



Federal Trade Commission

JONES DAY CHICAGO
20TH ANNIVERSARY CELEBRATION
MAY 2, 2007

Remarks of Deborah Platt Majoras
Chairman, Federal Trade Commission

The Rule of Law in Chicago and Around the Globe

It is an honor for me to return to Chicago and celebrate this 20th anniversary with you; while I left the office more than 13 years ago, I still regard it with particular fondness. In Al Borowitz's book on the first 100 years of Jones Day's history, he quotes Bill Ritchie as saying, "When we arrived, we basically opened with a dozen people, and I think all the established firms in town kind of yawned."¹ I laughed when I read that, thinking back to 1990, when I was deciding between Jones Day and one of "the established firms in town." I am sure that Bob Lee and Jim Hagy were getting tired of having to call me, but they never let it show (surprising especially for Lee). A lawyer at the other firm, however, finally said to me, "You know, Debbie, we really wanted you here because we thought you were special, one of us. But if you are seriously considering Jones Day, maybe we were wrong about you." I said, "you are right, I don't belong there," and I accepted at Jones Day the next day. There I would find a group of people who truly were exceptional, as lawyers and as people. Thank you for inviting me back.

¹Albert Borowitz, *THE FIRST CENTURY: JONES, DAY, REAVIS AND POGUE* 182 (1993).

Looking back to the 1980s, it could hardly be questioned that Jones Day belonged in Chicago – this major financial, commercial, and cultural center and by far the largest city in America’s heartland. Indeed, Chicago became a significant pillar for a Jones Day on the verge at that time of becoming an international legal powerhouse. This was fitting, because, historically, the city of Chicago’s contribution to the position of a young nation within the world economy cannot be questioned. In 1893, Chicago hosted the World’s Columbian Exposition, better known to us as the Chicago World’s Fair, to celebrate Christopher Columbus’s discovery of the New World 400 years earlier. Having beat out New York City, Washington, D.C., and St. Louis for the honor, Chicago did not disappoint, as the Fair attracted over 27 million people from around the world – that was about half of the U.S. population at the time – over a six-month period and was considered to be the greatest event of its time, setting the standard for future world fairs.² Now, there is no question that this was an architectural, cultural, and entertainment masterpiece. And it also gave us new symbols of our nation’s identity, as it introduced Columbus Day and the reciting of the Pledge of Allegiance by schoolchildren, the U.S. Postal Service produced its first commemorative stamp set, and the Mint offered its first commemorative coins.³ (Oh, and by the way, beer sales in Chicago doubled that year. Were you there, Melton?) Perhaps you knew all of this.

What I had failed to appreciate, though, was the enormous impact that this one event would have on the future of the United States and its place in the modern world. It had, reports

²Wikipedia.com, *World’s Columbian Exposition*, available at http://en.wikipedia.org/wiki/Columbian_World_Exposition.

³*Id.*

one source, “a profound effect on . . . American industrial optimism,” . . . [And it] became a symbol of then-emerging American Exceptionalism. . . .”⁴ Says another [commentator], “[t]he advent of the consumer-based society in America received its first major expression and celebration at the World’s Columbian Exposition.”⁵ Indeed, products introduced for the first time at the Fair included Cracker Jacks, diet soda, Aunt Jemima syrup, Juicy Fruit gum, the hamburger (for the first time in America), and Pabst beer.⁶

To realize the significance of this to the United States and to the world (right now you are thinking, how is she going to convince us that Pabst is significant?), we need to fast forward to today. Beginning in 1990, the Global McKinsey Institute, led by its founder, William Lewis, conducted a study to try to determine, to put it simply, why some nations are prosperous, while many remain poor even after years and years of foreign aid.⁷ McKinsey conducted the study by closely examining 13 nations in varying stages of economic development and tested some of the traditional hypotheses: differences in labor markets, capital markets, etc. But these were rejected as explanations when the evidence simply did not support them. No, Mr. Lewis and his Institute found that levels of productivity distinguished nations’ economic health, and that it is the intensity of local market competition that makes the difference in productivity levels.⁸

⁴*Id.*

⁵Julie K. Rose, *The Legacy of the Fair* (1996), available at <http://xroads.virginia.edu/~ma96/WCE/legacy.html>.

⁶Wikipedia.com, *World’s Columbian Exposition*, available at http://en.wikipedia.org/wiki/Columbian_World_Exposition.

⁷William W. Lewis, *THE POWER OF PRODUCTIVITY: WEALTH, POVERTY, AND THE THREAT TO GLOBAL STABILITY* 11 (2004).

⁸*Id.* at 13-14.

This is, of course, music to the ears of a competition enforcer, and indeed the United States has among the most intensely competitive markets in the world. Why? To understand McKinsey's conclusion, you need look no further than the title of Mr. Lewis' chapter on the United States: "Consumer is King."⁹ (Now I have been meaning to talk to Bill Lewis and tell him that "Consumer is Queen" might be accurate; I don't think anyone would doubt that I shop more than John does – although perhaps it evens out every time he gets new golf clubs). Says Lewis, "[t]he United States adopted the view that the purpose of an economy was to serve consumers much earlier than any other society," and we continue to "hold this view more strongly than almost any other place."¹⁰ Significantly, he concludes that, "Consumers are the only political force that can stand up to producer interests, big government, and the technocratic, political, business, and intellectual elites."¹¹

So, this consumer culture has strong roots here in Chicago, but it has important implications that extend well beyond U.S. borders. Since the fall of the Berlin Wall, the attempted transition from state-run economies to market-based economies characterized by competition has been rolling like a boulder down a steep hill. Whereas in 1990, there were about 25 competition agencies around the world, today there are over 100. The International Competition Network, an organization of competition law enforcers that the FTC and the Department of Justice Antitrust Division participated in forming with 15 other agencies in 2001, now has 100 members, and we will hold our sixth annual meeting in Moscow later this month.

⁹*Id.* at 80.

¹⁰*Id.* at 101.

¹¹*Id.* at 11.

And while I do not equate newly-created government bureaucracies with the existence of actual competition, the point is that the agencies were created – some converted from the old state monopoly offices – in recognition that markets and local competition are most likely to lead nations forward in their economic development.

Since the early 1990s, the FTC and the Department of Justice, mostly funded by U.S. AID, have worked together to provide technical assistance to competition agencies in developing countries. Not only do our attorneys and economists share effective investigational techniques and practical experiences, but they are supporting a generation of colleagues who can stand up for market forces in their nations. We started in Poland, Hungary, what is now the Czech Republic, and Venezuela. Our program soon expanded to include most of the rest of Eastern and Central Europe, Russia and the Ukraine, several more Latin American countries, and South Africa. Today, we are working extensively with China, which has been developing a new Anti-Monopoly law, and India – now among the biggest economies in the world.

This is hugely exciting, but enormously challenging. First, even in our own country that professes support for market forces over government interference, the market system is continually under attack from politicians who don't like the result the market is producing and special interests that want protection from the harshness of competition. (If you don't believe me, tune in the next time I get my head taken off when I testify about gasoline prices. One Senator complained of me last year, "she's always talking about supply and demand; she's like a broken record!") Now, think about trying to shift gears after enduring 50 or more years of a government-run economy, or in a society in which private property ownership is virtually unknown. The concept of competition and markets without government control is alien, and

much can get lost in the translation. My good friend and fellow FTC Commissioner Bill Kovacic is not only an antitrust scholar but is probably the foremost expert in providing technical antitrust assistance around the world – an expertise that comes from the thousands of hours he has spent doing it. He has stories that will likely fill many books, but my favorite “lost in translation” story was when an overseas official in a developing country approached him and said that he wanted to read his book. That book was the “Antitrust Law and Economics Nutshell” (I am sure you all are familiar with the Nutshells from law school). But this person said, “I am really looking forward to reading your book, ‘Antitrust Law and Economics Nuts in Hell.’”

I recently visited my counterpart agencies in Hungary and Romania, two of the countries in which we have provided extensive technical assistance. I listened to them explain their struggles over the past 15 years. One Romanian described how the relief that they felt at the fall of the Communist rule quickly changed to a sense of bewilderment about what they would do next. He said, “we said to each other, ‘the Americans will come and they will help us.’” Later in the discussion, a woman described the difficulty of trying to support competition in the face of extraordinary resistance from those who fear it. She said, “we are alone.” I told her, “no, you are not alone. You are part of a courageous web of people around the globe who are standing up for market forces as the way forward in economic development, and we are with you.”

Second, what has become utterly clear is that the rule of law is basic to a successful market economy. As you well know, transparency of rules and stability and consistency in applying them are critical factors in deciding where to invest and, in doing so, creating jobs. In our technical assistance work, it is not uncommon to be asked such questions as, “When you

know that the defendant is bribing the Judge, can we also bribe the Judge, and how much should we include in our budget for bribing judges?” Or, “when we are defining a market and computing shares, do we include counterfeit and black market products?” And worse, at a Workshop in which we explained how we would deal with a particular case in the oil industry, we were told that we had left out the very real threat that the competition official might be shot for taking such a position.

Governments working with governments can make progress in strengthening the rule of law around the globe. But, in my view, that is not enough. The private sector has a significant role to play, and international powerhouse firms like Jones Day are uniquely positioned. I tell my staff not to think of themselves just as law enforcers, but as champions for competition and consumers. Similarly, private lawyers are not just representing clients but are ambassadors for the rule of law. Undoubtedly, every time you take your knowledge, your experience, your professionalism, and your ethics to a client’s problem, you are supporting – indeed, exemplifying – the rule of law, and this is critical. But that also is not enough.

At the World Economic Forum in Davos last January, I had the opportunity to discuss this topic with General Counsels and others from top corporations around the globe, and we concluded, not surprisingly, that more must be done. Following up, last week I met with two officials from the International Development Law Organization. Since its founding in 1983, the IDLO has trained more than 15,000 legal specialists from 175 countries on the rule of law, governance, anti-corruption, democracy, reform and independence of the judiciary and has created a web of alumni to pass it on.¹² And the American Bar Association, which, as you may

¹²See www.idlo.int/.

know, is the largest voluntary professional membership organization in the world, is getting into the act. At the direction of President-Elect Bill Neukom, a partner in the Seattle office of Kirkpatrick & Lockhart Preston Gates Ellis, the new World Justice Project, which is co-sponsored by groups from around the globe and recently received a substantial donation from the Bill & Melinda Gates Foundation, will utilize multidisciplinary outreach conferences, definitive scholarship, and public education to reinforce and demonstrate empirically what has been observed over several decades – that is, that there is a direct correlation between peace, economic prosperity, and the rule of law. To quote Neukom, “The rule of law is needed to make communities safe, lift people out of poverty, root out corruption, protect people from disease, and open up classroom doors to all.”¹³

I recognize that the idea of lawyers as a U.S. export is the butt of many jokes. But to close, I will tell you another story from Bill Kovacic. Some years ago, when Bill was attending a lecture in Kiev on law reform and competition policy, the speaker – an American businessman – contended that the legal profession was “a blight on the American economy.” He quoted Shakespeare’s *King Henry the Sixth, Part II* in suggesting a solution, stating: “The first thing we do, let’s kill all the lawyers,”¹⁴ expecting a big laugh. The laugh did not come. Instead, a young Ukrainian lawyer stood up and, after explaining why the Shakespeare line had been taken out of context, said this: “In this century, the Soviet Union did what [Shakespeare’s] Dick the Butcher wanted. We killed many lawyers. We killed laws that disperse power. We destroyed people

¹³Abanet.org, *Gates Foundation Donates \$1.75 Million to Support American Bar Association’s World Justice Project*, available at http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=102.

¹⁴William Shakespeare, *HENRY VI (Part 2)*, Act IV, Scene II (1597).

with independent ideas. We elevated tyrants. Why do Americans ridicule institutions that have helped protect personal freedom and create economic prosperity?"¹⁵

I congratulate Jones Day on this important occasion, and I thank you for your tremendous service to clients and your stewardship for the rule of law in this great American City and throughout the world.

¹⁵William E. Kovacic, *The Competition Policy Entrepreneur and Law Reform in Formerly Communist and Socialist Countries*, AM. U. J. OF INT'L LAW & POLICY 437, 464 (1996).