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FREEDOM THROUGH SELF-REGULATION --
A CHALLENGE TO NEW ENGLAND ADVERTISING

Statement by Earl W. Kintner of Arent,
Fox, Kintner, Plotkin & Kahn, Washington,
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I

A cynic can be a delightful company during an interlude
of relaxation. Mordant wit often can illuminate the follies
of mankind with penetrating accuracy. However, when the time
for observation is over and the time for action comes, I find
the company of cynics to be less than pleasant. In the realm
of action cynicism often becomes an excuse for inaction, a
mask for defeatism, a cloak for paralysis of the will.

Now that the scandals unearthed within the communica-
tions industry have been exposed to public view for some time
the cynics have been in full cry. No lasting improvements or
reforms will be made in the world of advertising, they say.
Some of these cynics are the very men who must act if



advertising is to operate in an improved moral climate. Other cynics include leading economists who have seized upon advertising's troubles of the past two years to renew their attacks upon the value of advertising to the American economy. Their eyes turn toward a planned economy in which advertising would be a poor relation, if not the enemy.

I disagree with all these cynics, in and out of the industry.

Advertising is as susceptible to principled performance as any other form of economic activity. The rewards for ethical conduct are great and the dangers of unethical conduct are very apparent. The first such danger is the smoldering anger of the American public over shoddy advertising. Although this public indignation is not headline news every day, from my vantage point of the past two years I can assure you that it continues to be strong and deep. A surprising number of people have commented to me about the negative attitude that deceptive or tasteless advertising generates in them. Confronted with an advertisement designed to evoke a favorable attitude toward a

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product, these people often form a quiet resolve not to buy the product because of the offensive nature of the sales message.

Advertising is not a shell game. Good advertising informs; it does not deceive. These simple observations are truisms. Like many truisms, the great danger is that the truth may be so self-evident that it is ignored. It is almost presumptuous of me to remind this group of creative advertisers of these simple maxims. However, in any area there is a periodic need to re-examine first principles. As I have just indicated, in advertising this re-examination must take place in the context of a new evaluation of the American audience. That audience grows better educated and more sophisticated day by day. The proverbial advertiser who addresses all of his messages to twelve year olds continues to do so at his peril. A brief backward glance is sufficient to highlight the sharply rising level of taste and sophistication of the American audience.

James Webb Young, a great advertising pioneer, discusses a 1913 advertisement of Postum in a recent article in the Saturday Review. The ad points out the advantages of Postum over Brazilian coffee, attributing the following ills to coffee:

"... Sallow Complexions; Stomach Trouble; Bad
Liver; Heart Palpitations; Shattered Nerves;
Caffeine, a Drug: Weakness from Drugging."

Mr. Young then quotes a judgment on the changes that
forty years of education bring: "We doubt if the present
owners of Postum would OK copy like this today. Even if they
did not own Maxwell House." Mr. Young's example is not an
isolated one. Any of you that have read the AMA three volume
series Nostrums and Quackery, or Skindeep, or Turner's The
Shocking History of Advertising! or Holbrook's The Golden Age
of Quackery know that the incredible claims of yesterday would
not convince today. Every increase in culture, every advance
in education, every exposure to wider experience places an
additional seal of doom on shoddy, tasteless and irresponsible
advertising. Despite the appearance in recent years of some
very sophisticated institutional advertising, I sometimes feel
that advertisers are the last to weigh the American audience at
its true value. Certain it is that today's consumer is aware,
and that he resents being patronized as an unsuspecting boob.

No doubt, some of you will say "Oh well, this storm will
blow over like so many others have in the past." This attitude

is a mistaken one. The present threat to public confidence in advertising, while considerably abated by the massive self-regulatory efforts made by advertising at all levels during the past two years, is still deep and broad. It would be as dangerous to ignore the indignation of the American audience as it would be to insult its intelligence.

II

Freedom well may be the most difficult word to define in all the language. Freedom is a relative concept. Its meaning is ambulatory. Yet a society dedicated to individualism must somehow perform this difficult task of definition if it is to survive. The task of definition is difficult because a working concept of freedom must somehow equate the rights of one and the rights of many, the rights of the individual and the rights of society. Too much deference to the rights of the individual produces anarchy; too much deference to the rights of the mass produces a faceless tyranny. Obviously a balance must be struck.

The point of balance is not constant. It shifts according to times and places and conditions. The illustration of

this shifting balance most favored by legal philosophers concerns a man who owned a cannon. If a distance of 10 miles separates this man from his nearest neighbor, then there is no reason why he should not be perfectly free to fire his cannon morning, noon and night. But if he should move to a crowded city, then obviously his freedom to fire cannon salutes invades the rights of others and must be curbed.

The major thrust of the American Experiment is housed in the effort to preserve liberty while avoiding license. Our forefathers coined a striking phrase to describe that attempt. The phrase is "ordered liberty". Many would say that this phrase is a contradiction. Certainly an anarchist would refuse to believe that liberty remains liberty if limitations are placed upon it. But those of us who value our system would stoutly deny that any contradiction exists. The defenders of freedom must clearly recognize that the enjoyment of individual freedom depends upon the discharge of responsibilities to others.

Both our political system and our economic system are grounded in the belief that the best society is the one which

allows the individual the greatest opportunity for unfettered self-improvement. That belief in turn is grounded upon another article of faith, a faith that the individual in pursuing his self-development will demonstrate a decent respect for the needs of others and a willingness to forego unlimited self-gratification at the expense of others. Implanted in our National conscience there is a deep realization that the exercise of the privilege of freedom entails the assumption of responsibility to others. Unless that responsibility is recognized and discharged, freedom becomes meaningless; otherwise the freedom of a few is won only by the subjugation of the many.

American businessmen should feel a special urgency to recognize and discharge the responsibilities that free men must bear. You have a close and detailed knowledge of the benefits that a free economy can produce. You must also realize how easily the poisons of statism can sap the strength of a free economy. It requires no special historical insight to detect a seepage of power from the private sphere to the public sphere in 20th century America. The great questions now before us are

why the seepage has taken place and how further seepage can be stopped. If we adhere to the belief that ours is a republican form of government, we must assume that at least a portion of this seepage has been welcomed and approved by our citizenry. Why should this be so? At least part of the answer must lie in the failure of free individuals to discharge the responsibilities that inevitably accompany the exercise of freedom.

My interpretation of American economic history is that many devices for governmental regulation of business have been developed only after a protracted demonstration that free entrepreneurs had failed to discharge their responsibilities for the furtherance of the national interest in a given area of concern. The history of our antitrust and trade regulation laws illustrates this point.

The cardinal element in the structure of the American economic system is that economic problems will be resolved by the interplay of free market forces. Monopoly and unfair competition war against that principle. A market ceases to be free when predators are able to deny entry to the market to struggling new enterprises, to damage competitors by foul means

or to unilaterally set the conditions of trade. In the late 19th century, it became painfully obvious that private efforts could not impede the transfer of market power from diverse and disparate competitive entities to the trusts. Therefore, the national interest in free enterprise demanded the creation of the antitrust laws and the vigorous enforcement of those laws by the government. Early in the 20th century, it became glaringly obvious that the freedom of a few to engage in shoddy trickery denied the benefits of a free market to honest competitors and trusting consumers. Again, the national interest required the intervention of government, and the Federal Trade Commission was empowered not only to prevent monopoly but also to insure fair competition.

Examples could be multiplied, but this one example teaches us that strictures on the exercise of power by business -- limitations on the freedom of businessmen -- often have been the result of failures by business to discharge its responsibilities for the protection of the public interest without governmental intervention. The lesson is that business cannot operate unrestrained in a free society. Business must either act in self-restraint to further the public interest or have restraints imposed upon it.

The failure of business to discharge its responsibilities is not the sole reason for the rise of Big Government in the 20th century. Doubtless there have been, and now are, many who see absolute values in a statist system. These disguised totalitarians will not wait for a demonstration of irresponsibility by business to press for further governmental controls. At least a part of the rise of Big Government is attributable to them. However, as I attempt to foresee the future of our free economy I do not greatly fear the apostles of statism. The American people are not easily gulled by assertions that Washington is the fount of all wisdom and therefore should be the source of all power. I think that the American people have an abiding faith in the benefits of a free enterprise system. I think the American people will place further limitations on that system only if that faith is badly abused. And the responsibility for justifying that faith rests upon every American businessman. If business shows a capacity for self-discipline and a recognition of its responsibilities and a willingness to obey the wise laws that guarantee free competition and fair competition, then business has little to fear at the hands of the American public.

III

The plain duty of every businessman to protect the free enterprise system by avoiding shady dealing is reinforced by compelling considerations of self-interest.

I maintain that the keystone of our great system of distribution is reputation. Think for a moment of your daily purchases. I am willing to bet that in the vast majority of your daily purchases the thing that you are really purchasing is a reputation. It may be the reputation of a manufacturer or the reputation of a retailer. It may be the reputation of a person whose advice is valued. But in each case, reputation bulks large in the transaction. Indeed, the brand name concept is based upon reputation. Why would an advertiser spend millions to spread its name and the virtue of its product if not to acquire a reputation that will furnish the basis of a multitude of fruitful continuing business relationships? It would seem beyond dispute that any businessman who seeks to make more than one sale to the same person must value his good name beyond all else.

It is true that in the not so long ago the American hinterlands were full of drummers who descended like lightning

upon a community, sold an entire stock of goods and then disappeared over the horizon never to return again, thereby escaping the wrath of infuriated consumers. It is also true that some of this sort of bilking still exists. But in this day of rapid communication, isolation and ignorance are no longer the potent allies of predators. Means now exist to detect the business crook, and laws now exist to punish him. However, the rapid communication that now helps to foil the trickster presents dangers to the honest businessman as well. Now a momentary lapse from the strictest standards of honesty can imperil a reputation that was many years in the building. Since reputation is so valuable, since so much of our trade depends upon reputation, it behooves every businessman to guard his reputation zealously. Americans defend the profit system on the ground that profit is the legitimate reward for the assumption of risks. Certain it is that the entrepreneur must boldly embrace those risks which promise adequate potential reward, but it is also a part of the duty of the diligent and prudent entrepreneur to shun avoidable risks. The risk of the inconvenience and expense of a legal proceeding, the risk of legal penalties and the risk of loss of good will and reputation

that are the result of a violation of the laws guarding consumers and honest competitors are avoidable risks. The careful businessman can safeguard his enterprise by careful adherence to the requirements of law.

And we must not forget that every businessman has a duty to the free enterprise system itself in addition to the duty that he owes to his stockholders. A demonstration that individual entrepreneurs can safeguard the public interest in the absence of the massive controls of a police state vindicates the cause of freedom.

Those businessmen who operate the distributive phase of our economy -- those who advertise and sell in the consumer market -- must bear a special responsibility of compliance with the law. This is so because the American public has more contact with this phase of our economy than with any other. The average citizen forms his impressions and expectations of our system as he hears and reads the advertisements urging him to buy and as he purchases and uses the abundant goods produced by our complex economy. Judge for yourself how many people wade through dry tomes on economics in any given year and compare

this with your estimate of the number of advertisements the average person is exposed to during the same period and then conclude for yourself what is the major source of most impressions of our system. The awesome power of advertising suggests the awesomeness of advertising's responsibilities.

IV

What can be done by the honest businessman who recognizes his duty to the free enterprise system and who values his own business reputation? His task is two fold: First, he must learn the requirements of the laws guarding our free economy; second, he must comply with those requirements. He must comply with the spirit as well as the letter of those laws.

Fortunately, means to ease the task of education have proliferated in recent months. Any businessman who honestly seeks to develop a working knowledge of the pitfalls of deceptive advertising now has plentiful sources of information close at hand.

I am gratified that the Federal Trade Commission, during the period of my chairmanship, measurably extended its educational

efforts. The expanded guides program, the new technique of area-wide business seminars and increased assistance to national and local advertising groups all marked this increased effort.

A tremendous educational effort has been forthcoming from the advertising industry itself. The up-dating and re-vising of the codes of most of the national associations, the new Advertising Truth Book of the AFA, and the development of codes of ethics by local Better Business Bureaus and advertising clubs have all contributed to a new age of enlightenment in advertising. And the efforts of the media in improving the educational climate deserve special mention. Just last week I received a copy of the new standards of acceptability of the Detroit News. These standards are emblematic of a nationwide effort by the media to revise standards in the light of changed conditions. The Detroit News standards combine principles from the latest FTC guides and decisions, the Advertising Truth Book, and the latest studies of the Better Business Bureaus. I am proud that I could furnish a small contribution to this outstanding work.

Marked progress in accomplishing the second task facing honest businessmen -- that of complying with the laws denouncing deceptive practices -- has gone forward with remarkable speed and effect during the past eighteen months. No recount of the massive efforts of the great national associations of your industry -- the four A's, the AFA, the ANA, and the Association of Better Business Bureaus -- is necessary here. Their efforts are comparable to the efforts of the advertising industry to gain the passage of the Printers Ink statutes. I am particularly concerned with the efforts of local advertising clubs and Better Business Bureaus to establish thoroughgoing programs of compliance at the grass roots level. It seems to me that programs of this character are indispensable if the taint of deception is to be banished from American advertising, and I think that the advertising men and women in a host of American communities have clearly recognized the importance of grass roots compliance. An industry ruled by free imaginations can value freedom well. Advertising groups in communities throughout the nation have clearly recognized that the public's clamor for truth in advertising must be answered, if not by them then by government. In a host of communities, ethics committees

and advertising panels have been revitalized or new ones established. Local media, advertising agencies and advertisers have joined together in a common cause to fulfill the responsibilities of a free industry.

V

I have mentioned two potent reasons for a strong industry-wide effort to attain voluntary compliance with the law, but I would be remiss as a citizen if I failed to mention a third reason. At this critical juncture in the war of ideologies every American must be concerned not only with preserving the free enterprise system within our borders, but extending that system throughout the world. I do not think that we can consider too often how much damage to our international influence can be caused by shady dealing in American business.

Far more damage can be caused than the facts in any given case warrant. Our detractors make skillful use of the propaganda trumpet. With a squeaky fact at one end, they can produce a triumphant blast out of the other. It is a blast that can be heard by credulous ears. Our detractors ignore the

self-discipline of a thousand law-abiding businessmen while they herald the chicanery of one. And this one, our detractors shout, is free enterprise in action.

Unjust? Of course it is. We become indignant that our competitive system should be so misrepresented. The very strength of our economy should be a refutation that immorality built it. But, in typical American fashion, our indignation searches for a comforting explanation -- preferably one that avoids personal involvement in any corrective action. With a shrug, we tell ourselves that business since the days of the Phoenicians has never been without its larcenous few and never will be.

To some, this philosophy may be comforting, but not to me -- particularly at a time when individual freedom and state slavery are locked in a battle for the minds of men. We cannot afford to shrug away our weaknesses -- minor though they may be in fact and in proportion to our virtues, they are not minor through the trumpets of our enemies. And the whole world is listening.

The integrity of our business community can be impeached by an amoral element. But the impeachment can be lifted if business will exercise those great privileges of freedom -- self-discipline and acceptance of law.

VI

No society can exist without sanctions against hostile and destructive conduct. Those needed sanctions can come from two sources: Either they can be imposed by government or they can be voluntarily provided by responsible citizens.

I cannot emphasize too strongly that your effort to eliminate deception from advertising in this community is a positive and meaningful contribution to the cause of freedom. Some pessimists say that the cause of individualism is doomed to be crushed by the onward march of statism. This dire prediction may yet come true, but if all businessmen throughout the nation join with you in an effective demonstration that free citizens can be relied upon to regulate themselves, with governmental action reserved for the unscrupulous and dishonest minority, it will not come true. In the dark world

in which we live, many believe that the private citizen is powerless to stem the tide of history. I deny this. Individual citizens and private organizations such as yours can act to preserve the citadel of individualism. An effective demonstration of your awareness that freedom means responsibility and your determination to discharge that responsibility will do much to insure that the banners of free enterprise will not be trampled in the dust.

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