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Consumers Win on Product Liability

Senator Ernest F. "Fritz" Hollings (D-SC) crafted a major upset victory for American consumers when his leadership blocked anti-consumer product liability legislation in the Senate Commerce, Science and Technology Committee.

Hollings' masterful strategy surprised the proponents of S. 100 and denied a majority to the bill, which would wipe out essential consumer protections contained in current state product liability laws.

In recognition of his role in a victory that was totally unforeseen, Hollings will receive a special Distinguished Public Service Award at Consumer Federation of America's 15th annual Awards Dinner on June 19.

"The committee vote is a fantastic victory for victims and a significant setback to those who would impede recovery for injuries caused by defective products."

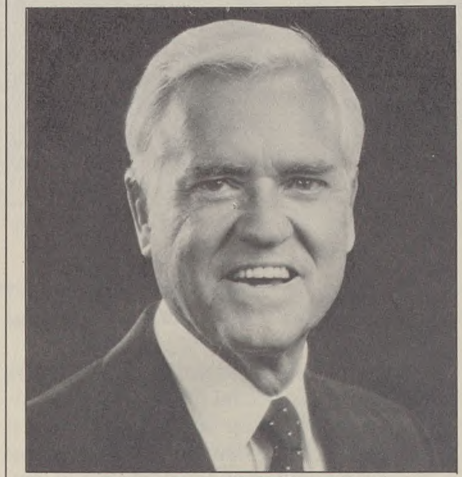
The product liability bill, which would set federal standards for lawsuits brought by victims injured by defective products, was introduced in Congress for the third time by Senator Robert Kasten (R-WI). Though opposed by a broad-based coalition of consumer groups, unions, trial lawyers, state judges and attorneys general, the bill was backed by a powerful and well-financed business alliance of manufacturers, distributors and wholesalers in the pharmaceutical, chemical, automobile, machine tool and insurance industries.

That alliance prevailed in 1984 when the Kasten bill passed in committee by an 11-5 vote, but it never reached the Senate floor. A similar outcome was expected this time, though by a lesser margin. But Hollings' mastery of the Congressional committee process and his quiet collection of proxies resulted in an eight-to-eight tie vote, effectively scuttling the bill for the present.

Committee Chairman Senator John C. Danforth (R-MO) conceded that "we missed it" and said he had assumed the bill would pass by 9-7.

CFA Legislative Director Gene Kimmelman said one of the factors in the turnaround was Danforth's organization of this year's deliberations in which academics played a major role.

Twenty-four law school professors signed a letter opposing the bill. Key evaluations, requested by Danforth, from Professor


Senator Ernest F. "Fritz" Hollings (D-SC)

Priest of the Yale University School of Law and Professor Keeton, former Dean of the University of Texas School of Law, criticized the Kasten bill while explaining their differing views on proposals to establish alternative compensation systems which would reduce the need for lawsuits.

Senators Slade Gorton (R-WA) and Christopher Dodd (D-CN) have proposed that an administrative procedure be established whereby persons injured by defective products could recover damages directly from the manufacturer without going to court. Damages, however, would be limited to costs such as lost wages and medical care, prohibiting payments for pain and suffering or punitive damages.

In seeking votes for S. 100, Danforth promised hearings on the latter proposals before attempting to bring the Kasten bill to the Senate floor.

It didn't work. Senator J. James Exon (D-NE), who backed the bill last year, wrote in a statement accompanying his proxy "no" vote: "This matter is too important to rush a bill to the floor with the assumption that problems will be worked out later."

Exon, who was hospitalized, was one of the senators whose proxies Hollings produced in his masterful strategic victory.

"The bill is not dead," says Kimmelman, "but the committee vote is both a fantastic victory for victims and a significant setback to those who would impede recovery for injuries caused by defective products and reduce incentives to manufacture safe ones—both of which S. 100 would do."

Kimmelman characterized the committee vote as a "major embarrassment" for business representatives who were clearly "outfoxed" by Hollings.

"The momentum is now going against the business alliance which had already started to work the House side on this issue," Kimmelman said, "assuming that their position would prevail in the Senate."

"Fritz" Hollings upset that assumption and earned the gratitude of consumers which CFA will publicly express June 19 at the Awards Dinner.

UN Passes Consumer Protection Guidelines–At Last

The world consumer movement scored a significant and long-sought victory with the unanimous adoption of the United Nations Guidelines on Consumer Protection by the UN General Assembly.

"The overwhelming support in the General Assembly sends a signal far and wide that consumerism is, indeed, global," said Esther Peterson, America's First Lady of Consumerism and a tireless worker for the Guidelines as a volunteer UN lobbyist for the International Organization of Consumers Unions (IOCU).

The Guidelines were finally adopted 10 years after the IOCU World Congress in Sydney, Australia, called for development and passage of a worldwide Model Code for Consumer Protection.

The final compromise document contains separate guidelines dealing with physical safety, protection of economic interests, safety and quality standards, distribution facilities, rights of redress and consumer education. Food, water and pharmaceuticals are dealt with in short, special sections as "areas of essential concern for the health of the consumer."

In hailing the victory, Lars Broch, IOCU's Director, said: "Although the Guidelines do not contain all that we wanted, for the first time ever, the world's most representative international body has agreed on the principles—a common understanding worldwide—of what constitutes basic, fair and sound consumer protection standards and measures."

IOCU consistently stresses concern for all people of the world and its victory statement said "the Guidelines represent a solid new basis for our work to make the marketplace safer and more responsive to consumer needs—wherever the marketplace is located."

Opposition to the Guidelines came mainly from the United States. Though eventually agreeing to the consensus, Ambassador Alan L. Keyes, Alternate United States Representative, left no doubt that the U.S. would have preferred to leave consumer questions to individual nations and the power of the free market.

U.S. objections included concerns that the Guidelines are biased toward government intervention in the marketplace and might be used as a rationale for protectionist measures and/or discrimination against foreign investors. It also was unhappy with the specificity of the sections on food, water and pharmaceuticals. It would have preferred that references to risks and hazards be stated and interpreted throughout as "unreasonable risks and hazards."

"The U.S. remains dubious that the UN


Esther Peterson

has a truly useful role to play in the regulatory area," Ambassador Keyes said.

Peterson cited the "outstanding leadership" of Qazi Shaukat Fersed of Pakistan and the active support of the Swedish delegation with bringing about the final compromise.

Characteristically, she says little about her own role. But she's obviously pleased that the Guidelines are finally a reality. "Acceptance of these principles, and strong information links on products that have been banned or severely restricted in various countries, will be a great help to countries without adequate consumer protections of their own," she said.

Consumers Want to Know:
Will Interstate Banking Improve Service?

"If interstate banking is approved, consumers are entitled to expect concrete improvements in service."

That was the message Alan Fox, Consumer Federation of America's Legislative Representative, brought to a Congressional hearing on regional interstate banking before the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance.

Federal Reserve Chairman Paul Volcker, Representative Fernand St Germain (D-RI), chairman of both the subcommittee and its parent Committee on Banking, Finance and Urban Affairs, and Fox all stressed the need for safeguards in any interstate banking legislation.

St Germain called for "hard, essential and fast ground rules" in conjunction with any further geographical banking expansion. "The ground rules," he said, "must assure the safety and soundness of the banking industry, community and consumer services and benefits, and the preservation and strengthening of economic and banking competition."

His observations were similar to those made by Fox in CFA's prepared testimony. "If interstate banking legislation is to meet consumers' needs," he said, "CFA believes it must meet three tests."

Those tests are:

(1) It must be designed to actually add new competitors to local markets, not just provide absentee ownership to established institutions;

(CFAnews photo by Allison Schuette)

American Bankers Association President, James G. Cairns, Jr., left, listens as Legislative Representative Alan Fox delivers CFA testimony on interstate banking to House subcommittee.

(2) It must require that service to *all* consumers be enhanced, specifically including the deposit and credit needs of low- and middle-income consumers and of small businesses; and

(3) It must not impair to any degree the safety of the banking system.

Chairman Volcker told the subcommittee that the time has come for Congress to authorize some interstate banking "while also protecting the safety and efficiency of the banking system, preventing undue concentration of economic resources, and assuring benefits to the users of banking services."

He urged Congress not to wait until the Supreme Court acted on the constitutionality of regional reciprocal banking pacts—a decision handed down June 10, making moot the question of which branch of government would act first. The Court ruled that states may band together in regional agreements to permit interstate banking without having to open their doors to banks from all states.

CFA's testimony did not urge or endorse any Congressional action. Fox said consumers want some answers before endorsing any interstate banking proposal. The questions he raised, stemming from the vast changes in financial services over the past few years, are:

- Will interstate banking hold down service costs which have made it increasingly difficult for low- and moderate-income families to maintain access to basic banking services?
- Will it open new service opportunities for *all* in our communities—the 40 percent of our families with under $1,000 in financial assets as well as those with higher incomes which the system seems to serve so well already?
- Will interstate banking reduce the time banks hold our checks?
- Will interstate banking result in safe and soundly managed banks?

Fox reiterated CFA's continuing concern that broadening interstate banking could increase mergers and acquisitions, resulting in undue levels of concentration. He also said that any legislation should require regulatory agencies to find that any expansion results in actual benefits to consumers—"specific benefits for which the institution may be held accountable."

"The average consumer on the street isn't demanding interstate banking," Fox said, "but he or she does want something done about the deterioration of service we have been subjected to over the past few years."

CFA Scores Federal Reserve Study on Bank Fees and Charges

In a detailed critique, the Consumer Federation of America severely criticized a widely publicized report by the Federal Reserve Board on bank fees and charges. CFA Executive Director Stephen Brobeck called the Fed report "a highly biased attempt to justify substantial hikes in bank fees and charges." He added that "the report refuses to acknowledge its own data which indicates that low and lower middle income families have been hardest hit by skyrocketing bank fees."

At the same time, House Banking Chairman Fernand St Germain released his letter to Fed Chairman Paul Volcker criticizing the report as "incomplete and unsatisfactory." St Germain took the Fed to task especially for failing "to assess the effect of fee increases in the context of the full range of costs consumers incur in obtaining needed banking services."

The 90-page Fed study seeks to justify rising bank fees by supporting two arguments. First, bank costs have escalated as rapidly as fees. And second, fee increases have not harmed consumers. The report is organized into three sections—service charges and fee schedules, personal checking account analysis, and service charges from the consumers' perspective.

Section by section, the CFA critique evaluates the Fed's 17 conclusions and their underlying methodology. The critique documents a "strong pro-bank, anti-consumer bias which permeates the Fed report," said Brobeck. "This bias was expressed in numerous ways."

Selection of Sources: The analysis of those without checking or savings accounts is based almost entirely on an outdated 1973 survey. Moreover, the report bases its conclusion that most banks offer free services to seniors on one survey to which 11 percent of banks responded, despite the fact that several more complete and accurate local surveys, which the Fed chose to ignore, suggest much lower percentages of banks offering free services.

Failure to Remember the Limitation of Sources: In its conclusions, the Fed report often forgets the limitations of its sources. The analysis of checking account profitability, for example, is based on data *volunteered* by a tiny (1 percent) and unrepresentative sample of Fed member banks. Despite expected bias, no effort was made to confirm this data.

Incomplete, Biased Analysis of Data: The Fed report understates the magnitude of fee increases because it ignored the substantial rise in the number of services for which banks levied a charge. It also ignores what concerns many bank critics the most—exceptionally high prices charged by a minority of institutions.

Refusal to Acknowledge Data Contradicting Its Thesis: The report seeks to discount the most important data it contains—statistically significant evidence of a substantial decline in the proportion of low and lower middle income families with checking accounts. The study contains data showing the proportion of the poorest 10 percent with checking fell from 56 percent in 1977 to 44 percent in 1983. This new and important finding was ignored by the report's conclusions.

"Even more disappointing than the report's bias," stated Brobeck, "is its neglect of the most important questions about the consumer impact of rising bank fees. In fact, despite the report's title, there is no systematic analysis of consumer economic impacts—no analysis of banking services consumers need, no analysis of those many families which gave up checking accounts, no economic analysis of the differential impacts of rising fees on different income classes."

"The report is particularly disappointing," concluded Brobeck, "because the Federal Reserve's expertise and resources make it the best suited of all institutions to objectively and thoroughly investigate the consumer impact of rising bank charges. Instead, it produced a report that is transparent in its goal of justifying current bank practices. Regrettably, this only provides ammunition to those who charge that the Fed acts only in the interest of its member banks, not in the broader public interest."

(The critique is available from CFA for $5; free to CFA members.)

Tele-Consumer Hotline Expands Its Services

The Tele-Consumer Hotline recently extended its services to seven Rocky Mountain and five Southwestern states. it continues to serve consumers in six Mid-Atlantic states.

The Hotline was established by Consumer Federation of America and Tele-Communications Research and Action Center (TRAC) last summer to assist residential phone customers confused by divestiture-related changes. Consumers can obtain information by calling a toll-free hotline or writing for fact sheets comparing long-distance services.

Currently the Hotline is receiving more than 500 calls a week and numerous requests for printed materials. One magazine article alone generated around 30,000 requests for information.

In periodic surveys, callers have expressed a high degree of satisfaction with the service. Typically, about 70 percent say they would "definitely recommend" the hotline to a friend while more than 10 percent indicate they probably would do so.

The hotline is directed by Susan Katz, who reports to a Board with representatives from CFA, TRAC, American Association of Retired Persons, National Association of Consumer Affairs Administrators, and other consumer groups. Representatives from Bell Atlantic, Southwestern Bell, Mountain Bell, AT&T Communications, GTE-Sprint, SBS Skyline, and Allnet serve on an Advisory Board which provides technical assistance.

CFA Battles for Lifeline Phones

Consumer Federation of America continues to battle for lifeline phone service and has called on the federal government to renew its commitment to universal service by preventing further dramatic increases in local rates.

In formal comments filed with the Federal Communications Commission (FCC), CFA said "it is essential" that the commission establish a lifeline service fund to protect those least able to afford basic phone service."

CFA and the U.S. Public Interest Research Group (PIRG) also released a report entitled **Ringing Off The Wall** which documents an alarming increase in residential phone rates during the two years immediately following announcement of the AT&T divestiture. The report was written by Dr. Mark Cooper, CFA's Energy Director; CFA Legislative Director Gene Kimmelman, and Pamela Gilbert, Staff Attorney at U.S.PIRG.

> ***"When all the numbers are added up, consumers will have been slapped with approximately $6 billion in local rate increases in three and a half years."***

Its conclusion is that rising local rates may drive as many as six million people off the telephone network by the end of 1986. "This is a significant and unacceptable erosion of the goal of universal telephone service," the report says.

Kimmelman points out that "while the phone companies give lip service to the lifeline concept, their definition differs dramatically from ours."

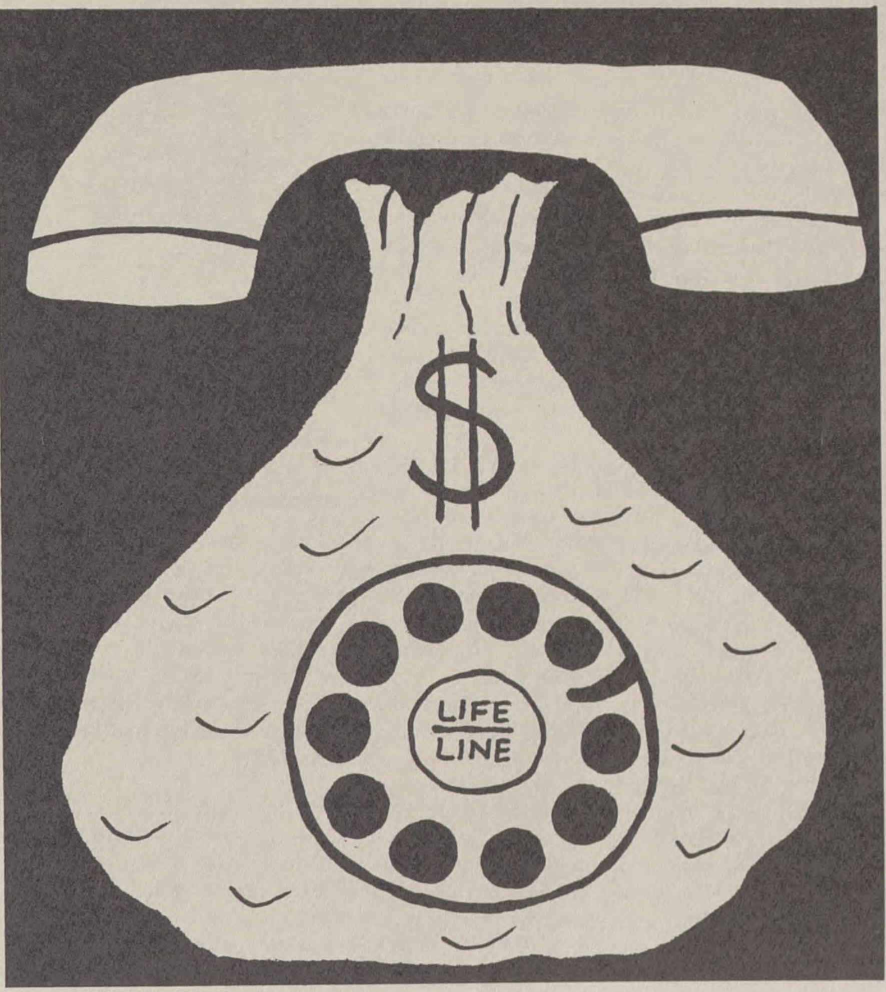
CFA's proposal is a basic, simple and cheap phone service affordable to all consumers and targeted to those least able to afford it. In **Ringing Off The Wall**, it is pointed out that most of the people who will be forced to do without phone service—or to do without some other basic necessities in order to afford a phone—are precisely those already hardest hit by recent and continuing reductions in poverty programs. They are, overwhelmingly, public assistance recipients, the elderly and the infirm.

Affordable local phone rates have traditionally been maintained by requiring users of all telephone services to support the public network and CFA believes this financing method should be expanded to cover a federal lifeline program. But what Kimmelman calls "an ominous trend" involves revolutionary changes in telephone pricing. During the past year, local rates have risen and long-distance rates have dropped.

Since most consumers spend less than $10 per month on long-distance calls, the lower rates make little difference. "What good is cheaper chrome if you can't afford the Cadillac?," Kimmelman asks.

Cooper estimates that in the next year and a half, local rate increases, combined with federally-imposed access charges, will increase local phone bills by $3.5 billion. That's on top of more than $2 billion by which local residential phone bills rose in the first year following the divestiture.

CFA data reveals that rate increases are pending in 15 of the 33 states surveyed so far this year. And in 14 of those 15 states, the increase will be the second since the AT&T breakup.



When all the numbers are added up, they mean that telephone consumers will have been slapped with approximately $6 billion in local rate increases in a three-and-a-half year period. "These are unprecedented rate hikes for a period of low inflation," Cooper says.

Nevertheless, the phone companies challenge the need for federal intervention. While they agree that lifeline is important, their concept of it includes three components which CFA opposes.

Those components are local measured service; subsidization—if any—to be financed by tax revenues, and all administration and verification of lifeline service to be handled by welfare agencies.

Local measured service is already being introduced by phone companies across the country. Under this plan, consumers pay for calls based on the time of day when they are made, their length and distance. Modified versions charge a basic fee for a dial tone and additional amounts per call.

"CFA believes in flexibility for the states," Kimmelman says, "but local measured service is needlessly complicated and could well end up costing consumers more than the basic service to which they are accustomed."

The federation's stand is that universal phone service is not a welfare program, but a service for which the phone companies have traditionally been responsible. Its FCC comments call for self-certified lenient standards to qualify for lifeline, much like the federal standards for the school lunch program.

Kimmelman says this approach avoids a heavy administrative burden and leaves it to the companies to ascertain whether and to what extent the program is being abused or errors are occurring.

In addition to lifeline service, **Ringing Off The Wall** calls for rate relief legislation and increased public representation at rate hearings "to preserve meaningful, universally affordable telephone service."

Two bills now pending before Congress meet CFA's criteria for basic, simple and cheap lifeline service. Both H.R. 151, sponsored by Representatives Mickey Leland (D-TX) and Edward Markey (D-MA), and S. 950, sponsored by Senators John Heinz (R-PA) and John Chafee (R-RI), would ensure that no households need be without phone service because they cannot afford it.

Kimmelman believes such legislation is essential. "The industry's message," he says, "is 'trust us, we'll take care of you.' In view of the recent history of rate increases, consumers are rightly skeptical of that message."

Public Citizen Book Charges Reagan 'Retreat From Safety'

President Joan Claybrook and the staff of Public Citizen have carefully documented the Reagan Administration's systematic repeal of substantial consumer protections in "Retreat From Safety" ($8.95), published by Pantheon Books.

Sub-titled "Reagan's Attack on America's Health," the book's thesis is that candidate Ronald Reagan's 1980 campaign promise to "get government off our backs" is a promise he kept all too well—to the great detriment of American consumers. The promise has turned out to mean abolishing many safety standards "that irked big business, but also happened, at the same time, to protect the health and safety of millions of Americans at home and in the workplace."

The retreats cover a wide range of consumer concerns, as the chapter headings show: Infant Formula, Food and Nutrition, Drugs, Product Safety, Health and Safety of Workers, Environmental Protection, Transportation Safety, and Energy.

"Retreat From Safety" says the Consumer Product Safety Commission (CPSC), "has reached its lowest ebb" in the Reagan Administration. But Congress shares the blame for its decline. The chapter on product safety details Congressional maneuvering on CPSC's reauthorization which "permits the crippled agency to stagger on, but without increasing its funding ceiling or personnel level."

Most consumer activists probably already know much of the sad story narrated in "Retreat From Safety." For them, it is a concise resource manual of how far we have come—or gone—in the Reagan years. For the general reader, it is an eye-opening look at how America's health and safety are being undermined by the same government agencies originally created to protect them.

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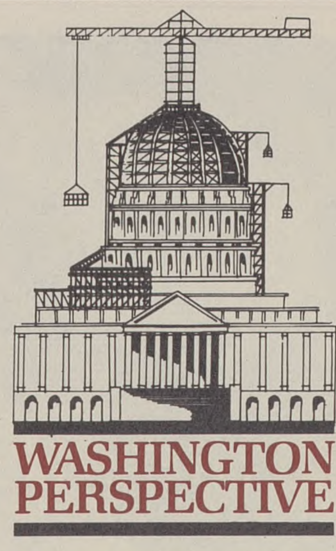
Tough Choices for Consumerists

by Stephen Brobeck, Executive Director

(This is an edited version of an address delivered to Consumer Assembly 1985.)



To the world, Consumer Federation of America probably seems pretty sure of itself. Our policies are usually very clear. And we advocate them aggressively and unambiguously.

But underlying our policy and strategic decisions are tough choices which the Consumer Movement does not spend enough time considering. This article raises five such questions.

The first one is: What consumers do we represent? We seek to represent them all, but this is often impossible. Many issues affect one class of consumers far more than others. And the interests of different classes sometimes conflict.

Current banking issues are a case in point. New accounts have been created. Pricing has become much more complex. But these changes are largely irrelevant to the poor who cannot afford such services. And savings disclosure reforms benefit only the small percentage of all families with substantial deposits. To what extent, then, should advocates marshal their limited resources behind truth-in-savings?

The problem of whom we should represent also is illustrated by the issue of cross-subsidies. Without subsidies, a large proportion of rural families could not afford phones and electricity. Should free market forces work unfettered by government intervention? Or should we insist on cross-subsidies that reduce the disparity?

What position do we take on subsidies to the poor, who in recent years have watched utility bills eat away their limited incomes? What limits, if any, do we place on the amount of service which is to be subsidized?

A second set of tough choices involves determining what is actually in the consumer interest. At one extreme, we can simply consult and mirror consumer opinion. At the other, we can use our own analysis as our policy basis. Most of us recognize that both approaches must be combined. Yet there are widespread differences on how and with which emphasis.

For example, outside Washington I have encountered more opposition to mandatory automobile air bags than to any other position we advocate. While some of this resistance is based on misinformation, a portion reflects an unwillingness to pay Detroit's inflated prices when safety belts provide almost as much protection. Should we continue simply to insist that consumers pay these additional costs? Or should we direct our efforts, instead, to convince citizens that passive restraints are well worth the expense?

A third difficult question is: How do we resolve conflicts betwen different consumer values? Consumers consider several factors—safety, performance, convenience and cost. What position do advocates take on issues when these values conflict—when safety improvements, for instance, cost a great deal of money? Our decisions are complicated by the fact that most consumers, especially the poor, predictably value cost above safety.

A fourth tough question is: What is our obligation to organizations and constituencies with whom we have worked closely over the years? On most issues their interests are identical or complementary to ours. But this is not always the case. How do consumerists respond when their trade union allies call for restraints on international trade, or when small farmers advocate higher commodities' prices?

Some of these constituencies are in desperate shape. Many industrial workers have exhausted their unemployment benefits. Hundreds of thousands of farmers face loss of their livelihood.

Are consumers obligated to some groups for support on consumer issues? Labor lobbyists, especially, can legitimately claim much of the credit for hundreds of federal and state consumer protection laws.

The final tough choice concerns our relationship to the business community. Is it an evil to be eradicated? Or is it a beneficial force providing desired products and jobs and creating wealth? Most basically, are its interests and ours complementary or opposed, or both? Our answers determine whether we conclude corporations can be reformed from within, or whether only public and/or governmental pressure can change corporate behavior.

If alliances with businesses are sometimes expedient, how do we relate to business representatives? Should we develop personal relationships? What about corporate funding? Should consumer groups take money from corporations for services? Should we accept outright contributions? There are no easy answers.

I would emphasize that there are great risks in considering such issues. An obsession with them can be enervating—paralysis through analysis. But we have a responsibility to address them or run the risk of failing to adequately represent the consumer interest. To the extent that such failure exists, we also risk losing the strong public support which is the source of our continuing influence.

Most important of all, we have a moral responsibility to ourselves. In my view, the Consumer Movement is concerned with social justice and social progress. We can not responsibly advocate the public interest without addressing fundamental ethical questions.

CFA Elects Officers; Jean Ann Fox Is President


Jean Ann Fox

Jean Ann Fox, a past president of the Pennsylvania Citizens Consumer Council, current secretary-treasurer of the Board of Directors of Consumers Union and a member of the Virginia Citizens Consumer Council, is the new president of Consumer Federation of America. She replaces Ellen Haas, who served as CFA's president, immediate past president or vice president for more than 10 years.

Kenneth S. Kovack, legislative representative of the United Steelworkers of America, will serve another term as secretary-treasurer. Officers were elected at CFA's annual board meeting.

Serving with Fox and Kovack as vice presidents are: Ann Brown of Americans for Democratic Action; Jacob Clayman, National Council of Senior Citizens; Ellen Haas, Public Voice for Food and Health Policy; Bill Matson, Pennsylvania League for Consumer Protection; Arnold Mayer, United Food and Commercial Workers; Alex Radin, American Public Power Association; Lee Richardson, Maryland Citizens Consumer Council, and Mark Silbergeld of Consumers Union.

Members of the Board of Directors, elected for three-year terms, are: John Brown, International Union of Operating Engineers; Clyde Chapman, Consumer Affairs Association; Vernon Dalton, Wells Rural Electric Cooperative; Hildred Drew, United Auto Workers; Joe Hansknecht, Jr., League Insurance Group; Robert Harbrandt, AFL-CIO Food and Allied Service Trades; Richard McClintock, Missouri Public Interest Research Group; Dan McCurry, Chicago Consumer Coalition; Barbara Slusher, American Council on Consumer Interests, and Nell Weekley, Louisiana Consumers League.

Stewart Kohl of the Cooperative League of the U.S.A. was elected to the single board seat which is for a one-year term. The president, secretary-treasurer and eight vice presidents also are elected for one-year terms.

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