



# CFA news

## Consumer Movement Faces Challenges Ahead

One of the consumer movement's most eminent leaders and its staunchest ally on the Hill challenged a new generation of advocates to reinvigorate consumer activism in order to tackle the tough issues that are still unresolved.

Esther Peterson and Sen. Howard Metzenbaum (D-OH) issued their calls to action in keynote addresses at this year's Consumer Assembly, "New State and Federal Consumer Initiatives."

Both Peterson and Sen. Metzenbaum recognized the progress that has been made in a relatively short period of time by the consumer movement, but both tempered their praise with a note of caution.

"From the very beginning, we demanded that the consumer voice be heard, whenever and wherever decisions are being made that affect our well-being," Peterson said. "We fought, and fought hard, for a seat at the table . . . and we succeeded beyond our wildest dreams. In many areas, we've not only won a seat at the table, but a number of seats, and in a few cases a majority of seats."

"As important as it has been to achieve our place at the table, we need to examine the effectiveness of consumer representation," she said.

Consumer representatives must "be philosophically committed to the concept of consumer representation," she said. They must understand "that the oft heard 'We are all consumers' or 'What's good for business is good for consumers' is a dangerous way to approach consumer representation."

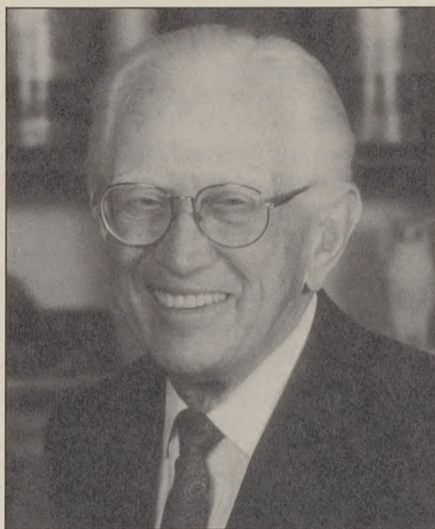
Furthermore, they "must be willing and able to devote the time necessary to do the job effectively. There are too many instances of consumer members who say yes when they should have said no, because they don't understand or couldn't or wouldn't put in the time required to be an effective spokesperson and advocate for the consumer," she added.

Finally, when they serve as consumer representatives, individuals must remember that their role is to represent the "user." "Each person's viewpoint is important, but his or her position on issues is not complete without input from those whom the consumer member represents — those who are actually affected by the board's decisions," she said.

### Consumers Are a Force on the Hill

Echoing Peterson, Sen. Metzenbaum praised the consumer movement for becoming "a force to be feared, and a voice to be heard."

"Corporate greed no longer goes unchecked in the halls of Congress. Blatant



Sen. Howard Metzenbaum (D-OH) and consumer leader Esther Peterson issued a call to action for consumer advocates.



power grabs no longer go unnoticed on the floor of the Senate," he said.

"But do these special interests still hold great sway in many congressional quarters? You bet," he warned. "And do they still flex legislative muscle that we cannot consistently match? Unquestionably."

"We can, and should, be proud of our accomplishments. But this meeting should not be a session to replay our greatest hits of yesteryear," he said. "We need to focus our energies on the very real problems of today, as well as the potential consumer crisis of tomorrow."

"We are about to speed headlong into the information age, propelled on something called the information superhighway," Sen. Metzenbaum said.

"I may not yet know a mouse from a megabyte, or a floppy disk from a hard drive, but I do know that unless consumers confront the dangers of new, huge telecommunications monopolies, consumers will be stuck in a ditch off the information superhighway. And we simply aren't going to be able to afford the tow once we're in that ditch," he added.

Sen. Metzenbaum pledged his support in ensuring that the Antitrust Subcommittee continues to scrutinize any proposed telecommunications merger "that could diminish competition for informa-

tion age services."

In addition, as Congress updates the Communications Act, Sen. Metzenbaum promised to work with consumer advocates "to prevent today's local telephone and cable monopolies from expanding that market power into new markets," "to make sure that regulation protects consumers by bringing rates down to reasonable and affordable levels," and to preserve "undiminished antitrust protections."

"If that legislation fails to preserve those principles, you can count on me to work to kill it," he said.

### Old Challenges Remain

In addition to that new challenge in telecommunications, there are old challenges consumer advocates have yet to meet, he said, citing as examples "the twin Goliaths that have teamed up to wreak havoc upon our nation's overall well-being — the insurance and health care industries."

With the "country's largest insurance giants under a cloud," consumer abuses rampant, state regulation inadequate, and many companies teetering toward insolvency, it is now time to repeal the McCarran-Ferguson antitrust immunity

for the insurance industry, stop policy transfers to unstable companies, and begin "moving toward a national regulatory system to end the fraud and abuse that is rampant in the insurance industry," he said.

"And finally, this year, the Congress will decide whether the United States finally joins the rest of the civilized world and enacts a health care system that guarantees decent health care to all of its citizens," he said.

But even though that process has just begun, "the health and insurance industry lobbies have knocked us off stride," he said.

In order to fight them effectively, the consumer movement will need to do a better job than it has in the past of mobilizing its members, he said.

### Consumers Must Tackle Cultural Issues

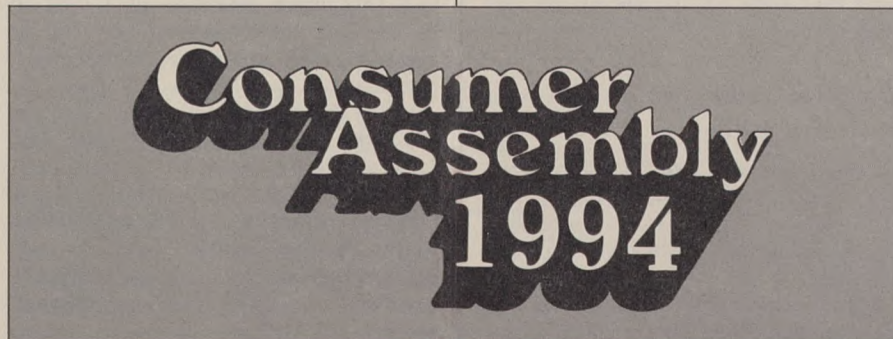
The consumer movement must also adapt to the future, which lies in "moving from the legislative and legal phase of consumerism to the far trickier social and cultural stage," Peterson said.

"More and more, I fear, the United States is moving toward a kind of social divide between a minority who are engaged, educated, enlivened by choices and wise and considered decisions, and many, many more who are simply enthralled with the worst that mass marketing, married with mass communications, has to offer," she said.

Citing the example of Gloria Steinem, who "practically built a social movement by ridiculing the sexual politics of the old 'ring around the collar' commercial," Peterson challenged consumer advocates to "build a consumer movement around the marketing politics of a television culture that sells false glamour, false fears of personal failure, false choices between ten different kinds of denture cleaners and twenty different antacids"

Calling for a "rebirth of militant consumerism and vigorous consumer representation," Peterson said it is time for the consumer movement to "start earning some enemies again." At the top of that list of enemies should be "tyrant television and a social system that leaves children and their incurious parents glassy-eyed before the false promises, its seductive lies and its corrupt fantasy projected on the tube."

"Haven't we put the future generations at risk because of our inaction, inability and unwillingness to give consumer issues the priority they deserve? If that is so, and I'm sure it is, we must be the driving force behind a stronger consumer movement that picks up where it was stranded 12 years ago at the beginning of the Bush/Reagan era," she concluded.



## New Investor Protection Partnership Urged

Securities and Exchange Commission Chairman Arthur Levitt called for a new partnership between consumer groups and the SEC to "help guarantee that America's investors can rely upon markets of openness and fairness, of tremendous efficiency, and of unimpeachable integrity."

"In the 90s, more than ever before, the people you work so hard to represent — America's consumers — are the same people we work to protect — America's investors," he said.

Levitt announced a series of initiatives "to make the SEC more consumer-friendly," including:

- creation of a Consumer Affairs Advisory Committee to formalize the consultation process and thus "keep consumer issues up front where they belong";
- transfer of the Office of Consumer Affairs to the SEC Secretary's Office "to ensure that the concerns of consumers are heard at the highest levels"; and
- release of a brochure, "Invest Wisely," "that outlines what every investor should know before putting down the first dollar."

Levitt also pledged an ongoing review of the agency's operations and those of the industry and the exchanges to ensure that, "wherever a consumer calls, they get good information."

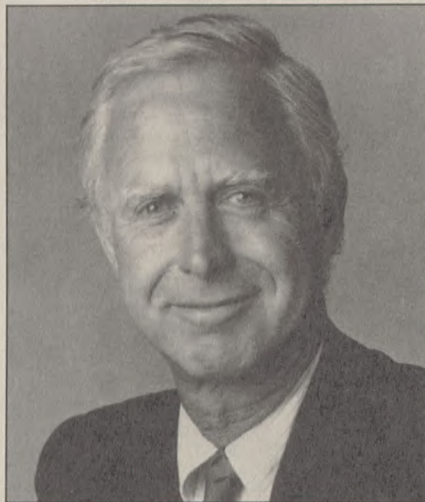
"We hope that these efforts will help investors get good answers from regulators. But we will also work to ensure that they get good advice from brokers," he said.

"I recognize that investors depend on sales representatives in much the same way that a client depends on a lawyer or a patient depends on a doctor," he said. "Brokers are often entrusted with the life savings — the future — of an individual or an entire family."

"That is an enormous responsibility, and it brings with it a great obligation. It is an obligation accentuated by the growing complexity of financial instruments being offered — being promoted — to retail investors," he continued.

### Higher Industry Standards Needed

With that in mind, he said, the SEC will "work to raise the standards of the profession, to make sure that brokers



SEC Chairman Arthur Levitt pledged increased consumer awareness at the SEC.

always consider the individual when they recommend an investment"; will "work to prevent the brokers who have egregiously violated the law from reentering the market"; and will "encourage the industry to educate both their customers and their sales forces."

"We will make sure that investors know what they're buying, what they're paying, and what they're getting for their dollar," he said.

"Maximizing investor protection also means minimizing investor costs," Levitt said, and that means reviewing regulations "for redundancy and obsolescence" to ensure that capital flows as cost-effectively as possible and modifying "any dispute resolution system if there is evidence that some people misuse it for their own improper ends."

While he expressed concern about the costs imposed by frivolous claims in securities litigation, Levitt pledged that

"the SEC will always support the ability of investors to have fair access to the courts if they have been defrauded."

"In the meantime," he added, "we will continue to require greater information in our markets — information that will allow potential buyers to understand the brokers, the market, and the financial risk involved in investments."

While the SEC can see that this information is provided to investors, "we can't make investors read it," he said, citing mounting evidence that they don't. He called on consumer groups to help make "consumers of financial products and services . . . educated consumers."

Educated investors will raise the industry's standards, help ensure that suitable advice is given, and serve as "the best deterrent to fraud," he said.

### Bank Securities Sales Need Regulation

One area where investor protections need to be enhanced is in the bank sale of securities, said Maureen Thompson, who manages government relations for the North American Securities Administrators Association.

In a session on "Consumer Policy Initiatives in Financial Services," Thompson said consumers are confused about securities sold in banks primarily because "banks are misleading consumers" and because the current system of disclosure is ineffective.

Thompson said other priorities of state securities regulators include getting bad brokers out of the securities business, fighting legislation that limits the ability of defrauded investors to take their claims to court, and improving regulation of financial planners.

Unfortunately, the "legitimate consumer interest" is lost in the debate on these issues, she said, because "investor issues are so often cast as intra-industry fights."

The consumer interest has also gotten lost in the Fair Credit Reform debate, said Ed Mierzewski, Consumer Program Director for U.S. Public Interest Research Group.

In return for "modest improvement" in credit bureaus, the big banks have demanded "sweeping preemption and rollback of current privacy protections," he said. As a result, consumer groups have withdrawn their support from the legislation "in hopes of improvement."

Other key financial services issues in Congress include abusive practices in the rent-to-own business, escalating bank fees, credit card abuses, home equity scams, and interstate branching, he said.

### Openness, Fairness Central to Insurance Issues

Issues of fairness and openness are at the heart of public policy debates related to insurance, said Amy Johnson, Public Counsel in the Texas Office of Public Insurance Counsel.

Johnson identified seven issues which she sees as the major consumer issues in insurance today: the need for federal minimum standards; the creation of independent state consumer protection offices funded by policyholders; focusing the health care debate on how it will affect consumers and on state single-payer options; repealing the industry's anti-trust exemption; providing public access to insurance data; requiring disclosure of accurate and standardized information to allow comparison shopping; and exposing red-lining and defining fair access.

## Information Age Legislation Needed

Legislation is needed to ensure that the "Information Age" evolves in a way that serves consumer interests, but the bills moving through Congress may or may not accomplish that goal, according to panelists in a session on "Advancing the Information Age: What Serves the Consumer Interest."

CFA Research Director Mark Cooper said he had reluctantly reached the conclusion that legislation is needed in the wake of recent anti-consumer developments, such as proposed mergers between huge communications companies and the FCC's release of a video dialtone proposal that lacks any universal services obligation.

### Progress, Disaster Both Possible

However, as you look at the various bills under consideration, he said, "the possibility for disaster is out there, and the possibility for significant progress is out there."

If the best provisions from the various bills are included in the final legislation, consumers could win more competition, "a better funding mechanism" based on a dynamic cost allocation mechanism, "a new concept of common carriage, which

we desperately need," and new public interest applications, Cooper said.

"We could get that stuff. Or we could end up with something like the Tauzin amendment, which says that the telephone companies get to choose whatever form of regulation they prefer, and, as long as there is a hint of competition, they can do whatever they want, with no protections against predatory pricing and anti-competitive behavior," he said.

Mary Gardner Jones, President of the Alliance for Public Technology, said a rewrite of the Communications Act is "very distinctly" needed. "What we need is a very clear definition of a goal of universal service for telecommunications video, two-way, in and out of the home," she said.

While the Markey bill takes a step in the right direction, with its "open platform" provisions, it does not go far enough, she said. "I think we're selling out too cheap to the telephone companies. We're letting them into video, and we're not demanding enough from them. This open platform . . . I don't think is a sufficient price."

Daniel Weitzner, Senior Staff Counsel for the Electronic Frontier Foundation, argued that the "open platform," which requires local exchange networks to tariff

digital services to the extent possible to ensure that they are reasonably priced, without undue impact on the local telephone network, is "the way to make widely available access affordable."

### Information Age Raises Privacy Concerns

The "rules of the road on privacy are going to be absolutely central" in determining whether the information superhighway "is the dream or the nightmare in terms of how technology is applied," said Alan Westin, Professor of Public Law and Government at Columbia University, in a panel on "Consumer Privacy: Growing Threats and Needed Strategies."

One area of concern relates to "transaction-generated information," said Beth Givens, Project Director for the Privacy Rights Clearinghouse at the University of San Diego Center for Public Interest Law. "I'm quite concerned that, when we use the information superhighway, the kinds of transaction-generated information that we leave on that and what it says about us will not be protected," she said.

All the panelists agreed, however, that the area of greatest privacy concern per-

(Continued on Page 3)



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# USDA Makes Nutrition a Priority

In the Clinton administration, nutrition is a primary mission of the U.S. Department of Agriculture, said Assistant Secretary for Food and Consumer Services Ellen Haas in a keynote Consumer Assembly address.

"Nutrition and health are very much a part of the agenda of the Department of Agriculture," Haas said.

A major priority has been the nutritional improvement of the school lunch and school breakfast programs, she said. Although they were created in the 1940s to "ensure the health and well-being of children," they have never been updated nutritionally, she said.

Child nutrition programs are important both because "children's diets today . . . contribute greatly to childhood diseases and also to long-term health risks" and because childhood eating patterns set the stage of adult habits, she said.

Using the dietary guidelines, the agency is attempting to update and modernize the child nutrition programs, Haas said. "We've really got to offset the nutritional neglect that we've had in the recent past and replace that with nutritional responsibility," she said.

With that in mind, the agency is developing "an integrated, comprehensive approach to this problem" that will include "helping kids make wise food choices," conducting nutrition education and training, providing technical assistance to food services directors and program managers, and "maximizing our resources with commodities . . . so we can help improve the nutritional profiles of the foods we offer," she said.

"You can't just mandate a change on the plate and expect to walk away and have done the job," she said.

The focus on nutrition will enhance, not detract from, the mission to fight hunger, she added. "It's not enough to

feed them or to have access if it's only access to food that's not healthy. We have to have access to a nutritious diet."

## Food Safety Must Be Modernized

The need to modernize USDA programs, this time in the area of food safety, was also discussed in a panel on "Consumer Product Safety Initiatives."

Approximately 9,000 people die each year of food-borne illness, despite the fact that we spend a great deal of money on food inspection, said Carol Tucker Foreman, President of the Foreman & Heidepriem, Inc. consulting firm.

"The inspectors are using the same methods they used 98 years ago — look and smell," she said. "You cannot see or smell bacteria."

We need microbial standards for meat and poultry, and we need to move the inspection function into an agency devoted to public health, she said.

Other panelists discussed a variety of safety initiatives on both state and federal levels.

Judith Lee Stone, President of Advocates for Highway and Auto Safety, described what she sees as three major trends in auto safety: victims are increasingly organized and speaking out; there is a new focus on the cost of injury rather than focusing exclusively on fatalities; and motor vehicle injuries and crashes "are now discussed as a public health issue."

These trends, plus the inclusion of numerous safety provisions in the last highway bill, have set the stage for progress in a number of areas, she said.

Progress is also being made on safety legislation in the current Congress, particularly toy safety and bike helmet legislation, which has passed both houses, said Claudia Simons, Counsel to the Con-

sumer Subcommittee of the Senate Commerce Committee.

In addition, the Senate confirmed Ann Brown to head the Consumer Product Safety Commission and is waiting to hear from her regarding CPSC's budget, Simons said.



USDA Assistant Secretary Ellen Haas described the agency's new focus on nutrition.

While the confirmation of Brown is good news, the bad news for CPSC is that Clinton has cut the agency's budget, despite the fact that the agency has been decimated by cuts in previous administrations, said CFA Product Safety Director Mary Ellen Fise.

Although the appointment of Brown raises the hope of a more active CPSC, currently, most of the progress on product safety initiatives is occurring at the state level, Fise said.

## Environmental Issues Unpopular on Hill

On environmental issues, "the mood is very ugly on Capitol Hill," said Erik Olson, Senior Attorney with National Resources Defense Council.

Congress has been reluctant to appropriate money for environmental programs and is increasingly looking at risk assessment and cost-benefit approaches, which he called "politically manipulative" and "fundamentally flawed."

One area in need of attention is the safety of the nation's drinking water, which often contains lead, pesticides, or, in some cases, is radioactive, he said. EPA's drinking water standards should be strengthened, he said.

Similarly, the Delaney clause, which relates to permissible levels of pesticides in food products, is under attack, not just in Congress, but also in the administration, said Richard Wiles, Director of Agricultural Pollution Prevention for the Environmental Working Group.

There is "a fair consensus that preserving Delaney forever is probably not viable," he said.

Although Congress is considering pro-consumer legislation on radon, consumer groups should take leadership in their communities to encourage testing and mitigation and not wait for the legislation to pass, said Stephen Page, Director of the Radon Division of the Environmental Protection Agency.

"The real problem is that people aren't testing their homes," he said.

One area where substantial progress has been made is in lead poisoning, said Pierre Erville, Director of Housing and Environmental Policy for the Alliance to End Childhood Lead Poisoning.

Provisions in recent housing legislation "completely revamp the way we look at lead" and create a much needed "primary prevention policy," he said.

Due to take effect in October 1995, the law will require lead disclosure during home sales and rentals, with prospective buyers provided 10 days in which to have the house inspected.

In addition, legislation is pending that would create a trust fund to help low income people and day care centers defray the cost of mitigation, he said.

## Information Age (Continued from Page 2)

tains to health care records in the new paperless system proposed as part of health care reform. While computerizing health care information offers "very exciting" possibilities for improving care, privacy safeguards and protections should be put in up-front, said Ronald Plesser, a partner in the Piper & Marbury law firm.

## Consumers Suffer Information Overload

Consumers are bombarded with information designed to help them make informed purchasing decisions, but they are unable to understand much of the information provided, said Maureen English, Assistant Director for Consumer and Community Affairs at the Federal Reserve Board.

Efforts are being made to develop clear, simple, short messages geared toward the average person, she said.

Consumers have a strong desire for independent information, but only a small minority of consumers are susceptible to consumer information that consumer educators control, said Katrinka Smith Sloan, Manager of Consumer Affairs for the American Association of Retired Persons. "The notion of looking to how sub-

groups get information is the wave of the future," she said.

Most programs to communicate information to consumers are not properly evaluated for effectiveness, said Lee Richardson, a member of the Board of Directors of the American Council on Consumer Interests. "Good evaluations are essential," he said.

Advertising is an important source of information for consumers, both in its own right and because it supports other information outlets, said John F. Kamp, Senior Vice President in the Washington Office of the American Association of Advertising Agencies, in a session on "Is Increasing Commercialization Innocuous or Destructive?"

Salvatore F. Divita, Professor in George Washington University's School of Business and Public Management, said that, while advertising should provide important information, it is often ineffective. "I think we need to focus on the effectiveness of advertising, how responsive is the advertising to the needs of the public."

Advertisements are not "givers of information, they are manipulators of information," countered Ronald Collins, Co-founder of the Center for the Study of Commercialism. Advertising is almost impossible to escape, and its "hedonistic influence is corrosive," he said.

# Should Consumer Reporters Be Advocates?

Consumer reporting requires a delicate balance between objectivity and advocacy, according to a panel of media experts in a session on "The Future of Consumer Advocacy Journalism." Panelists disagreed, however, on the question of where that balance is struck.

Journalists have a role to play in finding "resolutions to problems established agencies can't resolve," said Sylvia Gambardella, a correspondent for the syndicated television show *The Crusaders*. "That is the definition of advocacy journalism," she said.

When they act as advocates, however, journalists must explain that mission up-front so that viewers "don't feel manipulated," she added.

Warren Brown, a Business Writer for *The Washington Post*, argued for "keeping crusading out of the newsroom." News should be "a recitation of the outcome of human events," he said. "Any news organization that checks out a wrong ought to also check out the other side," he said.

"I think journalists aren't true to themselves if they say they are not biased," said Lea Thompson, Correspondent for *NBC-Dateline*. "It would be difficult, after working on a story for six months, not to care."

However, journalists must "step back and try not to convey the bias," she added. "To be fair, all sides need to be heard."

Furthermore, consumer advocates should not assume that reporters will take their side, she warned. "Consumer groups are not always right."

Phil Haseltine, President of ACTS foundation, a non-profit organization funded by automobile manufacturers and suppliers, argued that linking journalism and advocacy can lead to unfair reporting.

The auto industry receives "shoddy" and "unequal" treatment by the media, he said, citing research by the ACTS foundation which showed that the auto industry is presented extremely unfavorably in network news magazine programs on safety issues.

"If one is an advocate, one can't be a journalist," he said.

## Surgeon General Prescribes Health Care Cure

Americans have the best doctors, the best hospitals, and some of the best medical technology, but we still have one of the worst health care systems in the world, said U.S. Surgeon General Dr. M. Joycelyn Elders in a keynote address at Consumer Assembly.

Among the system's most serious flaws are the lack of access to health care for some Americans and the system's focus on treating, rather than preventing, sickness, she said.

We make a mistake when we think of access as strictly a financial issue, Elders noted. A person can lack access to health care even when he or she has the means to pay for it, if, for example, that person happens to live in a poor rural area where there are no providers, she said.

Furthermore, too many of our doctors, about 70 percent, are specialists, when what we need are primary care physicians, she added.

In addition to financial access, provider access, and transportation to services, "we need attitudinal access," she said. "We've got to educate our people . . . on how to use the health care system, and we've got to have a health care system that is concerned about keeping people healthy."

"What we have now is a very expensive sick care system," Elders said.

For example, most insurance policies only pay when we are sick, and don't pay for services to keep us healthy, she said. But "it's far cheaper to keep us healthy than it is to get us well."



U.S. Surgeon General M. Joycelyn Elders said health care reform must focus on access and prevention.

"So, when you think of access, I want you to think of all those things, because it takes every one of them for us to truly have access to health care," Elders said.

### More Focus on Prevention Needed

In addition to fixing the lack of access, any health care plan must shift our focus from sick care to health care, she said.

"We spend 99.1 percent of our health care dollars paying for sick care and only 0.9 percent of all of our health care dollars

on keeping us healthy," she said. "What people don't get is primary, preventive health care. They don't get the thing they need to keep them well."

The result is that, despite the fact that we spend more than any other country for health care, Americans do not lead the world in the indicators of overall health, such as infant mortality rates, life expectancy, and immunization rates.

The goal of any plan to reform health care should be "to improve the health of Americans, not just to improve health care," she said.

Among all the health care plans that are being proposed — many of which include universal access and comprehensive benefits — the President's plan is unique in its focus on prevention, she said.

### Merits of Reform Proposals Debated

"We agree with the president that the line in the sand has got to be universal, cradle to grave . . . health care for everyone, and we don't believe health care reform should move forward without that bottom line," said Linda Jenckes, Senior Vice President of the Health Insurance Association of America, in a session on "Health Care Reform: Administration and Congressional Proposals."

Jenckes said that the industry is concerned, however, over two main components of the president's plan: its "radical

restructuring of the system through these new purchasing cooperatives called health alliances," which she said could lead to restrictions on choice, and its reliance on price controls, whether in the form of global budgets or premium caps, which she said could inhibit the development of new technologies and cures.

Cathy Hurwit, Legislative Director of Citizen Action, argued that the president's proposal actually offers consumers more choice, since it moves choices among policies from employers to consumers.

Citizen Action's main concerns about the president's plan are that it has inadequate provisions to control costs, it puts too much control over health care decisions in the hands of insurers, and it retains a two-tiered system in which those with more money will be able to buy a higher quality of care, she said. For those reasons, Citizen Action favors the single-payer system proposed in the Wellstone-McDermott-Conyers proposal.

Martin Corry, Director of Federal Affairs for the American Association of Retired Persons, echoed Hurwit's concern that managed competition and other provisions in the president's plan might be ineffective in cutting costs, which he said is consumer's primary concern related to health care.

"It's very easy, on consumer grounds, to say that McDermott-Wellstone have it right," but it's not that easy to sell their plan to consumers, he said. "What we're doing today may be as far as they are willing to go right now!"

## Civil Justice System Needs To Be Reformed

The civil justice system needs to be reformed, according to members of a Consumer Assembly panel. Panelists disagreed sharply, however, over what reforms are needed.

Victor Schwartz, a senior partner with Crowell & Moring, argued that the "pendulum" has swung too far toward plaintiffs, which "has adverse consequences for everyone." Doctors are driven from practice, "good products are taken off the market," and some products are not put on the market at all, he said. He singled out two areas as being of particular concern: punitive damages and joint liability.

Punitive damages should only be assessed in cases of "conscious, flagrant wrong-doing," not gross negligence, he said. The gross negligence standard used in some states leads to unpredictable decisions, he said. Furthermore, each party should only be liable for the proportion of harm they cause, he said. "I have trouble charging Peter for the sins of Paul, and I don't think it's in the interests of consumers to do that."

Joint and several liability allows consumers to be fully compensated for their losses even when a party that contributed to that harm is unable to pay its share, countered Joan Claybrook, President of Public Citizen. Placing the interests of injured consumers over the interests of parties forced to pay more than their proportionate share of compensation is "only fair, if, but for them, the person would not have been harmed," she said.

Two areas which do need reform, she said, are: creation of "a fair dispute resolution system" for smaller cases, where consumers can't get a lawyer to take their case; and requiring courts, once a decision is reached, to make public "anything that deals with the public health and safety." Too often that information is kept hidden through sealed settlement agreements, she said.

Eliminating sealed settlements would lead to more litigation, Schwartz argued, because "cases would not be settled, they'd be litigated, and people would be reluctant to provide documents in discovery."

Steven Garber, Senior Economist for the RAND Institute for Civil Justice, said there is evidence that prices of some products have been driven up by liability and that some good products have been kept off the market, but these issues are often exaggerated, he said. Furthermore, the solutions offered are too simplistic.

"The liability system is neither a success, nor a disaster. What we really need to be thinking about is for what types of behavior is there too much liability, and for what types is there too little," he said.

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