



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION

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ACTING CHAIRMAN ROBERT ADLER

ICPHSO 2021 Keynote Address: CPSC Acting Chair Robert Adler

Wednesday, February 24, 2021

Good morning. It's a pleasure to appear before you today even virtually. It's certainly been a rough year on multiple fronts, but I'm hopeful that 2021 will be much happier and healthier for all of us.

At the outset, I'd like to recognize and thank a number of folks for putting together such a wonderful conference in the face of numerous pandemic challenges.

- March Schoem, Executive Director,
- Rick Rosati, ICPHSO President,
- Andy Church, Symposium Planning Chair and Incoming President,
- Erin Cole, ICPHSO's Meeting Manager,
- Shelby Mathis, CPSC ICPHSO Liaison,
- David Schmeltzer Scholarship Fund

Today I'd like to provide an update on developments at CPSC this past year and to discuss some of the challenges we face in the upcoming year.

But, first, a quick personal update. I still plan to retire at the end of my term in October (unless I spill into my holdover year). And, I look forward to leaving CPSC in good hands with a permanent Chair and full complement of Commissioners. At that point, I will have spent almost 50 years working at, overseeing, or writing about CPSC – and I'll be 77 years old. I realize that makes me too young to be president, but I feel it's time for me to hang up my safety spurs and move on. My intention is to do some teaching and writing about various topics that interest me – always product safety, but also ethics and negotiation.

Some of you may recall that I used the metaphor of being a caretaker when I became Acting Chair over a year ago. As I said, I felt committed to maintaining a degree of continuity at the agency, but no new Chairman arrived nor did any other changes from above occur. So, we moved ahead and, I believe, got a lot accomplished. Now, here we are sixteen months later, with a new administration that clearly views product safety in different terms. So, I plan to modify my job's metaphor from caretaker to gardener.

First and foremost, this means to me that CPSC must try to break free from the prison of incremental budgeting that has plagued us for decades. And, as all gardeners know, nothing can flourish without rich soil – goodness knows we’ve been planting in poor soil for most of our existence. So, it is my profound hope that instead of having our OMB friends and our appropriators simply look at our existing budget and add a few dollars to it each year – which sometimes doesn’t keep pace with mandatory pay increases and inflation – they’ll understand the agency’s need for an exponential increase in funds to do its job well. And, here, let me make a few points:

- CPSC has authority over something like 15,000 product categories, which may well be the broadest jurisdiction of any federal health and safety regulatory agency.
- On the other hand, with a budget of \$135 million, CPSC is, by far, the smallest of the federal health and safety regulatory agencies. In other words, we’re the poster child for “start poor, stay poor.”
- And, I’m not sure whether to laugh or cry when I read that our sister agency, FDA, with a budget almost 44 times that of CPSC, claims to be a bargain for the American public at roughly \$10.00 per person. Mind you, it is. But, if FDA is a bargain, then CPSC’s a steal, since we cost only about forty cents per person.
- And, another sister agency, NHTSA, with a budget closer to ours, still weighs in at roughly \$1 billion a year – over 7 times larger than CPSC. And, without getting into gruesome detail, every year CPSC deals with more deaths and injuries than NHTSA – or OSHA – or the Mine Safety and Health Administration (MSHA) – or almost any of the other federal health and safety regulatory agencies with bigger budgets than CPSC.

Let me be clear: I’m not criticizing the funding for other agencies. It’s money well spent. But, there’s no good reason for CPSC to be on such a starvation diet.

So, tired of searching for pennies under the cushions, as one Commissioner, I just sent a letter to the Office of Management and Budget (OMB) asking for a budget more closely aligned with the demands of the 21st century. To me, this will require an ongoing budget of roughly \$280 million, with a one-time adjustment cost of \$89 million. Now, if that sounds aggressive, consider this: even if we were to get every penny that I think we need, CPSC would still be the smallest health and safety regulatory agency in the federal government.

In short, I believe it is long past time for Congress to properly prioritize the safety of the nation’s products. The victims of product safety mishaps – far too many of whom are children – deserve a future in which the agency is funded appropriately to prevent more tragedies like theirs.

So, what would we do with added resources? Lots of things, but to begin with, we’d tackle the unfunded mandates given to us in the recently-enacted Omnibus Covid relief act. These include making important but costly strides in the areas of imports, flame arrestors for portable fuel containers, an upholstered furniture standard, and carbon monoxide detectors.

And, I assume that everyone is following the new Covid Relief Bill (Covid 2) currently pending before Congress. If it passes, the bill includes funding to cover the added responsibilities from Covid 1. However, while I’ll be extremely grateful for the earmarked funds, they come with limits and still won’t solve CPSC’s perennial budget problems.

For example, we have an immediate need for additional resources to support our current 2021 Operating Plan, which is as ambitious as any we've put forward in my years as a Commissioner. It includes projects to develop—and in some cases finalize—mandatory safety standards for infant sleep products, crib mattresses, crib bumpers, clothing storage units, Carbon Monoxide hazards, high-power magnets, as well as Organohalogen Flame Retardants (OFRs), table saws, and window coverings.

And, of course, our work continues with the voluntary standards sector on dozens of projects, such as booster seats, child-resistant packaging, carriages and strollers, infant bath tubs, battery fires, clothes dryer fires, flammable refrigerants, liquid laundry packets and on and on. And, depending on the progress – or lack thereof – any one of these projects could turn into a mandatory standard proceeding – or vice-versa.

If we are to address these priorities in a timely and effective manner, we will need additional resources for our staff in epidemiology, engineering, health sciences, human factors, law, and elsewhere. In fact, everywhere.

So, as you can see, my intent is to be very transparent about the agency's budget plight, which I hope will resonate with our friends and stakeholders who've worked with us over the years.

To continue building on my gardening metaphor: if resources are the soil, the agency still needs careful tending. As I see it, that means we need at least two significant legislative changes to make the agency function as it should. You won't be surprised to hear me say the first of these is to unshackle the agency from the information muzzle found in section 6(b) of the CPSA. I won't repeat the many criticisms I have of 6(b) because you've heard them before. I will say that I've heard for years the concern that an agency without controls could run rampant with misinformation about companies. However, here's the thing about that concern—I'm not sure it's any more real than Bigfoot. Somehow, every other agency in the federal government manages to function fairly and fully without the restrictions in 6(b). And, it's the public that suffers from the limits on sharing safety information.

The other legislative change we need is what I'll call "pruning." We need less cumbersome rulemaking of the sort that was added to the agency's statutes some 40 years ago. Despite the claims that these extra procedures and mandatory findings would produce better rules, 40 years of history show that all they've done is produce fewer rules, with no discernible quality improvement, and at a great cost to consumer safety.

That said, let me be clear—we will continue working on as many of our priorities as we can, even if we don't get any money or any help with our statutory requirements: we'll do as many safety standards, as many port inspections, as many recalls, as much voluntary standards collaboration, as much warning and educating the public as we can. In fact, we're going to use every option we have to make consumers safer, including using our dedicated Compliance and Enforcement team to their fullest.

And a special note here: I'm proud to say that, after an unnecessary hiatus of several years, we've begun seeking civil penalties again, culminating in two recent penalty settlements. By the way, I'm proud not because we're in the business of racking up penalties – as my colleague and friend, Commissioner Baiocco correctly reminds me – but because, done thoughtfully, they are a necessary part of any properly run enforcement agency. I feel the same way about unilateral press releases and

administrative litigation—these are tools we are obligated to use when warranted, and I’m not going to forget about them.

Is that all that’s going on? No, there’s more. Our Communications team continues to deliver great advice and safety information in the form of education campaigns, clear and urgent recall announcements, and compelling social media memes that I still don’t quite get, but am assured have quite the cult following.

Moreover, our research and standards-setting staff, known as EXHR, continue to test products and analyze data, and have done so even during the early days of the pandemic lockdown when we had to reduce staff access to our lab.

Finally, to mark National Consumer Protection Week in March, we will soon release a snapshot from NEISS that a lot of people have been requesting that compares injury data from March through September 2020 to the same months in 2019 to highlight the effects of the pandemic. And we’ll continue mining that data to see whether we need to take additional steps to protect consumers.

In sum, I hope that we garden this agency the way Matt Damon grew potatoes on Mars in *The Martian*: we’re going to take what little we have and use every tool at our disposal to get the job done.

Now if you’ll indulge me, I’d like to mention two additional priorities that are key to our success at CPSC. The first is diversity. I don’t just mean that our little agency should look more like the American people we serve—which we must. I mean that we should take every opportunity to approach product safety from a variety of diverse viewpoints. For example: how might certain hazards exist for some vulnerable populations more than others? How might real-life barriers, like socio-economic status, affect our safety messages and peoples’ ability to respond to them? What methods can we use to reach marginalized and underserved communities?

It’s asking and answering these questions where the crucial work of diversity is done, and that’s what we’re committed to doing. In fact, for this year’s mid-year priorities, I have directed staff to present ideas that continue to expand our long-standing commitment to diversity.

The second key component of our success—and this will surprise no one who knows me – is civility. Here, I would second something I heard President Biden declare a few weeks ago when addressing a thousand new government appointees. In a nutshell, he said that if he ever discovered staff treating others with disrespect, he’d fire them on the spot. Needless to say, I love that degree of accountability, and hope he stays true to it. I, too, believe that we should always remain civil and treat each other with respect. These qualities are extremely important to me, and should be to everyone at the Commission.

Finally, I’d like to briefly share a few observations as I reflect on product safety after paying 50 years of dues.

First, as recent news would suggest, I believe we’re returning to a period in which people recognize that regulations, despite their faults and failings, can dramatically improve the nation’s safety, well-being, and fairness. Granted, I would never claim that all rulemaking is good. But, I strongly object to the notion that it’s always bad.

Instead, I suggest that society is constantly trying to balance two competing dynamics: markets that are imperfect versus regulation that is imperfect. And, here I feel the need to inject a note of realism. Sorry, folks. Anyone who believes that markets always produce optimal societal outcomes without the need for regulation lives in a dream world where dangerous products, fraudulent practices, abusive monopolies, and climate change always sort themselves out in the long run. They don't.

And, please forgive a frustrated observation: I've found that when free market ideologues encounter a regulation that operates effectively, invariably they insist that, while the rule may work in practice, it'll never work in theory.

On the other hand, even rules drawn with the best of intentions and the greatest of skill rarely come without costs and occasional unintended consequences. Sadly, CPSC discovered this years ago when its rule promoting reduced flammability for children's sleepwear led to the use of potentially toxic flame retardants which undercut any safety benefits from that rule.

In short, markets are flawed human institutions despite occasional fantasies by some that they are divinely ordained. Similarly, regulations, like all of us, are human and fallible. And, as I've learned over the years, the work of regulators is hard, endless, and anything but sexy. And, for those of us who are content to toil behind the scenes, I urge you to watch Bill Maher's tribute to my former boss, Congressman Henry Waxman, on HBO this past January 30th. It's funny and moving – and spot on about the difference between being a workhorse and a show horse.

With those thoughts in mind, let me add that I believe, for the most part, safety rules have been a great success story. When I reflect on decades of product safety regulation, I note that extraordinary progress has been made across the board – and not just at CPSC. As I said at ICPHSO last year, although the US population has increased dramatically in the past 50 years, fatalities from consumer products have plummeted due, in large part, to safety rules.

In short, by almost any measure, American consumers are safer than they've ever been. Of course, that's no cause for dropping our guard or reducing our effort. As long as entrepreneurs dream up new products and chemists develop new concoctions, new safety hazards will always emerge.

And, here I remind us of what I call the great safety paradox: namely, the more successful CPSC is in reducing deaths and injuries, the less anyone notices. Babies that don't suffocate in cribs or die from swallowing toxic prescription drugs never tell anyone that their lives were saved by a government regulation. And rarely do people recognize how profoundly safer they are than generations before them. But, we – and here I include a lot of our friends at ICPHSO who work to advance safety – know what we've done, and I'm extremely thankful for everyone's dedicated work.

Unfortunately, there's a flip – and dark – side to this paradox. That is, safety measures often don't come about until tragedy strikes. Not until 146 young women died in the Triangle Shirtwaist Fire in 1911 did New York act to promote fire safety and impose new building codes. And, not until highly infectious Dalkon Shield IUDs left thousands of women sterile or with lifetime pelvic damage did Congress move to draft Medical Device Amendments in 1976.

And, I remind everyone that the Consumer Product Safety Improvement Act would not have passed in 2008 had there not been a flood of toys with high lead levels imported into the country.

In short, tragedies often lead to enhanced and overdue regulatory authority, and that's a hell of a way to promote safety. Surely, there is a better way, and it's my ongoing plea to folks at ICPHSO to work for safety reforms that are measured and effective without needing ghastly tragedies to spur action.

In closing, I want to assure you that I'll be around for a while, doing my best to make CPSC the strongest *not-so-little* agency that I can. More importantly, CPSC's incredibly dedicated staff will continue its superhuman efforts to protect all consumers.

Thank you, and stay healthy!