

ON CONSUMER PROTECTION

CARY JAYCEES

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Attorney General

To: Cary Jaycees

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ON CONSUMER PROTECTION AND STATES' RIGHTS

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I appreciate the privilege of coming and sharing a part on your program.

You know I believe very strongly that if government is to have the support of the people that the people must be informed and must know what the government is trying to do. After all, government exists for the people.

We, in the Attorney General's Office, are trying our best, especially in the area of youth and the law, to inform young people about the problems of our present day society. Our SBI agents, and our Consumer Protection Investigators could work night and day and arrest every violator that they could find and never really make a dent in the problem. I think any real progress that is to be made is in the field of educating the people as to the problems that confront them. For that reason, we always welcome an opportunity such as this. I think it is important

that you understand what we are trying to do if you are going to give us the support that we so desperately need if we are going to be successful.

I want, too, to tell you a little bit about my political philosophy and my political beliefs as this relates to some of the things we are trying to do in the Attorney General's Office.

I have always been a strong believer in states' rights. I believe, as Governor Aycock said seventy years ago in North Carolina, that the best government is the government that is closest to the people. Government that is responsive and subject to the wishes of the people - if I may use the vernacular of Governor Aycock, -

is so close to the people that when the shoe pinches, their cry can be heard.

During the last several months as Attorney General, I have tried to make my actions and my office conform to this Jeffersonian concept of government. For I believe, as strongly as I can, that as long as those of us who hold public office and public trust adhere to this philosophy that the people will have little or nothing to fear from their government.

With this thought in mind, our office has been active in several fields. For instance, we have been active in seeking to represent the public's interest in the regulated industries. What do I mean when I say regulated industries? Now, we believe very strongly in America and the free enterprise system. We believe that generally a man ought to have the right to enter into any business that he or she chooses and to operate it in an open and competitive market. But, we also recognize that there are certain area where this is not practical or feasible.

It wouldn't do to have Southern Bell building a telephone line down one side of the street and Carolina Tel and Tel building a telephone down another side of the street. If this were true, neither company would be able to survive economically.

It wouldn't do to have two railroads running down the same track or the same line; it wouldn't do to have Duke Power and Carolina Power and REA here in the City of Cary because it wouldn't be economically feasible.

So, since it is not practical to have an absolute free enterprise system operating in these areas, what

have we done here in this country? We have created regulatory agencies to offset the alternative which many countries have taken - nationalization.

In Great Britain, since 1945, public corporations have greatly increased and operate in several major fields of activity. The government runs the port facilities; the railroads; the airlines; controls the coal mining industry; the gas and electricity generating and distributing industries; the communications industry - telephone and broadcasting - and researching reveals that the takeover of these industries can be attributed in part to the public's interest not being properly represented. You will find the same nationalization course in France, Italy and other European countries. .

(See 4A if desired)

Here in America we don't believe in this method of operation - we still believe in the free enterprise system. But, since we said to these industries that it was not practical to operate in competition, we recognized that there must be some regulatory body to protect the public's interest because after all, its competition that normally regulates the flow of goods and services and the prices that you have to pay.

Of course, World War II and the subsequent collapse of the private economy contributed to the trend, but long before World War II, government takeovers were common on the Continent. (You can point to the dictatorships in Germany and Italy - in this type of government, public assets must be controlled).

While some socialists may point to Great Britain as a prime example of nationalization because of some success in the area, responsible economists are quick to note that the government of Great Britain operates its industries in the manner of private corporations leaving management with considerable flexibility and decision making power. Unfortunately, the government of the United States is not noted for its "hands off" policy once its foot is in the door.

In essence, we have said to these industries - we are going to give you a monopoly and a certain territory - you won't have to worry about your competitors, but, in doing so, we are going to subject you to regulations set by certain regulatory bodies - the Utilities Commission is a good example.

Now, what does this body do? They sit as a quasi-judicial body and try to see that these industries make a fair return on their investment. I believe very strongly in this. As a matter of fact, the few stocks that I own are all in the field of public utilities and regulated industries. So I believe that these industries

are entitled to a fair return. But, by the same token, I believe that you as an individual should have someone to present the other side of the issue so that whenever these agencies decide upon the services or the rates you must pay, they will have all of the facts that are available to them.

Under our system of jurisprudence in America, we have never said that any industry or any individual had to go before a court and make a case against himself. For instance, it would be ridiculous for Carolina Power and Light, when they feel they need to increase their rates in order 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, have them to present the other side - now, here are a few arguments in opposition. No one would expect any industry to do that. What we are doing in the Attorney General's office is simply trying to make sure that all points of view have been represented before these agencies - we are not seeking to prevent any company from receiving a fair return on their money.

What is the alternative to what we are doing?  
What has this got to do with states' rights?

Let me tell you that 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 the bureaucrats from north of the Potomac would descend on North Carolina and appear before the North Carolina Utilities Commission, before the Insurance Commissioner, or even before the Milk Commission whenever they felt like it, proporting to represent the public's interest.

I believe that we in the Attorney General's office who are directly responsible to the voters of this state - voters who 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 this state than bureaucrats from Washington who are completely

removed from the will of the people of North Carolina. And, I believe that regulated industry would much prefer that we do this here on a state level rather than have the crowd from Washington do it. In promoting this aspect of our office, we are upholding the concept of states' rights.

How about in the area of insurance? As some of you may know, for the first time in North Carolina, we intervened before the Insurance Commissioner in a rate hearing. What are we trying to accomplish? We are trying to put the Insurance Commissioner in a position where he can act impartially. We are trying to remove him from the position where he has to act as judge and prosecutor. You may rest assured that the insurance industry is going to present all of the arguments that are favorable to their side of the question. In the past, the Insurance Commissioner has had to listen to their arguments and try to present the other side. We are not trying to keep the insurance industry from receiving fair premiums and making a fair return, but we are trying to make sure that the five million North Carolinians know that someone is presenting their arguments to the Commissioner.

What has insurance got to do with states' 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 - 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 anguished 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 be better satisfied with 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, but I am afraid that unless we begin throughout the states to exercise these responsibilities, we are going to find more and more creeping federalism into our state government.

Last year the North Carolina General Assembly passed what was perhaps the first and most aggressive unfair and deceptive trade practice act in America. Commissioner ,

McIntyre of the Federal Trade Commission spoke here in Raleigh last year, and he made the statement that if other states in the Union were to follow the lead of the North Carolina Legislature that there would be little or no need for the Federal Trade Commission to involve itself on the local level with regard to unfair and deceptive trade practices.

Some of my friends who have known me for years and have felt that I have always been a conservative and a believer in free enterprise have become somewhat concerned. Some of them have been to see me. I will tell you as I told them. In the Consumer Protection Division, we are trying to meet the demands of the man on the street, see that he is protected from misrepresentation and deception in the marketplace. We are seeking to meet the demands of the businessman that he be protected from the unscrupulous and fly-by-night operator who moves into his community and through deception and misrepresentation deprives the housewife and the wage earner from their savings and earnings and deprives the legitimate businessman of the profits that he is rightfully entitled to make.

You know, the right to engage in free enterprise has never included the concept or the right to deceive someone

through misleading or false representation.

I would like to mention a number of cases which I think illustrate some of the points that we are talking about.

The chain referral - the pyramid selling gimmick in North Carolina - some of you may be familiar with it - especially as it related to the cosmetic area - left many persons in this State deprived of their earnings and savings because of a selling scheme which was deceptive and misleading. They were not selling cosmetics but they were selling franchises.

And I would like to mention to you the pyramid selling gimmick that moved into Charlotte.

A company moved into Charlotte and represented to the people there that they were going to build a gigantic department store, but they wanted to cut the people in on the ground floor. They said, "Now, we want to make you a partner in this operation. If you will buy a foundership for \$750, we will give you one of these television sets or a similar appliance which we estimate costs about \$100 or \$150 dollars." In addition, they offered to these people a plan whereby when the store opened, they could receive

fifty cards with their number on them and they were to pass these cards out to their friends. When the store opened, every time one of their friends made a purchase, they would get four percent of the gross sale price.

And this wasn't all. They could get their \$750 back by selling to three more people a foundership. When we were called in and sent our investigators, the first thing we found was that nowhere in America had this company actually built and operated a store. The only thing we found was a cement block warehouse in Birmingham where they had a few appliances stored. When we got the contracts and read them, we found nothing in the contracts to indicate any commitment that they would ever build a store. By the time we went into court and got a court order against this company, according to the Chamber of Commerce, the Better Business Bureau and our investigators, we estimated that they had walked out of Charlotte with three quarters of a million dollars of the wage earner's money, and three quarters of a million dollars in profits that the legitimate businessmen in Charlotte were entitled to make. And, at the time we got the court order, there were salesmen right here in Raleigh with their notebooks already to begin operation.

So, you see, we think we were protecting not only the customer, the consumer, but the legitimate businessman man as well.

Many companies move into an area and before their deception can be discovered, they have already departed the jurisdiction of the local sheriff or police - perhaps crossed county lines and the person is left unprotected. To be sure we cannot represent the individual. If you had been fleeced, we couldn't get your money back, but our purpose is to prevent others from being fleeced. Your own problem is, if course, a matter between you and your own attorney - you can see why we couldn't represent five million North Carolinians individually.

There are types of deceptive advertising which the individual cannot very well protect himself against.

Before Christmas, there was a well-known store in North Carolina, operating here, Durham, Greensboro, Charlotte and I don't recall where else, that ran a full-page advertisement advertising a so-called loss leader appliance at a rediculously low price. After some complaints, we sent investigators to the store.

At ten o'clock, after the store opened at 9:30, the appliance was already sold out. We checked, and our investigation revealed that there probably was never an appliance sold at a single store anywhere in North Carolina even though it was advertised repeatedly in full-page advertisements. This is a good example of the bait and switch gimmick to get people in the store. But what is the result? It deprives a legitimate merchant from business profits he is entitled to make.

We will never be able to rid the marketplace of all deception and fraud, but we do feel that because we are trying to make an effort, because there is now a place that people can complain to, somebody who will listen, somebody who will investigate, that it is having a good effect, and ridding the marketplace of much deception that would ordinarily be there.

Again, what does this have to do with states' rights?

Since the North Carolina Legislature passed this law, the President has already submitted to the Congress a bill with the identical programs we have here in North Carolina - except federal bureaucrats would be participating.

So, I believe what we are doing is really promoting states' rights, and I was pleased two weeks ago when I was asked to be on a panel of the Mid-Year Attorneys' General meeting in Washington. There we presented our program and proposals with the hope that the Attorneys General from the fifty states would begin to institute them in other states and, thereby, relieve the need for federal intervention.

We ask for your help in this area and if you need our help call on us.