

THE RISE AND PAUSE OF THE CONSUMER MOVEMENT:
POLITICAL STRATEGIES OF REGULATION AND DEREGULATION

LECTURE I

ON THE SIDE OF THE ANGELS:
CONGRESS AND THE CONSUMER IN THE 60's

INTRODUCTION

One day in the winter of 1979-80 -- the winter of Congress's discontent with the FTC -- an old friend, a scholar, cornered me on a downtown street in Washington and plied me with spirited consolation. "Remember the words of the great statesman," he said, "Many enemies; much honor!" I liked that. We certainly qualified for the former; at least, we could lay claim to the latter.

"I must use that line in my speeches," I gushed. "Who said it?"

He grinned and with feigned innocence replied, "Mussolini!"

Here, today, in this high noon of business's triumphant regulatory revolt, as a (mostly) unrepentant regulator, I feel as out of joint as Mussolini

celebrating World War II. Since these lectures will concern themselves with the politics of both regulation and deregulation, I do intend in due course to treat the FTC's late unpleasantness with the Congress. But first, I trust you'll not begrudge an old consumer cold warrior his nostalgia for the 60's -- not the street scenes of Berkeley -- but the more decorous scenes of the United States Senate, as the consumer movement -- perhaps, more precisely, the consumer impulse, waxed in the ascendancy.

I'd like to begin with a brief legislative chronicle. Early in 1967, a young Seattle pediatrician, Dr. Abraham Bergman, came to Washington to see his Senator, Warren Magnuson, then senior Senator from Washington State and Chairman of the Senate Commerce Committee. He came to tell of the chronic and unrelenting procession of burned and scarred children through the burn center of Seattle's Children's Hospital. Why couldn't the Federal Trade Commission, which then administered the Flammable Fabrics Act, mandate flame-resistant children's clothing, especially sleepwear, he asked? And if the Federal Trade Commission lacked the authority or the will, then perhaps Senator Magnuson could offer legislation to see that children were adequately protected. He could.

To us, the staff of the newly christened "Consumer Subcommittee" of the Commerce Committee, Senator Magnuson assigned the task of responding to the doctor's concerns. A quick reading of the Flammable Fabrics Act of 1953 revealed that it was hopelessly inadequate to control those cotton flannels and other textiles whose explosive flammability had led to the stream of victims in the Seattle burn center. On February 16, 1967, Senator Magnuson introduced the Flammable Fabrics Act Amendments of 1967, to provide the Federal Trade Commission (later the Consumer Product Safety Commission) broad authority to set flammability standards adequate to eliminate "the unreasonable risk" of burn injuries.

The professional staff members of the House Commerce Committee, our House counterparts, scoffed. Their committee was dominated by conservatives from Southern cotton and textile vending states (a political block now accorded great deference by political analysts as the "powerful bollweevils"). And the lobbyists for the cotton textile industry warned us ominously that "blood would run in the halls of Congress" before any such legislation would pass.

They were wrong. After a modest two-day hearing the Senate Commerce Committee unanimously reported the bill to the floor, whereupon it was passed on July 27th by voice vote. While House Commerce Committee consideration produced mild grumbling and some delay, the bill was reported to the House, passed the House, emerged from a Senate-House Conference Committee substantially as introduced by Senator Magnuson, and was signed into law by President Lyndon Johnson on December 14, 1967.

I choose the Flammable Fabrics Act Amendments, not because this truncated legislative chronicle is unique, but because it was typical of the consumer protection, environmental, occupational health and safety, and other social regulatory legislation enacted by Congress during the mid-to-late 1960's and early 1970's.

At the bill-signing ceremony, President Lyndon Johnson, with his good friend Senator Magnuson at his side proclaimed, "The American people are sick of seeing their children needlessly burned. This legislation is a major achievement for consumers. It provides them with the protection they need and want. I thank the Congress for

passing this part of my consumer agenda." For Senator Magnuson and his staff, the only mildly discordant note was the President's habitual insistence on claiming credit for the genesis of the legislation. In almost all other respects we could take great satisfaction in our handiwork. We never doubted that what we had done would save lives and spare misery. In doing so we had challenged and defeated the forces of darkness, that is, the cotton textile industry, which had demonstrated insensitivity, at best, to the hazards of its products.

As Congressional staff members, we had met the then-prevalent measure of legislative productivity: to the procession of consumer laws which bore witness to the initiative of Warren Magnuson and the Senate Commerce Committee, we had added yet another. We enjoyed a sense of power, and we never doubted that we had employed that power benignly in the public interest. Senator Magnuson was enshrined first by Drew Pearson, later Jack Anderson, as a hero of the people. The Washington Post and other media hailed the enactment of the Flammable Fabrics Act as a virtuous and humanitarian achievement.

Ultimately the textile industry accepted the inevitability of regulation if not with good grace, then "sullen but not mutinous."

There was a great headiness about our work in those days, for we believed that we had successfully defied at least one widely cited law of political gravity: in any political confrontation between producer interest and consumer interest, the producer interest is bound to prevail. And all this had been achieved by a handful of Senators and their staffs, without lobbies, without grassroots organization, without campaign contributions, and without access to the great lawyer-lobbying resources of Washington.

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I have come greatly to respect the insights of Yale political scientist and economist, Charles E. Lindblom. Lindblom, especially in his 1979 work Politics and Markets has named my experience and I intend to draw heavily upon his analytical framework and insights throughout these lectures. But if I had read Politics and Markets in 1967 I

would have dismissed as antiquarian his grim portrait of business political privilege and dominance of government decision-making and of the inexorable deflection of the regulatory impulse, however spontaneous, to the needs and demands of business.

The Lindblom analysis certainly held true for the Congress and the Senate Commerce Committee in which the first Flammable Fabrics Act had been enacted. Then Congress was forced to respond to the spontaneous national outrage which flowed from a highly publicized, traumatic epidemic of hideous child burnings from explosively flammable cowboy shirts and sweaters, mostly imported, which had been dramatized by the press as "torch sweaters." Congress had responded, in its own fashion, with minimalist legislation drafted by the cotton textile industry, working together with compliant Senate and House members, which incorporated into the law the specific, extremely modest industry-developed voluntary standard for flammability -- a standard which would catch only the most explosively flammable fabric imports. Nor did the new law delegate to the Federal Trade Commission, which was to enforce the Act, any authority to strengthen the standard should it prove inadequate.

Through the 1950's and early 1960's the Commerce Committee was hardly noted for its enterprise in pursuing consumer interests. Indeed, its primary occupation was the nurturing of that very regulation (aviation, trucking, water carriage) which fit securely within the Lindblom thesis. The members of the Committee were grouped by political cognoscenti as "trucker (and teamster) Senators," "railroad Senators," "marine Senators," and soon. As Earle Clements, former Senator and chief lobbyist for the Merchant Marine Institute once remarked, "Membership on the Commerce Committee assures the comfortable participation by many in one's campaigns for re-election."

Even ostensible consumer protection bills were industry inspired and shaped. Often, they reflected the efforts of one industry or one segment of an industry to eliminate "unfair competition" by another, as in the Wool Products Labeling Act designed to enhance the merchantability of virgin wool over recycled. Similarly, the Fur Products Labeling Act was designed to defend the fur industry against simulated fur garments, leading to the historic FTC challenge to the use of the term 'Red Fox' in the brand name of the venerable Georgia overall manufacturer.

As late as 1963, the dominant consumer issue before the Committee was pending legislation to preserve retail price fixing through federal pre-emption of state laws barring enforced retail price maintenance. In order to render that disreputable remnant of recession-inspired price fixing less obviously onerous, the Committee seriously entertained a series of euphemistically inspired reincarnations for price-fixing legislation posing, progressively as "fair trade," "quality stabilization," and finally, in desperation, "truth in pricing." My predecessor as consumer counsel for the Committee (though that was only a minor sub-assignment) assured me that I had landed a choice staff assignment, since the staff member responsible for managing the retail price maintenance legislation was assured a bountiful supply of sample price-fixed products, from toasters to audio equipment, a welcome and entirely acceptable staff "perk" in the prevailing ethical climate of the time.

Those businessmen and others who dread the growth and exuberant energy of Congressional staffs doubtless will find comforting the fact that the Commerce Committee's total compliment of professional staff in 1961 numbered six, who

together shared a single secretary (some rough measure of their productivity). Since bills and reports were all written "downtown" by counsel for whichever trade association emerged from industry conflict triumphant, there was little need for independent staff resources.

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But by 1966, we knew that such industry dominance of Congressional decision-making was only a rude and unlamented memory. While grim Marxist historians, like Gabriel Kolko, sought to debunk even the great populist triumphs of the Interstate Commerce Act and the Federal Trade Commission Act as business-shaped, if not inspired, how could they account for the strong and genuine consumer impulse of the late 1960's?

One answer has come from James Q. Wilson writing in The Politics of Regulation. Wilson attributes the surge of consumer, environmental civil rights, health and safety regulatory initiatives of the 60's and early 70's to the rise of what he has aptly labeled "entrepreneurial" politics. In his description, we would have recognized ourselves.

To quote Wilson:

A policy may be proposed that will confer general (though perhaps small) benefits at a cost to be born chiefly by a small segment of society. When this is attempted, we are witnessing entrepreneurial politics. Since the incentive (to organize is strong for opponents of) the policy but weak for the beneficiaries, and since the political system provides many points at which opposition can be registered, it may seem astonishing that regulatory legislation of this sort has ever passed. It is, and with growing frequency in recent years -- but it requires the efforts of a skilled entrepreneur who can mobilize latent public sentiment (by revealing a scandal or capitalizing on a crisis), put the opponents of the plan publicly on the defensive (by accusing them of deforming babies or killing motorists), and associate

the legislation with widely shared values (clean air, pure water, health and safety. The entrepreneur serves as the vicarious representative of groups not directly part of the legislative process. */

*/ The concept of successful consumer advocacy as an example of "entrepreneurial politics" serves another useful analytical purpose. It has become customary to refer to the "consumer movement." But if we understand a movement to reflect not only widespread popular support but, like the "populist movement" of the last 19th century, an organized grassroots effort which, for its members, transcends all other political identity or involvement, then it cannot be said that there ever existed a consumer movement. For consumer issues by their nature -- unlike wages and job security in the labor movement, for example -- rarely assume a first priority among citizens' competing economic concerns.

Consumer issues may dominate the political agenda under special circumstances, as in rent strikes, campaigns for rent control laws or, in locally organized campaigns to combat red-lining in mortgage loans or auto insurance. For certain groups, in particular the elderly on fixed incomes, whose principal economic concern is stretching static limited income, consumer issues may indeed loom large. But by and large the individual consumer stake in the pursuit of consumer laws and regulations lacks the motivating energy of true political movements. The reasons that this is almost inevitably so do not reflect public ambivalence about consumer initiatives but the limited economic stake which each consumer has in each of the discreet issues which taken together have been viewed as consumer legislation.

Peter Schuck writing in the Yale Law Journal, builds upon Wilson's construct of entrepreneurial politics by observing that the public interest entrepreneurs succeeded because they evoked a responsive cord in the emerging "dominant vision of the larger society":

Finally, and perhaps most importantly, American society appears to have come to a new view of the role and possibilities of law and politics in the pursuit of the good society.... Today, injustices are readily perceived, their tractability is widely assumed, and collective intervention by legal rule appears to be the remedy of choice. As our perception of imperfection has grown, our tolerance for it has diminished. These attitudes no doubt reflect a complex evolution in morality, ideas, and politics. Whatever their cultural sources, they have fused in a melioristic, not to say utopian, ambition to reform a disagreeable social reality through the affirmative application of public power.

Ironically, Wilson and Schuck, publishing in 1980 and 1981 may have captured the essence of a phenomenon which had already vanished. For if Lindblom and Kolko allow no space for the ascendance of entrepreneurial politics, by 1980 the public interest entrepreneurs appear to have lapsed into a state of political insolvency. And a very different public vision is commonly believed to have emerged (or re-emerged): rancorously individualistic, disaffected with government, especially the federal government, and nowhere more disenchanted than with regulation -- what the late Washington Star characterized as the "public howl" against regulation.

Now Lindblom's portrayal of business hegemony seems perfectly drawn to the scale of a Reagan administration and a Congress harmoniously attuned to business volitions. He writes:

In American law the corporation is a 'person' ... but these fictitious persons are taller and richer than the rest of us and have rights that we do not have. Their political impact differs from and dwarfs that of the ordinary citizen.

Ordinarily [corporate interests] need only point to the cost of doing business, the state of the economy, the dependence of the economy's stability and growth on their profits or sales prospects -- and simply predict, not threaten, that adverse consequences will follow on a refusal of their demands.

All citizen groups compete in politics with the use of their members' own incomes and energies. Except for businessmen. They enjoy a triple advantage: extraordinary sources of funds, organizations at the ready, and special access to government.

Regulatory policies generally are diverted from their ostensible purposes in order to meet many of the demands that businessmen can place upon government.

The tumultuous changes, both in the experience and theory of business impact on government, within less than two decades, plainly caution humility in drawing global and timeless conclusions on the politics of regulation. Much more must

this be true for me as a practitioner who confidently operated on the premise -- as late as 1977 -- that a potent consumerism had come to form part of the bedrock of regulatory politics, only to find the geological plates of those politics shifting radically beneath his feet. Now, however, my premises are transformed. I will venture the thesis that Lindblom is essentially right. Over time, significant government decision-making affecting the interests of producers and consumers will respond to the needs and, preponderantly, the demands of business.

Wilson and Schuck are also partly right that consumer-responsive politics can prevail when the political winds are right. But even at the zenith of Congress's consumer impulse, entrepreneurial politics posed a far more modest challenge to business autonomy and profitability than they suggest. It is true that in the 1960's and early 1970's Magnuson, Ralph Nader, and a handful of other consumer advocates both within and out of the Congress, through skillful political enterprise, succeeded in advancing legislative and regulatory initiatives against the will of the business community.

But it appears that these successes were possible only through a rare, if not unique, concurrence of economic and political conditions. The successes were limited by the relatively crude political implements available to the entrepreneurs, chiefly the evocation and exploitation of broad, consensual public outrage through empathetic public media. And they were limited by ideological constrictions on the legitimacy of government intervention in the marketplace.

We shall view these limitations in painful detail in the subsequent lectures. But today I'd like to dwell on the conditions in which the entrepreneurial politics of the consumer took root, the entrepreneurs themselves and the political strategies which characterized the consumer entrepreneurial initiatives of the 1960's and early 1970's.

THE 1960's AS FERTILE SEEDBED FOR THE
NOURISHMENT OF CONSUMER ENTREPRENEURIAL POLITICS

For consumer entrepreneurial politics to succeed in the 1960's, consumer goals had to harmonize with public attitudes and the political environment. They did. Toward the end of the post-war quarter century was a period of sustained, apparently boundless and real economic growth. Largely as a consequence, the public spirit in the mid-1960's remained buoyant, confident, generous.

The public agenda was the liberal agenda, the unfinished work of John F. Kennedy -- civil rights, Medicare -- trumped by L.B.J.'s Great Society which confidently undertook the elimination of poverty. Government, preeminently the federal government, was the acknowledged and accepted instrumentality of social justice.

At the same time prevailing public attitudes toward business were curiously schizoid. There was a fundamental, if unarticulated, faith in the

capacity of business to perform its function in our society. As social psychologist Daniel Yanke-lovich observes:

Virtually all of us presupposed that our economy would continue to function automatically and successfully, as surely as the sun would rise each morning without effort on our part. . . . Americans had grown used to the idea that the giant corporations, the government and other economic institutions would simply and eternally be there -- to support the aged, build the infrastructure, create jobs, turn out wealth and do the country's work, as much a part of nature as trees and rainfall from heaven.

This uncritical faith was ironically nowhere more manifest than in and among the advocates of consumer protection and environmental legislation. For though we might question the good faith of corporate commitment to the consumer and the environment, we never thought to question the capacity of business efficiently and at minimal cost to meet any standards imposed. Indeed, we

believed that if business turned to the task of assuring product or worker safety or environmental wholesomeness with good will, those ends could be accomplished at negligible cost. This faith, too, was not without substance, for it had more often than not proved true, when industry predicted that dire economic consequences would flow from proposed regulation, industry would invariably demonstrate its innovativeness and efficiency in responding -- as, for example, in the case of seat belts for automobiles. Faced with a legislative proposal in the early 1960's that seat belt installation be mandated in all new vehicles, witnesses for the automobile manufacturers solemnly predicted that compulsory seat belt installation would add \$150 to the cost of each vehicle. Implemented, the costs averaged out to \$8 per vehicle.

At the same time that confidence in business's capacity to perform persisted, as Wilson observes, "the perceived legitimacy of business enterprise declined." Throughout this century there had existed a strong strain of antipathy toward the increasing massiveness, remoteness, and concentration of business enterprise, while no comparable antipathy

had yet emerged toward the size or remoteness of the federal government. Corporate reputations were further undermined by a series of business scandals, extending from the General Electric price-fixing criminal convictions in the late 1950's to the exploitive drug pricing and thalidomide shocks dramatically illuminated by Estes Kefauver in the early 1960's. The cigarette industry, for example, contributed generously to growing public skepticism of the morality of business. Its seductive marketing themes, often targeted to young people through ubiquitous television commercials, flaunted the moral implications of the conclusive evidence that its products were prematuring killing hundreds of thousands of Americans. Thus, while industry's political posture contributed to skepticism about its motives, its performance confirmed our faith in its capacity.

As Wilson observes, "Entrepreneurial politics depends heavily on the attitudes of third parties: political elites; media; influential writers; committee staffs; heads of voluntary associations; political activists" (to which he may well have added, academics). The prevailing liberal tenets

were virtually unchallenged by elites. Conservatism marked the political deviate. The Young Americans For Freedom, for example, were not dismissed as a lunatic fringe, were consigned to a discredited older generation as "young fogies."

In 1964 the political tides were propitious. Lyndon Johnson had not only won a decisive victory over Barry Goldwater, but had brought with him perhaps the most liberal Congress in history. Conservatives still held tightly to key levers of Congress such as the chairmanship of the Rules Committee in the House and Judiciary Committee in the Senate, but they were perceived and perceived themselves to be on the political and ideological defensive.

By the mid-1960's liberals in Congress, especially the Senate Class of 1958, had begun to arise, through seniority and attrition, to committee chairmanships and positions of party influence, while the democratization of the Senate under Majority Leader Mansfield dispersed power more broadly than ever among the liberal majority of the Senate Democrats. Simply to call the roll of Senate liberals serves to recall the sense of

beckoning ascendancy of liberalism: Kefauver, Hart, Humphrey, Gore, Morse, Muskie, Douglas, Clark, Ribicoff, Proxmire, Nelson, Yarborough, McGovern, McCarthy, Magnuson, Jackson, Kennedy -- and on the Republican side: Javits, Percy, Aiken, Cooper, Case, Brooke.

The early stirrings of student and dissident reaction against perceived adventurism in Cuba and Viet Nam fueled a growing tendency among opinion leaders to question previously unchallenged institutions, including the multi-national corporation.

Organized labor was perceived as the strongest organized political constituency, the predominant institutional source of campaign financing. With wages and working conditions largely secure, labor leadership could turn confidently to the pursuit of social welfare and consumer issues.

Business was politically quiescent -- and defensive. Except for those industries which nestled comfortably within the protective shade of quota, tariff, or economic regulation, most American business, relatively undisturbed by Washington and flourishing, gave low priority to national political involvement.

Indeed, so much had liberal ideas set the national agenda that many businessmen themselves were deeply troubled by the issues raised by consumer advocates (and by their own children). John Wheeler, for many years the principal Washington lobbyist for Sears, while recuperating from a heart attack became convinced that both morally and politically Sears must pursue political statesmanship. He successfully convinced Sears management to support publicly federal product safety and warranty legislation.

Though it now appears at least mildly astonishing, in 1966 Ralph Nader was named one of the Junior Chamber of Commerce's outstanding young men. In 1973 the new President of the National Chamber of Commerce itself, the President of the State Farm Insurance Company, Edward Rust, declared, "Business should be grateful for Ralph Nader. He is single-mindedly committed to making the free-enterprise system work as its supposed to -- to making marketplace realities of the very virtues that businessmen ascribe to the system." By 1967 the Chamber had formed a committee on consumer interests, many of whose members were genuinely committed to exploring ways in which the Chamber could take the lead in affirmative initiatives responding to areas of concern by consumer advocates.

When the automobile industry had proved itself, in Elizabeth Drew's felicitous term, "a paper hippopotamus," in failing to suppress auto safety legislation, an automobile company executive lamented, "One of the serious problems in our industry is provinciality. The auto industry is a giant, with a fantastic impact on the economy, but the sun rises in Detroit and sets in Dearborn. Besides, our laissez faire attitude had worked so far."

The Bobby Baker scandal which partly exposed and partly threatened to expose the pervasive illicit cash economy of the House and Senate, provoked demands for campaign financing reform and enhanced Congressional fear of exposure and attack by Drew Pearson and others as "tools of the special interests."

Businessmen, to an extent which now seems hardly credible, ignored Washington. Edwin Epstein, in his fine book entitled The Corporation in American Politics, written in 1969, documents the institutional, even social inhibitions against corporate involvement in national political affairs.

The "dirty work" of lobbying was best left to trade associations. Yet these organizations, especially the major umbrella groups, such as the Chamber of Commerce and the National Association of Manufacturers, were decaying, vestigial ornaments of the early 20th Century, neglected and scorned even among business leaders. While young public interest volunteers, spurred by conviction and a sense of political momentum (if not manifest destiny) worked well into the night, the business lobbyist, on the defensive, challenged in his good faith by his own children, earned his pay and reserved his commitment for the 5th hole at Congressional Country Club. And if the trade association failed to defeat some new regulatory scheme, that was hardly the end of the world since in prosperous and buoyant markets the cost of regulation could be passed through to consumers without harm to profitability or markets.

Many Washington business lobbyists were themselves drawn from the ranks of former Congressional Democratic members and staffs, which was only natural since both houses of the Congress had been dominated by the Democrats since 1954. While

they learned facilely to place their client or employer interest first, they themselves retained strong vestiges of the predominant liberal ethos, personally, as they often told us, identifying with all our consumer initiatives save those that unfairly afflicted their clients. Many of the same lobbyists also harbored the self-interested need to maintain the status of incumbent Democrats in whom they had invested, both personally and financially, over the years and were hence uninterested in building a successful Republican opposition, no matter how business-oriented. To the extent that they became involved in national political campaigns, most businessmen remained diffident, far more likely to direct their contributions to court access with incumbents than to defeat them.

Why were consumer issues, in particular, ripe for the plucking by alert political entrepreneurs and for elevating to the national political agenda? With an excess of rhetorical zeal, I once concluded for Senator Magnuson a draft speech on the Commerce Committee's consumer agenda with a preoration decrying the "gaping gaps" in the fabric of the nation's consumer protection laws. Redundancies

aside, for those who cared to look, there were indeed patent gaps: the last major consumer protection law enacted before the Kefauver-Harris drug amendments in 1962 was the Food, Drug and Cosmetic Act of 1938.

Perhaps automobiles and cigarettes most graphically exemplify these gaps. In a seminal piece published in The New York Times Magazine in 1964, Daniel Patrick Moynihan, then Assistant Secretary of Labor (and the quondam employer of a young auto safety researcher named Ralph Nader) delineated the unreckoned toll taken by the automobile in death and debilitation and its drain upon the health care delivery system, the urban blight attributable to highway sprawl and the flight to the suburbs, the automobile's heavy contribution to air pollution, and such secondary impacts as the burdening of the courts and of the preponderant occupation of American lawyers with negotiating prices for ruined arms and legs. Auto fatalities had risen to 50,000 per year by 1965 when General Motors President James Roach testified that General Motors with 1.7 billion dollars in profits in 1964, had spent 1 million dollars on safety research.

As for cigarettes, they had, as a category, miraculously (perhaps) escaped the jurisdiction of the Food and Drug Administration, qualifying neither as food, drug, nor cosmetic. Yet in 1962 the medical/scientific community was presented with the authoritatively damning report of the British Royal College of Physicians, drawing a clear causal relationship between cigarette smoking and lung cancer.

In the explosive growth of the American economy since the second World War, increasingly sophisticated products were being manufactured and distributed through national distribution systems, which consumers perceived as increasingly remote and unresponsive to consumer complaint or locally targeted redress. There was a growing perception that American product quality standards had depreciated -- though it may well have been that Americans had for the first time acquired those goods for which they had worked and saved and dreamed, and held unrealistically high expectations. Certainly complaints over new automobile failures and warranty malperformance abounded. Everyone had his woeful tale of an unredeemable "lemon." Increasingly

sophisticated techniques for measuring latent product hazards were beginning to bring new issues to the surface, such as the epidemiological techniques which identified cigarette smoking's etiological role in lung disease and mild carcinogens in many common foods and drugs which had hitherto gone undetected.

Other hazards (such as flammable cotton flannel sleepwear) and market malfunctions (such as inadequate and confusing food labeling on packaging) had not grown measurably worse. But the evolving social psychology of public "entitlement" (as Yankelovich has characterized it) proved fertile ground for the evocation of public enthusiasm for proposed federal consumer remedies. When candidate John F. Kennedy delivered his "consumer" campaign speech in 1960, he was greeted with an exuberant enthusiasm which far exceeded his own expectations. Thus it was easy to understand why as President, he enlisted the efforts of a sturdy labor leader and consumer advocate, Esther Peterson, to draft the first Presidential consumer message. This message, sent to Congress on March 15, 1962 spelled out a consumer bill of rights (the right to know, to be safe, to choose, and to be heard)

and a (modest) agenda of consumer bills. Public opinion polls then (and now) showed broad, though not necessarily deep, public endorsement of these and other consumer protection initiatives.

By 1966 Johnson and the 89th Congress had neared completion of the broad liberal agenda carried over from the Eisenhower and early Kennedy years. In 1966 and 1967, as the costs of the war in Viet Nam began to place an inflationary strain upon the American economy and on the federal budget, consumer issues, which entailed little direct budgetary costs (as contrasted, for example, with poverty and housing programs) appealed increasingly to the President's agenda setters such as Joseph Califano of the Domestic Counsel in the White House. The contributions of the Chicago economists, and the consequent deregulatory fervor were a decade away from reaching the national agenda. Regulatory reform meant ending the universally acknowledged capture of the regulatory agencies by the regulated. Business generally harbored little grievance at federal overregulation, since (save for those industries which chose to be overregulated) most federal regulators had demonstrated such exquisite sensitivity to industry concerns that their quiet work cast no shadow of oppressiveness.

And though regulation in the abstract has never been popular among a people with so strong an individualistic ideology, the Democratic leaders of the Senate and House Commerce Committees could still feel confident enough in the legitimacy of regulation as late as the fall of 1975 to express their concerns to President Ford over what they perceived as regulatory reform overkill, with an affirmation: "Regulation,"...they wrote the President, "is as American as hot dogs, baseball, apple pie and Chevrolet."

THE CONGRESSIONAL ENTREPRENEUR

Into this welcoming environment entered the entrepreneurs. It is no wonder that politicians were drawn to consumer advocacy. Consumer issues were homey, usually simple in conception, and of broad general interest. Perhaps most important, issues such as health and the safety of products like cigarettes, automobiles, and flammable fabrics lent themselves readily to the evocation of broad public outrage (e.g., burned and scarred infants; death by impalement on spear-like steering columns).

Politicians found they could market consumer issues and initiatives through the media to voters in the political marketplace, to sell themselves as advocates of attitudes and initiatives which a broad public constituency would buy. They really fit Wilson's marketplace image of the "entrepreneur" more comfortably than public interest advocates such as Ralph Nader (who might be viewed as "not-for-profit" entrepreneurs). Estes Kefauver in the 1950's demonstrated how a full-throated attack upon the oil and drug industries could catapult a Senator without a major urban state platform into contention for the Presidential nomination.

In the early 1960's Senator Phil Hart inherited the Kefauver mantle, laying the painstaking foundation of investigation and hearings which was to lead ultimately to passing the Fair Packaging and Labeling Act. At the same time, Paul Douglas in the Senate Banking Committee patiently pursued "truth-in-lending" legislation which Proxmire, after Douglas's death, was to guide to passage. By mid-1964 Senator Gaylord Nelson had introduced a federal tire safety bill and by mid-February 1965 Senator Ribicoff would launch his chairmanship of the Senate Government Operations Committee's subcommittee on executive reorganization with hearings aimed at curbing "the fantastic carnage" on the nation's highways. In the states, young attorneys-general such as Walter Mondale were emerging as formidable challengers for higher office on a political foundation of consumer advocacy and law enforcement.

Though it is barely more than a decade distant, it now seems strange indeed to us that Lyndon Johnson and other lawmakers would seek to measure their effectiveness -- and be measured -- by the numbers of new laws proposed and enacted under their sponsorship. Indeed, much of the political

energy behind many of the consumer initiatives was reinforced if not generated by lively competition for credit as the progenitor of consumer laws.

In no arena was this competition more heated and its results more palpable than in the pursuit of auto safety legislation. First Congressman Kenneth Roberts of Georgia, alone for nearly a decade, then Gaylord Nelson and Abraham Ribicoff, joined by Magnuson, then Vance Hartke and finally emerging as the new Chairman of what had been a defiantly anti-consumer House Commerce Committee, Harley Staggers, supported the legislation. They were followed by John Moss, Robert Eckhart, and John Dingell in the House Committee, and later joined by Senator Frank Moss, following the '68 election, as second chairman of the Senate's Consumer Subcommittee. Each competed boisterously for credit as either the author or the strongest pro-consumer advocate of auto safety. And all of them had to contend with Lyndon Johnson who entered the lists with the administration's exceedingly modest auto safety bill, early in 1966. All combined in what Elizabeth Drew in the Atlantic Monthly labeled the "political car-safety derby."

Consumer advocates in Congress, such as Maurine Neuberger, who had "taken on" the cigarette industry, were singled out for rare praise by muckrakers such as Drew Pearson for their heroism in challenging "the special interests." Indeed they could bask in the sunlight of public approval while political retribution from business appeared remote.

THE ENTREPRENEURIAL COALITION

Though elected officials may be the purest of political entrepreneurs (and electoral politics their marketplace), their marketing of consumer political goods falls far short of explaining the peculiar nature of the consumer legislative surge of the 1960's and early 1970's).

Not only were unprecedented numbers of consumer laws enacted during those years but the customary Congressional pattern of treating producer/consumer disputes was very nearly stood on its head. There had been, after all, earlier Congressional entrepreneurs claiming credit for such laws as the first Flammable Fabrics Act or the Hazardous Substances Labeling Act of 1962 (which allowed warning labels but not the banning of toxic cleaning fluids such as carbon tetrachloride, subsequently banned by the Consumer Product Safety Commission).

Typically in the past, a Senator or Congressman or responsible agency would have responded to a consumer scandal or crisis by drafting and introducing a bill minimally adequate to vent public outrage. Where the initiative had come from an agency accustomed to regulating an industry or from the

appropriate committee chairmen, such legislation (as in the case of the first Flammable Fabrics Act) was often the product of extensive pre-introduction negotiation. If not, as the bill wound its passage through the tortuous succession of veto points called the legislative process, an alerted industry, employing one or another available legislative lever, would assure that objectionable provisions melted away. (For example, during the House Commerce Committee's consideration of the Senate-passed Fair Packaging and Labeling Act, it eliminated the critical Senate provision authorizing mandatory standard sizes for grocery products to promote competition through competitive pricing). Since few constituents were prepared to analyze or follow the terms or implementation of such legislation, the Congressional author's political purpose was achieved simply by claiming credit for the passage of a law bearing an impressive title.

By contrast, the auto safety law and others that followed, like the Consumer Product Safety Act and the Magnuson-Moss Warranty and FTC Improvements Act, were drafted and introduced as comprehensive regulatory schemes and maintained essentially intact, if not strengthened, throughout the course of legislative passage. This unique throttling of

business's accustomed access and influence on the legislative process could only have taken place because of the simultaneous emergence of four distinct groups of entrepreneurs who formed a largely unorganized but mutually reinforcing and sustained coalition:

- 1) The consumer advocates among the Senators and House members.
- 2) The new strain of entrepreneurial Congressional staff.
- 3) A newly aggressive core of investigative and advocacy journalists who shared the advocates' view of consumer initiatives as moral imperatives.
- 4) The private not-for-profit issue entrepreneurs, such as Dr. Abe Bergman, but preeminantly Ralph Nader -- so much so that to him belongs primary credit for the persistent substantive strength - if not the existence - of the major new consumer laws.

We'll examine representatives of each component of this coalition. But, first, let me turn to my own leader, Warren Magnuson, Chairman of the Senate Commerce Committee from 1956-1977.

MAGNUSON AND THE SENATE COMMERCE COMMITTEE

Observing Senator Magnuson in 1962, one might well not have marked him for future leadership as a consumer advocate. To be sure, shortly after his election to the Senate in 1946, he had expressed interest in heading an investigation of the life insurance industry as a joint venture with then Chairman McCarran of the Judiciary Committee. (He wisely withdrew from the project when McCarran informed him that the investigation would have to be conducted without benefit of additional staff counsel and investigators.) And it was Magnuson, according to Richard Harris, the chronicler of the Kefauver-Harris drug reform law who first raised at a Congressional hearing (this time the FTC appropriations hearings in 1957) questions about the anti-competitive structure of prescription drug pricing.

But since 1956 Magnuson had chosen the primary role of defender and nurturer of Washington industries merchant marine and fisheries, aviation, and trucking. In his combined roles as Chairman of the Commerce Committee and senior ranking member of the Appropriations Committee, he made certain that Washington State received ample allocations of federal expenditures. In the election of 1962 Magnuson experienced a rude shock. Previously a confident and skillful

vote-gatherer, he came within 50,000 votes of losing his Senate seat to a political novice, a young Methodist minister who had never before run for political office. He brushed aside his old political cronies, soured by their hoary counsel and botched campaign, and turned for guidance and leadership to a brilliant young Yale and Harvard lawyer, Gerald Grinstein, whose political acumen belied his eastern academic gloss (perhaps because, himself the son of a Magnuson crony, he had observed and absorbed what was to be learned from Magnuson's early political experience, without the older political generation's tendency to let that wisdom atrophy).

Having apprenticed and earned Magnuson's trust and respect as an assistant committee counsel handling the politically delicate Merchant Marine Subcommittee, Grinstein's first order of business was to sweep the cobwebs from the Senate Commerce Committee, whose staff, it must be said, had not previously been celebrated for energy or initiative. He would rebuild with young professionals who met both his standards for professional excellence and political sensitivity.

I do not know when Magnuson and Grinstein determined that a strong pro-consumer record of achievement would be a major component of the political revitalization of Warren Magnuson, but in the fall of 1964, Grinstein, who had been a

classmate of mine at Yale, asked me to join the staff of the Senate Commerce Committee in the newly created capacity of Consumer Counsel.

As a legislative assistant to Oregon Senator Maurine Neuberger, an early and enthusiastic consumer advocate, I had gained some experience and even more enthusiasm for the pursuit of consumer interests. I had assisted Senator Newburger's efforts to launch an early challenge to the cigarette companies and, jointly with Senator Hart, to pursue packaging and labeling abuses. Grinstein promised a wider canvas in the Commerce Committee: a vastly more senior and powerful leader, Senator Magnuson, and an opportunity, through the creation of a new consumer subcommittee (which did not actually take place until 1976), to make a substantial contribution to the law of consumer protection.

My assignment: to help build a consumer record for Magnuson, to identify opportunities, develop strategies, shepherd bills, and make certain that Magnuson received appropriate acknowledgement for his achievements. Grinstein knew that I had been trained by Neuberger's Administrative Assistant, Lloyd Tupling (formerly a muckraking Northwest journalist who had relished the private power controversies which occupied the stormy

center of Northwest politics for a generation). And he knew that the first lesson I had been taught as legislative assistant was never to write a speech, concoct an initiative or draft a bill, without simultaneously visualizing the press release.

Over the ensuing years, Grinstein and I gradually but relentlessly expanded the committee staff, absorbing each year one outstanding graduate of the University of Washington Law School and building, through on-the-job training, a corps of consumer legislative specialists. By 1968 ten new consumer laws bore Magnuson's name as principal author. And in the campaign of 1968 Magnuson, who had never once mentioned consumer issues in his 1962 campaign, ran a series of bold newspaper and television ads.

Across a full newspaper page in bold freehand type appeared the following message, trumpeting his consumer achievements:

"There's a law that forced Detroit
to make cars safer - Senator Magnuson's
law."

"There's a law that keeps the gas pipelines under your house from blowing up - Senator Magnuson's law."

"There's a law that makes food labels tell the truth - Senator Magnuson's law."

"Keep the big boys honest; let's keep Maggie in the Senate."

Magnuson's consumer enterprise passed largely unremarked by political observers with the crude and simplistic exception of an aside by Jim Ridgeway writing in The New Republic in 1966 who referred to Senator Magnuson as busily changing his image to consumer advocate from "corporate stooge."

THE ROLE OF STAFF

The second key component of the entrepreneurial coalition, sometimes deplored, or feared, but only dimly perceived, were the Congressional staffs. "Bumblebees," John Ehrlichman called us (to Magnuson's undisguised delight), hovering above the honey of power.

It is true that Magnuson's Commerce Committee never lacked for enthusiastic applicants, drawn, as Wilson observes, by the opportunity to pursue work perceived as both "morally correct" and "politically useful."

It is a measure of the ideological dominance of liberal values and remedies that the staff members drawn to the Commerce Committee could safely be selected by an independent faculty committee without regard to party affiliation or ideological commitment, though of course there was some measure of self-selection, as Magnuson's identity as consumer advocate grew. Indeed, the staff member assigned principal responsibility for the Flammable Fabrics Act was Norman Maleng, who viewed himself and subsequently pursued public office as a staunch Republican.

In 1966 David Price, a graduate student in political science at Duke, pursued as his thesis the role of staff on several Senate committees, most prominently the Commerce Committee. Comparing Magnuson's staff with the professionally competent, but defiantly neuter staff of the Senate Appropriations Committee, Price differentiated us from the Appropriation-type staff. He labeled them "professional" and us he called (perhaps anticipating Wilson) "entrepreneurial."

The role of staff was critical, but it can be exaggerated. The lack of formal structure and visibility of the relationship between staff and members lends itself to demonology, such as the persistent myth that Magnuson's consumer efforts were the product, not of the real Magnuson, but of an unrestrained rogue staff. So persistent was this myth that one day in late 1967 an old colleague (and former Administrative Assistant) to Senator Magnuson, then lobbyist for a major trade association, paid a visit to Magnuson at his home on behalf of old Magnuson hands within Washington's lobbying community. The purpose of the visit, said the old friend, was to bring to Magnuson's attention the (of course, selfless) concern among Magnuson's friends that in his name and without his knowledge Magnuson's overzealous staff were committing excesses in the name of consumer protection. Magnuson listened, nodded and smiled. His friend was not reassured. Magnuson, it turned out, knew far more of the thrust and detail of his consumer legislative program than his friends had imagined. And it was quite clear that he held the staff in harmonious harness. Indeed, it had served Magnuson's purpose to let the staff be cast as villains and rogue zealots, with Magnuson

a captive of his own staff. That image conveyed the message that direct appeals to Magnuson for legislative clemency would be of little avail, so Magnuson spared himself the pain of denying the earnest entreaties of old friends.

There were indeed sharply circumscribed limits to staff initiatives, but the role of the staff was undeniably critical. Foremost, the staff served as a professional resource, counterbalancing the extraordinary breath of legal and technical talent available to business. The crafting of effecting regulatory schemes is an arcane art, and the difference between effective and token regulation may well turn on the artful shaping of apparently innocuous and routine legislative boilerplate.

Staff also served as a source of psychic energy, buttressing and absorbing the stress of conflicting technical arguments for harrassed and burdened Congressmen and Senators. The relationship between Senators or Congressmen and their staffs are ambiguous and often emotionally complex. Unlike the structured roles of both government and business bureaucracies, the Congressional office or committee more nearly resembles a petty

Renaissance court, with power and advancement largely dependent on the temper of the relationship between principal and servant. These relationships are often intense mixtures of mutual respect and antagonism. Unhappily, staff are not infrequently seized with unearned self-importance, however, arrogant and contemptuous of their own principal; while the members, vain, are often jealous of their own staff's skills and knowledge.

But these relationships can also be enormously creative. Magnuson deliberately surrounded himself with young staff. He drew energy from their enthusiasm. He gave them creative space but only when he had satisfied himself that their judgment was reliable and harmonized with his own political philosophy and style. They, in turn, had only to watch him subtly take charge and direct the temper and thrust of a contentious Senate-House Conference Committee to achieve his goals, to gain respect and affection for their leader.

For many members, especially older members, whose social lives were played out mostly in the company of businessmen, lobbyists, and other worthies of the economic and political establishment, the business perspective and influence was counterbalanced by their younger

staffs, more attuned to the newer political generation -- which in the 60's meant less ambiguously liberal, skeptical of institutions, especially business, but not yet government.

Make no mistake of it, business lobbyists even at the zenith of the consumer thrust in Congress spoke powerfully for the economic and political establishment of the Congressmen and Senators' political constituencies. They formed for the most part the elected officials' social and economic peer group; they represented the primary source other than labor of campaign funds. But staff was constantly present. In the midst of the Senate Commerce Committee deliberations on auto safety, Rod Markely, then Washington Vice President of Ford and perhaps the most able representative of an auto manufacturer, called his neighbor Magnuson at home one evening to ask if he might drive the Chairman to the office the next day. Markely had spent his career patiently ingratiating himself so that he could be in position to ask to drive Magnuson to the office, a priceless opportunity to talk -- alone. Magnuson declined. But within our staff, those who needed access to the Chairman each morning took the opportunity to drive him in.

Of one senior Congressman, whose late-blooming political renaissance through consumer advocacy was stimulated by a close and affectionate relationship with

a lively and committed staff, an old friend observed, "They have power over him, because he sees, in their idealism, himself as a young man -- or what he would like to think he was or might have been." Thus, it was in the combination of elected members and their staffs that one found the felicitous confluence of the consumer enterprise.

THE NOT-FOR-PROFIT CONSUMER ENTREPRENEURS

The third component of the consumer coalition was made up of private citizens, labeled either public interest advocates or "so-called" public interest advocates, according to one's political preferences. Though the individual advocates, like Nader, stand out most vividly, it is important to describe the organizations and to emphasize that consumer advocacy in the late 60's and 70's was not without substantial institutional underpinnings.

Organized labor must be paid its due. To the extent that consumer issues were advanced through the uses of traditional political "clout," the unions supplied it: Evelyn Dubrow of the ILGWU; Arnold Mayer of the Meat

Cutters and Butcher Workman; Ken Young of the AFL-CIO, Ken Kovacs of the Steelworkers, Steve Schlossberg of the UAW -- each a veteran lobbyist, wise in the folkways of Congress, enjoying close, seasoned relationships with members -- and representing an organized constituency! These men and women entered into the lists on behalf of most of the consumers bills, and they did so with a spirit of deep personal commitment beyond institutional endorsement.

Labor's involvement was hardly surprising, since the consumer movement of the 1930's was closely intertwined with the rise of the labor movement. Indeed, this connection was symbolized by President Kennedy's assignment of a dual role to Esther Peterson, herself a legendary former organizer for the International Ladies Garment Workers Union, as Assistant Secretary of Labor and Special Assistant to the President for Consumer Affairs. For many of the labor representatives, the fight for consumer legislation gave vent to an idealism which mature labor unionism otherwise no longer engaged.

Labor, of course, had limiting, sometimes conflicting, goals. Their traditional approach and long-standing relationship within the Congress sometimes clashed with

the arms-length confrontational tactics of the new consumer advocates. But on most key consumer issues, they were there in sturdy numbers, cornering Senators and Congressmen and communicating their position in that familiar shorthand which only long-term and comfortable relationships support -- a traditional political resource which dwarfed those of all other consumer advocates combined.

Though I have preferred the term "consumer impulse" to "consumer movement," the successful effort in 1968 to bring together both labor and other national and local consumer organizations in an umbrella coalition, the Consumer Federation of America, did demonstrate the breadth of the appeal of consumer issues to a broad constituency. As a loose coalition of organizations, however, CFA might well have lacked significant independent political presence were it not for the extraordinary skill and energy of its leadership -- perhaps most forcefully, Carol Foreman, its executive director from 1973 to 1977.

During the late 1960s and early 1970s, the Nixon years, Foreman and Joan Claybrook, organizer, manager, and chief lobbyist of Congress Watch, Nader's "citizens' lobby," demonstrated the remarkable capacity of a handful

of skilled and dedicated advocates to affect legislative decision-making, with little more than zeal for political combat, subtle sense of legislative motivation and monumental determination and patience.

As the most venerable of consumer organizations, with more than a million members (though most may have viewed themselves as primarily subscribers to Consumer Reports) Consumer's Union took some time to shed its institutional diffidence concerning public advocacy, but became increasingly active in representing the consumer interest before Congress. And when it did, it conveyed the legitimacy of its tradition, the weight of its numbers, and its institutional expertise and recognition.

Then there were the individual advocates. Some like Dr. Bergman pursued their cause directly with responsive Senators and Congressmen, and their staffs. Others, like Jessica Mitford whose exposes of abuses in funeral practices led indirectly to a Federal Trade Commission investigation, could trace their functional lineage to the progressive muckrakers.

And there was Ralph Nader. How does one begin to take his measure? Like Mitford or Lincoln Steffens, a painstaking chronicler of public and corporate malfeasance:

a muckraker. But unlike the investigative journalist whose journey ends with exposee, Nader was also a scholar of the regulatory process -- of the historic breakdown between legislative promise and effective implementation.

Yet again, more than investigator and scholar, drawing upon but transcending his lawyer's skills, he was an advocate, skilled at seizing the symbols of debate -- not a traditional advocate but an advocate finely attuned to the uses and the needs of the media: the beats, the deadlines, the need for fresh "copy," for conflict, for heroism if available, but certainly for villainy, and above all for clarity and simplicity. ("Ralph Nader speaks in perfect bites!" said a TV consumer reporter, with professional respect.)

But even these significant roles diminish his contribution. For a very broad segment of the American public, his has been the voice and persona of a contemporary Old Testament prophet: not a political radical, but like the prophet's, deeply conservative, calling society to account for its drift from its own professed morality. To people troubled by the "cultural contradictions of capitalism," (in Daniel Bell's terminology), Nader evoked the neglected but latent ethic of community responsibility.

He called the business community to account for its abandonment of the puritan ethic of "right livelihood," and he called government to account for its failure to respond to the will and needs of the democratic majority rather than the economically privileged, invoking the morality of social responsibility and accountability. He was lively, but not ingratiating. He would not abide the conventions of politics. He was intemperate and prickly; he attacked allies; he would rather compromise too late than too early. His work was his leisure; his social life satisfying only to the extent that it furthered his causes. He could be very funny, but his wit too drew upon the wellsprings of his indignation.

For those already enlisted in the consumer cause he was the drill sergeant. He roused us from sleep and relaxation and plagued us into the night. He goaded, scolded, and teased. There was warmth and affection, too, but it was not readily forthcoming. Praise was rare, and when granted, it was invariably qualified with the kicker of expectation for future surpassing deeds. He understood that if the energy behind consumer initiatives flagged, if the attention of Senators and Congressmen were allowed to be diverted, if they became worn down and enervated by conflict, business, politically and institutionally resourceful, would ultimately persevere.

I first met Ralph Nader in the summer of 1965. We met over coffee (at least, I had coffee) in the Senate staff cafeteria. I had been assigned as the staff member responsible for tire safety legislation, on which the Commerce Committee had been holding hearings. It was about 6 months before publication of Unsafe at Any Speed, and 8 months before the public revelation of General Motors' investigative efforts to intimidate Nader or at least unearth his vulnerabilities.

He delineated for me, with barely contained fury, the sub-industries which had evolved with an economic stake in the continued high level of automobile accidents -- and injuries: the auto repair shops, the personal injury lawyers, the wreckers and salvage yards, even the surgeons and emergency rooms. But above all the auto companies! With their economic stake in the extremely profitable after-market for crash parts, the automobile industry, he maintained, had no economic incentive to improve the crashworthiness of new cars -- and would not do so until compelled by federal regulation. I was sympathetic (but uncomfortable at the unaccustomed passion of his conviction).

I expressed sympathy for his case, but with all the sophistication of a 3-year Senate staff veteran, proceeded to lecture him on the realities of the legislative

process. Despite Magnuson's consumer commitment, the Senate Commerce Committee remained a conservative institution. I could not conceive of its members participating in a comprehensive legislative assault upon so powerful a political citadel as the American automobile industry. He was disappointed in my response, but undeterred. I was, of course, wrong. He was by that next January -- and again and again -- to raise our horizon of the possible.

Finally Nader proved to be a skilled and resourceful political strategist. He understood that the political energy needed to offset the privileged position of business had to be generated through the media by broad and sustained public outrage, perceived by Congress as a potential source of political retribution if they failed adequately to address the sources of that outrage. To a citizenry which had come increasingly to despair of the possibility of government responsiveness to the individual, Nader's appeal also lay in his apparent redemption of the American promise that democratic government could be responsive to the demands and needs of the ordinary citizen -- a symbol of the potential capacity of "everyman" to affect political change.

Nader's appeal also lay in conveying to the citizen a sense of empowerment, by demonstrating that an unconnected citizen -- not part of the establishment nor enjoying a formal position of power or prestige -- could affect change. For a skeptical society, he became a symbol of trust-worthiness. To a society which was losing faith in the capacity of ordinary citizens to shape their lives, he held out the hope of democratic change.

Nader has sustained his status as a public figure without institutional standing with only modest diminution for almost 20 years. For this sustained public celebrity one can look partly to his clarity and skill in communicating with a broad public, his sense of the dramatic and a flair for the vital, fresh image and example. But Nader has also taken care to conserve his public identity. He deliberately avoided engaging in such deeply divisive public issues as the Viet Nam war -- at least in part so that he could husband the resource of his identity and uniqueness as the consumer advocate.

Nader understood the liberal journalist's self-image; appealing to his or her pride in the importance of their mission, conveying the sense that journalistic courage and the truth (including brand names) could be

the antidote in a democratic society to unaccountable government and corporate power. Though business critics tend to view Nader as "the great regulator" he succeeded partly because much of his message constituted an attack upon the lethargy and inadequacy of regulators. In associating himself with the consumer's pain and frustration, not with more or oppressive government regulation, it remains his skill, especially in his appearances on national television, to be able to relate and to resonate with the frustrations and anger of the ordinary citizen. As Tony Schwartz has written, the successful political candidate is not the one that spells out specific solutions to problems, but the one who convinces his constituency that he shares their concerns. When the consumer gets stuck with a new car lemon, he might say, "There ought to be a law!" but is even more likely to say, "Where is Ralph Nader when I need him?"

THE MEDIA

Though their inclusion as a part of the consumer entrepreneurial coalition was implicit, never explicit, no consumer political enterprise would have been possible without responsive media. Wilson attributes the success of the consumer entrepreneurs in activating in the press

what he believes has been a narrow sub-species of journalist, "those who bring an anti-business attitude to their jobs." Yet I discovered, during my years as a staff member on the Senate Commerce Committee, that I could safely assume that virtually any national reporter assigned to cover the story of some piece of consumer legislation or other would be unabashedly sympathetic with the aims of the legislation. I unhesitatingly took into confidence reporters with whom I'd had no prior dealings, and I was rarely disappointed or embarrassed.

It is true that for certain publications, columnists provided the most receptive forums for the propagation of consumer initiatives and the spotlighting of business lobbying efforts to thwart those initiatives. Drew Pearson -- later Jack Anderson and his associate Les Whitten -- were perhaps the most feared and, hence, the most potent journalistic guardians against what they perceived and characterized as Congressional subversion by special interests.

I remember with a perhaps perverse fondness my first encounter with Drew Pearson. It was in 1965, when I was an exceedingly tentative staff member assigned to my first major consumer bill, the Hart-Magnuson Fair

Packaging and Labeling bill. The committee had been meeting in (then) closed-door executive session, and Magnuson had encountered unaccustomed resistance among committee members who had been hearing from a well-organized consortium of food manufacturers, organized and led by Proctor and Gamble's Bryce Harlow. No more than an hour after the executive session I received a call from the Chairman, my first, with an order to come to his office forthwith. There, sitting across the table from him, was the fabled Drew Pearson.

"Tell Drew what went on in the executive session," said the Chairman.

I proceeded to spell out the character and source of advocacy of the food manufacturers' position within the committee. I reported the sage counsel of Tennessee Senator Ross Bass, who, in response to the information that potato chips were packaged in more than 60 odd weights and sizes under a pound, thereby making it virtually impossible for a prudent housewife to choose the least expensive by unit measure, had responded, "Any woman who feeds her children potato chips isn't worth protecting!" When I was finished, Magnuson dismissed me. Pearson stayed.

Five days later, in his "Washington Merry-Go-Round" column, an anonymous inside source was credited with revelations on the attempt by named members of the Senate Commerce Committee to deprive the consumer of honest labeling and fair packaging in consumer products. The next day the Committee met once again to complete its markup. In accordance with what was then already a vain ritual, one of the members thus publicly embraced demanded of the Chairman an investigation of "leaks" from the Committee. Magnuson nodded gravely at this lamentable breach of the Committee's sanctity. He looked piercingly around the room at the outer rim of staff members. I sat as impassively as I knew how. "Have any of you staff members been talking to the press -- been talking to Drew Pearson?" No head moved. Magnuson waited. The room was still. Magnuson frowned. Then, he abruptly turned to the agenda and within an hour the Packaging and Labeling bill, substantially intact, was on its way to the floor of the Senate.

Pearson/Anderson's willingness -- indeed delight -- in publishing ad hominem revelations of Congressional back-sliding, in their syndicated network of 1100 papers made them a formidable political force. Nader's ability

to ferret out from his Congressional sympathizers details of off-stage lobbying, the investigative work of the "Nader's Raiders" unmasking bureaucratic malingering, combined with Nader's unslackening moral indignation, meshed perfectly with Anderson's philosophical predilections and journalistic needs.

The Washington Post, the one paper all Congressmen and Senators read each morning, was also graced with the consumer reporting of Morton Mintz, as indefatigable in the pursuit of consumer injury, bureaucratic inertia and Congressional obfuscation as Nader -- a scrupulously exact reporter, but one who miraculously never became inured to the ethical sleights-of-hand endemic to official Washington, especially the Congress, a journalist whose threshold of outrage remained low and frequently breached.

Unlike Anderson/Whitten, Mintz was a reporter first, not an advocacy journalist. But he insisted upon covering hearings which would otherwise have quickly faded from sight, like the Flammable Fabrics hearings, and he fought his editors constantly for more space, not on the distant business pages but up front.

There was Herblock, the political cartoonist. Who could portray more venomously the illicit conspiracy of special interests and their Congressional cohorts as cabals of corpulent corrupt tycoons, malignly arrayed against the frail, friendless consumer?

Consumer advocates also found sympathetic ear and voice in the Post's editorial board, which, drawing substance and nourishment from Mintz's reporting, returned again and again to argue unequivocally against weakening consumer bills.

Though Anderson and Mintz and The Washington Post were of critical importance, only slightly less important, because of their enormous reach to every city and town in the country, were the mostly anonymous and generally unremarked Congressional wire service reporters. Reporters such as Patrick Sloyan of UPI and Bill Mead of AP cared enough to devote stringently rationed paragraphs to the revelations of corporate misdeeds unfolding in hearings and Congressional debate.

THE ENTERPRISE

Thus far, we've reviewed the environmental conditions in which entrepreneurial politics flourished identified the constituent members of the consumer coalition. Now let's observe the strategic blending of these ingredients.

You may recall that, confronted with Senator Magnuson's proposed Flammable Fabrics Act Amendments, a lobbyist for the cotton textile industry, with a flamboyant confidence borne of the habit of influence vowed, that "blood will run in the halls of Congress" before passage of the act.

In response to that challenge, we set about with what I confess was a certain macabre relish to structure the Commerce Committee hearings on the proposed bill. Our objective was simple: to gain access to the public media, to evoke public concern and reaction to the pain and suffering caused by child burnings; and to demonstrate the failure of the cotton textile industry to make any good faith effort to raise the inadequate voluntary standards of flammability.

As one of our first witnesses, we invited the newly launched Special Assistant to the President for Consumer Affairs, Betty Furness, a celebrity whose lack of visible credentials had made her appointment controversial, for what would be her maiden appearance before a committee of Congress. We knew that this first appearance would be a significant media event and would guarantee the presence of network cameras as well as wide attendance by other national media. She would be the door-opener to broad public attention.

Ms. Furness was followed immediately by Peter Hackes, the prominent CBS news commentator. Several months earlier, reading of Senator Magnuson's concern over flammable fabrics, he had called to offer his support, citing his own family's tragic experience through the burning of an eleven year old daughter whose cotton blouse (which he had determined met all current standards) had exploded into flames after she accidentally dropped a match on it. We asked him if he would tell the story of his own family's pain and suffering and economic debilitation -- the story of a family with whom the Senators and the public would readily identify.

"Dr. Bergman, in his testimony, also managed to put in stark human terms the tragedies represented by the impersonal statistics on child burnings that other witnesses were to give. He told of a two and a half year old girl, Suzy, who, three weeks earlier, had received 3rd degree burns on over 85 percent of her body when the nightgown she was wearing burst into flames after brushing against a space heater. Dr. Bergman told the committee that because

of the severity of the burns, this young girl would eventually die, but as each day could only bring more excruciating pain and agony to this child, he was praying for her speedy merciful death. Speaking of the dozens of other young children he had seen hideously burned by flammable clothing, Dr. Bergman went on to say: "In all honesty I must say that I do not consider it a triumph when the life of a severely burned child is saved. A lifetime of operations, pain, disfigurement, scarring, and rejection by society and self lie ahead. Death may be more merciful.'"

The next day the cotton textile council had its opportunity to respond. It maintained that no legislation was necessary, that the industry through its voluntary standards committee was hard at work to raise the standards as high as textile technology would economically permit.

The next day the National Cotton Council had its opportunity to respond. It argued, in spite of the horror stories the Committee had just heard, that the Flammable Fabrics Act had "done the job Congress intended it to do"

and called its results "admirable." It argued that no further legislation was necessary, for the industry, through its voluntary standards review committee, was hard at work to raise the standards as high as textile technology would economically permit.

"How often," asked Senator Magnuson, "does your standards committee meet?" "Regularly, Senator," responded the Cotton Council representative.

Indeed, it turned out that the industry standards committee had been meeting regularly, but only recently, prompted by a letter Senator Magnuson had written to the Secretary of Commerce, questioning the adequacy of the existing flammable fabrics standard. Prior to that it had last met in 1955, ten years earlier.

MOTIVATING CONGRESS

I cannot say now that these strategies were coolly and deliberately calculated. They were perhaps as much the product of political instinct. It is evident

however, at least in retrospect, that these strategies were played out against an operational construct of Congressional behavior which, however unarticulated, served the consumer advocacy cause well.

At a basic level our operational assumptions on the psychology of Congressional behavior were mechanistic. Congressional votes and related behavior involving consumer-producer conflicts will ordinarily trope toward the producer interest, given the normally high level of producer political influence -- especially gratitude for campaign contributions past and the promise of future beneficence -- unless there are substantial political costs or risks entailed in so doing. Opposition by a prominent union is one such cost. But for most consumer issues the greatest potential cost lies in public notoriety: critical attention in public media which potentially translates into a viable issue for a potential political opponent and ultimately voter retribution at the next election.

But we also knew that members of Congress were not simply political mechanisms. Emotions like greed, vanity, friendship, and loyalty, of course, played a role in determining Congressional behavior, not only in influencing votes but in shaping the determination and persistence with which a position, once taken, was

pursued. The ability of the media to confer hero status upon those who were perceived as fearlessly challenging "special interests" or championing the cause of the lone consumer, or were singled out from among "politicians" as a "statesman," could cast a lure to snare even relatively conservative politicians.

Even members whose electoral status was secure and even conservatives sympathetic with the concerns of business were moved, in the mid 1960's and early 1970's, at least, to avoid being labeled by Drew Pearson or Jack Anderson as "tools of the special interests" or worse, handmaidens of consumer pain or economic suffering, if only, to avoid the righteous wrath of their politically aroused, college-age children. One need not embrace Marshall McLuhan's construct of the "global village" to recognize, as media political strategist Tony Schwartz has, that the intimacy of the broadcast media can be as potent a vehicle for public shaming as the stocks in a prerevolutionary New England town.

Consumer strategists recognized other, perhaps more mundane emotions as well. The truth is that most veteran Congressmen and Senators ardently seek the avoidance of controversy. It is a cliché that the upright legislator is one against whom equal pressures

are applied from all directions. Otherwise the tendency is simply to give in to whichever pressures are unmatched by counterpressures. The stimulation by consumer advocates of public controversy makes it less tempting for the legislator simply to accede to the importuning of business representatives -- if only because of the knowledge that in so doing the legislator invites energy-draining conflict and confrontation, the spoiling of otherwise pleasant visits to the district, and the agitation of the local media.

As staff members, we came to view our principals as a congeries of personal and political instincts and motivations ranging from the venal to the heroic -- simultaneously coexisting. We understood that even the most zealous entrepreneurial staff member could frame issues in such a way as to resonate with the Senator or Congressman's more idealistic or populist instincts.

SECURING A PLACE ON THE NATIONAL

AGENDA: CHANNELING OUTRAGE

It was against this backdrop of perceived Congressional motivation that the consumer advocacy strategies evolved. Thus it was not enough simply to evoke public concern at

the fact of excessive child burn injuries, but to channel that concern toward potential public outrage at the failure of Congress to strengthen the Flammable Fabrics Law. A critical part of that channeling process was the need to focus public attention on the chosen legislative or regulatory instrument as the only legitimate response to a culpable business failure. That is one way in which a legislative initiative is placed upon the public agenda. Crucial to that process is legitimating the legislative initiative.

In the case of the Flammable Fabrics Amendments, this was relatively simple, since Congress had already enacted an earlier flammable fabrics law. The task was simply to prove it inadequate -- and that industry's promise to remedy that inadequacy through voluntary action was empty. Note that part of the process of establishing the legitimacy of legislation may lie in undermining the legitimacy of voluntary industry response. As Wilson observes, the need for crisis or scandal is less acute for the political entrepreneur where the industry is not "associated in the popular mind with positive values."

In the case of automobile safety, Nader faced a more difficult task in legitimating federal regulatory legislation as the appropriate response to the highway death toll. Though there was, indeed, sufficient highway mayhem to constitute a national scandal, there had been no sudden nor dramatic outbreak of such injuries, no dramatic escalation of the accident toll. Perhaps a more serious inhibition was the prevailing public belief that automobile accidents were primarily the result of driver rather than manufacturer failure. As Nader points out, this public attitude had been carefully nurtured by the automobile industry for many years. The industry had furnished the primary financial support to the National Safety Council (which remained, perhaps not surprisingly, unenthusiastic about auto safety legislation), generously underwriting its inexorable Labor Day body counts, its exhortations against drinking while driving, etc. All this was, of course, valid, but the constant focus on the driver also served to deflect public attention and concern from the design and safe construction of the vehicle itself. Indeed the auto industry embraced that safety slogan which implicitly denied the role of the vehicle in automobile safety: "It's the nut behind the wheel". A General Motors Vice-President for engineering, quoted in The New York Times in response to the agitation for federal safety standards, pleaded, "The driver is most important, we feel. If the drivers do everything they should, there wouldn't be accidents, would there?"

The public tended to accept the highway death and injury toll as an inevitable cost of its chosen public transportation system. Indeed, it could still be said in the 60s that the nation's deep emotional involvement with the automobile as a symbol of individuality and macho virility, stimulated by advertising imagery, had not waned. This imagery was antithetical to the antiseptic imagery of a transportation mode concerned with the safe packaging of its occupants. In resisting safety proposals, auto industry spokesman played skillfully upon these images, protesting that "no one wants to drive a Sherman tank."

Through the publication of Unsafe At Any Speed, and his efficient exploitation of the David vs. Goliath appeal which flowed from the illicit General Motors investigation of him and the subsequent lawsuit, Nader gained access through the media to a broad public audience. He evoked the outrage of GM's deliberate disdain of safe design in the building of the Corvair. And equally important, he introduced and nurtured the concept of "the second collision," the concept that while driver error or carelessness or bad luck may contribute to an accident, the life or death, the mutilation or safety from harm of the occupant was largely determined by the resulting collision of the passengers with the car's interior: the spearlike steering column, exposed knobs, and shattering glass. He argued that the safe or unsafe

packaging of the automobile's inhabitants was a social responsibility of the manufacturer, which had been sorely neglected in the interest of cost. When the automobile industry responded that it was the consumer's right to buy automobiles of any design and charged Nader with impeding freedom of choice, Nader wryly responded that it was admirable of the industry to defend that cherished civil liberty: "the inalienable right to go through the windshield."

NURTURING LEGITIMACY

We came to understand that success in overcoming business resistance lay as much in the careful cultivation and nurturing of the legitimacy of the laws proposed as in the political husbandry of public outrage. This learning is well-illustrated by the strategies which led to the passage of the Consumer Product Safety Act and the creation of a new independent regulatory agency: The National Commission on Product Safety.

Shortly after passage of the automobile safety law, Senator Magnuson and his staff began to explore what seemed to be the next logical step, omnibus product safety legislation covering other potentially hazardous

manufactured consumer products. The Food and Drug Administration, without regulatory authority, had carried on an extremely modest program monitoring product related injuries, through a small and low-priority Office of Product Safety. This office had accumulated sketchy but disturbing evidence indicating that there might indeed be substantial public injury attributable to the faulty design and manufacture of a broad range of consumer products.

We decided that the concept of an independent national product safety commission to regulate product safety, while needed and sound, was not politically ripe. The injuries attributable to such products were insufficiently documented and the public insufficiently alert to the extent of the risks to furnish a sufficient base of public support for immediate legislation. Moreover the concept of a national product safety commission lacked familiarity and legitimacy. So Senator Magnuson introduced legislation (in itself a legitimating step) to create a temporary National Commission on Product Safety, charged with the responsibility to study and hold hearings around the country, to develop a record of evidence on product hazards, to focus public attention and to develop "appropriate recommendations."

It had been our experience that business tended to become politically aroused only when regulatory action was directly poised to regulate business behavior and, therefore, a study commission looking to the possibility of future regulation would generate little negative business political energy. Indeed, the study commission bill was introduced with the unaccustomed cosponsorship of the conservative ranking Republican member of the Senate Commerce Committee, Norris Cotton in early 1967 and was on the President's desk by the end of the same year. The only change sought by industry (The Association of Home Appliance Manufacturers) was a change in the proposed title of the Commission: from "National Commission on Hazardous Household Products" to "National Commission on Product Safety."

It was our expectation, of course, that the Commission's deliberations would lead inexorably to a legislative proposal for the creation of a permanent consumer product safety commission, with full authority to set product safety standards and to order recalls. As anticipated, the Commission's regional hearings developed a public record on such design shortcuts and flaws as baby cribs designed to save a few cents through the spacing of the

slats so wide that they could catch the heads of infants and strangle them, and instant turnon systems for television sets that spontaneously, unannounced, burst into flames. Since Morton Mintz sought and was assigned by The Washington Post to follow the Commission from city to city, the hearings and revelations were assured not only of intense regional coverage and interest but of a national audience as well.

By the time the Commission issued its final report and delivered to Senator Magnuson and other Congressional leaders draft legislation to create a permanent product safety commission, public perception of the need for remedial legislation and the legitimacy of such a commission had been fully seeded.

Outrage As An Umbrella

The strategy leading to the passage of the Magnuson-Moss Act, on the other hand, involved the political use of public outrage already fulminating. In 1969 the Senate Commerce Committee as part of its interest in overseeing the performance of the Federal

Trade Commission, had invited each of its sitting members to propose remedies to deficiencies in the Commission's underlying authority which, in their individual judgments, had contributed to the "Nader's Raiders" and the American Bar Association's assessment of the Commission as, not only spiritless, but toothless as well.

The Commissioners, warming eagerly to that task, outlined a series of proposed legislative reforms, from industrywide rulemaking powers to enhanced FTC authority to obtain injunctions to halt deceptive advertising campaigns. This shopping list of FTC regulatory reforms was formidable, but to the leadership of the Consumer Subcommittee, Senators Magnuson and Moss, convincing. Yet, as structural and procedural reforms, they lacked the dramatic appeal of a Flammable Fabrics or Product Safety Act.

At about the same time the Committee's attention had been drawn to legislative proposals to provide consumer relief from exculpatory fine print and malperformance of product warranties. No other

single consumer complaint registered such widespread frustration and indignation. (Indeed, it had been my experience in speaking with business groups in defense of consumer legislation, that one had only to deflect attention from a particular industry's complaint of overregulation to their own individual experience with new car lemons to evoke the latent consumerist even among the most conservative businessmen.)

To take advantage of the energy behind warranty reform, in the bill, which came to be known as the Magnuson-Moss-Act, we married warranty reform (Title I of the Act) to a series of FTC Act amendments drawn from the Commissioners' prescriptions (Title II). Though many factors aided in the nurturing and passage of that legislation (including a virtuoso lobbying performance by Congress Watch and the Consumer Federation of America), the ease with which consumers (and Senators) could relate to the warranty provisions of the bill and their genuine popularity provided critical legislative loft for the more significant, but emotionally unprepossessing, FTC reforms.

CONCLUSION

Let me close this first lecture with a final vignette which recalls again for me those early days in which we saw ourselves the Scarlet Pimpernels of the consumer movement: secret, or in any event, unsung heroes doing good by doing in corporate abuse. One day during the late 60's I received a telephone call from former Kentucky Senator Earle Clements, then president of the Tobacco Institute. The day before, Senator Frank Moss, then Chairman of the Committee's Consumer Subcommittee, had issued a bitter press release decrying the rise in expenditures for cigarette advertising despite the Congressionally mandated withdrawal of cigarette advertising from television, and the "fact" that cigarette smoking caused the premature deaths of "300,000 Americans each year." Clements, not surprisingly, disputed the "fact." He assumed (correctly) that I had had a hand in drafting the Moss press release. His rebuke was mild, and characteristically defensive.

"You know, Pertschuk, when you're on the side of the angels, it's easier to stretch the truth."

Indeed, in those days we did see ourselves as on the side of the angels, and we were largely so perceived by the media and other reference groups that mattered. Nor were we immune from that curse of omnipotence which convinces each generation gaining political power that its successes are evidence of its own skills and virtue, and therefore fated to continue indefinitely.

Though we had hardly been able to achieve all that we proposed, we did not appreciate the uniquely benign political environment within which we had the good fortune to operate, nor did we comprehend the severely circumscribed, inherent limits to our strategies, nor take adequate note of the lowering clouds of gathering business concern and mobilization. These, however painful, will form the substance of the succeeding lectures.

But perhaps with the knowledge of what was to come, you will indulge me today this reverie for a time when to be a consumer advocate was indeed to enjoy "much honor" and few enemies that counted!