

POLITICS AND GOVERNMENT IN AMERICAN ECONOMIC LIFE

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Introduction: Government in the Economy and Businesspeople  
in the Policy Process:

I want to discuss this morning my views on the role  
of the federal government in the economic life of our nation,  
specifically as it pertains to regulation of the credit  
reporting industry, and also share my thoughts on the  
nature of the public policy process, and how you, as  
members of a trade association, and as individuals can  
most effectively participate in that process.

Importance of the Credit Reporting Industry:

The credit bureau industry is an essential component

of the American economic structure. Without question, our economy is highly credit-oriented, and consumer debt is at an all time high.

The credit bureau industry provides financial institutions and individual business people with the kind of factual and reliable consumer credit information needed to make sound lending decisions. That role is crucial to overall economic health.

Moreover, I believe your industry fulfills that essential economic role with a healthy regard for the rights of individual citizens.

Yet concern for the rights of individuals vis-a-vis the business world has been a major thrust behind the steady expansion of the federal government.

Growth of Federal Regulation:

Especially over the last two decades, we have witnessed a phenomenal growth in the size of the federal government.

Since 1962, some 25 new federal agencies or governmental bodies have been created to regulate some aspect of private business activity.

Financial institutions and specifically, the credit reporting industry:

And the scope of federal involvement in traditionally regulated areas has also grown. A host of new laws and regulations govern financial institutions.

The credit reporting industry, needless to say, has not been overlooked. Witness the Fair Credit Reporting Act, Truth in Lending, and a recent attempt to improve

and simplify that Act, now passed by the Senate but as yet not acted on by the House, the Equal Credit Opportunity Act, and the Fair Debt Collection Practices Act which became effective in March of this year.

There can be no doubt that these laws have achieved some very positive social benefits, but there can also be little doubt they have significantly increased the complexity and the cost of doing business.

Cost of Regulation/Attitude of Regulation:

From what I have seen, there is an inadequate appreciation in Washington of what such costs mean in the business environment.

The growth of the federal role in regulation of financial institutions, to my mind, has generally worked to the detriment of the American public.

There seems at times in Washington, a basic inability on the part of many lawmakers, to comprehend that increased regulatory costs ultimately come home to the individual consumer.

One Savings and Loan institution reported that last summer, they were unable to take loan applications, not due to the lack of lendable funds, or a lack of desire to make loans, but due to the inability to process the additional paperwork that the regulatory agencies have forced upon them.

When that point has been reached, it is indeed time to put on the brake.

Need for a New Perspective:

What we need, in part, is for more people in Washington to come to the realization that we don't necessarily protect

the consumer better by creating new regulations or by adding to the already overgrown federal bureaucracy.

Trend Toward Skirting the States:

Another problem in the prevailing attitude is the increasing trend toward erosion of any significant role for the states in solving consumer problems.

The prevailing attitude seems to be, 'if any problem can be found, then the federal government should step in to remedy it.' I firmly disagree with that approach.

Role as North Carolina Attorney General: As Attorney General of North Carolina, I established a consumer advocacy and consumer protection division in our state -- recognized by the national conference of Attorneys General as one of the best. I don't think I heard a single complaint that

I didn't think could be handled more effectively by the States than the Federal Government.

Trend toward Federal Pre-emption: And I continue to believe, that if conflicting state laws pose a problem for interstate industries, then the proper solution is to work through the Commission on Uniform State Laws, rather than presume that federal law must be written to supercede all state approaches.

I continue to believe that from differing experiences, comes creative and innovative thinking -- and that subjecting increasing sections of our economy to one set of regulations from Washington tends to stifle and constrict the free enterprise system.

No Real Change in Sight: Likely attempt to amend the Fair  
Credit Reporting Act

Yet, I must be candid with you, I see no evidence that any real change in this prevailing attitude is about to take place.

Despite the growing indications that people throughout the country are indeed becoming fed up with big government, the growth of regulation seems to continue unabated.

Of specific importance to the credit reporting industry, of course, is the Fair Credit Reporting Act. The last attempt to amend this basic act governing your industry was in 1975, when I served on the Subcommittee on Consumer Affairs in the Senate Banking Committee.

While I no longer serve on that Subcommittee, I retain



a keen interest in this entire area of legislation. And

I think it is safe to assume that another major attempt to amend this law will be made in the coming year -- if indeed, a bill to that effect is not introduced even sooner. In terms of a major legislative effort, however, prospects for any new initiative this year seem unlikely.

Future FCRA Amendments will be based on the Report of the Privacy Commission:

Any attempt to amend the FCRA next year would be based on the report of the Privacy Protection Study Commission issued late last year.

I have not yet studied the Commission's recommendations, so I will certainly not commit myself to any position. I believe deeply that the responsibility of any U.S. Senator

is to listen to all sides of an issue before making up his  
or her mind.

General Concerns: But let me tell you what generally  
concerns me when an attempt is made to change a major law --  
particularly in the field of consumer protection.

Decisions often based on "potential" Problems rather than  
documented abuses:

I am concerned that all too often in the Congress we  
act on the basis of potential problems in the field of  
consumer affairs -- rather than reacting to the real needs  
of people and concerns that they have brought to the attention  
of public officials.

Congress must carefully weigh the projected benefits of  
any new consumer protection against the real costs. Time

and time again, in the Senate Banking Committee, it appears to me we legislate with a wholly inadequate understanding of what the day-to-day impact of our actions will be.

As I see it, ----- when a law has been working well, the burden of proof should weigh heavily on those who would seek to change it. All too often the case is not well made, but the changes pass the Congress anyway.

Look at the policy process: How do these laws get made?

I'd like to discuss some aspects of the policy process with an eye toward how you as individuals, and through your business associations, can influence it in a positive and healthy way.

"Government in the sunshine" has opened up the legislative process considerably. We have had public

radio broadcasts of Senate debates, and public TV coverage of committee hearings. But the general legislative process still remains mystifying to all too many people -- people who should be intimately involved in it.

A Case Study: The 1975 attempt to amend the Fair Credit Reporting Act:

I would like to take a look at a kind of case study in the policy process -- the 1975 attempt to amend the Fair Credit Reporting Act.

As indicated, I was then a member of the Subcommittee considering S. 1840 -- which would have made significant changes in the FCRA -- and would have put significant new obligations on the individual businesses.

Two things stand out about those hearings in my mind:

First, was one of the witnesses -- a self-proclaimed consumer privacy advocate and journalist.

This gentleman proceeded to paint a broad-brush horror story -- of numerous abuses under the FCRA. But under questioning, it became apparent that he had in fact not really verified many of the claims he was making by checking with the creditor.

Secondly, was the claim by the Federal Trade Administration, that in excess of 20,000 complaints had been received under the FCRA in its then 4-years of existence.

It was on that basis of over 20,000 complaints that a good deal of the case for a revision of the FCRA was based.

ACB analysis of FTC claim: The ACB -- at considerable expense -- and utilizing hundreds of person-hours -- did an

analysis of that claim.

They noted that in 1973, the FTC had acknowledged only 2,360 complaints. Yet only 19 months later in the midst of the 1975 hearings, that number had soared to over 20,000. The ACB found that masses of different kinds of data had been lumped together and considered as complaints. It became obvious that "any phone call, any letter, any inquiry or request for information that even mentioned the word 'credit' was logged as a complaint against the Fair Credit Reporting Act."

There is something wrong when private business must go to such expense and care to have to refute this kind of misrepresentation of the facts by an independent governmental regulatory body. And something is even more wrong when a

body such as the FTC would so mistate a situation before  
a Committee of the U.S. Congress.

Industry Participation Vital to getting at the Truth:

The basic lesson of this case study is that the participation of the ACB was vital to uncovering the real nature of the experience under the Fair Credit Reporting Act.

And if your industry -- and business generally -- is not to be adversely affected by what goes on in Washington -- that participation must continue.

ACB role a very positive one: Past, present and future

In 1975, ACB's activity was crucial in preventing what would have been an undesirable revision of the FCRA.

But ACB has been effective long before that. In 1968, the credit reporting industry began to incorporate changes

and put into place practices that helped to frame the FCRA, which became law in 1971.

And more recently, with the Fair Debt Collection Practices Act -- which took effect in March 1978 -- the industry once again took an active and vital role in shaping legislation, the passage of which was inevitable.

One of the most remarkable achievements of that process of industry involvement was that the act became a self-enforcing one, -- i.e., the Congress -- in a rather rare instance -- did not abdicate its authority to the federal regulators. Instead, we proceeded to get into a subject so thoroughly that a good bill could be written.

Contrast with EFT this year: In marked contrast this year has been consideration of the Electronic Funds Transfer



legislation.

In that bill, which has been reported by the Senate Banking Committee, we recognized the complexity and embryonic nature of <sup>EFT technology</sup> and thus abdicated rule-making authority <sub>1</sub> to the Federal Reserve Board.

I believe we should have stuck to the subject until we could write a bill simple enough to cover the basic needs without the need for elaborate regulations which will have the force of law.

Challenge for businesspeople: I hope these lessons can be learned well. ACB has been an effective participant in the public policy process. More business people must become involved in that same effective way.

Politics -- and the legislative process -- is the

lifeblood of democracy -- there is an obligation to join in the 'free trade in ideas' which determines our nation's policy direction.

Keys to Effective Involvement:

I believe there are several keys to effective involvement.

The first is early involvement. Few things are more irritating -- and more ineffective -- than last minute panic, after the horse has gotten out of the barn. In beginning now, to educate key members and staff people about an upcoming issue, ACB is indeed to be congratulated.

A second key in my mind is local participation.

I believe that members of Congress want to hear from not just the executives of national associations -- but folks from his or her own state or district. Members of

Congress are interested in the national perspective, and have an obligation to consider issues in an overall way. But they want to hear the impact on their own area -- from people they know -- if possible.

Third, I believe is a willingness to compromise. A man or woman's record consists of many decisions and many votes.

Unfortunately, some business lobbying has been characterized by inadequate understanding of what a person's record is, and by a "do-or-die" approach to an issue. Veiled threats, or an attitude of "either you're with us or against us" does not win friends or influence people.

I believe the policy process has been weakened by the rise of "one-issue" groups -- groups to whom their particular

issue is a test of faith -- rather than a subject for reasonable discussion.

Fourth, and finally, I believe it is important to offer positive alternatives -- not just clichés or dire predictions of gloom and doom. If a real problem exists, businesspeople have the kind of pragmatic and practical experience which can help to solve it. Businesspeople -- with specific examples drawn from day-to-day experience -- can help lawmakers understand the impact of various policy decisions.

Conclusion: ENCOURAGING PROSPECTS AHEAD

I believe there are some positive notes on the horizon.

Nation's Business of June, 1978, contained one of the most encouraging articles I have seen recently, reporting on a recent national Chamber of Commerce meeting.

The theme of the Conference was "A New Agenda for Human Progress" -- emphasizing for a change something positive and upbeat.

Dr. Richard L. Leshner -- president of the National Chamber -- put it well in summing up the agenda:

----"Our role", he said, referring to businesspeople, "is not to ignore the problems, not to minimize them or simply to criticize. Our bigger role is to solve problems -- constructively, efficiently, and humanely."

To do that -- he said -- business needs legislative and political influence -- but above all a vision of the future -- one which is attainable -- and grounded in individual freedom, initiative, opportunity, and responsibility.

I believe we need to keep in mind <sup>that</sup> for all our economic

problems, this nation remains a land which offers more freedom of opportunity and scope for individual achievement than anywhere on earth.

Working together, businesspeople and concerned people in government can help to keep it that way.