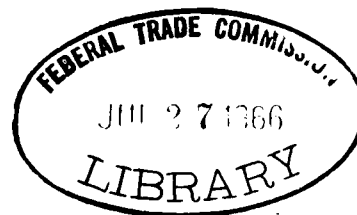


for a. m. release
July 8, 1966



THE FEDERAL GOVERNMENT,
CONSUMER PROTECTION, AND
INDIVIDUAL ACTION

Statement of Earl W. Kintner,
Arent, Fox, Kintner, Plotkin & Kahn,
Washington, D. C.,
Before the Fourteenth National Convention
of The National Retired Teachers
Association,
Minneapolis, Minnesota
July 8, 1966

Ladies and gentlemen, it is a distinct privilege for me to be here today and to share in these Convention activities of your outstanding organization, which I am privileged to serve as Washington Counsel. I am keenly aware of the outstanding work NRTA has accomplished over the years under the pioneering vision and leadership of your Dr. Andrus, a great and nationally respected lady of our time.

I know of your association's fine work on the legislative scene in Washington, D. C. -- on Medicare, on Truth-In-Packaging standards, on the wide range of federal legislation affecting you NRTA members and your

colleagues in the American Association of Retired Persons. NRTA has built a solid record of accomplishment which has earned these frank words of praise.

I.

In connection with my preparation for appearance here this morning, I was reminded of the deep interest you all share in the area of consumer protection at all levels of government -- federal, state, and local. I have spent the greater part of my adult life toiling in this area of the law, both at the Federal Trade Commission and in private practice. The subject of consumer protection is obviously one which I am delighted to discuss with you.

In Greek Mythology, the story is told of King Sisyphus of Corinth, who, because of his avaricious ways, was condemned to push a huge boulder up a hillside in Hades. But each time Sisyphus reached the top of the hill, the stone would roll away from him and back down to the bottom, and Sisyphus would repeat his efforts again and again. The story of Sisyphus warns us of the endless penalty which follows on the heels of a life devoted to crass exploitation of others. The symbolism of this story does not, however, translate effectively to the world of the market place, where the consumer -- who is often characterized in this country as the "King of our

Economy" -- frequently finds himself subjected to a similar fate though cast in the role of the exploited. Admittedly, for the American consumer, there is a considerable amount of leverage, or as Sisyphus would enviously have said, "downhill pull": notably, the basic fairness of the American businessman, the good sense of the purchasing public, and the governmental safeguards -- all of which provide means for coping with that difficult slick spot at the top of the economic hill where the buyer and seller meet in the moment of purchase. Focusing on this special moment, my remarks here today will examine two of the many agencies of the federal government specially created to deal with consumer problems -- the Federal Trade Commission and the President's Committee on Consumer Interests. It is only because of time limitations that I pass up the temptation to talk with you about the fine work of the Securities and Exchange Commission in curbing deception in the sale of securities, and the work of the Food and Drug Administration in the area of prescription drug dispensing and advertising.

II.

The five-man Federal Trade Commission was established by the Wilson-Administration Congress back in 1914 as an independent regulatory agency. Its role has been to enforce the Federal Trade Commission Act

which I shall discuss shortly. The FTC also shares with the U. S. Department of Justice enforcement of certain portions of the Clayton Antitrust Act, also enacted in 1914. Subsequently, a Depression-Era Congress in 1936 gave the FTC responsibility for enforcing the Robinson-Patman Price Discrimination Act, and several product labeling and identification laws.

At the heart of Commission enforcement authority is Section 5 of the Federal Trade Commission Act, which provides that "(u)nfair methods of competition . . . and unfair or deceptive acts or practices . . . are hereby declared unlawful." The broad sweep of this language is coupled with power to issue cease and desist orders against all who are responsible for deception, individuals as well as companies, even their advertising agencies -- and heavy penalties for violating these orders. Within the agency itself, one of the five internal bureaus, the Bureau of Deceptive Practices, is responsible for combating and eradicating deceptive acts or practices in interstate commerce.

Over the years, one of the most frequent targets of Commission action has been deceptive pricing practices. Where sellers advertise products at price reductions, the Commission insists that the former, or regular, or trading area comparative price on which the reduction is purportedly based must in fact be the usual price of the product, and not

a fictitious, deceptive price. Receiving similar scrutiny are offers which typically contain such come-on language as: "You have been specially selected . . ."; "Buy now or lose the chance . . ."; and "You can earn up to X dollars a week . . .".

The FTC takes the position that a buyer is entitled to know what he is buying, and from whom he is buying. Thus, products which are manufactured to look like a different and more desirable item to an unsuspecting purchaser, or products which are given names that mislead consumers into thinking they are getting something of higher quality or prestige are vulnerable to attack. Likewise, so-called "wholesalers" and "factory outlets" which are in fact retail enterprises misnamed for the purpose of deceiving unwary purchasers may be called to task by the FTC.

Other perennial deceptions include false advertising of guarantees without a fair disclosure of their limitations. "Bait advertising" is another. "Bait advertising" involves a scheme to advertise a popular article at a ridiculously low price simply to lure customers into the store or provide a door-to-door salesman with easy access to a consumer in his home. The trap inherent in this deception snaps shut when the bargain bait cannot be purchased, for one pretext or another, and the salesman, after disparaging the advertised product, attempts to switch the customer to a higher-priced substitute. Again, this technique has been under steady

fire from the Commission over the years, along with the multitude to schemes aimed at inducing the consumer into purchasing goods or services by representing or implying the existence of material facts, which simply do not exist.

As I mentioned earlier, the FTC is also charged with the responsibility of enforcing several product labeling and identification laws. The Wool Products Labeling Act of 1939, by its very title, speaks eloquently of consumer protection. This legislation followed on the heels of a history of consumer deception in the sale of woolens. Many garments sold as "wool" were composed of used or reprocessed wool. It is noteworthy that this law was enacted despite strong objection from some members of the industry. Consumers insisted on its need. I am sure that most responsible members of the industry now highly approve of both the law and the fair manner in which the law has been administered by the Federal Trade Commission. The Fur Products Labeling Act was enacted in 1951 in response to such practices as selling dyed rabbit fur and dyed dog fur under some 100 odd names including such euphemisms as Manchurian Fox and Belgian Beaver. This Act protects consumers and others against misbranding, false advertising and false invoicing of fur products and furs. The Flammable Fabrics Act, which was recently invoked in a widely publicized "torch sweater" case in New York, prohibits the sale of articles of wearing

apparel which are so highly flammable as to be dangerous when worn. Also, The Textile Fiber Products Identification Act of 1958 protects producers and consumers against misbranding and false advertising of the fiber content of textile fiber products. These areas of consumer legislation were enacted because you and your fellow citizens spoke up for relief. The effectiveness of this legislation is borne out by the confidence we all have in the articles of apparel we purchase at the clothing store.

In a recent and timely pamphlet entitled "The Ungentle Act of Self Defense", which can be obtained by simply dropping a post card to the FTC at Washington, D. C., the FTC tells how you as a consumer can exert a final defense against deceptions in the market place. You should shop more before you buy; bring your complaint first to the seller; report false advertising to the medium or media carrying it; report deception to local organizations such as the Better Business Bureau concerned with better business standards; and write the facts to the FTC.

Last year, the Commission initiated a pilot program in the Washington, D. C., area, wherein it established a special consumer complaints office in the downtown area, principally serving the poorer economic class of citizens. Under this program, Commission attorneys receive complaints from individual consumers by telephone or in person.

Consumers who have been victimized by unfair or deceptive business practices are urged to report their experiences, with apparent violations of laws within the FTC's ambit being promptly investigated. We see in this experiment a willingness to innovate, to try out new ideas, to chart new courses in the public interest.

But the legal power of the FTC is limited in terms of its budget and manpower. Realistically, it cannot do the whole job, but rather must concentrate on cases involving the greatest "public interest". The FTC provides just one of the many arms of protection of the public from that small percentage of the business community who engage in unfair and deceptive selling practices. As I have said, at the top of the competitive hill stands the consumer, and his influence on the market place becomes formidable when it takes the form of an alerted public. Chicanery deserts the moment of purchase when confronted by the narrowed eyes of an informed buyer -- and the P. T. Barnum-styled "suckers-born-every minute" tend to become a chapter of the past.

I would be remiss if I did not mention briefly Senator Hart's Truth-In-Packaging Bill which recently passed the Senate and is now before the House of Representatives. This is legislation in the highest level of consumer interest, and a bill spearheaded in no small measure by the vigilance of NRTA legislative representatives. Because of your association's

work, I am confident that this bill today will become law tomorrow.

In 1964, President Johnson set up the President's Committee on Consumer Interests. This organization has performed yeoman's service in tackling such jobs as: disseminating information on consumer credit rates and terms; strengthening local Better Business Bureaus; promotion of federal and state consumer legislation -- in general stirring up the dust in corners which have not received the attention they deserve. I urge you to write the President's Committee on Consumer Interests for an unexpected surprise as to the many areas of information which will be valuable to you.

III.

Never before has there been such an enlightened awareness of the economic rights of the American consumer. Much activity is stirring in Washington, D. C., on behalf of you and me. But what does this all mean? We have traced major legal developments from 1914 to 1966. Is it now time for us to sit back and assume that somebody is looking out for all of our interests? The answer, we all realize, is "no". Dr. Johnson once said: "Power is always gradually stealing away from the many to the few, because the few are more vigilant and consistent." This statement illuminates a great deal of world history. The story of Rome, the story of Hitler, prove the point. This statement illuminates also the need to be as vigilant

and consistent as "the few" in all areas of our life.

You are here today because you have elected not to sit back and assume somebody is looking out for your interests. You are leaders in this dedicated organization, the NRTA. You represent the highest ideals of Older Americans in the United States. I started out life on a farm in Indiana, and have had the good fortune to speak to many important groups over the years. But let me say this: I have never before had the privilege of knowing or serving an organization which has accomplished quite so much as yours in quite so short a time. I am confident that the ideals and hopes which shaped your early lives and mine will continue in great measure because each of you is showing the Younger Americans how to get the job done.

I am confident that all of you in NRTA understand very well the fact that willing individual assumption of the responsibilities of citizenship in our society is at once the best guarantor of the continuation of our individual freedoms and the best insurer of a system of government that benefits all of us. Time does not permit my continuing this dialogue now. I will look forward to a further opportunity at one of your future meetings. I thank you all for the privilege of being here today.