

THE STATE ATTORNEY GENERAL'S ROLE IN
CONSUMER ISSUES

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Quite awhile ago a ship was sailing in the Mediterranean and it happened to have a mishap and sunk. When it was all over, some individuals found themselves marooned on an island about 100 or 150 yards off shore. One of them was a lawyer; one of them was a priest; and one of them was a physician. It became necessary for them to decide who would swim from the island over to the shore and seek some help. The main problem was that there were about 150 or 200 sharks swimming around in the water between the island and the shore. They decided that they would draw straws to ascertain who would swim ashore. The lawyer lost and it became necessary for him to jump into the water and swim ashore. No sooner did he jump into the water when all the sharks spread out and opened a beautiful path for him to swim to shore and seek help. The priest got all excited and exclaimed, "Good Lord! A wonderful, beautiful act of God!" the physician said, "God, hell! It is professional courtesy".

What I wanted to present is that I feel before this august group I can expect the professional courtesy of not having grapefruits and such things thrown at me. But you know what I do for a living, in other words, work for the Attorney General, and it is not always that happy. Sometimes when I do speak before certain groups of various factions of our economy, they are not too happy to hear me and I am looked upon with the possible look that it would be good if I died in the course of my speech. But I hope that I am going to be able to hang on and finish it off. But I know this assembly and if something should happen to me, I hope some one will carry me away.

Inasmuch as the title of my speech, the topic I was assigned, is "The State's Attorney General's Role in Consumer Issues," let me tell you what I was told as an introduction. It is a beautiful introduction, I didn't write it, but I heard someone say once that the introduction was very nice and had my lover been here, she would have been thrilled and had my father been here, he wouldn't have believed it.

I have been a representative to the National Association of Attorneys General. Now this is the organization, like other organizations, that controls and has to do with the activities of the various Attorneys General throughout the United States. Within that organization there is only one committee that has its own secretary, that has its own meetings two or three times a year, and actively engages in a series of activities outside the national organization that really are of great merit. That group is the Consumer Protection Division; Consumer Protection Committee of the National Association of Attorneys General. There is such a committee and I was privileged to serve as the Chairman of the Mid-

western Region of it and I am certainly a member now. Therefore, the remarks that are made go further than the State of Illinois. The remarks that are made, I think, speak for the activities of Attorneys General throughout the United States.

Now the first issue is "What is the Attorney General and how did it come about?" The name is a funny name when you think about it, for why would a man be called an "Attorney General" and where does the "General" fit in? Very briefly, what happened is that most of our laws that we have in the United States have been developed from England and the attorney for the king was an appointed individual, I think Thomas More was one, and being appointed as the attorney for the king, it was his responsibility to be sure that the laws that were designated by the king, and if the king said that one could not go hunting on this land or one couldn't go into Sherwood Forest at night or something like that, he would tell his attorney that he did that and the attorney would say, "Yes, King, that's a good law." But the problem was that he had no one to stop people from hunting or to stop people from going into the forest at night. The king, therefore, decided to have the army do these different things. When he made a law, he would tell his lawyer and the lawyer in turn would tell the army to do it, but that became a little complicated when the army wouldn't listen to the lawyer. A lot of people don't listen to lawyers now-a-days anyway. The army absolutely refused to listen to the lawyer so the king said, "not only are you an attorney, but you are a General so when you tell the army what to do, they will do it." Therefore, he became called the Attorney General and that carried on until today. We now have a Federal Attorney General, a state Attorney General, and all kinds of Attorneys General, but they are not Generals at all; they are attorneys. But sometimes they tell me what to do or other people what to do. That is the development of the title "Attorney General."

Now when the original situation arose of an Attorney General for a particular state here in the United States, the main idea followed that of England. The Attorney General became the attorney for the Governor of the various states. The President of the United States also has an Attorney General and his duties were fairly little. He was called upon to tell the Governor that certain rules and laws were proper and constitutional. He also became the attorney for the myriad of government agencies and at first, of course, it was not very complicated. However, in our present society, as a typical example, the State of Illinois has 300 different various governmental agencies that are represented by the Attorney General, by the leading law officer of the state.

For example, there is the Superintendent of Public Instruction, we are his lawyers. If he is served with process, if he is served with a lawsuit, he just picks it up and brings it to us and we go into court representing him. There is the Department of Registration, where men are registered to be lawyers, or real estate salesmen, and things of that sort. They have their own rules and regulations as to who would be registered, but when a controversy arises or a lawsuit arises, it is the Attorney General who represents that agency. It sounds simple as I say it, but it gets

complicated when there is a difference of opinion, in many instances, between the Attorney General's position and the agency's position. Then it becomes rather difficult.

He presents the Racing Board, which has been involved in a lot of action here in the State of Illinois. He also represents the Tollway Commission so if you are driving around in your car and a truck is salting the streets and his lights are not on and you run into him and you are injured and sue the Tollway Commission, we then represent the Tollway Commission. So there are great duties of the Attorney General, enough to keep hundreds of lawyers busy and enough to keep the Attorney General busy.

We in the State of Illinois were almost the first ones in the United States, and when I say "almost," we were the first in pollution problems and in ecology problems. There are other states, of course, that did other things, New York for instance, in consumer matters. But in pollution matters we were the first and we were the first to develop what is called the doctrine of parens patriae. I can't translate that too carefully, but I can tell you exactly what it means. What it means is that the Attorney General feels that under the constitution that set up the office of the Attorney General, that he represents the people of the State of Illinois. Not only does he represent the Governor, not only does he represent all the various agencies that exist, but he also represents the people of the state. When a person complains that the air is not fit to breathe or a person complains that he bought a clock and it does not work properly or he has been defrauded in a particular business operation, it is the Attorney General who has decided that he represents the people.

Now this is a whole new concept of what we do. A concept that I think has developed very heavily in the State of Illinois. When I came into office in 1969, there were 2 lawyers and 3 secretaries in the division that I was put in charge of and now we have 100 working in the Chicago Office alone and of that we have 25 lawyers and 75 supportive people. We have an office in the Loop as well as an office on the North Side, the West Side, the South Side, and also an office in the Northwest area of Chicago where they speak Spanish and English. We also have 13 or 14 offices surrounding the City of Chicago and other offices throughout the state. So it really is a big business and it also is the bringing of government down to the people which is an entirely new concept of what the Attorney General is doing. A concept, by the way, that has now drifted over to the other States in the Union. There is not one Attorney General that I am aware of in the United States that has not thought of the possibilities of this particular operation and the good it can do his state. So those Attorneys General who do not have statutes, that do not have power, that are going to in the future, are trying to grasp on to this aid of helping the people and this parens patriae doctrine.

Now although they are all trying to grab on to that particular doctrine that I mentioned, they do not all come in on the same particular philosophical concept and approach that we have in the State of Illinois and our position here is one that does not always meet with great applause when we present it. We feel that

we are far from the type of an operation that Ralph Nader or those who are involved with his particular movement would present, without speaking for or against the particular movement. We feel that it becomes incumbent upon us, as the Attorney General of a state, as a leading law enforcement officer of a state, not only to represent and protect the interests of the individual within the state, but we also are charged with the responsibilities of representing the corporations within a state. So, therefore, when a complaint is brought to us or we get involved in a situation, it is not an immediate call of saying that the consumer is right, the business is wrong. We do not start off with that concept because it is necessary to operate properly within a major industrial state that business keeps flowing and things are correct and those businesses that are honest and those businesses that work in a fashion that benefits the state, we are all for. If a business should drift off into an area that does smack of fraud or even implies the possibility of a problem, we are more in a position where we want it cleaned up and get that business operating with the state to provide revenue for the state and to provide a service for the people. The elimination of business cuts down the possibility of competition between different endeavors. Therefore, this is the philosophy we have taken, but this is not basically the philosophy of many states.

Many states have taken the concept of the moment that something goes wrong, they run into court and they file a lawsuit. We do not think that that is proper. Even with the largest staff in the country, if I did that, many complaints would fall by the wayside. Also, the filing of complaints in many instances, I have determined, is what is desired by many fraudulent operators because they come into our state, they operate in a fraudulent way, they want us to file a lawsuit against them, and then the people who have been frauded and want their money back or some consideration or care from them, they say, "We're sorry, your Attorney General went into court, got an injunction, and we can't do a thing for you. We can't operate in the state. The fact is that we are closing up our shop. He has driven us out of business and we are going away." And I have always felt that this pyramid sales problem, which many of you are perhaps aware of, that we have had in the State of Illinois and all the other states have had is really a problem that the developers of it have expected. They have expected to have problems with the Attorney General and when they do have a problem, they listen to our lawsuits, they even enter into agreements sometimes with us, but then they can't pay off because we forbid them from operating within the state. It appears to me that a combination of both the prosecutive approach and the injunctive approach is the best one that a state can involve themselves in. It appears to me that that is the best system for the state itself although it becomes very difficult to get that concept across. I can get it across to you here because of the little joke I told. You have got to listen to me; you have no place to go unless you want to get up and walk out. But, in any event, it becomes difficult when a person comes into your office and makes a complaint. You listen to what he says and he has been taken. It is a terrible situation and all that person wants is for you to move quickly, go into court, and not to permit

the people to exist. The problem that we have is that we have thousands of complaints. We get about 2500 or 3000 complaints a month in our offices and it becomes necessary for us to try to jive the whole thing together; to put it all together and do the best that we can for the people. The best we can do does not always mean a fast lawsuit.

Now they say that when you give a speech, you should never read anything, but there is something here that I could not memorize; I just got it this morning so I will have to read it to you, but it is very short. The word "consumerism" and what it means to many people is the topic of an article in a DuPont publication; DuPont Chemical Company published something in which Senator Warren Magnuson, who has been a friend to the consumer movement, states his definition of what "consumerism" is. He said:

"Consumerism" is a word used to describe the phenomenon where by purchases of goods and services are trying to attain a marketing system which makes the consumer sovereign, which guarantees to him the right to safety, the right to be informed, the right to choose, and the right to be heard. "Consumerism" is based upon that basic tenant of the free enterprise system which says that the consumer, rather than the government, should control, through rational purchasing decisions in the market place, which goods and services are produced, but "consumerism" looks to government to control producers who would interfere with rational choice and, thereby, destroy the free enterprise system."

I think that that was a pretty good definition of the government's role in the consumer field. You can look to us to clear up a problem, but not to control the actual purchases of the item. We are there for things like regulations on "truth in lending;" we are there to try to explain, but there are those who have different opinions as to what "consumerism" is and that reminds me of a story.

A man went to see a psychiatrist and the psychiatrist administered the Rorschach test to him. The Rorschach test is the ink blot test and he showed the patient the ink blots and he is to come back with the meaning of each ink blot. The psychiatrist showed this patient this ink blot and patient looked at and said, "Oh, my, there are two people in there with no clothes on, doing terrible things." The psychiatrist held up another one and showed him. "Oh, my goodness, it is a terrible lewd scene. I won't even tell you what it is. Take it away." The psychiatrist shows him about twenty-five ink blots and each time he showed him an ink blot, the patient just said that it was some kind of lewd scene and he didn't want to see it. The psychiatrist said, "My God, I showed you all these ink blots and I want you to know that I think you are a sex maniac." The patient looked at him and said, "Me, a sex maniac' you're the one with all the dirty pictures." It really matters and depends on which side of the table you are looking at the situation from. If you are looking at the situation

from a business side, from a business environment, and you do not want to take into consideration what the people want, what the consumers want, you will tell yourself, "We will tell them what we want. After all, I am the President of a multi-million dollar corporation. I have developed these products. We have psychiatrists and people looking around to see what the public really wants and we will make that determination and sell it to them." That is one way of looking at it. The other way of looking at it is the way that Senator Magnuson has presented here. It appears to me that it becomes a fight for control. The only problem that we do not have control over, the only major problem that arises, is that we have no control over the advertising media.

Advertising is one of the most important factors in developing the need for products among the public. If the public does not react to the product as they get it and they are basing their decisions on advertising, then we are controlled by those who analyze the picture and determine what is going on. Therefore, when you talk with government, it is the government agencies that can issue some controls and some hold back on particular advertising. Just to give you an example of the way that advertising works, with no dig or intended dig to the advertising industry, as, in some particular instances, the advertising industry has its frauds in it just like any other industry.

I am sure that you all recall an ad where they took a pencil and they had a little ball of shaving cream, two balls of shaving cream actually, that they put on the table and they said that one is so thick and so good for your whiskers that they make your whiskers stick out and you just cut them right off. The other one was a weak one and it doesn't do any good and they took a pencil and they stuck it in this ball of shaving cream; it stuck up straight; the shaving cream held it up. But when they put a pencil in the other one, it fell right over. What they neglected to tell you is that they had a wad of gum underneath the ball of cream that was supposed to be so thick and that is what made the pencil stand up. I couldn't believe it when I read the story about the case.

Another one was an ad for glass that went into the front windows of a car and they showed you how this particular type of glass was so good because it offered no distortion in your view, but they neglected to tell you that when they made the T.V. movie, they didn't have any glass in the front window of the car. It is unbelievable the way things go, but in a fraudulent situation where you are buying items, you are really close to the store and you know what is going on. When you are controlled by advertising you are in a very difficult situation because you are about 4 or 5 steps away from the particular item that you can grab because you see the advertising and that's what puts you on to it.

Now there are many ways that an Attorney General's Office can operate to protect the consumer. It can be an aggressive office, that actually goes out and looks for trouble, or it can be an office that just sits around and takes complaints. Now the things that we do, the things that most major states do, are sometimes not available to the smaller states. Not available because of money,

personnel, or even the interest to go out and do them. But I would like to tell you basically what we do here, what we try to do here, because I feel it is sort of the model for what a state could be.

We have a very extensive education program. We do it in conjunction with the Superintendent of Public Instruction. Members of my staff and myself went to various superintendents of schools throughout the State of Illinois and we lectured to them on the effect of consumerism and what we felt our position would be in the educational system. We are blessed in the State of Illinois by being one of the few states that has a compulsory consumer education statute. One cannot graduate from high school in the State of Illinois without taking a course in Consumer Education. The problem is how developed is the course, how effective is it. This is being worked on right now; it is becoming better. It is a hundred thousand per cent better than it was 4 or 5 years ago and at the present time I am sure Miss Metcalf will get into it, what is going on in the State of Illinois as a model for other states. The Federal Government also has printed a set of guidelines. I think it is kindergarten through grade 12. There is a whole concept in the classroom. There is no longer a case of "buy this or that brand;" it is a case of "buy that brand, see what the net content is and what is the better value." Part of that program is unit pricing that has been followed voluntarily by most of the major supermarket areas in the State of Illinois.

Another field which we are greatly involved in is legislation. We feel that, unfortunately to catch and trap and nail those unscrupulous operators, it becomes necessary to have a heavy legislation program that is, of course, enforced. We have bills pending in the legislature concerning door-to-door sales, registration of mechanics, estimates on mechanical bills, holder in due course legislation, and things of that sort that we are basically involved in, the unit pricing also and just a little variance in our Consumer Fraud Act that provides more teeth.

We also feel that investigation is rather important. We have an investigative staff within my office, again a luxury that not many states have and we are fortunate enough to have. Therefore, rather than sit around and wait for complaints to come in, we are able to read the newspapers everyday, pick out the ads, respond to people who say, "I went and couldn't get it," respond to people who say, "I went in for 20 free lessons or whatever it is supposed to be for classes in these health schools and they conned me into a \$285.00 contract." We have investigators that we send out and they sneak around. It is a luxury, but it is most important.

Also we have within the office a constant analysis of complaints that come in. In other words, we periodically, every three months, look over (we file alphabetically and by industry) the complaints as they come into the office and ascertain where trouble arises in a particular field. This is an important adjunct of the office because then we know. But we have to use intelligence in that and decide what we want to do. If you get 25 com-

plaints against Marshall Field's, they might not rate an injunctive action. But if you get 25 complaints against a man on the corner who sells used cars, then he may. So we have to analyze the volume of the business; we have to look at the situation carefully. It is important, we are an elected office, the people have put their trust in us and, therefore, it is important that we do not violate that particular trust. A very easy thing to do as I will get into a little later when I tell you about our powers, a very broad factor that is overwhelming and ill-used can cause great difficulty.

We also have a very close cooperative effort with federal, local, and city agencies. We cooperate completely with the City Department of Weights and Measures. When a problem comes up that they lack jurisdiction on, they shift it over to us. When we have a problem that we cannot handle, we shift it to them. We work closely with the Federal Trade Commission and I am sure that during your dinner tonight you will be talked to by a very lovely lady, Virginia Knauer, and we have cooperated completely with the office. Many, many matters have come to her attention and we shift them back and forth. We also cooperate with, I have mentioned the Federal Trade Commission, the Chairman now, Mr. Lewis Engman, is a young man who worked for Virginia Knauer. He was on her staff and is a very competent young man and we are really looking forward to his work. Mr. Fitzpatrick with the F.T.C. started to change the image and I am certain that Mr. Engman will continue. There are people here from the F.T.C. and they are heavily involved in this consumer operation.

Now where does the power lie within the state activities? Where are most of the powers? Forty out of fifty of the states have the power to control consumer activities within the Office of the Attorney General. I feel that that is where it ought to be. There are many other types of organizations; there are consumer councils; there are offices within the Governor's Office; there are county and city agencies; and then there are some states that have none. None of these things are bad; none of these things should be objected to. Some of them are very effective. The State of Wisconsin has an office outside the Attorney General's Office that is a marvelous organization. Michigan has a Consumer Council. Many states have these organizations and they are fine. But there is really only one place that the really "gutsy" activity can be; there is only one place that the real pressure can be given and that is within the Office of the Attorney General. The Attorney General's Office is basically, irrespective of philosophy, a constitutive office and it is that office that the businesses that are operating in a fraudulent manner are afraid of and it is that office that does not have to check with anyone else before moving in. Therefore, it is my opinion, that is where it ought to be and apparently it is the opinion of the majority of states because that is where they placed it. If your state does not have it, does not have activities within the Attorney General's Office, then they will normally have some other type of activity. But by virtue of your position in the community, if you are ever called upon, or if the opportunity ever presents

itself to try to get it where it ought to be, to get "where the action is" as they say, it is the Attorney General's Office of the various states that have it.

Now the power that we have, as I said, is overwhelming. What can we do? We have a typical statute. I should say, a typical good statute. Some states don't have good statutes at all. But among those who do have good statutes, among those who do have the power and the states who have been forward moving, the statutes have been similar to ours. One of the most important powers that we have is called "the power of subpoena." Not necessarily do I need a grand jury, I don't need a court action, I don't need anything. All I need is a pen and a piece of paper and I sign my name on that piece of paper and out it goes. It goes out under three conditions -- when I think a fraud has been committed, when I think a fraud is going to be committed, or when I think a fraud is being committed. Now you really can't get much broader than that. Out goes the subpoena and the subpoena says, "Bring everything in; give me the names and addresses of everybody you sold this article to. Bring my anything I want." And if they don't bring it in, they are out of business because my statute also provides that if they fail to obey my particular subpoena, an injunctive action will start. This injunctive action will take away their city license to do business. The injunction gets issued and if they don't do what the injunction says, then they are in Contempt of Court and they go to jail. They get picked up and we have done that on a number of occasions. That is just a subpoena. Now once all this stuff comes in and we review it, if we decide that a corporate activity or an individual activity is a fraudulent activity, then we file similar types of suits that provide that everything that I just said, an injunctive remedy, the corporate charter, contempt, anything that you want plus one other remedy and that remedy is called "restitution." Now in the law that means, "get the money back for the person that was involved."

There is only one thing that I can ask for further than that and I don't think that I am going to get it if I try it in Springfield and that is called "penalties." In other words, if somebody does a bad thing, not only should they give back the money, but they also should then come in and pay hundreds of dollars as far as a fine is concerned and a penalty is concerned. This is something which we have not been able to get through Springfield. The statute does not basically read it now, but we might try as some judges get so mad when they see things that they say to a fellow, "Okay, pay it back and \$300.00 for the Attorney General's Office for costs as a penalty for being a bad boy." But we take the money and no one has appealed it yet so our position has remained fairly constant. So if there are any defense lawyers in here who want to come in, I am always happy to see them. I have lawyers that want to go to trail on an appellate matters, so we will be happy to handle it for you.

A long time ago when some one introduced Winston Churchill to give a speech, they introduced Mr. Churchill and they said, "We

would now like you to meet Mr. Churchill who has during the course of his life consumed enough brandy to fill this room up to here." Mr. Churchill stood up and looked around and looked up at that spot on the wall and then looked up at the ceiling and said, "My God, so much to do and so little time." So there really is an awful lot that I could tell you and an awful lot about particular cases in which we get involved in, things that are interesting and things that I hope are as useful as they seem to be funny, but I think for our purposes now and the meetings that are coming up, I will thank you very much for your attention.