The adverse impacts of deregulation on consumer health and safety proved to be a major issue at Consumer Assembly '86. Several keynote speakers and panelists focused particular attention on the performance of federal regulatory agencies.

Congressman James Florio (D-N.J.), chairman of the House Commerce, Transportation and Tourism Subcommittee, took the Environmental Protection Agency (EPA) to task for "failing to meet the increasingly urgent and overriding challenge posed by toxic contamination of our air, soil, and water." He charged that EPA had failed to adequately implement or enforce major toxic waste legislation enacted in the late 1970s.

Florio described several specific failures:

- **Unsafe Drinking Water**: A recent study by the congressional Office of Technology Assessment estimated that petrochemical wastes have contaminated over 30 percent of underground reservoirs supplying major cities. But EPA has established exposure standards for only 20 out of hundreds of these chemicals.

- **Air Pollution**: EPA has ignored air toxics from major chemical factories, instead passing the buck to state and local governments ill-equipped to deal with the problem.

- **Asbestos in Schools**: Over 15 million children attend schools contaminated by flaking asbestos. Yet EPA has not specified standards for identifying or cleaning up the hazard. As a result, many local communities have panicked, making a serious problem worse.

- **Radioactive Waste**: In five years, EPA has failed to complete even one toxic waste cleanup. Actual work has begun at less than five percent of 650 priority sites.

EPA inaction, said Florio, has forced Congress to take action. "In many instances we have taken regulatory decisions out of the hands of the agency and enacted them into law," as was done in the reauthorization of the hazardous waste disposal law. But EPA has taken regulatory decisions out of the hands of unqualified, low-level political appointees in OMB.

For example, OMB rejected a Department of Energy proposal to compare breast feeding with commercial infant formula use. In response, Horowitz asserted that OMB was simply ensuring that departments and agencies were accountable. He justified the cost-benefit study requirement by arguing that in a world of finite resources, the complete elimination of health and safety risks is not possible.

**At the Thursday luncheon, Consumers Union Technical Director R. David Pittle debated product recalls.**

At the Thursday luncheon, Consumers Union Technical Director R. David Pittle debated product recalls. Pittle criticized the CPSC for considering a requirement for cost-benefit analyses before recalls, often voluntary ones. These analyses would have difficulty assessing consumer costs, yet would delay needed action. He also said that if the agency rarely required recalls, industry would grow less willing to recall products voluntarily.

In another panel, speakers addressed the issue of new toxic threats. E. R. Davis, editor of the Ecological Illness Report, asserted that the increasing use of toxic chemicals in products is forcing many individuals to "forsake the 20th century." Along with Mary Ellen Fise, CPSC's product safety director, he warned that only a small fraction of products containing these chemicals have been tested. CPSC staffer Sandra Eberle added that this was true of most of the 150 chemicals that may be present in indoor air.

**CPS Commissioner Terrence Scanlon (left) and Consumer Union Technical Director R. David Pittle debate product recalls.**

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Stephen Sides of the National Paint and Coatings Association cited voluntary efforts by industry to improve product safety and the current attempt to find a substitute for methylene chloride. He agreed with Davis, however, that explicit labeling of hazards was essential.
Rockefeller Hits Deregulation Costs

The downside of deregulation was the theme of Senator John D. Rockefeller IV's (D-WV) keynote luncheon speech to Consumer Assembly attendees. Rockefeller enumerated the economic costs of deregulation, particularly in transportation. He also sharply criticized the "current merger madness" as "perhaps the least productive imaginative use of the resources we desperately need to rebuild our economy."

Rockefeller began his speech by expressing surprise that in the U.S. Senate, the theme of deregulation has largely given way to other issues such as deficit reduction and tax reform. He suggested that this change has occurred because legislators are concerned that regulatory changes have created major problems for both consumers and business.

In discussing communications, the senator questioned "whether telephone deregulation has left average consumers with service and efficiency far below what they expect for the increased amount they are paying."

But his toughest criticism was reserved for deregulation of the nation's transportation system. Rockefeller argued that escalating accident rates raised serious doubts about the value of trucking deregulation. For example, in West Virginia last year, 27 percent of the trucks checked on the highways had serious mechanical defects.

Bus deregulation. Rockefeller suggested, "has left many passengers stranded." While service has continued in the profitable inter-city markets, "for those of us who have substantial rural populations, the bus no longer stops." In West Virginia in the past three years, 65 communities have lost all regularly scheduled inter-city bus service.

Widely celebrated airline deregulation, the senator continued, has lowered fares and increased services in heavily traveled corridors. Yet it also may have jeopardized safety by imposing pressures to shortcut repairs and preventive maintenance, hire less experienced personnel, or provide employees with less training. In addition, deregulation has "left some communities with significantly fewer air options and at a higher cost."

Rockefeller expressed greatest concern with railroad deregulation. He took the Interstate Commerce Commission to task for turning special protections for captive shippers on their head and using them for the benefit of railroads. "No coal shipping rate has ever been found to be excessive, and no rate ever will be under this formula."

Yet Wall Street considers every major coal hauler to be in excellent financial shape, and the industry has used coal revenues to make or propose over $5 billion in corporate acquisitions. That is why "passage of reforms to the Staggers Rail Act has become one of my top legislative priorities," said Rockefeller.

In concluding, Rockefeller lashed out at the merger and takeover mania that has "traumatized corporations that were previously healthy." In the process, it has forced them to strip away equity and replace it with high-cost debt.

Before his speech, Rockefeller was presented with CFA's first "rookie of the year" award by CFA Secretary-Treasurer and former semi-pro baseball player Ken Kovac. Kovac recognized the senator for his effective, but often thankless, committee work on issues ranging from product liability to gas deregulation to railroad deregulation.

Senators Jay Rockefeller (D-WV)

Speakers, Workshops Address Liability Insurance Costs

From doctors to day-care operators, from small business to local governments, consumers and institutions confront skyrocketing insurance rates—and even total unavailability of insurance at any price. But is the liability crisis real, or has it been created by insurance providers seeking higher profits? This was the question addressed in lively, occasionally heated, debate at the 1986 Consumer Assembly.

Two former Federal Insurance Administrators, J. Robert Hunter and George K. Bernstein, took exactly opposite positions in the general session titled "The Liability Crisis: Real or Manufactured?" Hunter, president of the National Insurance Consumer Organization, accused insurance companies of "price-gouging" and said "the insurance industry is on strike." He noted parallels between the current situation of rising premiums and lack of insurance availability and the industry profit slumps of the mid-1960s and 1970s, when companies also raised premiums, terminated policies and carried for "nontort reform." Hunter called for extensive reform of the industry. Congress should end the insur- ance anti-trust exemption and repeal the prohibition on Federal Trade Commission investigations of the industry, according to Hunter. Most important, Hunter said, America must develop its own reinsurance market to circumvent Lloyds of London and other foreign reinsurers. "We need insurance independence, just as we need energy independence," he said.

George K. Bernstein, an attorney representing the insurance industry, countered that the liability crisis was quite real, caused by a combination of industry errors and a tort system run amok. "The industry is profit-making," Bernstein emphasized, "and you can't write insurance below cost and make money." He noted that in the 1970s competition in the industry had spurred companies to write policies below cost and today's rate increases were an attempt to reach an even keel.

Bernstein sees the solution to the crisis in reforming the tort system. "You don't know what the laws of tort are anymore," he said. Bernstein particularly criticized the legal doctrine of joint and several liability, whereby insured parties who cannot recover damages from all those responsible can still recover full judgments from some of the parties responsible. Thus, insurers can be forced to pay the entire amount of claims if their clients are partially responsible. It is extremely hard for companies to underwrite policies, he said, if they have only a vague idea of what they are insuring. Bernstein cited figures showing insurance performance at lower rates than other American industries and accused Hunter of using false and misleading data in attacking insurance companies. Hunter responded that insurance companies should release data they now keep secret to permit consumers to evaluate industry claims for themselves.

Product Liability and Medical Malpractice

Rising insurance rates for doctors and other medical professionals was the topic of the workshop titled, "The Crisis in Medical Malpractice: Whose Responsibility?" Peter Perlman of the Association of Trial Lawyers blamed the "mismanagement and greed" of insurance companies for the problem and said that the consumer's right to fair compensation for malpractice injuries must be protected. Linda Lipsen of Consumer Union agreed that the right to sue must not be compromised.

James S. Todd, M.D., of the American Medical Association countered that problems in the tort system were the culprits and that consumer advocates were distort- ing the debate by using misleading statistics. The panelists and audience members then embarked on a spirited debate of the medical malpractice issue, punctuated by sharp exchanges between Perlman and Todd.

A solution proposed in Congress to deal with liability for consumer product defects was discussed in the workshop "Product Liability: Assessing Proposals to Compensate Victims." Panelists focused on S. 999, introduced by Sen. John Danforth (R-Mo.). The bill would modify the product liability system by easing the burden of proof for victims and requiring attorneys to explain all options to clients, including alternatives to litigation.

David Zorensky, chief counsel to the Senate Committee on Consumer Subcommit- tee, stated that the bill would expedite plaintiff's recovery of damages and encour- age non-judicial dispute resolution. Several questions remain unanswered, though, such as how non-economic harm would be reimbursed.

Attorney Victor Schwartz also gave the bill qualified praise. He questioned whether the legislation, instead of encouraging arbi- tration, would provide "too many exemp- tions" that would justify involving lawyers in cases. Joseph Goftman, an attorney for Public Citizen, said the objective of reform legislation should be to increase the speed and certainty of settlements, to provide adequate compensation, and to include con- sumers who are now excluded from the tort system. He noted that S. 999 falls short of these objectives.
Grassroots Consumerism Flourishes in Deregulation Era

A
assembly participants who attended workshops on grassroots consumerism and consumer complaints found, to paraphrase Mark Twain, that reports of the consumer movement's death were somewhat exaggerated.

"The tougher the Reagan administration makes it for consumer groups, the tougher these groups get," noted George Idelson, editor and publisher of The Consumer Affairs Letter. Idelson said the consumer movement is diverse, innovative and issue-driven, while grassroots groups are growing in sophistication and becoming skilled lobbyists.

"...banking deregulation is emerging as the major consumer issue in low-income neighborhoods,..."

But Fred Goldberg, counsel to the National Association of State Utility Consumer Advocates, expressed doubt. "Consumerism is a growth industry. I'm not sure that consumer groups are a growth industry," he said, noting that consumer groups have had such great success in the past that today their impact appears less strong. "I think the consumer movement is in worse shape than it should be," said Mindy Lubber, program director for the Massachusetts Public Interest Research Group. "We must build organizations that survive." Lack of accountability and poorly-run operations plague too many consumer groups, she said, and organizations must build stable funding bases which do not depend on federal or state money.

Vice-President of the Center for Community Change Andrew Mott explained that his group needs federal funding to be effective. He noted that cutbacks in federal aid have slowed self-help initiatives in low-income communities.

What does the future hold? Goldberg described the growth in consumer action on health care issues and said consumers increasingly would demand alternatives to traditional health care programs. Idelson said that banking deregulation is emerging as the major consumer issue in low-income neighborhoods, particularly loss of access through branch closings, escalating fees, and restrictive lending practices.

Consumer Complaints and Consumerist Issues

The link between consumerist action and consumer complaints emerged at the workshop titled "What Complaints Tell Us About Emerging Consumer Issues," as moderator Tom Novick of the Oregon Public Interest Research Group pointed out that the complaints that consumer hotlines receive often direct public interest groups to neglected trouble spots. But Barbara Gregg, executive director of the Montgomery County, Maryland Department of Consumer Affairs, cautioned that complaints should serve only as guides to consumer groups; organizations should not allow the nature of consumer complaints to set their agendas.

Candace Von Salzen, a vice president at the Council of Better Business Bureaus, noted that the two major complaint categories in 1975—mail order schemes and home remodeling—still top the list of consumer complaints a decade later. She also described emerging issues in consumer complaints, particularly the growth in financial and investment fraud.

Consumers who complain to hotlines and government offices rarely get the same results. There is a lack of accountability and the data, as well as the results, will be made available to consumer groups, regulators and industry.

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CFAnews is published 8 times a year. Annual subscription rate is $25 per year.

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Design & Typset by: Design Consultants, Inc.
Consumers Have Basic Rights Under Bank Regulation, Rep. Oakar Says

I believe that banks have a public purpose that makes them an integral part of the local community. The longstanding tradition of banking has been service to the customer and the community. With those words, Rep. Mary Rose Oakar (D-Ohio), a member of the House Banking Committee, outlined a detailed agenda for consumers confronting deregulation of financial services.

Speaking to a general session at Consumer Assembly, Rep. Oakar said “The special relationship between banks and communities cannot be overemphasized. If banks meet their public purpose, consumers, communities, and the banks themselves will all prosper” she said. “Banks are and must continue to be the conduit for taking savings in the community and channeling it into productive investment in the community.”

Rep. Oakar identified five consumer rights which she said must be protected in the face of deregulation:

1. The right to choose. “Deregulation does not ensure that right to choice. Deregulation, rather than improving competition, could very easily result in large, diversified financial businesses driving small local financial institutions out of business.”

2. The right to secure deposits. “The crisis of confidence that resulted from the failure of only one privately insured institution in each state [Maryland and Ohio] underscores the importance of supervision, regulation, and the need for federal deposit insurance to protect consumers and the financial community.”

3. The right to information. “Developments in technology and deregulation require that consumers have more information on financial institutions than has been previously available.”

4. The right to be served. “Consumers have a right to banking services without economic qualification. My Basic Banking bill, H.R. 201, will guarantee that banking services are not taken from any person with savings to invest, no matter what the amount.”

5. The right to financial privacy. “The advent of computer technology has made it possible for personal, confidential information to be traded among various interests.”

A Consumer Assembly workshop on bank deregulation explored whether higher costs to banks justify higher fees. Robert Hobbs, staff attorney of the National Consumer Law Center, challenged as unreliable the Federal Reserve’s Functional Cost Analysis. This study was cited by the industry, including workshop participant Fritz Elmen-dorf of the American Bankers Association, as indicating that small bank accounts are unprofitable.

Hobbs argued that a time study used as the basis of many key assumptions in the study actually does not exist and that other important factors were also arbitrarily selected or have not been adjusted to meet changes in practice or technology. Elmen-dorf defended the study as “the only one available.”

In the opening keynote speech at Consumer Assembly, Rhoda Karpatkin movingly described the worsening plight of the poor and challenged consumerists and corporations to give this issue much greater attention. She urged “every organization not already doing so (to) consider working on poverty-related issues” particularly food and housing.

Karpatkin, executive director of Consumers Union, began her speech by demonstrating that the problem of poverty has reached “crisis proportions.” Among the facts and figures she cited were:

• A Congressional Research Service and Congressional Budget Office report concluding that between 1973 and 1983, poverty among children has “grown deeper and more widespread.”

• A Children’s Defense Fund publication showing that between 1981 and 1983, rates for post-neonatal infant mortality, low birthweight babies, and women receiving late or no neonatal care increased.

• A Harvard University report that concluded that hunger had reached epidemic proportions and was growing worse, despite the recent economic recovery.

Karpatkin laid much of the blame on the Reagan administration, which has cut back federal programs of greatest importance to the poor. Between 1973 and 1983, although the number of poor children grew by four million, the aggregate cash payments for these children fell six percent. In 1985, according to a U.S. Labor Department survey, only a quarter of unemployed workers received unemployment benefits—a record low.

In a call to action, Karpatkin challenged consumerists to give greater attention to the problems of the poor. In particular, she urged activists to support federal poverty programs and the Legal Services Corporation, which the administration has again targeted for elimination. She announced that later this year, Consumers Union will hold a conference on low-income consumer problems.

Karpatkin surprised the audience when she urged business to “add the poor consumer to their agendas.” She asked “the leaders of major American corporations, to join in this fight against hunger and homelessness, to use their finely-honed lobbying skills and networks to achieve adequate food, housing, and health care for low-income families.”

In her conclusion Karpatkin asserted: “This country has prided itself on its generosity, and its concern for human rights and human dignity. Now is a time when we must join together to affirm those values, and to make them a reality for all Americans.”