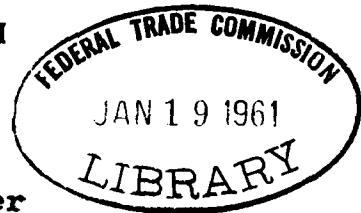


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**THE PRESERVATION OF FREEDOM  
REQUIRES SOMETHING OF YOU**



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Statement by Earl W. Kintner  
Chairman, Federal Trade Commission  
To the Annual Meeting of the  
Better Business Bureau of Memphis  
Memphis, Tennessee  
January 18, 1961

I.

Freedom is difficult to define. Yet a society dedicated to individualism must somehow perform this difficult task of definition if it is to survive. 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 owns a cannon. If a distance of ten miles separates this man from his nearest neighbor, then there is no reason why he must not be perfectly free to fire his cannon morning, noon and night. But if he should move to a crowded city,

his freedom to fire cannon salutes invades the rights of others and must be curbed.

The American Experiment has attempted 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. 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.

You as American businessmen should feel a special urgency to recognize and discharge the responsibilities that free men must bear. You have an intimate 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 before us are why this seepage has taken place and how further seepage can be stopped. If we believe 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 welfare in a given area of concern. The history of our antitrust and trade regulation laws illustrates this point.

We have placed faith in the resolution of economic problems by the interplay of free market forces. Monopoly and unfair competition destroy this interplay. A market ceases to be free when predators are able to deny entry to struggling new enterprises, to damage competitors by foul means or to set unilaterally the conditions of trade. In the late 19th Century it became painfully obvious that private efforts could not stop the transfer of market power from diverse competitive entities to the trusts. Therefore, the national interest in free enterprise demanded the creation of the antitrust laws and vigorous enforcement of those laws by the government. Early in the 20th Century it became obvious that the freedom of the 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.

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 the 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 on every American businessman. If business shows a capacity for self-discipline, a recognition of its responsibilities, and a willingness to obey the laws that guarantee free competition and fair competition, then business has little to fear at the hands of the American public.

## II.

Paradoxically, the best tools for preventing the encroachment of statism in the future are the controls

placed upon business behavior in the past. If competition is abused and the market becomes a jungle, control over the economy will not remain in private hands. The representatives of the American people chose well when they devised our antitrust and trade regulation laws, for these laws inject the government into the marketplace in the most limited manner possible. Indeed, the antitrust and trade regulation laws are conservative in the truest sense of that much abused term. They represent an undertaking by government designed to prevent still wider undertakings by government. These laws are an expression of public confidence in the principle of free enterprise. If that confidence is not preserved, the rise of statism is inevitable.

Let us examine the nature of our respective responsibilities in insuring compliance with the laws that defend and preserve our free economy.

The first duty of a government agency charged with the enforcement of the antitrust and trade regulation laws is the vigorous enforcement of those laws. Any law becomes a mockery, an ineffectual pious expression, unless it is enforced. No economy can be free and fair unless malefactors are restricted and timid souls easily tempted are deterred. An agency of government charged with the duty of law enforcement must allow nothing to impinge on its enforcement role. However, when laws are enforced by an

administrative agency, the flexibility inherent in the administrative process allows such an agency to assume other roles not incompatible with its enforcement duties. The Federal Trade Commission has demonstrated this flexibility. The Commission's intellectual parents were staunch believers in the vigorous enforcement of the anti-trust and trade regulation laws, but those foresighted men, while abhorring malefactors, also held a firm belief in the basic morality of most members of the business community. They were sure that the principles embodied in the antitrust and trade regulation laws could best be implemented by a combination of vigorous enforcement and education of those businessmen who honestly wish to comply with the law and compete fairly and freely. The Federal Trade Commission quite honestly wishes to be a menace to the predators of the marketplace, but it also seeks, in the spirit of Woodrow Wilson, to offer to businessmen something more than the menace of legal process.

### III.

The responsibility of the honest businessman is twofold. His first responsibility is to learn the requirements

of the laws guarding our free economy and to comply with those requirements.

Compliance with the spirit as well as the letter of the law is required. 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.

We must not forget that every businessman has a duty to the free enterprise system itself, in addition to the duty 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 for 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. Compare your estimate of how many people wade through dry tomes on economics in any given year with your estimate of the number of advertisements the average person is exposed to during the same period. I suspect you will conclude that the latter is the major source of most impressions of our system.

The Federal Trade Commission is closely concerned with this vital distributive phase of the economy, perhaps more so than any other government agency. The Commission has been granted broad powers by the Congress to prevent "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." Armed with this power the Commission moved against false and misleading advertising early in its history, a history that now extends over 46 years. And knowing that it is important to assist honest businessmen in avoiding deceptive advertising practices, just as it is important to quickly institute formal proceedings against the unscrupulous few who recognize no laws, the Federal Trade Commission, through

its Bureau of Consultation, has developed a broad and versatile program to inform and educate the business community of the legal pitfalls in advertising. Those of you who participated in today's earlier sessions should have received a quick, basic, but, I hope, effective education through the Bureau of Consultation's newest technique--the local conference session.

#### IV.

The Federal Trade Commission has been doing its part to safeguard the free enterprise system. In 1960, the Commission had a record year. Totals of 560 complaints and 410 orders topped any performance figures in the Commission's 46-year history. The previous record year of 1959 was exceeded by 52 per cent in complaints issued and by 36 per cent in orders.

The biggest percentage gain was in actions to halt antitrust violations. Here the 202 formal complaints more than doubled the previous record number of 99 in 1959 and more than tripled the 66 complaints issued in 1958.

The increased volume of work was achieved with a staff only 8-1/2 per cent larger than in 1959--799 compared to 736.

I like to believe that the Commission's staff has caught fire with enthusiasm for the purposes this agency

serves. Certainly bi-weekly paychecks could not have accounted for the imagination and drive that so many on the staff have exhibited during the past year.

Also significant has been the full use the Commission has made of the legal tools Congress has provided. Instead of unbalanced zeal for either the bludgeon or the wagging finger, we have used either or both to best serve the public purpose. With a combination of education, persuasion, individual actions and large-scale crack-downs on those who would violate the law, we deployed the Commission's force to the basic objective of encouraging honest competition in American business.

In halting deceptive practices, the Commission's most conspicuous action was directed against "payola" in the broadcast of musical records. Eighty-three complaints and 90 orders issued during the year successfully attacked this evil at its source, namely, the record manufacturers and distributors who were making the illegal payments to disc jockeys who "exposed" the records on the airwaves.

Wide attention also was given the Commission's attack on misleading television commercials in which "demonstrations" exaggerated the merits of one product over another. The makers of seven well-known products were named in complaints which alleged, in substance, that camera trickery had been resorted to, or that significant facts regarding the televised portrayal had not been disclosed.

Another coordinated attack was made against those sellers of corneal contact lenses whose advertising claimed that any person could wear the lenses and without discomfort. The Commission took the position that a significant number of people cannot wear them successfully, and practically all will experience some discomfort at first.

Still another group of actions was directed against sellers of reconditioned television tubes whose advertising either implied or claimed the tubes were new.

Other widespread deceptive practices under steady attack during the year were fictitious pricing (in which the advertised "former" or "regular" price is set at a falsely high figure in order to make the selling price seem to be a bargain), false advertising of vending machine profits, debt collection agencies that sought to hide their true purpose, "advance fee" loan procurement and real estate rackets, and misleading advertising of money-making opportunities for graduates of correspondence schools.

Altogether, the Commission issued 359 complaints in 1960 against deceptive practices, compared with 273 in 1959. This increase includes more than doubling actions to halt false advertising of foods, drugs, cosmetics and therapeutic devices. The increase was from 21 to 43.

In the antitrust field, the report shows a sharp increase in anti-merger activity. Eleven new complaints

were issued in 1960 (compared to 3 in 1959), and the Commission ordered six corporations (compared to one the year before) to divest themselves of properties illegally acquired. The products involved in the divestiture orders were: petroleum, salt, aluminum foil, sporting goods, flour mixes, and paper pulp facilities.

An unprecedented effort was made to obtain greater compliance with the Robinson-Patman Act's prohibition against discriminations in price and services favoring big buyers. Here a total of 170 complaints was issued compared to but 80 in 1959 and 54 the year before. The 1960 orders were 58 compared to 45 in 1959.

In addition to formal case work, the Commission authorized a study to determine how enforcement of the Robinson-Patman Act might be augmented by informal means. A 10-man task force headed by FTC Executive Director Robert M. Parrish undertook the task and recommended the issuance of Guides to businessmen on how to avoid violation of Sections 2(d) and 2(e) of the Act. These sections prohibit illegal promotional allowances and services. In addition, the task force recommended greater use, for investigational purposes, of the Commission's power under Section 6 of the FTC Act to require reports from corporations.

The stepped-up enforcement of the Robinson-Patman Act also produced an unprecedented number of actions to

stop the passing on of brokerage payments. For example, the citrus fruit industry, where this practice was prevalent, was the recipient of 47 complaints directed against shippers of fruit and 21 against buyers.

The speed with which the Commission acted in the citrus fruit investigation was due to the use of the powers contained in Section 6 of the Federal Trade Commission Act. Heretofore this power had been but rarely used in conducting legal investigations.

We saw no reason why this very useful investigative tool should not be dusted off and put to good purpose. Among other things, Section 6 empowers the Commission to investigate by requiring reports from corporations, with stern penalties for failure to provide the information. The past year has demonstrated the effectiveness of this power and certainly justifies its continued and expanded use.

Backing up the greater volume of complaints and orders was an increase in the work of the Commission's compliance staff. A record number of 18 civil penalty suits against alleged violators was filed during the year.

The Commission made considerable progress during the year on its program to secure compliance with the law through voluntary procedures on an industry or community-wide basis. The program emphasizes efforts to educate business concerning the requirements of the law.

**Guides Against Deceptive Advertising of Guarantees and Guides for Advertising Allowances and Other Merchandising Payments and Services were issued and disseminated widely.**

The so-called "tar and nicotine derby" among cigarette manufacturers was terminated on an industry-wide basis through this voluntary method.

In Washington, D. C., city-wide meetings were held with furniture retailers and with appliance retailers to point out deceptive advertising of prices that violated the Federal Trade Commission Act, as was explained in the Guides Against Deceptive Pricing. Each of these meetings resulted in substantial elimination within days of the questioned claims by these retailers. These meetings were coordinated with complaints that the Commission had issued against alleged violators in these two segments of the retail industry.

The year saw greater use being made of industry conferences to acquaint businessmen with their responsibilities under the laws administered by the Commission. For example, a series of meetings was conducted in key cities for the jewelry industry, and FTC staff members addressed numerous industry groups on the subject of promotional merchandising programs.

By the end of the year, the Commission was conducting several trade practice proceedings to the end that threats

to fair competition be countered and consumer interest be protected. Included in these proceedings are the following industries: fresh fruit and vegetable, household furniture, luggage, residential aluminum siding, poultry hatching and breeding, and the pleasure boat industry. Advertising or Robinson-Patman Act violations, or both, allegedly are widespread in these industries. The Commission hopes, through these procedures, to secure needed correction of these practices.

During the year, the Commission also used the stipulation process to secure industry-wide compliance with the law. Allegations had been received that there was false advertising regarding television and radio cabinets which were not composed of wood such as walnut and mahogany but were, in fact, made of other substances. The Commission accepted numerous stipulations, by the terms of which manufacturers of rebuilt automobile parts agreed to disclose that they were rebuilt. In an effort to secure this disclosure on an industry-wide basis, the Commission is exploring the possibility of a trade practice conference with other automotive parts rebuilders.

In September, a meeting was held in Cincinnati in cooperation with civic groups interested in advertising, at which representatives of the Commission explained requirements of the law as applicable to advertisers in



that city. Today's sessions are in the pattern of the Cincinnati conference. Other meetings have been scheduled in the future.

These activities illustrate the Commission's continuing effort to aid businessmen who seek to comply voluntarily with the law. I know that you join with me in the hope that more and more advertisers will demonstrate a wholehearted willingness to obey the laws against deceptive advertising now in force. The only alternative is a painful one. That alternative is the imposition of a mesh of broad controls over advertising practices.

#### V.

Voluntary compliance with the law is the first responsibility of all businessmen, but there is another important responsibility that must be discharged if our economy is to remain free. I refer, of course, to the need for a demonstration that business can effectively regulate itself in the public interest.

No society can exist without sanctions against hostile and destructive conduct. These 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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