

Regulation and Government Reform
October 23, 1976--Associated Credit Bureaus

October 25, 1976--Associated General Contractors

OUR CONSTITUTION SET UP THREE CO-EQUAL BRANCHES OF

GOVERNMENT: THE EXECUTIVE, THE JUDICIARY, AND THE LEGISLATIVE.

THE WAY IN WHICH THESE BRANCHES HAVE INTERACTED DURING THE
TWO HUNDRED YEARS HAS AT TIMES BEEN CONFLICT, AT TIMES, AGREEMENT,
AT TIMES, COMPROMISE, BUT ALWAYS, THE OPPOSITION OF THE THREE
BRANCHES HAS TENDED TO WORK TOWARD A BALANCE OF THEIR POWERS.

OF THESE THREE BRANCHES, THE LEGISLATIVE HAS PERHAPS THE
MOST CENTRAL POSITION, THE POSITION TO WHICH THE OTHER BRANCHES
RE-ACT: THE LEGISLATIVE BRANCH ACTUALLY MAKES THE LAWS.

IN RECOGNITION OF THE SPECIAL POWER THIS GAVE THE LEGISLATIVE
BRANCH, THE SHAPERS OF OUR CONSTITUTION MADE THE CONGRESS THE
MOST INHERENTLY DEMOCRATIC PART OF OUR GOVERNMENT. SENATORS
AND CONGRESSMEN REPRESENT RELATIVELY SMALL NUMBERS OF CONSTITUENTS
DIRECTLY--AND THOSE CONSTITUENTS CAN MAKE THEIR WISHES KNOWN

TO THE REPRESENTATIVES WITH GREAT FORCE, AND TELLING EFFECT,

WE, IN THE CONGRESS, ARE VERY CLOSELY TIED TO THE PEOPLE WHO SENT US THERE. VERY FEW PEOPLE IN THIS WHOLE COUNTRY HAVE EVER SEEN, MUCH LESS MET, A PRESIDENT OR A SUPREME COURT JUSTICE, BUT THERE ARE A LOT OF PEOPLE IN EVERY TOWN WHO FEEL THAT THEY KNOW THEIR CONGRESSMEN AND SENATORS.

EVERY TIME WE VOTE, WE TAKE SIDES ON SOMETHING. EVERY TIME WE WALK DOWN THE STREET, WE HEAR ABOUT IT FROM ONE SIDE OR THE OTHER.

NOW CONSIDER THE POSITION OF THE REGULATORS. WHO IN THE WORLD HAS EVER SEEN A MEMBER OF THE FEDERAL TRADE COMMISSION?

THERE ARE ONLY FIVE OF THEM, BUT I WOULD SUPPOSE THAT THEY ARE FIVE OF THE MOST POWERFUL PEOPLE IN THIS COUNTRY. WHAT DO THEY

? THEY MAKE REGULATIONS, LIKE MANY OTHER AGENCIES, AND THAT

IS AN AWFUL LOT LIKE MAKING LAWS. THE DICTIONARY SAYS
THAT "LAW" AND "REGULATION" ARE SYNONYMS.

POLITICAL SCIENTISTS SAY THE REGULATORY AGENCIES ARE
"QUASI-LEGISLATIVE" BECAUSE THEY WRITE REGULATIONS. THEY ARE
ALSO CONSIDERED "QUASI-JUDICIAL" SINCE THEY PROSECUTE VIOLATIONS
OF THOSE REGULATIONS.

BACK IN THE OLD DAYS, THE CONGRESS WROTE THE LAW, AND
THE COURTS INTERPRETED IT. UP THROUGH 1887, THE FEDERAL GOVERNMENT
WAS VERY SMALL, AND VERY MUCH LIKE THE CONSTITUTION HAD DESCRIBED
IT. BUT WHEN A SOCIETY GOES THROUGH THE GROWING PAINS OF
BECOMING AN INDUSTRIAL GIANT, THE PROBLEMS BECOME MORE COMPLEX.

It was the age of so-called

~~IN THE 1850S~~ *"ROBBER BARONS."* ~~THE~~ THE FIRST EVIDENCES OF

FOR THE FIRST TIME,

A STRONG NATIONAL ECONOMY BEGAN TO APPEAR, AND ~~THERE~~ WERE

ABUSES AND PROBLEMS IN THE BUSINESS WORLD ON A NATIONAL LEVEL.

THE VERY FIRST REGULATORY AGENCY WAS THE INTERSTATE
COMMERCE COMMISSION, AND IT MIGHT BE INTERESTING FOR US TO
LOOK BACK TO SEE WHY THE LEADERS OF THE NATION AT THAT TIME
THOUGHT IT NECESSARY TO CREATE A TOTALLY "NEW ANIMAL" IN THE
FEDERAL GOVERNMENT.

THE RAILROADS WERE THE FIRST "BIG BUSINESS" IN THE
UNITED STATES. THEY WERE THE FIRST TRULY NATIONAL CORPORATIONS,
DOING BUSINESS ACROSS STATE LINES IN A BIG WAY. IN MOST CASES,
THE SUBSEQUENT GIANTS OF INDUSTRY, SUCH AS STANDARD OIL, WERE
BUILT ON THE FOUNDATIONS SET UP BY RAILWAY COMPANIES. RAILROADS
WERE SO ESSENTIAL TO THE ECONOMIC LIFE OF THE NATION, THAT THEY
COULD EFFECTIVELY CONTROL THE ECONOMY MUCH BETTER THAN THE
GOVERNMENT AND ALL THE REST OF PRIVATE INDUSTRY PUT TOGETHER.
THE STATES TRIED TO REGULATE THEIR RATES AND PRACTICES,

BUT THE COURTS WOULD ONLY ALLOW THE STATES TO REGULATE RAILROADS WITHIN THE STATES. THE FEDERAL GOVERNMENT HAD NO MECHANISM THAT COULD REGULATE THE RAILROADS, AND THE STATE COULDN'T DO IT, SO WHAT WAS TO BE DONE? THE ANSWER WAS THE FIRST FEDERAL REGULATORY AGENCY. YOU MIGHT BE TEMPTED TO SAY IT WAS A DARK DAY IN OUR HISTORY, BUT BEFORE YOU MAKE THAT CONCLUSION, CONSIDER THE PROBLEM.

THE RAILROADS WERE UNBOUNDED, POWERFUL, AND ABLE TO DO WHATEVER THEY WANTED TO. AS A RESULT, THE ECONOMY AS A WHOLE SUFFERED, AND THOUSANDS OF PEOPLE WERE PUT OUT OF BUSINESS. FARMERS IN THE MIDWEST, WHO WERE DEPENDENT ON THE RAILROADS TO GET THEIR GRAIN TO MARKET, WERE BEING CHARGED SUCH EXORBITANT RATES THAT THEY COULDN'T AFFORD TO PRODUCE MUCH GRAIN--THE MORE THEY HAD TO SHIP, THE FARTHER IN THE HOLE THEY WENT.

A BUSINESSMAN ON THE EAST COAST WHO SHIPPED SOMETHING TO CHICAGO MIGHT COME OUT ALRIGHT, SINCE CHICAGO WAS THE END OF THE LINE, AND THE RAILROADS OFFERED A VERY LOW RATE ON SHIPMENTS TO THE END OF THE LINE. HIS NEIGHBOR DOWN THE ROAD, PRODUCING THE KIND AND QUALITY OF GOODS, MIGHT BE FORCED OUT OF BUSINESS SOLELY BECAUSE HIS BUYERS WERE IN, SAY, TENNESSEE, INSTEAD OF CHICAGO. THE RAILROADS WERE CHARGING A LOT MORE FOR SHORTER HAULS. YOU CAN SEE THE KIND OF THING THAT PROMPTED THE CONGRESS TO DEPART FROM TRADITION AND SET UP AN INDEPENDENT REGULATORY AGENCY.

IN THE CASE OF THE FORMATION OF EACH OF THE SUBSEQUENT REGULATORY BODIES, THERE HAVE BEEN EQUALLY GOOD REASONS FOR THEIR CREATION. THE ROAD TO A SELF-SERVING, CAPRICIOUS BUREAUCRACY HAS ALWAYS BEEN PAVED WITH GOOD INTENTIONS.

EVER SINCE THE REGULATORY AGENCY TREND BEGAN, THERE HAVE BEEN ATTEMPTS TO REFORM THE AGENCIES AND TO DEFINE THEIR PLACE, IF ANY, IN THE POLITICAL AND GOVERNMENTAL SYSTEMS OF THE UNITED STATES. IN THE PAST, THE USUAL THING TO DO , WAS TO APPOINT A COMMISSION TO STUDY COMMISSIONS. SOME OF THEIR FINDINGS ARE INTERESTING. IN 1937, A COMMISSION APPOINTED BY PRESIDENT ROOSEVELT SAID THE REGULATORS WERE "A HEADLESS FOURTH BRANCH OF GOVERNMENT," AND THEY ADDED, "NO ADMINISTRATIVE RE-ORGANIZATION WORTHY OF THE NAME CAN LEAVE HANGING IN THE AIR MORE THAN A DOZEN POWERFUL, IRRESPONSIBLE AGENCIES FREE TO DETERMINE POLICY AND ADMINISTER LAW."

THERE WERE LATER COMMISSIONS THAT STUDIED THE PROBLEM.

THE FIRST HOOVER COMMISSION, IN TRUMAN'S ADMINISTRATION, SAID THE ADMINISTRATIVE COSTS OF THE VARIOUS REGULATORY AGENCIES

WERE MUCH TOO HIGH, BECAUSE OF WASTE, DUPLICATION, AND
LACK OF COORDINATION. THE SECOND HOOVER COMMISSION,
DURING EISENHOWER'S TERM, SAID ABOUT THE SAME THING, AND THAT
THE EXECUTIVE AND JUDICIAL FUNCTIONS IN A LOT OF THE AGENCIES
WERE MIXED TOGETHER TOO CLOSELY.

A REPORT DONE FOR PRESIDENT KENNEDY RECOMMENDED CLOSER
PRESIDENTIAL INVOLVEMENT AND CONTROL OVER THE REGULATORY AGENCIES,
AND ANOTHER ONE PREPARED FOR PRESIDENT JOHNSON SAID THE SAME
THING. UNDER NIXON, THERE WAS ANOTHER COMMISSION AND IT REPORTED
THAT THE REGULATORY AGENCIES WERE NOT SUFFICIENTLY ACCOUNTABLE
TO EITHER CONGRESS OR THE PRESIDENT.

CONGRESS IS CLEARLY INTERESTED IN THIS SUBJECT, AND IT
WILL DEFINITELY BE ONE OF THE MAJOR ISSUES OF THE 95TH CONGRESS

WHEN WE CONVENE IN JANUARY. ACCOUNTABILITY IS THE HEART OF
THE PROBLEM. HOW CAN THE BUREAUCRATS WHO MAKE THESE REGULATIONS
BE MADE MORE ACCOUNTABLE TO THE PUBLIC AND TO THE CONGRESS?

LACK OF ACCOUNTABILITY IS WHAT IS BEHIND THE WHIMSICAL,
DOWNRIGHT STUPID RULINGS FROM SOME OF OUR BUREAUCRATS IN
RECENT YEARS.

SOME OF THE THINGS THE BUREAUCRATS HAVE DONE WOULD BE
TRULY FUNNY, IF THEY DIDN'T HAVE SUCH A GREAT EFFECT ON
THE LIVES OF PEOPLE.

JUST AS AN EXAMPLE, THE CONSUMER PRODUCT SAFETY COMMISSION
ORDERED SOME BUTTONS A COUPLE OF YEARS BACK AT CHRISTMAS-TIME.
THEY WERE LITTLE LAPEL BUTTONS THAT HAD A SLOGAN REMINDING PARENTS
TO BUY SAFE TOYS FOR THEIR CHILDREN. AFTER THE BUTTONS ARRIVED,

SOME INSPECTOR REALIZED THAT THE BUTTONS WERE PAINTED WITH LEAD-BASED PAINT, AND THAT IF A CHILD PUT ONE IN HIS MOUTH, HE COULD GET LEAD POISONING.

THE CONSUMER PRODUCT SAFETY COMMISSION HAD TO BAN ALL 80,000 OF ITS OWN BUTTONS.

THE FOOD AND DRUG ADMINISTRATION REQUIRES MEAT-PACKING PLANTS TO BE CLEAN AND SANITARY. THE SURFACES THAT ARE EASIEST TO CLEAN ARE STAINLESS STEEL AND TILE. THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION DOESN'T LIKE STAINLESS STEEL AND TILE BECAUSE THEY REFLECT SOUND TOO MUCH AND INCREASE NOISE LEVELS ABOVE THEIR STANDARDS.

A SMALL TIRE MANUFACTURER IN DENVER DUTIFULLY PUT UP WAIST-HIGH GUARD RAILS AROUND HIS MACHINERY, JUST LIKE O.S.H.A. TOLD HIM TO. IN A FEW WEEKS SEVERAL OF THE EMPLOYEES WERE

STAYING OUT OF WORK SEVERAL DAYS A WEEK, LAID UP WITH BACK PAINS. THEY INVESTIGATED, AND FOUND THAT THE BACK TROUBLE WAS CAUSED BY THE GUARD RAILS.

ONE OF MY FAVORITES WAS AN OSHA RULING THAT WOULD HAVE REQUIRED FARMERS--EVEN VERY SMALL FARM OPERATIONS--TO PUT PORTABLE TOILETS IN THEIR FIELDS.

ACCOUNTABILITY WAS NOWHERE TO BE SEEN WHEN THESE RULINGS WERE HANDED DOWN.

THE NEXT CONGRESS WILL PROBABLY ADDRESS THIS PROBLEM IN SOME WAY. THERE HAVE BEEN MANY SCHEMES PROPOSED, AND WE DON'T KNOW YET WHAT SHAPE ANY LEGISLATION ON THE SUBJECT WOULD TAKE.

THE BASIC IDEA BEHIND A LOT OF THE PROPOSALS IS TO GIVE CONGRESS VETO POWER OVER ALL THE REGULATIONS WRITTEN BY THE VARIOUS AGENCIES. THERE WOULD HAVE TO BE A CONGRESSIONAL REVIEW

OF WHAT THE BUREAUCRACY PROPOSED. I'M NOT SURE WHETHER
CONGRESS HAS THE TIME TO REVIEW AS MANY REGULATIONS AS THEY
HAVE BEEN WRITING HERE LATELY, BUT MAYBE THE EFFECT OF SUCH
A LAW WOULD BE TO CUT DOWN ON THE NUMBER OF REGULATIONS.
WE'LL HAVE TO SEE WHAT CAN BE DONE ALONG THESE LINES. THERE
IS A GOOD POSSIBILITY THAT THE CONGRESS WILL BE IN THE MOOD
TO DO SOMETHING ABOUT REVIEWING THE REGULATORS.

THERE IS ALREADY ONE IMPROVEMENT THAT WILL PROBABLY
HELP TO GET SOME OF THE CAPRICIOUSNESS OUT OF THE VARIOUS
AGENCIES. "THE GOVERNMENT IN THE SUNSHINE" LAW WAS PASSED,
SO THE AGENCIES WILL HAVE TO HOLD THEIR DECISION-MAKING MEETINGS
IN THE OPEN. PUBLIC SCRUTINY HAS A WAY OF MAKING PEOPLE THINK
TWICE ABOUT WHAT THEY DO.

WE WILL ALMOST CERTAINLY HAVE, IN THE NEXT CONGRESS,

A "SUNSET LAW" OF SOME KIND. THIS TYPE OF LEGISLATION WOULD REQUIRE THAT EVERY AGENCY, COMMISSION, BUREAU, AND COMMITTEE IN THE BUREAUCRACY BE REVIEWED PERIODICALLY, EVERY THREE YEARS ACCORDING TO ONE PROPOSAL, AND THESE VARIOUS AGENCIES WOULD THEN HAVE TO JUSTIFY THEIR VERY EXISTENCE. HAVING A THING LIKE THAT HANGING OVER THEM IS LIKELY TO INSPIRE A GOOD DEAL MORE BUREAUCRATIC EFFICIENCY AND A LOT LESS WHIMSICAL RULE-MAKING.