

Bert Foer's Prepared Remarks to the Consumer Federation of America,

June 22, 2016

Thank you, Joan Claybrook, Steve Brobeck, and the Board of CFA. I want to particularly mention Sue Kelly. Sue's organization, APPA, was the first contributor to the American Antitrust Institute and Sue served on our advisory board for a number of years. Dave Penn, Sue's predecessor, is here tonight.

I owe thanks to Ralph Nader, whose encouragement and advice helped me launch the AAI in 1998. It was Joan who introduced me to Ralph and it was Ralph who introduced me to Senator Howard Metzenbaum, your chairman at that time, and he became one of the AAI's very first advisory board members.

I am especially grateful to my wife Esther, and family who are seated over there...our Washington son Franklin Foer and his wife Abby Greensfelder and their daughters Sadie and Theo; and our Boston son, Joshua Foer, who flew in for this occasion. Son Jonathan also was planning to be here but had to cancel at the last moment.

Of course I also want to thank the terrific staff, advisors, and board members of the AAI, whose consistent enthusiasm for antitrust as a champion and protector of consumer interests is what brings us to this evening. As many of you know, the AAI is now well into its second generation of advocacy under the leadership of economist Diana Moss.

Your presentation of the Esther Peterson Consumer Service Award tonight confirms that antitrust, despite its ups and downs since the historic passage of the Sherman Act in 1890, remains a vital resource of the consumer movement and that the AAI, as the independent public interest advocate focused on antitrust policy, is a valued contributor to the consumer movement.

Why should consumers care about antitrust (“Yawn”) [quoting Joan]? When antitrust laws are vigorously enforced, the competitive economy which they are intended to promote and protect provides three major benefits to consumers.

First, competition for your business keeps prices close to the producer’s cost. Cartels and monopolies utilize their market power in order to allow certain businesses to take more from our pockets than they would be entitled to if they competed fairly. Price fixing, bid-rigging, and dividing markets, for example, must be recognized for what they are: white collar theft.

Second, when businesses compete, they must attempt to understand our needs and therefore offer us a range of choices among products and services. It is the presence of choice-- that is, options to take our business somewhere else-- which gives us not only leverage as consumers but the individual economic liberty that contributes importantly to political liberty and even basic human dignity and contentment.

And third, competition induces firms to innovate, which brings into our lives both new options and economic growth. With growth, there is opportunity for each of us to have a larger slice of the economic pie, depending, of course, on other distributional decisions within the political system such as tax and welfare policies. But it is innovation, not stagnation, that is the consumer’s friend.

I just returned from my 50th college reunion at Brandeis University, named after Louis D. Brandeis. Probably more than anyone else, this man has inspired my professional life. I want to talk about him. He was known as the people’s attorney because of the many pro bono causes to which he gave his unmatched skills of advocacy.

A great civil libertarian, Brandeis first developed the concept that privacy is a legal right. He invented “the Brandeis brief,” a tool for advocates to utilize social science research in court to support their public interest clients.

It was Brandeis who showed how large financial institutions can abuse what he memorably called “other peoples’ money” and who saw that great corporate size is neither efficient nor safe for the republic. He stressed the values of transparency and competition and railed against the over-concentration of centralized power, whether political or economic. This great Progressive helped give us the Clayton Act and the Federal Trade Commission Act as well as other historic legislative accomplishments.

Finally, as a Supreme Court justice, he is still among the most widely respected and influential. He was, as Jeffrey Rosen’s excellent new biography definitively demonstrates, an American prophet.

I emphasize most strongly, we have moved too far away from the spirit of Brandeis on too many important issues, most especially on civil liberties and social control over concentrated power. As we enter one of the strangest and most dangerous political seasons in our history, the wisdom of Louis Brandeis seems especially relevant to the objectives of the CFA and, I sincerely hope, of the United States of America.

I am enormously grateful for the honor you have given to me, to the AAI, and to the antitrust enterprise itself.