

Administration Faulted for Inaction on Health and Safety

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 toxics legislation enacted in the late 1970s.

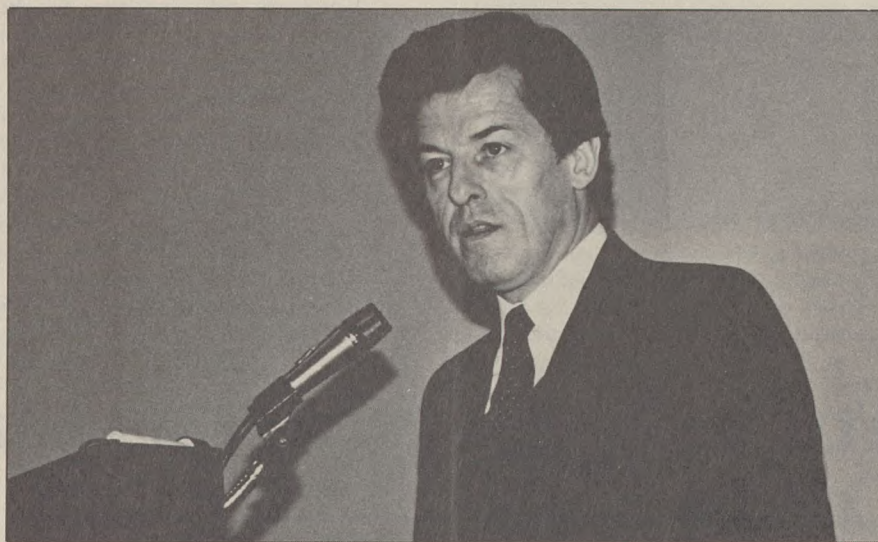
Florio described several specific failures:

- **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.
- **Toxic Wastes:** In five years, EPA has failed to complete even one toxic waste cleanup. Actual work has begun at less than five percent of 850 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 and the extension of the Superfund program.

Congress has also begun insisting that communities be fully informed about the toxic risks of local chemical plants. These disclosure provisions, for example, will be included in final Superfund legislation.

Florio concluded by stating that "the result of the last five years of inactivity is that we now have an enforcement crisis, an insurance crisis, and a liability crisis, creating an overall crisis that threatens the environment in the most serious way." But we



Rep. James Florio (D-N.J.) lambastes EPA's "failure to meet the increasingly urgent challenge posed by toxic contamination."

must try to reverse "the dangerous erosion of health and safety regulations," he said.

In a debate with former Office of Management and Budget (OMB) General Counsel Michael Horowitz, Public Citizen President Joan Claybrook charged that OMB has "attempted to emasculate federal regulation of public health, safety, and the environment." In her opening statement she outlined three major concerns.

First, OMB has assumed the regulatory decision-making authority that Congress has clearly delegated to Cabinet officers. This was accomplished by two Executive Orders, one issued in 1981 requiring all agencies to prepare cost-benefit analyses for proposed regulations, and the other issued in 1985 requiring agencies to obtain OMB approval for any action that may lead to a proposed regulation. Effectively, stated Claybrook, the control of the federal regulatory machinery has been centralized in the hands of unqualified, low-level political appointees in OMB.

Second, OMB has used off-the-record contacts and information to approve or reject proposed regulations. This happened in the case of the Department of Health and Human Services' proposal requiring warning labels for Reyes Syndrome on aspirin and related medicines. A secret meeting of lobbyists for aspirin manufacturers with an OMB official nearly succeeded in killing this proposed rule.

Claybrook's third concern is OMB's restriction of the collection of information that agencies need to oversee safety and the public needs to oversee the agencies. For example, OMB rejected a Department

of Agriculture 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.

often exaggerated consumer culpability by spreading fake stories about product misuse, such as the fictitious lawsuit by someone using a lawnmower as a hedge-trimmer.

Later that afternoon, Pittle and Consumer Product Safety Commission (CPSC) Commissioner Terrence Scanlon debated the issue of product recalls. Scanlon affirmed the commitment of the CPSC to product safety, citing 49 corrective actions taken in 1985 to remove unsafe toys from the market. He suggested that voluntary recalls were usually speedier than mandatory ones.

Pittle criticized the CPSC for considering a requirement for cost-benefit analyses before recalls, even 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. Earon 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, CFA'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



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

At the Thursday luncheon, Consumers Union Technical Director R. David Pittle criticized industry and government officials who blame product-related accidents mainly on the stupidity of consumers. He admitted that carelessness sometimes contributed to injuries, but noted that the latter could often be prevented through improved product design. He also charged that industry

150 chemicals that may be present in indoor air.

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 imaginable 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 short-cut 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



Senator Jay Rockefeller (D-WV.)

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 Kovack. Kovack recognized the senator for his effective, but often thankless, committee work on issues ranging from product liability to gas deregulation to railroad deregulation.

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 called for "tort reform."

Hunter called for extensive reform of the industry. Congress should end the insurance 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 Lloyd's of London and other foreign reinsurers. "We need insurance independence, just as we need energy independence," he said.

George K. Bernstein, an attorney repre-

senting 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 injured parties who cannot recover damages from all those responsible can still recover full judgements 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 performing 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: Who's Responsible?" 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 distorting 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. 1999, 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 Zorenky, chief counsel to the Senate Commerce Consumer Subcommittee, stated that the bill would expedite plaintiff's recovery of damages and encourage 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 arbitration, would provide "too many exceptions" that would justify involving lawyers in cases. Joseph Goffman, 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 consumers who are now excluded from the tort system. He noted that S. 1999 falls short of these objectives.



Bob Bergland, executive vice-president of the National Rural Electric Cooperative Association, warned of threats to public and cooperative power in his address to the Assembly. He condemned Reagan administration plans to sell some federal power facilities and end loan programs to the federal Rural Electrification Administration as "off the wall proposals that together add up to higher electric rates and curtailed economic growth in rural America."

Grassroots Consumerism Flourishes in Deregulation Era

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 that 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 practices. Mott 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 represent just the tip of the iceberg, warned Esther K. Shapiro, director of Detroit's Consumer Affairs Department. She cited a 1974 consumer survey that found two-thirds of consumers dissatisfied with their purchases never registered a complaint. Consumer rights agencies are still relatively new to the marketplace, Shapiro said, and "consumer complaints aren't a thermometer of where we are, just a general barometer."

Both Gregg and Shapiro emphasized the need to address the problems of low-income consumers, who often lack the knowledge of where and how to complain about problems.

Walter T. Dartland, consumer advocate for Dade County, Florida, pointed out the limits of small claims courts and the reluctance of many attorneys to take on consumer complaint cases. He suggested arbitration programs as an alternative to litigation. Von Salzen agreed, saying, "I think arbitration offers tremendous opportunities for consumers and industries. It helps keep down legal fees, which is particularly important to small business."

Gregg also cited arbitration as an alternative, but cautioned that it was not a panacea and that consumers in arbitration hearings usually lacked an advocate.

Finally, Shapiro called for mass education on the problem of "gypsy crime"—young people who prey on the elderly by posing as social workers or utility representatives to gain entry to homes, rob the occupants, then move on.



Left to right, AARP President Cyril Brickfield, AT&T Communications President Randall Tobias and CFA Executive Director Steve Brobeck.

Joint CFA-AT&T Phone Study Announced

At a press conference held during Consumer Assembly, the Consumer Federation of America and AT&T Communications announced a jointly-managed research project offering the promise of resolving controversial questions about the telephone-related needs of consumers. At the conference, CFA Executive Director Stephen Brobeck and AT&T Communications President Randall Tobias were joined by American Association of Retired Persons President Cy Brickfield.

Brobeck explained that the independently conducted research will focus on two areas. The first is service-related needs, particularly those of low-income families, the elderly, and those not on the telephone network. This research will examine what consumers use the phone for and what they value the most about phone service.



Rep. John Bryant (D-Tx.)

The second area of inquiry is consumer information needs. The questions to be addressed include: What do consumers understand and misunderstand about equal access related changes? What information do they need to eliminate confusion and what are the most effective ways of delivering it?

Brobeck said that the research will go beyond the usual national phone survey of 1,500 randomly selected consumers to include face-to-face interviews that can probe consumer phone needs in greater depth. He also noted that the data, as well as the results, will be made available to consumer groups, regulators and industry.

Tobias affirmed AT&T's commitment to this project, which his company will fund. In answer to a question, he said that although no budget had been developed, he expected expenses would run in the "hundreds of thousands of dollars."

The press conference followed keynote speeches by Tobias and Congressman John Bryant (D-Tx.). Along with announcing the study, Tobias outlined AT&T's "consumer platform" for delivering products and services to customers. This includes support for local lifeline programs offering limited service to the truly needy. But, in answer to a question, he said these programs should be funded by taxes, not by the communications industry.

Tobias also announced AT&T's intention to give most consumers one bill for equipment rental and long-distance service, and to require no deposits for people with good credit ratings.

Bryant gave a highly critical assessment of AT&T's consumer policies and practices. He held AT&T chiefly responsible for divestiture and for shifting long-distance expenses onto residential customers through access charges.

The Texas congressman also criticized the Federal Communications Commission for allowing AT&T to sell long-distance service below cost, thus driving long-distance competitors out of the market. Instead, the FCC should hold off further deregulation of AT&T "until we reach a level playing field in phone competition."

Bryant affirmed his strong support for lifeline phone service and for prohibitions on by-pass. He concluded by expressing thanks that "CFA and other consumer groups are keeping the heat on Congress."



CONSUMER FEDERATION OF AMERICA
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121

President: Jean Ann Fox
Executive Director: Stephen Brobeck
Legislative Director: Gene Kimmelman
Administrative Director: Erika Landberg
Legislative Representative: Alan Fox
Energy Director: Mark Cooper
Public Affairs Director: Jack Gillis
Product Safety Director: Mary Ellen Fise
Product Safety Coordinator: Edith Furst
Conference Manager: Sheila Meade
Secretary: Lydia Rivera Grogan
Secretary/Researcher: Lisa Goldstein
Legislative Assistant: Dina Zarin
Administrative Assistant: Miguel Carpio

CFAnews Editor: David R. Jones

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

© Copyright 1986 by Consumer Federation of America. CFA should be credited for all material. All Rights Reserved.

Design & Typeset 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 choice.* "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



Rep. Mary Rose Oakar (D-Ohio).

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. 2011, 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 is 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."

Ken McEldowney of Consumer Action, the third panelist, said that his group's study of accounts in California indicated that individual institutions lack solid data on their costs of maintaining accounts and that, as a result, there is "little indication that increases in fees were based on actual costs."

Karpatkin Calls for Action on Poverty

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."

CFAnews

Consumer Federation of America
1424 16th Street, N.W. • Washington, D.C. 20036 • (202)387-6121



BULK RATE
U.S. POSTAGE
PAID
WASHINGTON, D.C.
PERMIT NO. 8772