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Arlyne Reichert's statement on consumer protection

Arlyne Reichert

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STATEMENT BEFORE COMMITTEE ON PUBLIC HEALTH, WELFARE AND LABOR

Consumer Protection has recently become a fashionable term and its meaning has broadened with its popularity. The consumer's central civil right is the right to get his money's worth. However, this is becoming increasingly difficult and despite the proliferation of federal agencies, many consumers are being denied this basic civil right. Ralph Nader isn't far off when he ridicules the "powerlessness" of the consumer movement and compares it to an "expanding, gaseous verbal balloonfloating over the heads of do-nothing senators". The failure of federal agencies to cope with consumer's problems is typified by the FDA, FCC, the ICC and others becoming "captured" by the industries they were supposed to police. In recent years, federal agencies have served as often to undermine the consumer interest as to defend it. One federal commission did attempt to be effective ... in its 2 year life, the National Commission of Product Safety battled one industry after another on behalf of consumers and usually won.... that's why it didn't last long.

There is now an Office of Consumer Affairs in Washington headed by Virginia Knauer who has publicly engaged other members of the administration very rarely and gently. Such encounters as she has dared, like the 1969 disputes with the Dept. of Agriculture over the percentage of fat and chicken permitted in hot dogs, have seemingly been staged and coordinated by the White House. It is not easy to imagine Mrs. Knauer intervening in a significant case.

To do a job well a consumer advocate in Washington needs 2 things. . . lots of money and political independence. So far, no one has found a way to combine the two in one institution. Since Ralph Nader and his Raiders are unable to tackle problems all over the country, it's time the states assumed protection of their citizens.

This is the reason I am supporting the proposal for consumer protection. . . I realize that in theory, consumers should be protected under due process in the Constitution, yet, in practice, we know this is not the case. How many individuals will go to the expense of thousands of dollars to go to court to save a few hundred dollars? (those who earn less than \$4000/yr. in Montana) have been entitled to free legal services. However, the middle income group cannot afford the fees and attendant court costs. In addition, in the U.S., each side pays his own legal fees regardless of who wins the case. Even worse, in most states, consumer contracts may lawfully provide that if the merchant sues the consumer and wins, the consumer pays the merchants' legal fees. So, in reality, the consumer pays his own lawyer if he wins and both lawyers if he loses.

As Bess Myerson Grant put it in a recent Congressional hearing: "The law of all our states has often been hypocritical as far as the consumer is concerned. It gives him rights, but then creates economic barriers so high that it is impossible to enforce those rights. It tells him to spend thousands of dollars on a lawsuit to recover hundreds of dollars which he lost in a swindle."

Only a small percentage of consumers who are cheated seek professional help of any sort - 9% according to the book, "The Poor Pay More" by David Caplovitz. A professor from Columbia University reports that 97% of consumers sued in Civil Court in New York City never appear to defend themselves, and lose by default. Then the creditor extracts the amount from back accounts or garnisheeing their wages. Although many of these people might have refused to pay because the merchandise was shoddy or defective, they have no recourse.

A Supreme Court decision in 1969 did protect people from having their wages garnisheed without prior notice and hearing.

In Montana, as in most other states, the Holder-in-due course doctrine is widely used. This is the practice whereby a contract is sold for cash to a third party such as a Bank or Finance Company. This means if there is any problem, the payments must still be made. A case in point: A young wife joins a local Health Club. Her husband is transferred to a place where there is no health club. Her bank contract is for \$20/month. Despite the fact that she is no longer in Montana to attend the health club she must continue paying \$20/month to the bank until the contract expires. Another case; a rug costing \$600 proves to be defective. . . a finance company holds the contract. The dealer has left town. . . a balance of \$400 is still due. . . although the rug has completely deteriorated the payments must continue.

I feel consumers are deprived of their constitutional rights when injustices of this nature are commonplace. Yet, we're told it could be worse. If the Holder-in-due course doctrine were not in effect, many people would simply borrow cash at high rates of interest, pay cash for the merchandise and whoever loans the money would have even less interest in the consumer than the bank or finance company which buys the actual contract under the Holder-in-due course doctrine.

There are some laws designed to protect buyers. . . these rules constitute the law of misrepresentation and the law of warranties. Notwithstanding these rights, consumers are in terrible trouble. The structure of rights so elegant on paper, is more theoretical than real. The middle-class buyer of a non-functioning stereo, however, will be far luckier if he bought the stereo directly from the store, and if he's a good customer of that store. However, if friendly settlement is impossible, consumers might look to the courts. This is where the system of consumer's rights breaks down, for despite all their rights to fair dealing, consumers lack the oldest and most fundamental civil

liberty; the right to a day in court. The barriers which the legal system has erected to consumer litigation go a long way toward explaining the relative unconcern of some merchant and manufacturers with truthful selling and quality merchandise. As mentioned in Miss Speer's proposal - education of the ~~cities~~^{citizens} of this state is imperative. Some feel another answer lies in free legal help for consumers' others are interested in class action suits or small claims people's courts where it would not be necessary to hire a lawyer or engage in legale to resolve consumer's problems. In Massachusetts, third parties could be held responsible under the Holder-in-due course doctrine.

Frankly, I want a fundamental Constitution. . . I don't want statutory law in it. . . surely, there must be some way to help the consumers of this state in a fundamental way. . .