



An Interview with Lacy H. Thornburg

Lacy H. Thornburg, 55, became North Carolina's Attorney General on January 7, 1985, having been elected in the 1984 general election to succeed Rufus L. Edmisten as head of the N.C. Department of Justice. Thornburg, a native of Mecklenburg County who has spent most of his adult life as a resident of Sylva in Jackson County, has been a Superior Court judge (1967-83), a member of the N.C. House of Representatives (1961-65), and once served as an aide to former U.S. Rep. David Hall (D-N.C.).

A Democrat, Thornburg is a former member of the board of directors of the Oxford Orphanage and a member of the Tryon Palace Commission and the Capital Planning Commission. He also has served on the N.C. Courts Commission, the N.C. Criminal Code Commission, and the N.C. Judicial Council. He is a U.S. Army veteran. *Insight* Associate Editor Jack Betts and N.C. Center Intern Amy Butterworth conducted this interview on June 30, 1986.

What is the state's role and responsibility in protecting individual consumers?

The Department of Justice represents the state's consumers in a broad variety of ways to ensure that their interests are protected. That includes representing consumers before the North Carolina Utilities Commission, responding to complaints about deceptive advertising, making sure that North Carolina's laws against fraud and

deception are enforced, and representing the using and consuming public in class action lawsuits that we file. We receive thousands upon thousands of consumer complaints each year, and we try to help resolve them.

However, we try not to get into the private practice of law by representing an individual consumer in court or in other legal forums. We seek to represent all consumers, but we do not and cannot represent taxpayers on an individual basis. The average consumer may think we're splitting hairs there, but obviously we can't bring a lawsuit on every individual complaint. What we can do if we are representing a class of complainants is to bring class actions. And even though we may have had very few complaints, we can step in, particularly in the deceptive advertising area, and bring actions. We have become much more litigious in the consumer protection area in the last 18 months. (See pp. 23-24 for more).

We keep records on all the complaints that come in. If what may start out as a single complaint becomes a pattern, then we step in as the consumer advocate and bring the suit to stop the practice. We have been handling somewhere around 10,000 complaints a year in our Consumer Protection Section of the Justice Department. Thanks to some increased funding from the General Assembly, we're upgrading our automation, and that should make us more effective. Certainly it makes us more efficient and it enables fewer people to take a heavier load, which we've been



Jack Betts

very successful in doing. But the range of what we do is phenomenal.

Did your office make a conscious decision to become more litigious, to see how much more you could accomplish on behalf of consumers?

From my experience in the court system over a period of about 30 years, I was fully aware that you can't run a bluff but so far. You have to be ready to step in and back your bluff if it's called. So one of the first things I did was to say to the Consumer Protection Section, as well as to our attorneys in other areas of the law, that we're going to handle these matters in the same way as a private lawyer. That is, don't run a bluff. When you say you're going to do something, then if you don't get the desired result, or if you don't feel you are getting the compromise you are seeking to protect the rights of these people, then you go into court and get the court's help. I have every confidence in our court system, having been a part of it as long as I have.

Do you try to choose cases that will have the broadest application on behalf of consumers?

Yes. We try to choose cases that affect a lot of people. We have to, because as I indicated earlier, we can't really become private counsel. We have to become counsel generally to represent classes of people or groups of people as well. A good example of that is the automobile field. We have pursued a number of prosecutions in odometer rollbacks. We have pursued deceptive advertising in home construction, plumbing, and that type of thing.

I might point out that a lot of these complaints come from legitimate businesses. They don't all come from individuals by any means. These unfair trade practices hit them too.

Do you find that the state's statutes give you all the ammunition you need? Are there any changes in the law that would make your agency more effective?

Right now we have some of the best statutory

provisions in the country in terms of protecting consumers. And we have been very satisfied with the authority that we have under that law, and that law, used in connection with what we call our long arm statute, enables us to reach across state lines.¹ In addition, our cooperative efforts with attorneys general in other states has enabled us to do a good job. There may be an area or two that we may ask for some changes in the future, but we feel we have a good statutory scheme and that it's working well for North Carolina.

Are the consumers who have been harmed financially usually able to get a financial settlement?

Yes, we frequently get money back for these people. Settlements range from a few dollars to several thousand dollars, depending upon the type of case and the amount of financial injury. We frequently are able to get the consumer the relief they are seeking. Now, we handle a lot of individual claims that are very small, and we write a letter and say, "Look, this is what our complainant says is wrong with your product. Will you do so and so, and make this right?" A goodly number of those are handled in that manner. For example, in automobile cases, the dealer often will go ahead and take care of whatever the complaint is, or the manufacturing company will do it. Complaints from businesses can be resolved in the same way. We'll have some small businessman call up to say he's gotten a shipment of several hundred dollars worth of pencils he didn't order, or some inferior photocopying toner, and when we file a complaint, they'll often say, "Ship it back and we'll pay the cost and send you your check"—that type of thing. As a general rule, yes, we do get relief.

The suggestion has been made that the little antitrust act² should have criminal penalties as well as civil penalties. Wouldn't that be of particular help to your staff as you seek to help the victims of consumer fraud?

I would say generally that we are able to get them help in other ways. When you get into the criminal area, say with people across state lines,



you can involve the federal government. If there were a minor criminal penalty involved, you couldn't get them here anyway. There also are some criminal penalties already on the books that we can use in conjunction with the act. So we think we've been pretty effective so far with the penalties that we have on the books.

Is your workload increasing because consumer fraud is more prevalent today? Or do you think it's because people are complaining more?

Probably a little of both. But generally speaking I would think that a large part of it results from the fact that people are more aware of their rights now than they have been in the past, and more aware of where to go for help. Though, no matter what we do, every time we devise a statutory scheme to give us some help, the guys on the other end respond by working around it. Still, I think the consumer is now better protected than ever before in the history of the state or nation because the federal government has taken a lot more active role in consumer protection in recent years.

Your office has some consumer protection functions representing consumers before the Utilities Commission. In 1985, you suggested that the Public Staff of the commission be transferred to your office. Do you still think the two should be combined and that your office should handle all consumer representation before the commission? Could you do a better job?

Well, we had discussed that at one time, and were unable really to be successful in getting the group moved to the Attorney General's office. Primarily our complaint has been their close relationship with the Utilities Commission itself, and that perhaps they could function more adequately for the using and consuming public if they functioned entirely as a separate group. That's a luxury that we have that they don't have. We do not have to answer to the Utilities Commission in any respect. We can take the position that we feel is most beneficial to the using and

consuming public, and have done so. And by virtue of that, we have several times disagreed with the Public Staff. A good example of that came shortly after I became Attorney General. I took the position that it was improper to flow through the cost of an abandoned plant to the ratepayers as an operating expense. Now, neither the Public Staff nor the Attorney General's Office prior to that time had taken that position. So, that was an entirely new position. It was based on my reading and understanding of the law, and it was a matter of fairness too. That case involves hundreds of millions of dollars over a period of time. It's still pending before the N.C. Supreme Court.

We have also taken the position that the power companies should reduce their rates instead of getting a rate increase. Now they're after a second increase. The Public Staff contended that they should have a substantial increase. So we don't have anybody except our own assessment, our own appraisal, our own witnesses, our own analysis, and so on, to worry about, whereas the Public Staff is tied in to the Utilities Commission.

Can you recall any instances where the Public Staff has not been as independent as it could have been, where it made a difference? Or are you talking more about appearances, of being "tied" to the Utilities Commission?

I really don't know. I don't have a feel for that. We just disagree on some of those matters. The State Auditor did an operations analysis of the Utilities Commission, and the analysis found that there was some overlapping.³ The report said that it was good to have two groups representing the consumers, and that's pretty much what some of the utility commissioners themselves said.

There seems to be a lack of consumer advocacy groups in North Carolina that can voice their concern before the General Assembly and other state agencies. Do you see it as the role of your office to represent the consumer on issues that come up before the legislature?



We do that, from time to time. We go over and express opinions on various legislation, though the tremendous volume of bills involved there limits us to some extent. We have to pick and choose. But we do from time to time go over and take a position on legislation if we think it adversely affects the using and consuming public. A good example of that would be the position we took last year on a bill dealing with the small loan industry, and we were able to work out legislation that ultimately was very beneficial to the small borrower.⁴ We'd like to be able to do more. But then, we have such a major responsibility, for example, to law enforcement and other groups where we logically are the spokesman, that we don't have the personnel or the time to devote to scanning each of these bills and giving them the in-depth analysis that we would like.

Are you comfortable with your department being cast in that role, of spokesman for the consumers?

Yes. I don't see any other agency doing that, and since there isn't, we feel that responsibility. So far, I think the legislature has been pretty understanding with us. So far they don't seem to have visited upon us any retribution by virtue of our disagreements. For instance, we recently urged the legislature to reconsider whether limits should be adopted for jury awards in accident cases unless the insurance industry was willing to promise either greater coverage or lesser premiums. I felt like in that regard that we were speaking for those people out there who were caught up in the crisis and are paying the bills and are really grasping for straws. Our position primarily was to point out to them [the members of the legislature] that the industry has given you no promise of changing anything, either coverage or premiums, and that we need to do an in-depth analysis to find out what

can and should be done and then come back with structuring legislation that can be helpful for everyone.

And I think we were successful in that to some extent.⁵ Certainly the snowball was slowed somewhat, not just by my efforts but by a lot of people who were all singing pretty much the same tune, though some of them were more specific in their criticism and had positions that were somewhat more narrowly defined than ours. Ours was basically a consumer protection approach.

Consumer protection is a real responsible part of this office's work and it has been one of the most active parts, clearly. We constantly are trying to improve what we're doing and the manner in which we are doing it, so we aren't resting on our laurels and I'm sure it will get better as time goes by. There are just so many times where we're the only folks that step up out there and say, "Wait a minute, we want to talk to you about this." □◡□

FOOTNOTES

¹N.C.G.S. 1-75.4, enacted as Chapter 954, 1967 Session Laws, used in conjunction with Rule 4(j) or 4(j1) of the Rules of Civil Procedure.

²N.C.G.S. 75-1, enacted as Chapter 41, Section 1 of the 1913 Session Laws.

³"North Carolina Department of Justice—A Limited Scope Review of the Interrelationship Between the Attorney General and the Public Staff in Matters Before the State Utilities Commission," Preliminary Operational Audit, Office of State Auditor, February 1985.

⁴N.C.G.S. 53-172, enacted as Chapter 154, Section 9, 1985 Session Laws.

⁵The 1986 General Assembly adjourned without approving legislation sought by the insurance industry to place a cap of \$500,000 on jury awards to individuals in tort claims cases. The legislature did give the Commissioner of Insurance more regulatory powers, which the industry had opposed, in Chapter 1027 of the 1985 Session Laws (2nd Session, 1986).

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