more than a judge does when hearing a case in court. He is supposed to act impartially and fairly. We explained that the Insurance Commissioner is not a party to a lawsuit when he sits as a judicial officer. He has no direct interest in the outcome of the proceedings conducted before him. The contest is not between the insurance agency and the Commissioner; it is between the insurance companies who are asking for more money and the members of the general public who buy insurance, or, in the case of automobile liability, the drivers who are obliged by law to buy insurance.

It is a fact that, in North Carolina by our Constitution, both the insurance industry and the insurance-buying public are entitled to an open, fair and impartial hearing, conducted by an impartial administrator. If the Commissioner's own statement that he had been representing the public interest in rate hearings held by him were true, his orders would be voidable as a matter of law, because the insurance industry has every right to have its case heard on the evidence produced at an impartial hearing.

The Commissioner finally allowed a rate increase which may or may not have been justified. However, in our opinion, he disregarded a North Carolina statute which provides that only competent, relevant, material evidence should be considered. We felt that it was time to have a court ruling on this statute, to see whether in fact it means what it says.

The Commissioner requested that I provide him with representation in this matter. I told him that I couldn't understand how he could have any special interest in the outcome, or any special reason to defend the rate increase. But if he did feel his decision should be defended, we would ask the court to allow his own attorneys, and he has three, to appear as friends of the court.

The Commissioner in North Carolina does have his own attorneys. Their job classification sheets say in part that their duties include interpreting pertinent statutes and applicable case law in order to furnish necessary legal advice in evaluating and resolving legal issues which arise in the various fields administered by the Commissioner, and so forth. One of these attorneys is a former Deputy Attorney General, so there is no question as to his competence.

The Attorney General also has an Assistant assigned to the Commissioner of Insurance. My predecessor would tell agencies which wanted more help to go to the legislature and get another attorney, then he'd help them. So the department or commission would get a bill enacted creating another Assistant Attorney General's position to be assigned to that agency. So you can see how there might be some questions concerning a conflict in representation.

We have had a favorable response on our action not only from the public but from a substantial segment of the industry.

Industry would like to have an adversary at every hearing, so when the Commissioner does grant a rate increase, the public will know that the other side of the issue was presented by the Attorney General and that the hearing was fair and impartial.

Why should we as Attorneys General be concerned about appearing before the Insurance Commission on behalf of the consuming public? How does this help protect your powers and state's rights?

Those of you that take Business Week, I ask you to go back and look at the February 7th issue, page 29, and you will find there an article which indicates that yet another area of interest to the consumer may be the target of federal intervention. The article is entitled "Insurers Brace for Federal Action" and indicates that Congress is pondering legislation which would extend the federal arm into this area - an area which has previously been a state-regulated activity. Business Week states that most of the industry, as well as state insurance commissioners, strongly oppose this legislation as an unwarranted intervention in another area of states rights.

What brought on this bill in Congress? Why is the federal government now seeking to intervene in this area which has been historically and primarily left to the states?

Consumer complaints have forced the issue. Business Week says that consumers are angered by the rising cost of automobile and other insurance. The anquished haggling over

flood damage claims in the wake of hurricane Camille; cancellation of policies seemingly without provocation; the inability to obtain coverage in certain high areas. I could go on.

Now, it may very well be that these activities on the part of the insurance industry are completely justified, but I believe that the consuming public would better accept higher rates, they would better understand cancellations if they knew that somebody was appearing before the Insurance Commissioner and making their arguments for them. And that is exactly what we are seeking to do.

This same Business Week magazine, quoting an insurance executive, said that if the states would fulfill their responsibility, if the states would do what they are entitled to do - should do - then this bill would never pass Congress, and I am afraid that unless we do begin to exercise these responsibilities, we are going to find more and more federalism creeping into our state government.

We should not give any member of the Congress a chance to point a finger at our states and use us as an example why more power should be concentrated in federal agencies. If we want to preserve state's rights---and I do---we must act responsibly to represent the interests of the consuming public before our state and federal regulatory bodies. In this day, consumers throughtout America demand such representation and have every right to receive it.

Speech by: Robert Morgan
Attorney General

To: Carolina Telco Credit Union
Charlotte, North Carolina
February 19, 1970

Address: Consumer Protection and The Role of the Attorney General in Appearing Before Regulatory Agencies.

Addition to Speech:

1. Need for legal monoply

England and France - national ownership immediately after World War II

Government ownership can be universally expected to result in greater outlays of national resources, along with increased taxes, for the same output and service rendered.

2. Hope you have read of consumer protection.
   a. Anything our office does to protect consumer also protects the honest businessman and makes for a healthier economic system in our state.
   b. Business is better when people believe they will receive a dollar's value for a dollar spent
   c. Business is better when the seller is not the object of suspicion and mistrust.

The adversary system is the result of the slow evolution from trial by combat to a less violent form of testing the argument and evidence. The atmosphere of contention, which always is present in an adversary proceeding, is still the hallmark of our way of arriving at justice

The presentation of opposing views in vigorous debate as a prelude to decision is a feature common to the legislative and executive as well as the judicial process.

By contention, provided it is kept within proper bounds, the area of dispute is narrowed and deceptive arguments revealed in the course of debate. Contest spurs each side to greater efforts of intellect and imagination so that it is certain that no important consideration will altogether escape notice.

With respect to truth and fact-finding, cross-examination has proved to be an effective means to expose testimony but, more frequently, inaccuracies of testimony. Two adversaries, approaching the facts from entirely different perspectives and objectives and functioning within the framework of an orderly and established set

of rules, will uncover more of the truth than would investigators, however industrious and objective, seeking to compose a unified picture of what had occurred.

Each advocate comes to the hearing prepared to present his proofs and arguments, knowing at the same time that his arguments may fail to persuade and that his proofs may be rejected as inadequate. It is a part of his role to absorb these possible disappointments. The deciding tribunal, on the other hand, comes to the hearing uncommitted. It has not represented to the public that any fact can be proved, that any argument is sound, or that any particular way of stating a litigant's case is the most effective expression of its merits.

Thus, the institution of advocacy seeks to achieve both a fair and an accurate disposition of the dispute by avoiding "the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known."