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ON CONSUMER PROTECTION AND THE BILL OF RIGHTS

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You know, I believe very strongly that if government is to have the support of the people, the people must know what those in government are trying to do and must have a way of showing whether or not they approve or disapprove of it, for after all, we American's believe that government exists for the sake of the people. Thus as William Henry Harrison said, "A decent and manly examination of the acts of government should not only be tolerated, but encouraged."

I have also always been a strong believer in the Bill of Rights. I believe that one of the major functions of government is the protection of individual rights, and as most of you must already know, the Bill of Rights was not meant to confer rights but merely to protect them, for as the Declaration of Independence states, those rights are inalienable. As Jefferson said, "The care of human life and happiness . . . is the first and only legitimate object of good government."

When people think of the Bill of Rights, they usually think of things like freedom of speech and religion, the

right to assembly and petition, protection from unreasonable searches and seizures, and if one is a state's righter, the 10th amendment which is supposed to invest the states with certain powers. But in thinking of the Bill of Rights, people never remember the 9th amendment. Let me read it to you.

"IX"

"The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

This amendment embodies the political theory upon which our nation is based. As many of you must know, that theory teaches that before the establishment of government men existed in a state of nature under natural law that endowed them with certain natural rights. When by mutual consent men created government, they granted to it their natural right of adjudicating and executing the natural law, but they retained their natural rights.

John Locke, of course, is the 18th century philosopher whose writings most influenced the founding fathers, and Locke held that "the state of nature has a law of nature to govern it, which teaches that no one ought to harm another in his life, health, liberty, or possessions." This law gives

all men an inalienable right to fair treatment in matters affecting his life, health, liberty, and possessions, and it is natural rights such as these that the 9th amendment guarantees. So when the Attorney General intervenes in proceedings affecting the public interest and enjoins firms involved in unfair trade practices, he is operating under the 9th amendment's sanctions. The Bill of Rights and Consumer Protection are not unrelated.

During the last several months as Attorney General, I have tried to make my actions and my office conform to this Jeffersonian concept. 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, the people will have little or nothing to fear from governmental actions.

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. Now, we in the Attorney General's office believe very strongly in America and in the free enterprise system. We believe that generally a man ought to have the right to enter into any business that he chooses and to operate it in an open and competitive market since no man, according to Locke, should unnecessarily restrict another's liberty. But we also recognize

that there are certain areas where this would not enhance the common good, for which all just government is instituted.

It wouldn't do, for example, to have Southern Bell building a telephone line down one side of the street and Carolina Tel and Tel building a telephone line down another side of the same street. Neither company would be able to survive, and the public would be deprived of an enormous benefit.

Since it is not wise to have a system of absolutely free enterprise, we in this country have granted monopolies to some companies and regulatory agencies to protect the public interest.

In essence, we have said to companies involved in certain industries--we are going to give you a monopoly within a certain territory--you won't have to worry about any competitors, but, we are going to subject you to regulations set by certain regulatory bodies in order to protect the public interest. The Utilities Commission is a good example.

Now, what does this body do? It sits as a quasi-judicial body and tries to see that the industries it controls provides the public with adequate levels of a certain worthwhile service and makes a fair return on their investments. I believe very strongly that this procedure is the proper one. [As a matter of fact, the few stocks that I own are all in regulated industries.] I believe that these industries are entitled to a

fair return on their investments. But, by the same token, I believe that every individual should have someone to present his side of every issue so that whenever a regulatory agency must decide upon the quality of service the public receives or the rates the public must pay, all of the relevant facts will be available.

Under our system of jurisprudence, we do not expect an industry or an individual to go before a court and make a case against himself. For instance, it would be ridiculous for Carolina Power and Light, when it feels the need to increase rates, to come before the Utilities Commission and present all of the arguments against such an increase. No one would expect any industry to do that. Now since the regulatory agency--for example the public utilities commission--sits as a judicial body, and since the industry presents only its own side of any issue, some other agency must present the public's side. This is what we in the Attorney General's office have been trying to do. What we are doing in the Attorney General's office is simply trying to make sure that all points of view are represented before these agencies--we are not seeking to prevent any company from receiving a fair return on its investment, nor are we seeking to perform the regulatory agencies' judicial function.

What are the alternatives to what we are doing?

One alternative is that a federal agency can be established to represent the consuming public before any federal or state regulatory agency which is considering matters which affect the public interest. In fact, Senator Metcalf of Montana has already made such a proposal. The other alternative is nationalization of those industries to which we now grant monopolies. In Great Britain, since 1945, public corporations have been created in several major fields of activity. The government runs the port facilities, the railroads, the air lines, the coal mining industry, the gas and electric generating and distributing industries, the communications industry. You will find the same nationalization in France, Italy, and other European countries. We here in America do not believe in nationalization; we still believe in free enterprise. And if Senator Metcalf's proposal were enacted, it would mean that Federal officials would appear before the North Carolina Utilities Commission, the Insurance Commissioner, and even the Milk Commission in order to represent the public's interest.

Now, I do not have to tell you what this does to the concept of individual liberties. I believe that we in the Attorney General's office--we 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 any Federal agency which is 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 anyone from Washington do it. In promoting this aspect of our office, we are upholding the concept of individual liberties by preserving the individual's right to a voice in his own government.

So as some of you may know, for the first time in the history of North Carolina, we have 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 from which he can act imparitally. We are trying to remove from his shoulders the burden of being both judge and prosecutor. You may rest assured that the insurance industry is going to present all of the arguments that are favorable to its side of the question. In the past, the Insurance Commissioner has had to listen to industry's arguments, has had to try to present the other side, and has had to adjudicate the issue. We contend that the Commission cannot do all of this adequately. The Commission cannot be both judge and prosecutor.

So we are trying to make sure that the five million North Carolinians know that someone is presenting their arguments to the Commissioner.

If any of you think that the threat of Federal intervention is an illusion, I ask you to go back and look at the February 7th issue of Business Week, in which you will find an article entitled "Insurers Brace for Federal Action" which indicates that Congress is considering legislation that would extend the federal arm into this area--an area which has previously been state-regulated. Business Week states that most of the industry, as well as most state insurance commissioners, strongly oppose this legislation as an unwarranted intervention in another area of states' rights, and an ultimate infringement of individual 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, by the anguished haggling over flood damage claims in the wake of Hurricane Camile; by the cancellation of policies seemingly without provocation; by the inability to obtain coverage in certain high risk 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 will never be convinced of this unless it knows that somebody is appearing before the Insurance Commissioner and presenting the public's case. And that is exactly what we are seeking to do.

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

Yet this creeping Federalism can be avoided. 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, 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 about our recent actions. Some of them have even been to see me. I will tell you what I told them. In the Consumer Protection Division, we are trying to protect the natural rights of the man on the street, see that he is protected from misrepresentation and deception in the marketplace. We are seeking to meet the natural rights of the businessman that he be protected from the unscrupulous and fly-by-night operator who moves into his community and who through deception and misrepresentation deprives the housewife and the wage earner of their savings and earnings and deprives the legitimate businessman of the profits that he is rightfully entitled to make.

You know the natural law which Locke states implies that the right to engage in free enterprise has never included the concept or the right to deceive someone through misleading or false representation. Yet some businesses seem to be founded on just this misconception.

I would like to mention a number of cases which I think illustrate this.

Some of you may be familiar with the pyramid selling gimmick, especially as it has been used by some in the

cosmetic industry. This chain referral technique deprived many persons in this state of their earnings and savings because the selling scheme was deceptive and misleading. Cosmetics were not being sold; franchises were.

Another company moved into Charlotte and indicated to the people there that a gigantic department store would be built and that the company wanted to cut people in on the ground floor. Those representing this company 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." In addition, this company offered to these people a plan whereby they could receive fifty cards on which their identification number was to be printed and which were to be passed out to their friends when the store opened. Every time one of these friends made a purchase, the individuals involved were to get four percent of the gross sale price.

And this wasn't all. The people were told that they could get their \$750 back by selling founderships to three more people.

When we in the Attorney General's office were called in, our investigators found 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 a few appliances were stored. When we got the contracts and read them carefully, we found nothing in them to indicate any commitment that this company would ever build a store. By the time we went into court and got a court order against this company, the Chamber of Commerce, the Better Business Bureau, and our investigators, estimated that this company had walked out of Charlotte with three quarters of a million dollars--three quarters of a million dollars in sales that the legitimate businessmen in Charlotte were entitled to make. At the time we got this court order, there were salesmen from this company in Raleigh ready to begin operation.

So, you see, we think we are protecting not only the customer, the consumer, but the legitimate businessman 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, the Attorney General's office cannot represent each individual. Trying to represent five million North Carolinians individually would require that we employ almost every attorney in the State. So, our purpose was not to recover the money lost in

Charlotte or anywhere else; our purpose was and is to protect the natural rights of citizens under the 9th amendment. The individual's loss is, of course, a matter between him and his own attorney.

Yet there are types of deceptive advertising which the individual cannot very well protect himself against, and in relation to these, the Attorney General's office can be most useful.

Before Christmas, a well-known store in North Carolina which operates in Durham, Greensboro, Charlotte and other places, ran a full-page advertisement advertising a so-called loss leader appliance at a ridiculously low price. After some complaints, we sent investigators to the store. One-half hour after the store opened, the store claimed that the appliance was already sold out. We checked, and our investigation revealed that there probably never was an appliance of the sort advertised 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 technique used to get people into a store so that high-priced items can be sold. But what is the result? The gimmick deprives a legitimate merchant from business profits he is entitled to make.

Of course, we will never be able to rid the marketplace of all deception and fraud, but we do feel that because we are making an effort, because there is not a place where people can complain, because there is now somebody who will listen, somebody who will investigate, a good effect is being made and much of the marketplace's deception is being eliminated.

Since the North Carolina Legislature passed this unfair and deceptive trade practice act, the President has submitted to the Congress a bill with identical features except that federal officials would administer it. So, by making this Federal law unnecessary in North Carolina I believe that what we are doing really promotes a person's 9th amendment rights, and I was pleased recently 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 other fifty states would begin to institute them also and, thereby, eliminate the need for federal intervention.

This knowledge of what we are attempting should help you understand our actions better, and this understanding should enable you to give us the support we need. We ask for your help and if you need ours, call on us.