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House Leaders Score Administration

by David I. Greenberg,
CFA Legislative Director

When the leadership of the House Commerce Committee speaks, consumers better listen, for that Committee's jurisdiction spans the entire consumer agenda, from energy, communications and health, to consumer protection, product safety and toxic torts. Two powerhouses of the Commerce Committee addressed Consumer Assembly '84, each delivering a profoundly troubling message about the bedrock policies, programs and values consumers count on.

"Consumers Mugged"

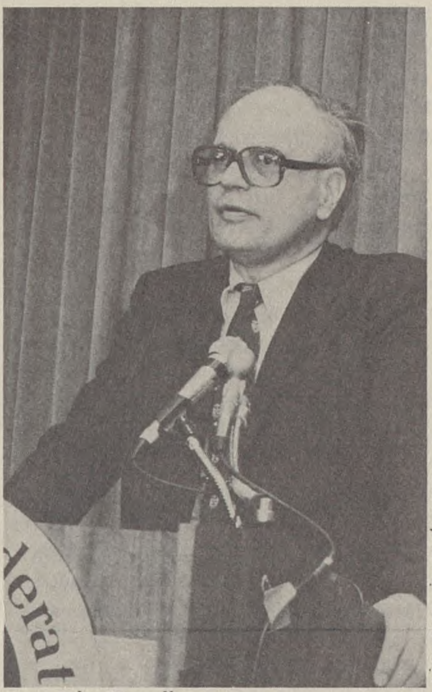
Committee Chairman John Dingell was scheduled to deliver a speech about natural gas decontrol but broadened his talk and launched a broad-scale attack on the Reagan Administration consumer policy. Dingell recalled his statement that "1981 would go down in history as the year the American consumer was mugged in the name of economic recovery and regulatory reform."

His analysis of 1982 and 1983, and his projections about 1984, led him to go even further: "This President," he said, "is more radical, more reactionary and more anti-consumer than any in this century. He has made more radical changes in four years in the way the Federal Government treats America's citizens—or, rather, mistreats them—than any other President in this century."

Government "Dismantled"

Chairman Dingell cited an all too familiar bill of particulars, amounting to what he called an effort at "wholesale dismantlement of the Federal Government."

He charged the Federal Trade Commission with upending the antitrust laws, "permitting and even encouraging some of the biggest and most anti-consumer mergers in this country's history." Dingell brought figures to back up his charge: during 1983 there were 2,553 announced mergers—a nine-year record—with a total price tag of $73.5 billion.


CFAnews photo by Anne Averyt
Rep. John Dingell


CFAnews photo by Anne Averyt
Rep. James Florio

Other agencies received similar criticism for failing to live up to, or even countermanding, their basic mandates. Dingell called the Consumer Product Safety Commission a "consultant to product manufacturers." The Securities and Exchange Commission, "rather than protecting investors from fraud, is reducing Federal enforcement and pressuring the states to lower their standards." The Federal Energy Regulatory Commission, according to Dingell, has spent its resources attempting to decontrol natural gas prices and provide utilities with a massive infusion of consumer dollars by allowing charges for work in progress.

"Orwellian" Politics

Subcommittee Chairman James Florio's speech touched on many of the same themes. Florio—whose jurisdiction covers the FTC, hazardous wastes, insurance, and transportation—chose to illustrate what he called the "Orwellian" language and concepts of the Reagan Administration.

In looking at the law enforcement record of Reagan Regulators, Florio said, "They call it 'prosecutorial discretion.' I call it disregard for the law... They call it economic analysis. I call it advanced voodoo economics or the charade of pseudo science... They call it efficiency. I call it monopoly."

Like Dingell, Florio cited numerous examples. The cutbacks in FDA enforcement (down 45%), the hundreds of unfilled food inspector positions at the Agriculture Department, and the reduction in FTC staff (down 33%) are, according to Florio, counterproductive in pure economic terms.

More broadly, however, he said, "they are distorting our society and raising a serious question whether the leadership of this country has any idea what this country stands for. All of this has been done in the name of regulatory relief, to encourage private gain." But, asked Florio, "Are we a civilization or a commodities pit?"

Both Dingell and Florio raised these troubling questions, not to discourage consumers, but merely to point out the difficult tasks that lie ahead. And they promised to join consumers on the front lines of those future battles, providing the kind of leadership and strength we have to come to expect from both.

Miller, Pertschuk Differ on FTC

On the same morning of Consumer Assembly, Federal Trade Commission Chairman James C. Miller III and immediate past Chairman Michael Pertschuk, communicated radically different views of the FTC.

Former Chairman Mike Pertschuk returned to Consumer Assembly not to defend his agency but as its chief critic. He laid major blame for what he sees as the Commission's current failures squarely at the gate of 1600 Pennsylvania Avenue. According to Pertschuk, the first commandment of Reagan Regulation was set down by then top economist Murray Weidenbaum: "Don't just do something, stand there."

It would be unfair, according to Commissioner Pertschuk, to accuse FTC Chairman James Miller of personally seeking to dismantle the Commission. Pertschuk recalled that the President's initial FTC budget sought to abolish the Commission's antitrust jurisdiction and close down all its regional offices. Both proposals met bipartisan opposition in Congress.

Lean Times

Despite his attacks on higher Administration officials, Pertschuk saved plenty of criticism for the FTC's own leadership. As to Chairman Miller's promise of a "lean but mean" program, Pertschuk agreed that the budget was lean but the meanness was "primarily directed toward the Commission's programs, not toward deceptive advertisers, business predators or mergerers."

Pertschuk cited attempts to "restrict" the definition of deception and the reach of the ad substantiation doctrine; the elimination of certain proposed

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Special Consumer Assembly Issue

CONSUMER FEDERATION OF AMERICA

Telecommunications Fight Moves to the States

by Glenn Nishimura, CFA Legislative Representative

The fight over telecommunications policy in 1984 is moving to the states. And as Consumer Assembly '84 attendees were told, consumer groups must be diligent in order to protect the goal of affordable and accessible telephone service.

In a keynote address to the Assembly, U.S. District Judge Harold Greene, who oversaw the AT&T divestiture, noted the irony in the nostalgia for the Bell System. Greene likened it to "your late mother-in-law; when she was alive she was a pain in the neck; now that she is gone she is thought of as a saint."

Greene, the most knowledgeable authority on the divestiture, also took issue with those who argue that long distance rates subsidize local rates. "If, before 1982, the Justice Department and the FCC could not tell us that long distance was subsidizing local rates, how do they know now? What studies have been made since then to support that conclusion?" Greene asked.

Following Judge Greene's remarks, leading consumer experts on telecommunications issues at the state level conducted a workshop on how to advocate for consumers before state public utility commissions.

Under the present regulatory scheme, there is a "positive incentive to subsidize competitive services by monopoly services," said Dr. William Melody of Simon Fraser University. Melody emphasized that some of the basic tenets of regulation must change and that consumers must force state commissions to reject the use of residual pricing, which ultimately forces consumers to bear a disproportionate share of the burden of paying for the telephone system.

Dr. Walter Bolter of the Bethesda Research Institute, warned that the Regional Bell Operating Company structure can funnel money away from the local operating companies. After questioning who will regulate the regionals, Bolter suggested that consumers may see profitable competitive services being developed under local companies only to be split off to operate under the regional umbrella, while unprofitable ventures stay at the local company.

Meanwhile, in a workshop on grassroots strategies, Gene Kimmelman, staff attorney for Congress Watch, urged consumer groups to take a two-prong approach at the state level: achieve rate relief before regulatory commissions and pass legislation to assure public participation in regulatory hearings. Pointing to the Wisconsin Citizens Utility Board as a model, Kimmelman stressed that long-term advocacy mechanisms to protect the public are needed.

Electric Power Plants: To Build or Not to Build

Electric utility plant construction was a major topic of discussion at Consumer Assembly '84. In a general session, American Public Power Association Executive Director Alex Radin, Georgia Power Chairman Robert Scherer, and National Resources Defense Council attorney Alan Miller disagreed on the need to complete one trillion dollars of power plants currently under construction.

Scherer argued that these plants should be finished and brought on line. Despite extensive conservation programs and ambitious solar research, Georgia Power, for example, cannot meet future electricity needs without new plants.

Radin suggested that the question of completing plants "cannot be answered without a case-by-case analysis." While such an assessment might show it is "economically desirable to complete some or all of them," Radin also stressed the availability of other options—conservation, cogeneration, reconditioning old plants, and greater transmission of power from areas of surplus to those of shortage.

After criticizing the U.S. Department of Energy's recent electric power report for exaggerating future electricity demand and minimizing the cost of meeting these needs through large coal and nuclear plants, Miller emphasized the importance of relying on investments in efficiency and decentralized sources of supply. Both provide much greater flexibility and much less risk than investments in large central power plants. Completing the latter would impose huge and unnecessary costs on the whole society—about $10,000 per household during the next 15 years if utilities were allowed immediate cost recovery.

In an earlier session on grassroots strategies, Michigan Citizens Lobby Executive Director Joe Tuchinsky outlined three strategies available for blocking plant construction and restraining electric rates: appealing PUC decisions in the courts; lobbying state legislatures on behalf of legislation; and organizing initiative campaigns to put legislation before all voters. While each demands considerable skill and resources, these strategies can work: The Michigan Citizens Lobby, for example, has won several reforms including restrictions on the ability of utilities to automatically pass on fuel costs to consumers.

CFA Elects New Board

Al Luzi, Executive Director of Concerned Consumers League in Milwaukee, was elected President of CFA at the Federation's annual meeting held in February. Luzi, a long-time Board member of CFA, was elected to a one-year term, replacing outgoing CFA President Ellen Haas, Executive Director of Public Voice.

Luzi serves on the board of numerous public interest organizations, and is a member of Consumers Union's National Education Advisory Committee and the Milwaukee Public School's Consumer Education Advisory Board.

Kenneth Kovack, Legislative Representative, United Steelworkers, was elected Secretary-Treasurer of CFA, and Ann Brown, Consumer Chairman, Americans for Democratic Action; Jacob Clayman, President, National Council of Senior Citizens; Jean Ann Fox, Board member, Virginia Citizens Consumer Council; William Matson, Chairman, Pennsylvania League for Consumer Protection; Arnold Mayer, International Vice President, United Food and Commercial Workers; Alex Radin, Executive Director, American Public Power Association; Lee Richardson, President, Maryland Citizens Consumer Council, and Mark Silbergeld, Director, Consumers Union's Washington office were all elected to one-year terms on the Executive Committee of CFA.

New members elected to CFA's Board of Directors include Gene Defries, Executive Vice-President, National Marine Engineers Beneficial Association; Evelyn Dubrow, Vice President, International Ladies Garment Workers Union; Virgil Fodness, President, East River Rural Electric Association; Richard Murphy, Legislative Director, Service Employees International Union; Tom Nelson, Director of Consumer Affairs, American Association of Retired Persons; Mary Solow, President, Consumer Federation of California; Ira Thompson, Comptroller, Ohio AFL-CIO; Stanley Yarkin, Director, Consumer Services Coop., Inc.; William Winn, President, North Carolina Consumers Council, and Robert Krughoff, President, Center for the Study of Services.

CFAnews

CONSUMER FEDERATION OF AMERICA
1314 14th Street, N.W., Washington, D.C. 20005
(202) 387-6121
President: *Al Luzi*
Executive Director: *Stephen Brobeck*
Legislative Director: *David Greenberg*
Administrative Director: *Karen Eppsteiner*
Legislative Representative: *Glenn Nishimura*
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CFAnews Editor: Anne C. Averyt

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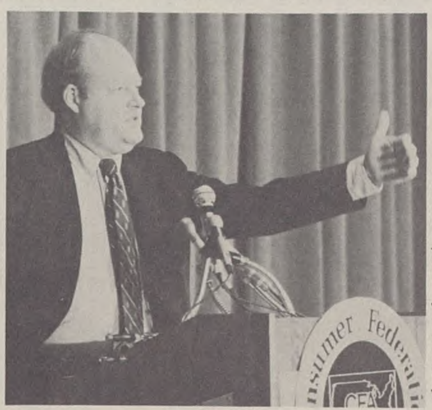


Chairman James Miller

CFAnews photo by Anne Averyt

rules—like the Food Advertising Rule—and the effort to force others—on hearing aids, vocational schools and mobile homes—to "languish in the bowels of the Commission;" the plan to disestablish the absolute ban on resale price maintenance; and the development of the "most meager" of antitrust records.

The most painful aspect of working at the FTC today, according to Pertschuk, and the greatest source of his concern about its future, is the "steady loss of good and committed public servants." If the President is reelected, Pertschuk predicted that the "bleeding will become a hemorrhage."

"Cop Off the Beat"

In his remarks, FTC Chairman James C. Miller III seemed to implicitly accept his predecessor's view that the Commission has changed, but Miller's evaluation of those changes differed markedly from Pertschuk's.

The Chairman believes that the FTC has refocused its resources toward "traditional consumer protection issues—fraud, deception and discrimination." In the fraud area, he mentioned suits against second trust loan scams and phony diamond, oil lease and franchise schemes. With respect to deception, the Chairman spoke of stopping false claims about energy savings devices, air cleaners, smoke masks and dietary "cancer cures."

In the antitrust arena, Miller referred to "targeting resources" on price-fixing and boycotts, practices that "truly harm competition," and thanked consumer groups for their help in coalition efforts to stop the legislative campaigns to gain antitrust exemptions for doctors and lawyers.

Former Chairman Mike Pertschuk

CFAnews photo by Anne Averyt

In closing, Chairman Miller acknowledged the need for greater communication with consumers. He also touted the Commission's "non-litigation strategies" for improving industry compliance with the law, and he disagreed entirely with Mike Pertschuk's frequent characterization of the FTC as "the cop off the beat."

Workshops Cover Broad Gamut of Issues

by Mary Jo Meenan, CFA Legislative Assistant

Workshop sessions at Consumer Assembly '84 covered a broad range of current issues including food safety legislation, banking deregulation and the consumer's role in the coming elections.

Keeping Our Food Supply Safe

The debate over food safety legislation was the focus of a workshop which analyzed the impact of the proposed "Hatch Bill," legislation now being sponsored in the Senate to relax U.S. food safety laws.

Nancy Drabble of Congress Watch examined the proposed Hatch bill in light of the current Food, Drug and Cosmetic Act, arguing that it would weaken consumer protections set forth in current law. The Hatch bill, she said, would water down the definition of "safe" as it applies to food additives, and it would slowly phase out dangerous additives rather than immediately banning such products. Drabble also criticized the bill's provision requiring a balancing act of risk-benefit analysis. Such a balancing of risks and benefits may often err on the side of leniency rather than safety, according to Drabble.

Panelist Tom Smith of Public Voice echoed Drabble's concerns with regard to the Hatch proposal, and also pointed out that Federal agencies such as the Environmental Protection Agency don't have enough staff to test for hazardous substances such as pesticides. He went on to voice concern that the importance of ongoing research into food safety is being overlooked in the attempt to weaken current law. "The public is entitled to more reliable information in regard to food products," he said.

Arguing in favor of the Hatch bill was Stuart Pape of Patton, Boggs and Blow. Pape views the Hatch bill as a necessary compromise of all the diverse positions on food safety, stressing that current law is too rigid to accomplish its goals.

Labyrinth of Banking Deregulation

Substantive changes in the financial services industry and the public interest implications of those changes were addressed by speakers from industry, government and consumer groups in a workshop focusing on banking deregulation.

Deregulation is being driven by factors such as technology, greater consumer sophistication, and inflation, said Meredith Fernstrom of American Express. The new environment created by deregulation also brings with it greater consumer problems, such as customer confusion, decreased access for low-income groups, computer-related problems of privacy invasion, and increased difficulties in complaint handling, she said.

> *"Topics ranged from food safety legislation and banking deregulation to the consumer's role in the upcoming elections."*

Senate Banking Committee General Counsel John Collins described the historic events that led to the enactment of two major banking deregulation bills in the past three years, and how those events translate into the possibility of further legislation. Currently, he said, the Senate Banking Committee is considering a comprehensive financial services bill sponsored by its Chairman, Senator Jake Garn (R-UT).

The trailblazing efforts of the state of New York to cope with the problems and methods of deregulation were outlined by Lee Webb, of the Conference of Alternative State and Local Policies, and Jon Brown, of the Public Interest Research Group. Webb lamented that consumer groups appear unprepared for the debate on deregulation, though there are tremendous opportunities to bargain. The various industry participants may be willing to negotiate on consumer protection issues now, he said, whereas, five years from now their positions may be etched in stone.

Winning at the Polls

In the "Consumer's Role in the 1984 Election" workshop, consumer groups received practical tips on how to choose and support a candidate. Al Jackson, of the National Committee for Effective Congress, urged consumers to examine clear philosophical differences between candidates. He cautioned against "working for clear losers." Instead, he said, pick a marginal yet winnable candidate, and be sure to critically examine the resources needed to win. The most important tactic, he said, is to stay involved in the campaign, and remind the winners that your support did make a difference.

David Schmidt, editor of *Initiative News Report*, spoke about the increasing role of citizen's initiatives in the political process. About 23 states now have such a system whereby citizens can enact a proposal by direct vote. Proposition 13 in California is probably the most famous such initiative. Schmidt hailed the initiative process as an opportunity to establish a political power base, for even if you lose, you've built a group of organizers.

Citizens Labor Energy Coalition representative, Liz Blackburn, spoke about grassroots organizing and just plain hard work. Her themes in regard to campaigning were persistence and creativity. CLEC, in Philadelphia, for example, held car washes to raise money, canvassed by phone, and worked with Pennsylvania Public Interest Coalition to elect Wilson Goode. Such efforts, whether successful or not, pay off, she said, because groups gain valuable organizing experience and increased visibility.

CFAnews photo by Anne Averyt

Luncheon speaker Robert B. Reich, Professor of Business and Public Policy at Harvard University, calls for a "new economics" which addresses the challenges of the "next American frontier." This new economics stresses the importance of productive long-term investments, sees no trade-off between growth and equity, and recognizes the need for a labor-management-government alliance to plan the transition into a new technological era.

Sessions Focus on Product Safety

by Anne C. Averyt,
CFA Product Safety Director

Product safety issues were the focus of Consumer Assembly workshop sessions on formaldehyde, indoor air pollution and toxic torts.

Former Consumer Product Safety Commissioner David Pittle chaired the formaldehyde session, noting that the time has come to redirect the resources currently being channelled into a continuing debate over the health risks associated with formaldehyde, and instead focus on three questions: What is the best achievable level of formaldehyde off-gassing today? What is the best level we can reach in three years? How can we reach those levels quickly and economically?

Panelists C. "Kip" Howlett of Georgia-Pacific and Tom Collier of Steptoe and Johnson, legal counsel for the Manufactured Housing Institute, explored those questions, describing the current state of the art regarding formaldehyde emissions, and what levels we could expect in the near future.

Anne Averyt, Product Safety Director for CFA, expressed concern for the small segment of the population that may experience a hypersensitive reaction at very low levels of off-gassing. She called on the industry to commit resources to medical research, and to technological research to find an adequate substitute for formaldehyde.

Indoor air pollution, a new priority product safety issue for CFA, was the focus of another Consumer Assembly workshop. The panel, chaired by David Swankin of Swankin and Turner, newly-named indoor air consultant to CFA, included several prominent researchers.

Dr. John Spengler, professor at the Harvard University School of Public Health, pointed out there are numerous sources of indoor air pollution: supplemental heating equipment, recirculation of dryer heat, tobacco smoke, dust, fibers, aerosols, spores and other particles.

The other panelists, including Dr. Harvey Sachs of the National Indoor Environmental Institute; David Harris, manager, Indoor Air Quality for the National Institute of Building Sciences; author Rebecca Cohen, and representatives from the Environmental Protection Agency and the Consumer Product Safety Commission, discussed possible policy options to address the problem, ranging from liability suits and new health and building codes, to clean air and toxic substance laws, and regulatory action.

The third workshop program involving product safety issues focused on toxic torts and the need for a Federal compensation system. Chaired by CFA Legislative Director David Greenberg, the workshop examined possible remedies for victims of toxic products.

Michael Goldberg, counsel for the House Labor Standards Committee, spoke in favor of legislation sponsored by Rep. George Miller (D-CA) to merge tort law and workmen's compensation programs into one federal no-fault system.

Arguing against a no-fault system were Steve Wodka, of Frederick R. Baron and Associates, and attorney Michael Mullen of Crowell and Moring. Both agreed the tort system is the most workable, and criticized the no-fault proposal as too costly and unwieldy to manage.

Jeffrey Trauberman, Director of the Toxic Substances Program for the Environmental Law Institute, addressed the broader questions raised by the debate on toxic compensation: "Who hurt whom?" and "What are we going to do about it.?"

UPCOMING EVENTS

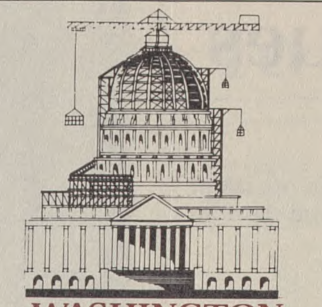
Telephone Issues for the States: "Implementing Divestiture"
MAY 17, 1984
Washington Plaza Hotel
Washington, D.C.

Awards Dinner
JUNE 14, 1984
Capital Hilton Hotel
Washington, D.C.

Call: Karen Eppsteiner, (202) 387-6121

The Evolution of Consumerism

by Stephen Brobeck, CFA Executive Director



Frank Swoboda's perceptive speech at Consumer Assembly reminded us how much the consumer movement, and our society, have changed during the past 15 years. The analysis developed by the *Washington Post*'s business and finance editor drew a parallel between organized labor and consumer groups. "Both have evolved from activist movements to become institutionalized parts of the power structure. Both have done well for your supporters and now are basically taken for granted. Both are primarily reduced to trying to protect previous legislative gains in a changing environment. And both have worked together as part of a broad coalition to try and achieve your goals."

Swoboda's characterization of the evolving consumer movement is essentially correct. At federal, state, and local levels, we have succeeded in establishing new consumer agencies ranging from the Consumer Product Safety Commission and National Highway Traffic Safety Administration to hundreds of state and local protection agencies. Scores of consumer activists who had worked with nonprofit groups were among those selected to run and staff these new agencies, and older ones.

Though many problems remain unsolved, we have not done a bad job protecting the consumer interest. As well as the new agencies, numerous of new consumer statutes and regulations serve as a reminder that advocates have left their institutional mark.

Swoboda ignored the many initiatives still being taken outside Washington: recently, state legislatures, county governments, and city councils have passed dozens of new consumer laws and rescinded few old ones. But since 1979, Washington-based advocates have largely been on the defensive. Not long after we mobilized against a massive business attack on the FTC, we were forced to oppose Administration efforts to shut down the FTC's Bureau of Competition, the CPSC, and the Consumer Cooperative Bank. While the agencies survived, they did so in a condition weakened by severe budget reductions. Furthermore, new anti-regulatory administrators succeeded in diluting old protections and blocking new regulations which were close to approval. At state and local levels, budget cutbacks were responsible for eliminating some and weakening most established protection agencies.

As well as analyzing trends in consumerism, Swoboda sought to explain why consumer groups are currently on the defensive. He identified four principal factors:

- The Administration's campaign to curtail government intervention in private markets.
- The growing political clout of business.
- The Consumer Movement's own success. The resolution of many marketplace issues to the benefit of consumers has convinced many citizens there is little left to accomplish.
- The Consumer Movement's increasing partisanship and emphasis on broad social issues. Swoboda argued that this is the primary reason for the growing number of consumers who feel consumer leaders have lost touch with their concerns.

Partisanship clearly has increased during the past three years, principally as a response to the Administration's assault on past consumer protections. In two Reaganomics reports, national consumer groups went beyond criticism of specific policies to charge the Administration with being anti-consumer. CFA and other national groups have also shown more of a willingness to link up with other organizations whom the Administration has put on the defensive—those representing women, minorities, environmentalists, labor, and others—in the belief there is strength in numbers.

Although partisanship represents a predictable political response to a powerful threat, it probably has not increased our popularity with consumers. Except during the last recession, President Reagan's standing in the polls has been high. Despite great costs, the Administration and Federal Reserve did bring down inflation and interest rates. Moreover, many citizens have been convinced that regulations carry a high price tag. This belief does not translate into opposition to all regulations, as the 1983 Harris survey on consumerism demonstrates. But the public clearly has a stronger sense of the trade-offs involved in regulation than do most consumer advocates.

How should we respond to increased public skepticism about our advocacy? First, we should focus our attention on consumer issues. These are the issues about which we are knowledgeable and enjoy credibility. Second, we must make certain we can justify our positions on these issues with arguments that are convincing to the public. Whenever possible, for example, we should point to cost-benefit estimates suggesting that the benefits of protections far outweigh costs. Finally, in our advocacy we should stick to issues. Rather than excoriating business or the Administration generally, we should explain our positions on specific issues, then let consumers draw their own conclusions. When these positions are well-developed and documented adequately, they will yield far more consumer support than any broad denunciations.

Deregulation: Return to the Jungle

The current push for deregulation was described as a "return to the jungle" by Consumer Assembly speakers Susan and Martin Tolchin, authors of *Dismantling America: The Rush to Deregulate.* The Tolchins pointed out that with developments such as gene splicing and the potential for electronic invasion of privacy, this is hardly the time to abandon government oversight.

Ms. Tolchin spoke out against the short-sighted policies of the deregulators, which have produced some frightening results. Because of the decreasing number of regulatory enforcements in mine safety, she said, mining deaths have gone up 50%. Ms. Tolchin also warned that the gutted regulations are producing a wide range of losers: "children, minorities, women, the poor, the aged, the infirm, teenagers, workers, consumers, and those who breathe the air and drink the water."

Who lobbies for a given regulation often determines the speed with which the regulation takes effect, Ms. Tolchin said. When an industry wants a regulation they consider in their own interest, the enactment is almost immediate. But when a special interest decides to stonewall a regulation, the health and safety of the consumer is sacrificed. The drug industry, for example, pushed through packaging regulations in three weeks following the Tylenol tampering emergency. The FDA on the other hand took 18 months to regulate nutritionally deficient infant formula.

An especially frustrating problem, according to the Tolchins, is the degree of secrecy under which decisions are made. The Office of Management and Budget, while playing an increasingly significant role in the administration, does so without any public hearings.

Mr. Tolchin added that deregulation has brought with it a re-ordering of national priorities. The desire for "regulatory reform" has now replaced such "older" goals as clean water and air, and consumer protection. Mr. Tolchin stressed that no industry can police itself. Government should not turn its back on necessary regulations simply to fit into the deregulation fad.

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