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THE SOURCES OF NECESSARY RESTRAINTS.

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Statement by Earl W. Kintner
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Before a Meeting of the
American Association of Advertising Agencies
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I.

Individual freedom is meaningless if any individual
is free to trample the rights of the many. Even a society

attention to the erection of restraints upon the abuse of
freedom. A society cannot be free if only the strong and

opportunity than in a complex industrial structure. However.

once the industrial revolution gained momentum the absence of restraints upon predatory economic conduct became intolerable. As the weapons of economic piracy grow sharper and inflict greater injury, the healthy conscience of a free society demands the imposition of more restraints of greater efficacy. Many illustrations of the operation of this principle can be taken from our economic history, but since all of us here are deeply concerned with the role of advertising in our economy, let us turn briefly to the history of advertising.

In the second half of the 19th Century two broad developments, long in coming, intersected. Revolutionary improvements in the national transportation network provided

an outrageous fashion. A recognition of the necessity of some restraints against false advertising soon followed. Voluntary groups of advertisers who recognized the responsibilities of their growing industry were organized and partially filled the vacuum, but responsible members

advertising was to become a reality. Soon after the birth

conditions and shifting competitive situations can produce

of which must be judged for deceptive qualities. Congress, fully realizing the difficulty of defining economic offenses but determined to persevere and extend a fair and free economy, wisely chose not to erect a universal statutory standard which might be adequate at the moment but which might become hopelessly outmoded as conditions changed. Instead, Congress created an administrative agency, the Federal Trade Commission, and charged it with the task of defining unfair or deceptive acts and practices as they occurred within the context of given competitive situations. The Commission has diligently pursued this never-ending requirement for definition. In literally thousands of cases, formal and informal, the Commission has established guides for the honest as well as prescriptions for the dishonest. The definitions of deception

severely as the outright falsehood. An advertisement

be deceptive even though every statement within it is

which eye programs for success evaluation of the product.

II.

In the wake of the sharp and sudden drop of public confidence in advertising late in 1959, enforcement activities by the Federal Trade Commission rose to a record level. In calendar 1960 the Commission instituted 359 new actions against deceptive practices, the vast majority involving advertising in some form. This unprecedented number

~~reflects the Commission's quick and decisive effort against~~

payola, an increasing concern with misleading "demonstrations" in television commercials, an awareness of the possibility of deception in the use of claims based on scientific tests, concentration upon industries in which deceptive advertising violations were particularly rife (such as contact lenses and television tubes), and a determination to mount a new attack on specific deceptive advertising practices (such as fictitious pricing and representations of profit and earning opportunities), that continued to flourish despite

advertisers in intrastate commerce are free to deceive,
the Commission in the past year has actively encouraged the
improvement of state statutes and local ordinances against

sanctions at the state and local levels.

I have spoken of the need for some restraints against
advertising harmful to the public interest and I have touched
upon the contribution of two of the sources of those needed
restraints. However, the federal government and the state

Individual integrity is at once potentially the most potent source of needed restraint and at the same time the restraining force most difficult to measure or evaluate. But one thing is certain--no system of laws, no ethical system, no civilized activity is possible without it. During the past 18 months I have suggested to numerous audiences of advertising men and women that the best way for advertising to avoid a permanent loss of public confidence is for each of them to develop a sense of professionalism, a sense of professional responsibility. A profession is distinguished by the recognition that ethical standards must govern every aspect of the individual's work and adherence to those standards even when adherence means temporary
incompetence. A professional must be willing to sacrifice

furnish all the necessary protection, for there will
always be a few willfully dishonest men and enterprises
who recognize no restraint except the compulsory process

advertisers suffer competitively and become tempted to

vigorous action by the Federal Trade Commission under
existing laws.

recent years. This public will not long tolerate blatant
assaults upon its credulity. If the advertising industry
does not restrain itself, the public will demand increased